WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

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ENROLLED
Com. Sub. for
HOUSE BILL No. 3146

(By Mr. Speakman, 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)

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

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
there to 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 chapter 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.

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

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

In addition to all other powers and duties now conferred by law upon county courts, such courts are hereby empowered to establish, operate and maintain, either directly or by contract, garbage and refuse collection and disposal services, and to pay for the establishment, operation and maintenance of such collection and disposal services, in whole or in part, either out of general funds in the county treasury, or out of special funds to be derived from fees charged to and paid by the users of such services or a combination of both such general revenue or special fund: Provided, That the power and authority hereby conferred upon county courts shall not be exercised in territory included...
within the boundaries of any municipal corporation, except as provided herein. Any county court for the purpose of implementing this section is hereby authorized to enter into such contract or contracts with any municipality or county within this state for the purposes of carrying out the powers vested in such county courts by this section, and all said county courts may, pursuant to such contract, exercise the authority herein granted within such contracting municipality: Provided, however, That where an area is furnished garbage and refuse collection service by an existing carrier under authority issued by the public service commission of West Virginia, the county court may enter into contracts or agreements with such carrier to supplement such existing service, but shall not enter into any competing service without authority being granted by the public service commission.

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

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

ARTICLE 5. FISCAL AFFAIRS.

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

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

ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES


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

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

The authority shall be controlled, managed and operated by a six-member board known as the West Virginia resource recovery — solid waste disposal authority board which is hereby created. The director of the department of health and the director of the department of natural resources shall be members ex officio of the board. The other five members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of one, two, three, four and five years, respectively. One appointee shall be a member of the West Virginia association of county officials, one a member of the West Virginia municipal league and a resident of a municipality as defined in section two, article one, chapter eight of this code, one a member of a regional council as defined in section two, article twenty-five, chapter eight of this code, one a contract solid waste hauler who holds a valid certificate of convenience and necessity issued by the public service commission and one person knowledgeable in environmental law. The successor of each such appointed member shall be appointed for a term of four years in the same manner the original appointments were made and so that the representation on the board
as set forth in this section is preserved, except that any
person appointed to fill a vacancy occurring prior to the
expiration of the term for which his predecessor was
appointed shall be appointed only for the remainder of
such term. Each board member shall serve until the
appointment and qualification of his successor.

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

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

The ex officio members of the board shall not receive
any compensation for serving as a board member. Each
of the five appointed members of the board shall receive
compensation of fifty dollars for each day actually spent
in attending meetings of the board or in the discharge
of his duties as a member of the board, but not to exceed
two thousand five hundred dollars in any fiscal year.
Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board. All such compensation and expenses incurred by board members shall be payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriation.

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

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

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

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

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

(2) Adopt an official seal.

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

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections ten, eleven and sixteen of this article. Any
(5) Make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects and adopt rules and procedures for making such loans and grants.

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

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

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

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

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any solid waste disposal facility operated under permits issued pursuant to the provisions of
article five-f, chapter twenty of this code and owned by
any person or governmental agency. This article does
not authorize the authority to take or disturb property
or facilities belonging to any public utility or to a
common carrier, which property or facilities are
required for the proper and convenient operation of such
public utility or common carrier, unless provision is
made for the restoration, relocation or duplication of
such property or facilities elsewhere at the sole cost of
the authority.

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

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

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

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

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

(16) Charge, alter and collect rentals and other 
charges for the use or services of any solid waste 
disposal project as provided in this article, and charge 
and collect reasonable interest, fees and other charges 
in connection with the making and servicing of loans to
governmental agencies in furtherance of the purposes of this article.

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

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


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

The authority shall designate the sheds so that:

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

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

(3) Solid waste collection and disposal service, facilities and projects can be integrated in the most feasible, dependable, effective, efficient and economical manner.

(4) No county is located in more than one shed.
The authority, in developing and designating solid waste disposal sheds, is exempt from the provisions of chapter twenty-nine-a. On or before the first day of July, one thousand nine hundred eighty-eight, the authority shall file a report designating the composition and 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.

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

ARTICLE 23. SALVAGE YARDS.


As used in this article:

(a) “Salvage” means old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machine or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel and other old or scrap ferrous or nonferrous materials.

(b) “Salvage yard” means any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard.

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

(d) “Fence” means an enclosure, barrier or screen
constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the commissioner and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this state.

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

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

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

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

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

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

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

The license of any salvage yard duly issued under the
former provisions of this article, which salvage yard or
any part thereof on the effective date of this article, is
(1) within one thousand feet of the nearest edge of the
right-of-way of any road within the state road system
designated and classified or redesignated and reclassi-
fied as expressway, trunkline or feeder, or any road
within the state road system designated and classified
or redesignated and reclassified for purposes of alloca-
tion of federal highway funds as part of the federal-aid
interstate or primary systems or is (2) within five
hundred feet of the nearest edge of the right-of-way of
any state local service road, or is (3) within one
thousand feet of the nearest occupied private residence
or within five thousand feet of the nearest occupied
private residence which is part of a residential commu-
nity, may be renewed only if the view of the said salvage
yard and all parts thereof are effectively screened from
the adjacent road by natural objects, plantings, fences
or other appropriate means or a waiver is obtained from
the owner of an occupied private residence. The
provisions of this paragraph, as amended, shall apply
only to salvage yards licensed after the first day of
April, one thousand nine hundred eighty-eight.
Any salvage yard which, on the effective date of this article, is duly licensed under the former provisions of this article may be established or continue to be operated and maintained without screening by natural objects, plantings, fences or other appropriate means so long as any part of such salvage yard is (1) not located within one thousand feet of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for the purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems or is (2) not located within five hundred feet of the nearest edge of the right-of-way of any state local service road, or is (3) not located within one thousand feet of the nearest residence or within five thousand feet of the nearest occupied private residence which is part of a residential community.

On or after the first day of July, one thousand nine hundred eighty-four, any owner or operator establishing, operating or maintaining a salvage yard for which a license is required under the provisions of this article is hereby required to first obtain an approval permit from the county planning commission, or if the county does not have a county planning commission, from an appropriate office or agency designated by the county commission, in which the salvage yard is located. The county planning commission or designated agency or office shall promulgate such reasonable rules including, but not limited to, determining the effect of the proposed salvage yard on residential, business or commercial property investment and values, establishing a quota for the number of salvage yards in the county, and the social, economic and environmental impact on community growth and development in utilities, health, education, recreation, safety, welfare and convenience, if any, before issuing such approval permit. These rules shall conform to guidelines established in rules promulgated by the commissioner. The fee for the approval permit shall be twenty-five dollars, payable upon the filing of the application on forms to be designated and approved.
by the county planning commission or designated office
or agency.

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

§17-23-8. Authority of commissioner to remove or pur-
chase certain yards; restrictions on relicens-
ing at location where yard terminated.

Whenever a salvage yard is so situated that it or any
part thereof is or shall be required to be effectively
screened by fences as provided in section four of this
article, and the said salvage yard or any part thereof
cannot, in the opinion of the commissioner, be effectively
screened by fences to comply with the provisions of this
article, so that the owner or operator of the salvage yard
cannot lawfully continue to operate and do business in
compliance with the terms hereof, or if a salvage yard
has been abandoned, then and only in such events, the
commissioner, in addition to all other powers herein
conferred, may (1) with the consent of said owner or
operator pay the cost of removal of all salvage and
equipment from such salvage yard to such other location
as the said owner or operator may direct whereon a
salvage yard business may be conducted in compliance
with the provisions of this article, or (2) purchase at
private sale or acquire by proceeding in eminent
domain, in accordance with the provisions of chapter
fifty-four of this code, all such property rights and
interests, other than title to real property, as are
necessary and required to effect a lawful termination of
the salvage business conducted on any such salvage
yard, or on any part thereof.
If any salvage yard at any location is terminated under the provisions of this section or by court order as provided in section nine of this article, the commissioner shall not thereafter license any salvage yard at any such location if such location or any part thereof is (1) within one thousand feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunk line or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems or (2) within five hundred feet of the nearest edge of the right-of-way of any state local service road unless and until the view of such salvage yard or any part thereof from such state local service road is 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 highway litter control fund.

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5. WATER RESOURCES.
§20-5-15. Litter along streams, criminal penalties, enforcement.

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

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

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

Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon his or her first conviction, shall be fined not less than fifty nor more than five hundred dollars and may be required, in the discretion of the court, to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior
permission of the owner, the area to be specified by the
court, any and all litter, garbage, refuse, trash, cans,
bottles, papers, ashes, carcass of any dead animal or any
part thereof, offal or any other offensive or unsightly
matter placed, deposited, dumped or thrown contrary to
the provisions of this section by anyone prior to the date
of such conviction. Upon his or her second conviction,
such person shall be fined not less than two hundred
fifty dollars nor more than one thousand dollars and
imprisoned in the county jail not less than twenty-four
hours nor more than six months. Upon such person's
third and successive conviction, he or she shall be fined
not less than five hundred dollars nor more than two
thousand dollars and imprisoned in the county jail not
less than forty-eight hours nor more than one year.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

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

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

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

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

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

§20-5F-2. Definitions.

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

(a) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article;

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

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

(d) “Sludge” means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water
supply treatment plant or air pollution control facility
or any other such waste having similar origin;
(e) "Solid waste" means any garbage, paper, litter,
refuse, cans, bottles, sludge from a waste treatment
plant, water supply treatment plant or air pollution
control facility, other discarded material, including
carcasses of any dead animal or any other offensive or
unsightly matter, solid, liquid, semisolid or contained
liquid or gaseous material resulting from industrial,
commercial, mining or from community activities but
does not include solid or dissolved material in sewage,
or solid or dissolved materials in irrigation return flows
or industrial discharges which are point sources and
have permits under article five-a, chapter twenty of the
code, or source, special nuclear or by-product material
as defined by the Atomic Energy Act of 1954, as
amended, or a hazardous waste either identified or
listed under article five-e, chapter twenty of the code or
refuse, slurry and overburden regulated under article
six, chapter twenty of the code;
(f) "Solid waste disposal" means the practice of
disposing solid waste including placing, depositing,
dumping or throwing or causing to be placed, deposited,
dumped or thrown any solid waste;
(g) "Solid waste facility" means any system, facility,
land, contiguous land, improvements on the land,
structures or other appurtenances or methods used for
processing, recycling or disposing of solid waste,
including landfills, transfer stations, resource recovery
facilities and other such facilities not herein specified;
(h) "Commercial solid waste facility" means any solid
waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility
and shall not include an approved solid waste facility
owned and operated by a person for the sole purpose of
disposing of solid wastes created by that person or such
person and other persons on a cost-sharing or non-profit
basis; and
(i) "Solid waste disposal shed" means the geographical
area which the resource recovery — solid waste disposal
authority designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code.

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

(a) The director shall adopt rules and regulations in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and regulations and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules and regulations the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, origin or characteristics of the solid waste, potential for contamination of public water supply, requirements for public roadway standards and design for access to the facilities with approval by the commissioner of the department of highways, public sentiment, the financial capability of the applicant, soil and geological considerations and other natural resource considerations. All existing rules and regulations of the department of health relating to solid waste disposal shall remain valid and be enforceable by the department of natural resources on the effective date of this article until changed or modified by the director, in compliance with chapter twenty-nine-a of the code.

(b) The chief, after public notice and opportunity for public hearing near the affected community, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or abandonment of a solid waste facility: Provided, That the director may deny the issuance of a permit on the
basis of information in the application or from other sources including public comment, if the solid waste facility may cause adverse impacts on the natural resources and environmental concerns under the director's purview in chapter twenty of the code, destruction of aesthetic values, destruction or endangerment of the property of others or is significantly adverse to the public sentiment of the area where the solid waste facility is, or will be, located. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above cited factors and may delete such geographical area from consideration for that type and size solid waste facility.

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

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

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

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

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

(5) Has had any permit revoked under the environmental laws of any state or the United States.

(d) For the purpose of this section, the conduct and reputation of any owner may be imputed to the applicant.
(e) The director, chief or any authorized representative, employee or agent of the department, may at reasonable times, enter onto any approved solid waste facility, open dump or property where solid waste is present for the purpose of making an inspection or investigation of solid waste disposal.

(f) The director, chief or any authorized representative, employee or agent of the department may, at reasonable times, enter any approved solid waste facility, open dump or property where solid waste is present and take samples of the waste, soils, air or water or may, upon issuance of an order, require any person to take and analyze samples of such waste, soil, air or water.

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

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

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

(j) The director shall require (1) that persons disposing of solid waste at commercial solid waste facilities within the state file with the operator of the commercial solid waste facility records concerning the type, amount and origin of solid waste disposed of by them; and (2) that operators of commercial solid waste facilities within the state maintain records and file them with the director concerning the type, amount and origin of solid waste accepted by them.
(k) The director may expend funds from the litter control fund established pursuant to section twenty-six, article seven, chapter twenty of this code to assist county and regional solid waste authorities in the formulation of their comprehensive litter and solid waste control plans pursuant to section seven, article eight, chapter twenty and in the construction and maintenance of approved commercial solid waste facilities and collection equipment, including the provision of grants as well as bonding assistance for those authorities which would in the opinion of the director be unable to construct or maintain an approved commercial solid waste facility without grant funds.

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

(a) Approval permit required. —

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

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

(3) For each such solid waste permit or renewal permit application pending before the department of natural resources on the effective date of this act, a class A applicant shall within thirty days of the effective date of this act obtain an approval permit from the county commission of the county in which the solid waste
disposal facility is to be located.

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

(b) Class A applicant defined. —

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

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

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

(d) Each county commission and authority shall as soon as practicable promulgate reasonable rules including, but not limited to, rules for determining the effect of the proposed solid waste facility on residential, business or commercial property investment and values, and the social, economic, aesthetic and environmental impact on community growth and development in
utilities, health, education, recreation, safety, welfare
and convenience, if any, before issuing any approval
permit pursuant to this section. Each county commission
and authority may deny an approval permit based upon
said rules and regulations or upon a finding of adverse
public sentiment.

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

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

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

(b) It shall be unlawful for any person, unless he holds
a valid permit from the division to install, establish,
construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.

(c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article five-a and the rules promulgated thereunder, so that only a single permit shall be required of a solid waste facility under these two articles. Each permit issued under this article shall have a fixed term not to exceed five years: Provided, that the chief may administratively extend a permit beyond its five year term if the approved solid waste facility is in compliance with this article, its rules and article five-a of this chapter and the rules promulgated thereunder: Provided, however, That such administrative extension may not be for more than one year. Upon expiration of a permit, renewal permits may be issued in compliance with rules and regulations promulgated by the director of the department of natural resources.

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

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

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

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

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

(b) Collection, return, payment and records.—The fee herein imposed shall be paid by the person disposing of solid waste at a solid waste disposal facility and shall be collected by the operator of the solid waste disposal facility and remitted to the state tax commissioner. The fee accrues at the time the solid waste is disposed of in this state. The fee imposed by this section shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on such form or forms as prescribed by the state tax commissioner. Each person disposing of solid waste at a solid waste disposal facility
and each person required to collect the fee imposed by
this section shall keep complete and accurate records in
such form as the state tax commissioner may by
regulation require.

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

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

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

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

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

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

(f) Procedure and administration.—Each and every
provision of the "West Virginia Tax Procedure and
Administration Act" set forth in article ten, chapter
eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

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

(h) Dedication of proceeds.—The net proceeds of the fee collected pursuant to this section shall be transferred to an account designated by the director of the department of natural resources as such proceeds are received by the state tax commissioner. Twenty-five cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected shall be deposited into the "Solid Waste Reclamation and Environmental Response Fund" hereinafter created for the purposes hereinafter specified. The first fifty thousand dollars of the remaining net proceeds of the fee imposed by this section shall be transferred to the public service commission for the purposes of conducting the study required by section one-b, article two, chapter twenty-four of this code. The next one million dollars of the net proceeds of the fee imposed by this section in each fiscal year shall be deposited in the "Solid Waste Enforcement Fund" hereinafter created and for the purposes hereinafter specified. The next two hundred fifty thousand dollars of the net proceeds of the fee imposed by this section in each fiscal year shall be deposited in the "Resource Recovery — Solid Waste Disposal Authority Reserve Fund" hereinafter created for the purposes hereinafter specified. The director of the department of natural resources shall allocate the remainder (if any) of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby created in the state treasury:
(1) The "Solid Waste Enforcement Fund" which shall be expended by the director of the department of natural resources for administration, inspection, enforcement and permitting activities established pursuant to this article;

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

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

(i) Findings.—In addition to the purposes and legislative findings set forth in section one of this chapter, the Legislature finds as follows:

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

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

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

(j) Severability.—If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the
remainder of this section, but shall be confined in its
operation to the provision thereof directly involved in
the controversy in which such judgment shall have been
rendered, and the applicability of such provision to other
person or circumstances shall not be affected thereby.

(k) Effective date.—This section is effective on the first
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.

(a) After a solid waste permit application has been
approved pursuant to this article, but before a permit
has been issued, each operator of a commercial solid
waste facility shall furnish bond, on a form to be
prescribed and furnished by the director, payable to the
state of West Virginia and conditioned upon the
operator faithfully performing all of the requirements
of this article, regulations promulgated hereunder and
the permit. The amount of the bond required shall be
one thousand dollars per acre and may include an
additional amount determined by the director based
upon the total estimated cost to the state of completing
final closure according to the permit granted to such
facility and such measures as are necessary to prevent
adverse effects upon the environment; such measures
shall include, but not be limited to, satisfactory
monitoring, post-closure care and remedial measures:
Provided, That the amount of the bond shall not exceed
eight thousand dollars per acre. All permits shall be
bonded for at least ten thousand dollars. The bond shall
cover either (1) the entire area to be used for the
disposal of solid waste, or (2) that increment of land
within the permit area upon which the operator will
initiate and conduct commercial solid waste facility
operations within the initial term of the permit pursuant
to rules and regulations promulgated by the director
pursuant to chapter twenty-nine-a of this code. If the
operator chooses to use incremental bonding, as succeed-
ing increments of commercial solid waste facility
operations are to be initiated and conducted within the
permit area, the operator shall file with the director an
additional bond or bonds to cover such increments in accordance with this section: Provided, That once the operator has chosen to proceed with bonding either the entire area to be used for the disposal of solid waste or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

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

c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the director, the
whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the ten-year period following final closure, the department will conduct a final inspection of the facility. The purpose of the inspection shall be to determine compliance with this article, the department's regulations, the terms and conditions of the permit, orders of the department and the terms and conditions of the bond. Based upon this determination, the department will either forfeit the bond prior to the expiration of the ten-year period following final closure, or release the bond at the expiration of the ten-year period following final closure. Bond release requirements shall be provided in regulations promulgated by the director.

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

§20-5F-5c. Pre-siting notice.

(a) Any person investigating an area for the purpose of siting a commercial solid waste facility where no current solid waste permit exists, in order to determine
a feasible, approximate location, shall prior to filing an
application for a solid waste permit publish a Class II
legal advertisement in a qualified newspaper serving
the county where the proposed site is to be located. Such
notice shall inform the public of the location, nature and
other details of the proposed activity as prescribed in
rules and regulations to promulgated as soon as
practicable by the director. Within five days of such
publication such person shall file with the director a
pre-siting notice, which shall be made in writing on
forms prescribed by the director and shall be signed and
verified by the applicant. Such notice shall contain a
certification of publication from a qualified newspaper,
description of the area, the period of investigative
review, a United States geological survey topographic
map and a map showing the location of property
boundaries of the area proposed for siting and other
such information as required by rules and regulations
promulgated pursuant to this section. The director, in
his discretion, may hold a public hearing on the pre-
siting notice if he receives information or public
comment which warrants such a hearing. The director
shall define pre-siting activities by promulgating rules
and regulations pursuant to chapter twenty-nine-a of
this code.

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

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

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

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

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

(c) On or before the first day of July, one thousand
nine hundred ninety-one, the director is authorized and directed to promulgate legislative rules and regulations pursuant to chapter twenty-nine-a of this code encouraging each commercial solid waste facility and each person, partnership, corporation and governmental agency engaged in the commercial collection, transportation, processing and disposal of solid waste to recycle paper, glass, plastic and aluminum materials and such other solid wastes as the director may specify.

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

(e) Under no condition shall transloading solid waste materials be permitted within a municipality except those facilities owned or operated on behalf of the 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.

(a) In addition to all other powers, duties and responsibilities granted and assigned to the director of the department of natural resources in this chapter and elsewhere by law, the director, in the administration of the West Virginia litter control program created by this section, shall:

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

(2) Cooperate with all local governments to accompl-
lish coordination of local litter control and recycling efforts;

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

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

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

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

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

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

(9) Attract to the state persons or industries that
purchase, process or use recyclable materials; and

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

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

(c) The director of the department of natural resources in cooperation with the commissioner of highways, the department of commerce, the department of public safety, the United States forestry service, and other local, state and federal law-enforcement agencies, shall be responsible for the administration and enforcement of all laws and regulations relating to the maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys and any other private or public areas of the state and these other agencies shall make recommendations to the director from time to time concerning means and methods of accomplishing litter control consistent with the provisions of this chapter. Such cooperation shall include, but not be limited to, contracts with the commissioner of highways to operate the litter control program.

(d) All other state agencies and local governments shall cooperate with the director in effecting the 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.

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

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

(b) Any litter found on any public or private property
with any indication of ownership on it will be evidence
creating a rebuttable inference it was deposited improp-
erly by the person whose identity is indicated, and any 
person who improperly disposes of litter shall be subject 
to either a civil fine of up to five hundred dollars for 
such litter or required to pay the costs of removal of 
such litter if the removal of such litter is required to 
be done by the department, at the discretion of the 
director. All such fines and costs shall be deposited to 
the litter control fund: Provided, That no inference shall 
be drawn solely from the presence of any logo, trade-
mark, trade name or other similar mass reproduced 
identifying character appearing on litter found.

(c) Every person who is convicted of or pleads guilty 
to disposing of litter in violation of subsection (a) of this 
section shall pay the sum of not less than fifty dollars 
(or more than five hundred dollars as costs for cleanup, 
investigation and prosecution in such case, in addition 
to any other court costs that the court is otherwise 
required by law to impose upon such convicted person. 
The clerk of the circuit court, magistrate court or 
municipal court wherein such additional costs are 
imposed shall, on or before the last day of each month, 
transmit all such costs received under this subsection to 
the state treasurer for deposit in the state treasury to 
the credit of a special revenue fund to be known as the 
litter control fund which is hereby created. All moneys 
collected and received under this subsection and paid 
into the state treasury and credited to the litter control 
fund in the manner prescribed by section two, article 
two, chapter twelve of this code, shall be kept and 
maintained for expenditure by the director for the 
specific purposes as provided by law, and shall not be 
treated by the state auditor and treasurer as part of the 
general revenue of the state. At the end of each fiscal 
year, any unexpended balance of the litter control fund 
shall not be transferred to the general revenue fund, but 
shall remain in the litter control fund.

(d) The commissioner of motor vehicles, upon regis-
tering a motor vehicle or issuing an operator's or 
chauffeur's license, shall issue to the owner or licensee, 
as the case may be, a copy of subsection (a) of this 
section.
The commissioner of highways may cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

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

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

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

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

(a) Litter pickup and removal.—(1) Each county commission and the regional jail authority may establish a jail or prison inmate program including a regular
litter pick-up work regimen under proper supervision pursuant to section four, article fifteen, chapter seventeen of this code. Funding for said programs shall be from the litter control fund. Funding requirements may include salaries for additional personnel needed for the program. Said program may include the cooperative help of the department of highways or any other voluntary state, local, private, civic or public agency for personnel, equipment, or materials in establishing a county or region-wide, continual program of inmate litter pick-up. Upon final approval of the projected cost of the program for a given fiscal year, the director of the department of natural resources shall disburse the approved amount to the county or regional authority. The funds will be used by the authority to reimburse the county commission or regional jail authority for its expenses related to the program and to pay other costs related to the use of inmates for litter pick-up. Nothing contained herein shall preclude a county or counties from expending whatever additional funds its commission or commissions may deem appropriate from any other revenue source in furtherance of said program.

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

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

(b) Education.—(1) The department of education in cooperation with the department of natural resources shall distribute educational materials to the schools
based on the goals of litter cleanup and proper solid waste disposal, the rationale for said goals, and how primary and secondary school students can contribute to the achievement of such goals. The department of education shall further incorporate such information into the curriculum of the public school system as appropriate.

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

(3) The department of natural resources and the resource recovery — solid waste authority shall provide technical assistance to local governments in the implementation of this law.

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

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

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

(B) Programs that provide for:

(i) The establishment of a collection place for recyclables at all landfills and other interim solid waste
collection sites and arrangements for the material collected to be recycled;

(ii) Public notification of such places and encouragement to participate;

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

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

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

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

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

(f) Report to the Legislature.—The director of the department of natural resources shall submit a report to the Speaker of the House and the President of the Senate not later than the first day of March, one thousand nine hundred ninety, and every five years
thereafter regarding the effectiveness of the programs authorized by this law.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

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

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

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

The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal into the state
of increasingly large amounts of infectious, dangerous
and undesirable solid waste and hazardous waste from
other states by persons and firms who wish to avoid the
costs and requirements for proper, effective and safe
disposal of such wastes in the states of origin.

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


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

(a) “Approved solid waste facility” means a commer-
cial solid waste facility or practice which has a valid
permit under this article.

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

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

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

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

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

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

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

(i) "Solid waste disposal shed" means the geographical area which the resource recovery — solid waste disposal authority designates and files in the state register
§20-9-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

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

(b) The authority board of directors shall be comprised of five members who shall be appointed as follows: One by the director of the department of natural resources, two by the county commission, one by the director of the department of health and one by the board of supervisors for the soil conservation district in which the county is situated. The members of the board shall be appointed for terms of four years for which the initial terms shall start on the first day of July, one thousand, nine hundred eighty-eight: Provided, That the first two members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and for terms of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate
appointing authority within sixty days after such vacancy occurs. No member may have any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste.

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

(a) On and after the first day of January, one thousand nine hundred eighty-nine, or any two or more counties within the same solid waste shed and with the approval of the resource recovery — solid waste disposal authority, establish a regional solid waste authority. Such a regional solid waste authority shall be a public agency and shall be the successor to any county solid waste authority existing on the date of said approval by the resource recovery — solid waste disposal authority. The resource recovery — solid waste disposal authority may require a county authority to cooperate and participate in programs with other county and regional authorities if the need arises.

(b) The board of directors of the regional solid waste authority shall be comprised and appointed as follows: one by the director of the department of natural resources, two by the county commission of each county participating therein, one by the director of the department of health, one appointed by the board of supervisors for each soil conservation district in which a county of the region is situated and two municipal representatives from each county having one or more participating municipality to be selected by the mayors of the participating municipality from each such county. The members of the board shall be appointed for terms of four years for which the initial terms shall start on the first day of July, nineteen hundred eighty-eight: Provided, That the members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and to terms of four years for after the expiration of each such initial term. The members of the board shall receive no compensation for
their service thereon but shall be reimbursed their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member may have any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste.

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Innovative incentives to promote recycling
efforts;

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

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

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

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

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

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

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

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

The director of the department of natural resources, the resource recovery — solid waste disposal authority and the director of the department of health shall provide such technical assistance to each county and regional solid waste authority as reasonable and
§20-9-9. Mandatory disposal; proof required; penalty imposed.

Each person occupying a residence or operating a business establishment in this state shall either (i) subscribe to and use a solid waste collection service and pay the fees established therefor or (ii) provide proper proof that said person properly disposes of solid waste at approved solid waste facilities or in any other lawful manner. The director of the department of natural resources shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars shall be assessed to the person receiving solid waste collection services in addition to the unpaid fees for every year 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.

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

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


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

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

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

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

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

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

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

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

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

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

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

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

(12) Cooperate with and make such recommendations
to local, state and federal government and the private
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.


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

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

(c) No person while in the employ of, or holding any
official relation to, any public utility subject to the
provisions of this chapter, or holding any stocks or bonds
thereof, or who is pecuniarily interested therein, may
serve as a member of the commission or as an employee
thereof. Nor may any such commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

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

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

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

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

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

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

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

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

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

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

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

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

(2) From the public service commission motor carrier
fund collected under the provisions of section six, article
six, chapter twenty-four-a of this code, eight thousand
(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand six hundred dollars.

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

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

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

The public service commission, in cooperation with the department of natural resources and after opportunity for public comment, shall study the feasibility of mandatory separation of solid waste for recycling purposes and shall study the impact of said mandatory separation and recycling on costs incurred by regulated motor carriers. The results of the study shall be reported to the joint committee on government and finance or or before the first day of January, one thousand nine hundred eighty-nine.
CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.


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

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

(1) Dismiss the petition;

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

(3) Upon a finding that the child is in need of extra-parental supervision (A) place the child under the supervision of a probation officer of the court or of the court of the county where the child has its usual place of abode, or other person while leaving the child in custody of his parent or custodian and (B) prescribe a program of treatment or therapy or limit the child’s activities under terms which are reasonable and within the child’s ability to perform, including participation in the litter control program established pursuant to section twenty-five, article seven, chapter twenty;
(4) Upon a finding that a parent or custodian is not willing or able to take custody of the child, that a child is not willing to reside in the custody of his parent or custodian, or that a parent or custodian cannot provide the necessary supervision and care of the child, the court may place the child in temporary foster care or temporarily commit the child to the state department or a child welfare agency;

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

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

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

(c) The disposition of the child shall not be affected by the fact that the child demanded a trial by jury or
made a plea of denial. Any dispositional order is subject to appeal to the supreme court of appeals.

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

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

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

(a) In addition to the methods of disposition provided in section thirteen of this article, the court may enter an order imposing one or more of the following penalties, conditions and limitations:

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

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

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

(4) When the child is fifteen years of age or younger and has been adjudged delinquent, the court may order that the child is not eligible to be issued a junior probationary operator's license or when the child is
between the ages of sixteen and eighteen years and has
been adjudged delinquent, the court may order that the
child is not eligible to operate a motor vehicle in this
state, and any junior or probationary operator's license
shall be surrendered to the court. Such child's driving
privileges shall be suspended for a period not to exceed
two years, and the clerk of the court shall notify the
commissioner of the department of motor vehicles of
such order.

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

(c) Notwithstanding any other provisions of this code
to the contrary, in the event a child charged with
delinquency under this chapter is transferred to adult
jurisdiction and there convicted, the court may never-
thless, in lieu of sentencing such person as an adult,
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.

The term of confinement in jail of a person found
guilty of a misdemeanor, where that punishment is
prescribed, shall, unless otherwise provided, be ascer-
tained by the court, and the amount of the fine, where
the punishment is by fine, shall, except where it is
otherwise provided, be assessed by the court, so far as
the term of confinement and the amount of the fine are
not fixed by law. In addition to or in lieu of any other
punishment prescribed herein, the court may require
the person found guilty of such misdemeanor to partic-
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) When a defendant is sentenced or committed for
a term of one year or less by a court of record having
criminal jurisdiction, such court may in its order grant
to such defendant the privilege of leaving the jail during
necessary and reasonable hours for any of the following
purposes:

(a) To work at his employment;
(b) To seek employment;
(c) To conduct his own business or to engage in other
self-employment, including, in the case of a woman,
housekeeping and attending to the needs of her family;
(d) To attend an educational institution;
(e) To obtain medical treatment;
(f) To devote time to any other purpose approved of
or ordered by the court, including participation in the
litter control program of the county unless the court
specifically finds that this alternative service would be
inappropriate.

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

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

(4) If the inmate has been granted permission to leave
the jail to seek or take employment, the court's probation
officers, or if none, the state's division of correction shall
assist him in obtaining suitable employment and in
making certain that employment already obtained is
suitable. Employment shall not be deemed suitable if
the wages or working conditions or other circumstances
present a danger of exploitation or of interference in a
labor dispute in the establishment in which the inmate
would be employed.

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

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

(7) The court shall not make an order granting the
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
9 (1)(A) Shall have served the minimum term of his or
10 her indeterminate sentence, or shall have served one
11 fourth of his or her definite term sentence, as the case
12 may be, except that in no case shall any person who
13 committed, or attempted to commit a felony with the
use, presentment or brandishing of a firearm, be eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: Provided, That any person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, shall not be eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever shall be the greater. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. No person is ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless such fact is clearly stated and included in the indictment or presentment by which such person was charged and was either (i) found by the court at the time of trial upon a plea of guilty or nolo contendere, or (ii) found by the jury, upon submitting to such jury a special interrogatory for such purpose if the matter was tried before a jury, or (iii) found by the court, if the matter was tried by the court without a jury.

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

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

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

(ii) Shall apply with respect to the contents of any indictment or presentment returned on or after the first
day of August of that year irrespective of when the offense occurred;

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

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

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

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

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

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

(5) Shall have satisfied the board that if released on parole he or she will not constitute a danger to the
Except in the case of one serving a life sentence, no person who has been previously twice convicted of a felony may be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. No person sentenced for life may be paroled until he or she has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he or she has served fifteen years. In the case of a person sentenced to any penal institution of this state, it shall be the duty of the board, as soon as such person becomes eligible, to consider the advisability of his or her release on parole. If, upon such consideration, parole be denied, the board shall at least once a year reconsider and review the case of every prisoner so eligible, which reconsideration and review shall be by the entire board. If parole be denied, the prisoner shall be promptly notified.

(b) In the case of any person sentenced to or confined under sentence in any city or county jail in this state, the board shall act only upon written application for parole. If such jail prisoner is under sentence on a felony conviction, the provisions hereof relating to penitentiary prisoners shall apply to and control his or her release on parole. If such person is serving time on a misdemeanor conviction, he or she is eligible for parole consideration, upon receipt of his or her written parole application and after time for probation release by the sentencing court or judge has expired.

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

The board shall be charged with the duty of super-
vising all probationers and parolees whose supervision
may have been undertaken by this state by reason of any
interstate compact entered into pursuant to the uniform
act for out of state parolee supervision.

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

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

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

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

(4) On physical, mental and psychiatric examinations
of the prisoner conducted, insofar as practicable, within
the two months next preceding parole consideration by
the board.
The board may waive the requirement of any such report when not available or not applicable as to any prisoner considered for parole but, in every such case, shall enter in the record thereof its reason for such waiver: Provided, That in the case of a prisoner who is incarcerated because such prisoner has been found guilty of, or has pleaded guilty to a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eighty-b or eighty-c of chapter sixty-one, the board may not waive the report required by this subsection and the report shall include a study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: Providing, however, That nothing disclosed by the person during such study or diagnosis shall be made available to any law enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless such information disclosed shall indicate the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment shall be made at least every six months to the parole officer supervising such person. In addition, in such cases, the parole board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the parole board of the circumstances surrounding a conviction or plea of guilty, plea bargaining and other background information that might be useful in its deliberations. The board shall also notify the victim, or the parents or guardian of the victim if the victim is still a minor, of the person being considered for parole in such a case.

Before releasing any penitentiary prisoner on parole, the board of parole shall arrange for the prisoner to appear in person before the board and the board may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the board made pursuant to the provisions hereof. The board shall reach its own written conclusions as to the
desirability of releasing such prisoner on parole. The
warden or superintendent shall furnish all necessary
assistance and cooperate to the fullest extent with the
board of parole. All information, records and reports
received by the board shall be kept on permanent file.

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

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

Prior to making such recommendation and prior to
releasing any penitentiary person on parole, the board
shall notify the sentencing judge and prosecuting
attorney at least ten days before such recommendation
or parole. Any person released on parole shall partici-
pate as a condition of parole in the litter control
program of the county to the extent directed by the
board, unless the board specifically finds that this
alternative service would be inappropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is hereby approved this the 30th day of March, 1988.

Governor
PRESENTED TO THE
GOVERNOR
Date
Date 6/25/58
Time 3:38 p.m.