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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. 4149

(By Delegates Douglas + Grubb)

— ● —

Passed Feb. 20, 1992

In Effect From Passage

ENROLLED

H. B. 4149

(By DELEGATES DOUGLAS AND GRUBB)

[Passed February 20, 1992; in effect from passage.]

AN ACT to amend and reenact section five, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and six, article five-n of said chapter; to amend and reenact sections four, five and five-b, article eleven of said chapter; and to amend and reenact section one-h, article two, chapter twenty-four, relating to solid waste management; amending the date of expiration of division of health issued permits; revising the imposition of a fee; extending the deadline for closure assistance for single liner facilities; extending the application deadline for closure assistance for single liner facilities, decreasing the population requirement for municipalities to draft by ordinance a materials recovery facility; redefining "coal combustion byproduct"; allowing the public service commission to add additional classified exempt employees for solid waste program purposes and making other technical corrections.

Be it enacted by the Legislature of West Virginia:

That section five, article five-f, chapter twenty of the code of West Virginia; one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five and six, article five-n of said chapter be amended and reenacted; that sections four, five and five-b, article eleven of said chapter be amended and reenacted; and that section one-h, article two,

chapter twenty-four be amended and reenacted, all to read as follows:

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§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 issued
35 in compliance with the requirements of this article, its

36 rules and article five-a and the rules promulgated
37 thereunder, so that only a single permit shall be
38 required of a solid waste facility under these two
39 articles. Each permit issued under this article shall have
40 a fixed term not to exceed five years: *Provided*, That the
41 chief may administratively extend a permit beyond its
42 five-year term if the approved solid waste facility is in
43 compliance with this article, its rules and article five-
44 a of this chapter and the rules promulgated thereunder:
45 *Provided, however*, That such administrative extension
46 may not be for more than one year. Upon expiration of
47 a permit, renewal permits may be issued in compliance
48 with rules and regulations promulgated by the director
49 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 this 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 tenth day of June, one
57 thousand nine hundred eighty-three. Within four years
58 of the tenth day of June, one thousand nine hundred
59 eighty-three, all persons holding such division of health
60 permits shall apply to the chief for a permit under this
61 article: *Provided, however*, That the chief may require
62 persons holding such existing health division permits to
63 reapply under this section prior to four years from the
64 tenth day of June, one thousand nine hundred eighty-
65 three, if persistent violations of this article, any permit
66 term or condition, orders or rules promulgated under
67 this article, exist at that facility. Notwithstanding any
68 other provision contained in this subsection, the division
69 of natural resources may enter an extension order for
70 a period of two years while an application for a permit
71 pursuant to this article is pending.

72 (e) No person may dispose in the state of any solid
73 waste, whether such waste originates in state or out of
74 state, in a manner which endangers the environment or
75 the public health, safety or welfare as determined by the
76 director of the division of natural resources: *Provided*,

77 That the carcasses of dead animals may be disposed of
78 in any solid waste facility or in any other manner as
79 provided for in this code. Upon request by the director
80 of the division of natural resources, the director of the
81 division of health shall provide technical advice concern-
82 ing the disposal of solid waste or carcasses of dead
83 animals within the state.

84 (f) To the extent permissible by law, a commercial
85 solid waste facility shall first ensure that the disposal
86 needs of the county, or if applicable the region, in which
87 it is located are met. If the county solid waste authority,
88 or regional solid waste authority if applicable, in which
89 the facility is located determines that the present or
90 future disposal needs of the county, or if applicable the
91 region, are not being, or will not be, met by the
92 commercial solid waste facility, such authority may
93 apply to the director of the division of natural resources
94 to modify the applicable permit in order to reduce the
95 total monthly tonnage of out of county waste, or if
96 applicable, out of region waste, the facility is permitted
97 to accept by an amount that shall not exceed the total
98 monthly tonnage generated by the county, or if appli-
99 cable the region, in which the facility is located.

100 (g) In addition to all the requirements of this article
101 and the rules promulgated hereunder, a permit to
102 construct a new commercial solid waste facility or to
103 expand the spatial area of an existing facility, not
104 otherwise allowed by an existing permit, may not be
105 issued unless the public service commission has granted
106 a certificate of need, as provided in section one-c, article
107 two, chapter twenty-four of this code. If the director
108 approves a permit or permit modification, the certificate
109 of need shall become a part of the permit and all
110 conditions contained in the certificate of need shall be
111 conditions of the permit and may be enforced by the
112 division of natural resources in accordance with the
113 provisions of this article.

114 (h) The director of the division of natural resources
115 shall promulgate legislative rules pursuant to chapter
116 twenty-nine-a of this code which reflect the purposes as
117 set forth in this article.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

1 The director may provide closure assistance only to
2 permittees who meet the following requirements:

3 (1) The permittee of a landfill that does not have a
4 liner and ceases accepting solid waste on or before the
5 thirtieth day of November, one thousand nine hundred
6 ninety-one, except for those landfills allowed to accept
7 solid waste pursuant to the provisions of section eight,
8 article five-f of this chapter and ceases accepting solid
9 waste on or before the extension deadline as determined
10 by the director; or the permittee of a landfill that has
11 only a single liner and ceases accepting solid waste on
12 or before the thirtieth day of September, one thousand
13 nine hundred ninety-three;

14 (2) The permittee of the landfill must demonstrate to
15 the satisfaction of the director that it does not have the
16 financial resources on hand or the ability to generate the
17 amounts needed to comply, in a timely manner, with the
18 closure requirements provided in article five-f of this
19 chapter and any rules promulgated pursuant thereto;
20 and

21 (3) The permittee must maintain a permit for the
22 landfill pursuant to the provisions of section five, article
23 five-f of this chapter and maintain the full amount of
24 the bond required to be submitted pursuant to section
25 five-b, article five-f of this chapter.

§20-5N-6. Application for closure assistance.

1 (a) The director shall provide an application and
2 application procedure for all permittees of solid waste
3 landfills desiring to receive closure assistance under this
4 article. At a minimum the procedure shall require that:

5 (1) The permittee of a landfill that does not have a
6 liner system must submit its application no later than
7 the fifteenth day of September, one thousand nine
8 hundred ninety-two, except the permittee of a landfill
9 that has been allowed to accept solid waste pursuant to
10 the provisions of section eight, article five-f of this

11 chapter must submit its application no later than the
12 eleven months following the expiration of the extension;
13 and

14 (2) The permittee of a landfill that has only a single
15 liner system must submit its application no later than
16 eleven months following the date of closure of the
17 landfill.

18 (b) The director shall, within a reasonable time after
19 receipt of a complete application, notify the applicant of
20 the acceptance or rejection of the application. If the
21 application is rejected the notice shall contain the
22 reasons for the rejection.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-4. Recycling plans.

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

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

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

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

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

1 (a) Within twelve months following the effective date
2 of this section, each municipality described in subsection
3 (b) of this section shall submit a proposal to the solid

4 waste management board, consistent with the provisions
5 of this section, describing the establishment and
6 implementation of the mandatory recycling program.
7 The solid waste management board shall review the
8 submitted plans for consistency with the criteria
9 provided in this section, the county or regional solid
10 waste management plan and the statewide management
11 plan. The solid waste management board may make
12 suggested changes to the plan and shall provide
13 technical assistance to the municipalities in the devel-
14 opment of the plans.

15 (b) Within twenty-four months following the effective
16 date of this section, each municipality with a population
17 of ten thousand or more people, as determined by the
18 most recent decennial census by the Bureau of the
19 Census of the United States Department of Commerce,
20 shall establish and commence implementation of a
21 source separation and curbside collection program for
22 recyclable materials. Implementation may be phased in
23 over a six month time period. Such program shall
24 include, at a minimum, the following:

25 (1) An ordinance adopted by the governing body of the
26 municipality requiring that each person, partnership,
27 corporation or other entity in the municipality shall
28 separate at least three recyclable materials, as deemed
29 appropriate by the municipality, from other solid waste:
30 *Provided*, That the list of recyclables to be separated
31 may be adjusted according to whether the generator is
32 residential, commercial or other type of establishment.

33 (2) A scheduled day, at least one per month, during
34 which separated materials are to be placed at the
35 curbside, or similar location, for collection.

36 (3) A system that collects recyclable materials from
37 the curbside, or similar location, at least once per
38 month: *Provided*, That to encourage full participation,
39 the program shall, to the maximum extent possible,
40 provide for the collection of recyclables at the same rate
41 of frequency, and simultaneous with, the regular
42 collection of solid waste.

43 (4) Provisions to ensure compliance with the ordi-

44 nance, including incentives and penalties.

45 (5) A comprehensive public information and education
46 program covering the importance and benefits of
47 recycling, as well as the specific features and require-
48 ments of the recycling program. As part of the educa-
49 tion program, each municipality shall, at a minimum,
50 notify all persons occupying residential, commercial,
51 institutional or other premises within its boundaries of
52 the requirements of the program, including how the
53 system will operate, the dates of collection, the respon-
54 sibilities of persons within the municipality, and
55 incentives and penalties.

56 (6) Consultation with the county or regional solid
57 waste authority in which the municipality is located to
58 avoid duplication, ensure coordination of solid waste
59 programs, and maximize the market for recyclables.

60 (c) Notwithstanding the provisions of subsection (b) of
61 this section, a comprehensive recycling program for
62 solid waste may be established in any county of this state
63 by action of a county commission in accordance with the
64 provisions of this section. Such program shall require:

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

71 (2) Each person engaged in the commercial collection,
72 transportation, processing or disposal of solid waste
73 within the county shall accept only such solid waste
74 from which recyclable materials in accordance with said
75 county's comprehensive recycling program have been
76 segregated; and

77 (3) That the provisions of the recycling plan prepared
78 pursuant to section four of this article shall, to the extent
79 practicable, be incorporated in said county's comprehen-
80 sive recycling program.

81 (d) For the purposes of this article, recyclable
82 materials shall include, but not be limited to, steel and

83 bi-metallic cans, aluminum, glass, paper and such other
84 solid waste materials as may be specified by either the
85 municipality or county commission with the advice of
86 the county or regional solid waste authority.

87 (e) A comprehensive recycling program for solid
88 waste may be established in any county of this state by:
89 (1) A petition filed with the county commission bearing
90 the signatures of registered voters of the county equal
91 to not less than five percent of the number of votes cast
92 within the county for governor at the preceding
93 gubernatorial election; and (2) approval by a majority
94 of the voters in a subsequent referendum on the issue.
95 A referendum to determine whether it is the will of the
96 voters of a county that a comprehensive recycling
97 program for solid waste be established in the county
98 may be held at any regular primary or general election
99 or in conjunction with any other countywide election.
100 Any election at which the question of establishing a
101 policy of comprehensive recycling for solid waste is
102 voted upon shall be held at the voting precincts
103 established for holding primary or general elections. All
104 of the provisions of the general election laws, when not
105 in conflict with the provisions of this article, shall apply
106 to voting and elections hereunder, insofar as practicable.
107 The secretary of state shall prescribe the form of the
108 petition which shall include the printed name, address
109 and date of birth of each person whose signature
110 appears on the petition. Upon verification of the
111 required number of signatures on the petition, the
112 county commission shall, not less than seventy days
113 before the election, order that the issue be placed on the
114 ballot and referendum held at the next primary, general
115 or special election to determine whether it is the will of
116 the voters of said county that a policy of comprehensive
117 recycling of solid waste be established in the county:
118 *Provided*, That the petition bearing the necessary
119 signatures has been filed with the county commission at
120 least one hundred days prior to the election.

121 The ballot, or the ballot labels where voting machines
122 are used, shall have printed thereon substantially the
123 following:

124 "Shall the County Commission be required to establish
125 a comprehensive recycling program for solid waste in
126 _____ County, West Virginia?

127 ☐ For Recycling

128 ☐ Against Recycling

129 (Place a cross mark in the square opposite your
130 choice.)"

131 If a majority of legal votes cast upon the question be
132 for the establishment of a policy of comprehensive
133 recycling of solid waste, the county commission shall,
134 after the certification of the results of the referendum,
135 thereafter adopt an ordinance, within one hundred
136 eighty days of said certification, establishing a compre-
137 hensive recycling program for solid waste in the county:
138 *Provided*, That such program shall be implemented and
139 operational no later than twelve months following said
140 certification. If a majority of the legal votes cast upon
141 the question be against the establishment of a policy of
142 comprehensive recycling of solid waste, said policy shall
143 not take effect, but the question may again be submitted
144 to a vote at any subsequent election in the manner
145 herein provided.

146 (f) A comprehensive recycling program for solid waste
147 established by petition and referendum may be res-
148 cinded only pursuant to the procedures set out herein
149 to establish the program.

150 To rescind the program, the ballot, or the ballot labels
151 where voting machines are used, shall have printed
152 thereon substantially the following:

153 "Shall the County Commission be required to termi-
154 nate the comprehensive recycling program for solid
155 waste in _____ County, West
156 Virginia?

157 ☐ Continue Recycling

158 ☐ End Recycling

159 (Place a cross mark in the square opposite your
160 choice.)"

161 (g) If a majority of legal votes cast upon the question
162 be for the termination of a policy of comprehensive
163 recycling of solid waste previously established in the
164 county, the county commission shall, after the certifica-
165 tion of the results of the referendum, thereafter rescind
166 by ordinance the comprehensive recycling program for
167 solid waste in the county within ninety days of said
168 certification. If a majority of the legal votes cast upon
169 the question be for the continuation of the policy of
170 comprehensive recycling of solid waste, said ordinance
171 shall not be rescinded, but the question may again be
172 submitted to a vote at any subsequent election in the
173 manner herein provided.

174 (h) In the case of any municipality having a population
175 greater than thirty thousand persons, as indicated by
176 the most recent decennial census conducted by the
177 United States, the governing body of such municipality
178 may by ordinance establish a materials recovery facility
179 in lieu of or in addition to the mandatory recycling
180 program required under the provisions of this section:
181 *Provided*, That such materials recovery facility shall be
182 subject to approval by both the public service commis-
183 sion and the solid waste management board upon a
184 finding by both the public service commission and the
185 solid waste management board that the establishment
186 of such materials recovery facility will not hinder, and
187 will be consistent with, the purposes of this article.

**§20-11-5b. Solid and hazardous waste supplemental
assessment fee.**

1 (a) *Imposition.* — Effective the first day of January,
2 one thousand nine hundred ninety-two, a solid and
3 hazardous waste supplemental assessment fee is hereby
4 levied and imposed upon the disposal of solid or
5 hazardous waste at all solid waste or hazardous waste
6 disposal facilities in this state, to be collected at the rate
7 of twenty-five cents per ton or part thereof of solid or
8 hazardous waste. The fee imposed by this section shall
9 be in addition to all other fees levied by law.

10 (b) *Collection, return, payment and records.* — The
11 person disposing of solid or hazardous waste at the solid

12 or hazardous waste disposal facility shall pay the fee
13 imposed by this section, whether or not such person
14 owns the solid or hazardous waste, and the fee shall be
15 collected by the operator of the solid or hazardous waste
16 facility who shall remit it to the tax commissioner.

17 (1) The fee imposed by this section accrues at the time
18 the solid or hazardous waste is delivered to the solid or
19 hazardous waste disposal facility.

20 (2) The operator shall remit the fee imposed by this
21 section to the tax commissioner on or before the fifteenth
22 day of the month next succeeding the month in which
23 the fee accrued. Upon remittance of the fee, the operator
24 shall be required to file returns on forms and in the
25 manner as prescribed by the tax commissioner.

26 (3) The operator shall account to the state for all fees
27 collected under this section and shall hold them in trust
28 for the state until they are remitted to the tax
29 commissioner.

30 (4) If any operator fails to collect the fee imposed by
31 this section, he or she shall be personally liable for such
32 amount as he or she failed to collect, plus applicable
33 additions to tax, penalties and interest imposed by
34 article ten, chapter eleven of this code.

35 (5) Whenever any operator fails to collect, truthfully
36 account for, remit the fee, or file returns with the fee
37 as required in this section, the tax commissioner may
38 serve written notice requiring such operator to collect
39 the fees which become collectible after service of such
40 notice, to deposit such fees in a bank approved by the
41 tax commissioner, in a separate account, in trust for and
42 payable to the tax commissioner, and to keep the amount
43 of such fees in such account until remitted to the tax
44 commissioner. Such notice shall remain in effect until
45 a notice of cancellation is served on the operator or
46 owner by the tax commissioner.

47 (6) Whenever the owner of a solid or hazardous waste
48 disposal facility leases the solid or hazardous waste
49 facility to an operator, the operator shall be primarily
50 liable for collection and remittance of the fee imposed

51 by this section and the owner shall be secondarily liable
52 for remittance of the fee imposed by this section.
53 However, if the operator fails, in whole or in part, to
54 discharge his obligations under this section, the owner
55 and the operator of the solid or hazardous waste disposal
56 facility shall be jointly and severally responsible and
57 liable for compliance with the provisions of this section.

58 (7) If the operator or owner responsible for collecting
59 the fee imposed by this section is an association or
60 corporation, the officers thereof shall be liable, jointly
61 and severally, for any default on the part of the
62 association or corporation, and payment of the fee and
63 any additions to tax, penalties and interest imposed by
64 article ten, chapter eleven of this code may be enforced
65 against them and against the association or corporation
66 which they represent.

67 (8) Each person disposing of solid or hazardous waste
68 at a solid or hazardous waste disposal facility and each
69 person required to collect the fee imposed by this section
70 shall keep complete and accurate records in such form
71 as the tax commissioner may require in accordance with
72 the rules and regulations of the tax commissioner.

73 (c) *Regulated motor carriers.* — The fee imposed by
74 this section shall be considered a necessary and reason-
75 able cost for motor carriers of solid or hazardous waste
76 subject to the jurisdiction of the public service commis-
77 sion under chapter twenty-four-a of this code. Notwith-
78 standing any provision of law to the contrary, upon the
79 filing of a petition by an affected motor carrier, the
80 public service commission shall, within fourteen days,
81 reflect the cost of said fee in said motor carrier's rates
82 for solid or hazardous waste removal service. In
83 calculating the amount of said fee to said motor carrier,
84 the commission shall use the national average of pounds
85 of waste generated per person per day as determined by
86 the United States Environmental Protection Agency.

87 (d) *Definitions.* — For purposes of this section:

88 (1) "Solid or hazardous waste disposal facility" means
89 any approved solid or hazardous waste facility or open
90 dump in this state and includes a transfer station when

91 the solid or hazardous waste collected at the transfer
92 station is not finally disposed of at a solid or hazardous
93 waste facility within this state that collects the fee
94 imposed by this section.

95 (2) "Coal combustion byproduct" means the residuals,
96 including fly ash, bottom ash, bed ash, and boiler slag
97 produced by coal-fired or coal/gas-fired electrical or
98 steam generating units. For nonelectrical steam gener-
99 ating units burning a combination of solid waste and
100 coal, a carbon monoxide level of less than or equal to
101 one hundred parts per million on a twenty-four hour
102 average basis is required for the byproducts to meet this
103 definition. The carbon monoxide level shall be calcu-
104 lated on a dry gas basis corrected to seven percent
105 oxygen; and

106 (3) "Sludge" means any solid, semisolid, residue or
107 precipitate, separated from or created by a municipal,
108 commercial or industrial waste treatment plant, water
109 supply treatment plant or air pollution control facility
110 or any other such waste having similar origin.

111 Nothing herein shall be construed to authorize in any
112 way the creation or operation of or contribution to an
113 open dump.

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

116 (1) Disposal of solid waste in which the recycling
117 assessment fee levied and imposed by section five-a of
118 this article has been paid;

119 (2) Disposal of sludge or coal combustion byproducts;

120 (3) Reuse or recycling of any solid or hazardous waste;
121 or

122 (4) Disposal of residential solid waste by an individual
123 not in the business of hauling or disposing of solid waste
124 on such days and times as designated by the director of
125 the division of natural resources by regulation as
126 exempt from the fee imposed pursuant to section five-
127 a, article five-f, chapter twenty of this code.

128 (f) *Procedure and administration.* — Notwithstanding

129 section three, article ten, chapter eleven of this code,
 130 each and every provision of the “West Virginia Tax
 131 Procedure and Administration Act” set forth in article
 132 ten, chapter eleven of this code shall apply to the fee
 133 imposed by this section with like effect as if said act
 134 were applicable only to the fee imposed by this section
 135 and were set forth in extenso herein.

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

143 (h) *Dedication of proceeds.* — The proceeds of the fee
 144 collected pursuant to this section shall be deposited by
 145 the tax commissioner, at least monthly, to the hazardous
 146 waste emergency response fund established in article
 147 five-g of this chapter.

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

157 (j) *Effective date.* — This section is effective on the first
 158 day of January, one thousand nine hundred ninety-two.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1h. Additional powers and duties of commission to control flow of solid waste.

1 (a) Upon the petition of any county or regional solid
 2 waste authority, motor carrier or solid waste facility, or
 3 upon the commission's own motion, the commission may
 4 issue an order that solid waste generated in the

5 surrounding geographical area of a solid waste facility
6 and transported for processing or disposal by solid waste
7 collectors and haulers who are "motor carriers", as
8 defined in chapter twenty-four-a of this code, be
9 processed or disposed of at a designated solid waste
10 facility or facilities: *Provided*, That such order shall not
11 include:

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

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

20 (3) Disposal of residential solid waste by an individual
21 not in the business of hauling or disposing of solid waste
22 on such days and times as designated by the director of
23 the division of natural resources pursuant to the
24 provisions of section four-b, article five-f, chapter twenty
25 of this code.

26 (b) In determining whether to issue an order estab-
27 lishing flow control to a solid waste facility, the
28 commission shall consider, but shall not be limited to
29 considering, the nature and composition of the solid
30 waste, the environmental impact of controlling the flow
31 of solid waste, the efficient disposal of solid waste,
32 financial feasibility of proposed or existing solid waste
33 facilities, the county or region solid waste control plan,
34 the statewide solid waste control plan and the public
35 convenience and necessity.

36 (c) The public service commission shall promulgate
37 rules providing standards and criteria to effectuate the
38 purposes of this section.

39 (d) Notwithstanding any provision of this code to the
40 contrary, excepting rules of the public service commis-
41 sion from legislative rule-making review, the public
42 service commission shall propose a legislative rule in
43 accordance with the provisions of article three, chapter

44 twenty-nine-a of this code, which shall mandate that
45 motor carriers transport source-separated recyclable
46 materials to a recycling facility. Such legislative rule
47 shall provide, at a minimum, for a separate rate for the
48 transportation of such materials or that such motor
49 carriers may contract with a customer to waive the
50 charge for transporting such materials in exchange for
51 the value of such materials.

52 (e) Notwithstanding any provision of this code to the
53 contrary, the public service commission is hereby
54 authorized to employ ten persons, who shall be in the
55 classified exempt service, in addition to any personnel
56 positions otherwise authorized or allocated to the
57 commission as of the effective date of this section to
58 facilitate enforcement of duties imposed upon the
59 commission in the regulation of solid waste disposal
60 during the second extraordinary session of the Legisla-
61 ture, one thousand nine hundred ninety-one.

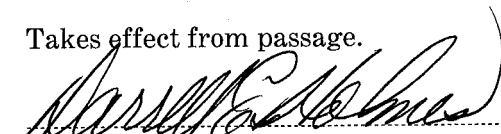
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

Originating in the House.

Takes effect from passage.

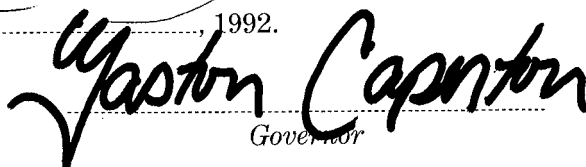

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 2nd
day of May, 1992.


Governor

PRESENTED TO THE

GOVERNOR

Date 2/26/92

Time 3:40 pm