SECOND ENROLLMENT

COMMITTEE SUBSTITUTE FOR
House Bill No. 2222

(By Delegates Campbell and Mahan)

Passed March 28, 2001

In Effect Ninety Days from Passage
AN ACT to repeal section twenty-eight, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-ff, article one, chapter seven of said code; to amend article fourteen, chapter seventeen-c of said code by adding thereto a new section, designated section fourteen; to amend and reenact sections twenty-four and twenty-six, article seven, chapter twenty of said code; and to amend and reenact section twenty-three, article four, chapter twenty-two-c, all relating to litter generally; authorizing county commissions to hire litter control officers; making it a crime to throw litter from a motor vehicle or other conveyance; assessing three points against driver’s license; creating presumption of responsibility when more than one person is in vehicle; requiring division of motor vehicles promulgate a rule; defining terms; making it a misdemeanor to litter on public or private property or waters of the state; creating fines and community
service penalties for certain violations; establishing jail sentence for certain violations; providing that landowners, renters and lessees are not restricted in lawful use of property; creating exceptions for permitted industrial discharges; prohibiting litter near waters of the state and providing exception; providing for verification of community service litter cleanup; establishing presumption of intent if litter is thrown from motor vehicle, boat, airplane or other conveyance; providing for enforcement; creating presumption of ownership if identifying information found in litter; creating exemption for logos and trademarks; increasing civil penalties for litter conviction; directing moneys from civil penalties to go to litter control fund and county and regional solid waste authorities; requiring solid waste authorities expend funds for litter prevention, cleanup and enforcement; requiring the division of highways to erect signs throughout the state setting forth the penalties for littering; requiring the division of motor vehicles to provide summary of litter law when registering a motor vehicle or issuing an operator’s or chauffeur’s license; authorizing certain state agencies and political subdivisions to place litter receptacles in public areas and establishing penalties for failure to do so; and clarifying that solid waste authorities may expend any available funds to operate solid waste facilities, litter control programs and recycling programs.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three-ff, article one, chapter seven of said code be amended and reenacted; that article fourteen, chapter seventeen-c of said code be amended by adding thereto a new section, designated section fourteen; that sections twenty-four and twenty-six, article seven, chapter twenty of said code be amended and reenacted; and to amend and reenact section twenty-three, article four, chapter twenty-two-c, all to read as follows:
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

(a) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(b) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the removal and clean up of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located...
on private lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare whether the result of natural or manmade force or effect.

(c) The county commission in formally adopting ordinances shall designate an enforcement agency, which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or his or her designee, a fire chief from a county fire company, the county litter control officer, if the commission chooses to hire one, and two members at large selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and the county officer charged with enforcing the orders of the county commission under this section.

(d) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards considered necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage, and shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in a manner as to cause the least possible inconvenience to the persons in possession.

(e) Any county commission adopting ordinances authorized by this section shall hear and determine complaints of the enforcement agency. Complaints shall be initiated by citation issued by the county litter control officer or petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the enforcement agency, but only after that agency has investigated
and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or demolished.

The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia rules of civil procedure. The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within ten days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency. If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross examine all witnesses. The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence. At the conclusion of the hearing the county commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not, and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris;
overgrown vegetation; toxic spillage or toxic seepage on private
lands which is determined to be unsafe, unsanitary, dangerous
or detrimental to the public safety or welfare, whether the result
of natural or manmade force or effect. The county commission
has authority to order the owner or owners thereof to repair,
alter, improve, vacate, remove, close, clean up or demolish the
dwelling or building in question or to remove or clean up any
accumulation of refuse or debris, overgrown vegetation or toxic
spillage or toxic seepage within a reasonable time and to
impose daily civil monetary penalties on the owner or owners
who fail to obey an order. Appeals from the county commission
to the circuit court shall be in accordance with the provisions of
article three, chapter fifty-eight of this code.

(f) Upon the failure of the owner or owners of the private
land to perform the ordered duties and obligations as set forth
in the order of the county commission, the county commission
may advertise for and seek contractors to make the ordered
repairs, alterations or improvements, or the ordered demolition,
removal or clean up. The county commission may enter into
any contract with any contractor to accomplish the ordered
repairs, alterations or improvements, or the ordered demolition,
removal or clean up.

(g) A civil proceeding may be brought in circuit court by
the county commission against the owner or owners of the
private land which is the subject matter of the order of the
county commission to subject the private land in question to a
lien for the amount of the contractor’s costs in making these
ordered repairs, alterations or improvements, or ordered
demolition, removal or clean up together with any daily civil
monetary penalty imposed and reasonable attorney fees and
court costs and to order and decree the sale of the private land
in question to satisfy the lien, and to order and decree that the
contractor may enter upon the private land in question at any
and all times necessary to make improvements, or ordered
reparations, alterations or improvements, or ordered demolition, removal or clean up. In addition, the county commission shall have the authority to institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(h) County commissions have the power and authority to receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(b) For purposes of this section, "litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.
(c) In addition to any penalty imposed for littering under the provisions of article seven, chapter twenty of this code, any driver of a motor vehicle or other conveyance convicted of violating this section shall have three points assessed against his or her driver’s license.

(d) The commissioner shall assess points against the driver’s license of any driver of a motor vehicle or other conveyance found guilty of violating this section upon receiving notice from a circuit clerk, magistrate court or municipal court of this state of the conviction. Circuit clerks, magistrate courts and municipal courts of this state shall promptly notify the commissioner of the convictions.

(e) When there is more than one occupant in a motor vehicle or other conveyance and it cannot be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

(f) The commissioner of the division of motor vehicles shall propose or amend legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the purposes of this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-24. Definitions.

As used in sections twenty-five and twenty-six of this article, unless the context requires a different meaning:

(a) “Collected for commercial purposes” means taking solid waste for disposal from any person for remuneration regardless of whether or not the person taking the solid waste is a common carrier by motor vehicle governed by article two, chapter twenty-four-a of this code.
(b) "Court" means any circuit, magistrate or municipal court.

(c) "Litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(d) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the director's rules promulgated pursuant to subdivision eight, subsection (a), section twenty-five of this article.

(e) "Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state, or an area held open for unrestricted access by the general public.

(f) "Waters of the state" means generally, without limitation, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands.

§20-7-26. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section twenty-four of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred
feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.

(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen
cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than five hundred dollars nor more than two thousand dollars, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes, is guilty of a misdemeanor. Upon conviction the person is subject to a fine not less than twenty-five hundred dollars or not more than twenty-five thousand dollars, or confinement in a county or regional jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of said article.

(7) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(8) The sentence of litter cleanup shall be verified by conservation officers from the division of natural resources or environmental inspectors from the division of environmental protection. Any defendant receiving the sentence of litter cleanup shall provide within a time to be set by the court written acknowledgment from a conservation officer or environmental inspector that the sentence has been completed.
(9) Any person who has been found by the court to have willfully failed to comply with the terms of a litter cleanup sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties.

(10) All law-enforcement agencies, officers and environmental inspectors shall enforce compliance with this section within the limits of each agency's statutory authority.

(11) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this section: Provided, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission or the division of natural resources or the division of environmental protection, then the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.

(b) Any indication of ownership found in litter shall be prima facie evidence that the person identified violated the provisions of this section: Provided, That no inference may be
drawn solely from the presence of any logo, trademark, trade
name or other similar mass reproduced things of identifying
character appearing on the found litter.

(c) Every person who is convicted of or pleads guilty to
disposing of litter in violation of subsection (a) of this section
shall pay a civil penalty in the sum of not less than one hundred
dollars nor more than one thousand dollars as costs for cleanup,
investigation and prosecution of the case, in addition to any
other court costs that the court is otherwise required by law to
impose upon a convicted person.

The clerk of the circuit court, magistrate court or municipal
court in which these additional costs are imposed shall, on or
before the last day of each month, transmit fifty percent of a
civil penalty received pursuant to this section to the state
treasurer for deposit in the state treasury to the credit of a
special revenue fund to be known as the litter control fund
which is hereby continued. Expenditures for purposes set forth
in this section are not authorized from collections but are to be
made only in accordance with appropriation and in accordance
with the provisions of article three, chapter twelve of this code
and upon fulfillment of the provisions set forth in article two,
chapter five-a of this code. Amounts collected which are found
from time to time to exceed the funds needed for the purposes
set forth in this article may be transferred to other accounts or
funds and designated for other purposes by appropriation of the
Legislature.

(d) The remaining fifty percent of each civil penalty
collected pursuant to this section shall be transmitted to the
county or regional solid waste authority in the county where the
litter violation occurred. Moneys shall be expended by the
county or regional solid waste authority for the purpose of litter
prevention, cleanup and enforcement. The county commission
shall cooperate with the county or regional solid waste authority
serving the respective county to develop a coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of this code.

(e) The commissioner of the division of motor vehicles, upon registering a motor vehicle or issuing an operator’s or chauffeur’s license, shall issue to the owner or licensee, as the case may be, a summary of this section and section fourteen, article fourteen, chapter seventeen-c of the code.

(f) The commissioner of the division of highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates or otherwise controls any public area as may be designated by the director by rule promulgated pursuant to subdivision (8), subsection (a), section twenty-five of this article, shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the director, any person who fails to place and maintain the litter receptacles upon his or her premises in violation of this subsection or the rules of the director shall be fined fifteen dollars per day of the violation.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.
§22C-4-23. Powers, duties and responsibilities of authority generally.

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

1. Sue and be sued, plead and be impleaded and have and use a common seal.

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

3. The authority board of directors shall promulgate rules to implement the provisions of sections nine and ten of this article and is authorized to promulgate rules for purposes of this article and the general operation and administration of authority affairs.

4. Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.

5. To promulgate such rules as may be proper and necessary to implement the purposes and duties of this article.

6. Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent or contract for the operation by any person, partnership, corporation or governmental agency, any solid waste facility or collection, transportation and processing facilities related thereto.

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

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

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

(10) Make and enter all contracts, leases and agreements
and to execute all instruments necessary or incidental to the
performance of its duties and powers.

(11) Employ managers, engineers, accountants, attorneys,
planners and such other professional and support personnel as
are necessary in its judgment to carry out the provisions of this
article.

(12) Receive and accept from any source such grants, fees,
real and personal property, contributions, funds transferred
from a solid waste facility and funds of any nature as may
become available to the authority, in order to carry out the
purposes of this article including, but not limited to, the
development, operation or management of litter control
programs and recycling programs: Provided, That nothing
contained in this subsection shall be construed to extend the
authority or jurisdiction of the public service commission to
activities under this subsection solely because the activities are
funded by moneys transferred from a solid waste facility, nor
may the use of transferred funds by a solid waste authority be
considered by the public service commission in carrying out its
duties under section one-f, article two, chapter twenty-four of
this code.

(13) Cooperate with and make such recommendations to
local, state and federal government and the private sector in the
technical, planning and public policy aspects of litter control
and solid waste management as the authority may find appro-
appropriate and effective to carry out the purposes of this article.

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

(15) Prohibit the dumping of solid waste outside the hours
of operation of a solid waste facility.

(16) Enforce the hours of operation of a solid waste facility
and the mandatory disposal provision in section ten of this
article by referring violations to the division of environmental
protection or the appropriate law-enforcement authorities.

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

All rules promulgated by the authority pursuant to this
article are exempt from the provisions of article three, chapter
twenty-nine-a of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days 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 5th day of April 2001.

Governor