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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

— ● —

ENROLLED

Com. Sub. For

HOUSE BILL No. *H224*

(By Delegates *Grubb and Manuel*)

— ● —

Passed *March 7,* 1992

In Effect *Thirty Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4224
(By DELEGATES GRUBB AND MANUEL)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to referendum prior to the siting of any commercial hazardous waste management facility or of any hazardous waste management facility which disposes of greater than ten thousand tons of hazardous waste per annum on site within this state.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-a, to read as follows:

**ARTICLE 10A. HAZARDOUS WASTE FACILITY SITING
APPROVAL.**

§20-10A-1. Legislative purpose.

1 The purpose of this article is to provide the opportun-
2 ity for public participation in the decision to locate
3 commercial hazardous waste management facilities and
4 to locate any hazardous waste management facility
5 which disposes of greater than ten thousand tons of

6 hazardous waste per annum in West Virginia.

§20-10A-2. Definitions.

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

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

6 (b) "Commercial hazardous waste management facil-
7 ity" means any hazardous waste treatment, storage or
8 disposal facility which accepts hazardous waste, as
9 identified or listed by the director of the division of
10 natural resources under article five-e of this chapter,
11 generated by sources other than the owner or operator
12 of the facility and shall not include an approved
13 hazardous waste facility owned and operated by a
14 person for the sole purpose of disposing of hazardous
15 wastes created by that person or such person and other
16 persons on a cost-sharing or nonprofit basis;

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

30 (d) "On site" means the location for disposal of
31 hazardous waste including the hazardous waste gener-
32 ated at the location of disposal or generated at some
33 location other than the location of disposal.

§20-10A-3. Procedure for public participation.

1 (a) From and after the effective date of this article,
2 in order to obtain approval to locate either a commercial

3 hazardous waste management facility or a hazardous
4 waste management facility which disposes of greater
5 than ten thousand tons per annum on site in this state,
6 an applicant shall:

7 (1) File a pre-siting notice with the county or counties
8 in which the facility is to be located or proposed. Such
9 notice shall be submitted on forms prescribed by the
10 commercial hazardous waste management facility siting
11 board;

12 (2) File a pre-siting notice with the commercial
13 hazardous waste management facility siting board; and

14 (3) File a pre-siting notice with the division of natural
15 resources.

16 (b) If a pre-siting notice is filed in accordance with
17 subsection (a) of this section, the county commission
18 shall publish a Class II legal advertisement in com-
19 pliance with the provisions of article three, chapter fifty-
20 nine of this code, in a newspaper of general circulation
21 in the counties wherein the hazardous waste manage-
22 ment facility is to be located. Upon an affirmative vote
23 of the majority of the county commissioners or upon the
24 written petition of registered voters residing in the
25 county equal to not less than fifteen percent of the
26 number of votes cast within the county for governor at
27 the preceding gubernatorial election, which petition
28 shall be filed with the county commission within sixty
29 days after the last date of publication of the notice
30 provided in this section, the county commission shall,
31 upon verification of the required number of signatures
32 on the petition, and not less than fifty-six days before
33 the election, order a referendum be placed upon the
34 ballot: *Provided*, That such a referendum shall not be
35 required for a hazardous waste management facility for
36 which at least ninety percent of the capacity is desig-
37 nated for hazardous waste generated at the site of
38 disposal. Any referendum conducted pursuant to this
39 section shall be held at the next primary, general or
40 other countywide election.

41 (1) Such referendum will be to determine whether it
42 is the will of the voters of the county that a commercial

43 hazardous waste management facility be located in the
44 county or that a hazardous waste management facility
45 disposing of greater than ten thousand tons of hazardous
46 waste per annum on site be located in the county. Any
47 election at which such question of locating a hazardous
48 waste management facility is voted upon shall be held
49 at the voting precincts established for holding primary
50 or general elections. All of the provisions of the general
51 election laws, when not in conflict with the provisions
52 of this article, shall apply to voting and elections
53 hereunder, insofar as practicable. The secretary of state
54 shall prescribe the form of the petition which shall
55 include the printed name, address and date of birth of
56 each person whose signature appears on the petition.

57 (2) The ballot, or the ballot labels where voting
58 machines are used, shall have printed thereon substan-
59 tially the following depending upon the type of facility
60 to be located with the county:

61 "Shall a commercial hazardous waste management
62 facility be located within _____ County,
63 West Virginia?

64 For the facility

65 Against the facility

66 (Place a cross mark in the square opposite your
67 choice.)" or,

68 "Shall a hazardous waste management facility dispos-
69 ing of greater than ten thousand tons per annum on site
70 be located within _____ County, West
71 Virginia?

72 For the facility

73 Against the facility

74 (Place a cross mark in the square opposite your
75 choice.)"

76 (3) If a majority of the legal votes cast upon the
77 question be against the facility, then the county
78 commission shall notify the division of natural resources
79 and the commercial hazardous waste management

80 facility siting board, in the case of a commercial facility,
81 of the result and the commercial hazardous waste
82 management facility siting board or division of natural
83 resources, as the case may be, shall not proceed any
84 further with the application. If a majority of the legal
85 votes cast upon the question be for the facility, then the
86 application process as set forth in article five-e of this
87 chapter and article ten of this chapter, in the case of a
88 commercial hazardous waste management facility, may
89 proceed: *Provided*, That such vote shall not be binding
90 on nor require the commercial hazardous waste man-
91 agement facility siting board to grant a certificate of
92 site approval or the division of natural resources to issue
93 the permit, as the case may be. If the majority of the
94 legal votes cast be against the question, the question
95 may be submitted to a vote at any subsequent election
96 in the manner herein specified: *Provided, however*, That
97 the question may not be resubmitted to a vote until two
98 years after the date of the previous referendum.

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

Abner Beck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Parrell E. Kelhus

Clerk of the Senate

Donald E. Kopp

Clerk of the House of Delegates

Paul Furdette

President of the Senate

Bob Coll

Speaker of the House of Delegates

The within *is approved* this the *25th*
day of *March* 1992.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 11:50 am