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**WEST VIRGINIA LEGISLATURE**  
REGULAR SESSION, 1989



**ENROLLED**  
*Committee Substitute for*  
SENATE BILL NO. 301

(By Senator *Tucker, Mr. President, et al*)



PASSED April 8, 1989  
In Effect from Passage

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 301**

(BY SENATORS TUCKER, MR. PRESIDENT, AND HARMAN,  
BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 1989; in effect from passage.]

AN ACT to amend and reenact section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, article twenty-six, chapter sixteen of said code; to amend and reenact sections one, two, and eight, article nine, chapter twenty of said code; to further amend said article nine by adding thereto four new sections, designated sections five-a, twelve-a, twelve-b and twelve-c; to further amend said chapter twenty by adding thereto two new articles, designated articles ten and eleven; to amend and reenact sections one and four-b, article two, chapter twenty-four of said code; to amend article two of said chapter twenty-four by adding thereto a new section, designated section one-d; and to amend article two, chapter twenty-four-a by adding thereto a new section, designated section four-a, all relating to solid and hazardous waste disposal

generally; county solid waste assessment fees authorized; establishing the West Virginia solid waste management board; short title; definitions; redesignation of West Virginia resource recovery-solid waste disposal authority as the West Virginia solid waste management board; organization; appointment; qualifications; terms of office; compensation and expenses; director; designation and establishment of disposal sheds; construction and maintenance of disposal projects; loans; compliance with state and federal law; powers, duties, and responsibilities of board; power of board to collect service charges; exercise of other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights; development and designation of solid waste disposal sheds by the board; funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department; solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance; trustee for bondholders; contents of trust agreement; remedies of bondholders and trustees; bonds and notes not a debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article; use of funds and properties by board; restrictions thereon; investment of funds by board; rentals, fees, service charges, and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies; maintenance, operation, and repair of projects; repair of damaged property; reports by board to governor and Legislature; exemption from taxation; governmental agencies authorized to convey property; gratuities and financial interest in contracts and projects prohibited; penalties; conduct of proceedings of board; regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; testimony at commission hearings; cooperation of board and enforcement agencies in the collection and disposal of abandoned appliances and motor vehicles; findings and purposes; definitions;

election by county commission to assume powers and duties of the county solid waste authority; assistance to county or regional solid waste authorities; commercial solid waste facilities siting plan; facilities subject to plan; criteria; approval by West Virginia solid waste management board; effect on facilities siting; public hearings; rules and regulations; interim siting approval for commercial solid waste facilities; solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties; creation of commercial hazardous waste management siting board; purpose and legislative findings; definitions; establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules and procedures; effect of certification; commercial hazardous waste management facility siting fund created; fees; judicial review; remedies; short title; West Virginia recycling program; short title; findings and purpose; recycling goals; recycling plans; establishment of county recycling programs for solid waste; petition for referendum and ballot form; referendum election procedure; effect of election; establishment of state recycling programs for solid waste; procurement of recycled products; jurisdiction of commission; waiver of jurisdiction; jurisdiction of public service commission with respect to solid waste facilities; procedures for changing rates of electric, natural gas, telephone cooperatives and municipally operated public utilities; motor carrier transporting solid waste; and pass through of landfill tip fee as rate surcharge.

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

That section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four of article twenty-six, chapter sixteen of said code be amended and reenacted; that sections one, two and eight, article nine, chapter twenty of said code be amended and reenacted; that article nine of said chapter be

further amended by adding thereto four new sections, designated sections five-a, twelve-a, twelve-b and twelve-c; that said chapter twenty be further amended by adding thereto two new articles, designated articles ten and eleven; that sections one and four-b, article two, chapter twenty-four of said code be amended and reenacted; that article two of said chapter twenty-four be further amended by adding thereto a new section, designated section one-d; and that article two, chapter twenty-four-a be amended by adding thereto a new section, designated section four-a, all to read as follows:

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

**ARTICLE 5. FISCAL AFFAIRS.**

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

1 Each county commission is hereby authorized to  
2 impose a similar solid waste assessment fee to that  
3 imposed by section five, article five-f, chapter twenty  
4 of this code at a rate not to exceed fifty cents per ton  
5 or part thereof upon the disposal of solid waste in that  
6 county: *Provided*, That in counties wherein one or  
7 more municipalities operate their own solid waste  
8 collection programs and solid waste disposal facilities,  
9 such municipality or municipalities shall receive one  
10 half of the assessments collected under this section.  
11 Such amount shall be divided pro-rata amongst said  
12 municipalities and shall be deposited in their general  
13 revenue fund. All assessments due the county shall be  
14 applied to the reasonable costs of administration of  
15 that county's regional or county solid waste authority  
16 including the necessary and reasonable expenses of its  
17 members.

**ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.**

**§16-26-1. Short title.**

1 This article shall be known and cited as the "West  
2 Virginia Solid Waste Management Board Act."

**§16-26-3. Definitions.**

1 As used in this article, unless the context clearly  
2 requires a different meaning:

3 (1) "Board" means the West Virginia solid waste  
4 management board created in section four of this  
5 article, heretofore known as the West Virginia state  
6 solid waste authority, the duties, powers, responsibili-  
7 ties and functions of which are specified in this article.  
8 All references in this code to the West Virginia  
9 resource recovery — solid waste disposal authority  
10 shall be construed as references to the West Virginia  
11 solid waste management board.

12 (2) "Bond" or "solid waste disposal revenue bond"  
13 means a revenue bond or note issued by the West  
14 Virginia solid waste management board, heretofore  
15 known as the West Virginia resource recovery — solid  
16 waste disposal authority, to effect the intents and  
17 purposes of this article.

18 (3) "Construction" includes reconstruction, enlarge-  
19 ment, improvement and providing furnishings or  
20 equipment for a solid waste disposal project.

21 (4) "Cost" means, as applied to solid waste disposal  
22 projects, the cost of their acquisition and construction;  
23 the cost of acquisition of all land, rights-of-way,  
24 property, rights, easements, franchise rights and  
25 interests required by the board for such acquisition  
26 and construction; the cost of demolishing or removing  
27 any buildings or structures on land so acquired,  
28 including the cost of acquiring any land to which such  
29 buildings or structures may be moved; the cost of  
30 diverting highways, interchange of highways and  
31 access roads to private property, including the cost of  
32 land or easements therefor; the cost of all machinery,  
33 furnishings and equipment; all financing charges and  
34 interest prior to and during construction and for no  
35 more than eighteen months after completion of con-  
36 struction; the cost of all engineering services and all  
37 expenses of research and development with respect to  
38 solid waste disposal facilities; the cost of all legal  
39 services and expenses; the cost of all plans, specifica-  
40 tions, surveys and estimates of cost and revenues; all  
41 working capital and other expenses necessary or  
42 incident to determining the feasibility or practicability  
43 of acquiring or constructing any such project; all

44 administrative expenses and such other expenses as  
45 may be necessary or incident to the acquisition or  
46 construction of the project; the financing of such  
47 acquisition or construction, including the amount  
48 authorized in the resolution of the board providing for  
49 the issuance of solid waste disposal revenue bonds to  
50 be paid into any special funds from the proceeds of  
51 such bonds; and the financing of the placing of any  
52 such project in operation. Any obligation or expenses  
53 incurred after the effective date of this article by any  
54 governmental agency, with the approval of the board,  
55 for surveys, borings, preparation of plans and specifi-  
56 cations and other engineering services in connection  
57 with the acquisition or construction of a project shall  
58 be regarded as a part of the cost of such project and  
59 shall be reimbursed out of the proceeds of loans or  
60 solid waste disposal revenue bonds as authorized by  
61 the provisions of this article.

62 (5) "Governmental agency" means the state govern-  
63 ment or any agency, department, division or unit  
64 thereof; counties; municipalities; watershed improve-  
65 ment districts; soil conservation districts; sanitary  
66 districts; public service districts; drainage districts;  
67 regional governmental authorities and any other  
68 governmental agency, entity, political subdivision,  
69 public corporation or agency having the authority to  
70 acquire, construct or operate solid waste disposal  
71 facilities; the United States government or any agency,  
72 department, division or unit thereof; and any agency,  
73 commission or authority established pursuant to an  
74 interstate compact or agreement.

75 (6) "Industrial waste" means any solid waste sub-  
76 stance resulting from or incidental to any process of  
77 industry, manufacturing, trade or business, or from or  
78 incidental to the development, processing or recovery  
79 of any natural resource.

80 (7) "Owner" includes all persons, partnerships or  
81 governmental agencies having any title or interest in  
82 any property rights, easements and interests autho-  
83 rized to be acquired by this article.

84 (8) "Person" means any public or private corpora-  
85 tion, institution, association, firm or company organ-  
86 ized or existing under the laws of this or any other  
87 state or country; the United States or the state of West  
88 Virginia; governmental agency; political subdivision;  
89 county commission; municipality; industry; sanitary  
90 district; public service district; drainage district; soil  
91 conservation district; solid waste disposal shed district;  
92 partnership; trust; estate; individual; group of individ-  
93 uals acting individually or as a group; or any other  
94 legal entity whatever.

95 (9) "Pollution" means the discharge, release, escape  
96 or deposit, directly or indirectly, of solid waste of  
97 whatever kind or character, on lands or in waters in  
98 the state in an uncontrolled, unregulated or unap-  
99 proved manner.

100 (10) "Revenue" means any money or thing of value  
101 collected by, or paid to, the West Virginia solid waste  
102 management board as rent, use fee, service charge or  
103 other charge for use of, or in connection with, any  
104 solid waste disposal project, or as principal of or  
105 interest, charges or other fees on loans, or any other  
106 collections on loans made by the West Virginia solid  
107 waste management board to governmental agencies to  
108 finance in whole or in part the acquisition or construc-  
109 tion of any solid waste development project or pro-  
110 jects, or other money or property which is received  
111 and may be expended for or pledged as revenues  
112 pursuant to this article.

113 (11) "Solid waste" means all putrescible and nonpu-  
114 trescible solid waste substances, except human  
115 excreta, including, but not limited to, garbage, rubbish,  
116 ashes, incinerator residue, street refuse, dead animals,  
117 demolition and construction waste, vehicles and parts  
118 thereof, tires, appliances, sewage plant sludge, com-  
119 mercial and industrial waste and special waste, includ-  
120 ing, but not limited to, explosives, pathological waste  
121 and radioactive material, except those commercial and  
122 industrial wastes and special wastes which are under  
123 the control of the department of natural resources, the  
124 department of energy or the West Virginia air pollu-



125 tion control commission, or both, or of the United  
126 States government.

127 (12) "Solid waste disposal facility" means any  
128 method, system or facility to collect, transport, treat,  
129 neutralize, dispose of, stabilize, segregate, recover,  
130 recycle or hold solid waste, including, without limiting,  
131 the generality of the foregoing, the equipment, fur-  
132 nishings and appurtenances thereof.

133 (13) "Solid waste disposal project" or "project"  
134 means any solid waste disposal facility the acquisition  
135 or construction of which is authorized by the West  
136 Virginia solid waste management board or any acqui-  
137 sition or construction which is financed in whole or in  
138 part from funds made available by grant or loan by, or  
139 through, the board as provided in this article, includ-  
140 ing all buildings and facilities which the board deems  
141 necessary for the operation of the project, together  
142 with all property, rights, easements and interests  
143 which may be required for the operation of the  
144 project.

145 (14) "Solid waste disposal shed" or "shed" means a  
146 geographical area which the West Virginia solid waste  
147 management board designates as provided in section  
148 eight of this article for solid waste management.

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

1 The West Virginia resource recovery — solid waste  
2 disposal authority is hereby continued in all respects  
3 as heretofore constituted but is hereafter designated  
4 and shall be known as the West Virginia solid waste  
5 management board. All references in this code to the  
6 West Virginia resource recovery — solid waste disposal  
7 authority shall be construed as references to the West  
8 Virginia solid waste management board. The board is  
9 a governmental instrumentality of the state and a  
10 body corporate. The exercise by the board of the

11 powers conferred on it by this article and the carrying  
12 out of its purposes and duties are essential government-  
13 tal functions and are for a public purpose.

14 The board shall be composed of seven members. The  
15 director of the department of health and the director  
16 of the department of natural resources, or their  
17 designees, shall be members ex officio of the board.  
18 The other five members of the board shall be  
19 appointed by the governor, on the effective date of this  
20 section, by and with the advice and consent of the  
21 Senate, for terms of one, two, three, four and five  
22 years, respectively. Two appointees shall be persons  
23 having at least three years of professional experience  
24 in solid waste management, civil engineering or  
25 regional planning and three appointees shall be  
26 representatives of the general public. The successor of  
27 each such appointed member shall be appointed for a  
28 term of five years in the same manner the original  
29 appointments were made and so that the representa-  
30 tion on the board as set forth in this section is  
31 preserved, except that any person appointed to fill a  
32 vacancy occurring prior to the expiration of the term  
33 for which his predecessor was appointed shall be  
34 appointed only for the remainder of such term. Each  
35 board member shall serve until the appointment and  
36 qualification of his successor.

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

51 Annually the board shall elect one of its appointed

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

66 The ex officio members of the board shall not  
67 receive any compensation for serving as a board  
68 member. Each of the five appointed members of the  
69 board shall receive compensation of fifty dollars for  
70 each day actually spent in attending meetings of the  
71 board or in the discharge of his duties as a member of  
72 the board, but not to exceed two thousand five hun-  
73 dred dollars in any fiscal year. Each of the seven board  
74 members shall be reimbursed for all reasonable and  
75 necessary expenses actually incurred in the perfor-  
76 mance of his duties as a member of the board. All such  
77 compensation and expenses incurred by board  
78 members shall be payable solely from funds of the  
79 board or from funds appropriated for such purpose by  
80 the Legislature and no liability or obligation shall be  
81 incurred by the board beyond the extent to which  
82 moneys are available from funds of the board or from  
83 such appropriation.

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

88 The board shall appoint a director as its chief  
89 executive officer. The director shall have successfully  
90 completed an undergraduate education and, in addi-  
91 tion, shall have two years of professional experience in  
92 solid waste management, civil engineering, public  
93 administration or regional planning.

**§16-26-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.**

1 To accomplish the public policy and purpose and to  
2 meet the responsibility of the state as set forth in this  
3 article, the West Virginia solid waste management  
4 board shall designate and establish solid waste disposal  
5 sheds and it may initiate, acquire, construct, maintain,  
6 repair and operate solid waste disposal projects or  
7 cause the same to be operated pursuant to a lease,  
8 sublease or agreement with any person or government-  
9 tal agency; may make loans and grants to persons and  
10 to governmental agencies for the acquisition or con-  
11 struction of solid waste disposal projects by such  
12 persons and governmental agencies; and may issue  
13 solid waste disposal revenue bonds of this state,  
14 payable solely from revenues, to pay the cost of, or  
15 finance, in whole or in part, by loans to governmental  
16 agencies, such projects. A solid waste disposal project  
17 shall not be undertaken unless the board determines  
18 that the project is consistent with federal law, with its  
19 solid waste disposal shed plan, with the standards set  
20 by the state water resources board and the division of  
21 water resources of the department of natural resour-  
22 ces for any waters of the state which may be affected  
23 thereby, with the air quality standards set by the West  
24 Virginia air pollution control commission and with  
25 health standards set by the department of health. Any  
26 resolution of the board providing for acquiring or  
27 constructing such projects or for making a loan or  
28 grant for such projects shall include a finding by the  
29 board that such determinations have been made. A  
30 loan agreement shall be entered into between the  
31 board and each governmental agency to which a loan  
32 is made for the acquisition or construction of a solid  
33 waste disposal project, which loan agreement shall  
34 include, without limitation, the following provisions:

35 (1) The cost of such project, the amount of the loan,  
36 the terms of repayment of such loan and the security  
37 therefor, which may include, in addition to the pledge

38 of all revenues from such project after a reasonable  
39 allowance for operation and maintenance expenses, a  
40 deed of trust or other appropriate security instrument  
41 creating a lien on such project;

42 (2) The specific purposes for which the proceeds of  
43 the loan shall be expended, the procedures as to the  
44 disbursement of loan proceeds and the duties and  
45 obligations imposed upon the governmental agency in  
46 regard to the construction or acquisition of the project;

47 (3) The agreement of the governmental agency to  
48 impose, collect, and, if required to repay the obliga-  
49 tions of such governmental agency under the loan  
50 agreement, increase service charges from persons  
51 using said project, which service charges shall be  
52 pledged for the repayment of such loan together with  
53 all interest, fees and charges thereon and all other  
54 financial obligations of such governmental agency  
55 under the loan agreement; and

56 (4) The agreement of the governmental agency to  
57 comply with all applicable laws, rules and regulations  
58 issued by the board or other state, federal and local  
59 bodies in regard to the construction, operation, main-  
60 tenance and use of the project.

61 The board shall comply with all of the provisions of  
62 federal law and of article one of this chapter and any  
63 rules and regulations promulgated thereunder which  
64 pertain to solid waste collection and disposal.

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

1 The West Virginia solid waste management board  
2 may exercise all powers necessary or appropriate to  
3 carry out and effectuate its corporate purpose. The  
4 board may:

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

11 (2) Adopt an official seal.

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

15 (4) Sue and be sued in its own name and plead and  
16 be impleaded in its own name, and particularly to  
17 enforce the obligations and covenants made under  
18 sections ten, eleven and sixteen of this article. Any  
19 actions against the board shall be brought in the  
20 circuit court of Kanawha County.

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

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

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

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

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

47 (10) Acquire in the name of the state, by purchase or  
48 otherwise, on such terms and in such manner as it

49 deems proper, or by the exercise of the right of  
50 eminent domain in the manner provided in chapter  
51 fifty-four of this code, such public or private lands, or  
52 parts thereof or rights therein, rights-of-way, property,  
53 rights, easements and interests it deems necessary for  
54 carrying out the provisions of this article, but exclud-  
55 ing the acquisition by the exercise of the right of  
56 eminent domain of any solid waste disposal facility  
57 operated under permits issued pursuant to the provi-  
58 sions of article five-f, chapter twenty of this code and  
59 owned by any person or governmental agency. This  
60 article does not authorize the board to take or disturb  
61 property or facilities belonging to any public utility or  
62 to a common carrier, which property or facilities are  
63 required for the proper and convenient operation of  
64 such public utility or common carrier, unless provision  
65 is made for the restoration, relocation or duplication of  
66 such property or facilities elsewhere at the sole cost of  
67 the board.

68 (11) Make and enter into all contracts and agree-  
69 ments and execute all instruments necessary or  
70 incidental to the performance of its duties and the  
71 execution of its powers. When the cost under any such  
72 contract or agreement, other than compensation for  
73 personal services, involves an expenditure of more  
74 than two thousand dollars, the board shall make a  
75 written contract with the lowest responsible bidder  
76 after public notice published as a Class II legal  
77 advertisement in compliance with the provisions of  
78 article three, chapter fifty-nine of this code, the  
79 publication area for such publication to be the county  
80 wherein the work is to be performed or which is  
81 affected by the contract, which notice shall state the  
82 general character of the work and the general charac-  
83 ter of the materials to be furnished, the place where  
84 plans and specifications therefor may be examined and  
85 the time and place of receiving bids. A contract or  
86 lease for the operation of a solid waste disposal project  
87 constructed and owned by the board or an agreement  
88 for cooperation in the acquisition or construction of a  
89 solid waste disposal project pursuant to section sixteen  
90 of this article is not subject to the foregoing require-

91 ments and the board may enter into such contract or  
92 lease or such agreement pursuant to negotiation and  
93 upon such terms and conditions and for such period as  
94 it finds to be reasonable and proper under the circum-  
95 stances and in the best interests of proper operation or  
96 of efficient acquisition or construction of such project.  
97 The board may reject any and all bids. A bond with  
98 good and sufficient surety, approved by the board,  
99 shall be required of all contractors in an amount equal  
100 to at least fifty percent of the contract price, condi-  
101 tioned upon the faithful performance of the contract.

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

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

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

127 (15) Purchase fire and extended coverage and liabil-  
128 ity insurance for any solid waste disposal project and  
129 for the principal office and suboffices of the board,  
130 insurance protecting the board and its officers and



131 employees against liability, if any, for damage to  
132 property or injury to or death of persons arising from  
133 its operations and any other insurance the board may  
134 agree to provide under any resolution authorizing the  
135 issuance of solid waste disposal revenue bonds or in  
136 any trust agreement securing the same.

137 (16) Charge, alter and collect rentals and other  
138 charges for the use or services of any solid waste  
139 disposal project as provided in this article, and charge  
140 and collect reasonable interest, fees and other charges  
141 in connection with the making and servicing of loans  
142 to governmental agencies in furtherance of the pur-  
143 poses of this article.

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

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

**§16-26-7. Power of board to collect service charges and  
exercise other powers of governmental agen-  
cies in event of default; power to require  
governmental agencies to enforce their rights.**

1 In order to insure that the public purposes to be  
2 served by the board may be properly carried out and  
3 in order to assure the timely payment to the board of  
4 all sums due and owing under loan agreements with  
5 governmental agencies, as referred to in section five of  
6 this article, notwithstanding any provision to the  
7 contrary elsewhere contained in this code, in event of  
8 any default by a governmental agency under such a  
9 loan agreement, the board shall have, and may, at its  
10 option, exercise the following rights and remedies in  
11 addition to the rights and remedies conferred by law  
12 or pursuant to said loan agreement:

13 (1) The board may directly impose, in its own name  
14 and for its own benefit, service charges determined by  
15 it to be necessary under the circumstances upon all  
16 users of the solid waste disposal project to be acquired  
17 or constructed pursuant to such loan agreement, and

18 proceed directly to enforce and collect such service  
19 charges, together with all necessary costs of such  
20 enforcement and collection.

21 (2) The board may exercise, in its own name or in  
22 the name of and as agent for the governmental  
23 agency, all of the rights, board, powers and remedies  
24 of the governmental agency with respect to the solid  
25 waste disposal project or which may be conferred  
26 upon the governmental agency by statute, rule, regu-  
27 lation or judicial decision, including, without limita-  
28 tion, all rights and remedies with respect to users of  
29 such solid waste disposal project.

30 (3) The board may, by civil action, mandamus or  
31 other judicial or administrative proceeding, compel  
32 performance by such governmental agency of all of  
33 the terms and conditions of such loan agreement  
34 including, without limitation, the adjustment and  
35 increase of service charges as required to repay the  
36 loan or otherwise satisfy the terms of such loan  
37 agreement, the enforcement and collection of such  
38 service charges and the enforcement by such govern-  
39 mental agency of all rights and remedies conferred by  
40 statute, rule, regulation or judicial decision.

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

1 The board shall maintain the division of the state  
2 into geographical areas for solid waste management  
3 which shall be known as solid waste disposal sheds.  
4 The board may, from time to time, modify the bound-  
5 aries of such sheds in a manner consistent with the  
6 provisions of this section. Before it modifies the sheds,  
7 the board shall consult with the affected municipalities  
8 and county or regional solid waste authorities and  
9 obtain and evaluate their opinions as to how many  
10 sheds there should be and where their boundaries  
11 should be located. The board shall then cause feasibil-  
12 ity and cost studies to be made in order for it to  
13 designate the solid waste disposal sheds within each of  
14 which the most dependable, effective, efficient and  
15 economical solid waste disposal projects may be

16 established. The sheds shall not overlap and shall  
17 cover the entire state.

18 The board shall designate the sheds so that:

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

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

26 (3) Solid waste collection and disposal service,  
27 facilities and projects can be integrated in the most  
28 feasible, dependable, effective, efficient and economi-  
29 cal manner.

30 (4) No county is located in more than one shed:  
31 *Provided*, That the board may divide a county among  
32 two or more sheds upon request of the appropriate  
33 county or regional solid waste authority.

34 The board, in modifying the boundaries of solid  
35 waste disposal sheds, is exempt from the provisions of  
36 chapter twenty-nine-a.

**§16-26-9. Expenditure of funds and use of health depart-  
ment employees for study and engineering of  
proposed projects; records to be kept; repay-  
ment to department.**

1 With the approval of the board, the director of the  
2 department of health shall expend out of any funds  
3 available for the purpose such moneys as are neces-  
4 sary for the study and engineering of any proposed  
5 solid waste disposal project and may use its employees  
6 and consultants for that purpose. All such expenses  
7 incurred by the director of the department of health  
8 prior to the issuance of solid waste disposal revenue  
9 bonds or notes under this article shall be paid by him  
10 and charged to the appropriate solid waste disposal  
11 project. The director of the department of health shall  
12 keep proper records and accounts showing the  
13 amounts so charged. Upon the sale of solid waste

14 disposal revenue bonds or notes for a solid waste  
15 disposal project, the moneys so expended by the  
16 director of the department of health with the approval  
17 of the board in connection with such project shall be  
18 repaid to the department of health from the proceeds  
19 of such bonds or notes.

**§16-26-10. Board empowered to issue solid waste disposal  
revenue bonds, renewal notes and refunding  
bonds; requirements and manner of such  
issuance.**

1 The board is hereby empowered to issue, from time  
2 to time, solid waste disposal revenue bonds and notes  
3 of the state in such principal amounts as the board  
4 deems necessary to pay the cost of or finance in whole  
5 or in part by loans to governmental agencies, one or  
6 more solid waste development projects, but the aggre-  
7 gate amount of all issues of bonds and notes outstand-  
8 ing at one time for all projects authorized hereunder  
9 shall not exceed that amount capable of being serviced  
10 by revenues received from such projects, and shall not  
11 exceed in the aggregate the sum of fifty million  
12 dollars.

13 The board may, from time to time, issue renewal  
14 notes, issue bonds to pay such notes and whenever it  
15 deems refunding expedient, refund any bonds by the  
16 issuance of solid waste disposal revenue refunding  
17 bonds of the state. Except as may otherwise be  
18 expressly provided in this article or by the board,  
19 every issue of its bonds or notes shall be obligations of  
20 the board payable out of the revenues and reserves  
21 created for such purposes by the board, which are  
22 pledged for such payment, without preference or  
23 priority of the first bonds issued, subject only to any  
24 agreements with the holders of particular bonds or  
25 notes pledging any particular revenues. Such pledge  
26 shall be valid and binding from the time the pledge is  
27 made and the revenue so pledged and thereafter  
28 received by the board shall immediately be subject to  
29 the lien of such pledge without any physical delivery  
30 thereof or further act and the lien of any such pledge  
31 shall be valid and binding as against all parties having

32 claims of any kind in tort, contract or otherwise  
33 against the board irrespective of whether such parties  
34 have notice thereof. All such bonds and notes shall  
35 have all the qualities of negotiable instruments.

36 The bonds and notes shall be authorized by resolu-  
37 tion of the board, shall bear such dates and shall  
38 mature at such times, in the case of any such note or  
39 any renewals thereof not exceeding five years from  
40 the date of issue of such original note, and in the case  
41 of any such bond not exceeding fifty years from the  
42 date of issue, as such resolution may provide. The  
43 bonds and notes shall bear interest at such rate, be in  
44 such denominations, be in such form, either coupon or  
45 registered, carry such registration privileges, be  
46 payable in such medium of payment, at such place and  
47 be subject to such terms of redemption as the board  
48 may authorize. The board may sell such bonds and  
49 notes at public or private sale, at the price the board  
50 determines. The bonds and notes shall be executed by  
51 the chairman and vice chairman of the board, both of  
52 whom may use facsimile signatures. The official seal  
53 of the board or a facsimile thereof shall be affixed  
54 thereto or printed thereon and attested, manually or  
55 by facsimile signature, by the secretary-treasurer of  
56 the board, and any coupons attached thereto shall bear  
57 the signature or facsimile signature of the chairman of  
58 the board. In case any officer whose signature, or a  
59 facsimile of whose signature, appears on any bonds,  
60 notes or coupons ceases to be such officer before  
61 delivery of such bonds or notes, such signature or  
62 facsimile is nevertheless sufficient for all purposes the  
63 same as if he had remained in office until such  
64 delivery and, in case the seal of the board has been  
65 changed after a facsimile has been imprinted on such  
66 bonds or notes, such facsimile seal will continue to be  
67 sufficient for all purposes.

68 Any resolution authorizing any bonds or notes or  
69 any issue thereof may contain provisions (subject to  
70 such agreements with bondholders or noteholders as  
71 may then exist, which provisions shall be a part of the  
72 contract with the holders thereof) as to pledging all or

73 any part of the revenues of the board to secure the  
74 payment of the bonds or notes or of any issue thereof;  
75 the use and disposition of revenues of the board; a  
76 covenant to fix, alter and collect rentals, fees, service  
77 charges and other charges so that pledged revenues  
78 will be sufficient to pay the costs of operation, main-  
79 tenance and repairs, pay principal of and interest on  
80 bonds or notes secured by the pledge of such revenues  
81 and provide such reserves as may be required by the  
82 applicable resolution or trust agreement; the setting  
83 aside of reserve funds, sinking funds or replacement  
84 and improvement funds and the regulation and dispo-  
85 sition thereof; the crediting of the proceeds of the sale  
86 of bonds or notes to and among the funds referred to  
87 or provided for in the resolution authorizing the  
88 issuance of the bonds or notes; the use, lease, sale or  
89 other disposition of any solid waste disposal project or  
90 any other assets of the board; limitations on the  
91 purpose to which the proceeds of sale of bonds or notes  
92 may be applied and pledging such proceeds to secure  
93 the payment of the bonds or notes or of any issue  
94 thereof; agreement of the board to do all things  
95 necessary for the authorization, issuance and sale of  
96 bonds in such amounts as may be necessary for the  
97 timely retirement of notes issued in anticipation of the  
98 issuance of bonds; limitations on the issuance of  
99 additional bonds or notes; the terms upon which  
100 additional bonds or notes may be issued and secured;  
101 the refunding of outstanding bonds or notes; the  
102 procedure, if any, by which the terms of any contract  
103 with bondholders or noteholders may be amended or  
104 abrogated, the holders of which must consent thereto,  
105 and the manner in which such consent may be given;  
106 limitations on the amount of moneys to be expended  
107 by the board for operating, administrative or other  
108 expenses of the board; securing any bonds or notes by  
109 a trust agreement; and any other matters, of like or  
110 different character, which in any way affect the  
111 security or protection of the bonds or notes.

112 In the event that the sum of all reserves pledged to  
113 the payment of such bonds or notes shall be less than  
114 the minimum reserve requirements established in any

115 resolution or resolutions authorizing the issuance of  
116 such bonds or notes, the chairman of the board shall  
117 certify, on or before the first day of December of each  
118 year, the amount of such deficiency to the governor of  
119 the state, for inclusion, if the governor shall so elect,  
120 of the amount of such deficiency in the budget to be  
121 submitted to the next session of the Legislature for  
122 appropriation to the board to be pledged for payment  
123 of such bonds or notes: *Provided*, That the Legislature  
124 shall not be required to make any appropriation so  
125 requested, and the amount of such deficiencies shall  
126 not constitute a debt or liability of the state.

127 Neither the members of the board nor any person  
128 executing the bonds or notes shall be liable personally  
129 on the bonds or notes or be subject to any personal  
130 liability or accountability by reason of the issuance  
131 thereof.

**§16-26-11. Trustee for bondholders; contents of trust agreement.**

1 In the discretion of the board, any solid waste  
2 disposal revenue bonds or notes or solid waste disposal  
3 revenue refunding bonds issued by the board under  
4 this article may be secured by a trust agreement  
5 between the board and a corporate trustee, which  
6 trustee may be any trust company or banking institu-  
7 tion having the powers of a trust company within or  
8 without this state.

9 Any such trust agreement may pledge or assign  
10 revenues of the board to be received, but shall not  
11 convey or mortgage any solid waste disposal project or  
12 any part thereof. Any such trust agreement or any  
13 resolution providing for the issuance of such bonds or  
14 notes may contain such provisions for protecting and  
15 enforcing the rights and remedies of the bondholders  
16 or noteholders as are reasonable and proper and not in  
17 violation of law, including the provisions contained in  
18 section nine of this article, covenants setting forth the  
19 duties of the board in relation to the acquisition of  
20 property, the construction, improvement, mainte-  
21 nance, repair, operation and insurance of the solid

22 waste disposal project, the cost of which is paid in  
23 whole or in part from the proceeds of such bonds or  
24 notes, the rentals or other charges to be imposed for  
25 the use or services of any solid waste disposal project,  
26 provisions with regard to the payment of the principal  
27 of and interest, charges and fees on loans made to  
28 governmental agencies from the proceeds of such  
29 bonds or notes, the custody, safeguarding, and applica-  
30 tion of all moneys and provisions for the employment  
31 of consulting engineers in connection with the con-  
32 struction or operation of such solid waste disposal  
33 project. Any banking institution or trust company  
34 incorporated under the laws of this state which may  
35 act as depository of the proceeds of bonds or notes or  
36 of revenues shall furnish such indemnifying bonds or  
37 pledge such securities as are required by the board.  
38 Any such trust agreement may set forth the rights and  
39 remedies of the bondholders and noteholders and of  
40 the trustee and may restrict individual rights of action  
41 by bondholders and noteholders as customarily pro-  
42 vided in trust agreements or trust indentures securing  
43 similar bonds. Such trust agreement may contain such  
44 other provisions as the board deems reasonable and  
45 proper for the security of the bondholders or note-  
46 holders. All expenses incurred in carrying out the  
47 provisions of any such trust agreement may be treated  
48 as a part of the cost of the operation of the solid waste  
49 disposal project. Any such trust agreement or resolu-  
50 tion authorizing the issuance of solid waste disposal  
51 revenue bonds may provide the method whereby the  
52 general administrative overhead expenses of the board  
53 shall be allocated among the several projects acquired  
54 or constructed by it as a factor of the operating  
55 expenses of each such project.

**§16-26-12. Legal remedies of bondholders and trustees.**

1 Any holder of solid waste disposal revenue bonds  
2 issued under the authority of this article or any of the  
3 coupons appertaining thereto and the trustee under  
4 any trust agreement, except to the extent the rights  
5 given by this article may be restricted by the applica-  
6 ble resolution or such trust agreement, may by civil



7 action, mandamus or other proceeding, protect and  
8 enforce any rights granted under the laws of this state  
9 or granted under this article, by the trust agreement  
10 or by the resolution authorizing the issuance of such  
11 bonds, and may enforce and compel the performance  
12 of all duties required by this article, or by the trust  
13 agreement or resolution, to be performed by the board  
14 or any officer or employee thereof, including the  
15 fixing, charging and collecting of sufficient rentals,  
16 fees, service charges or other charges.

**§16-26-13. Bonds and notes not debt of state, county,  
municipality or of any political subdivision;  
expenses incurred pursuant to article.**

1 Solid waste disposal revenue bonds and notes and  
2 solid waste disposal revenue refunding bonds issued  
3 under authority of this article and any coupons in  
4 connection therewith shall not constitute a debt or a  
5 pledge of the faith and credit or taxing power of this  
6 state or of any county, municipality or any other  
7 political subdivision of this state, and the holders or  
8 owners thereof shall have no right to have taxes levied  
9 by the Legislature or taxing authority of any county,  
10 municipality or any other political subdivision of this  
11 state for the payment of the principal thereof or  
12 interest thereon, but such bonds and notes shall be  
13 payable solely from the revenues and funds pledged  
14 for their payment as authorized by this article unless  
15 the notes are issued in anticipation of the issuance of  
16 bonds or the bonds are refunded by refunding bonds  
17 issued under authority of this article, which bonds or  
18 refunding bonds shall be payable solely from revenues  
19 and funds pledged for their payment as authorized by  
20 this article. All such bonds and notes shall contain on  
21 the face thereof a statement to the effect that the  
22 bonds or notes, as to both principal and interest, are  
23 not debts of the state or any county, municipality or  
24 political subdivision thereof, but are payable solely  
25 from revenues and funds pledged for their payment.

26 All expenses incurred in carrying out the provisions  
27 of this article shall be payable solely from funds  
28 provided under authority of this article. This article

29 does not authorize the board to incur indebtedness or  
30 liability on behalf of or payable by the state or any  
31 county, municipality or political subdivision thereof.

**§16-26-14. Use of funds, properties, etc., by board; restrictions thereon.**

1 All moneys, properties and assets acquired by the  
2 board, whether as proceeds from the sale of solid  
3 waste disposal revenue bonds or as revenues or  
4 otherwise, shall be held by it in trust for the purposes  
5 of carrying out its powers and duties, and shall be used  
6 and reused in accordance with the purposes and  
7 provisions of this article. Such moneys shall at no time  
8 be commingled with other public funds. Such moneys,  
9 except as otherwise provided in any resolution autho-  
10 rizing the issuance of solid waste disposal revenue  
11 bonds or in any trust agreement securing the same, or  
12 except when invested pursuant to section fifteen of  
13 this article, shall be kept in appropriate depositories  
14 and secured as provided and required by law. The  
15 resolution authorizing the issuance of such bonds of  
16 any issue or the trust agreement securing such bonds  
17 shall provide that any officer to whom, or any banking  
18 institution or trust company to which, such moneys  
19 are paid shall act as trustee of such moneys and hold  
20 and apply them for the purposes hereof, subject to the  
21 conditions this article and such resolution or trust  
22 agreement provide.

**§16-26-15. Investment of funds by board.**

1 The board is hereby authorized and empowered to  
2 invest any funds not needed for immediate disburse-  
3 ment in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by  
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of  
7 indebtedness issued by any of the following agencies:  
8 Banks for cooperatives; federal intermediate credit  
9 banks; federal home loan bank system; Export-Import  
10 Bank of the United States; federal land banks; the  
11 Federal National Mortgage Association or the Govern-  
12 ment National Mortgage Association;

13 (3) Public housing bonds issued by public agencies or  
14 municipalities and fully secured as to the payment of  
15 both principal and interest by a pledge of annual  
16 contributions under any annual contributions contract  
17 or contracts with the United States of America; or  
18 temporary notes issued by public agencies or munici-  
19 palities or preliminary loan notes issued by public  
20 agencies or municipalities, in each case, fully secured  
21 as to the payment of both principal and interest by a  
22 requisition or payment agreement with the United  
23 States of America;

24 (4) Certificates of deposit secured by obligations of  
25 the United States of America;

26 (5) Direct obligations of or obligations guaranteed by  
27 the state of West Virginia; or

28 (6) Direct and general obligations of any other state  
29 within the territorial United States, to the payment of  
30 the principal of and interest on which the full faith  
31 and credit of such state is pledged: *Provided*, That at  
32 the time of their purchase, such obligations are rated  
33 in either of the two highest rating categories by a  
34 nationally recognized bond-rating agency.

35 Funds of the board in excess of current needs,  
36 except as otherwise provided in any resolution autho-  
37 rizing the issuance of its solid waste disposal revenue  
38 bonds or in any trust agreement securing the same,  
39 may be invested by the board in any security or  
40 securities in which the West Virginia state board of  
41 investments is authorized to invest under sections nine  
42 and ten, article six, chapter twelve of this code, except  
43 those securities specified in subsections (f) and (g) of  
44 said section nine. Income from all such investments of  
45 moneys in any fund shall be credited to such funds as  
46 the board determines, subject to the provisions of any  
47 such resolution or trust agreement and such invest-  
48 ments may be sold at such times as the board  
49 determines.

**§16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.**

1 This section shall apply to any solid waste disposal  
2 project or projects which are owned in whole or in  
3 part by the board.

4 The board may charge, alter and collect rentals, fees,  
5 service charges or other charges for the use or services  
6 of any solid waste disposal project, and contract in the  
7 manner provided by this section with one or more  
8 persons, one or more governmental agencies, or any  
9 combination thereof, desiring the use or services  
10 thereof, and fix the terms, conditions, rentals, fees,  
11 service charges or other charges for such use or  
12 services. Such rentals, fees, service charges or other  
13 charges shall not be subject to supervision or regula-  
14 tion by any other authority, department, commission,  
15 board, bureau or agency of the state, and such contract  
16 may provide for acquisition by such person or govern-  
17 mental agency of all or any part of such solid waste  
18 disposal project for such consideration payable over  
19 the period of the contract or otherwise as the board in  
20 its sole discretion determines to be appropriate, but  
21 subject to the provisions of any resolution authorizing  
22 the issuance of solid waste disposal revenue bonds or  
23 notes or solid waste disposal revenue refunding bonds  
24 of the board or any trust agreement securing the  
25 same. Any governmental agency which has power to  
26 construct, operate and maintain solid waste disposal  
27 facilities may enter into a contract or lease with the  
28 board whereby the use or services of any solid waste  
29 disposal project of the board will be made available to  
30 such governmental agency and pay for such use or  
31 services such rentals, fees, service charges or other  
32 charges as may be agreed to by such governmental  
33 agency and the board.

34 Any governmental agency or agencies or combina-  
35 tion thereof may cooperate with the board in the  
36 acquisition or construction of a solid waste disposal

37 project and shall enter into such agreements with the  
38 board as are necessary, with a view to effective  
39 cooperative action and safeguarding of the respective  
40 interests of the parties thereto, which agreements  
41 shall provide for such contributions by the parties  
42 thereto in such proportion as may be agreed upon and  
43 such other terms as may be mutually satisfactory to  
44 the parties, including without limitation the authoriza-  
45 tion of the construction of the project by one of the  
46 parties acting as agent for all of the parties and the  
47 ownership and control of the project by the board to  
48 the extent necessary or appropriate for purposes of the  
49 issuance of solid waste disposal revenue bonds by the  
50 board. Any governmental agency may provide such  
51 contribution as is required under such agreements by  
52 the appropriation of money or, if authorized by a  
53 favorable vote of the electors to issue bonds or notes  
54 or levy taxes or assessments and issue notes or bonds  
55 in anticipation of the collection thereof, by the issu-  
56 ance of bonds or notes or by the levying of taxes or  
57 assessments and the issuance of bonds or notes in  
58 anticipation of the collection thereof, and by the  
59 payment of such appropriated money or the proceeds  
60 of such bonds or notes to the board pursuant to such  
61 agreements.

62 Any governmental agency, pursuant to a favorable  
63 vote of the electors in an election held before or after  
64 the effective date of this section for the purpose of  
65 issuing bonds to provide funds to acquire, construct or  
66 equip, or provide real estate and interests in real  
67 estate for a solid waste disposal project, whether or not  
68 the governmental agency at the time of such election  
69 had the board to pay the proceeds from such bonds or  
70 notes issued in anticipation thereof to the board as  
71 provided in this section, may issue such bonds or notes  
72 in anticipation of the issuance thereof and pay the  
73 proceeds thereof to the board in accordance with an  
74 agreement between such governmental agency and  
75 the board: *Provided*, That the legislative board of the  
76 governmental agency finds and determines that the  
77 solid waste disposal project to be acquired or con-  
78 structed by the board in cooperation with such govern-

79 mental agency will serve the same public purpose and  
80 meet substantially the same public need as the project  
81 otherwise proposed to be acquired or constructed by  
82 the governmental agency with the proceeds of such  
83 bonds or notes.

**§16-26-17. Maintenance, operation and repair of projects;  
repair of damaged property; reports by board  
to governor and Legislature.**

1 Each solid waste development project, when con-  
2 structed and placed in operation, shall be maintained  
3 and kept in good condition and repair by the board or  
4 if owned by a governmental agency, by such govern-  
5 mental agency, or the board or such governmental  
6 agency shall cause the same to be maintained and kept  
7 in good condition and repair. Each such project owned  
8 by the board shall be operated by such operating  
9 employees as the board employs or pursuant to a  
10 contract or lease with a governmental agency or  
11 person. All public or private property damaged or  
12 destroyed in carrying out the provision of this article  
13 and in the exercise of the powers granted hereunder  
14 with regard to any project shall be restored or  
15 repaired and placed in its original condition, as nearly  
16 as practicable, or adequate compensation made there-  
17 for out of funds provided in accordance with the  
18 provisions of this article.

19 As soon as possible after the close of each fiscal year,  
20 the board shall make an annual report of its activities  
21 for the preceding fiscal year to the governor and the  
22 Legislature. Each such report shall set forth a com-  
23 plete operating and financial statement covering the  
24 board's operations during the preceding fiscal year.  
25 The board shall cause an audit of its books and  
26 accounts to be made at least once each fiscal year by  
27 certified public accountants and the cost thereof may  
28 be treated as a part of the cost of construction or of  
29 operation of its projects. A report of the audit shall be  
30 submitted to the governor and the Legislature.

**§16-26-19. Exemption from taxation.**

1 The board shall not be required to pay any taxes or

2 assessments upon any solid waste disposal project or  
3 upon any property acquired or used by the board or  
4 upon the income therefrom. Bonds and notes issued by  
5 the board and all interest and income thereon shall be  
6 exempt from all taxation by this state, or any county,  
7 municipality, political subdivision or agency thereof,  
8 except inheritance taxes.

**§16-26-20. Governmental agencies authorized to convey property.**

1 All governmental agencies, notwithstanding any  
2 provision of law to the contrary, may lease, lend, grant  
3 or convey to the board, at its request, upon such terms  
4 as the proper authorities of such governmental agen-  
5 cies deem reasonable and fair and without the neces-  
6 sity for an advertisement, auction, order of court or  
7 other action or formality, other than the regular and  
8 formal action of the governmental agency concerned,  
9 any real property or interests therein, including  
10 improvements thereto or personal property which is  
11 necessary or convenient to the effectuation of the  
12 authorized purposes of the board, including public  
13 roads and other real property or interests therein,  
14 including improvements thereto or personal property  
15 already devoted to public use.

**§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.**

1 No officer, member or employee of the board may  
2 be financially interested, directly or indirectly, in any  
3 contract of any person with the board, or in the sale  
4 of any property, real or personal, to or by the board.  
5 This section does not apply to contracts or purchases of  
6 property, real or personal, between the board and any  
7 governmental agency.

8 No officer, member or employee of the board may  
9 have or acquire any financial interest, either direct or  
10 indirect, in any project or activity of the board or in  
11 any services or material to be used or furnished in  
12 connection with any project or activity of the board. If  
13 an officer, member or employee of the board has any  
14 such interest at the time he becomes an officer,

15 member or employee of the board, he shall disclose  
16 and divest himself of it. Failure to do so shall be cause  
17 for dismissal from the position he holds with the  
18 authority.

19 This section does not apply in instances where a  
20 member of the board who is a contract solid waste  
21 hauler either seeks or has a financial interest, direct or  
22 indirect, in any project or activity of the board or in  
23 any services or material to be used or furnished in  
24 connection with any project or activity of the board:  
25 *Provided*, That that member shall fully disclose orally  
26 and in writing to the board the nature and extent of  
27 any interest, prior to any vote by the board which  
28 involves his interest, withdraw from any deliberation  
29 or discussion by the board of matters involving his  
30 interest, and refrain from voting on any matter which  
31 directly or indirectly affects him.

32 No officer, member or employee of the board may  
33 accept a gratuity from any person doing business with  
34 the board or from any person for the purpose of  
35 gaining favor with the board.

36 Any officer, member or employee of the board who  
37 has any financial interest prohibited by this section or  
38 who fails to comply with its provisions is guilty of a  
39 misdemeanor, and, upon conviction thereof, shall be  
40 fined not more than one thousand dollars, or impri-  
41 soned in the county jail not more than one year, or  
42 both fined and imprisoned.

**§16-26-22. Conduct of proceedings of board.**

1 The board shall comply with all of the requirements  
2 in article nine-a, chapter six of this code.

**§16-26-23. Regulation of solid waste collectors and haulers to  
continue under public service commission;  
bringing about their compliance with solid  
waste disposal shed plan and solid waste  
disposal projects; giving testimony at com-  
mission hearings.**

1 Solid waste collectors and haulers who are “common  
2 carriers by motor vehicle,” as defined in section two,



3 article one, chapter twenty-four-a of this code, shall  
4 continue to be regulated by the public service commis-  
5 sion in accordance with the provisions of chapter  
6 twenty-four-a and rules and regulations promulgated  
7 thereunder. Nothing in this article shall give the board  
8 any power or right to regulate such solid waste  
9 collectors and haulers in any manner, but the public  
10 service commission, when it issues a new certificate of  
11 convenience and necessity, or when it alters or adjusts  
12 the provisions of any existing certificate of conve-  
13 nience and necessity, or when it approves the assign-  
14 ment or transfer of any certificate of convenience and  
15 necessity, shall consult with the board regarding what  
16 action it could take which would most likely further  
17 the implementation of the board's solid waste disposal  
18 shed plan and solid waste disposal projects and shall  
19 take any reasonable action that will lead to or bring  
20 about compliance of such waste collectors and haulers  
21 with such plan and projects.

22 At any hearing conducted by the public service  
23 commission pertaining to solid waste collectors and  
24 haulers on any of these matters, any member of the  
25 board, the director or an employee of the board  
26 designated by the director may appear before the  
27 commission and present evidence.

**§16-26-24. Cooperation of board and enforcement agencies  
in collecting and disposing of abandoned  
household appliances and motor vehicles, etc.**

1 The provisions of this article are complementary to  
2 those contained in article twenty-four, chapter seven-  
3 teen of this code, and do not alter or diminish the  
4 authority of any enforcement agency, as defined in  
5 section two thereof, to collect and dispose of aban-  
6 doned household appliances and motor vehicles,  
7 inoperative household appliances and junked motor  
8 vehicles and parts thereof, including tires. The board  
9 and such enforcement agencies shall cooperate fully  
10 with each other in collecting and disposing of such  
11 solid waste.

**CHAPTER 20. NATURAL RESOURCES.**

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

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

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

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

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

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

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

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

68 The Legislature further finds that affected citizens  
69 and local governments often look to state environmen-  
70 tal regulatory agencies to resolve local land use  
71 conflicts engendered by these proposed facilities. The  
72 Legislature also finds that such local land use conflicts  
73 are most effectively resolved in a local governmental  
74 forum where citizens can most easily participate in the  
75 decision-making process and the land use values of  
76 local communities most effectively identified and  
77 incorporated into a comprehensive policy which  
78 reflects the values and goals of those communities.

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

**§20-9-2. Definitions.**

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

3 (a) "Approved solid waste facility" means a com-  
4 mercial solid waste facility or practice which has a  
5 valid permit or compliance order under article five-f  
6 of this chapter;

7 (b) "Commercial solid waste facility" means any  
8 solid waste facility which accepts solid waste generated  
9 by sources other than the owner or operator of the  
10 facility and shall not include an approved solid waste  
11 facility owned and operated by a person for the sole  
12 purpose of disposing of solid wastes created by that  
13 person or such person and other person on a cost-  
14 sharing or non-profit basis and shall not include the  
15 legitimate reuse and recycling of materials for struc-  
16 tural fill, road base, mine reclamation, and similar  
17 applications;

18 (c) "Compliance order" means an administrative  
19 order issued pursuant to section five, article five-f,  
20 chapter twenty of this code authorizing a solid waste  
21 facility to operate without a solid waste permit;

22 (d) "Open dump" means any solid waste disposal  
23 which does not have a permit under this article, or is  
24 in violation of state law, or where solid waste is  
25 disposed in a manner that does not protect the  
26 environment;

27 (e) "Person" means any industrial user, public or  
28 private corporation, institution, association, firm or  
29 company organized or existing under the laws of this  
30 or any other state or country; the state of West  
31 Virginia; governmental agency, including federal  
32 facilities; political subdivision; county commission;  
33 municipal corporation; industry; sanitary district;

34 public service district; drainage district; soil  
35 conservation district; watershed improvement district;  
36 partnership; trust; estate; person or individual; group  
37 of persons or individuals acting individually or as a  
38 group; or any legal entity whatever;

39 (f) "Sludge" means any solid, semisolid, residue or  
40 precipitate, separated from or created by a municipal,  
41 commercial or industrial waste treatment plant, water  
42 supply treatment plant or air pollution control facility  
43 or any other such waste having similar origin;

44 (g) "Solid waste" means any garbage, paper, litter,  
45 refuse, cans, bottles, sludge from a waste treatment  
46 plant, water supply treatment plant or air pollution  
47 control facility, other discarded material, including  
48 carcasses of any dead animal or any other offensive or  
49 unsightly matter, solid, liquid, semisolid or contained  
50 liquid or gaseous material resulting from industrial,  
51 commercial, mining or from community activities but  
52 does not include solid or dissolved material in sewage,  
53 or solid or dissolved materials in irrigation return  
54 flows or industrial discharges which are point sources  
55 and have permits under article five-a, chapter twenty  
56 of this code, or source, special nuclear or by-product  
57 material as defined by the Atomic Energy Act of 1954,  
58 as amended, or a hazardous waste either identified or  
59 listed under article five-e, chapter twenty of this code  
60 or refuse, slurry, overburden or other waste or  
61 material resulting from coal fired electric power  
62 generation, the exploration, development, production,  
63 storage and recovery of coal, oil and gas, and other  
64 mineral resources placed or disposed of at a facility  
65 which is regulated under chapter twenty-two, twenty-  
66 two-a or twenty-two-b of this code; so long as such  
67 placement or disposal is in conformance with a permit  
68 issued pursuant to said chapters; "solid waste" shall  
69 also not include materials which are recycled by being  
70 used or reused in an industrial process to make a  
71 product, as effective substitutes for commercial pro-  
72 ducts, or are returned to the original process as a  
73 substitute for raw material feedstock;

74 (h) "Solid waste disposal" means the practice of

75 disposing solid waste including placing, depositing,  
76 dumping or throwing or causing to be placed, depos-  
77 ited, dumped or thrown any solid waste;

78 (i) "Solid waste disposal shed" means the geograph-  
79 ical area which the resource recovery — solid waste  
80 disposal authority designates and files in the state  
81 register pursuant to section eight, article twenty-six,  
82 chapter sixteen of this code; and

83 (j) "Solid waste facility" means any system, facility,  
84 land, contiguous land, improvements on the land,  
85 structures or other appurtenances or methods used for  
86 processing, recycling or disposing of solid waste,  
87 including landfills, transfer stations, resource recovery  
88 facilities and other such facilities not herein specified.

**§20-9-5a. Election by county commission to assume powers  
and duties of the county solid waste authority.**

1 Notwithstanding any provision of this article, any  
2 county commission which, on the first day of July, one  
3 thousand nine hundred eighty-eight, held a valid  
4 permit or compliance order for a commercial solid  
5 waste transfer station issued pursuant to article five-  
6 f of this chapter, may elect to assume all the duties,  
7 powers, obligations, rights, title and interests vested in  
8 the county solid waste authority by this chapter. A  
9 county commission may, prior to the first day of  
10 October, one thousand nine hundred eighty-nine,  
11 exercise this right of election by entering an order  
12 declaring such election and serving a certified copy  
13 thereof upon the resource recovery — solid waste  
14 disposal authority. Thirty days after entry of said  
15 order by the county commission the county solid waste  
16 authority shall cease to exist and the county commis-  
17 sion shall assume all the duties, powers, obligations,  
18 rights, title and interest vested in the former authority  
19 pursuant to this chapter.

**§20-9-8. Assistance to county or regional solid waste authorities by West Virginia state solid waste management board, department of natural resources, department of health and the attorney general.**

1 The department of natural resources, the resource  
2 recovery — solid waste disposal authority, and the  
3 department of health shall provide technical assistance  
4 to each county and regional solid waste authority as  
5 reasonable and practicable for the purposes of this  
6 article within the existing resources and appropri-  
7 ations of each agency available for such purposes. The  
8 attorney general shall provide legal counsel and  
9 representation to each county and regional solid waste  
10 authority for the purposes of this article within the  
11 existing resources and appropriations available for  
12 such purposes, or with the written approval of the  
13 attorney general, said authority may employ counsel  
14 to represent it.

**§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.**

1 (a) On or before the first day of July, one thousand  
2 nine hundred ninety, each county or regional solid  
3 waste authority shall prepare and complete a commer-  
4 cial solid waste facilities siting plan for the county or  
5 counties within its jurisdiction: *Provided*, That the  
6 West Virginia state solid waste management board  
7 may authorize any reasonable extension of up to one  
8 year for the completion of the said siting plan by any  
9 county or regional solid waste authority. The siting  
10 plan shall identify zones within each county where  
11 siting of the following facilities is authorized or  
12 prohibited:

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

16 (2) Commercial solid waste landfills which shall

17 accept only less than an aggregate of ten thousand tons  
18 of solid waste per month.

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

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

25 (b) The county or regional solid waste authority  
26 shall develop the siting plan authorized by this section  
27 based upon the consideration of one or more of the  
28 following criteria: The efficient disposal of solid waste,  
29 including all solid waste generated within the county  
30 or region, economic development, transportation  
31 facilities, property values, groundwater and surface  
32 waters, geological and hydrological conditions, aes-  
33 thetic and environmental quality, historic and cultural  
34 resources, the present or potential land uses for  
35 residential, commercial, recreational, environmental  
36 conservation or industrial purposes and the public  
37 health, welfare and convenience. The plan shall be  
38 developed based upon information readily available.  
39 Due to the limited funds and time available the plan  
40 need not be an exhaustive and technically detailed  
41 analysis of the criteria set forth above. Unless the  
42 information readily available clearly establishes that  
43 an area is suitable for the location of a commercial  
44 solid waste facility or not suitable for such a facility,  
45 the area shall be designated as an area in which the  
46 location of a commercial solid waste facility is tenta-  
47 tively prohibited. Any person making an application  
48 for the redesignation of a tentatively prohibited area  
49 shall make whatever examination is necessary and  
50 submit specific detailed information in order to meet  
51 the provision established in subsection (g) of this  
52 section.

53 (c) Prior to completion of the siting plan, the county  
54 or regional solid waste authority shall complete a draft  
55 siting plan and hold at least one public hearing in each  
56 county encompassed in said draft siting plan for the



57 purpose of receiving public comment thereon. The  
58 authority shall provide notice of such public hearings  
59 and encourage and solicit other public participation in  
60 the preparation of the siting plan as required by the  
61 rules and regulations promulgated by the West Vir-  
62 ginia state solid waste management board for this  
63 purpose. Upon completion of the siting plan, the  
64 county or regional solid waste authority shall file said  
65 plan with the West Virginia state solid waste authority.

66 (d) The siting plan shall take effect upon approval by  
67 the West Virginia state solid waste management board  
68 pursuant to the rules and regulations promulgated for  
69 this purpose. Upon approval of said plan, the West  
70 Virginia state solid waste management board shall  
71 transmit a copy thereof to the director of the depart-  
72 ment of natural resources and to the clerk of the  
73 county commission of the county encompassed by said  
74 plan which county clerk shall file the plan in an  
75 appropriate manner and shall make the plan available  
76 for inspection by the public.

77 (e) Effective upon approval of the siting plan by the  
78 West Virginia state solid waste management board, it  
79 shall be unlawful for any person to establish, con-  
80 struct, install or operate a commercial solid waste  
81 landfill or transfer station at a site not authorized by  
82 the siting plan: *Provided*, That an existing commercial  
83 solid waste landfill or transfer station which, on the  
84 effective date of this section, held a valid solid waste  
85 permit or compliance order issued by the department  
86 of natural resources pursuant to article five-f of this  
87 chapter may continue to operate but may not expand  
88 the spatial land area of the said facility beyond that  
89 authorized by said solid waste permit or compliance  
90 order, and may not increase the aggregate monthly  
91 solid waste capacity in excess of ten thousand tons  
92 monthly unless such a facility is authorized by the  
93 siting plan.

94 (f) The county or regional solid waste authority may,  
95 from time to time amend the siting plan in a manner  
96 consistent with the requirements of this section for  
97 completing the initial siting plan and the rules and

98 regulations promulgated by the West Virginia state  
99 solid waste management board for the purpose of such  
100 amendments.

101 (g) Notwithstanding any provision of this code to the  
102 contrary, upon application from a person who has filed  
103 a pre-siting notice pursuant to section five-c, article  
104 five-f of this chapter, the county or regional solid  
105 waste authority or county commission, as appropriate  
106 may amend the siting plan by redesignating a zone  
107 that has been designated as an area where a commer-  
108 cial solid waste facility is tentatively prohibited to an  
109 area where one is authorized. In such case, the person  
110 seeking the change has the burden to affirmatively  
111 and clearly demonstrate, based on the criteria set forth  
112 in subsection-b of this section, that a solid waste  
113 facility could be appropriately operated in the public  
114 interest at such location. The West Virginia state solid  
115 waste management board shall provide, within avail-  
116 able resources, technical support to a county or  
117 regional solid waste authority or county commission,  
118 as appropriate, when requested by such authority or  
119 commission to assist it in reviewing an application for  
120 any such amendment.

121 (h) The West Virginia state solid waste management  
122 board shall prepare and adopt a siting plan for any  
123 county or regional solid waste authority which does  
124 not complete and file with the said state authority  
125 such a siting plan in compliance with the provisions of  
126 this section and the rules and regulations promulgated  
127 thereunder. Any siting plan adopted by the West  
128 Virginia state solid waste authority pursuant to this  
129 subsection shall comply with the provisions of this  
130 section, and the rules and regulations promulgated  
131 thereunder, and shall have the same effect as a siting  
132 plan prepared by a county or regional solid waste  
133 authority and approved by the said state authority.

134 (i) The siting plan adopted pursuant to this section  
135 shall incorporate the provisions of the litter and solid  
136 waste control plan, as approved by West Virginia state  
137 solid waste management board pursuant to section  
138 seven of this article, regarding collection and disposal

139 of solid waste and the requirements, if any, for  
140 additional commercial solid waste landfill and transfer  
141 station capacity.

142 (j) The West Virginia state solid waste management  
143 board is authorized and directed to promulgate rules  
144 and regulations specifying the public participation  
145 process, content, format, amendment, review and  
146 approval of siting plans for the purposes of this section.

**§20-9-12b. Interim siting approval for commercial solid  
waste facilities.**

1 (a) Until the first day of July, one thousand nine  
2 hundred ninety-one, or the effective date of the  
3 commercial solid waste facility siting plan authorized  
4 by section twelve-a of this article, whichever date  
5 occurs first, it shall be unlawful for any person to  
6 establish, construct or install a commercial solid waste  
7 landfill or transfer station, or to expand the spatial  
8 land area of such an existing facility, without a  
9 certificate of site approval from the county or regional  
10 solid waste authority for the county in which the  
11 facility would be situated: *Provided*, That a person,  
12 who, on the effective date of this section, holds a valid  
13 Class A approval permit issued by a county commis-  
14 sion, may obtain site approval from the county com-  
15 mission for the county in which the facility would be  
16 situated: *Provided, however*, That no such certificate  
17 will be required for such an existing commercial solid  
18 waste facility which on the effective date of this  
19 section held a valid solid waste permit or compliance  
20 order issued by the department of natural resources  
21 unless such facility increases its spatial land area  
22 beyond that authorized by such solid waste permit or  
23 compliance order.

24 (b) The county or regional solid waste authority, or  
25 county commission, as appropriate, shall issue or deny  
26 the certificate of site approval based upon the consid-  
27 eration of the effects of the proposed commercial solid  
28 waste landfill or transfer station upon one or more of  
29 the following criteria: The efficient disposal of solid  
30 waste generated within the county or region, economic

31 development, transportation facilities, property values,  
32 groundwater and surface waters, geological and hydro-  
33 logical conditions, aesthetic and environmental quality,  
34 historic or cultural resources, the present or potential  
35 land uses for residential, commercial, recreational,  
36 industrial or environmental conservation purposes and  
37 the public health, welfare and convenience.

38 (c) The county or regional solid waste authority, or  
39 county commission, as appropriate, shall issue or deny  
40 the certificate of site approval within a reasonable  
41 period upon receiving the pre-siting notice for the  
42 proposed commercial solid waste facility required by  
43 section five-c of article five-f of this chapter.

44 (d) The county or regional solid waste authority, or  
45 county commission, as appropriate, shall hold a public  
46 hearing prior to the issuance of a certificate of site  
47 approval for the purpose of receiving public comment  
48 upon the siting of the proposed commercial solid waste  
49 facility. The authority shall provide notice of such  
50 public hearing with publication of a Class II legal  
51 advertisement in a qualified newspaper serving the  
52 county where the proposed site is situated.

53 (e) The county or regional solid waste authority, or  
54 county commission, as appropriate, shall complete  
55 findings of fact and conclusions relating to the criteria  
56 authorized in paragraph (b) hereof which support its  
57 decision to issue or deny a certificate of site approval.

58 (f) Any person adversely affected by a decision of a  
59 county or regional solid waste authority, or county  
60 commission, as appropriate, to issue or deny a certifi-  
61 cate of site approval pursuant to this section may  
62 appeal that decision to the circuit court for the county  
63 in which the proposed commercial solid waste facility  
64 would be located.

**§20-9-12c. Solid waste assessment interim fee; regulated  
motor carriers; dedication of proceeds; crim-  
inal penalties.**

1 (a) *Imposition.* — Effective the first day of July, one  
2 thousand nine hundred eighty-nine, a solid waste

3 assessment interim fee is hereby levied and imposed  
4 upon the disposal of solid waste at any solid waste  
5 disposal facility in this state to be collected at the rate  
6 of one dollar per ton or part thereof of solid waste.  
7 Said interim fee shall expire on the thirtieth day of  
8 June, one thousand nine hundred ninety-one. The fee  
9 imposed by this section shall be in addition to all other  
10 fees levied by law.

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

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

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

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

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

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

54 (3) Disposal of residential solid waste by an individ-  
55 ual not in the business of hauling or disposing of solid  
56 waste on such days and times as designated by the  
57 director of the department of natural resources by  
58 regulation as exempt from the fee imposed pursuant  
59 to section five-a, article five-f, chapter twenty of this  
60 code.

61 (f) *Procedure and administration.* — Each and every  
62 provision of the "West Virginia Tax Procedure and  
63 Administration Act" set forth in article ten, chapter  
64 eleven of this code shall apply to the fee imposed by  
65 this section with like effect as if said act were appli-  
66 cable only to the fee imposed by this section and were  
67 set forth in extenso herein.

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

74 (h) *Dedication of proceeds.* — The net proceeds of  
75 the interim fee collected pursuant to this section shall  
76 be transferred to a special revenue account designated  
77 as the "Solid Waste Planning Fund" as such proceeds  
78 are received by the state tax commissioner. The West  
79 Virginia state solid waste management board shall  
80 allocate the proceeds of the said fund as follows:

81 (1) Fifty percent of the total proceeds shall be  
82 divided equally among, and paid over to, each county

83 solid waste authority to be expended for the purposes  
84 of this article: *Provided*, That where a regional solid  
85 waste authority exists, such funds shall be paid over to  
86 the regional solid waste authority to be expended for  
87 the purposes of this article in an amount equal to the  
88 total share of all counties within the jurisdiction of  
89 said regional solid waste authority; and

90 (2) Fifty percent of the total proceeds shall be  
91 expended by the West Virginia state solid waste  
92 management board for: (i) Grants to the county or  
93 regional solid waste authorities for the purposes of this  
94 article; (ii) administration, technical assistance or  
95 other costs of the state solid waste management board  
96 necessary to implement the purposes of this article.

97 (i) *Severability*. — If any provision of this section or  
98 the application thereof shall for any reason be  
99 adjudged by any court of competent jurisdiction to be  
100 invalid, such judgment shall not affect, impair or  
101 invalidate the remainder of this section, but shall be  
102 confined in its operation to the provision thereof  
103 directly involved in the controversy in which such  
104 judgment shall have been rendered, and the applica-  
105 bility of such provision to other persons or circumstan-  
106 ces shall not be affected thereby.

107 (j) *Effective date*. — This section is effective on the  
108 first day of July, one thousand nine hundred eighty-  
109 nine.

**ARTICLE 10. COMMERCIAL HAZARDOUS WASTE MANAGEMENT  
FACILITY SITING BOARD.**

**§20-10-1. Purpose and legislative findings.**

1 (a) The purpose of this article is to establish a state  
2 commercial hazardous waste management facility  
3 siting board and to establish the procedure for which  
4 approval certificates shall be granted or denied for  
5 commercial hazardous waste management facilities.

6 (b) The Legislature finds that hazardous waste is  
7 generated throughout the state as a by-product of the  
8 materials used and consumed by individuals, busi-  
9 nesses, enterprise and governmental units in the state,  
10 and that the proper management of hazardous waste  
11 is necessary to prevent adverse effects on the environ-

12 ment and to protect public health and safety. The  
13 Legislature further finds that:

14 (1) The availability of suitable facilities for the  
15 treatment, storage and disposal of hazardous waste is  
16 necessary to protect the environment resources and  
17 preserve the economic strength of this state and to  
18 fulfill the diverse needs of its citizens;

19 (2) Whenever a site is proposed for the treatment,  
20 storage or disposal of hazardous waste, the nearby  
21 residents and the affected county and municipalities  
22 may have a variety of reasonable concerns regarding  
23 the location, design, construction, operation, closing  
24 and long-term care of facilities to be located at the site,  
25 the effect of the facility upon their community's  
26 economic development and environmental quality and  
27 the incorporation of such concerns into the siting  
28 process;

29 (3) Local authorities have the responsibility for  
30 promoting public health, safety, convenience and  
31 general welfare, encouraging planned and orderly land  
32 use development, recognizing the needs of industry  
33 and business, including solid waste disposal and the  
34 treatment, storage and disposal of hazardous waste and  
35 that reasonable concerns of local authorities should be  
36 considered in the siting of commercial hazardous  
37 waste management facilities; and

38 (4) New procedures are needed to resolve many of  
39 the conflicts which arise during the process of siting  
40 commercial hazardous waste management facilities.

**§20-10-2. Definitions.**

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

3 (a) "Board" means the commercial hazardous waste  
4 management facility siting board established pursuant  
5 to section three of this article;

6 (b) "Commercial hazardous waste management  
7 facility" means any hazardous waste treatment,  
8 storage or disposal facility which accepts hazardous



9 waste, as identified or listed by the director of the  
10 department of natural resources under article five-e of  
11 this chapter, generated by sources other than the  
12 owner or operator of the facility and shall not include  
13 an approved hazardous waste facility owned and  
14 operated by a person for the sole purpose of disposing  
15 of hazardous wastes created by that person or such  
16 person and other persons on a cost-sharing or non-  
17 profit basis;

18 (c) "Hazardous waste management facility" means  
19 any facility including land and structures, appurtenan-  
20 ces, improvements and equipment used for the treat-  
21 ment, storage or disposal of hazardous wastes, which  
22 accepts hazardous waste for storage, treatment or  
23 disposal. For the purposes of this article, it does not  
24 include: (i) Facilities for the treatment, storage or  
25 disposal of hazardous wastes used principally as fuels  
26 in an on-site production process; or (ii) facilities used  
27 exclusively for the pretreatment of wastes discharged  
28 directly to a publicly owned sewage treatment works.  
29 A facility may consist of one or more treatment,  
30 storage or disposal operational units.

**§20-10-3. Establishment of commercial hazardous waste  
management facility siting board; composi-  
tion; appointment; compensation; powers;  
rules; and procedures.**

1 (a) There is hereby established a commercial haz-  
2 ardous waste management facility siting board consist-  
3 ing of nine members including the director of the  
4 department of natural resources and the director of  
5 the air pollution control commission who shall be non-  
6 voting members ex officio, two ad hoc members  
7 appointed by the county commission of the county in  
8 which the facility is or is proposed to be located and  
9 who shall be residents of said county, and five other  
10 permanent members to be appointed by the governor  
11 with the advice and consent of the Senate, two of  
12 whom shall be representative of industries engaged in  
13 business in this state and three of whom shall be  
14 representative of the public at large. No two or more  
15 of the five permanent voting members of the board

16 appointed by the governor shall be from the same  
17 county. Upon initial appointment, which shall be made  
18 by the governor within thirty days of the effective  
19 date of this article, one of said other five members  
20 shall be appointed for five years, one for four years,  
21 one for three years, one for two years and one for one  
22 year which terms shall commence on the effective  
23 date of this article. Thereafter, said permanent  
24 members shall be appointed for terms of five years  
25 each. Vacancies occurring other than by expiration of  
26 a term shall be filled by the governor in the same  
27 manner as the original appointment for the unexpired  
28 portion of the term. The term of the ad hoc members  
29 shall continue until a final determination has been  
30 made in the particular proceeding for which they are  
31 appointed. Four of the voting members on the board  
32 shall constitute a quorum for the transaction of any  
33 business, and the decision of four voting members of  
34 the board shall constitute action of the board. No  
35 person shall be eligible to be an appointee of the  
36 governor to the board who has any direct personal  
37 financial interest in any commercial hazardous waste  
38 management enterprise. The five permanent voting  
39 members of the board shall annually elect from among  
40 themselves a chairman no later than the thirty-first  
41 day of July of each calendar year. The board shall  
42 meet upon the call of the chairman or upon the  
43 written request of at least three of the voting  
44 members of the board.

45 (b) Each member of the board, other than the two  
46 members ex officio, shall be paid, out of funds approp-  
47 riated for such purpose as compensation for his or her  
48 services on the board, the sum of seventy-five dollars  
49 for each day or substantial portion thereof that he or  
50 she is actually engaged in their duties pursuant to this  
51 article. In addition, each member, including members  
52 ex officio, shall be reimbursed, out of moneys approp-  
53 riated for such purpose, all reasonable sums which he  
54 or she necessarily shall expend in the discharge of  
55 duties as a member of the board. The department of  
56 natural resources shall make available to the board  
57 such professional and support staff and services as

58 may be necessary in order to support the board in  
59 carrying out its responsibilities within the limit of  
60 funds available for this purpose. The office of the  
61 attorney general shall provide legal advice and repre-  
62 sentation to the board as requested, within the limit of  
63 funds available for this purpose, or the board with the  
64 written approval of the attorney general, may employ  
65 counsel to represent it.

66 (c) After the effective date of this article, no person  
67 shall construct or commence construction of a com-  
68 mercial hazardous waste management facility without  
69 first obtaining a certificate of site approval issued by  
70 the board in the manner prescribed herein. For the  
71 purpose of this section, "construct" and "construction"  
72 shall mean (i) with respect to new facilities, the  
73 significant alteration of a site to install permanent  
74 equipment or structures or the installation of perma-  
75 nent equipment or structures; (ii) with respect to  
76 existing facilities, the alteration or expansion of  
77 existing structures or facilities to include accommoda-  
78 tion of hazardous waste, or expansion of more than  
79 fifty percent the area or capacity of an existing  
80 hazardous waste facility, or any change in design or  
81 process of a hazardous waste facility that will result in  
82 a substantially different type of facility. Construction  
83 does not include preliminary engineering or site  
84 surveys, environmental studies, site acquisition, acqui-  
85 sition of an option to purchase or activities normally  
86 incident thereto.

87 (d) Upon receiving a written request from the owner  
88 or operator of the facility, the board may allow,  
89 without going through the procedures of this article,  
90 any changes in the facilities which are designed (1) to  
91 prevent a threat to human health or the environment  
92 because of an emergency situation; (2) to comply with  
93 federal or state laws and regulations; or (3) to result in  
94 demonstrably safer or environmentally more accept-  
95 able processes.

96 (e) An application for certificate of site approval  
97 shall consist of a copy of all hazardous waste permits,  
98 if any, and permit applications, if any, issued by or

99 filed with any state permit-issuing authority pursuant  
100 to article five (e) of this chapter and a detailed written  
101 analysis with supporting documentation of the follow-  
102 ing factors:

103 (1) The nature of the probable environmental and  
104 economic impacts, including but not limited to, speci-  
105 fication of the predictable adverse effects on quality of  
106 natural environment, public health and safety, scenic,  
107 historic, cultural and recreational values, water and  
108 air quality, wildlife, property values, transportation  
109 networks, and an evaluation of measures to mitigate  
110 such adverse effects;

111 (2) The nature of the environmental benefits likely  
112 to be derived from such facility, including the resul-  
113 tant decrease in reliance upon existing waste disposal  
114 facilities which do not comply with applicable laws  
115 and regulations, and a reduction in fuel consumption  
116 and vehicle emissions related to long-distance trans-  
117 portation of hazardous waste; and

118 (3) The economic benefits likely to be derived from  
119 such facility, including, but not limited to, a reduction  
120 in existing costs for the disposal of hazardous waste,  
121 improvement to the state's ability to retain and attract  
122 business and industry due to predictable and stable  
123 waste disposal costs, and any economic benefits which  
124 may accrue to the municipality or county in which the  
125 facility is to be located.

126 (f) On or before sixty calendar days after the receipt  
127 of such application, the board shall mail written notice  
128 to the applicant as to whether or not such application  
129 is complete. If, or when, the application is complete,  
130 the board shall notify the applicant and the county  
131 commission of the county in which the facility is or is  
132 proposed to be located. Said county commission shall  
133 thereupon, within thirty days of receipt of such notice,  
134 appoint the two ad hoc members of the board to act  
135 upon the application.

136 (g) Immediately upon determining that an applica-  
137 tion is complete, the board shall, at the applicant's  
138 expense, cause a notice to be published in the state

139 register, which shall be no later than thirty calendar  
140 days after the date of such written notice of complete-  
141 ness, and shall provide notice to the chief executive  
142 office of each municipality in which the proposed  
143 facility is to be located and to the county commission  
144 of the county in which the facility is proposed to be  
145 located, and shall direct the applicant to provide  
146 reasonable notice to the public which shall, at a  
147 minimum, include publication as a Class I-O legal  
148 advertisement in at least two newspapers having  
149 general circulation in the vicinity in which the  
150 proposed facility is to be located identifying the  
151 proposed location, type of facility and activities  
152 involved, the name of the permittee, and the date,  
153 time and place at which the board will convene a  
154 public hearing with regard to the application. The date  
155 of the hearing shall be set by the board and shall  
156 commence within sixty days of the date of notice of  
157 completeness of an application.

158 (h) The board shall conduct a public hearing upon  
159 the application in the county in which the facility is to  
160 be located and shall keep an accurate record of such  
161 proceedings by stenographic notes and characters or  
162 by mechanical or electronic means. Such proceedings  
163 shall be transcribed at the applicant's expense. The  
164 board may accept both written and oral comments on  
165 the application.

166 (i) The commercial hazardous waste management  
167 facility siting board request further information of the  
168 applicant and shall render a decision based upon the  
169 application and the record, either, requesting further  
170 information, granting a certificate of site approval,  
171 denying it, or granting it upon such terms, conditions  
172 and limitations as the board deems appropriate. The  
173 board shall base its decision upon the factors set forth  
174 in subsection (e). The written decision of the board  
175 containing its findings and conclusions shall be mailed  
176 by certified mail to the applicant and to any request-  
177 ing person on or before sixty calendar days after  
178 receipt by the board of a complete record of the  
179 hearing.

180 (j) The board may exercise all powers necessary or  
181 appropriate to carry out the purposes and duties  
182 provided in this article, including the power to pro-  
183 mulgate rules in compliance with chapter twenty-  
184 nine-a of this code.

**§20-10-4. Effect of certification.**

1 A grant of an approval certificate shall supersede  
2 any local ordinance or regulation that is inconsistent  
3 with the terms of the approval certificate. Nothing in  
4 this chapter shall affect the authority of the host  
5 community to enforce its regulations and ordinances  
6 to the extent that they are not inconsistent with the  
7 terms and conditions of the approval certificate. Grant  
8 of an approval certificate shall not preclude or excuse  
9 the applicant from the requirement to obtain approval  
10 or permits under this chapter or other state or federal  
11 laws.

**§20-10-5. Commercial hazardous waste management facility  
siting fund created; fees.**

1 (a) There is hereby created and established in the  
2 state treasury a special revenue fund entitled the  
3 "commercial hazardous waste management facility  
4 siting fund" which may be expended by the director  
5 of the department of natural resources for the  
6 following:

7 (1) The necessary expenses of the board which may  
8 include expenses and compensation for each member  
9 of the board as authorized by this article.

10 (2) Administration, professional and support services  
11 provided by the department to the board.

12 (3) Legal counsel and representation provided by the  
13 attorney general to the board for the purposes of this  
14 article.

15 (b) The director of the department of natural  
16 resources shall promulgate rules and regulations,  
17 pursuant to section one, article one, chapter twenty-  
18 nine-a of this code, establishing reasonable fees to be  
19 charged each applicant for a certificate of site appro-

20 val. Such fees shall be calculated to recover the  
21 reasonable and necessary expenses of the board,  
22 department of natural resources and attorney general  
23 which such agencies incur as pursuant to this article.

**§20-10-6. Judicial review.**

1 (a) Any person having an interest adversely affected  
2 by a final decision made and entered by the board is  
3 entitled to judicial review thereof in the Circuit Court  
4 of Kanawha County, or the circuit court of the county  
5 in which the facility is, or is proposed to be, situated,  
6 such appeal to be perfected by the filing of a petition  
7 with the court within sixty days of the date of receipt  
8 by the applicant of the board's written decision.

9 (b) The review shall be conducted by the court  
10 without a jury and shall be upon the record made  
11 before the board except that in cases of alleged  
12 irregularities in procedure before the board not shown  
13 in the record, testimony thereon may be taken before  
14 the court. The court may hear oral arguments and  
15 require written briefs.

16 The court may affirm the order or decision of the  
17 board or remand the case for further proceedings. It  
18 may reverse, vacate or modify the order or decision of  
19 the board if the substantial rights of the petitioner or  
20 petitioners have been prejudiced because the adminis-  
21 trative findings, inferences, conclusions, decision or  
22 order are:

23 (1) In violation of constitutional or statutory provi-  
24 sions; or

25 (2) In excess of the statutory authority or jurisdic-  
26 tion of the board; or

27 (3) Made upon unlawful procedures; or

28 (4) Affected by other error of law; or

29 (5) Clearly wrong in view of the reliable, probative  
30 and substantial evidence on the whole record; or

31 (6) Arbitrary or capricious or characterized by abuse  
32 of discretion or clearly unwarranted exercise of  
33 discretion.

34 (c) The judgment of the circuit court shall be final  
35 unless reversed, vacated or modified on appeal to the  
36 supreme court of appeals. The petition seeking such  
37 review must be filed with said supreme court of  
38 appeals within ninety days from the date of entry of  
39 the judgment of the circuit court.

40 (d) Legal counsel and services for the board in all  
41 appeal proceedings shall be provided by the attorney  
42 general.

**§20-10-7. Remedies.**

1 (a) Any person who violates this section shall be  
2 compelled by injunction, in a proceeding instituted in  
3 the circuit court or the locality where the facility or  
4 proposed facility is to be located, to cease the violation.

5 (b) Such an action may be instituted by the board,  
6 director of the department of natural resources, air  
7 pollution control commission, political subdivision in  
8 which the violation occurs, or any other person  
9 aggrieved by such violation. In any such action, it shall  
10 not be necessary for the plaintiff to plead or prove  
11 irreparable harm or lack of an adequate remedy at  
12 law. No person shall be required to post any injunction  
13 bond or other security under this section.

14 (c) No action may be brought under this section  
15 after an approval certificate has been issued by the  
16 board, notwithstanding the pendency of any appeals or  
17 other challenges to the board's action.

18 (d) In any action under this section, the court may  
19 award reasonable costs of litigation, including attorney  
20 and expert witness fees, to any party if the party  
21 substantially prevails on the merits of the case and if  
22 in the determination of the court the party against  
23 whom the costs are requested has acted in bad faith.

**§20-10-8. Short title.**

1 This article may be known and cited as the Com-  
2 mercial Hazardous Waste Management Facility Siting  
3 Act.



**ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.**

**§20-11-1. Short title.**

1 This article shall be known and cited as the West  
2 Virginia Recycling Act of 1989.

**§20-11-2. Legislative findings and purpose.**

1 The Legislature finds that many citizens desire a  
2 recycling program in their county in order to conserve  
3 limited natural resources, reduce litter, recycle valu-  
4 able materials, extend the useful life of solid waste  
5 landfills and reduce the need for new landfills.

6 The Legislature further finds that the identification  
7 and creation of local, regional, state and national  
8 markets for recyclable materials are necessary for the  
9 implementation of effective recycling programs.

10 The Legislature further finds that recycling pro-  
11 grams can most successfully be established by encour-  
12 aging the source separation of solid waste.

13 Therefore, it is the purpose of the Legislature to  
14 establish goals for the recycling of solid waste; to  
15 authorize each county commission, or the citizens of a  
16 county by referendum, to adopt a comprehensive  
17 recycling program for solid waste; to encourage source  
18 separation of solid waste; to increase the purchase of  
19 recycled products by the various agencies and instru-  
20 mentalities of government; and to educate the public  
21 concerning the benefits of recycling.

**§20-11-3. Recycling goals.**

1 (a) It is the goal of this state to reduce the solid  
2 waste stream by thirty percent by the year two  
3 thousand.

4 (b) It is an interim goal of this state to reduce the  
5 solid waste stream by twenty percent by the first day  
6 of January, one thousand nine hundred and ninety-  
7 four.

**§20-11-4. Recycling plans.**

1 (a) Each county or regional solid waste authority, as

2 part of the comprehensive litter and solid waste  
3 control plan required pursuant to the provisions of  
4 section seven, article nine of this chapter, shall  
5 prepare and adopt a comprehensive recycling plan to  
6 assist in the implementation of the recycling goals in  
7 section four of this article.

8 (b) Each recycling plan required by this section shall  
9 include, but not be limited to:

10 (1) Designation of the recyclable materials that can  
11 be most effectively source separated in the region or  
12 county, which shall include at least three recyclable  
13 materials; and

14 (2) Designation of potential strategies for the collec-  
15 tion, marketing and disposition of designated source  
16 separated recyclable materials in each region or  
17 county.

**§20-11-5. Establishment of county recycling programs for  
solid waste; petition for referendum to be  
placed on ballot; referendum election proce-  
dure; effect of such election.**

1 (a) A comprehensive recycling program for solid  
2 waste may be established in any county of this state by  
3 action of a county commission in accordance with the  
4 provisions of this section. Such program shall require:

5 (1) That, prior to collection at its source, all solid  
6 waste shall be segregated into separate identifiable  
7 recyclable materials by each person, partnership,  
8 corporation and governmental agency subscribing to a  
9 solid waste collection service in the county or trans-  
10 porting solid waste to a commercial solid waste facility  
11 in the county;

12 (2) That each commercial solid waste facility located  
13 in the county and each person engaged in the com-  
14 mercial collection, transportation, processing or dis-  
15 posal of solid waste within the county shall accept only  
16 such solid waste from which recyclable materials in  
17 accordance with said county's comprehensive recy-  
18 cling program have been segregated; and

19 (3) That the provisions of the recycling plan pre-  
20 pared pursuant to section four of this article shall, to  
21 the extent practicable, be incorporated in said county's  
22 comprehensive recycling program.

23 (b) For the purposes of this article, recyclable  
24 materials shall include, but not be limited to, steel and  
25 bi-metallic cans, aluminum, glass, paper, and such  
26 other solid waste materials as may be specified by the  
27 county commission with the advice of the county or  
28 regional solid waste authority.

29 (c) A referendum to determine whether it is the will  
30 of the voters of a county that a comprehensive recy-  
31 cling program for solid waste be established in the  
32 county may be held at any regular primary or general  
33 election or in conjunction with any other election. Any  
34 election at which the question of establishing a policy  
35 of comprehensive recycling for solid waste is voted  
36 upon shall be held at the voting precincts established  
37 for holding primary or general elections. All of the  
38 provisions of the general election laws, when not in  
39 conflict with the provisions of this article, shall apply  
40 to voting and elections hereunder, insofar as  
41 practicable.

42 (d) The county commission, upon the written peti-  
43 tion of qualified voters residing within the county  
44 equal to at least five percent of the number of persons  
45 who voted in that county in the preceding general  
46 election, which petition may be in any number of  
47 counterparts, shall order a referendum be placed upon  
48 the ballot at the next primary, general or special  
49 election to determine whether it is the will of the  
50 voters of said county that a policy of comprehensive  
51 recycling of solid waste be established in the county.

52 (e) The ballot, or the ballot labels where voting  
53 machines are used, shall have printed thereon sub-  
54 stantially the following:

55 "Shall the County Commission be required to  
56 establish a comprehensive recycling program for solid  
57 waste in \_\_\_\_\_  
58 County, West Virginia?"

59 /\_\_\_\_\_ / For Recycling

60 /\_\_\_\_\_ / Against Recycling

61 (Place a cross mark in the square opposite your  
62 choice.)”

63 (f) If a majority of legal votes cast upon the question  
64 be for the establishment of a policy of comprehensive  
65 recycling of solid waste, the county commission shall,  
66 after the certification of the results of the referendum,  
67 thereafter establish by ordinance a comprehensive  
68 recycling program for solid waste in the county within  
69 ninety days of said certification. If a majority of the  
70 legal votes cast upon the question be against the  
71 establishment of a policy of comprehensive recycling  
72 or solid waste, said policy shall not take effect, but the  
73 question may again be submitted to a vote at any  
74 subsequent election in the manner herein provided.

75 (g) Any comprehensive recycling program adopted  
76 by referendum pursuant to this section may be  
77 rescinded only by a subsequent referendum adopted  
78 pursuant to the following procedures:

79 (1) The county commission, upon the written peti-  
80 tion of qualified voters residing within the county  
81 equal to at least five percent of the number of persons  
82 who voted in that county in the next preceding  
83 general election, which petition may be in any num-  
84 ber of counterparts, shall order a referendum be  
85 placed upon the ballot at the next primary, general or  
86 special election to determine whether it is the will of  
87 the voters of said county that the policy of comprehen-  
88 sive recycling of solid waste previously established in  
89 the county be terminated.

90 (2) The ballot, or the ballot labels where voting  
91 machines are used, shall have printed thereon sub-  
92 stantially the following:

93 “Shall the County Commission be required to  
94 terminate the comprehensive recycling program for  
95 solid waste in \_\_\_\_\_  
96 County, West Virginia?”

97 / \_\_\_\_\_/ Continue Recycling

98 / \_\_\_\_\_/ End Recycling

99 (Place a cross mark in the square opposite your  
100 choice.)”

101 (h) If a majority of legal votes cast upon the question  
102 be for the termination of a policy of comprehensive  
103 recycling of solid waste previously established in the  
104 county, the county commission shall, after the certifi-  
105 cation of the results of the referendum, thereafter  
106 rescind by ordinance the comprehensive recycling  
107 program for solid waste in the county within ninety  
108 days of said certification. If a majority of the legal  
109 votes cast upon the question be for the continuation of  
110 the policy of comprehensive recycling of solid waste,  
111 said ordinance shall not be rescinded, but the question  
112 may again be submitted to a vote at any subsequent  
113 election in the manner herein provided.

**§20-11-6. Establishment of state recycling program for solid waste.**

1 Notwithstanding any provision of this article to the  
2 contrary, all agencies and instrumentalities of the state  
3 shall implement programs to recycle solid waste. Such  
4 programs shall include, but not be limited to, the  
5 following:

6 (a) Source separation of at least two recyclable  
7 materials;

8 (b) In the absence of a comprehensive county  
9 recycling plan pursuant to section six of this article,  
10 collection and transportation of source separated  
11 recycled materials to an appropriate location.

**§20-11-7. Procurement of recycled products.**

1 (a) It is the goal of the Legislature that, to the  
2 maximum extent possible, the state purchase recycled  
3 products.

4 (b) In furtherance of the aforesaid goal, the director  
5 of the department of finance and administration shall  
6 develop a procurement plan for recycled paper pro-

7 ducts. Such plan shall include a review of existing  
8 procurement policies and a cost analysis of the impacts  
9 of such plan. The director shall submit a report on the  
10 thirty-first day of January, one thousand nine hun-  
11 dred ninety summarizing the plan and any recommen-  
12 dations for its implementation. Said report shall be  
13 submitted to the governor, speaker of the house of  
14 delegates and president of the state senate.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

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

#### **§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

1 The jurisdiction of the commission shall extend to  
2 all public utilities in this state, and shall include any  
3 utility engaged in any of the following public services:

4 Common carriage of passengers or goods, whether  
5 by air, railroad, street railroad, motor or otherwise, by  
6 express or otherwise, by land, water or air, whether  
7 wholly or partly by land, water or air; transportation  
8 of oil, gas or water by pipeline; transportation of coal  
9 and its derivatives and all mixtures and combinations  
10 thereof with other substances by pipeline; sleeping car  
11 or parlor car services; transmission of messages by  
12 telephone, telegraph or radio; generation and trans-  
13 mission of electrical energy by hydroelectric or other  
14 utilities for service to the public, whether directly or  
15 through a distributing utility; supplying water, gas or  
16 electricity, by municipalities or others; sewer systems  
17 servicing twenty-five or more persons or firms other  
18 than the owner of the sewer systems; any public  
19 service district created under the provisions of article  
20 thirteen-a, chapter sixteen of this code; toll bridges,  
21 wharves, ferries; solid waste facilities, pursuant to  
22 section one-d of this article; and any other public  
23 service: *Provided*, That natural gas producers who  
24 provide natural gas service to not more than twenty-  
25 five residential customers are exempt from the juris-  
26 diction of the commission with regard to the provi-  
27 sions of such residential service: *Provided, however*,  
28 That upon request of any of the customers of such

29 natural gas producers, the commission may, upon good  
30 cause being shown, exercise such authority as the  
31 commission may deem appropriate over the operation,  
32 rates and charges of such producer and for such length  
33 of time as the commission may consider to be proper:  
34 *Provided further*, That the jurisdiction the commission  
35 may exercise over the rates and charges of municipi-  
36 tally operated public utilities is limited to that author-  
37 ity granted the commission in section four-b of this  
38 article: *And provided further*, That the decision  
39 making authority granted to the commission in sec-  
40 tions four and four-a of this article shall, in respect to  
41 an application filed by a public service district, be  
42 delegated to a single hearing examiner appointed from  
43 the commission staff, which hearing examiner shall be  
44 authorized to carry out all decision making duties  
45 assigned to the commission by said sections, and to  
46 issue orders having the full force and effect of orders  
47 of the commission.

48 The commission may, upon application, waive its  
49 jurisdiction and allow a utility operating in an adjoin-  
50 ing state to provide service in West Virginia when:

51 (1) An area of West Virginia cannot be practicably  
52 and economically served by a utility licensed to  
53 operate within the state of West Virginia;

54 (2) Said area can be provided with utility service by  
55 a utility which operates in a state adjoining West  
56 Virginia;

57 (3) The utility operating in the adjoining state is  
58 regulated by a regulatory agency or commission of the  
59 adjoining state; and

60 (4) The number of customers to be served is not  
61 substantial.

62 The rates the out-of-state utility charges West  
63 Virginia customers shall be the same as the rate the  
64 utility is duly authorized to charge in the adjoining  
65 jurisdiction.

66 The commission, in the case of any such utility, may  
67 revoke its waiver of jurisdiction for good cause.

**§24-2-1d. Jurisdiction of commission over solid waste facilities.**

1 (a) Effective the first day of July, one thousand nine  
2 hundred eighty-nine, in addition to all other powers  
3 and duties of the commission as defined in this article,  
4 the commission shall establish, prescribe and enforce  
5 rates and fees charged by commercial solid waste  
6 facilities, as defined in subsection (b), section two,  
7 article nine, chapter twenty of this code: *Provided*,  
8 That an owner of a commercial solid waste facility  
9 that is not in existence on the effective date of this  
10 article that has executed or executes an agreement  
11 with a county commission or county or regional solid  
12 waste authority, establishing disposal rates or fees for  
13 said county or region, shall not be subject to the  
14 requirements of this chapter upon the approval of said  
15 disposal rates or fees by the commission for the term  
16 of such agreement: *Provided, however*, That any  
17 revisions to rates or fees or any renewals or extensions  
18 of said agreement would be similarly subject to such  
19 approval. The purpose of this provision is to encourage  
20 the development of solid waste disposal facilities which  
21 meet the environmental standards and requirements  
22 of article five-f of chapter twenty of this code and  
23 which provide for quality waste disposal for the  
24 county or region at reasonable rates. If any provisions  
25 of this section shall be held unconstitutional, all  
26 commercial solid waste facilities shall be subject to the  
27 jurisdiction of the commission as provided herein.

**§24-2-4b. Procedures for changing rates of electric, natural gas, telephone cooperatives and municipally operated public utilities.**

1 (a) Electric cooperatives, natural gas cooperatives,  
2 telephone cooperatives and municipally operated  
3 public utilities, except for municipally operated com-  
4 mercial solid waste facilities as defined in section two-  
5 h, article five-f, chapter twenty of this code, are not  
6 subject to the rate approval provisions of section four  
7 or four-a of this article but are subject to the limited  
8 rate provisions of this section.

9 (b) All rates and charges set by electric cooperatives,



10 natural gas cooperatives, telephone cooperatives and  
11 municipally operated public utilities shall be just,  
12 reasonable, applied without unjust discrimination or  
13 preference and based primarily on the costs of provid-  
14 ing these services. Such rates and charges shall be  
15 adopted by the electric, natural gas or telephone  
16 cooperative's governing board and in the case of the  
17 municipally operated public utility by municipal  
18 ordinance to be effective not sooner than forty-five  
19 days after adoption: *Provided*, That notice of intent to  
20 effect a rate change shall be specified on the monthly  
21 billing statement of the customers of such utility for  
22 the month next preceding the month in which the rate  
23 change is to become effective or the utility shall give  
24 its customers, and in the case of a cooperative, its  
25 customers, members and stockholders, such other  
26 reasonable notices as will allow filing of timely  
27 objections to such rate change. Such rates and charges  
28 shall be filed with the commission together with such  
29 information showing the basis of such rates and  
30 charges and such other information as the commission  
31 considers necessary. Any change in such rates and  
32 charges with updated information shall be filed with  
33 the commission. If a petition, as set out in subdivision  
34 (1), (2) or (3), subsection (c) of this section, is received  
35 and the electric cooperative, natural gas cooperative,  
36 telephone cooperative, or municipality has failed to  
37 file with the commission such rates and charges with  
38 such information showing the basis of rates and  
39 charges and such other information as the commission  
40 considers necessary, the suspension period limitation  
41 of one hundred twenty days and the one hundred day  
42 period limitation for issuance of an order by a hearing  
43 examiner, as contained in subsections (d) and (e) of  
44 this section, is tolled until the necessary information is  
45 filed. The electric cooperative, natural gas cooperative,  
46 telephone cooperative or municipality shall set the  
47 date when any new rate or charge is to go into effect.

48 (c) The commission shall review and approve or  
49 modify such rates upon the filing of a petition within  
50 thirty days of the adoption of the ordinance or resolu-  
51 tion changing said rates or charges by:

52 (1) Any customer aggrieved by the changed rates or  
53 charges who presents to the commission a petition  
54 signed by not less than twenty-five percent of the  
55 customers served by such municipally operated public  
56 utility, or twenty-five percent of the membership of  
57 the electric, natural gas or telephone cooperative  
58 residing within the state; or

59 (2) Any customer who is served by a municipally  
60 operated public utility and who resides outside the  
61 corporate limits and who is affected by the change in  
62 said rates or charges and who presents to the commis-  
63 sion a petition alleging discrimination between custo-  
64 mers within and without the municipal boundaries.  
65 Said petition shall be accompanied by evidence of  
66 discrimination; or

67 (3) Any customer or group of customers who are  
68 affected by said change in rates who reside within the  
69 municipal boundaries and who present a petition to  
70 the commission alleging discrimination between said  
71 customer or group of customers and other customers  
72 of the municipal utility. Said petition shall be accom-  
73 panied by evidence of discrimination.

74 (d) (1) The filing of a petition with the commission  
75 signed by not less than twenty-five percent of the  
76 customers served by the municipally operated public  
77 utility, or twenty-five percent of the membership of  
78 the electric, natural gas or telephone cooperative  
79 residing within the state, under subdivision (1),  
80 subsection (c) of this section, shall suspend the adop-  
81 tion of the rate change contained in the ordinance or  
82 resolution for a period of one hundred twenty days  
83 from the date said rates or charges would otherwise go  
84 into effect, or until an order is issued as provided  
85 herein.

86 (2) Upon sufficient showing of discrimination by  
87 customers outside the municipal boundaries, or a  
88 customer or a group of customers within the municip-  
89 al boundaries, under a petition filed under subdivi-  
90 sion (2) or (3), subsection (c) of this section, the  
91 commission shall suspend the adoption of the rate

92 change contained in the ordinance for a period of one  
93 hundred twenty days from the date said rates or  
94 charges would otherwise go into effect or until an  
95 order is issued as provided herein.

96 (e) The commission shall forthwith appoint a hear-  
97 ing examiner from its staff to review the grievances  
98 raised by the petitioners. Said hearing examiner shall  
99 conduct a public hearing, and shall within one hun-  
100 dred days from the date the said rates or charges  
101 would otherwise go into effect, unless otherwise tolled  
102 as provided in subsection (b) of this section, issue an  
103 order approving, disapproving or modifying in whole  
104 or in part, the rates or charges imposed by the electric,  
105 natural gas or telephone cooperative or by the munic-  
106 ipally operated public utility pursuant to this section.

107 (f) Upon receipt of a petition for review of the rates  
108 under the provisions of subsection (c) of this section,  
109 the commission may exercise the power granted to it  
110 under the provisions of section three of this article.  
111 The commission may determine the method by which  
112 such rates are reviewed and may grant and conduct a  
113 de novo hearing on the matter if the customer,  
114 electric, natural gas or telephone cooperative or  
115 municipality requests such a hearing.

116 (g) The commission may, upon petition by a munic-  
117 ipality or electric, natural gas or telephone coopera-  
118 tive, allow an interim or emergency rate to take effect,  
119 subject to future modification, if it is determined that  
120 such interim or emergency rate is necessary to protect  
121 the municipality from financial hardship and if that  
122 financial hardship is attributable solely to the pur-  
123 chase of the utility commodity sold. In such cases, the  
124 commission may waive the forty-five-day waiting  
125 period provided for in subsection (b) of this section  
126 and the one hundred twenty-day suspension period  
127 provided for in subsection (d) of this section.

128 (h) Notwithstanding any other provision, the com-  
129 mission shall have no authority or responsibility with  
130 regard to the regulation of rates, income, services or  
131 contracts by municipally operated public utilities for

132 services which are transmitted and sold outside of the  
133 state of West Virginia.

**CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS  
AND PROPERTY FOR HIRE.**

**ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.**

**§24A-2-4a. Motor carriers transporting solid waste; pass  
through of landfill tip fees as rate surcharge.**

1 Any common carrier transporting solid waste in this  
2 state pursuant to authority granted under the code of  
3 West Virginia section five, article two, chapter twenty-  
4 four-a, may make application to the commission for  
5 approval of a rate surcharge to pass through any  
6 increase in the disposal rate charged by the landfill at  
7 which solid waste is disposed by the motor carrier,  
8 commonly known as the tip fee, to commercial and  
9 residential customers, including increases which are  
10 the direct result of fees, charges, taxes, or any other  
11 assessment imposed upon the landfill by a governmen-  
12 tal body. The commission shall within fourteen days of  
13 receipt of said application notify the motor carrier of  
14 approval of the requested rate surcharge, or approval  
15 of a rate surcharge other than in the amount  
16 requested and the reason therefore. The effective date  
17 of the approved rate surcharge shall be the same date  
18 as the effective date of the increase in the tip fee to  
19 which the surcharge relates; except that in the event  
20 the application for approval of the rate surcharge is  
21 received by the commission more than sixty days after  
22 the effective date of the tip fee increase, then the  
23 effective date of the approved rate surcharge shall be  
24 the date said application was received by the  
25 commission.

26 The commission shall immediately promulgate  
27 emergency rules which set forth the procedures for  
28 the filing of the tip fee rate surcharge application. It  
29 is the purpose of this statute to provide an expedited  
30 process which will allow the subject motor carriers to  
31 pass through tip fee increases to all customers. Only  
32 that data necessary to review in accordance with this  
33 statute may be required by the commission to be  
34 submitted by the motor carrier.

Enr. Com. Sub. For S. B. No. 301] 68

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

*Frederick L. Pearson*  
.....  
Chairman Senate Committee

*J. L. Satter*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Jed Colwell*  
.....  
Clerk of the Senate

*Donald L. Kapp*  
.....  
Clerk of the House of Delegates

*Samuel Franklin*  
.....  
President of the Senate

*Robert C. ...*  
.....  
Speaker House of Delegates

\_\_\_\_\_

The within *is approved* this the *24th*  
day of *April* 19*89*.  
*Yaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/89

Time 10:46