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
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 impose a similar solid waste assessment fee to that imposed by section five, article five-f, chapter twenty of this code at a rate not to exceed fifty cents per ton or part thereof upon the disposal of solid waste in that county: Provided, That in counties wherein one or more municipalities operate their own solid waste collection programs and solid waste disposal facilities, such municipality or municipalities shall receive one half of the assessments collected under this section. Such amount shall be divided pro-rata amongst said municipalities and shall be deposited in their general revenue fund. All assessments due the county shall be applied to the reasonable costs of administration of that county’s regional or county solid waste authority including the necessary and reasonable expenses of its 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 Virginia Solid Waste Management Board Act.”

§16-26-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:
(1) “Board” means the West Virginia solid waste management board created in section four of this article, heretofore known as the West Virginia state solid waste authority, the duties, powers, responsibilities and functions of which are specified in this article. All references in this code to the West Virginia resource recovery — solid waste disposal authority shall be construed as references to the West Virginia solid waste management board.

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

(3) “Construction” includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

(4) “Cost” means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste disposal facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability 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 specifica-
56 tions 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.

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

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

(7) “Owner” includes all persons, partnerships or
79 governmental agencies having any title or interest in
80 any property rights, easements and interests autho-
81 rized to be acquired by this article.
(8) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity whatever.

(9) "Pollution" means the discharge, release, escape or deposit, directly or indirectly, of solid waste of whatever kind or character, on lands or in waters in the state in an uncontrolled, unregulated or unapproved manner.

(10) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia solid waste management board as rent, use fee, service charge or other charge for use of, or in connection with, any solid waste disposal project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the West Virginia solid waste management board to governmental agencies to finance in whole or in part the acquisition or construction of any solid waste development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(11) "Solid waste" means all putrescible and nonputrescible solid waste substances, except human excreta, including, but not limited to, garbage, rubbish, ashes, incinerator residue, street refuse, dead animals, demolition and construction waste, vehicles and parts thereof, tires, appliances, sewage plant sludge, commercial and industrial waste and special waste, including, but not limited to, explosives, pathological waste and radioactive material, except those commercial and industrial wastes and special wastes which are under the control of the department of natural resources, the department of energy or the West Virginia air pollu-
tion control commission, or both, or of the United States government.

(12) "Solid waste disposal facility" means any method, system or facility to collect, transport, treat, neutralize, dispose of, stabilize, segregate, recover, recycle or hold solid waste, including, without limiting, the generality of the foregoing, the equipment, furnishings and appurtenances thereof.

(13) "Solid waste disposal project" or "project" means any solid waste disposal facility the acquisition or construction of which is authorized by the West Virginia solid waste management board or any acquisition or construction which is financed in whole or in part from funds made available by grant or loan by, or through, the board as provided in this article, including all buildings and facilities which the board deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

(14) "Solid waste disposal shed" or "shed" means a geographical area which the West Virginia solid waste management board designates as provided in section 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, compensation and expenses; director of board.

The West Virginia resource recovery — solid waste disposal authority is hereby continued in all respects as heretofore constituted but is hereafter designated and shall be known as the West Virginia solid waste management board. All references in this code to the West Virginia resource recovery — solid waste disposal authority shall be construed as references to the West Virginia solid waste management board. The board is a governmental instrumentality of the state and a body corporate. The exercise by the board of the
powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and are for a public purpose.

The board shall be composed of seven members. The director of the department of health and the director of the department of natural resources, or their designees, shall be members ex officio of the board. The other five members of the board shall be appointed by the governor, on the effective date of this section, by and with the advice and consent of the Senate, for terms of one, two, three, four and five years, respectively. Two appointees shall be persons having at least three years of professional experience in solid waste management, civil engineering or regional planning and three appointees shall be representatives of the general public. The successor of each such appointed member shall be appointed for a term of five years in the same manner the original appointments were made and so that the representation on the board as set forth in this section is preserved, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor.

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

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

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

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

The board shall appoint a director as its chief
executive officer. The director shall have successfully
completed an undergraduate education and, in addi-
tion, shall have two years of professional experience in
solid waste management, civil engineering, public
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 meet the responsibility of the state as set forth in this article, the West Virginia solid waste management board shall designate and establish solid waste disposal sheds and it may initiate, acquire, construct, maintain, repair and operate solid waste disposal projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects by such persons and governmental agencies; and may issue solid waste disposal revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to governmental agencies, such projects. A solid waste disposal project shall not be undertaken unless the board determines that the project is consistent with federal law, with its solid waste disposal shed plan, with the standards set by the state water resources board and the division of water resources of the department of natural resources for any waters of the state which may be affected thereby, with the air quality standards set by the West Virginia air pollution control commission and with health standards set by the department of health. Any resolution of the board providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the board that such determinations have been made. A loan agreement shall be entered into between the board and each governmental agency to which a loan is made for the acquisition or construction of a solid waste disposal project, which loan agreement shall include, without limitation, the following provisions:

(1) The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge
of all revenues from such project after a reasonable
allowance for operation and maintenance expenses, a
deed of trust or other appropriate security instrument
creating a lien on such project;

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

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

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

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

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

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

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

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

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

(5) Make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects and adopt rules and procedures for making such loans and grants.

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

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

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

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

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

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

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

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

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

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

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

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

(18) Do all acts necessary and proper to carry out the 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 agencies in event of default; power to require governmental agencies to enforce their rights.

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

(1) The board may directly impose, in its own name and for its own benefit, service charges determined by it to be necessary under the circumstances upon all users of the solid waste disposal project to be acquired or constructed pursuant to such loan agreement, and
proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(2) The board may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, board, powers and remedies of the governmental agency with respect to the solid waste disposal project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including, without limitation, all rights and remedies with respect to users of such solid waste disposal project.

(3) The board may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including, without limitation, the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.


The board shall maintain the division of the state into geographical areas for solid waste management which shall be known as solid waste disposal sheds. The board may, from time to time, modify the boundaries of such sheds in a manner consistent with the provisions of this section. Before it modifies the sheds, the board shall consult with the affected municipalities and county or regional solid waste authorities and obtain and evaluate their opinions as to how many sheds there should be and where their boundaries should be located. The board shall then cause feasibility and cost studies to be made in order for it to designate the solid waste disposal sheds within each of which the most dependable, effective, efficient and economical solid waste disposal projects may be
established. The sheds shall not overlap and shall cover the entire state.

The board shall designate the sheds so that:

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

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

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

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

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

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

With the approval of the board, the director of the department of health shall expend out of any funds available for the purpose such moneys as are necessary for the study and engineering of any proposed solid waste disposal project and may use its employees and consultants for that purpose. All such expenses incurred by the director of the department of health prior to the issuance of solid waste disposal revenue bonds or notes under this article shall be paid by him and charged to the appropriate solid waste disposal project. The director of the department of health shall keep proper records and accounts showing the amounts so charged. Upon the sale of solid waste
disposal revenue bonds or notes for a solid waste disposal project, the moneys so expended by the director of the department of health with the approval of the board in connection with such project shall be repaid to the department of health from the proceeds 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.

The board is hereby empowered to issue, from time to time, solid waste disposal revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance in whole or in part by loans to governmental agencies, one or more solid waste development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of fifty million dollars.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste disposal revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes shall be obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge shall be valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge 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
any part of the revenues of the board to secure the
payment of the bonds or notes or of any issue thereof;
the use and disposition of revenues of the board; a
covenant to fix, alter and collect rentals, fees, service
charges and other charges so that pledged revenues
will be sufficient to pay the costs of operation, main-
tenance and repairs, pay principal of and interest on
bonds or notes secured by the pledge of such revenues
and provide such reserves as may be required by the
applicable resolution or trust agreement; the setting
aside of reserve funds, sinking funds or replacement
and improvement funds and the regulation and dispo-
sition thereof; the crediting of the proceeds of the sale
of bonds or notes to and among the funds referred to
or provided for in the resolution authorizing the
issuance of the bonds or notes; the use, lease, sale or
other disposition of any solid waste disposal project or
any other assets of the board; limitations on the
purpose to which the proceeds of sale of bonds or notes
may be applied and pledging such proceeds to secure
the payment of the bonds or notes or of any issue
thereof; agreement of the board to do all things
necessary for the authorization, issuance and sale of
bonds in such amounts as may be necessary for the
timely retirement of notes issued in anticipation of the
issuance of bonds; limitations on the issuance of
additional bonds or notes; the terms upon which
additional bonds or notes may be issued and secured;
the refunding of outstanding bonds or notes; the
procedure, if any, by which the terms of any contract
with bondholders or noteholders may be amended or
abrogated, the holders of which must consent thereto,
and the manner in which such consent may be given;
limitations on the amount of moneys to be expended
by the board for operating, administrative or other
expenses of the board; securing any bonds or notes by
a trust agreement; and any other matters, of like or
different character, which in any way affect the
security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to
the payment of such bonds or notes shall be less than
the minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such bonds or notes, the chairman of the board shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state, for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the board to be pledged for payment of such bonds or notes: Provided, That the Legislature shall not be required to make any appropriation so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

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

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

In the discretion of the board, any solid waste disposal revenue bonds or notes or solid waste disposal revenue refunding bonds issued by the board under this article may be secured by a trust agreement between the board and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without this state.

Any such trust agreement may pledge or assign revenues of the board to be received, but shall not convey or mortgage any solid waste disposal project or any part thereof. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section nine of this article, covenants setting forth the duties of the board in relation to the acquisition of property, the construction, improvement, maintenance, repair, operation and insurance of the solid
waste disposal project, the cost of which is paid in whole or in part from the proceeds of such bonds or notes, the rentals or other charges to be imposed for the use or services of any solid waste disposal project, provisions with regard to the payment of the principal of and interest, charges and fees on loans made to governmental agencies from the proceeds of such bonds or notes, the custody, safeguarding, and application of all moneys and provisions for the employment of consulting engineers in connection with the construction or operation of such solid waste disposal project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the board. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the board deems reasonable and proper for the security of the bondholders or note-holders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the solid waste disposal project. Any such trust agreement or resolution authorizing the issuance of solid waste disposal revenue bonds may provide the method whereby the general administrative overhead expenses of the board shall be allocated among the several projects acquired or constructed by it as a factor of the operating expenses of each such project.

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

1 Any holder of solid waste disposal revenue bonds issued under the authority of this article or any of the coupons appertaining thereto and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or such trust agreement, may by civil
action, mandamus or other proceeding, protect and
enforce any rights granted under the laws of this state
or granted under this article, by the trust agreement
or by the resolution authorizing the issuance of such
bonds, and may enforce and compel the performance
of all duties required by this article, or by the trust
agreement or resolution, to be performed by the board
or any officer or employee thereof, including the
fixing, charging and collecting of sufficient rentals,
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.

Solid waste disposal revenue bonds and notes and
solid waste disposal revenue refunding bonds issued
under authority of this article and any coupons in
connection therewith shall not constitute a debt or a
pledge of the faith and credit or taxing power of this
state or of any county, municipality or any other
political subdivision of this state, and the holders or
owners thereof shall have no right to have taxes levied
by the Legislature or taxing authority of any county,
municipality or any other political subdivision of this
state for the payment of the principal thereof or
interest thereon, but such bonds and notes shall be
payable solely from the revenues and funds pledged
for their payment as authorized by this article unless
the notes are issued in anticipation of the issuance of
bonds or the bonds are refunded by refunding bonds
issued under authority of this article, which bonds or
refunding bonds shall be payable solely from revenues
and funds pledged for their payment as authorized by
this article. All such bonds and notes shall contain on
the face thereof a statement to the effect that the
bonds or notes, as to both principal and interest, are
not debts of the state or any county, municipality or
political subdivision thereof, but are payable solely
from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions
of this article shall be payable solely from funds
provided under authority of this article. This article
§16-26-14. Use of funds, properties, etc., by board; restrictions thereon.

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

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

1 The board is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities:

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

6 (2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association;
(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under any annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

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

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

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

Funds of the board in excess of current needs, except as otherwise provided in any resolution authorizing the issuance of its solid waste disposal revenue bonds or in any trust agreement securing the same, may be invested by the board in any security or securities in which the West Virginia state board of investments is authorized to invest under sections nine and ten, article six, chapter twelve of this code, except those securities specified in subsections (f) and (g) of said section nine. Income from all such investments of moneys in any fund shall be credited to such funds as the board determines, subject to the provisions of any such resolution or trust agreement and such investments may be sold at such times as the board 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.

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

The board may charge, alter and collect rentals, fees, service charges or other charges for the use or services of any solid waste disposal project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals, fees, service charges or other charges for such use or services. Such rentals, fees, service charges or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such solid waste disposal project for such consideration payable over the period of the contract or otherwise as the board in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of solid waste disposal revenue bonds or notes or solid waste disposal revenue refunding bonds of the board or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain solid waste disposal facilities may enter into a contract or lease with the board whereby the use or services of any solid waste disposal project of the board will be made available to such governmental agency and pay for such use or services such rentals, fees, service charges or other charges as may be agreed to by such governmental agency and the board.

Any governmental agency or agencies or combination thereof may cooperate with the board in the 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-
mental agency will serve the same public purpose and meet substantially the same public need as the project otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

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

Each solid waste development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the board or if owned by a governmental agency, by such governmental agency, or the board or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the board shall be operated by such operating employees as the board employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provision of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

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

§16-26-19. Exemption from taxation.

The board shall not be required to pay any taxes or
assessments upon any solid waste disposal project or
upon any property acquired or used by the board or
upon the income therefrom. Bonds and notes issued by
the board and all interest and income thereon shall be
exempt from all taxation by this state, or any county,
municipality, political subdivision or agency thereof,
except inheritance taxes.

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

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

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

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

No officer, member or employee of the board may
have or acquire any financial interest, either direct or
indirect, in any project or activity of the board or in
any services or material to be used or furnished in
connection with any project or activity of the board. If
an officer, member or employee of the board has any
such interest at the time he becomes an officer,
member or employee of the board, he shall disclose
and divest himself of it. Failure to do so shall be cause
for dismissal from the position he holds with the
authority.

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

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

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

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

The board shall comply with all of the requirements
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-
misson hearings.

Solid waste collectors and haulers who are “common
carriers by motor vehicle,” as defined in section two,
article one, chapter twenty-four-a of this code, shall continue to be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a and rules and regulations promulgated thereunder. Nothing in this article shall give the board any power or right to regulate such solid waste collectors and haulers in any manner, but the public service commission, when it issues a new certificate of convenience and necessity, or when it alters or adjusts the provisions of any existing certificate of convenience and necessity, or when it approves the assignment or transfer of any certificate of convenience and necessity, shall consult with the board regarding what action it could take which would most likely further the implementation of the board’s solid waste disposal shed plan and solid waste disposal projects and shall take any reasonable action that will lead to or bring about compliance of such waste collectors and haulers with such plan and projects.

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

The provisions of this article are complementary to those contained in article twenty-four, chapter seventeen of this code, and do not alter or diminish the authority of any enforcement agency, as defined in section two thereof, to collect and dispose of abandoned household appliances and motor vehicles, inoperative household appliances and junked motor vehicles and parts thereof, including tires. The board and such enforcement agencies shall cooperate fully with each other in collecting and disposing of such 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 uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia, (2) the degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies, (3) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare, (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state, (5) has adverse social and economic effects on the state and its citizens, and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

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

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

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

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

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land use conflicts engendered by these proposed facilities. The Legislature also finds that such local land use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.
Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.


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

(a) "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under article five-f of this chapter;

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

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

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

(e) "Person" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district;
public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever;

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

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

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

(i) “Solid waste disposal shed” means the geographical area which the resource recovery — solid waste disposal authority designates and files in the state register pursuant to section eight, article twenty-six, chapter sixteen of this code; and

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

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

Notwithstanding any provision of this article, any county commission which, on the first day of July, one thousand nine hundred eighty-eight, held a valid permit or compliance order for a commercial solid waste transfer station issued pursuant to article five-f of this chapter, may elect to assume all the duties, powers, obligations, rights, title and interests vested in the county solid waste authority by this chapter. A county commission may, prior to the first day of October, one thousand nine hundred eighty-nine, exercise this right of election by entering an order declaring such election and serving a certified copy thereof upon the resource recovery — solid waste disposal authority. Thirty days after entry of said order by the county commission the county solid waste authority shall cease to exist and the county commission shall assume all the duties, powers, obligations, rights, title and interest vested in the former authority 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 recovery - solid waste disposal authority, and the department of health shall provide technical assistance to each county and regional solid waste authority as reasonable and practicable for the purposes of this article within the existing resources and appropriations of each agency available for such purposes. The attorney general shall provide legal counsel and representation to each county and regional solid waste authority for the purposes of this article within the existing resources and appropriations available for such purposes, or with the written approval of the attorney general, said authority may employ counsel to represent it.

§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.

(a) On or before the first day of July, one thousand nine hundred ninety, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the West Virginia state solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

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

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

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

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

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

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the
purpose of receiving public comment thereon. The
authority shall provide notice of such public hearings
and encourage and solicit other public participation in
the preparation of the siting plan as required by the
rules and regulations promulgated by the West Vir-
ginia state solid waste management board for this
purpose. Upon completion of the siting plan, the
county or regional solid waste authority shall file said
plan with the West Virginia state solid waste authority.

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

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

(f) The county or regional solid waste authority may,
from time to time amend the siting plan in a manner
consistent with the requirements of this section for
completing the initial siting plan and the rules and
(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a pre-siting notice pursuant to section five-c, article five-f of this chapter, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on the criteria set forth in subsection-b of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The West Virginia state solid waste management board shall provide, within available resources, technical support to a county or regional solid waste authority or county commission, as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

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

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by West Virginia state solid waste management board pursuant to section seven of this article, regarding collection and disposal.
of solid waste and the requirements, if any, for additional commercial solid waste landfill and transfer station capacity.

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

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

(a) Until the first day of July, one thousand nine hundred ninety-one, or the effective date of the commercial solid waste facility siting plan authorized by section twelve-a of this article, whichever date occurs first, it shall be unlawful for any person to establish, construct or install a commercial solid waste landfill or transfer station, or to expand the spatial land area of such an existing facility, without a certificate of site approval from the county or regional solid waste authority for the county in which the facility would be situated: Provided, That a person, who, on the effective date of this section, holds a valid Class A approval permit issued by a county commission, may obtain site approval from the county commission for the county in which the facility would be situated: Provided, however, That no such certificate will be required for such an existing commercial solid waste facility which on the effective date of this section held a valid solid waste permit or compliance order issued by the department of natural resources unless such facility increases its spatial land area beyond that authorized by such solid waste permit or compliance order.

(b) The county or regional solid waste authority, or county commission, as appropriate, shall issue or deny the certificate of site approval based upon the consideration of the effects of the proposed commercial solid waste landfill or transfer station upon one or more of the following criteria: The efficient disposal of solid waste generated within the county or region, economic
development, transportation facilities, property values, groundwater and surface waters, geological and hydro-
logical conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

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

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

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

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

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

(a) Imposition. — Effective the first day of July, one thousand nine hundred eighty-nine, a solid waste
assessment interim fee is hereby levied and imposed
upon the disposal of solid waste at any solid waste
disposal facility in this state to be collected at the rate
of one dollar per ton or part thereof of solid waste.
Said interim fee shall expire on the thirtieth day of
June, one thousand nine hundred ninety-one. The fee
imposed by this section shall be in addition to all other
fees levied by law.

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

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

(d) Definition of solid waste disposal facility. — For
purposes of this section, the term “solid waste disposal
facility” means any approved solid waste facility or
open dump in this state. Nothing herein shall be
construed to authorize in any way the creation or
operation of or contribution to an open dump.
(e) **Exemptions.** — The following transactions shall be exempt from the fee imposed by this section:

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

2. Reuse or recycling of any solid waste; and

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the department of natural resources by regulation as exempt from the fee imposed pursuant to section five-a, article five-f, chapter twenty of this code.

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

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

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

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

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

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

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

ARTICLE 10. COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD.

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

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

(b) The Legislature finds that hazardous waste is generated throughout the state as a by-product of the materials used and consumed by individuals, businesses, enterprise and governmental units in the state, and that the proper management of hazardous waste is necessary to prevent adverse effects on the environ-
ment and to protect public health and safety. The Legislature further finds that:

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

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

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

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

§20-10-2. Definitions.

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

(a) “Board” means the commercial hazardous waste management facility siting board established pursuant to section three of this article;

(b) “Commercial hazardous waste management facility” means any hazardous waste treatment, storage or disposal facility which accepts hazardous
9 waste, as identified or listed by the director of the
department of natural resources under article five-e of
this chapter, generated by sources other than the
owner or operator of the facility and shall not include
an approved hazardous waste facility owned and
operated by a person for the sole purpose of disposing
of hazardous wastes created by that person or such
person and other persons on a cost-sharing or non-
profit basis;

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

(a) There is hereby established a commercial haz-
ardous waste management facility siting board consist-
ing of nine members including the director of the
department of natural resources and the director of
the air pollution control commission who shall be non-
voting members ex officio, two ad hoc members
appointed by the county commission of the county in
which the facility is or is proposed to be located and
who shall be residents of said county, and five other
permanent members to be appointed by the governor
with the advice and consent of the Senate, two of
whom shall be representative of industries engaged in
business in this state and three of whom shall be
representative of the public at large. No two or more
of the five permanent voting members of the board
appointed by the governor shall be from the same county. Upon initial appointment, which shall be made by the governor within thirty days of the effective date of this article, one of said other five members shall be appointed for five years, one for four years, one for three years, one for two years and one for one year which terms shall commence on the effective date of this article. Thereafter, said permanent members shall be appointed for terms of five years each. Vacancies occurring other than by expiration of a term shall be filled by the governor in the same manner as the original appointment for the unexpired portion of the term. The term of the ad hoc members shall continue until a final determination has been made in the particular proceeding for which they are appointed. Four of the voting members on the board shall constitute a quorum for the transaction of any business, and the decision of four voting members of the board shall constitute action of the board. No person shall be eligible to be an appointee of the governor to the board who has any direct personal financial interest in any commercial hazardous waste management enterprise. The five permanent voting members of the board shall annually elect from among themselves a chairman no later than the thirty-first day of July of each calendar year. The board shall meet upon the call of the chairman or upon the written request of at least three of the voting members of the board.

(b) Each member of the board, other than the two members ex officio, shall be paid, out of funds appropriated for such purpose as compensation for his or her services on the board, the sum of seventy-five dollars for each day or substantial portion thereof that he or she is actually engaged in their duties pursuant to this article. In addition, each member, including members ex officio, shall be reimbursed, out of moneys appropriated for such purpose, all reasonable sums which he or she necessarily shall expend in the discharge of duties as a member of the board. The department of natural resources shall make available to the board such professional and support staff and services as
may be necessary in order to support the board in carrying out its responsibilities within the limit of funds available for this purpose. The office of the attorney general shall provide legal advice and representation to the board as requested, within the limit of funds available for this purpose, or the board with the written approval of the attorney general, may employ counsel to represent it.

(c) After the effective date of this article, no person shall construct or commence construction of a commercial hazardous waste management facility without first obtaining a certificate of site approval issued by the board in the manner prescribed herein. For the purpose of this section, “construct” and “construction” shall mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to include accommodation of hazardous waste, or expansion of more than fifty percent the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

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

(e) An application for certificate of site approval shall consist of a copy of all hazardous waste permits, if any, and permit applications, if any, issued by or
filed with any state permit-issuing authority pursuant
to article five (e) of this chapter and a detailed written
analysis with supporting documentation of the follow-
ing factors:

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

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

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

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

(g) Immediately upon determining that an applica-
tion is complete, the board shall, at the applicant’s
expense, cause a notice to be published in the state
register, which shall be no later than thirty calendar
days after the date of such written notice of complete-
ness, and shall provide notice to the chief executive
office of each municipality in which the proposed
facility is to be located and to the county commission
of the county in which the facility is proposed to be
located, and shall direct the applicant to provide
reasonable notice to the public which shall, at a
minimum, include publication as a Class I-O legal
advertisement in at least two newspapers having
general circulation in the vicinity in which the
proposed facility is to be located identifying the
proposed location, type of facility and activities
involved, the name of the permittee, and the date,
time and place at which the board will convene a
public hearing with regard to the application. The date
of the hearing shall be set by the board and shall
commence within sixty days of the date of notice of
completeness of an application.

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

(i) The commercial hazardous waste management
facility siting board request further information of the
applicant and shall render a decision based upon the
application and the record, either, requesting further
information, granting a certificate of site approval,
denying it, or granting it upon such terms, conditions
and limitations as the board deems appropriate. The
board shall base its decision upon the factors set forth
in subsection (e). The written decision of the board
containing its findings and conclusions shall be mailed
by certified mail to the applicant and to any request-
ing person on or before sixty calendar days after
receipt by the board of a complete record of the
hearing.
(j) The board may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the power to promulgate rules in compliance with chapter twenty-nine-a of this code.

§20-10-4. Effect of certification.

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

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

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

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

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

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

(b) The director of the department of natural resources shall promulgate rules and regulations, pursuant to section one, article one, chapter twenty-nine-a of this code, establishing reasonable fees to be charged each applicant for a certificate of site appro-
Such fees shall be calculated to recover the reasonable and necessary expenses of the board, department of natural resources and attorney general which such agencies incur as pursuant to this article.


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

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

The court may affirm the order or decision of the board or remand the case for further proceedings. It may reverse, vacate or modify the order or decision of the board if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

1. In violation of constitutional or statutory provisions; or
2. In excess of the statutory authority or jurisdiction of the board; or
3. Made upon unlawful procedures; or
4. Affected by other error of law; or
5. Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
(c) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. The petition seeking such review must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

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

§20-10-7. Remedies.

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

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

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

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


This article may be known and cited as the Commercial Hazardous Waste Management Facility Siting Act.
ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-1. Short title.

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

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

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

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

10 The Legislature further finds that recycling programs can most successfully be established by encouraging the source separation of solid waste.

Therefore, it is the purpose of the Legislature to establish goals for the recycling of solid waste; to authorize each county commission, or the citizens of a county by referendum, to adopt a comprehensive recycling program for solid waste; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.


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

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

§20-11-4. Recycling plans.

(a) Each county or regional solid waste authority, as
part of the comprehensive litter and solid waste control plan required pursuant to the provisions of section seven, article nine of this chapter, shall prepare and adopt a comprehensive recycling plan to assist in the implementation of the recycling goals in section four of this article.

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

1. Designation of the recyclable materials that can be most effectively source separated in the region or county, which shall include at least three recyclable materials; and

2. Designation of potential strategies for the collection, marketing and disposition of designated source separated recyclable materials in each region or county.

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

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

1. That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

2. That each commercial solid waste facility located in the county and each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only such solid waste from which recyclable materials in accordance with said county's comprehensive recycling program have been segregated; and
(3) That the provisions of the recycling plan prepared pursuant to section four of this article shall, to the extent practicable, be incorporated in said county's comprehensive recycling program.

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

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

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

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

"Shall the County Commission be required to establish a comprehensive recycling program for solid waste in ____________________ County, West Virginia?"
(f) If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter establish by ordinance a comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling or solid waste, said policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

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

(1) The county commission, upon the written petition of qualified voters residing within the county equal to at least five percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, shall order a referendum be placed upon the ballot at the next primary, general or special election to determine whether it is the will of the voters of said county that the policy of comprehensive recycling of solid waste previously established in the county be terminated.

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

"Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in ____________________________ County, West Virginia?"
(Place a cross mark in the square opposite your choice.)”

(h) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, said ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

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

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

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

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


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

(b) In furtherance of the aforesaid goal, the director of the department of finance and administration shall develop a procurement plan for recycled paper pro-
ducts. Such plan shall include a review of existing procurement policies and a cost analysis of the impacts of such plan. The director shall submit a report on the thirty-first day of January, one thousand nine hundred ninety summarizing the plan and any recommendations for its implementation. Said report shall be submitted to the governor, speaker of the house of 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.

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

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities, pursuant to section one-d of this article; and any other public service: Provided, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: Provided, however, That upon request of any of the customers of such
natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: Provided further, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: And provided further, That the decision making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.

The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

1. An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the state of West Virginia;
2. Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;
3. The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and
4. The number of customers to be served is not substantial.

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

The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.
§24-2-1d. Jurisdiction of commission over solid waste facilities.

(a) Effective the first day of July, one thousand nine hundred eighty-nine, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in subsection (b), section two, article nine, chapter twenty of this code: Provided, That an owner of a commercial solid waste facility that is not in existence on the effective date of this article that has executed or executes an agreement with a county commission or county or regional solid waste authority, establishing disposal rates or fees for said county or region, shall not be subject to the requirements of this chapter upon the approval of said disposal rates or fees by the commission for the term of such agreement: Provided, however, That any revisions to rates or fees or any renewals or extensions of said agreement would be similarly subject to such approval. The purpose of this provision is to encourage the development of solid waste disposal facilities which meet the environmental standards and requirements of article five-f of chapter twenty of this code and which provide for quality waste disposal for the county or region at reasonable rates. If any provisions of this section shall be held unconstitutional, all commercial solid waste facilities shall be subject to the 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.

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

(b) All rates and charges set by electric cooperatives,
natural gas cooperatives, telephone cooperatives and
municipally operated public utilities shall be just,
reasonable, applied without unjust discrimination or
preference and based primarily on the costs of provid-
ing these services. Such rates and charges shall be
adopted by the electric, natural gas or telephone
cooperative's governing board and in the case of the
municipally operated public utility by municipal
ordinance to be effective not sooner than forty-five
days after adoption: Provided, That notice of intent to
effect a rate change shall be specified on the monthly
billing statement of the customers of such utility for
the month next preceding the month in which the rate
change is to become effective or the utility shall give
its customers, and in the case of a cooperative, its
customers, members and stockholders, such other
reasonable notices as will allow filing of timely
objections to such rate change. Such rates and charges
shall be filed with the commission together with such
information showing the basis of such rates and
charges and such other information as the commission
considers necessary. Any change in such rates and
charges with updated information shall be filed with
the commission. If a petition, as set out in subdivision
(1), (2) or (3), subsection (c) of this section, is received
and the electric cooperative, natural gas cooperative,
television cooperative, or municipality has failed to
file with the commission such rates and charges with
such information showing the basis of rates and
charges and such other information as the commission
considers necessary, the suspension period limitation
of one hundred twenty days and the one hundred day
period limitation for issuance of an order by a hearing
examiner, as contained in subsections (d) and (e) of
this section, is tolled until the necessary information is
filed. The electric cooperative, natural gas cooperative,
television cooperative or municipality shall set the
date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or
modify such rates upon the filing of a petition within
thirty days of the adoption of the ordinance or resolu-
tion changing said rates or charges by:
(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

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

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries, or a customer or a group of customers within the municipal boundaries, under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate
change contained in the ordinance for a period of one
hundred twenty days from the date said rates or
charges would otherwise go into effect or until an
order is issued as provided herein.

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

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

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

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

Any common carrier transporting solid waste in this state pursuant to authority granted under the code of West Virginia section five, article two, chapter twenty-four-a, may make application to the commission for approval of a rate surcharge to pass through any increase in the disposal rate charged by the landfill at which solid waste is disposed by the motor carrier, commonly known as the tip fee, to commercial and residential customers, including increases which are the direct result of fees, charges, taxes, or any other assessment imposed upon the landfill by a governmental body. The commission shall within fourteen days of receipt of said application notify the motor carrier of approval of the requested rate surcharge, or approval of a rate surcharge other than in the amount requested and the reason therefore. The effective date of the approved rate surcharge shall be the same date as the effective date of the increase in the tip fee to which the surcharge relates; except that in the event the application for approval of the rate surcharge is received by the commission more than sixty days after the effective date of the tip fee increase, then the effective date of the approved rate surcharge shall be the date said application was received by the commission.

The commission shall immediately promulgate emergency rules which set forth the procedures for the filing of the tip fee rate surcharge application. It is the purpose of this statute to provide an expedited process which will allow the subject motor carriers to pass through tip fee increases to all customers. Only that data necessary to review in accordance with this statute may be required by the commission to be 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. Hays
Chairman Senate Committee

J. L. Sells
Chairman House Committee

Originated in the Senate.

In effect from passage.

J. P. Ade
Clerk of the Senate

Donald L. Kepp
Clerk of the House of Delegates

Sam J. Brown
President of the Senate

Speaker House of Delegates

The within bill approved this the 24th day of April, 1939.

Goodson Copeland
Governor