WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED
Committee Substitute for Committee Substitute for

SENATE BILL NO. 428

(By Senators Tomblin, Mr. President, and Spruie;)

PASSED April 9, 2005

In Effect 90 days from Passage
ENROLLED
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:


CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

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

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

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

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

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

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

(f) Any county commission adopting ordinances authorized by this section shall hear and determine complaints of the enforcement agency. Complaints shall be initiated by citation issued by the county litter control officer or petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the enforcement agency, but only after that agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or demolished. The county commission shall cause the owner
or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in Rule 4 of the West Virginia Rules of Civil Procedure. The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within ten days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency. If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses. The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence. At the conclusion of the hearing the county commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect. The county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up or
demolish the dwelling or building in question or to remove
or clean up any accumulation of refuse or debris, over-
grown vegetation or toxic spillage or toxic seepage within
a reasonable time and to impose daily civil monetary
penalties on the owner or owners who fail to obey an
order. Appeals from the county commission to the circuit
court shall be in accordance with the provisions of article
three, chapter fifty-eight of this code.

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

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

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

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

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

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

ARTICLE 23. SALVAGE YARDS.


As used in this article:

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

(b) “Commissioner” means the Commissioner of the West Virginia Division of Highways.

(c) “Fence” means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the commissioner and located, placed or maintained so as effectively to screen at all times salvage yards and the
salvage therein contained from the view of persons passing
upon the public roads of this state.

(d) “Occupied private residence” means a private
residence which is occupied for at least six months each
year.

(e) “Owner or operator” includes an individual, firm,
partnership, association or corporation or the plural
thereof.

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

(g) “Salvage” means old or scrap brass, copper, iron,
steel, other ferrous or nonferrous materials, batteries or
rubber and any junked, dismantled or wrecked machinery,
machines or motor vehicles or any parts of any junked,
dismantled or wrecked machinery, machines or motor
vehicles.

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

(i) “Waste tire” means any continuous solid or pneu-
matic rubber covering designed to encircle the wheel of a
vehicle but which has been discarded, abandoned or is no
longer suitable for its original, intended purpose nor
suitable for recapping, or other beneficial use, as defined
in section two, article fifteen-a, chapter twenty-two of this
code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

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

(k) "Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the 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.

In addition to each fee provided for in this article, an additional five-dollar fee shall be imposed on the issuance of each certificate of title issued pursuant to article three of this chapter. All money collected under this section shall be deposited in the State Treasury and credited to the A. James Manchin Fund to be established within the division of highways for waste tire remediation in accordance to the provisions of article fifteen-a, chapter twenty-two of this code. The Commissioner is to work with the Secretary of the Department of Environmental Protection to accomplish the goals of said chapter. The additional fee provided herein shall be imposed for each
application for certificate and renewal thereof made on or
after the first day of July, two thousand: **Provided, That**
no further collections or deposits shall be made after the
Commissioner certifies to the Governor and the Legisla-
ture that the remediation of all waste tire piles that were
determined by the Commissioner to exist on the first day
of June, two thousand one, has been completed.

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

**ARTICLE 14. MISCELLANEOUS RULES.**

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

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

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

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

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

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

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

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


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

(1) “Agronomic rate” means the whole sewage sludge application rate, by dry weight, designed:

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

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

(2) “Applicant” means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family
relationships as the director may specify, including the following: Spouses, parents and children and siblings.

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

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

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

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

(7) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

(8) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing or composting of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon
which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(9) “Compost” means a humus-like material resulting from aerobic, microbial, thermophilic decomposition of organic materials.

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

(11) “Commercial composting facility” means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a composting facility owned and operated by a person for the sole purpose of composting waste created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

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

(13) “Department” means the Department of Environmental Protection.

(14) “Energy recovery incinerator” means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(15) “Incineration technologies” means any technology that uses controlled flame combustion to thermally break
down solid waste, including refuse-derived fuel, to an ash
residue that contains little or no combustible materials,
regardless of whether the purpose is processing, disposal,
electric or steam generation or any other method by which
solid waste is incinerated.

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

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

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

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

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

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

(22) “Municipal solid waste incineration” means the
burning of any solid waste collected by any municipal or
residential solid waste disposal company.
(23) “Open dump” means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(24) “Person” or “persons” means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(25) “Publicly owned treatment works” means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw domestic, industrial or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort or property of any of the inhabitants of this state before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.

(26) “Recycling facility” means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, article fifteen-a of this chapter and article four, chapter twenty-two-c of this code.

(27) “Sewage sludge” means solid, semisolid or liquid residue generated during the treatment of domestic sewage
in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. “Sewage sludge” does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(28) “Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to article one of this chapter.

(29) “Sewage sludge processing facility” is a solid waste facility that processes sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic, microbial and anaerobic digestion.

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

(31) “Solid waste” means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal
standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters.

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

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

(34) “Solid waste facility” means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with section twenty of this article. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: Provided, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility.
(35) “Solid waste facility operator” means any person or persons possessing or exercising operational, managerial or financial control over a commercial solid waste facility, whether or not such person holds a certificate of convenience and necessity or a permit for such facility.

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


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

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

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

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

(e) Persons who violate this article are subject to all enforcement actions available to the Secretary under the provisions of section fifteen, article fifteen, chapter twenty-two of this code.
(f) Except as otherwise provided in subsection (g) of this section, each retailer is required to accept one tire of comparable size for each new tire sold at retail. The retailer may charge a disposal fee to cover the actual costs of lawful waste tire disposal. No retail tire dealer may deliver any waste tire, or part thereof, to a person not authorized by the state of West Virginia to transport or accept waste tires.

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

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

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

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

(3) “It is a crime to burn, bury, abandon or throw away waste tires without authorization and or permits from the Department of Environmental Protection.”
This notice must be at least eight and one-half inches wide and eleven inches high.

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

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

(k) The Department shall propose for legislative promulgation emergency and legislative rules to effectuate the purposes of this section.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.
§22-15A-1. Legislative findings and purpose.

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

(b) The Legislature further finds that the improper management of commercial and residential solid waste and the unlawful disposal of such waste creates open dumps that adversely impacts the state's natural resources, public water supplies and the public health, safety and welfare of the citizens of the state. It is therefore necessary to establish a program to promote pollution prevention and to eliminate and remediate open dumps.

(c) The Legislature further finds that waste tire piles are a direct product of state citizens use and enjoyment of state roads and highways and proper waste tire disposal is a necessary component of maintenance of the transportation system. The accumulation of waste tires has also become a significant environmental and public health hazard to the state and the location and number of waste tires are directly related to the efficiency of travel, by citizens, visitors and of commerce, along public highways in West Virginia. In particular, the Legislature recognizes that waste tires are widespread in location and in number throughout the state; waste tires physically touch and concern public highways, including, but not limited to, state roads, county roads, park roads, secondary routes and orphan roads, all of which interferes with the efficiency of public highways; and further that the existence of waste tires along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.
(d) The Legislature also recognizes and declares that waste tires are a public nuisance and hazard; that waste tires serve as harborage and breeding places for rodents, mosquitoes, fleas, ticks and other insects and pests injurious to the public health, safety and general welfare; that waste tires collected in large piles pose an excessive risk to public health, safety and welfare from disease or fire; that the environmental, economic and societal damage resulting from fires in waste tire piles can be avoided by removing the piles; and that tire pile fires cause extensive pollution of the air and surface and groundwater for miles downwind and downstream from the fire.

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

(f) The Legislature finds that many citizens desire a recycling program in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of solid waste landfills, reduce the need for new landfills, and create markets for recyclable materials. It is therefore necessary to establish goals for recycling solid waste; to require certain municipalities to implement recycling programs; to authorize counties to adopt comprehensive recycling programs; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalties of government; and to educate the public concerning the benefits of recycling.
(g) The Legislature finds that the effectiveness of litter control, open dump, tire clean up programs and recycling programs have been made less efficient by fragmented implementation of the various programs by different agencies. It is therefore necessary to coordinate all such programs under one program managed by the Department to ensure that all current and future litter, open dump, waste tire and recycling issues are managed and addressed efficiently and effectively.

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


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

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

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

(4) “Department” means the Department of Environmental Protection.

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

(6) “Litter receptacle” means those containers suitable for the depositing of litter at each respective public area designated by the Secretary’s rules promulgated pursuant to subsection (e), section three of this article.

(7) “Person” means a natural person, corporation, firm, partnership, association or society, and the plural as well as the singular.

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

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

(10) “Secretary” means the Secretary of the Department of Environmental Protection.

(11) “Waste tire” means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use because of
wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

(12) "Waste tire monofill or monofill" means an approved solid waste facility where no solid waste except waste tires are placed for the purpose of long term storage for eventual retrieval for marketing purposes.

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

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

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

(a) On and after the first day of July, two thousand five, the litter control and recycling programs heretofore operated and managed by the Division of Natural Resources shall transfer to the Department of Environmental Protection.

With the transfer of the West Virginia Litter Control and Recycling Programs from the jurisdiction of the Division of Natural Resources to the jurisdiction of the Department of Environmental Protection, all records, assets and contracts, along with rights and obligations thereunder,
obtained or signed on behalf of the Litter Control and Recycling Programs are hereby transferred and assigned to the Department of Environmental Protection.

(b) The Commissioner of the Division of Natural Resources and the Secretary of the Department of Environmental Protection shall determine which employees of the Division of Natural Resources will be transferred to the Department of Environmental Protection. All employees including administrators of the litter control and recycling programs are subject to being transferred to the Department of Environmental Protection. Employees in the classified service who have gained permanent status as of the effective date of this article, enacted during the two thousand five regular session of the Legislature, will not be subject to further qualifying examination in their respective classifications by reason of the transfer required by the provisions of this section. Nothing contained in this section may be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in article six, chapter twenty-nine of this code or to preclude the reclassification or reallocation of positions in accordance with procedures set forth in said article. The Division of Personnel shall work with the Commission and Secretary to efficiently transfer employees from the Division of Natural Resources to the Department of Environmental Protection.

(c) In addition to all other powers, duties and responsibilities granted and assigned to the Secretary of the Department of Environmental Protection in this chapter and elsewhere by law, the Secretary, in the administration of the West Virginia Litter Control Program created by this section, shall:

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

(2) Cooperate with all local governments to accomplish coordination of local litter control and recycling efforts;
(3) Encourage, organize, coordinate and increase public awareness of and participation in all voluntary litter control and recycling campaigns, including citizen litter watch programs, seeking to focus the attention of the public on the litter control and recycling programs of the state and local governments and of private recycling centers;

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

(5) Investigate the methods and success of techniques of litter control, removal and disposal utilized in other states, and develop, encourage, organize and coordinate local litter control programs funded by grants awarded pursuant to subsection (d) of this section utilizing such successful techniques;

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

(7) Attract to the state persons or industries that purchase, process or use recyclable materials; and

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

(d) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code establishing criteria for awarding direct or matching grants for the study of available research and development in the fields of litter control, removal and disposal, methods for the implementation of such research and development, and the development of public educational programs concerning litter control is hereby transferred from the Division of Natural Resources to the Secretary of the Department of
Environmental Protection as of the effective date of enactment of this section and article during the two thousand five session of the Legislature: Provided, That any rule promulgated by the Division of Natural Resources relating to such grants shall remain in force and effect as though promulgated by the Department of Environmental Protection until the Secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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

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

(g) The Secretary of the Department of Environmental Protection in cooperation with the Commissioner of Highways, the Department of Commerce, the West Virginia State Police, the United States Forestry Service and other local, state and federal law-enforcement agencies shall be responsible for the administration and enforce-
ment of all laws and rules relating to the maintenance of
cleanliness and improvement of appearances on and along
highways, roads, streets, alleys and any other private or
public areas of the state. These other agencies shall make
recommendations to the Secretary, from time to time,
concerning means and methods of accomplishing litter
control consistent with the provisions of this chapter.
Such cooperation shall include, but not be limited to,
contracts with the Commissioner of Highways to operate
a litter control program.

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

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

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

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

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

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

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

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

(8) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

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

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

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

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

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

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

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

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

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.
(g) Any state agency or political subdivision that owns, operates or otherwise controls any public area as may be designated by the Secretary by rule promulgated pursuant to subdivision (g), subsection (a), section three of this article shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the Secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the Secretary shall be fined fifteen dollars per day of the violation.

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

(a) Litter pickup and removal. –

(1) Each county commission and the Regional Jail Authority may establish a jail or prison inmate program including a regular litter pickup work regimen under proper supervision pursuant to section four, article fifteen, chapter seventeen of this code. Funding for these programs shall be from the Litter Control Fund. Funding requirements may include salaries for additional personnel needed for the program. The program may include the cooperative help of the Division of Highways or any other voluntary state, local, private, civic or public agency for personnel, equipment or materials in establishing a county or regionwide, continual program of inmate litter pickup. Upon final approval of the projected cost of the program for a given fiscal year, the Secretary shall disburse the approved amount to the county or Regional Jail Authority. The funds will be used by the Authority to reimburse the county commission or Regional Jail Authority for its expenses related to the program and to pay other costs.
related to the use of inmates for litter pickup. Nothing contained herein shall preclude a county or counties from expending whatever additional funds its commission or commissions may deem appropriate from any other revenue source in furtherance of said program.

(2) All persons involved with litter pickup may separate identifiable recyclable materials from other litter collected. The funds resulting from the sale of those recyclable materials shall be returned to the Litter Control Fund.

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

(b) Education. –

(1) The Department of Education in cooperation with the Department of Environmental Protection shall distribute educational materials to the schools based on the goals of litter clean up and proper solid waste disposal, the rationale for the goals and how primary and secondary school students can contribute to the achievement of the goals. The Department of Education shall further incorporate this information into the curriculum of the public school system as appropriate.

(2) The Division of Highways and local governments shall conduct public awareness programs to notify the public of the provisions of this law and how they can participate, to inform them as to the rationale behind the provisions of this law, to advise them of other avenues for
achievement of the noted goals and to encourage their participation.

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

(c) Government recycling responsibilities. —

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

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

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

(B) Programs that provide for:

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

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

(iii) The use of rate differentials at landfills to facilitate public participation in on-site recycling programs.
§22-15A-6. Assistance to solid waste authorities.

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


(a) The Secretary shall establish the Pollution Prevention and Open Dump (PPOD) Program to encourage the proper disposal of commercial and residential solid waste and to undertake all reclamation, clean up and remedial actions necessary to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner. The program shall seek to eliminate open dumps, which often include waste tires and to recycle as many items as possible from these reclamation efforts. This program shall be funded through the Solid Waste Reclamation and Environmental Response Fund established in section eleven, article fifteen of this chapter.
(b) Authorized representatives of the Department have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of an open dump, to determine the feasibility of the reclamation or prevention of such adverse effects and to conduct reclamation activities provided herein. Such entry is an exercise of the police power of the state and for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.


(a) No person shall, within this state, place, deposit or abandon any waste tire or part thereof upon the right-of-way of any public highway or upon any other public property nor deposit or abandon any waste tire or part thereof upon any private property unless it is at a licensed monofill, solid waste facility or at any other business authorized by the Department of Environmental Protection to accept, process, manufacture or remanufacture waste tires: Provided, That the Secretary may temporarily accumulate as many waste tires as he or she deems necessary at any location or locations necessary to effectuate the purposes of this article.

(b) No person, except those persons who have received and maintain a valid permit or license from the state for the operation of a solid waste facility, waste tire monofill, waste tire processing facility, or other such permitted 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 certificate 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 Commiss-
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
section seventeen-a, article fifteen-a, chapter thirty-one of this code have been paid in full or legally defeased.

(c) If infrastructure bonds are not issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state on or before the thirty-first day of December, two thousand six, all further collections and deposits to the A. James Manchin Fund which are not programmed for remediation or disposal shall be transferred 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.

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

(b) All authority to promulgate legislative rules necessary to implement the provisions of this article is hereby transferred from the Division of Highways to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the two thousand five session of the Legislature. Any legislative rules promulgated by the Commissioner of the Division of Highways in furtherance of the waste tire remediation program established in former article twenty-four, chapter seventeen of this code shall remain in force and effect as if promulgated by the Secretary until they are amended in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(c) The Secretary also has the following powers:
(1) To apply and carry out the provisions of this article and the rules promulgated under this article.

(2) To investigate, from time to time, the operation and effect of this article and of the rules promulgated under this article and to report his or her findings and recommendations to the Legislature and the Governor.

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

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

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

(g) The Secretary may establish a tire disposal program within the Department to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at locations designated by the Department that have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The Secretary may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the Department. The Secretary may establish a limit on the number of tires an individual or business may be paid for
during any calendar month. The Secretary may in his or her discretion authorize commercial businesses to participate in the collection program: Provided, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The Commissioner of the Division of Highways may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin Fund created by section nine of this article to the payment of debt service, including the funding of reasonable reserves, on bonds issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: Provided, That a waste tire processing facility shall be determined by the Solid Waste Management Board, established pursuant to the provisions of article three, chapter twenty-two-c of this code, to meet all applicable federal and state environmental laws and rules and to aid the state in efforts to promote and encourage recycling and use of constituent component parts of waste tires in an environmentally sound manner: Provided, however, That the waste tire processing facility shall have a capital cost of not less than three hundred million dollars and the council for community and economic development shall determine that the waste tire processing facility is a viable economic development project of benefit to the state's economy.


(a) The Department may sell waste tires collected during remediation of waste tire piles at public auction or to a waste tire monofill, waste tire processing facility or business authorized by the Department of Environmental Protection to accept, store, use or process waste tires.
(b) If there is no market in West Virginia for the sale of waste tires the Department may sell them at any available market.

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

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

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

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

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

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

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

(c) If the remediation is not completed within the time limit or the person cannot be located or the person notifies the Department that he or she is unable to comply with the order, the Department may expend funds, as provided herein, to complete the remediation. Any amounts so expended shall be promptly repaid by the person or persons responsible for the waste tire pile. Any person
owing remediation costs or damages shall be liable at law
until such time as all costs or damages are fully paid.

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

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

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

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

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

(f) Any person, who is a bona fide purchaser of real
property prior to the first day of July, two thousand one,
who did not cause, permit or profit from the illegal
disposal of waste tires on the property is only liable for the
costs of remediation to the extent that the fair market
value of the property, when remediation is completed,
exceeds the fair market value of the property that existed
on the first day of July, two thousand one. The Depart-
ment shall have a cause of action against any previous
owner who caused, permitted, contributed or profited from
the illegal disposal of waste tires on the property for the
difference in the amount recovered from the purchaser and
the cost of remediation.

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

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

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

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

(k) Upon determining the existence of a waste tire pile,
the Department shall file a notice of the location of the
waste tire pile in the office of the county clerk in the
county where property containing a waste tire pile is
situate. The Department shall immediately file the notice
for all property known to have waste tire piles as of the
day the Legislature enacted the amendment to this section
during the two thousand five legislative session. The
notice shall contain the property owner's name, a location
and description of the property and the waste tire pile and
the potential liability for remediation. The county clerk
shall record the notice in the same manner as a lien and
index the notice by the name of the property owner.


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

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

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


The waste tire remediation program shall continue to
exist, pursuant to the provisions of article ten, chapter
four of this code until the first day of July, two thousand
six, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.


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


(a) Each county or regional solid waste authority, as part of the comprehensive litter and solid waste control plan required pursuant to the provisions of section eight, article four, chapter twenty-two-c of this code, shall prepare and adopt a comprehensive recycling plan to assist in the implementation of the recycling goals in section sixteen of this article.

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

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

(2) Designation of potential strategies for the collection, marketing and disposition of designated source separated 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.

(a) On or before the eighteenth day of October, one thousand nine hundred ninety-two, each municipality described in subsection (b) of this section shall submit a proposal to the Solid Waste Management Board, consistent with the provisions of this section, describing the estab-
lishment and implementation of the mandatory recycling
program. The Solid Waste Management Board shall
review the submitted plans for consistency with the
criteria provided in this section, the county or regional
solid waste management plan and the statewide manage-
ment plan. The Solid Waste Management Board may
make suggested changes to the plan and shall provide
technical assistance to the municipalities in the develop-
ment of the plans.

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

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

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

(3) A system that collects recyclable materials from the
curbside, or similar location, at least once per month:
Provided, That to encourage full participation, the pro-
gram shall, to the maximum extent possible, provide for
the collection of recyclables at the same rate of frequency,
and simultaneous with, the regular collection of solid waste.

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

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

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

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

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

(2) Each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only solid waste from which recyclable materials in accordance with the county's comprehensive recycling program have been segregated; and
(3) That the provisions of the recycling plan prepared pursuant to section seventeen of this article shall, to the extent practicable, be incorporated in the county's comprehensive recycling program.

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

(e) A comprehensive recycling program for solid waste may be established in any county of this state by: (1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for Governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election or in conjunction with any other countywide election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than seventy days before the election, order that the issue be placed on the ballot and referendum held at the next primary, general or
special election to determine whether it is the will of the
voters of the county that a policy of comprehensive
recycling of solid waste be established in the county:
Provided, That the petition bearing the necessary signa-
tures has been filed with the county commission at least
one hundred days prior to the election.

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

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

□ For Recycling

□ Against Recycling

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

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

(f) A comprehensive recycling program for solid waste
established by petition and referendum may be rescinded
only pursuant to the procedures set out herein to establish
the program.
To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in _________ County, West Virginia?

☐ Continue Recycling

☐ End Recycling

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

If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, the ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

In the case of any municipality having a population greater than thirty thousand persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: Provided, That a materials recovery facility shall be subject to approval by both the Public Service Commission and the Solid Waste Management Board upon a finding by both the Public Service Commission and the Solid Waste Management Board that the establishment of a materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

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

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

1. The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

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

3. The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner;

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

5. Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as
required in this section, the Tax Commissioner may serve
written notice requiring the operator to collect the fees
which become collectible after service of the notice, to
deposit the fees in a bank approved by the Tax Commis-
sioner, in a separate account, in trust for and payable to
the Tax Commissioner, and to keep the amount of the fees
in the account until remitted to the Tax Commissioner.
The notice remains in effect until a notice of cancellation
is served on the operator or owner by the Tax Commis-
sioner;

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

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

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

(c) Regulated motor carriers. – The fee imposed by this
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.

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

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

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

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs and recycling market procurement efforts, established pursuant to this article. The Secretary shall promulgate rules, in accordance with chapter twenty-nine-a of this code, containing application procedures, guidelines for eligibility, reporting requirements and other matters considered appropriate: Provided, That persons responsible for collecting, hauling or disposing of solid waste who do not participate in the collection and payment of the solid waste assessment fee imposed by this section in addition to all other fees and taxes levied by law for solid waste generated in this state which is destined for disposal, shall
(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried conservation officers;

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

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

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


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

(1) Source separation of at least two recyclable materials; and
In the absence of either a municipal program or a comprehensive county recycling plan pursuant to section eighteen of this article, collection and transportation of source separated recycled materials to an appropriate location.

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


(a) It is the policy of the State of West Virginia that, to the maximum extent possible, all agencies and instrumentalities of the state purchase recycled products. The goal of the state is to achieve a recycled product mix on future purchases.

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

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

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

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

(4) A requirement that all agencies and instrumentalities of the state use compost in all land maintenance and
landscaping activities: Provided, That the use of com-
posted or deep stacked poultry litter products, certified by
the Commissioner of Agriculture as being free from
organisms that are not found in poultry litter produced in
this state, have priority unless determined to be economi-
cally unfeasible by the agency or instrumentality.

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

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

(b) Effective the first day of January, one thousand nine
hundred ninety-seven, it shall be unlawful to dispose of
yard waste, including grass clippings and leaves, in a solid
waste facility in West Virginia: Provided, That such
prohibitions do not apply to a facility designed specifically
to compost such yard waste or otherwise recycle or reuse
such items: Provided, however, That reasonable and
necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection (d) of this section.

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

(d) No later than the first day of August, one thousand nine hundred ninety-five, the Department shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (c) of this section. No later than the first day of August, two thousand, the Department shall promulgate rules, in accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (c) of this section.

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

(f) In promulgating the rules required by subsections (c) and (d) of this section, yard waste, as described in subsection (e) of this section, the Department shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:
58 (1) Disposal in a publicly or privately operated commercial or noncommercial composting facility.

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

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

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


1 Recycling facilities, as defined in section two, article fifteen of this chapter, whose only function is to accept free-of-charge, buy or transfer source-separated material or recycled material for resale or transfer for further processing are exempt from the provisions of said article and article four of chapter twenty-two-c and sections one-c and one-f, article two, chapter twenty-four of this 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 hundred ninety-three, the Solid Waste Management Board shall prepare an overall state plan for the proper management of solid waste: Provided, That such plan shall be consistent with the findings and purposes of article four of this chapter and articles fifteen and fifteen-a, chapter
22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

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

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the Solid Waste Management Board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

- Provided, however, That such plan shall incorporate the county or regional plans developed pursuant to sections eight and twenty-four, article four of this chapter, as amended:
- Provided further, That such plan shall be updated every two years following its initial preparation.
(1) Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

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

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

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

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The initial plan shall be developed based upon information readily available. Due to the limited funds and time available, the initial plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific
detailed information in order to meet the provision established in subsection (g) of this section.

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

(d) The siting plan takes effect upon approval by the Solid Waste Management Board pursuant to the rules promulgated for this purpose. Upon approval of the plan, the Solid Waste Management Board shall transmit a copy thereof to the Secretary of the Department of Environmental Protection and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

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

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

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

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

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the Solid Waste Management Board pursuant to section eight of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste facility capacity.

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

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

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

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section twenty-three, article fifteen-a, chapter twenty-two of this code, that are
specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment of this code, and facilities which were otherwise exempted from local site approval under any prior enactment of this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twenty-six, twenty-seven and twenty-eight of this article.

(b) In considering whether to issue or deny the certificate of site approval as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority shall base its determination upon the following criteria: The efficient disposal of solid waste anticipated to be received or processed at the facility, including solid waste generated within the county or region, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

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

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

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.


(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the court shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order a psychological examination of the juvenile. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the dispositional proceeding, giving all parties an opportunity to be heard. In disposition the court shall not be limited to the relief sought in the petition and shall, in
electing from the following alternatives, consider the best
interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

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

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

(4) Upon a finding that a parent or custodian is not
willing or able to take custody of the juvenile, that a
juvenile is not willing to reside in the custody of his parent
or custodian or that a parent or custodian cannot provide
the necessary supervision and care of the juvenile, the
court may place the juvenile in temporary foster care or
temporarily commit the juvenile to the department or a
child welfare agency. The court order shall state that
continuation in the home is contrary to the best interest of
the juvenile and why; and whether or not the department
made a reasonable effort to prevent the placement or that
the emergency situation made such efforts unreasonable or
impossible. Whenever the court transfers custody of a
youth to the department, an appropriate order of financial
support by the parents or guardians shall be entered in
accordance with section five, article seven of this chapter
and guidelines promulgated by the Supreme Court of
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 sentenc-
71 ing 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
90 (6) After a hearing conducted under the procedures set
91 out in subsections (c) and (d), section four, article five,
92 chapter twenty-seven of this code, commit the juvenile to
a mental health facility in accordance with the juvenile's treatment plan; the Director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

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

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

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

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

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

(1) Impose a fine not to exceed one hundred dollars upon such child;
(2) Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent, or if the child does not make full restitution, require the custodial parent or parents, as defined in section two, article seven-a, chapter fifty-five, of the child to make partial or full restitution to the victim to the extent the child fails to make full restitution;

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

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

(b) Nothing herein stated shall limit the discretion of the court in disposing of a juvenile case: Provided, That the juvenile shall not be denied probation or any other disposition pursuant to this article because the juvenile is financially unable to pay a fine or make restitution or reparation: Provided, however, That all penalties, conditions and limitations imposed under this section shall be based upon a consideration by the court of the seriousness of the offense, the child's ability to pay and a program of rehabilitation consistent with the best interests of the child.
(c) Notwithstanding any other provisions of this code to the contrary, in the event a child charged with delinquency under this chapter is transferred to adult jurisdiction and there convicted, the court may nevertheless, in lieu of sentencing such person as an adult, make its disposition in accordance with this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor