

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2005*

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**ENROLLED**

*Committee Substitute for Committee Substitute for*  
**SENATE BILL NO. 428**

**(By Senators Tomblin, Mr. President, and Sprouse, Jr.)**  
*By Request of the Executive*

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**PASSED APRIL 9, 2005**

**In Effect 90 days from Passage**

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COMMITTEE SUBSTITUTE

FOR

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**Senate Bill No. 428**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to repeal §17-24-1, §17-24-2, §17-24-3, §17-24-4, §17-24-5, §17-24-6, §17-24-7, §17-24-8, §17-24-9 and §17-24-10 of the Code of West Virginia, 1931, as amended; to repeal §20-7-24, §20-7-25, §20-7-26, §20-7-27 and §20-7-29 of said code; to repeal §20-11-1, §20-11-2, §20-11-3, §20-11-4, §20-11-5, §20-11-6, §20-11-7, §20-11-8, §20-11-9, §20-11-10, §20-11-11 and §20-11-12 of said code; to amend and reenact §7-1-3ff of said code; to amend and reenact §17-2A-21 of said code; to amend and reenact §17-23-2 of said code; to amend and reenact §17A-10-16 of said code; to amend and reenact §17C-14-14 of said code; to amend and reenact §22-15-2 and §22-15-21 of said code; to amend said code by adding thereto a new article, designated §22-15A-1, §22-15A-2, §22-15A-3, §22-15A-4, §22-15A-5, §22-15A-6, §22-

15A-7, §22-15A-8, §22-15A-9, §22-15A-10, §22-15A-11, §22-15A-12, §22-15A-13, §22-15A-14, §22-15A-15, §22-15A-16, §22-15A-17, §22-15A-18, §22-15A-19, §22-15A-20, §22-15A-21, §22-15A-22 and §22-15A-23; to amend and reenact §22C-3-7 and §22C-3-24 of said code; to amend and reenact §22C-4-24 and §22C-4-25 of said code; to amend and reenact §31-15A-17a of said code; and to amend and reenact §49-5-13 and §49-5-13b of said code, all relating to the Rehabilitation Environmental Action Plan; consolidating litter control, open dump elimination and reclamation, waste tire clean up and recycling programs; defining certain terms; providing for litter control and recycling programs; providing additional duties of Secretary of the Department of Environmental Protection; transferring assets, contracts and personnel of the Litter Control Program; providing penalties for the unlawful disposal of litter; providing for litter control education; creating the Pollution Prevention and Open Dump Program; providing for assistance to solid waste authorities for litter and solid waste plans; prohibiting waste tires in certain places; providing for penalty for violations thereof; providing that the Department of Environmental Protection is to administer funds for waste tire remediation; authorizing the Secretary of the Department of Environmental Protection to promulgate rules; providing for the disposal of waste tires; providing for the continuation of the A. James Manchin Fund; establishing purposes for expenditure from the A. James Manchin Fund; providing that the Commissioner of the Division of Highways work with the Secretary of the Department of Environmental Protection in certain circumstances; establishing remediation and liability for remediation; clarifying that Commissioner for Bureau for Public Health has the authority to regulate public health matters; establishing recycling goals and plans; establishing county recycling programs for solid waste; providing for a recycling assessment fee; providing for criminal penalties; establishing state recycling program for solid waste; providing for the procurement of recycled products; prohibiting the disposal of certain items; and exempting certain recycling facilities from regulation.

*Be it enacted by the Legislature of West Virginia:*

That §17-24-1, §17-24-2, §17-24-3, §17-24-4, §17-24-5, §17-24-6, §17-24-7, §17-24-8, §17-24-9 and §17-24-10 of the Code of West Virginia, 1931, as amended, be repealed; that §20-7-24, §20-7-25, §20-7-26, §20-7-27 and §20-7-29 of said code be repealed; that §20-11-1, §20-11-2, §20-11-3, §20-11-4, §20-11-5, §20-11-6, §20-11-7, §20-11-8, §20-11-9, §20-11-10, §20-11-11 and §20-11-12 of said code be repealed; that §7-1-3ff of said code be amended and reenacted; that §17-2A-21 of said code be amended and reenacted; that §17-23-2 of said code be amended and reenacted; that §17A-10-16 of said code be amended and reenacted; that §17C-14-14 of said code be amended and reenacted; that §22-15-2 and §22-15-21 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22-15A-1, §22-15A-2, §22-15A-3, §22-15A-4, §22-15A-5, §22-15A-6, §22-15A-7, §22-15A-8, §22-15A-9, §22-15A-10, §22-15A-11, §22-15A-12, §22-15A-13, §22-15A-14, §22-15A-15, §22-15A-16, §22-15A-17, §22-15A-18, §22-15A-19, §22-15A-20, §22-15A-21, §22-15A-22 and §22-15A-23; that §22C-3-7 and §22C-3-24 of said code be amended and reenacted; that §22C-4-24 and §22C-4-25 of said code be amended and reenacted; that §31-15A-17a of said code be amended and reenacted; and that §49-5-13 and §49-5-13b of said code be amended and reenacted, 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.**

1 (a) Plenary power and authority are hereby conferred  
2 upon every county commission to adopt ordinances  
3 regulating the repair, alteration or improvement, or the  
4 vacating and closing or removal or demolition, or any  
5 combination thereof, of any dwellings or other buildings,  
6 except for buildings utilized for farm purposes on land  
7 actually being used for farming, unfit for human habita-  
8 tion due to dilapidation, defects increasing the hazard of  
9 fire, accidents or other calamities, lack of ventilation, light  
10 or sanitary facilities or any other conditions prevailing in  
11 any dwelling or building, whether used for human habita-  
12 tion or not, which would cause the dwellings or other  
13 buildings to be unsafe, unsanitary, dangerous or detrimen-  
14 tal to the public safety or welfare, whether the result of  
15 natural or manmade force or effect.

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

24 (c) The county commission, in formally adopting ordi-  
25 nances, shall designate an enforcement agency which shall  
26 consist of the county engineer (or other technically quali-  
27 fied county employee or consulting engineer), county  
28 health officer or his or her designee, a fire chief from a  
29 county fire company, the county litter control officer, if  
30 the commission chooses to hire one, and two members at  
31 large selected by the county commission to serve two-year  
32 terms. The county sheriff shall serve as an ex officio  
33 member of the enforcement agency and the county officer

34 charged with enforcing the orders of the county commis-  
35 sion under this section.

36 (d) In addition to the powers and duties imposed by this  
37 section, county litter control officers shall have authority  
38 to issue citations for violations of the provisions of section  
39 four, article fifteen-a, chapter twenty-two of this code  
40 after completing a training course offered by the West  
41 Virginia Department of Environmental Protection.  
42 Nothing in this subsection supercedes the authority or  
43 duty of other law-enforcement officers to preserve law and  
44 order and enforce the litter control program.

45 (e) Any ordinance adopted pursuant to the provisions of  
46 this section shall provide fair and equitable rules of  
47 procedure and any other standards considered necessary  
48 to guide the enforcement agency, or its agents, in the  
49 investigation of dwelling or building conditions, accumu-  
50 lation of refuse or debris, overgrown vegetation or toxic  
51 spillage or toxic seepage and shall provide for fair and  
52 equitable rules of procedure for instituting and conducting  
53 hearings in the matters before the county commission.  
54 Any entrance upon premises for the purpose of making  
55 examinations shall be made in a manner as to cause the  
56 least possible inconvenience to the persons in possession.

57 (f) Any county commission adopting ordinances autho-  
58 rized by this section shall hear and determine complaints  
59 of the enforcement agency. Complaints shall be initiated  
60 by citation issued by the county litter control officer or  
61 petition of the county engineer (or other technically  
62 qualified county employee or consulting engineer) on  
63 behalf of and at the direction of the enforcement agency,  
64 but only after that agency has investigated and determined  
65 that any dwelling, building, accumulation of refuse or  
66 debris, overgrown vegetation or toxic spillage or toxic  
67 seepage is unsafe, unsanitary, dangerous or detrimental to  
68 the public safety or welfare and should be repaired,  
69 altered, improved, vacated, removed, closed, cleaned or  
70 demolished. The county commission shall cause the owner

71 or owners of the private land in question to be served with  
72 a copy of the complaint. Service shall be accomplished in  
73 the manner provided in Rule 4 of the West Virginia Rules  
74 of Civil Procedure. The complaint shall state the findings  
75 and recommendations of the enforcement agency and that  
76 unless the owner or owners of the property file with the  
77 clerk of the county commission a written request for a  
78 hearing within ten days of receipt of the complaint, an  
79 order will be issued by the county commission implement-  
80 ing the recommendations of the enforcement agency. If  
81 the owner or owners of the property file a request for a  
82 hearing, the county commission shall issue an order setting  
83 this matter down for hearing within twenty days. Hear-  
84 ings shall be recorded by electronic device or by court  
85 reporter. The West Virginia rules of evidence do not apply  
86 to the proceedings, but each party has the right to present  
87 evidence and examine and cross-examine all witnesses.  
88 The enforcement agency has the burden of proving its  
89 allegation by a preponderance of the evidence and has the  
90 duty to go forward with the evidence. At the conclusion of  
91 the hearing the county commission shall make findings of  
92 fact, determinations and conclusions of law as to whether  
93 the dwelling or building: Is unfit for human habitation due  
94 to dilapidation; has defects that increase the hazard of fire,  
95 accidents or other calamities, lacks ventilation, light or  
96 sanitary facilities; or any other conditions prevailing in the  
97 dwelling or building, whether used for human habitation  
98 or not and whether the result of natural or manmade force  
99 or effect, which would cause such dwelling or other  
100 building to be unsafe, unsanitary, dangerous or detrimen-  
101 tal to the public safety or welfare; or whether there is an  
102 accumulation of refuse or debris, overgrown vegetation,  
103 toxic spillage or toxic seepage on private lands which is  
104 determined to be unsafe, unsanitary, dangerous or detri-  
105 mental to the public safety or welfare, whether the result  
106 of natural or manmade force or effect. The county com-  
107 mission has authority to order the owner or owners thereof  
108 to repair, alter, improve, vacate, remove, close, clean up or

109 demolish the dwelling or building in question or to remove  
110 or clean up any accumulation of refuse or debris, over-  
111 grown vegetation or toxic spillage or toxic seepage within  
112 a reasonable time and to impose daily civil monetary  
113 penalties on the owner or owners who fail to obey an  
114 order. Appeals from the county commission to the circuit  
115 court shall be in accordance with the provisions of article  
116 three, chapter fifty-eight of this code.

117 (g) Upon the failure of the owner or owners of the  
118 private land to perform the ordered duties and obligations  
119 as set forth in the order of the county commission, the  
120 county commission may advertise for and seek contractors  
121 to make the ordered repairs, alterations or improvements  
122 or the ordered demolition, removal or clean up. The  
123 county commission may enter into any contract with any  
124 contractor to accomplish the ordered repairs, alterations  
125 or improvements or the ordered demolition, removal or  
126 clean up.

127 (h) A civil proceeding may be brought in circuit court by  
128 the county commission against the owner or owners of the  
129 private land which is the subject matter of the order of the  
130 county commission to subject the private land in question  
131 to a lien for the amount of the contractor's costs in making  
132 these ordered repairs, alterations or improvements or  
133 ordered demolition, removal or clean up, together with any  
134 daily civil monetary penalty imposed and reasonable  
135 attorney fees and court costs and to order and decree the  
136 sale of the private land in question to satisfy the lien and  
137 to order and decree that the contractor may enter upon the  
138 private land in question at any and all times necessary to  
139 make improvements or ordered repairs, alterations or  
140 improvements, or ordered demolition, removal or clean up.  
141 In addition, the county commission shall have the author-  
142 ity to institute a civil action in a court of competent  
143 jurisdiction against the landowner or other responsible  
144 party for all costs incurred by the county with respect to



145 the property and for reasonable attorney fees and court  
146 costs incurred in the prosecution of the action.

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

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

#### **§17-2A-21. Commissioner authorized to contract for implementation of litter control programs.**

1 In addition to all other powers granted and duties  
2 imposed upon the Commissioner, he or she shall contract  
3 with the Secretary of the Department of Environmental  
4 Protection and expend moneys from the highway litter  
5 control fund to implement the litter control program and  
6 litter control maintenance of the highways pursuant to  
7 article fifteen-a, chapter twenty-two of this code.

### **ARTICLE 23. SALVAGE YARDS.**

#### **§17-23-2. Definitions.**

1 As used in this article:

2 (a) "Abandoned salvage yard" means any unlicensed  
3 salvage yard or any salvage yard that was previously  
4 licensed but upon which the license has not been renewed  
5 for more than one year.

6 (b) "Commissioner" means the Commissioner of the West  
7 Virginia Division of Highways.

8 (c) "Fence" means an enclosure, barrier or screen  
9 constructed of materials or consisting of plantings, natural  
10 objects or other appropriate means approved by the  
11 commissioner and located, placed or maintained so as  
12 effectively to screen at all times salvage yards and the

13 salvage therein contained from the view of persons passing  
14 upon the public roads of this state.

15 (d) "Occupied private residence" means a private  
16 residence which is occupied for at least six months each  
17 year.

18 (e) "Owner or operator" includes an individual, firm,  
19 partnership, association or corporation or the plural  
20 thereof.

21 (f) "Residential community" means an area wherein five  
22 or more occupied private residences are located within any  
23 one thousand-foot radius.

24 (g) "Salvage" means old or scrap brass, copper, iron,  
25 steel, other ferrous or nonferrous materials, batteries or  
26 rubber and any junked, dismantled or wrecked machinery,  
27 machines or motor vehicles or any parts of any junked,  
28 dismantled or wrecked machinery, machines or motor  
29 vehicles.

30 (h) "Salvage yard" means any place which is maintained,  
31 operated or used for the storing, keeping, buying, selling or  
32 processing of salvage, or for the operation and mainte-  
33 nance of a motor vehicle graveyard: *Provided*, That no  
34 salvage yard shall accept, store or process more than one  
35 hundred waste tires unless it has all permits necessary to  
36 operate a monofill, waste tire processing facility or solid  
37 waste facility. Any salvage yard which currently has on its  
38 premises more than one hundred waste tires not on a  
39 vehicle must establish a plan in conjunction with the  
40 Department of Environmental Protection for the proper  
41 disposal of the waste tires.

42 (i) "Waste tire" means any continuous solid or pneu-  
43 matic rubber covering designed to encircle the wheel of a  
44 vehicle but which has been discarded, abandoned or is no  
45 longer suitable for its original, intended purpose nor  
46 suitable for recapping, or other beneficial use, as defined  
47 in section two, article fifteen-a, chapter twenty-two of this

48 code, because of wear, damage or defect. A tire is no  
49 longer considered to be suitable for its original intended  
50 purpose when it fails to meet the minimum requirements  
51 to pass a West Virginia motor vehicle safety inspection.  
52 Used tires located at a commercial recapping facility or  
53 tire dealer for the purpose of being reused or recapped are  
54 not waste tires.

55 (j) "Waste tire monofill or monofill" means an approved  
56 solid waste facility where waste tires not mixed with any  
57 other waste are placed for the purpose of long term storage  
58 for eventual retrieval for marketing purposes.

59 (k) "Waste tire processing facility" means a solid waste  
60 facility or manufacturer that accepts waste tires generated  
61 by sources other than the owner or operator of the facility  
62 for processing by such means as cryogenics, pyrolysis,  
63 pyroprocessing cutting, splitting, shredding, quartering,  
64 grinding or otherwise breaking down waste tires for the  
65 purposes of disposal, reuse, recycling or marketing.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,  
REGISTRATION, CERTIFICATE OF TITLE,  
AND ANTITHEFT PROVISIONS.**

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.**

**§17A-10-16. Fee for the A. James Manchin Fund.**

1 In addition to each fee provided for in this article, an  
2 additional five-dollar fee shall be imposed on the issuance  
3 of each certificate of title issued pursuant to article three  
4 of this chapter. All money collected under this section  
5 shall be deposited in the State Treasury and credited to the  
6 A. James Manchin Fund to be established within the  
7 division of highways for waste tire remediation in accor-  
8 dance to the provisions of article fifteen-a, chapter  
9 twenty-two of this code. The Commissioner is to work  
10 with the Secretary of the Department of Environmental  
11 Protection to accomplish the goals of said chapter. The  
12 additional fee provided herein shall be imposed for each

13 application for certificate and renewal thereof made on or  
14 after the first day of July, two thousand: *Provided*, That  
15 no further collections or deposits shall be made after the  
16 Commissioner certifies to the Governor and the Legisla-  
17 ture that the remediation of all waste tire piles that were  
18 determined by the Commissioner to exist on the first day  
19 of June, two thousand one, has been completed.

**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.**

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

9 (b) For purposes of this section, "litter" means all waste  
10 material including, but not limited to, any garbage, refuse,  
11 trash, disposable package, container, can, bottle, paper,  
12 ashes, cigarette or cigar butt, carcass of any dead animal  
13 or any part thereof, or any other offensive or unsightly  
14 matter, but not including the wastes of primary processes  
15 of mining, logging, sawmilling, farming or manufacturing.

16 (c) In addition to any penalty imposed for littering under  
17 the provisions of article fifteen-a, chapter twenty-two of  
18 this code, any driver of a motor vehicle or other convey-  
19 ance convicted of violating this section shall have three  
20 points assessed against his or her driver's license.

21 (d) The Commissioner shall assess points against the  
22 driver's license of any driver of a motor vehicle or other

23 conveyance found guilty of violating this section upon  
24 receiving notice from a circuit clerk, magistrate court or  
25 municipal court of this state of the conviction. Circuit  
26 clerks, magistrate courts and municipal courts of this state  
27 shall promptly notify the Commissioner of the convictions.

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

33 (f) The Commissioner of the Division of Motor Vehicles  
34 shall propose or amend legislative rules for promulgation,  
35 in accordance with the provisions of article three, chapter  
36 twenty-nine-a of this code, to effectuate the purposes of  
37 this section.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

#### **§22-15-2. Definitions.**

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

3 (1) "Agronomic rate" means the whole sewage sludge  
4 application rate, by dry weight, designed:

5 (A) To provide the amount of nitrogen needed by the  
6 food crop, feed crop, fiber crop, cover crop or vegetation  
7 on the land; and

8 (B) To minimize the amount of nitrogen in the sewage  
9 sludge that passes below the root zone of the crop or  
10 vegetation grown on the land to the groundwater.

11 (2) "Applicant" means the person applying for a com-  
12 mercial solid waste facility permit or similar renewal  
13 permit and any person related to such person by virtue of  
14 common ownership, common management or family

15 relationships as the director may specify, including the  
16 following: Spouses, parents and children and siblings.

17 (3) "Approved solid waste facility" means a solid waste  
18 facility or practice which has a valid permit under this  
19 article.

20 (4) "Back hauling" means the practice of using the same  
21 container to transport solid waste and to transport any  
22 substance or material used as food by humans, animals  
23 raised for human consumption or reusable item which may  
24 be refilled with any substance or material used as food by  
25 humans.

26 (5) "Bulking agent" means any material mixed and  
27 composted with sewage sludge.

28 (6) "Class A facility" means a commercial solid waste  
29 facility which handles an aggregate of between ten  
30 thousand and thirty thousand tons of solid waste per  
31 month. Class A facility includes two or more Class B solid  
32 waste landfills owned or operated by the same person in  
33 the same county, if the aggregate tons of solid waste  
34 handled per month by such landfills exceeds nine thousand  
35 nine hundred ninety-nine tons of solid waste per month.

36 (7) "Commercial recycler" means any person, corpora-  
37 tion or business entity whose operation involves the  
38 mechanical separation of materials for the purpose of  
39 reselling or recycling at least seventy percent by weight of  
40 the materials coming into the commercial recycling  
41 facility.

42 (8) "Commercial solid waste facility" means any solid  
43 waste facility which accepts solid waste generated by  
44 sources other than the owner or operator of the facility  
45 and does not include an approved solid waste facility  
46 owned and operated by a person for the sole purpose of the  
47 disposal, processing or composting of solid wastes created  
48 by that person or such person and other persons on a cost-  
49 sharing or nonprofit basis and does not include land upon

50 which reused or recycled materials are legitimately  
51 applied for structural fill, road base, mine reclamation and  
52 similar applications.

53 (9) "Compost" means a humus-like material resulting  
54 from aerobic, microbial, thermophilic decomposition of  
55 organic materials.

56 (10) "Composting" means the aerobic, microbial,  
57 thermophilic decomposition of natural constituents of  
58 solid waste to produce a stable, humus-like material.

59 (11) "Commercial composting facility" means any solid  
60 waste facility processing solid waste by composting,  
61 including sludge composting, organic waste or yard waste  
62 composting, but does not include a composting facility  
63 owned and operated by a person for the sole purpose of  
64 composting waste created by that person or such person  
65 and other persons on a cost-sharing or nonprofit basis and  
66 shall not include land upon which finished or matured  
67 compost is applied for use as a soil amendment or condi-  
68 tioner.

69 (12) "Cured compost" or "finished compost" means  
70 compost which has a very low microbial or decomposition  
71 rate which will not reheat or cause odors when put into  
72 storage and that has been put through a separate aerated  
73 curing cycle stage of thirty to sixty days after an initial  
74 composting cycle or compost which meets all regulatory  
75 requirements after the initial composting cycle.

76 (13) "Department" means the Department of Environ-  
77 mental Protection.

78 (14) "Energy recovery incinerator" means any solid  
79 waste facility at which solid wastes are incinerated with  
80 the intention of using the resulting energy for the genera-  
81 tion of steam, electricity or any other use not specified  
82 herein.

83 (15) "Incineration technologies" means any technology  
84 that uses controlled flame combustion to thermally break

85 down solid waste, including refuse-derived fuel, to an ash  
86 residue that contains little or no combustible materials,  
87 regardless of whether the purpose is processing, disposal,  
88 electric or steam generation or any other method by which  
89 solid waste is incinerated.

90 (16) "Incinerator" means an enclosed device using  
91 controlled flame combustion to thermally break down  
92 solid waste, including refuse-derived fuel, to an ash  
93 residue that contains little or no combustible materials.

94 (17) "Landfill" means any solid waste facility for the  
95 disposal of solid waste on or in the land for the purpose of  
96 permanent disposal. Such facility is situated, for purposes  
97 of this article, in the county where the majority of the  
98 spatial area of such facility is located.

99 (18) "Materials recovery facility" means any solid waste  
100 facility at which source-separated materials or materials  
101 recovered through a mixed waste processing facility are  
102 manually or mechanically shredded or separated for  
103 purposes of reuse and recycling, but does not include a  
104 composting facility.

105 (19) "Mature compost" means compost which has been  
106 produced in an aerobic, microbial, thermophilic manner  
107 and does not exhibit phytotoxic effects.

108 (20) "Mixed solid waste" means solid waste from which  
109 materials sought to be reused or recycled have not been  
110 source-separated from general solid waste.

111 (21) "Mixed waste processing facility" means any solid  
112 waste facility at which materials are recovered from mixed  
113 solid waste through manual or mechanical means for  
114 purposes of reuse, recycling or composting.

115 (22) "Municipal solid waste incineration" means the  
116 burning of any solid waste collected by any municipal or  
117 residential solid waste disposal company.



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

122 (24) "Person" or "persons" means any industrial user,  
123 public or private corporation, institution, association, firm  
124 or company organized or existing under the laws of this or  
125 any other state or country; State of West Virginia; govern-  
126 mental agency, including federal facilities; political  
127 subdivision; county commission; municipal corporation;  
128 industry; sanitary district; public service district; drainage  
129 district; soil conservation district; watershed improvement  
130 district; partnership; trust; estate; person or individual;  
131 group of persons or individuals acting individually or as a  
132 group; or any legal entity whatever.

133 (25) "Publicly owned treatment works" means any  
134 treatment works owned by the state or any political  
135 subdivision thereof, any municipality or any other public  
136 entity which processes raw domestic, industrial or municipi-  
137 pal sewage by any artificial or natural processes in order  
138 to remove or so alter constituents as to render the waste  
139 less offensive or dangerous to the public health, comfort or  
140 property of any of the inhabitants of this state before the  
141 discharge of the plant effluent into any of the waters of  
142 this state, and which produces sewage sludge.

143 (26) "Recycling facility" means any solid waste facility  
144 for the purpose of recycling at which neither land disposal  
145 nor biological, chemical or thermal transformation of solid  
146 waste occurs: *Provided*, That mixed waste recovery  
147 facilities, sludge processing facilities and composting  
148 facilities are not considered recycling facilities nor consid-  
149 ered to be reusing or recycling solid waste within the  
150 meaning of this article, article fifteen-a of this chapter and  
151 article four, chapter twenty-two-c of this code.

152 (27) "Sewage sludge" means solid, semisolid or liquid  
153 residue generated during the treatment of domestic sewage

154 in a treatment works. Sewage sludge includes, but is not  
155 limited to, domestic septage, scum or solids removed in  
156 primary, secondary or advanced wastewater treatment  
157 processes and a material derived from sewage sludge.  
158 "Sewage sludge" does not include ash generated during  
159 the firing of sewage sludge in a sewage sludge incinerator.

160 (28) "Secretary" means the Secretary of the Department  
161 of Environmental Protection or such other person to whom  
162 the Secretary has delegated authority or duties pursuant  
163 to article one of this chapter.

164 (29) "Sewage sludge processing facility" is a solid waste  
165 facility that processes sewage sludge for: (A) Land applica-  
166 tion; (B) incineration; or (C) disposal at an approved  
167 landfill. Such processes include, but are not limited to,  
168 composting, lime stabilization, thermophilic, microbial  
169 and anaerobic digestion.

170 (30) "Sludge" means any solid, semisolid, residue or  
171 precipitate, separated from or created by a municipal,  
172 commercial or industrial waste treatment plant, water  
173 supply treatment plant or air pollution control facility or  
174 any other such waste having similar origin.

175 (31) "Solid waste" means any garbage, paper, litter,  
176 refuse, cans, bottles, waste processed for the express  
177 purpose of incineration; sludge from a waste treatment  
178 plant; water supply treatment plant or air pollution  
179 control facility; and other discarded materials, including  
180 offensive or unsightly matter, solid, liquid, semisolid or  
181 contained liquid or gaseous material resulting from  
182 industrial, commercial, mining or community activities  
183 but does not include solid or dissolved material in sewage  
184 or solid or dissolved materials in irrigation return flows or  
185 industrial discharges which are point sources and have  
186 permits under article five-a of this chapter, or source,  
187 special nuclear or byproduct material as defined by the  
188 Atomic Energy Act of 1954, as amended, including any  
189 nuclear or byproduct material considered by federal

190 standards to be below regulatory concern, or a hazardous  
191 waste either identified or listed under article five-e of this  
192 chapter or refuse, slurry, overburden or other wastes or  
193 material resulting from coal-fired electric power or steam  
194 generation, the exploration, development, production,  
195 storage and recovery of coal, oil and gas and other mineral  
196 resources placed or disposed of at a facility which is  
197 regulated under chapter twenty-two, twenty-two-a or  
198 twenty-two-b of this code, so long as placement or dis-  
199 posal is in conformance with a permit issued pursuant to  
200 such chapters.

201 (32) "Solid waste disposal" means the practice of  
202 disposing of solid waste including placing, depositing,  
203 dumping or throwing or causing any solid waste to be  
204 placed, deposited, dumped or thrown.

205 (33) "Solid waste disposal shed" means the geographical  
206 area which the solid waste management board designates  
207 and files in the state register pursuant to section eight,  
208 article twenty-six, chapter sixteen of this code.

209 (34) "Solid waste facility" means any system, facility,  
210 land, contiguous land, improvements on the land, struc-  
211 tures or other appurtenances or methods used for process-  
212 ing, recycling or disposing of solid waste, including  
213 landfills, transfer stations, materials recovery facilities,  
214 mixed waste processing facilities, sewage sludge process-  
215 ing facilities, commercial composting facilities and other  
216 such facilities not herein specified, but not including land  
217 upon which sewage sludge is applied in accordance with  
218 section twenty of this article. Such facility shall be  
219 deemed to be situated, for purposes of this article, in the  
220 county where the majority of the spatial area of such  
221 facility is located: *Provided*, That a salvage yard, licensed  
222 and regulated pursuant to the terms of article twenty-  
223 three, chapter seventeen of this code, is not a solid waste  
224 facility.

225 (35) "Solid waste facility operator" means any person or  
226 persons possessing or exercising operational, managerial  
227 or financial control over a commercial solid waste facility,  
228 whether or not such person holds a certificate of convenience and necessity or a permit for such facility.  
229

230 (36) "Source-separated materials" means materials  
231 separated from general solid waste at the point of origin  
232 for the purpose of reuse and recycling but does not mean  
233 sewage sludge.

**§22-15-21. Waste tire management.**

1 (a) No person, except those persons who have received  
2 and maintained a valid permit or license from the state for  
3 the operation of a solid waste facility, waste tire monofill,  
4 waste tire processing facility, or other such permitted  
5 activities, shall accumulate waste tires without obtaining  
6 a license or permit from the Division: *Provided*, That  
7 persons who use waste tires for beneficial uses may in the  
8 discretion of the Secretary of the Department of Environmental Protection accumulate waste tires without a  
9 permit.  
10

11 (b) No person shall dispose of waste tires in or upon any  
12 public or private land, any site or facility other than a site  
13 or facility which holds a valid permit issued by the Department for such disposal or usage.  
14

15 (c) No person shall knowingly transport or knowingly  
16 allow waste tires under his or her control to be transported  
17 to a site or facility that does not have a valid permit or  
18 license to accept waste tires.

19 (d) No person shall engage in the open burning of waste  
20 tires.

21 (e) Persons who violate this article are subject to all  
22 enforcement actions available to the Secretary under the  
23 provisions of section fifteen, article fifteen, chapter  
24 twenty-two of this code.

25 (f) Except as otherwise provided in subsection (g) of this  
26 section, each retailer is required to accept one tire of  
27 comparable size for each new tire sold at retail. The  
28 retailer may charge a disposal fee to cover the actual costs  
29 of lawful waste tire disposal. No retail tire dealer may  
30 deliver any waste tire, or part thereof, to a person not  
31 authorized by the state of West Virginia to transport or  
32 accept waste tires.

33 (g) Any person purchasing a new tire from a retailer  
34 must provide a used or waste tire for each tire purchased  
35 or sign a waiver, provided to the tire retailer by the  
36 Department, acknowledging that he or she is retaining the  
37 waste tire and that he or she is legally responsible for  
38 proper disposal of each tire retained. These forms are to  
39 be kept by the retailer for three years. If the tire purchaser  
40 returns to the tire retailer with a signed form given to the  
41 purchaser by that retailer, the retailer must accept up to  
42 the total number of comparable size tires as previously  
43 retained by the purchaser: *Provided*, That persons having  
44 winter tires changed or buying new winter tires and  
45 keeping usable summer tires for later installation are not  
46 required to provide a used or waste tire or sign a waiver.

47 (h) Each tire retailer shall post in a conspicuous place a  
48 written notice, provided by the Department, that bears the  
49 following statements:

50 (1) "State law requires us to accept your (old) waste tires  
51 for recycling or proper disposal if you purchase new tires  
52 from us."

53 (2) "State law authorizes us to charge you no more than  
54 the actual cost of disposal of your waste tires even if you  
55 do not leave your tires with us."

56 (3) "It is a crime to burn, bury, abandon or throw away  
57 waste tires without authorization and or permits from the  
58 Department of Environmental Protection."

59 This notice must be at least eight and one-half inches  
60 wide and eleven inches high.

61 (i) Solid waste facilities shall accept whole waste tires  
62 and may charge a reasonable fee for acceptance of waste  
63 tires. All waste tires except those disposed of in a landfill  
64 shall be excluded from the calculation of monthly tonnage  
65 limits and from any solid waste disposal assessment fees  
66 imposed by section nineteen, article fifteen-a, chapter  
67 twenty-two; section eleven, article fifteen, chapter twenty-  
68 two; section four, article sixteen, chapter twenty-two; and  
69 section thirty, article four, chapter twenty-two-c of this  
70 code.

71 (j) Solid waste facilities shall accept and dispose of  
72 whole tires from state authorized tire remediation projects.  
73 All waste tires from state authorized tire remediation  
74 projects except those disposed of in a landfill shall be  
75 excluded from the calculation of monthly tonnage limits  
76 and from any solid waste disposal assessment fees imposed  
77 by section nineteen, article fifteen-a, chapter twenty-two;  
78 section eleven, article fifteen, chapter twenty-two; section  
79 four, article sixteen, chapter twenty-two; and section  
80 thirty, article four, chapter twenty-two-c of this code. For  
81 state-sponsored tire remediation projects, the state may  
82 negotiate with the solid waste facility for rates and  
83 charges for the disposal of waste tires regardless of the  
84 rates and charges established by the Public Service  
85 Commission pursuant to article one, chapter twenty-four  
86 of this code: *Provided*, That the disposal of whole tires in  
87 a solid waste facility is allowed only when the Department  
88 of Environmental Protection has determined there is no  
89 other reasonable alternative available.

90 (k) The Department shall propose for legislative promul-  
91 gation emergency and legislative rules to effectuate the  
92 purposes of this section.

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRON-  
MENTAL ACTION PLAN.**

**§22-15A-1. Legislative findings and purpose.**

1 (a) The Legislature finds that litter is a public nuisance  
2 and distracts from the beauty of the state and its natural  
3 resources. It is therefore necessary to establish and  
4 implement a litter control program to coordinate public  
5 and private litter control efforts; to establish penalties for  
6 littering; to provide for litter pickup programs; to create  
7 education programs; and to provide assistance to local  
8 solid waste authority litter control efforts.

9 (b) The Legislature further finds that the improper  
10 management of commercial and residential solid waste  
11 and the unlawful disposal of such waste creates open  
12 dumps that adversely impacts the state's natural resources,  
13 public water supplies and the public health, safety and  
14 welfare of the citizens of the state. It is therefore neces-  
15 sary to establish a program to promote pollution preven-  
16 tion and to eliminate and remediate open dumps.

17 (c) The Legislature further finds that waste tire piles are  
18 a direct product of state citizens use and enjoyment of  
19 state roads and highways and proper waste tire disposal is  
20 a necessary component of maintenance of the transporta-  
21 tion system. The accumulation of waste tires has also  
22 become a significant environmental and public health  
23 hazard to the state and the location and number of waste  
24 tires are directly related to the efficiency of travel, by  
25 citizens, visitors and of commerce, along public highways  
26 in West Virginia. In particular, the Legislature recognizes  
27 that waste tires are widespread in location and in number  
28 throughout the state; waste tires physically touch and  
29 concern public highways, including, but not limited to,  
30 state roads, county roads, park roads, secondary routes  
31 and orphan roads, all of which interferes with the effi-  
32 ciency of public highways; and further that the existence  
33 of wastetires along and near publichighwaysis sometimes  
34 accompanied by other hazards and, in turn, adversely  
35 impacts the proper maintenance and efficiency of public  
36 highways for citizens.

37 (d) The Legislature also recognizes and declares that  
38 waste tires are a public nuisance and hazard; that waste  
39 tires serve as harborage and breeding places for rodents,  
40 mosquitoes, fleas, ticks and other insects and pests injuri-  
41 ous to the public health, safety and general welfare; that  
42 waste tires collected in large piles pose an excessive risk to  
43 public health, safety and welfare from disease or fire; that  
44 the environmental, economic and societal damage result-  
45 ing from fires in waste tire piles can be avoided by remov-  
46 ing the piles; and that tire pile fires cause extensive  
47 pollution of the air and surface and groundwater for miles  
48 downwind and downstream from the fire.

49 (e) Therefore, in view of the findings relating to waste  
50 tires, the Legislature declares it to be the public policy of  
51 the State of West Virginia to eliminate the present danger  
52 resulting from discarded or abandoned waste tires and to  
53 eliminate the visual pollution resulting from waste tire  
54 piles and that in order to provide for the public health,  
55 safety and welfare, quality of life and to reverse the  
56 adverse impacts to the proper maintenance and efficiency  
57 of public highways, it is necessary to enact legislation to  
58 those ends by providing expeditious means and methods  
59 for effecting the disposal of waste tires.

60 (f) The Legislature finds that many citizens desire a  
61 recycling program in order to conserve limited natural  
62 resources, reduce litter, recycle valuable materials, extend  
63 the useful life of solid waste landfills, reduce the need for  
64 new landfills, and create markets for recyclable materials.  
65 It is therefore necessary to establish goals for recycling  
66 solid waste; to require certain municipalities to implement  
67 recycling programs; to authorize counties to adopt com-  
68 prehensive recycling programs; to encourage source  
69 separation of solid waste; to increase the purchase of  
70 recycled products by the various agencies and instrumen-  
71 talities of government; and to educate the public concern-  
72 ing the benefits of recycling.



73 (g) The Legislature finds that the effectiveness of litter  
74 control, open dump, tire clean up programs and recycling  
75 programs have been made less efficient by fragmented  
76 implementation of the various programs by different  
77 agencies. It is therefore necessary to coordinate all such  
78 programs under one program managed by the Department  
79 to ensure that all current and future litter, open dump,  
80 waste tire and recycling issues are managed and addressed  
81 efficiently and effectively.

82 (h) This article implements the A. James Manchin  
83 Rehabilitation Environmental Action Plan, a coordinated  
84 effort to address litter, waste, open dump, tire clean up  
85 and recycling programs.

**§22-15A-2. Definitions.**

1 Unless the context clearly indicates a different meaning  
2 or defined elsewhere in this chapter, as used in this article:

3 (1) "Beneficial use" means the use or reuse of whole  
4 waste tires or tire derived material which are reused in  
5 constructing retaining walls, rebuilding highway shoulders  
6 and subbase, building highway crash attenuation barriers,  
7 feed hopper or watering troughs for livestock, other  
8 agricultural uses approved by the Department of Environ-  
9 mental Protection, playground equipment, boat or truck  
10 dock construction, house or building construction, go-cart,  
11 motorbike or race track barriers, or similar types of  
12 beneficial applications: *Provided*, That waste tires may  
13 not be reused as fencing, as erosion control structures,  
14 along stream banks or river banks or reused in any manner  
15 where human health or the environment, as determined by  
16 the Secretary of the Department of Environmental Protec-  
17 tion, is put at risk.

18 (2) "Collected for commercial purposes" means taking  
19 solid waste for disposal from any person for remuneration  
20 regardless of whether or not the person taking the solid  
21 waste is a common carrier by motor vehicle governed by  
22 article two, chapter twenty-four-a of this code.

23 (3) "Court" means any circuit, magistrate or municipal  
24 court.

25 (4) "Department" means the Department of Environ-  
26 mental Protection.

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

34 (6) "Litter receptacle" means those containers suitable  
35 for the depositing of litter at each respective public area  
36 designated by the Secretary's rules promulgated pursuant  
37 to subsection (e), section three of this article.

38 (7) "Person" means a natural person, corporation, firm,  
39 partnership, association or society, and the plural as well  
40 as the singular.

41 (8) "Public area" means an area outside of a municipal-  
42 ity, including public road and highway rights-of-way,  
43 parks and recreation areas owned or controlled by this  
44 state or any county of this state, or an area held open for  
45 unrestricted access by the general public.

46 (9) "Remediate or Remediation" means to remove all  
47 litter, solid waste, and tires located above grade at a site:  
48 *Provided*, That remediation does not include clean up of  
49 hazardous waste.

50 (10) "Secretary" means the Secretary of the Department  
51 of Environmental Protection.

52 (11) "Waste tire" means any continuous solid or pneu-  
53 matic rubber covering designed to encircle the wheel of a  
54 vehicle but which has been discarded, abandoned or is no  
55 longer suitable for its original, intended purpose nor  
56 suitable for recapping, or other beneficial use because of

57 wear, damage or defect. A tire is no longer considered to  
58 be suitable for its original intended purpose when it fails  
59 to meet the minimum requirements to pass a West Virginia  
60 motor vehicle safety inspection. Used tires located at a  
61 commercial recapping facility or tire dealer for the  
62 purpose of being reused or recapped are not waste tires.

63 (12) "Waste tire monofill or monofill" means an ap-  
64 proved solid waste facility where no solid waste except  
65 waste tires are placed for the purpose of long term storage  
66 for eventual retrieval for marketing purposes.

67 (13) "Waste tire processing facility" means a solid waste  
68 facility or manufacturer that accepts waste tires generated  
69 by sources other than the owner or operator of the facility  
70 for processing by such means as cryogenics, pyrolysis,  
71 pyroprocessing cutting, splitting, shredding, quartering,  
72 grinding or otherwise breaking down waste tires for the  
73 purposes of disposal, reuse, recycling and/or marketing.

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

**§22-15A-3. West Virginia litter control and recycling programs;  
transfer of programs and employees; additional  
duties of Secretary; grants to counties and mu-  
nicipalities; and rules relating thereto.**

1 (a) On and after the first day of July, two thousand five,  
2 the litter control and recycling programs heretofore  
3 operated and managed by the Division of Natural Re-  
4 sources shall transfer to the Department of Environmental  
5 Protection.

6 With the transfer of the West Virginia Litter Control and  
7 Recycling Programs from the jurisdiction of the Division  
8 of Natural Resources to the jurisdiction of the Department  
9 of Environmental Protection, all records, assets and  
10 contracts, along with rights and obligations thereunder,

11 obtained or signed on behalf of the Litter Control and  
12 Recycling Programs are hereby transferred and assigned  
13 to the Department of Environmental Protection.

14 (b) The Commissioner of the Division of Natural Re-  
15 sources and the Secretary of the Department of Environ-  
16 mental Protection shall determine which employees of the  
17 Division of Natural Resources will be transferred to the  
18 Department of Environmental Protection. All employees  
19 including administrators of the litter control and recycling  
20 programs are subject to being transferred to the Depart-  
21 ment of Environmental Protection. Employees in the  
22 classified service who have gained permanent status as of  
23 the effective date of this article, enacted during the two  
24 thousand five regular session of the Legislature, will not  
25 be subject to further qualifying examination in their  
26 respective classifications by reason of the transfer required  
27 by the provisions of this section. Nothing contained in this  
28 section may be construed to either abridge the rights of  
29 employees within the classified service of the state to the  
30 procedures and protections set forth in article six, chapter  
31 twenty-nine of this code or to preclude the reclassification  
32 or reallocation of positions in accordance with procedures  
33 set forth in said article. The Division of Personnel shall  
34 work with the Commission and Secretary to efficiently  
35 transfer employees from the Division of Natural Resources  
36 to the Department of Environmental Protection.

37 (c) In addition to all other powers, duties and responsi-  
38 bilities granted and assigned to the Secretary of the  
39 Department of Environmental Protection in this chapter  
40 and elsewhere by law, the Secretary, in the administration  
41 of the West Virginia Litter Control Program created by  
42 this section, shall:

43 (1) Coordinate all industry and business organizations  
44 seeking to aid in the litter control and recycling effort;

45 (2) Cooperate with all local governments to accomplish  
46 coordination of local litter control and recycling efforts;

47 (3) Encourage, organize, coordinate and increase public  
48 awareness of and participation in all voluntary litter  
49 control and recycling campaigns, including citizen litter  
50 watch programs, seeking to focus the attention of the  
51 public on the litter control and recycling programs of the  
52 state and local governments and of private recycling  
53 centers;

54 (4) Recommend to local governing bodies that they adopt  
55 ordinances similar to the provisions of section four of this  
56 article;

57 (5) Investigate the methods and success of techniques of  
58 litter control, removal and disposal utilized in other states,  
59 and develop, encourage, organize and coordinate local  
60 litter control programs funded by grants awarded pursu-  
61 ant to subsection (d) of this section utilizing such success-  
62 ful techniques;

63 (6) Investigate the availability of, and apply for, funds  
64 available from any and all private or public sources to be  
65 used in the litter control program created by this section;

66 (7) Attract to the state persons or industries that pur-  
67 chase, process or use recyclable materials; and

68 (8) Contract for the development, production and  
69 broadcast of radio and television messages promoting the  
70 West Virginia Litter Control Program. The messages  
71 should increase public awareness of and promote citizen  
72 responsibility toward the reduction of litter.

73 (d) All authority to promulgate rules pursuant to article  
74 three, chapter twenty-nine-a of this code establishing  
75 criteria for awarding direct or matching grants for the  
76 study of available research and development in the fields  
77 of litter control, removal and disposal, methods for the  
78 implementation of such research and development, and the  
79 development of public educational programs concerning  
80 litter control is hereby transferred from the Division of  
81 Natural Resources to the Secretary of the Department of

82 Environmental Protection as of the effective date of  
83 enactment of this section and article during the two  
84 thousand five session of the Legislature: *Provided*, That  
85 any rule promulgated by the Division of Natural Resources  
86 relating to such grants shall remain in force and effect as  
87 though promulgated by the Department of Environmental  
88 Protection until the Secretary amends the rules in accor-  
89 dance with the provisions of article three, chapter twenty-  
90 nine-a of this code.

91 (e) All authority to promulgate rules pursuant to article  
92 three, chapter twenty-nine-a of this code designating  
93 public areas where litter receptacles shall be placed and  
94 the minimum number of litter receptacles in accordance  
95 with subsection (g), section four of this article is hereby  
96 transferred from the Division of Natural Resources to the  
97 Secretary of the Department of Environmental Protection  
98 as of the effective date of enactment of this section and  
99 article during the two thousand five session of the Legisla-  
100 ture. Any rule promulgated by the Division of Natural  
101 Resources relating to littering receptacles shall remain in  
102 effect as if promulgated by the Secretary until amended by  
103 the Secretary.

104 (f) Commencing on the first day of July, two thousand  
105 five, the Secretary shall expend annually at least fifty  
106 percent of the moneys credited to the Litter Control Fund  
107 in the previous fiscal year for matching grants to counties  
108 and municipalities for the initiation and administration of  
109 litter control programs. The Secretary shall promulgate  
110 rules pursuant to article three, chapter twenty-nine-a of  
111 this code establishing criteria for the awarding of match-  
112 ing grants.

113 (g) The Secretary of the Department of Environmental  
114 Protection in cooperation with the Commissioner of  
115 Highways, the Department of Commerce, the West Vir-  
116 ginia State Police, the United States Forestry Service and  
117 other local, state and federal law-enforcement agencies  
118 shall be responsible for the administration and enforce-

119 ment of all laws and rules relating to the maintenance of  
120 cleanliness and improvement of appearances on and along  
121 highways, roads, streets, alleys and any other private or  
122 public areas of the state. These other agencies shall make  
123 recommendations to the Secretary, from time to time,  
124 concerning means and methods of accomplishing litter  
125 control consistent with the provisions of this chapter.  
126 Such cooperation shall include, but not be limited to,  
127 contracts with the Commissioner of Highways to operate  
128 a litter control program.

129 (h) All other state agencies and local governments shall  
130 cooperate with the Secretary in effecting the purposes of  
131 the litter control program.

**§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.**

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

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

14 (3) If any litter is placed, deposited, dumped, discharged,  
15 thrown or caused to be placed, deposited, dumped or  
16 thrown from a motor vehicle, boat, airplane or other  
17 conveyance, it is prima facie evidence that the owner or  
18 the operator of the motor vehicle, boat, airplane or other

19 conveyance intended to violate the provisions of this  
20 section.

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

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

50 (6) Any person who violates the provisions of this section  
51 by placing, depositing, dumping or throwing or causing to  
52 be placed, deposited, dumped or thrown any litter in an  
53 amount greater than five hundred pounds in weight or two  
54 hundred sixteen cubic feet in size or any amount which  
55 had been collected for commercial purposes is guilty of a



56 misdemeanor. Upon conviction, the person is subject to a  
57 fine not less than twenty-five hundred dollars or not more  
58 than twenty-five thousand dollars, or confinement in a  
59 county or regional jail for not more than one year or both.  
60 In addition, the violator may be guilty of creating or  
61 contributing to an open dump as defined in section two,  
62 article fifteen, chapter twenty-two of this code and subject  
63 to the enforcement provisions of section fifteen of said  
64 article.

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

69 (8) The sentence of litter clean up shall be verified by  
70 environmental inspectors from the Department of Envi-  
71 ronmental Protection. Any defendant receiving the  
72 sentence of litter clean up shall provide, within a time to  
73 be set by the court, written acknowledgment from an  
74 environmental inspector that the sentence has been  
75 completed and the litter has been disposed of lawfully.

76 (9) Any person who has been found by the court to have  
77 willfully failed to comply with the terms of a litter clean  
78 up sentence imposed by the court pursuant to this section  
79 is subject to, at the discretion of the court, double the  
80 amount of the original fines and community service  
81 penalties originally ordered by the court.

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

86 (11) No portion of this section restricts an owner, renter  
87 or lessee in the lawful use of his or her own private  
88 property or rented or leased property or to prohibit the  
89 disposal of any industrial and other wastes into waters of  
90 this state in a manner consistent with the provisions of

91 article eleven, chapter twenty-two of this code. But if any  
92 owner, renter or lessee, private or otherwise, knowingly  
93 permits any such materials or substances to be placed,  
94 deposited, dumped or thrown in such location that high  
95 water or normal drainage conditions will cause any such  
96 materials or substances to wash into any waters of the  
97 state, it is prima facie evidence that the owner, renter or  
98 lessee intended to violate the provisions of this section:  
99 *Provided*, That if a landowner, renter or lessee, private or  
100 otherwise, reports any placing, depositing, dumping or  
101 throwing of these substances or materials upon his or her  
102 property to the prosecuting attorney, county commission,  
103 the Division of Natural Resources or the Department of  
104 Environmental Protection, the landowner, renter or lessee  
105 will be presumed to not have knowingly permitted the  
106 placing, depositing, dumping or throwing of the materials  
107 or substances.

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

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

123 The clerk of the circuit court, magistrate court or  
124 municipal court in which these additional costs are  
125 imposed shall, on or before the last day of each month,  
126 transmit fifty percent of a civil penalty received pursuant  
127 to this section to the State Treasurer for deposit in the

128 State Treasury to the credit of a special revenue fund to be  
129 known as the Litter Control Fund which is hereby contin-  
130 ued and transferred to the Department of Environmental  
131 Protection. Expenditures for purposes set forth in this  
132 section are not authorized from collections but are to be  
133 made only in accordance with appropriation and in  
134 accordance with the provisions of article three, chapter  
135 twelve of this code and upon fulfillment of the provisions  
136 set forth in article two, chapter five-a of this code.  
137 Amounts collected which are found from time to time to  
138 exceed the funds needed for the purposes set forth in this  
139 article may be transferred to other accounts or funds and  
140 designated for other purposes by appropriation of the  
141 Legislature.

142 (d) The remaining fifty percent of each civil penalty  
143 collected pursuant to this section shall be transmitted to  
144 the county or regional solid waste authority in the county  
145 where the litter violation occurred. Moneys shall be  
146 expended by the county or regional solid waste authority  
147 for the purpose of litter prevention, clean up and enforce-  
148 ment. The county commission shall cooperate with the  
149 county or regional solid waste authority serving the  
150 respective county to develop a coordinated litter control  
151 program pursuant to section eight, article four, chapter  
152 twenty-two-c of this code.

153 (e) The Commissioner of the Division of Motor Vehicles,  
154 upon registering a motor vehicle or issuing an operator's  
155 or chauffeur's license, shall issue to the owner or licensee,  
156 as the case may be, a summary of this section and section  
157 fourteen, article fourteen, chapter seventeen-c of the code.

158 (f) The Commissioner of the Division of Highways shall  
159 cause appropriate signs to be placed at the state boundary  
160 on each primary and secondary road, and at other loca-  
161 tions throughout the state, informing those entering the  
162 state of the maximum penalty provided for disposing of  
163 litter in violation of subsection (a) of this section.

164 (g) Any state agency or political subdivision that owns,  
165 operates or otherwise controls any public area as may be  
166 designated by the Secretary by rule promulgated pursuant  
167 to subdivision (8), subsection (a), section three of this  
168 article shall procure and place litter receptacles at its own  
169 expense upon its premises and shall remove and dispose of  
170 litter collected in the litter receptacles. After receiving  
171 two written warnings from any law-enforcement officer or  
172 officers to comply with this subsection or the rules of the  
173 Secretary, any state agency or political subdivision that  
174 fails to place and maintain the litter receptacles upon its  
175 premises in violation of this subsection or the rules of the  
176 Secretary shall be fined fifteen dollars per day of the  
177 violation.

**§22-15A-5. Litter pickup and removal; education; government  
recycling responsibilities; monitoring and evaluation;  
study commission; repeal; report to Legislature.**

1 (a) *Litter pickup and removal.* –

2 (1) Each county commission and the Regional Jail  
3 Authority may establish a jail or prison inmate program  
4 including a regular litter pickup work regimen under  
5 proper supervision pursuant to section four, article fifteen,  
6 chapter seventeen of this code. Funding for these pro-  
7 grams shall be from the Litter Control Fund. Funding  
8 requirements may include salaries for additional personnel  
9 needed for the program. The program may include the  
10 cooperative help of the Division of Highways or any other  
11 voluntary state, local, private, civic or public agency for  
12 personnel, equipment or materials in establishing a county  
13 or regionwide, continual program of inmate litter pickup.  
14 Upon final approval of the projected cost of the program  
15 for a given fiscal year, the Secretary shall disburse the  
16 approved amount to the county or Regional Jail Authority.  
17 The funds will be used by the Authority to reimburse the  
18 county commission or Regional Jail Authority for its  
19 expenses related to the program and to pay other costs

20 related to the use of inmates for litter pickup. Nothing  
21 contained herein shall preclude a county or counties from  
22 expending whatever additional funds its commission or  
23 commissions may deem appropriate from any other  
24 revenue source in furtherance of said program.

25 (2) All persons involved with litter pickup may separate  
26 identifiable recyclable materials from other litter col-  
27 lected. The funds resulting from the sale of those recycla-  
28 ble materials shall be returned to the Litter Control Fund.

29 (3) The county or regional solid waste authority may also  
30 contract with local governments, civic organizations or  
31 chief correctional officers in any county to implement  
32 litter pickup and removal pursuant to this act when the  
33 state offender work force is not available. In such cases,  
34 the contract provisions shall require that identifiable  
35 recyclable materials shall be separated from other litter  
36 collected, with resulting funds returned to the Litter  
37 Control Fund. Priority shall be given to those contracts  
38 that maximize the use of community service hours by  
39 inmates and youth employment programs.

40 (b) *Education.* –

41 (1) The Department of Education in cooperation with the  
42 Department of Environmental Protection shall distribute  
43 educational materials to the schools based on the goals of  
44 litter clean up and proper solid waste disposal, the ratio-  
45 nale for the goals and how primary and secondary school  
46 students can contribute to the achievement of the goals.  
47 The Department of Education shall further incorporate  
48 this information into the curriculum of the public school  
49 system as appropriate.

50 (2) The Division of Highways and local governments  
51 shall conduct public awareness programs to notify the  
52 public of the provisions of this law and how they can  
53 participate, to inform them as to the rationale behind the  
54 provisions of this law, to advise them of other avenues for

55 achievement of the noted goals and to encourage their  
56 participation.

57 (3) The Department of Environmental Protection and the  
58 Solid Waste Management Board shall provide technical  
59 assistance to local governments in the implementation of  
60 this law.

61 (c) *Government recycling responsibilities.* –

62 (1) All state agencies and regional planning councils may  
63 establish and implement aluminum container, glass and  
64 paper recycling programs at their public facilities. To the  
65 extent practicable, programs for other metals, plastics,  
66 rubber and other recyclable materials may be established  
67 and implemented. The moneys collected from the sale of  
68 such materials shall be deposited and accounted for in the  
69 Litter Control Fund pursuant to the authority of section  
70 four of this article.

71 (2) To further promote recycling and reduction of the  
72 waste stream, county and municipal governments shall  
73 consider the establishment of recycling programs as  
74 provided in this section in the operation of their facilities  
75 and shall evaluate the cost-effectiveness of:

76 (A) Procedures that separate identifiable recyclable  
77 materials from solid waste collected; and

78 (B) Programs that provide for:

79 (i) The establishment of a collection place for recyclables  
80 at all landfills and other interim solid waste collection  
81 sites and arrangements for the material collected to be  
82 recycled;

83 (ii) Public notification of such places and encouragement  
84 to participate;

85 (iii) The use of rate differentials at landfills to facilitate  
86 public participation in on-site recycling programs.

87 (d) Each affected agency and local government shall  
88 monitor and evaluate the programs implemented pursuant  
89 to this law.

90 (e) The Secretary shall submit a report to the Speaker of  
91 the House and the President of the Senate not later than  
92 the first day of March, two thousand six, and every five  
93 years thereafter regarding the effectiveness of the pro-  
94 grams authorized by this law.

**§22-15A-6. Assistance to solid waste authorities.**

1 The Secretary may expend funds from the Litter Control  
2 Fund established pursuant to section four of this article to  
3 assist county and regional solid waste authorities in the  
4 formulation of their comprehensive litter and solid waste  
5 control plans pursuant to section eight, article four,  
6 chapter twenty-two-c of this code and in the construction  
7 and maintenance of approved commercial solid waste  
8 facilities authorities which would in the opinion of the  
9 Secretary be unable to construct or maintain an approved  
10 commercial solid waste facility without grant funds.

**§22-15A-7. Pollution prevention and open dumps.**

1 (a) The Secretary shall establish the Pollution Prevention  
2 and Open Dump (PPOD) Program to encourage the proper  
3 disposal of commercial and residential solid waste and to  
4 undertake all reclamation, clean up and remedial actions  
5 necessary to minimize or mitigate damage to the environ-  
6 ment, natural resources, public water supplies, water  
7 resources and the public health, safety and welfare which  
8 may result from open dumps or solid waste not disposed of  
9 in a proper or lawful manner. The program shall seek to  
10 eliminate open dumps, which often include waste tires and  
11 to recycle as many items as possible from these reclama-  
12 tion efforts. This program shall be funded through the  
13 Solid Waste Reclamation and Environmental Response  
14 Fund established in section eleven, article fifteen of this  
15 chapter.

16 (b) Authorized representatives of the Department have  
17 the right, upon presentation of proper identification, to  
18 enter upon any property for the purpose of conducting  
19 studies or exploratory work to determine the existence of  
20 adverse effects of an open dump, to determine the feasibil-  
21 ity of the reclamation or prevention of such adverse effects  
22 and to conduct reclamation activities provided herein.  
23 Such entry is an exercise of the police power of the state  
24 and for the protection of public health, safety and general  
25 welfare and is not an act of condemnation of property or  
26 trespass thereon. Nothing contained in this section  
27 eliminates any obligation to follow any process that may  
28 be required by law.

**§22-15A-8. Waste tires prohibited in certain places; penalty.**

1 The Waste Tire Remediation Program heretofore under  
2 the jurisdiction of the Division of Highways is transferred  
3 to the Department of Environmental Protection effective  
4 upon enactment of this article by the Legislature during  
5 the regular session of two thousand five.

6 (a) No person shall, within this state, place, deposit or  
7 abandon any waste tire or part thereof upon the right-of-  
8 way of any public highway or upon any other public  
9 property nor deposit or abandon any waste tire or part  
10 thereof upon any private property unless it is at a licensed  
11 monofill, solid waste facility or at any other business  
12 authorized by the Department of Environmental Protec-  
13 tion to accept, process, manufacture or remanufacture  
14 waste tires: *Provided*, That the Secretary may temporarily  
15 accumulate as many waste tires as he or she deems neces-  
16 sary at any location or locations necessary to effectuate  
17 the purposes of this article.

18 (b) No person, except those persons who have received  
19 and maintain a valid permit or license from the state for  
20 the operation of a solid waste facility, waste tire monofill,  
21 waste tire processing facility, or other such permitted  
22 activities, shall accumulate more than one hundred waste



23 tires for beneficial use without obtaining a license or  
24 permit from the Department of Environmental Protection.

25 (c) Any person who violates any provision of this section  
26 shall be guilty of creating an open dump and subject to  
27 enforcement actions or prosecution under the provisions of  
28 article fifteen of this chapter.

**§22-15A-9. Creation of the A. James Manchin Fund; proceeds  
from sale of waste tires; fee on issuance of certifi-  
cate of title.**

1 (a) There is continued in the State Treasury a special  
2 revenue fund known as the A. James Manchin Fund. All  
3 moneys appropriated, deposited or accrued in this Fund  
4 shall be used exclusively for remediation of waste tire piles  
5 as required by this article, for the tire disposal program  
6 established under section ten of this article or for the  
7 purposes of subsection (h), section ten of this article or for  
8 the purposes of subsection (c), section eleven of this article.  
9 The Commissioner of the Division of Highways shall work  
10 with and may use moneys in the fund to contract with the  
11 Secretary of the Department of Environmental Protection  
12 to accomplish the remediation of waste tire piles. The  
13 Fund consists of the proceeds from the sale of waste tires;  
14 fees collected by the Division of Motor Vehicles as pro-  
15 vided in section sixteen, article ten, chapter seventeen-a of  
16 this code; any federal, state or private grants; legislative  
17 appropriations; loans; and any other funding source  
18 available for waste tire remediation. Any unprogrammed  
19 balance remaining in the Fund at the end of any state  
20 fiscal year shall be transferred to the State Road Fund.

21 (b) No further collections or deposits shall be made after  
22 the Commissioner of the Division of Highways certifies to  
23 the Governor and the Legislature that the remediation of  
24 all waste tire piles that were determined by the Commis-  
25 sioner to exist on the first day of July, two thousand one,  
26 has been completed and that all infrastructure bonds  
27 issued by the Water Development Authority pursuant to

28 section seventeen-a, article fifteen-a, chapter thirty-one of  
29 this code have been paid in full or legally defeased.

30 (c) If infrastructure bonds are not issued by the Water  
31 Development Authority pursuant to section seventeen-a,  
32 article fifteen-a, chapter thirty-one of this code to finance  
33 infrastructure projects relating to waste tire processing  
34 facilities located in this state on or before the thirty-first  
35 day of December, two thousand six, all further collections  
36 and deposits to the A. James Manchin Fund which are not  
37 programmed for remediation or disposal shall be trans-  
38 ferred to the state road fund at the end of each fiscal year.

**§22-15A-10. Department to administer funds for waste tire  
remediation; rules authorized; duties of Secretary.**

1 (a) The Department shall administer all funds made  
2 available to the Department by legislative appropriation  
3 or by funds made available by the Division of Highways,  
4 as well as federal, state or private grants for remediation  
5 of waste tire piles and for the proper disposal of waste  
6 tires removed from waste tire piles.

7 (b) All authority to promulgate legislative rules neces-  
8 sary to implement the provisions of this article is hereby  
9 transferred from the Division of Highways to the Secre-  
10 tary of the Department of Environmental Protection as of  
11 the effective date of enactment of this section and article  
12 during the two thousand five session of the Legislature.  
13 Any legislative rules promulgated by the Commissioner of  
14 the Division of Highways in furtherance of the waste tire  
15 remediation program established in former article twenty-  
16 four, chapter seventeen of this code shall remain in force  
17 and effect as if promulgated by the Secretary until they  
18 are amended in accordance with the provisions of article  
19 three, chapter twenty-nine-a of this code.

20 (c) The Secretary also has the following powers:

21 (1) To apply and carry out the provisions of this article  
22 and the rules promulgated under this article.

23 (2) To investigate, from time to time, the operation and  
24 effect of this article and of the rules promulgated under  
25 this article and to report his or her findings and recom-  
26 mendations to the Legislature and the Governor.

27 (d) On or before the first day of July, two thousand six,  
28 the Secretary shall determine the location, approximate  
29 size and potential risk to the public of all waste tire piles  
30 in the state and establish, in descending order, a waste tire  
31 remediation list.

32 (e) The Secretary may contract with the Department of  
33 Health and Human Resources or the Division of Correc-  
34 tions, or both, to remediate or assist in remediation of  
35 waste tire piles throughout the state. Use of available  
36 Department of Health and Human Resources and the  
37 Division of Corrections work programs shall be given  
38 priority status in the contract process so long as such  
39 programs prove a cost-effective method of remediating  
40 waste tire piles.

41 (f) Waste tire remediation shall be stopped upon the  
42 discovery of any potentially hazardous material at a  
43 remediation site. The Department shall respond to the  
44 discovery in accordance with the provisions of article  
45 nineteen of this chapter.

46 (g) The Secretary may establish a tire disposal program  
47 within the Department to provide for a cost effective and  
48 efficient method to accept passenger car and light truck  
49 waste tires at locations designated by the Department that  
50 have sufficient space for temporary storage of waste tires  
51 and personnel to accept and handle waste tires. The  
52 Secretary may pay a fee for each tire an individual West  
53 Virginia resident or West Virginia business brings to the  
54 Department. The Secretary may establish a limit on the  
55 number of tires an individual or business may be paid for

56 during any calendar month. The Secretary may in his or  
57 her discretion authorize commercial businesses to partici-  
58 pate in the collection program: *Provided*, That no person  
59 or business who has a waste tire pile subject to  
60 remediation under this article may participate in this  
61 program.

62 (h) The Commissioner of the Division of Highways may  
63 pledge not more than two and one-half million dollars  
64 annually of the moneys appropriated, deposited or accrued  
65 in the A. James Manchin Fund created by section nine of  
66 this article to the payment of debt service, including the  
67 funding of reasonable reserves, on bonds issued by the  
68 Water Development Authority pursuant to section seven-  
69 teen-a, article fifteen-a, chapter thirty-one of this code to  
70 finance infrastructure projects relating to waste tire  
71 processing facilities located in this state: *Provided*, That  
72 a waste tire processing facility shall be determined by the  
73 Solid Waste Management Board, established pursuant to  
74 the provisions of article three, chapter twenty-two-c of  
75 this code, to meet all applicable federal and state environ-  
76 mental laws and rules and to aid the state in efforts to  
77 promote and encourage recycling and use of constituent  
78 component parts of waste tires in an environmentally  
79 sound manner: *Provided, however*, That the waste tire  
80 processing facility shall have a capital cost of not less than  
81 three hundred million dollars and the council for commu-  
82 nity and economic development shall determine that the  
83 waste tire processing facility is a viable economic develop-  
84 ment project of benefit to the state's economy.

**§22-15A-11. Disposal of waste tires.**

1 (a) The Department may sell waste tires collected during  
2 remediation of waste tire piles at public auction or to a  
3 waste tire monofill, waste tire processing facility or  
4 business authorized by the Department of Environmental  
5 Protection to accept, store, use or process waste tires.

6 (b) If there is no market in West Virginia for the sale of  
7 waste tires the Department may sell them at any available  
8 market.

9 (c) If there is no market for the sale of waste tires the  
10 Department may dispose of them in any lawful manner.

**§22-15A-12. Remediation; liability for remediation and court costs.**

1 (a) Any person who has, prior or subsequent to the  
2 effective date of this act, illegally disposed of waste tires  
3 or has waste tires illegally disposed on his or her property  
4 shall be liable for:

5 (1) All costs of removal or remedial action incurred by  
6 the Department;

7 (2) Any other necessary costs of remediation, including  
8 properly disposing of waste tires and damage to adjacent  
9 property owners; and

10 (3) All costs incurred in bringing civil actions under this  
11 article.

12 (b) The Department shall notify any person who owns  
13 real property or rights to property where a waste tire pile  
14 is located that remediation of the waste tire pile is neces-  
15 sary. The Department shall make and enter an order  
16 directing such person or persons to remove and properly  
17 dispose of the waste tires. The Department shall set a time  
18 limit for completion of the remediation. The order shall be  
19 served by registered or certified mail, return receipt  
20 requested, or by a county sheriff or deputy sheriff.

21 (c) If the remediation is not completed within the time  
22 limit or the person cannot be located or the person notifies  
23 the Department that he or she is unable to comply with the  
24 order, the Department may expend funds, as provided  
25 herein, to complete the remediation. Any amounts so  
26 expended shall be promptly repaid by the person or  
27 persons responsible for the waste tire pile. Any person

28 owing remediation costs or damages shall be liable at law  
29 until such time as all costs or damages are fully paid.

30 (d) Authorized representatives of the Department have  
31 the right, upon presentation of proper identification, to  
32 enter upon any property for the purpose of conducting  
33 studies or exploratory work to determine the existence of  
34 adverse effects of a waste tire pile, to determine the  
35 feasibility of the remediation or prevention of such adverse  
36 effects and to conduct remediation activities provided  
37 herein. Such entry is an exercise of the police power of the  
38 state and for the protection of public health, safety and  
39 general welfare and is not an act of condemnation of  
40 property or trespass thereon. Nothing contained in this  
41 section eliminates any obligation to follow any process  
42 that may be required by law.

43 (e) There is hereby created a statutory lien upon all real  
44 property and rights to the property from which a waste  
45 tire pile was remediated for all reclamation costs and  
46 damages incurred by the Department. The lien created by  
47 this section shall arise at the later of the following:

48 (1) The time costs are first incurred by the Department;  
49 or

50 (2) The time the person is provided, by certified or  
51 registered mail or personal service, written notice as  
52 required by this section.

53 The lien shall continue until the liability for the costs or  
54 judgment against the property is satisfied.

55 (f) Any person, who is a bona fide purchaser of real  
56 property prior to the first day of July, two thousand one,  
57 who did not cause, permit or profit from the illegal  
58 disposal of waste tires on the property is only liable for the  
59 costs of remediation to the extent that the fair market  
60 value of the property, when remediation is completed,  
61 exceeds the fair market value of the property that existed  
62 on the first day of July, two thousand one. The Depart-

63 ment shall have a cause of action against any previous  
64 owner who caused, permitted, contributed or profited from  
65 the illegal disposal of waste tires on the property for the  
66 difference in the amount recovered from the purchaser and  
67 the cost of remediation.

68 (g) Liens created by this section shall be duly recorded  
69 in the office of the clerk of the county commission in the  
70 county where the real property is located and be liens of  
71 equal dignity, rank and priority with the lien on such  
72 premises of state, county, school and municipal taxes for  
73 the amount thereof upon the real property served. The  
74 Department shall have the power and authority to enforce  
75 such liens in a civil action to recover the money due for  
76 remediation costs and damages plus court fees and costs  
77 and reasonable attorney's fees.

78 (h) The Department may foreclose upon the premises by  
79 bringing a civil action, in the circuit court of the county  
80 where the property is located, for foreclosure and an order  
81 to sell the property to satisfy the lien.

82 (i) Any proceeds from any sale of property obtained as  
83 a result of execution of a lien or judgment under this  
84 section for remediation costs, excluding costs of obtaining  
85 judgment and perfecting the lien, shall be deposited into  
86 the A. James Manchin Fund of the State Treasury.

87 (j) The provisions of this section do not apply and no lien  
88 may attach to the right-of-way, easement or other prop-  
89 erty interest of a utility, whether electric, gas, water,  
90 sewer, telephone, television cable or other public service,  
91 unless the utility contributed to the illegal tire pile.

92 (k) Upon determining the existence of a waste tire pile,  
93 the Department shall file a notice of the location of the  
94 waste tire pile in the office of the county clerk in the  
95 county where property containing a waste tire pile is  
96 situate. The Department shall immediately file the notice  
97 for all property known to have waste tire piles as of the

98 day the Legislature enacted the amendment to this section  
99 during the two thousand five legislative session. The  
100 notice shall contain the property owner's name, a location  
101 and description of the property and the waste tire pile and  
102 the potential liability for remediation. The county clerk  
103 shall record the notice in the same manner as a lien and  
104 index the notice by the name of the property owner.

**§22-15A-13. Injunctive relief; additional remedy.**

1 In addition to all other remedies provided in this article,  
2 the Attorney General of this state, the Department, the  
3 prosecuting attorney of any county where any violation of  
4 any provision of this article occurs, or any citizen, resident  
5 or taxpayer of the county where any violation of any  
6 provision of this article occurs, may apply to the circuit  
7 court, or the judge thereof in vacation, of the county where  
8 the alleged violation occurred, for an injunction to re-  
9 strain, prevent or abate the maintenance and storage of  
10 waste tires in violation of any provision of this article, or  
11 the violation of any other provision of this article. In  
12 seeking an injunction, it is not necessary for the Secretary  
13 or any state agency seeking an injunction under this  
14 section to post bond.

**§22-15A-14. Authority of Commissioner of Bureau for Public Health.**

1 Although the Secretary is primarily responsible for  
2 remediation of waste tire piles under the provisions of this  
3 article, the Commissioner of the Bureau for Public Health  
4 may enforce the public health laws in any instance where  
5 the Commissioner of the Bureau for Public Health deter-  
6 mines there is an imminent and substantial endangerment  
7 to the public health.

**§22-15A-15. Continuation of waste tire remediation program.**

1 The waste tire remediation program shall continue to  
2 exist, pursuant to the provisions of article ten, chapter  
3 four of this code until the first day of July, two thousand



4 six, unless sooner terminated, continued or reestablished  
5 pursuant to the provisions of that article.

**§22-15A-16. Recycling goals.**

1 By the first day of January, two thousand ten, it is the  
2 goal of this state to reduce the disposal of municipal solid  
3 waste by fifty percent of the amount of per capita solid  
4 waste disposed of in one thousand nine hundred  
5 ninety-one.

**§22-15A-17. 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 eight,  
4 article four, chapter twenty-two-c of this code, shall  
5 prepare and adopt a comprehensive recycling plan to assist  
6 in the implementation of the recycling goals in section  
7 sixteen 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 county,  
12 which shall include at least three recyclable materials; and

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

**§22-15A-18. Establishment of county recycling programs for  
solid waste; petition for referendum; ballot  
contents; election procedure; effect of such  
election.**

1 (a) On or before the eighteenth day of October, one  
2 thousand nine hundred ninety-two, each municipality  
3 described in subsection (b) of this section shall submit a  
4 proposal to the Solid Waste Management Board, consistent  
5 with the provisions of this section, describing the estab-

6 lishment and implementation of the mandatory recycling  
7 program. The Solid Waste Management Board shall  
8 review the submitted plans for consistency with the  
9 criteria provided in this section, the county or regional  
10 solid waste management plan and the statewide manage-  
11 ment plan. The Solid Waste Management Board may  
12 make suggested changes to the plan and shall provide  
13 technical assistance to the municipalities in the develop-  
14 ment of the plans.

15 (b) On or before the eighteenth day of October, one  
16 thousand nine hundred ninety-three, each municipality  
17 with a population of ten thousand or more people, as  
18 determined by the most recent decennial census by the  
19 Bureau of the Census of the United States Department of  
20 Commerce, shall establish and commence implementation  
21 of a source separation and curbside collection program for  
22 recyclable materials. Implementation shall be phased in  
23 by the first day of July, one thousand nine hundred ninety-  
24 five. Such program shall include, at a minimum, the  
25 following:

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

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

37 (3) A system that collects recyclable materials from the  
38 curbside, or similar location, at least once per month:  
39 *Provided*, That to encourage full participation, the pro-  
40 gram shall, to the maximum extent possible, provide for  
41 the collection of recyclables at the same rate of frequency,

42 and simultaneous with, the regular collection of solid  
43 waste.

44 (4) Provisions to ensure compliance with the ordinance,  
45 including incentives and penalties.

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

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

60 (c) Notwithstanding the provisions of subsection (b) of  
61 this section, a comprehensive recycling program for solid  
62 waste may be established in any county of this state by  
63 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 collec-  
69 tion service in the county or transporting solid waste to a  
70 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 solid waste from which  
74 recyclable materials in accordance with the county's  
75 comprehensive recycling program have been segregated;  
76 and

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

81 (d) For the purposes of this article, recyclable materials  
82 shall include, but not be limited to, steel and bimetallic  
83 cans, aluminum, glass, paper and such other solid waste  
84 materials as may be specified by either the municipality or  
85 county commission with the advice of the county or  
86 regional solid waste authority.

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

114 special election to determine whether it is the will of the  
115 voters of the county that a policy of comprehensive  
116 recycling of solid waste be established in the county:  
117 *Provided*, That the petition bearing the necessary signa-  
118 tures has been filed with the county commission at least  
119 one hundred days prior to the election.

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

123 “Shall the County Commission be required to establish  
124 a comprehensive recycling program for solid waste in  
125 \_\_\_\_\_ County, West Virginia?

126  For Recycling

127  Against Recycling

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

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

143 (f) A comprehensive recycling program for solid waste  
144 established by petition and referendum may be rescinded  
145 only pursuant to the procedures set out herein to establish  
146 the program.

147 To rescind the program, the ballot, or the ballot labels  
148 where voting machines are used, shall have printed  
149 thereon substantially the following:

150 “Shall the County Commission be required to terminate  
151 the comprehensive recycling program for solid waste in  
152 \_\_\_\_\_ County, West Virginia?

153  Continue Recycling

154  End Recycling

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

156 (g) If a majority of legal votes cast upon the question be  
157 for the termination of a policy of comprehensive recycling  
158 of solid waste previously established in the county, the  
159 county commission shall, after the certification of the  
160 results of the referendum, thereafter rescind by ordinance  
161 the comprehensive recycling program for solid waste in the  
162 county within ninety days of certification. If a majority of  
163 the legal votes cast upon the question be for the continua-  
164 tion of the policy of comprehensive recycling of solid  
165 waste, the ordinance shall not be rescinded, but the  
166 question may again be submitted to a vote at any subse-  
167 quent election in the manner herein provided.

168 (h) In the case of any municipality having a population  
169 greater than thirty thousand persons, as indicated by the  
170 most recent decennial census conducted by the United  
171 States, the governing body of such municipality may by  
172 ordinance establish a materials recovery facility in lieu of  
173 or in addition to the mandatory recycling program re-  
174 quired under the provisions of this section: *Provided*, That  
175 a materials recovery facility shall be subject to approval  
176 by both the Public Service Commission and the Solid  
177 Waste Management Board upon a finding by both the  
178 Public Service Commission and the Solid Waste Manage-  
179 ment Board that the establishment of a materials recovery  
180 facility will not hinder, and will be consistent with, the  
181 purposes of this article.

**§22-15A-19. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.**

1 (a) *Imposition.* – A recycling assessment fee is hereby  
2 levied and imposed upon the disposal of solid waste at all  
3 solid waste disposal facilities in this state, to be collected  
4 at the rate of two dollars per ton or part of a ton of solid  
5 waste. The fee imposed by this section is in addition to all  
6 other fees levied by law.

7 (b) *Collection, return, payment and records.* – The  
8 person disposing of solid waste at the solid waste disposal  
9 facility shall pay the fee imposed by this section, whether  
10 or not that person owns the solid waste, and the fee shall  
11 be collected by the operator of the solid waste facility who  
12 shall remit it to the Tax Commissioner:

13 (1) The fee imposed by this section accrues at the time  
14 the solid waste is delivered to the solid waste disposal  
15 facility;

16 (2) The operator shall remit the fee imposed by this  
17 section to the Tax Commissioner on or before the fifteenth  
18 day of the month next succeeding the month in which the  
19 fee accrued. Upon remittance of the fee, the operator shall  
20 file returns on forms and in the manner as prescribed by  
21 the Tax Commissioner;

22 (3) The operator shall account to the state for all fees  
23 collected under this section and shall hold them in trust  
24 for the state until they are remitted to the Tax Commis-  
25 sioner;

26 (4) If any operator fails to collect the fee imposed by this  
27 section, he or she is personally liable for the amount that  
28 he or she failed to collect, plus applicable additions to tax,  
29 penalties and interest imposed by article ten, chapter  
30 eleven of this code;

31 (5) Whenever any operator fails to collect, truthfully  
32 account for, remit the fee or file returns with the fee as

33 required in this section, the Tax Commissioner may serve  
34 written notice requiring the operator to collect the fees  
35 which become collectible after service of the notice, to  
36 deposit the fees in a bank approved by the Tax Commis-  
37 sioner, in a separate account, in trust for and payable to  
38 the Tax Commissioner, and to keep the amount of the fees  
39 in the account until remitted to the Tax Commissioner.  
40 The notice remains in effect until a notice of cancellation  
41 is served on the operator or owner by the Tax Commis-  
42 sioner;

43 (6) Whenever the owner of a solid waste disposal facility  
44 leases the solid waste facility to an operator, the operator  
45 is primarily liable for collection and remittance of the fee  
46 imposed by this section and the owner is secondarily liable  
47 for remittance of the fee imposed by this section. How-  
48 ever, if the operator fails, in whole or in part, to discharge  
49 his or her obligations under this section, the owner and the  
50 operator of the solid waste facility are jointly and sever-  
51 ally responsible and liable for compliance with the provi-  
52 sions of this section;

53 (7) If the operator or owner responsible for collecting the  
54 fee imposed by this section is an association or corpora-  
55 tion, the officers of the association or corporation are  
56 liable, jointly and severally, for any default on the part of  
57 the association or corporation, and payment of the fee and  
58 any additions to tax, penalties and interest imposed by  
59 article ten, chapter eleven of this code may be enforced  
60 against them and against the association or corporation  
61 which they represent; and

62 (8) Each person disposing of solid waste at a solid waste  
63 disposal facility and each person required to collect the fee  
64 imposed by this section shall keep complete and accurate  
65 records in the form required by the Tax Commissioner in  
66 accordance with the rules of the Tax Commissioner.

67 (c) *Regulated motor carriers.* – The fee imposed by this  
68 section is a necessary and reasonable cost for motor



69 carriers of solid waste subject to the jurisdiction of the  
70 Public Service Commission under chapter twenty-four-a  
71 of this code. Notwithstanding any provision of law to the  
72 contrary, upon the filing of a petition by an affected motor  
73 carrier, the Public Service Commission shall, within  
74 fourteen days, reflect the cost of the fee in the motor  
75 carrier's rates for solid waste removal service. In calculat-  
76 ing the amount of the fee to the motor carrier, the Com-  
77 mission shall use the national average of pounds of waste  
78 generated per person per day as determined by the United  
79 States Environmental Protection Agency.

80 (d) *Definition.* – For purposes of this section, “Solid  
81 Waste Disposal Facility” means any approved solid waste  
82 facility or open dump in this state and includes a transfer  
83 station when the solid waste collected at the transfer  
84 station is not finally disposed of at a solid waste facility  
85 within this state that collects the fee imposed by this  
86 section.

87 Nothing in this section authorizes in any way the  
88 creation or operation of or contribution to an open dump.

89 (e) *Exemptions.* –The following transactions are exempt  
90 from the fee imposed by this section:

91 (1) Disposal of solid waste at a solid waste facility by the  
92 person who owns, operates or leases the solid waste  
93 disposal facility if it is used exclusively to dispose of waste  
94 originally produced by that person in his or her regular  
95 business or personal activities or by persons utilizing the  
96 facility on a cost-sharing or nonprofit basis;

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

98 (3) Disposal of residential solid waste by an individual  
99 not in the business of hauling or disposing of solid waste  
100 on the days and times designated by the Secretary by rule  
101 as exempt from the fee imposed pursuant to section eleven,  
102 article fifteen, chapter twenty-two of this code.

103 (f) *Procedure and administration.* – Notwithstanding  
104 section three, article ten, chapter eleven of this code, each  
105 and every provision of the West Virginia Tax Procedure  
106 and Administration Act set forth in article ten, chapter  
107 eleven of this code applies to the fee imposed by this  
108 section with like effect as if the act were applicable only to  
109 the fee imposed by this section and were set forth in  
110 extenso in this section.

111 (g) *Criminal penalties.* – Notwithstanding section two,  
112 article nine, chapter eleven of this code, sections three  
113 through seventeen, article nine, chapter eleven of this code  
114 apply to the fee imposed by this section with like effect as  
115 if the sections were the only fee imposed by this section  
116 and were set forth in extenso in this section.

117 (h) *Dedication of proceeds.* – The proceeds of the fee  
118 collected pursuant to this section shall be deposited by the  
119 Tax Commissioner, at least monthly, in a special revenue  
120 account designated as the Recycling Assistance Fund  
121 which is hereby continued and transferred to the Depart-  
122 ment of Environmental Protection. The Secretary shall  
123 allocate the proceeds of the fund as follows:

124 (1) Fifty percent of the total proceeds shall be provided  
125 in grants to assist municipalities, counties and other  
126 interested parties in the planning and implementation of  
127 recycling programs, public education programs and  
128 recycling market procurement efforts, established pursu-  
129 ant to this article. The Secretary shall promulgate rules,  
130 in accordance with chapter twenty-nine-a of this code,  
131 containing application procedures, guidelines for eligibil-  
132 ity, reporting requirements and other matters considered  
133 appropriate: *Provided*, That persons responsible for  
134 collecting, hauling or disposing of solid waste who do not  
135 participate in the collection and payment of the solid  
136 waste assessment fee imposed by this section in addition  
137 to all other fees and taxes levied by law for solid waste  
138 generated in this state which is destined for disposal, shall

139 not be eligible to receive grants under the provisions of  
140 this article;

141 (2) Twelve and one-half percent of the total proceeds  
142 shall be expended for personal services and benefit  
143 expenses of full-time salaried conservation officers;

144 (3) Twelve and one-half percent of the total proceeds  
145 shall be directly allocated to the solid waste planning  
146 fund;

147 (4) Twelve and one-half percent of the total proceeds  
148 shall be transferred to the solid waste reclamation and  
149 environmental response fund, established pursuant to  
150 section eleven, article fifteen, chapter twenty-two of this  
151 code, to be expended by the Department of Environmental  
152 Protection to assist in the funding of the pollution preven-  
153 tion and open dumps program (PPOD) which encourages  
154 recycling, reuse, waste reduction and clean-up activities;  
155 and

156 (5) Twelve and one-half percent of the total proceeds  
157 shall be deposited in the hazardous waste emergency  
158 response fund established in article nineteen of this  
159 chapter.

**§22-15A-20. Establishment of state recycling program for solid waste.**

1 (a) In the absence of either a municipal or a comprehen-  
2 sive county recycling plan pursuant to section eighteen of  
3 this article, all agencies and instrumentalities of the state,  
4 all primary and secondary schools, where practicable, and  
5 private colleges and universities shall implement programs  
6 to recycle solid waste. To carry out the purposes of this  
7 section, any affected party may be eligible to receive  
8 grants pursuant to subdivision (1), subsection (h), section  
9 nineteen of this article. Such programs shall include, but  
10 not be limited to, the following:

11 (1) Source separation of at least two recyclable materi-  
12 als; and

13 (2) In the absence of either a municipal program or a  
14 comprehensive county recycling plan pursuant to section  
15 eighteen of this article, collection and transportation of  
16 source separated recycled materials to an appropriate  
17 location.

18 (b) For purposes of this section, the Department shall be  
19 designated the lead agency to ensure proper compliance  
20 and coordination of any such recycling program.

**§22-15A-21. Procurement of recycled products.**

1 (a) It is the policy of the State of West Virginia that, to  
2 the maximum extent possible, all agencies and instrumen-  
3 talities of the state purchase recycled products. The goal  
4 of the state is to achieve a recycled product mix on future  
5 purchases.

6 (b) In furtherance of the aforesaid goal, the Secretary of  
7 the Department of Administration in consultation with the  
8 Secretary shall develop a comprehensive procurement  
9 program for recycled products. The program shall include,  
10 but not be limited to:

11 (1) A review, and subsequent revision, of existing  
12 procurement procedures and bid specifications to remove  
13 language that discriminates against recycled products;

14 (2) A review, and subsequent revision, of existing  
15 procurement procedures and bid specifications to ensure  
16 that, to the maximum extent possible, all agencies and  
17 instrumentalities of the state purchase recycled products:  
18 *Provided*, That recycled paper products shall be given a  
19 price preference of ten percent: *Provided, however*, That  
20 priority shall be given to paper products with the highest  
21 postconsumer content;

22 (3) A plan to eliminate, to the maximum extent possible,  
23 the use of disposable and single-use products; and

24 (4) A requirement that all agencies and instrumentalities  
25 of the state use compost in all land maintenance and

26 landscaping activities: *Provided*, That the use of com-  
27 posted or deep stacked poultry litter products, certified by  
28 the Commissioner of Agriculture as being free from  
29 organisms that are not found in poultry litter produced in  
30 this state, have priority unless determined to be economi-  
31 cally unfeasible by the agency or instrumentality.

32 (c) The Secretary shall prepare and submit an annual  
33 report on the thirty-first day of January of each year  
34 summarizing the program's accomplishments, prospects  
35 for the future, and any recommendations. The report shall  
36 be submitted to the Governor, Speaker of the House of  
37 Delegates and President of the Senate.

**§22-15A-22. Prohibition on the disposal of certain items; plans  
for the proper handling of said items required.**

1 (a) Effective the first day of June, one thousand nine  
2 hundred ninety-four, it shall be unlawful to dispose of  
3 lead-acid batteries in a solid waste landfill in West  
4 Virginia; effective the first day of June, one thousand nine  
5 hundred ninety-six, it shall be unlawful to dispose of tires  
6 in a solid waste landfill in West Virginia except for waste  
7 tires collected as part of the Department's waste tire  
8 remediation projects or other collection efforts in accor-  
9 dance with the provisions of this article or the pollution  
10 prevention program and open dump program or other  
11 state-authorized remediation or clean up programs:  
12 *Provided*, That waste tires may be disposed of in solid  
13 waste landfills only when the state agency authorizing the  
14 remediation or clean up program has determined there is  
15 no reasonable alternative available.

16 (b) Effective the first day of January, one thousand nine  
17 hundred ninety-seven, it shall be unlawful to dispose of  
18 yard waste, including grass clippings and leaves, in a solid  
19 waste facility in West Virginia: *Provided*, That such  
20 prohibitions do not apply to a facility designed specifically  
21 to compost such yard waste or otherwise recycle or reuse  
22 such items: *Provided, however*, That reasonable and

23 necessary exceptions to such prohibitions may be included  
24 as part of the rules promulgated pursuant to subsection (d)  
25 of this section.

26 (c) No later than the first day of May, one thousand nine  
27 hundred ninety-five, the Solid Waste Management Board  
28 shall design a comprehensive program to provide for the  
29 proper handling of yard waste and lead-acid batteries. No  
30 later than the first day of May, one thousand nine hundred  
31 ninety-four, a comprehensive plan shall be designed in the  
32 same manner to provide for the proper handling of tires.

33 (d) No later than the first day of August, one thousand  
34 nine hundred ninety-five, the Department shall promul-  
35 gate rules, in accordance with chapter twenty-nine-a of  
36 this code, as amended, to implement and enforce the  
37 program for yard waste and lead-acid batteries designed  
38 pursuant to subsection (c) of this section. No later than  
39 the first day of August, two thousand, the Department  
40 shall promulgate rules, in accordance with chapter  
41 twenty-nine-a of said code, as amended, to implement and  
42 enforce the program for tires designed pursuant to subsec-  
43 tion (c) of this section.

44 (e) For the purposes of this section, "yard waste" means  
45 grass clippings, weeds, leaves, brush, garden waste, shrub  
46 or tree prunings and other living or dead plant tissues,  
47 except that such materials which, due to inadvertent  
48 contamination or mixture with other substances which  
49 render the waste unsuitable for composting, shall not be  
50 considered to be yard waste: *Provided*, That the same or  
51 similar waste generated by commercial agricultural  
52 enterprises is excluded.

53 (f) In promulgating the rules required by subsections (c)  
54 and (d) of this section, yard waste, as described in subsec-  
55 tion (e) of this section, the Department shall provide for  
56 the disposal of yard waste in a manner consistent with one  
57 or any combination of the following:

58 (1) Disposal in a publicly or privately operated commer-  
59 cial or noncommercial composting facility.

60 (2) Disposal by composting on the property from which  
61 domestic yard waste is generated or on adjoining property  
62 or neighborhood property if consent is obtained from the  
63 owner of the adjoining or neighborhood property.

64 (3) Disposal by open burning where such activity is not  
65 prohibited by this code, rules promulgated hereunder or  
66 municipal or county codes or ordinances.

67 (4) Disposal in a publicly or privately operated landfill,  
68 only where none of the foregoing options are available.  
69 Such manner of disposal will involve only small quantities  
70 of domestic yard waste generated only from the property  
71 of the participating resident or tenant.

**§22-15A-23. Recycling facilities exemption.**

1 Recycling facilities, as defined in section two, article  
2 fifteen of this chapter, whose only function is to accept  
3 free-of-charge, buy or transfer source-separated material  
4 or recycled material for resale or transfer for further  
5 processing are exempt from the provisions of said article  
6 and article four of chapter twenty-two-c and sections  
7 one-c and one-f, article two, chapter twenty-four of this  
8 code.

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

**ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.**

**§22C-3-7. Development of state solid waste management plan.**

1 On or before the first day of January, one thousand nine  
2 hundred ninety-three, the Solid Waste Management Board  
3 shall prepare an overall state plan for the proper manage-  
4 ment of solid waste: *Provided*, That such plan shall be  
5 consistent with the findings and purposes of article four of  
6 this chapter and articles fifteen and fifteen-a, chapter

7 twenty-two of this code: *Provided, however,* That such  
8 plan shall incorporate the county or regional plans devel-  
9 oped pursuant to sections eight and twenty-four, article  
10 four of this chapter, as amended: *Provided further,* That  
11 such plan shall be updated every two years following its  
12 initial preparation.

**§22C-3-24. Cooperation of board and enforcement agencies in  
collecting and disposing of abandoned household  
appliances and motor vehicles, etc.**

1 The provisions of this article are complementary to those  
2 contained in article twenty-four, chapter fifteen-a of this  
3 code and do not alter or diminish the authority of any  
4 enforcement agency, as defined in section two thereof, to  
5 collect and dispose of abandoned household appliances  
6 and motor vehicles, inoperative household appliances and  
7 junked motor vehicles and parts thereof, including tires.  
8 The board and such enforcement agencies shall cooperate  
9 fully with each other in collecting and disposing of such  
10 solid waste.

**ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.**

**§22C-4-24. Commercial solid waste facility siting plan; facilities  
subject to plan; criteria; approval by Solid Waste  
Management Board; effect on facility siting;  
public hearings; rules.**

1 (a) On or before the first day of July, one thousand nine  
2 hundred ninety-one, each county or regional solid waste  
3 authority shall prepare and complete a commercial solid  
4 waste facilities siting plan for the county or counties  
5 within its jurisdiction: *Provided,* That the Solid Waste  
6 Management Board may authorize any reasonable exten-  
7 sion of up to one year for the completion of the said siting  
8 plan by any county or regional solid waste authority. The  
9 siting plan shall identify zones within each county where  
10 siting of the following facilities is authorized or prohib-  
11 ited:



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

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

18 (3) Commercial solid waste transfer stations or commer-  
19 cial facilities for the processing or recycling of solid waste.

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

23 (b) The county or regional solid waste authority shall  
24 develop the siting plan authorized by this section based  
25 upon the consideration of one or more of the following  
26 criteria: The efficient disposal of solid waste, including,  
27 but not limited to, all solid waste which is disposed of  
28 within the county or region regardless of its origin,  
29 economic development, transportation infrastructure,  
30 property values, groundwater and surface waters, geologi-  
31 cal and hydrological conditions, aesthetic and environ-  
32 mental quality, historic and cultural resources, the present  
33 or potential land uses for residential, commercial, recre-  
34 ational, environmental conservation or industrial purposes  
35 and the public health, welfare and convenience. The  
36 initial plan shall be developed based upon information  
37 readily available. Due to the limited funds and time  
38 available, the initial plan need not be an exhaustive and  
39 technically detailed analysis of the criteria set forth above.  
40 Unless the information readily available clearly estab-  
41 lishes that an area is suitable for the location of a commer-  
42 cial solid waste facility or not suitable for such a facility,  
43 the area shall be designated as an area in which the  
44 location of a commercial solid waste facility is tentatively  
45 prohibited. Any person making an application for the  
46 redesignation of a tentatively prohibited area shall make  
47 whatever examination is necessary and submit specific

48 detailed information in order to meet the provision  
49 established in subsection (g) of this section.

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

62 (d) The siting plan takes effect upon approval by the  
63 Solid Waste Management Board pursuant to the rules  
64 promulgated for this purpose. Upon approval of the plan,  
65 the Solid Waste Management Board shall transmit a copy  
66 thereof to the Secretary of the Department of Environ-  
67 mental Protection and to the clerk of the county commis-  
68 sion of the county encompassed by said plan which county  
69 clerk shall file the plan in an appropriate manner and shall  
70 make the plan available for inspection by the public.

71 (e) Effective upon approval of the siting plan by the  
72 Solid Waste Management Board, it is unlawful for any  
73 person to establish, construct, install or operate a commer-  
74 cial solid waste facility at a site not authorized by the  
75 siting plan: *Provided*, That an existing commercial solid  
76 waste facility which, on the eighth day of April, one  
77 thousand nine hundred eighty-nine, held a valid solid  
78 waste permit or compliance order issued by the Division of  
79 Natural Resources pursuant to the former provisions of  
80 article five-f, chapter twenty of this code may continue to  
81 operate, but may not expand the spatial land area of the  
82 said facility beyond that authorized by said solid waste  
83 permit or compliance order and may not increase the  
84 aggregate monthly solid waste capacity in excess of ten

85 thousand tons monthly unless such a facility is authorized  
86 by the siting plan.

87 (f) The county or regional solid waste authority may,  
88 from time to time, amend the siting plan in a manner  
89 consistent with the requirements of this section for  
90 completing the initial siting plan and the rules promul-  
91 gated by the Solid Waste Management Board for the  
92 purpose of such amendments.

93 (g) Notwithstanding any provision of this code to the  
94 contrary, upon application from a person who has filed a  
95 presiting notice pursuant to section thirteen, article  
96 fifteen, chapter twenty-two of this code, the county or  
97 regional solid waste authority or county commission, as  
98 appropriate, may amend the siting plan by redesignating  
99 a zone that has been designated as an area where a com-  
100 mercial solid waste facility is tentatively prohibited to an  
101 area where one is authorized. In such case, the person  
102 seeking the change has the burden to affirmatively and  
103 clearly demonstrate, based on the criteria set forth in  
104 subsection (b) of this section, that a solid waste facility  
105 could be appropriately operated in the public interest at  
106 such location. The Solid Waste Management Board shall  
107 provide, within available resources, technical support to a  
108 county or regional solid waste authority, or county com-  
109 mission as appropriate, when requested by such authority  
110 or commission to assist it in reviewing an application for  
111 any such amendment.

112 (h) The Solid Waste Management Board shall prepare  
113 and adopt a siting plan for any county or regional solid  
114 waste authority which does not complete and file with the  
115 said state authority a siting plan in compliance with the  
116 provisions of this section and the rules promulgated  
117 thereunder. Any siting plan adopted by the Solid Waste  
118 Management Board pursuant to this subsection shall  
119 comply with the provisions of this section, and the rules  
120 promulgated thereunder, and has the same effect as a  
121 siting plan prepared by a county or regional solid waste

122 authority and approved by the Solid Waste Management  
123 Board.

124 (i) The siting plan adopted pursuant to this section shall  
125 incorporate the provisions of the litter and solid waste  
126 control plan, as approved by the Solid Waste Management  
127 Board pursuant to section eight of this article, regarding  
128 collection and disposal of solid waste and the require-  
129 ments, if any, for additional commercial solid waste  
130 facility capacity.

131 (j) The solid waste management board is authorized and  
132 directed to promulgate rules specifying the public partici-  
133 pation process, content, format, amendment, review and  
134 approval of siting plans for the purposes of this section.

135 (k) To the extent that current solid waste plans approved  
136 by the board are approved as provided for in this section,  
137 and in place on the effective date of this article, provisions  
138 which limit approval for new or expanded solid waste  
139 facilities based solely on local solid waste disposal needs  
140 without consideration for national waste disposal needs  
141 are disallowed as being in conflict with the public policy  
142 of this article: *Provided*, That all other portions of the  
143 solid waste management plans as established in the litter  
144 and solid waste control plan as provided for in this section  
145 and the comprehensive recycling plan as provided for in  
146 section seventeen, article fifteen-a, chapter twenty-two of  
147 this code are continued in full force and effect to the  
148 extent that those provisions do not conflict with the  
149 provisions of this article.

**§22C-4-25. Siting approval for solid waste facilities; effect on  
facilities with prior approval.**

1 (a) It is the intent of the Legislature that all commercial  
2 solid waste facilities operating in this state must receive  
3 site approval at the local level, except for recycling  
4 facilities, as defined in section twenty-three, article  
5 fifteen-a, chapter twenty-two of this code, that are

6 specifically exempted by section twelve, article eleven,  
7 chapter twenty of this code. Notwithstanding said intent,  
8 facilities which obtained such approval from either a  
9 county or regional solid waste authority, or from a county  
10 commission, under any prior enactment of this code, and  
11 facilities which were otherwise exempted from local site  
12 approval under any prior enactment of this code, shall be  
13 deemed to have satisfied such requirement. All other  
14 facilities, including facilities which received such local  
15 approval but which seek to expand spatial area or to  
16 convert from a Class B facility to a Class A facility, shall  
17 obtain such approval only in the manner specified in  
18 sections twenty-six, twenty-seven and twenty-eight of this  
19 article.

20 (b) In considering whether to issue or deny the certificate  
21 of site approval as specified in sections twenty-six,  
22 twenty-seven and twenty-eight of this article, the county  
23 or regional solid waste authority shall base its determina-  
24 tion upon the following criteria: The efficient disposal of  
25 solid waste anticipated to be received or processed at the  
26 facility, including solid waste generated within the county  
27 or region, economic development, transportation infra-  
28 structure, property values, groundwater and surface  
29 waters, geological and hydrological conditions, aesthetic  
30 and environmental quality, historic or cultural resources,  
31 the present or potential land uses for residential, commer-  
32 cial, recreational, industrial or environmental conservation  
33 purposes and the public health, welfare and convenience.

34 (c) The county or regional solid waste authority shall  
35 complete findings of fact and conclusions relating to the  
36 criteria authorized in subsection (b) of this section which  
37 support its decision to issue or deny a certificate of site  
38 approval.

39 (d) The siting approval requirements for composting  
40 facilities, materials recovery facilities and mixed waste  
41 processing facilities shall be the same as those for other  
42 solid waste facilities.

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.**

**§31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin Fund.**

1 Notwithstanding any other provision of this code to the  
2 contrary, the Water Development Authority may issue, in  
3 accordance with the provisions of section seventeen of this  
4 article, infrastructure revenue bonds payable from the A.  
5 James Manchin Fund created by section nine, article  
6 fifteen-a, chapter twenty-two of this code and such other  
7 sources as may be legally pledged for such purposes other  
8 than the West Virginia Infrastructure Revenue Debt  
9 Service Fund created by section seventeen of this article.

**CHAPTER 49. CHILD WELFARE.**

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-13. Disposition of juvenile delinquents; appeal.**

1 (a) In aid of disposition of juvenile delinquents, the  
2 juvenile probation officer assigned to the court shall, upon  
3 request of the court, make an investigation of the environ-  
4 ment of the juvenile and the alternative dispositions  
5 possible. The court, upon its own motion, or upon request  
6 of counsel, may order a psychological examination of the  
7 juvenile. The report of such examination and other  
8 investigative and social reports shall not be made avail-  
9 able to the court until after the adjudicatory hearing.  
10 Unless waived, copies of the report shall be provided to  
11 counsel for the petitioner and counsel for the juvenile no  
12 later than seventy-two hours prior to the dispositional  
13 hearing.

14 (b) Following the adjudication, the court shall conduct  
15 the dispositional proceeding, giving all parties an opportu-  
16 nity to be heard. In disposition the court shall not be  
17 limited to the relief sought in the petition and shall, in

18 electing from the following alternatives, consider the best  
19 interests of the juvenile and the welfare of the public:

20 (1) Dismiss the petition;

21 (2) Refer the juvenile and the juvenile's parent or  
22 custodian to a community agency for needed assistance  
23 and dismiss the petition;

24 (3) Upon a finding that the juvenile is in need of ex-  
25 tra-parental supervision: (A) Place the juvenile under the  
26 supervision of a probation officer of the court or of the  
27 court of the county where the juvenile has his or her usual  
28 place of abode or other person while leaving the juvenile  
29 in custody of his or her parent or custodian; and (B)  
30 prescribe a program of treatment or therapy or limit the  
31 juvenile's activities under terms which are reasonable and  
32 within the child's ability to perform, including participa-  
33 tion in the litter control program established pursuant to  
34 section three, article fifteen-a, chapter twenty-two of this  
35 code or other appropriate programs of community service;

36 (4) Upon a finding that a parent or custodian is not  
37 willing or able to take custody of the juvenile, that a  
38 juvenile is not willing to reside in the custody of his parent  
39 or custodian or that a parent or custodian cannot provide  
40 the necessary supervision and care of the juvenile, the  
41 court may place the juvenile in temporary foster care or  
42 temporarily commit the juvenile to the department or a  
43 child welfare agency. The court order shall state that  
44 continuation in the home is contrary to the best interest of  
45 the juvenile and why; and whether or not the department  
46 made a reasonable effort to prevent the placement or that  
47 the emergency situation made such efforts unreasonable or  
48 impossible. Whenever the court transfers custody of a  
49 youth to the department, an appropriate order of financial  
50 support by the parents or guardians shall be entered in  
51 accordance with section five, article seven of this chapter  
52 and guidelines promulgated by the Supreme Court of  
53 Appeals;

54 (5) Upon a finding that the best interests of the juvenile  
55 or the welfare of the public require it, and upon an adjudi-  
56 cation of delinquency pursuant to subdivision (1), section  
57 four, article one of this chapter, the court may commit the  
58 juvenile to the custody of the Director of the Division of  
59 Juvenile Services for placement in a juvenile services  
60 facility for the treatment, instruction and rehabilitation of  
61 juveniles: *Provided*, That the court maintains discretion  
62 to consider alternative sentencing arrangements. Notwith-  
63 standing any provision of this code to the contrary, in the  
64 event that the court determines that it is in the juvenile's  
65 best interests or required by the public welfare to place the  
66 juvenile in the custody of the Division of Juvenile Services,  
67 the court shall provide the Division of Juvenile Services  
68 with access to all relevant court orders and records  
69 involving the underlying offense or offenses for which the  
70 juvenile was adjudicated delinquent, including sentencing  
71 and presentencing reports and evaluations, and provide  
72 the Division with access to school records, psychological  
73 reports and evaluations, medical reports and evaluations  
74 or any other such records as may be in the court's posses-  
75 sion as would enable the Division of Juvenile Services to  
76 better assess and determine the appropriate counseling,  
77 education and placement needs for the juvenile offender.  
78 Commitments shall not exceed the maximum term for  
79 which an adult could have been sentenced for the same  
80 offense and any such maximum allowable sentence to be  
81 served in a juvenile correctional facility may take into  
82 account any time served by the juvenile in a detention  
83 center pending adjudication, disposition or transfer. The  
84 order shall state that continuation in the home is contrary  
85 to the best interests of the juvenile and why; and whether  
86 or not the state department made a reasonable effort to  
87 prevent the placement or that the emergency situation  
88 made such efforts unreasonable or impossible; or

89 (6) After a hearing conducted under the procedures set  
90 out in subsections (c) and (d), section four, article five,  
91 chapter twenty-seven of this code, commit the juvenile to



92 a mental health facility in accordance with the juvenile's  
93 treatment plan; the Director of the mental health facility  
94 may release a juvenile and return him or her to the court  
95 for further disposition. The order shall state that continu-  
96 ation in the home is contrary to the best interests of the  
97 juvenile and why; and whether or not the state department  
98 made a reasonable effort to prevent the placement or that  
99 the emergency situation made such efforts unreasonable or  
100 impossible.

101 (c) The disposition of the juvenile shall not be affected  
102 by the fact that the juvenile demanded a trial by jury or  
103 made a plea of denial. Any dispositional order is subject  
104 to appeal to the Supreme Court of Appeals.

105 (d) Following disposition, the court shall inquire  
106 whether the juvenile wishes to appeal and the response  
107 shall be transcribed; a negative response shall not be  
108 construed as a waiver. The evidence shall be transcribed  
109 as soon as practicable and made available to the juvenile  
110 or his or her counsel, if the same is requested for purposes  
111 of further proceedings. A judge may grant a stay of  
112 execution pending further proceedings.

113 (e) Notwithstanding any other provision of this code to  
114 the contrary, if a juvenile charged with delinquency under  
115 this chapter is transferred to adult jurisdiction and there  
116 tried and convicted, the court may make its disposition in  
117 accordance with this section in lieu of sentencing such  
118 person as an adult.

**§49-5-13b. Authority of the courts to order fines; revocation of  
vehicle privileges and restitution.**

1 (a) In addition to the methods of disposition provided in  
2 section thirteen of this article, the court may enter an  
3 order imposing one or more of the following penalties,  
4 conditions and limitations:

5 (1) Impose a fine not to exceed one hundred dollars upon  
6 such child;

7       (2) Require the child to make restitution or reparation to  
8 the aggrieved party or parties for actual damages or loss  
9 caused by the offense for which the child was found to be  
10 delinquent, or if the child does not make full restitution,  
11 require the custodial parent or parents, as defined in  
12 section two, article seven-a, chapter fifty-five, of the child  
13 to make partial or full restitution to the victim to the  
14 extent the child fails to make full restitution;

15       (3) Require the child to participate in a public service  
16 project under such conditions as the court prescribes,  
17 including participation in the litter control program  
18 established pursuant to the authority of section three,  
19 article fifteen-a, chapter twenty-two of this code;

20       (4) When the child is fifteen years of age or younger and  
21 has been adjudged delinquent, the court may order that  
22 the child is not eligible to be issued a junior probationary  
23 operator's license or when the child is between the ages of  
24 sixteen and eighteen years and has been adjudged delin-  
25 quent, the court may order that the child is not eligible to  
26 operate a motor vehicle in this state, and any junior or  
27 probationary operator's license shall be surrendered to the  
28 court. Such child's driving privileges shall be suspended  
29 for a period not to exceed two years, and the clerk of the  
30 court shall notify the Commissioner of the Division of  
31 Motor Vehicles of such order.

32       (b) Nothing herein stated shall limit the discretion of the  
33 court in disposing of a juvenile case: *Provided*, That the  
34 juvenile shall not be denied probation or any other dispo-  
35 sition pursuant to this article because the juvenile is  
36 financially unable to pay a fine or make restitution or  
37 reparation: *Provided, however*, That all penalties, condi-  
38 tions and limitations imposed under this section shall be  
39 based upon a consideration by the court of the seriousness  
40 of the offense, the child's ability to pay and a program of  
41 rehabilitation consistent with the best interests of the  
42 child.

43 (c) Notwithstanding any other provisions of this code to  
44 the contrary, in the event a child charged with delinquency  
45 under this chapter is transferred to adult jurisdiction and  
46 there convicted, the court may nevertheless, in lieu of  
47 sentencing such person as an adult, make its disposition in  
48 accordance with this section.

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

*Mandy White*  
.....  
Chairman Senate Committee

*D. Rub Brown*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Ebbins*  
.....  
Clerk of the Senate

*Buoy W. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *3rd* .....  
Day of *May* ..... 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 29 2005

Time 9:40am