

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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## ENROLLED

Com. Sub. for  
HOUSE BILL No. 4364

(By Mr. Speaker, Mr. Charles, & Del. Wootton)

— ● —

Passed March 10, 1990

In Effect from Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4364**  
(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE WOOTON)

[Passed March 10, 1990; 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, two and four-a, article five-f, chapter twenty of said code; to further amend said article by adding thereto a new section, designated section four-b; to amend and reenact sections five, five-b and five-c of said article; to amend and reenact sections one, two and seven, article nine of said chapter; to further amend said article by adding thereto ten new sections, designated sections ten-a, ten-b, ten-c, ten-d, ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; to amend and reenact section twelve, article nine of said chapter; to amend and reenact sections twelve-a, twelve-b and twelve-c of said article; and to further amend said article by adding thereto a new section, designated section twelve-d, all relating to county solid waste assessment fees; adding additional legislative findings and definitions; requiring site approval permits for all solid waste disposal facilities; establishing priority for disposal needs; establishing special provision for residential solid waste disposal; setting priorities of disposal at a permit site; requiring bonding of solid waste facilities operating under a compliance order;

making performance bonds liable for thirty years after closure of a permit site; eliminating ninety day comment period by a county or regional solid waste authority on a pre-siting notice; requiring county and regional solid waste authorities to establish a waste management hierarchy; extending until one thousand nine hundred ninety-one the time within which county and regional solid waste authorities must submit comprehensive litter and solid waste control plans and commercial solid waste facility siting plans; providing for bonds and notes for constructing or acquiring or improving or extending solid waste facilities; allowing referendums on the continuation of establishment of Class A landfills; extending until one thousand nine hundred ninety-two the requirements regarding interim site approval; and making the solid waste assessment fee permanent.

*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, two and four-a, article five-f of chapter twenty be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four-b; that sections five, five-b and five-c of said article be amended and reenacted; that sections one, two and seven, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto ten new sections, designated sections ten-a, ten-b, ten-c, ten-d, ten-e, ten-f, ten-g, ten-h, ten-i and ten-j; that section twelve, article nine of said chapter be amended and reenacted; that sections twelve-a, twelve-b and twelve-c of said article be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-d, 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 or regional solid waste authority is  
2 hereby authorized to impose a similar solid waste

3 assessment fee to that imposed by section five, article  
 4 five-f, chapter twenty of this code at a rate not to exceed  
 5 fifty center per ton or part thereof upon the disposal of  
 6 solid waste in that county or region. All assessments due  
 7 shall be applied to the reasonable costs of administration  
 8 of the county's regional or county solid waste authority  
 9 including the necessary and reasonable expenses of its  
 10 members, and any other expenses incurred from refuse  
 11 cleanup, litter control programs, or any solid waste  
 12 programs deemed necessary to fulfill its duties.

## CHAPTER 20. NATURAL RESOURCES.

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

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

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

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

26 (c) The Legislature further finds that disposal in West

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

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

44 (e) The Legislature further finds that Class A land-  
45 fills often have capacities far exceeding the needs of the  
46 state or the areas of the state which they serve and that  
47 such landfills create special environmental problems  
48 that require statewide coordination of the management  
49 of such landfills.

**§20-5F-2. Definitions.**

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

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

6 (b) "Chief" shall mean the chief of the section of waste  
7 management of the division of natural resources;

8 (c) "Commercial solid waste facility" means any solid  
9 waste facility which accepts solid waste generated by  
10 sources other than the owner or operator of the facility  
11 and shall not include an approved solid waste facility  
12 owned and operated by a person for the sole purpose of  
13 disposing of solid wastes created by that person or such  
14 person and other persons on a cost-sharing or nonprofit  
15 basis;

16 (d) "Division" shall mean the division of natural  
17 resources;

18 (e) "Director" shall mean the director of the division  
19 of natural resources;

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

24 (g) "Person," "persons" or "applicant" shall mean any  
25 industrial user, public or private corporation, institu-  
26 tion, association, firm or company organized or existing  
27 under the laws of this or any other state or country; state  
28 of West Virginia; governmental agency, including  
29 federal facilities; political subdivision; county commis-  
30 sion; municipal corporation; industry; sanitary district;  
31 public service district; drainage district; soil conserva-  
32 tion district; watershed improvement district; partner-  
33 ship; trust; estate; person or individual; group of persons  
34 or individuals acting individually or as a group; or any  
35 legal entity whatever;

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

41 (i) "Solid waste" means any garbage, paper, litter,  
42 refuse, cans, bottles, sludge from a waste treatment  
43 plant, water supply treatment plant or air pollution  
44 control facility, other discarded material, including  
45 carcasses of any dead animal or any other offensive or  
46 unsightly matter, solid, liquid, semisolid or contained  
47 liquid or gaseous material resulting from industrial,  
48 commercial, mining or from community activities but  
49 does not include solid or dissolved material in sewage,  
50 or solid or dissolved materials in irrigation return flows  
51 or industrial discharges which are point sources and  
52 have permits under article five-a, chapter twenty of the  
53 code, or source, special nuclear or by-product material  
54 as defined by the Atomic Energy Act of 1954, as  
55 amended, or a hazardous waste either identified or

56 listed under article five-e, chapter twenty of the code or  
57 refuse, slurry, overburden or other wastes or material  
58 resulting from coal-fired electric power generation, the  
59 exploration, development, production, storage and  
60 recovery of coal, oil and gas, and other mineral  
61 resources placed or disposed of at a facility which is  
62 regulated under chapter twenty-two, twenty-two-a, or  
63 twenty-two-b of the code, so long as such placement or  
64 disposal is in conformance with a permit issued  
65 pursuant to such chapters; "solid waste" shall not  
66 include materials which are recycled by being used or  
67 reused in an industrial process to make a product, as  
68 effective substitute for commercial products, or are  
69 returned to the original process as a substitute for raw  
70 material feed stock;

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

75 (k) "Solid waste disposal shed" means the geographi-  
76 cal area which the solid waste management board  
77 designates and files in the state register pursuant to  
78 section eight, article twenty-six, chapter sixteen of this  
79 code;

80 (l) "Solid waste facility" means any system, facility,  
81 land, contiguous land, improvements on the land,  
82 structures or other appurtenances or methods used for  
83 processing, recycling or disposing of solid waste,  
84 including landfills, transfer stations, resource recovery  
85 facilities and other such facilities not herein specified.  
86 Such facility shall be deemed to be situated, for  
87 purposes of this article, in the county where the majority  
88 of the spatial area of such facility is located;

89 (m) "Class A facility" means a commercial solid waste  
90 disposal facility which handles an aggregate of ten  
91 thousand tons or more of solid waste per month; and

92 (n) "Applicant" means the person applying for a  
93 commercial solid waste disposal permit or similar  
94 renewal permit and any person related to such person  
95 by virtue of common ownership, common management

96 or family relationships as the director of the division of  
97 natural resources may specify including the following:  
98 Spouses, parents and children and siblings.

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

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

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

19 (3) For each such solid waste permit or renewal  
20 permit application pending before the division of  
21 natural resources on the effective date of this act, an  
22 applicant shall within thirty days of the effective date  
23 of this act obtain a certificate of site approval from the  
24 county commission of the county in which the solid  
25 waste disposal facility is to be located.

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

33 (b) The fee for the certificate of site approval is  
34 twenty-five dollars payable upon the filing of the



35 application therefor with the county, county solid waste  
36 authority or regional solid waste authority, as the case  
37 may be.

38 (c) Each county commission and authority shall as  
39 soon as practicable promulgate reasonable rules includ-  
40 ing, but not limited to, rules for determining the effect  
41 of the proposed solid waste facility on residential,  
42 business or commercial property investment and values,  
43 and the social, economic, aesthetic and environmental  
44 impact on community growth and development in  
45 utilities, health, education, recreation, safety, welfare  
46 and convenience, if any, before issuing any certificate of  
47 site approval pursuant to this section. Each county  
48 commission and authority may deny a certificate of site  
49 approval based upon said rules and regulations or upon  
50 a finding of adverse public sentiment.

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

**§20-5F-4b. Special provision for residential solid waste disposal.**

1 All commercial and public solid waste disposal  
2 facilities shall establish and publish a yearly schedule  
3 providing for one day per month on which a person not  
4 in the business of hauling or disposing of solid waste  
5 may dispose of an amount of residential solid waste up  
6 to one pick-up truck load or its equivalent, free of all  
7 charges and fees.

**§20-5F-5. Prohibitions; permits required; priority of disposal.**

1 (a) Open dumps are prohibited and it shall be  
2 unlawful for any person to create, contribute to or  
3 operate an open dump or for any landowner to allow an  
4 open dump to exist on his property unless that open  
5 dump is under a compliance schedule approved by the  
6 chief. Such compliance schedule shall contain an  
7 enforceable sequence of actions leading to compliance

8 and shall not exceed two years. Open dumps operated  
9 prior to the first day of April, one thousand nine  
10 hundred eighty-eight, by a landowner or tenant for the  
11 disposal of solid waste generated by the landowner or  
12 tenant at his or her residence or farm shall not be  
13 deemed to constitute a violation of this section if such  
14 open dump did not constitute a violation of law on the  
15 first day of January, one thousand nine hundred eighty-  
16 eight, and unauthorized dumps which were created by  
17 unknown persons shall not constitute a violation of this  
18 section: *Provided*, That no person shall contribute  
19 additional solid waste to any such dump after the first  
20 day of April, one thousand nine hundred eighty-eight,  
21 except that the owners of the land on which unautho-  
22 rized dumps have been or are being made shall not be  
23 liable for such unauthorized dumping unless such  
24 landowners refuse to cooperate with the division of  
25 natural resources in stopping such unauthorized  
26 dumping.

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

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

49 by the director of the division of natural resources.

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

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

80 (f) To the extent permissible by law, a commercial  
81 solid waste facility shall first ensure that the disposal  
82 needs of the county, or if applicable the region, in which  
83 it is located are met. If the county solid waste authority,  
84 or regional solid waste authority if applicable, in which  
85 the facility is located determines that the present or  
86 future disposal needs of the county, or if applicable the  
87 region, are not being, or will not be, met by the  
88 commercial solid waste facility, such authority may  
89 apply to the director of the division of natural resources

90 to modify the applicable permit in order to reduce the  
 91 total monthly tonnage of out of county waste, or if  
 92 applicable, out of region waste, the facility is permitted  
 93 to accept by an amount that shall not exceed the total  
 94 monthly tonnage generated by the county, or if appli-  
 95 cable the region, in which the facility is located.

96 The director of the division of natural resources shall  
 97 promulgate legislative rules pursuant to chapter twenty-  
 98 nine-a of this code which reflect the purposes as set forth  
 99 in this article.

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

1 (a) After a solid waste permit application has been  
 2 approved pursuant to this article, or once operations  
 3 have commenced pursuant to a compliance order, but  
 4 before a permit has been issued, each operator of a  
 5 commercial solid waste facility shall furnish bond, on a  
 6 form to be prescribed and furnished by the director,  
 7 payable to the state of West Virginia and conditioned  
 8 upon the operator faithfully performing all of the  
 9 requirements of this article, regulations promulgated  
 10 hereunder and the permit: *Provided*, That the director  
 11 shall have the discretion to waive the requirement of a  
 12 bond from the operator of a commercial solid waste  
 13 facility, other than a Class A facility, which is operating  
 14 under a compliance order. The amount of the bond  
 15 required shall be one thousand dollars per acre and may  
 16 include an additional amount determined by the  
 17 director based upon the total estimated cost to the state  
 18 of completing final closure according to the permit  
 19 granted to such facility and such measures as are  
 20 necessary to prevent adverse effects upon the environ-  
 21 ment; such measures shall include, but not be limited  
 22 to, satisfactory monitoring, post-closure care and  
 23 remedial measures: *Provided*, That the amount of the  
 24 bond shall not exceed eight thousand dollars per acre.  
 25 All permits shall be bonded for at least ten thousand  
 26 dollars. The bond shall cover either (1) the entire area  
 27 to be used for the disposal of solid waste, or (2) that  
 28 increment of land within the permit area upon which

29 the operator will initiate and conduct commercial solid  
30 waste facility operations within the initial term of the  
31 permit pursuant to legislative rules promulgated by the  
32 director pursuant to chapter twenty-nine-a of this code.  
33 If the operator chooses to use incremental bonding, as  
34 succeeding increments of commercial solid waste  
35 facility operations are to be initiated and conducted  
36 within the permit area, the operator shall file with the  
37 director an additional bond or bonds to cover such  
38 increments in accordance with this section: *Provided*,  
39 That once the operator has chosen to proceed with  
40 bonding either the entire area to be used for the disposal  
41 of solid waste or with incremental bonding, the operator  
42 shall continue bonding in that manner for the term of  
43 the permit.

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

52 (c) The form of the performance bond shall be  
53 approved by the director and may include, at the option  
54 of the director, surety bonding, collateral bonding  
55 (including cash and securities), establishment of an  
56 escrow account, letters of credit, performance bonding  
57 fund participation (as established by the director), self-  
58 bonding or a combination of these methods. If collateral  
59 bonding is used, the operator may elect to deposit cash,  
60 or collateral securities or certificates as follows: Bonds  
61 of the United States or its possessions, of the federal  
62 land bank, or of the homeowners' loan corporation; full  
63 faith and credit general obligation bonds of the state of  
64 West Virginia, or other states, and of any county,  
65 district or municipality of the state of West Virginia or  
66 other states; or certificates of deposit in a bank in this  
67 state, which certificates shall be in favor of the division.  
68 The cash deposit or market value of such securities or  
69 certificates shall be equal to or greater than the sum of

70 the bond. The director shall, upon receipt of any such  
71 deposit of cash, securities or certificates, promptly place  
72 the same with the treasurer of the state of West Virginia  
73 whose duty it shall be to receive and hold the same in  
74 the name of the state in trust for the purpose for which  
75 the deposit is made when the permit is issued. The  
76 operator making the deposit shall be entitled from time  
77 to time to receive from the state treasurer, upon the  
78 written approval of the director, the whole or any  
79 portion of any cash, securities or certificates so depos-  
80 ited, upon depositing with him in lieu thereof, cash or  
81 other securities or certificates of the classes herein  
82 specified having value equal to or greater than the sum  
83 of the bond.

84 (d) Within twelve months prior to the expiration of  
85 the thirty-year period following final closure, the  
86 division will conduct a final inspection of the facility.  
87 The purpose of the inspection shall be to determine  
88 compliance with this article, the division's regulations,  
89 the terms and conditions of the permit, orders of the  
90 division and the terms and conditions of the bond. Based  
91 upon this determination, the division will either forfeit  
92 the bond prior to the expiration of the thirty-year period  
93 following final closure, or release the bond at the  
94 expiration of the thirty-year period following final  
95 closure. Bond release requirements shall be provided in  
96 regulations promulgated by the director.

97 (e) If the operator of a commercial solid waste facility  
98 abandons the operation of a solid waste disposal facility  
99 for which a permit is required by this article or if the  
100 permittee fails or refuses to comply with the require-  
101 ments of this article in any respect for which liability  
102 has been charged on the bond, the director shall declare  
103 the bond forfeited and shall certify the same to the  
104 attorney general who shall proceed to enforce and collect  
105 the amount of liability forfeited thereon, and where the  
106 operation has deposited cash or securities as collateral  
107 in lieu of corporate surety, the secretary shall declare  
108 said collateral forfeited and shall direct the state  
109 treasurer to pay said funds into a waste management  
110 fund to be used by the director to effect proper closure

111 and to defray the cost of administering this article.  
112 Should any corporate surety fail to promptly pay, in full,  
113 forfeited bond, it shall be disqualified from writing any  
114 further surety bonds under this article.

**§20-5F-5c. Pre-siting notice.**

1 Any person investigating an area for the purpose of  
2 siting a commercial solid waste facility where no  
3 current solid waste permit exists, in order to determine  
4 a feasible, approximate location, shall prior to filing an  
5 application for a solid waste permit publish a Class II  
6 legal advertisement in a qualified newspaper serving  
7 the county where the proposed site is to be located. Such  
8 notice shall inform the public of the location, nature and  
9 other details of the proposed activity as prescribed in  
10 rules and regulations to be promulgated as soon as  
11 practicable by the director. Within five days of such  
12 publication such person shall file with the director a  
13 pre-siting notice, which shall be made in writing on  
14 forms prescribed by the director and shall be signed and  
15 verified by the applicant. Such notice shall contain a  
16 certification of publication from a qualified newspaper,  
17 description of the area, the period of investigative  
18 review, a United States geological survey topographic  
19 map and a map showing the location of property  
20 boundaries of the area proposed for siting and other  
21 such information as required by rules and regulations  
22 promulgated pursuant to this section. The director shall  
23 hold a public hearing on the pre-siting notice in the area  
24 affected. The director shall define pre-siting activities  
25 by promulgating legislative rules pursuant to chapter  
26 twenty-nine-a of this code. On or after the first day of  
27 January, one thousand nine hundred eighty-nine, the  
28 pre-siting notice, as prescribed by the director, shall also  
29 be filed with the county or regional solid waste  
30 authority, established pursuant to article nine, chapter  
31 twenty of this code, in which the proposed site is located  
32 within five days of the publication of the notice.

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

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

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

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

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

41    Therefore, it is the purpose of the Legislature to



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

56 It is further the purpose of the Legislature to reduce  
57 our solid waste management problems and to meet the  
58 purposes of this article by requiring county and regional  
59 solid waste authorities to establish programs and plans  
60 based on an integrated waste management hierarchy. In  
61 order of preference, the hierarchy is as follows:

62 (1) *Source reduction*.—This involves minimizing waste  
63 production and generation through product design,  
64 reduction of toxic constituents of solid waste, and  
65 similar activities.

66 (2) *Recycling, reuse and resource recovery*.—This  
67 involves separating and recovering valuable resources  
68 from the waste stream, composting food and yard waste,  
69 marketing of recyclables and, if environmentally  
70 acceptable, incineration.

71 (3) *Landfilling*.—This is the lowest priority in the  
72 hierarchy and involves the waste management option of  
73 last resort. To the maximum extent possible, it should  
74 be reserved for nonrecyclables and other materials that  
75 cannot practically be managed in any other way.

76 The Legislature further finds that the potential  
77 impacts of proposed commercial solid waste facilities  
78 may have a deleterious and debilitating impact upon the  
79 transportation network, property values, economic  
80 growth, environmental quality, other land uses and the  
81 public health and welfare in affected communities. The

82 Legislature also finds that the siting of such facilities  
83 is not being adequately addressed to protect these  
84 compelling interests of counties and local communities.

85 The Legislature further finds that affected citizens  
86 and local governments often look to state environmental  
87 regulatory agencies to resolve local land use conflicts  
88 engendered by these proposed facilities. The Legislature  
89 also finds that such local land use conflicts are most  
90 effectively resolved in a local governmental forum  
91 where citizens can most easily participate in the  
92 decision-making process and the land use values of local  
93 communities most effectively identified and incorpo-  
94 rated into a comprehensive policy which reflects the  
95 values and goals of those communities.

96 Therefore, it is the purpose of the Legislature to  
97 enable local citizens to resolve the land-use conflicts  
98 which may be created by proposed commercial solid  
99 waste facilities through the existing forum of county or  
100 regional solid waste authorities.

## **§20-9-2. Definitions.**

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

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

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

17 (c) "Compliance order" means an administrative  
18 order issued pursuant to section five, article five-f,  
19 chapter twenty of this code authorizing a solid waste

20 facility to operate without a solid waste permit;

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

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

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

42 (g) "Solid waste" means any garbage, paper, litter,  
43 refuse, cans, bottles, sludge from a waste treatment  
44 plant, water supply treatment plant or air pollution  
45 control facility, other discarded material, including  
46 carcasses of any dead animal or any other offensive or  
47 unsightly matter, solid, liquid, semisolid or contained  
48 liquid or gaseous material resulting from industrial,  
49 commercial, mining or from community activities but  
50 does not include solid or dissolved material in sewage,  
51 or solid or dissolved materials in irrigation return flows  
52 or industrial discharges which are point sources and  
53 have permits under article five-a, chapter twenty of this  
54 code, or source, special nuclear or by-product material  
55 as defined by the Atomic Energy Act of 1954, as  
56 amended, or a hazardous waste either identified or  
57 listed under article five-e, chapter twenty of this code  
58 or refuse, slurry, overburden or other waste or material  
59 resulting from coal-fired electric power generation, the

60 exploration, development, production, storage and  
 61 recovery of coal, oil and gas, and other mineral  
 62 resources placed or disposed of at a facility which is  
 63 regulated under chapter twenty-two, twenty-two-a or  
 64 twenty-two-b of this code, so long as such placement or  
 65 disposal is in conformance with a permit issued  
 66 pursuant to said chapters; "solid waste" shall also not  
 67 include materials which are recycled by being used or  
 68 reused in an industrial process to make a product, as  
 69 effective substitutes for commercial products, or are  
 70 returned to the original process as a substitute for raw  
 71 material feedstock;

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

76 (i) "Solid waste disposal shed" means the geographical  
 77 area which the solid waste management board designates  
 78 and files in the state register pursuant to section  
 79 eight, article twenty-six, chapter sixteen of this code;

80 (j) "Solid waste facility" means any system, facility,  
 81 land, contiguous land, improvements on the land,  
 82 structures or other appurtenances or methods used for  
 83 processing, recycling or disposing of solid waste,  
 84 including landfills, transfer stations, resource recovery  
 85 facilities and other such facilities not herein specified.  
 86 Such facility shall be deemed to be situated, for  
 87 purposes of this article, in the county where the majority  
 88 of the spatial area of such facility is located; and

89 (k) "Class A facility" means a commercial solid waste  
 90 disposal facility which handles an aggregate of ten  
 91 thousand tons or more of solid waste per month.

**§20-9-7. Authority to develop litter and solid waste  
 control plan; approval by solid waste management  
 board; development of plan by  
 director; advisory rules.**

1 (a) Each county and regional solid waste authority  
 2 shall be required to develop a comprehensive litter and  
 3 solid waste control plan for its geographic area and to

4 submit said plan to the solid waste management board  
5 on or before the first day of July, one thousand nine  
6 hundred ninety-one. Each authority shall submit a draft  
7 litter and solid waste control plan to the solid waste  
8 management board by the thirty-first day of March, one  
9 thousand nine hundred ninety-one. The comments  
10 received by the county or regional solid waste authority  
11 at public hearings, two of which shall be required, shall  
12 be considered in developing the final plan.

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

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

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

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

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

39 (5) A recommendation for the siting of one or more  
40 properly permitted public or private solid waste  
41 landfills and other facilities, whether existing or  
42 proposed, to serve the solid waste needs of the county

43 or the region, as the case may be, consistent with the  
44 comprehensive county plan prepared by the county  
45 planning commission;

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

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

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

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

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

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

61 (12) Coordination with the division of highways and  
62 other local, state and federal agencies in the control and  
63 removal of litter and the cleanup of open and unpermit-  
64 ted dumps;

65 (13) Establishment of a program to encourage and  
66 utilize those individuals incarcerated in the county jail  
67 and those adults and juveniles sentenced to probation for  
68 the purposes of litter pickup; and

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

75 (c) The solid waste management board shall establish  
76 advisory rules to guide and assist the counties in the  
77 development of the plans required by this section.

78 (d) Each plan prepared under this section shall be  
79 subject to approval by the solid waste management

80 board. Any plan rejected by the solid waste manage-  
81 ment board shall be returned to the regional or county  
82 solid waste authority with a statement of the insufficien-  
83 cies in such plan. The authority shall revise the plan to  
84 eliminate the insufficiencies and submit it to the  
85 director within ninety days.

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

**§20-9-10a. Bonds and Notes.**

1 For constructing or acquiring any solid waste facil-  
2 ities for the authorized purposes of the authority, or  
3 necessary or incidental thereto, and for constructing  
4 improvements and extension thereto, and also for  
5 reimbursing or paying the costs and expenses of  
6 creating the authority, if any, the board of any such  
7 authority is hereby authorized to borrow money from  
8 time to time and in evidence thereof issue the bonds or  
9 notes of such authority, payable from the revenues  
10 derived from the operation of the solid waste facilities  
11 under control of the authority or from such other funds  
12 as available to the authority for such purpose. Such  
13 bonds or notes may be issued in one or more series, may  
14 bear such date or dates, may mature at such time or  
15 times not to exceed forty years from their respective  
16 dates, may bear interest at such rate or rates, payable  
17 at such times, may be in such form, may carry such  
18 registration privileges, may be executed in such  
19 manner, may be payable at such place or places, may  
20 be subject to such terms of redemption with or without  
21 premium, may be declared or become due before  
22 maturity date thereof, may be authenticated in any  
23 manner, and upon compliance with such conditions, and  
24 may contain such terms and covenants as may be  
25 provided by resolution or resolutions of the board.  
26 Notwithstanding the form or tenor thereof, and in the

27 absence of any express recital on the face thereof, that  
28 the bond or note is nonnegotiable, all such bonds or notes  
29 shall be, and shall be treated as, negotiable instruments  
30 for all purposes. The bonds or notes shall be executed  
31 by the chairman of the board, who may use a facsimile  
32 signature. The official seal of the authority or a  
33 facsimile thereof shall be affixed to or printed on each  
34 bond or note and attested, manually or by facsimile  
35 signature, by the secretary-treasurer of the board, and  
36 any coupons attached to any bond or note shall bear the  
37 signature or facsimile signature of the chairman of the  
38 board. Bonds or notes bearing the signatures of officers  
39 in office on the date of the signing thereof shall be valid  
40 and binding for all purposes notwithstanding that  
41 before the delivery thereof any or all of the persons  
42 whose signatures appear thereon shall have ceased to be  
43 such officers. Notwithstanding the requirements or  
44 provisions of any other law, any such bonds or notes may  
45 be negotiated or sold in such manner and at such time  
46 or times as is found by the board to be most advantage-  
47 ous. Any resolution or resolutions providing of the  
48 issuance of such bonds or notes may contain such  
49 covenants and restrictions upon the issuance of  
50 additional bonds or notes thereafter as may be deemed  
51 necessary or advisable for the assurance of the payment  
52 of the bonds or notes thereby authorized.

**§20-9-10b. Items included in cost of properties.**

1 The cost of any solid waste facilities acquired under  
2 the provisions of this article shall be deemed to include  
3 the cost of the acquisition or construction thereof, costs  
4 of closure of solid waste facilities, the cost of all property  
5 rights, easements and franchises deemed necessary or  
6 convenient therefor and for the improvements and  
7 extensions thereto; interest upon bonds or notes prior to  
8 and during construction or acquisition and for twelve  
9 months after completion of construction or of acquisition  
10 of the improvements and extensions; engineering, fiscal  
11 agents and legal expenses; expenses for estimates of cost  
12 and of revenues, expenses for plans, specifications and  
13 surveys; other expenses necessary or incident to deter-  
14 mining the feasibility or practicability of the enterprise,



15 administrative expense, and such other expenses as may  
16 be necessary or incident to the financing herein  
17 authorized, and the construction or acquisition of the  
18 properties and the placing of same in operation, and the  
19 performance of the things herein required or permitted,  
20 in connection with any thereof.

**§20-9-10c. Bonds or notes may be secured by trust indenture.**

1 In the discretion and at the option of the board such  
2 bonds or notes may be secured by a trust indenture by  
3 and between the authority and a corporate trustee,  
4 which may be a trust company or bank having powers  
5 of a trust company within or without the state of West  
6 Virginia. The resolution authorizing the bonds or notes  
7 and fixing the details thereof may provide that such  
8 trust indenture may contain such provisions for protect-  
9 ing and enforcing the rights and remedies of bond-  
10 holders as may be reasonable and proper, not in  
11 violation of law, including covenants setting forth the  
12 duties of the authority and the members of its board and  
13 officers in relation to the construction or acquisition of  
14 solid waste facilities and the improvement, extension,  
15 operation, repair, maintenance and insurance thereof,  
16 and the custody, safeguarding and application of all  
17 moneys, and may provide that all or any part of the  
18 construction work shall be contracted for, constructed  
19 and paid for, under the supervision and approval of  
20 consulting engineers employed or designated by the  
21 board and satisfactory to the original bond purchasers,  
22 their successors, assignees or nominees, who may be  
23 given the right to require the security given by  
24 contractors and by any depository of the proceeds of  
25 bonds or notes or revenues of the solid waste facilities  
26 or other money pertaining thereto be satisfactory to such  
27 purchasers, their successors, assignees or nominees.  
28 Such indenture may set forth the rights and remedies  
29 of the bondholders or noteholders and such trustee.

**§20-9-10d. Sinking fund for bonds or notes.**

1 At or before the time of the issuance of any bonds or  
2 notes under this article the board may by resolution or

3 in the trust indenture provide for the creation of a  
 4 sinking fund and for payments into such fund from the  
 5 revenues of the solid waste facilities operated by the  
 6 authority or from other funds available thereto such  
 7 sums in excess of the cost of maintenance and operation  
 8 of such properties as will be sufficient to pay the  
 9 accruing interest and retire the bonds or notes at or  
 10 before the time each will respectively become due and  
 11 to establish and maintain reserves therefor. All sums  
 12 which are or should be, in accordance with such  
 13 provisions, paid into such sinking fund shall be used  
 14 solely for payment of interest and principal and for the  
 15 retirement of such bonds or notes or at prior to maturity  
 16 as may be provided or required by such resolution.

**§20-9-10e. Collection, etc., of revenues and funds and  
 enforcement of covenants; default; suit, etc.,  
 by bondholder or noteholder or trustee to  
 compel performance of duties; appointment  
 and powers of receiver.**

1 The board for any such authority shall have power to  
 2 insert enforceable provisions in any resolution authoriz-  
 3 ing the issuance of bonds or notes relating to the  
 4 collection, custody and application of revenues or of the  
 5 authority from the operation of the solid waste facilities  
 6 under its control or other funds available to the  
 7 authority and to the enforcement of the covenants and  
 8 undertakings of the authority. In the event there shall  
 9 be default in the sinking fund provisions aforesaid or in  
 10 the payment of the principal or interest on any of such  
 11 bonds or notes or, in the event the authority or its board  
 12 or any of its officers, agents or employees, shall fail or  
 13 refuse to comply with the provisions of this article, or  
 14 shall default in any covenant or agreement made with  
 15 respect to the issuance of such bonds or notes or offered  
 16 as security therefor then any holder or holders of such  
 17 bonds or notes and any such trustee under the trust  
 18 indenture, if there be one, shall have the right by suit,  
 19 action, mandamus or other proceeding instituted in the  
 20 circuit court for the county or any of the counties  
 21 wherein the authority extends, or in any other court of  
 22 competent jurisdiction, to enforce and compel perfor-

23 mance of all duties required by this article or under-  
24 taken by the authority in connection with the issuance  
25 of such bonds or notes, and upon application of any such  
26 holder or holders, or such trustee, such court shall, upon  
27 proof of such defaults, appoint a receiver for the affairs  
28 of the authority and its properties, which receiver so  
29 appointed shall forthwith directly, or by his agents and  
30 attorneys, enter into and upon and take possession of the  
31 affairs of the authority and each and every part thereof,  
32 and hold, use, operate, manage and control the same,  
33 and in the name of the authority exercise all of the  
34 rights and powers of such authority as shall be deemed  
35 expedient, and such receiver shall have power and  
36 authority to collect and receive all revenues and apply  
37 same in such manner as the court shall direct. Whenever  
38 the default causing the appointment of such receiver  
39 shall have been cleared and fully discharged and all  
40 other defaults shall have been cured, the court may in  
41 its discretion and after such notice and hearing as it  
42 deems reasonable and proper direct the receiver to  
43 surrender possession of the affairs of the authority to its  
44 board. Such receiver so appointed shall have no power  
45 to sell, assign, mortgage, or otherwise dispose of any  
46 assets of the authority except as hereinbefore provided.

**§20-9-10f. Operating contracts.**

1 The board may enter into contracts or agreements  
2 with any persons, firms or corporations for the operation  
3 and management of the solid waste facilities for such  
4 period of time and under such terms and conditions as  
5 shall be agreed upon between the board and such  
6 persons, firms or corporations. The board shall have  
7 power to provide in the resolution authorizing the  
8 issuance of bonds or notes, or in any trust indenture  
9 securing such bonds or notes, that such contracts or  
10 agreements shall be valid and binding upon the  
11 authority as long as any of said bonds or notes, or  
12 interest thereon, are outstanding and unpaid.

**§20-9-10g. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.**

1 Unless otherwise provided by resolution of the board,

2 there shall be and is hereby created a statutory  
3 mortgage lien upon such solid waste facilities of the  
4 authority, which shall exist in favor of the holders of  
5 bonds or notes hereby authorized to be issued, and each  
6 of them, and the coupons attached to said bonds or notes,  
7 and such solid waste facilities shall remain subject to  
8 such statutory mortgage lien until payment in full of all  
9 principal of and interest on such bonds or notes. Any  
10 holder of such bonds or notes, of any coupons attached  
11 thereto, may, either at law or in equity, enforce said  
12 statutory mortgage lien conferred hereby and upon  
13 default in the payment of the principal of or interest on  
14 said bonds or notes, and may foreclose such statutory  
15 mortgage lien in the manner now provided by the laws  
16 of the state of West Virginia for the foreclosure of  
17 mortgages on real property.

**§20-9-10h. Refunding bonds or notes.**

1 The board of any authority having issued bonds or  
2 notes under the provisions of this article is hereby  
3 empowered thereafter by resolution to issue refunding  
4 bonds or notes of such authority for the purpose of  
5 retiring or refinancing any or all outstanding bonds or  
6 notes, together with any unpaid interest thereon and  
7 redemption premium thereunto appertaining and all of  
8 the provisions of this article relating to the issuance,  
9 security and payment of bonds or notes shall be  
10 applicable to such refunding bonds or notes, subject,  
11 however, to the provisions of the proceedings which  
12 authorized the issuance of the bonds or notes to be so  
13 refunded.

**§20-9-10i. Indebtedness of authority.**

1 No constitutional or statutory limitation with respect  
2 to the nature or amount of or rate of interest on  
3 indebtedness which may be incurred by municipalities,  
4 counties or other public or governmental bodies shall  
5 apply to the indebtedness of an authority. No indebted-  
6 ness of any nature of authority shall constitute an  
7 indebtedness of the state of West Virginia or any  
8 municipality or county therein or a charge against any  
9 property of said state of West Virginia or any munic-

10 ipalities or counties. No indebtedness or obligation  
11 incurred by any authority shall give any right against  
12 any member of the governing body of any municipality  
13 or any member of the authority of any county or any  
14 member of the board of any authority. The rights of  
15 creditors of any authority shall be solely against the  
16 authority as a corporate body and shall be satisfied only  
17 out of property held by it in its corporate capacity.

**§20-9-10j. Property, bonds or notes and obligations of  
authority exempt from taxation.**

1 The authority shall be exempt from the payment of  
2 any taxes or fees to the state or any subdivisions thereof  
3 or any municipalities or to any officer or employee of  
4 the state or of any subdivision thereof or of any  
5 municipalities. The property of the authority shall be  
6 exempt from all local and municipal taxes. Bonds, notes,  
7 debentures and other evidence of indebtedness of the  
8 authority are declared to be issued for a public purpose  
9 and to be public instrumentalities, and, together with  
10 interest thereon, shall be exempt from taxes.

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

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

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

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

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

16 (4) Adopt, and from time to time, amend and repeal

17 bylaws necessary and proper for the conduct of its  
18 affairs consistent with this article.

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

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

28 (7) Issue negotiable bonds, notes, debentures or other  
29 evidences of indebtedness and provide for the rights of  
30 the holders thereof, incur any proper indebtedness and  
31 issue any obligations and give any security therefor  
32 which it may deem necessary or advisable in connection  
33 with exercising powers as provided herein.

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

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

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

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

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

53 (13) Cooperate with and make such recommendations  
54 to local, state and federal government and the private

55 sector in the technical, planning and public policy  
56 aspects of litter control and solid waste management as  
57 the authority may find appropriate and effective to  
58 carry out the purposes of this article.

59 (14) Charge, alter and collect rentals, fees, service  
60 charges and other charges for the use or services of any  
61 solid waste facilities or any solid waste collection,  
62 transportation and processing services provided by the  
63 authority.

64 (15) Do all acts necessary and proper to carry out the  
65 powers expressly granted to the authority by the article  
66 and powers conferred upon the authority by this article.

67 All rules and regulations promulgated by the author-  
68 ity pursuant to this article are exempt from the  
69 provisions of article three, chapter twenty-nine-a of the  
70 code.

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

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

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

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

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

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

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

51       (c) Prior to completion of the siting plan, the county  
52 or regional solid waste authority shall complete a draft  
53 siting plan and hold at least one public hearing in each  
54 county encompassed in said draft siting plan for the  
55 purpose of receiving public comment thereon. The  
56 authority shall provide notice of such public hearings  
57 and encourage and solicit other public participation in  
58 the preparation of the siting plan as required by the



59 rules and regulations promulgated by the West Virginia  
60 state solid waste management board for this purpose.  
61 Upon completion of the siting plan, the county or  
62 regional solid waste authority shall file said plan with  
63 the West Virginia state solid waste authority.

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

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

91 (f) The county or regional solid waste authority may,  
92 from time to time, amend the siting plan in a manner  
93 consistent with the requirements of this section for  
94 completing the initial siting plan and the rules and  
95 regulations promulgated by the West Virginia state  
96 solid waste management board for the purpose of such  
97 amendments.

98 (g) Notwithstanding any provision of this code to the

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

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

130 (i) The siting plan adopted pursuant to this section  
131 shall incorporate the provisions of the litter and solid  
132 waste control plan, as approved by the West Virginia  
133 state solid waste management board pursuant to section  
134 seven of this article, regarding collection and disposal  
135 of solid waste and the requirements, if any, for addi-  
136 tional commercial solid waste landfill and transfer  
137 station capacity.

138 (j) The West Virginia state solid waste management  
139 board is authorized and directed to promulgate rules

140 and regulations specifying the public participation  
141 process, content, format, amendment, review and  
142 approval of siting plans for the purposes of this section.

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

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

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

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

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

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

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

**§20-9-12c. Approval of establishment or continuation of  
 Class A facility by county commission  
 and/or referendum.**

1 (a) If a Class A applicant obtains a certificate of site  
 2 approval from the county or regional solid waste  
 3 authority regarding establishing, constructing or  
 4 operating a commercial solid waste landfill, said  
 5 applicant shall also file a notice with the county  
 6 commission of the county within whose boundaries such  
 7 landfill would be situated or of the county commission  
 8 where it would be situated if its spatial area covers more  
 9 than one county. The applicant shall request the  
 10 approval of the county commission of the affected county

11 to establish, construct or operate such landfill within the  
12 county. The county commission must act on such request  
13 and either grant or deny its approval within thirty days  
14 after the filing of such notice and request. The county  
15 commission may hold public hearings and solicit public  
16 comment for the purposes of this section.

17 Following the decision by the county commission and  
18 upon the written petition of registered voters residing  
19 in the county equal to not less than fifteen percent of  
20 the number of votes cast within the county for governor  
21 at the preceding gubernatorial election, which petition  
22 shall be filed with the county commission within sixty  
23 days after it has rendered its decision, the county  
24 commission shall, upon verification of the required  
25 number of signatures on the petition, and not less than  
26 fifty-six days before the election, order a referendum be  
27 placed upon the ballot.

28 Any referendum conducted pursuant to this section  
29 shall be held at the next primary, general or other  
30 county-wide election: *Provided*, That the election shall  
31 be held within nine months following the decision of the  
32 county commission. If no primary, general or county-  
33 wide election is scheduled within such nine month  
34 period, then the county commission shall schedule a  
35 special election to be held within such time period.

36 (1) Such referendum will be to determine whether it  
37 is the will of the voters of the county that a solid waste  
38 facility handling ten thousand tons or more of solid  
39 waste per month be located in the county. Any election  
40 at which the question of locating a solid waste disposal  
41 facility is voted upon shall be held at the voting  
42 precincts established for holding primary or general  
43 elections. All of the provisions of the general election  
44 laws, when not in conflict with the provisions of this  
45 article, shall apply to voting and elections hereunder,  
46 insofar as practicable. The secretary of state shall  
47 prescribe the form of the petition which shall include  
48 the printed name, address and date of birth of each  
49 person whose signature appears on the petition.

50 (2) The ballot, or the ballot labels where voting

51 machines are used, shall have printed thereon substan-  
52 tially the following:

53 “Shall a solid waste disposal facility handling ten  
54 thousand tons or more of solid waste per month be  
55 located within \_\_\_\_\_ County, West Virginia?

56 ☐ For the Facility

57 ☐ Against the Facility

58 (Place a cross mark in the square opposite your  
59 choice.)”

60 (3) If a majority of the legal votes cast upon the  
61 question be against the siting of a Class A landfill within  
62 the county, then the county commission, the county or  
63 regional solid waste authority and the division of natural  
64 resources shall not proceed any further with the pending  
65 notice or application nor may any of them allow to be  
66 filed subsequent notices or applications to site a Class  
67 A landfill within the county. If a majority of the legal  
68 votes cast upon the question be for siting a Class A  
69 landfill within the county, then the application process  
70 as set forth in this article and article five-f of this  
71 chapter may proceed, but such vote shall not be binding  
72 on or require the county or regional solid waste  
73 authority or the division of natural resources to approve  
74 an application to establish, construct or operate a Class  
75 A landfill. If the majority of the legal votes cast be  
76 against the question, that does not prevent the question  
77 from again being submitted to a vote at any subsequent  
78 election in the manner herein provided.

79 (b) Notwithstanding any other provisions of this  
80 chapter to the contrary, a person who, on the effective  
81 date of this section holds a valid Class A approval  
82 permit or compliance order issued by the division of  
83 natural resources pursuant to article five-f of this  
84 chapter, may continue to operate if, by the first day of  
85 June, one thousand nine hundred ninety, the county  
86 commission of the county in which such facility is  
87 located approves the continued handling of ten thousand  
88 tons or more of solid waste per month: *Provided*, That  
89 the decision of the county commission is subject to

90 review by referendum of the citizens of the county in  
91 which such facility is located.

92 (1) Any referendum held pursuant to this subsection  
93 shall comply with the procedure set forth in subsection  
94 (a) of this section. Further the ballot, or ballot labels  
95 where voting machines are used, shall have printed  
96 thereon substantially the following: "Shall the  
97 \_\_\_\_\_ landfill continue to handle ten  
98 thousand tons or more of solid waste per month?

99 ☐ For continued handling of ten thousand tons or  
100 more of solid waste per month

101 ☐ Against continued handling of ten thousand tons  
102 or more of solid waste per month

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

105 (2) If a majority of the legal votes cast upon the  
106 question are against the continued handling of ten  
107 thousand tons or more of solid waste per month, or if  
108 the county commission disapproves the continued  
109 operation of such facility, the director of the division of  
110 natural resources shall, within thirty days following  
111 certification of the election results, or the decision of the  
112 county commission, amend the permit or compliance  
113 order to require a decrease, over a period lasting no  
114 more than one year, in total tonnage to a level below ten  
115 thousand tons of solid waste per month.

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

1 (a) *Imposition.*—Effective the first day of July, one  
2 thousand nine hundred eighty-nine, a solid waste  
3 assessment fee is hereby levied and imposed upon the  
4 disposal of solid waste at any solid waste disposal facility  
5 in this state to be collected at the rate of one dollar per  
6 ton or part thereof of solid waste. The fee imposed by  
7 this section shall be in addition to all other fees levied  
8 by law.

9 (b) *Collection, return, payment and record.*—The fee

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

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

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

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

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



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

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

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

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

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

77 (1) Fifty percent of the total proceeds shall be divided  
78 equally among, and paid over to, each county solid waste  
79 authority to be expended for the purposes of this article:  
80 *Provided*, That where a regional solid waste authority  
81 exists, such funds shall be paid over to the regional solid  
82 waste authority to be expended for the purposes of this  
83 article in an amount equal to the total share of all  
84 counties within the jurisdiction of said regional solid  
85 waste authority; and

86 (2) Fifty percent of the total proceeds shall be  
87 expended by the West Virginia state solid waste  
88 management board for: (i) Grants to the county or

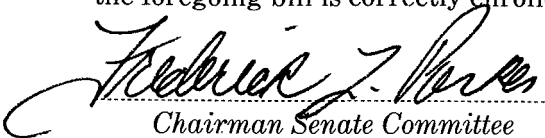
89 regional solid waste authorities for the purposes of this  
 90 article; (ii) administration, technical assistance or other  
 91 costs of the state solid waste management board  
 92 necessary to implement the purposes of this article and  
 93 article twenty-six, chapter sixteen of the code of West  
 94 Virginia, one thousand nine hundred thirty-one, as  
 95 amended.

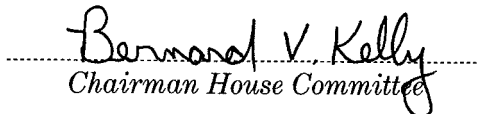
96 (i) *Severability*.—If any provision of this section or the  
 97 application thereof shall for any reason be adjudged by  
 98 any court of competent jurisdiction to be invalid, such  
 99 judgment shall not affect, impair or invalidate the  
 100 remainder of this section, but shall be confined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

105 (j) *Effective date*.—This section is effective on the first  
 106 day of July, one thousand nine hundred ninety.

Enr. Com. Sub. for H. B. 4364] 42

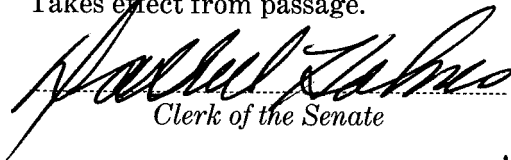
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

  
Chairman House Committee

Originating in the House.

Takes effect from passage.

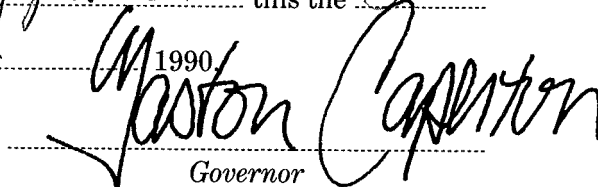
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 30<sup>th</sup> day of March 1990.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/3/40

Time

3:57 pm

RECEIVED

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OFFICE OF THE  
SECRETARY OF WAR