

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Second Extraordinary Session, 1991
Third Extraordinary Session, 1991

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FOREWORD

This volume contains the Acts of the Second and Third Extraordinary Sessions of the 70th Legislature, 1991.

Second Extraordinary Session, 1991

The Second Extraordinary Session convened at 12:00 Noon on September 30, 1991, and adjourned *sine die* at 7:36 P.M. on October 18, 1991.

The Legislature was called together for the purpose of considering eighteen items: Realignment of congressional districts, regulation and management of solid waste disposal, reorganization of the Department of Energy, statewide program of rural health care in West Virginia, funding of Medicaid program costs, funding for in-home health care services, pay equity for school service personnel, paid military leave for certain state employees, supplemental appropriation to the Fire Commission, supplemental appropriation to the Attorney General for pursuing litigation against asbestos manufacturers, supplementary appropriation for the Family Law Master System, authorizing PSC to create incentives for use of natural gas as an alternative fuel for motor vehicles, modifications to motor vehicles, redefining child abuse laws, operation of Veterans' Field Service Offices in West Virginia, issuance of Railroad Maintenance Authority bonds, salary increases for magistrates and to pay expenses for this extraordinary session.

The Legislature passed, and the Governor approved, twenty-two bills: Seventeen House bills and five Senate bills.

Three House Concurrent Resolutions were adopted.

The House introduced and adopted five House Resolutions and the Senate introduced and adopted eight Senate Resolutions.

Third Extraordinary Session, 1991

The Third Extraordinary Session convened at 7:00 P.M. on December 6, 1991, pursuant to the Proclamation issued by the Governor on December 2, 1991. The Proclamation originally was issued for the sole purpose of considering and acting upon reapportionment of the State Senate and House of Delegates.

The Governor issued an amendment to his original proclamation on December 4, 1991, setting forth an additional item for consideration by the Legislature, salary increase for county magistrates and their staffs and reapportionment of magistrates among the counties.

The Legislature adjourned *sine die* at 12:05 P.M. Monday, December 9, 1991.

There were two House bills and two Senate bills introduced during the session, of which one House bill and two Senate bills were passed by the Legislature: Com. Sub. for H. B. 301, reapportioning the House of Delegates; S. B. 1, reapportioning the State Senate and S. B. 2, reapportioning magistrates among the counties.

* * * * *

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These Acts may be purchased from the Division of Purchasing, Department of Administration, State Capitol, Charleston, West Virginia 25305.

DONALD L. KOPP,
*Clerk of the House and
Keeper of the Rolls.*

TABLE OF CONTENTS

ACTS AND RESOLUTIONS

Second Extraordinary Session, 1991
Third Extraordinary Session, 1991

GENERAL LAWS

Chapter	Page
Second Extraordinary Session, 1991	
ALTERNATIVE FUEL	
1. Public Service Commission to Establish Program for Natural Gas Initiative.....	1
APPROPRIATIONS	
Supplemental, 1991 Budget	
2. Attorney General, Account No. 2400.....	3
3. Board of Trustees of University System, Health Sciences Account No. 2855.....	4
4. State Department of Education, State Aid to Schools, Account No. 2950.....	6
5. Division of Veterans' Affairs, Account No. 4040.....	8
6. Division of Human Services, Account No. 4050.....	10
7. Division of Health, Account No. 4190.....	11
8. Department of Education and the Arts, Account No. 5332.....	13
9. Fire Commission, Account No. 6170.....	15
10. Fire Commission, Account No. 8465.....	16
11. Mines and Minerals Operations Fund.....	17
ASBESTOS ACCOUNT	
12. Special Revenue Asbestos Account Under Control of State Building Commission.....	20
CHILD WELFARE	
13. Redefining Terms Relating to Child Abuse and Neglect.....	23
CONGRESSIONAL REAPPORTIONMENT	
14. Congressional Reapportionment.....	28
ENVIRONMENTAL PROTECTION	
15. Division of Environmental Protection.....	29
FIRE MARSHAL	
16. Disposition of Fire Marshal Fees.....	61

Chapter		Page
	MEDICAID ENHANCEMENT	
17.	Medicaid Enhancement.....	65
	MILITARY SERVICE	
18.	Leaves of Absence for Military Service.....	99
	MOTOR VEHICLES	
19.	Modification of Motor Vehicles.....	100
	RURAL HEALTH CARE	
20.	Statewide Program of Rural Health Care.....	103
	SCHOOL PERSONNEL	
21.	Salary Increase for School Service Personnel.....	126
	SOLID WASTE	
22.	Solid Waste Management.....	132
	RESOLUTIONS	
	(Only resolutions of general interest are included herein)	
Number	Concurrent	Page
HCR 1	Raising a Joint Assembly to hear an address by His Excellency, the Governor.....	291
HCR 3	Advising the Legislature of the purpose and amount of bonds or other obligations to be issued by the West Virginia Railroad Maintenance Authority.....	291
	House	
HR 2	A resolution in tribute to Harley O. Staggers, Sr., member of the United States House of Representatives, Second Congressional District.....	293
HR 4	Requesting GTE to retain its customer service office and computer center in St. Marys, Pleasants County.....	296
	Third Extraordinary Session	
Chapter		Page
	MAGISTRATES	
1.	Salaries of magistrates and apportioning the number of magistrates among the counties.....	297
	REDISTRICTING	
2.	Apportionment of the Senate.....	306
3.	Apportionment of the House of Delegates.....	318

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1991

CHAPTER 1

(Com. Sub. for S. B. 2—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed October 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to permitting the public service commission to establish a program to encourage the use of natural gas, methanol as derived from coal, and electricity in new demonstration technologies, including alternative fuel vehicles; and providing that the sale of alternative fuels by nonutilities for certain purposes not be regulated by the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. ALTERNATIVE FUEL INITIATIVES.

- §24-2D-1. Legislative findings.
- §24-2D-2. Incentives for use of alternative fuels in new technologies.
- §24-2D-3. Limitation on commission jurisdiction over sales by nonutilities of alternative fuel for certain purposes.

§24-2D-1. Legislative findings.

1 The Legislature finds that there is growing concern
2 about the environment and our state's and nation's
3 dependence on foreign oil.

4 The Legislature further finds that this state has an
5 abundant supply of alternative fuels and an extensive
6 supply network, and that by encouraging the use of
7 alternative fuels in new demonstration technologies such
8 as alternative fuel vehicles, the state will be reducing
9 dependence on foreign oil and promoting improved air
10 quality. Accordingly, the Legislature finds that it is in
11 the public interest to have the public service commission
12 develop and implement programs designed to encourage
13 the use of West Virginia alternative fuels as vehicle
14 fuels and in other new demonstration technologies.

§24-2D-2. Incentives for use of alternative fuels in new technologies.

1 (a) For purposes of this section, "alternative fuel
2 vehicles" shall mean motor vehicles whose primary
3 source of fuel is natural gas, methanol, and/or
4 electricity.

5 (b) Upon a finding that it is in the public interest of
6 this state to authorize the same, as provided in section
7 one, article one of this chapter, the public service
8 commission shall authorize ratemaking allowances for
9 public utilities to encourage the use of alternative fuel
10 in new demonstration technologies, including alterna-
11 tive fuel vehicles, which provide incentives to encourage
12 investments in such technologies.

§24-2D-3. Limitation on commission jurisdiction over sales by nonutilities of alternative fuel for certain purposes.

1 Notwithstanding any provision of this chapter to the
2 contrary, the public service commission shall have no
3 jurisdiction over the ultimate sale by nonutilities of
4 alternative fuel to be utilized solely as fuel for motor
5 vehicles.

CHAPTER 2

(Com. Sub. for H. B. 214—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 16, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the attorney general, account no. 2400, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 1, dated October 1, 1991, setting forth appropriated surplus balance as of the thirty-first day of July, one thousand nine hundred ninety-one, of twenty-one million, eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of four hundred sixty-five thousand dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 2400, attorney general, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 2400 as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

12—Attorney General

(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

	Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
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1	7a Asbestos litigation ... \$ —	\$ 465,000
---	---------------------------------	------------

2 The purpose of this supplementary appropriation bill
3 is to transfer specified unexpended amounts from
4 account no. 6698-95 to supplement and amend account
5 no. 2400, attorney general, in the fiscal year 1991-1992.
6 This supplementary appropriation shall be available for
7 such use and expenditure upon passage of the bill.

8 The attorney general shall transfer amounts approp-
9 riated for asbestos litigation to a special revenue account
10 in the state treasury for use in accordance with the
11 provisions of applicable law by the attorney general for
12 ongoing asbestos litigation.

CHAPTER 3

(Com. Sub. for H. B. 215—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 16, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of education and the arts, board of trustees of the university system of West Virginia,

university of West Virginia, health sciences account, account no. 2855, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 1 dated October 1, 1991, setting forth appropriated surplus balance as of the thirty-first day of July, one thousand nine hundred ninety-one, of twenty-one million eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of five million eight hundred thousand dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 2855, board of trustees of the university system of West Virginia, university of West Virginia, health sciences account, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 2855 as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

58—Board of Trustees of the University System of West Virginia

University of West Virginia

Health Sciences Account

(WV Code Chapter 18B)

Acct. No. 2855

		Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1	12a	Primary Health Education	
2	12b	Program Support..\$	\$ 4,000,000
3	12c	Rural Health Initiative	
4	12d	Site Support	\$ 2,000,000

5 The purpose of this supplementary appropriation bill
6 is to transfer specified unexpended amounts from
7 account no. 6698-95 to supplement and amend account
8 no. 2855, board of trustees of the university system of
9 West Virginia, university of West Virginia, health
10 sciences account, in the fiscal year 1991-1992. This
11 supplementary appropriation shall be available for such
12 use and expenditure upon passage of the bill.

13 Any balance remaining from this supplementary
14 appropriation at the close of the fiscal year 1991-92 shall
15 be reappropriated for expenditure during the fiscal year
16 1992-93.

CHAPTER 4

(Com. Sub. for H. B. 224—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 14, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the state department of education, state aid to schools, account no. 2950, all amending chapter thirteen, acts of

the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 1 dated October 1, 1991, setting forth appropriated surplus balance as of the thirty-first day of July, one thousand nine hundred ninety-one, of twenty-one million eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of two million nine hundred four thousand seven hundred sixty-eight dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 2950, state aid to schools, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 2950 as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

50—State Department of Education— State Aid to Schools

(WV Code Chapters 18 and 18A)

Acct. No. 2950

		Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1	2	Service Personnel.....\$ —	\$ 2,353,945
2	3	Fixed Charges..... —	197,731

3 15 Teachers' Retirement
4 System — 353,092

5 The purpose of this supplementary appropriation bill
6 is to transfer specified unexpended amounts from
7 account no. 6698-95 to supplement and amend account
8 no. 2950, state aid to schools, in the fiscal year 1991-
9 1992. This supplementary appropriation shall be
10 available for such use and expenditure upon passage of
11 the bill.

CHAPTER 5

(Com. Sub. for H. B. 209—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 10, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending June thirtieth, one thousand nine hundred ninety-two, to the department of public safety, division of veterans' affairs, account no. 4040, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 1 dated October 1, 1991, setting forth appropriated surplus balance as of July thirty-first, one thousand nine hundred ninety-one, of twenty-one million, eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of one hundred thirty-eight thousand dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 4040, division of veterans' affairs, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 4040 as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF PUBLIC SAFETY

74—Division of Veterans' Affairs

(WV Code Chapter 9A)

Acct. No. 4040

		Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1	2	Personal Services \$ —	\$ 96,252
2	4	Employee Benefits —	35,947
3	5	Unclassified —	5,801

4 The purpose of this supplementary appropriation bill
5 is to transfer specified unexpended amounts from
6 account no. 6698-95 to supplement and amend account
7 no. 4040, division of veterans' affairs, in the fiscal year
8 1991-1992. This supplementary appropriation shall be
9 available for such use and expenditure upon passage of
10 the bill.

11 The further purpose of this supplementary appropri-
12 ation is to provide supplementary funding for the
13 operation of the veterans' field service offices in West
14 Virginia.

CHAPTER 6

(Com. Sub. for H. B. 206—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 10, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of health and human resources, division of human services, account no. 4050, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 1, dated October 1, 1991, setting forth appropriated surplus balance as of the thirty-first day of July, one thousand nine hundred ninety-one, of twenty-one million, eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of one hundred eighty-four thousand eight hundred two dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 4050 as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 4050 as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES*64—Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

	Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1 7 Family Law Masters \$ —		\$ 184,802
2 The purpose of this supplementary appropriation bill		
3 is to transfer specified unexpended amounts from		
4 account no. 6698-95 to supplement and amend account		
5 no. 4050, division of human services, in the fiscal year		
6 1991-1992. This supplementary appropriation shall be		
7 available for such use and expenditure upon passage of		
8 the bill.		

CHAPTER 7

(Com. Sub. for S. B. 6—By Senators Burdette, Mr. President, and Boley, By
Request of the Executive)

[Passed October 15, 1991: in effect in passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of health and human resources, consolidated medical service fund, account no. 4190, all amending chapter thirteen, acts of the Legislature,

regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 2 dated October 1, 1991, setting forth appropriated surplus balance as of the thirty-first day of July, one thousand nine hundred ninety-one, of twenty-one million eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of one million thirty-seven thousand two hundred ninety-four dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 4190, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 4190 as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

66—Consolidated Medical Service Fund

Acct. No. 4190

		Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1	15a Influenza Vaccine\$	—	\$ 37,294
2	32a In-Home Services		
3	for Senior		
4	32b Citizens.....\$	—	\$1,000,000

5 The purpose of this supplementary appropriation bill
6 is to transfer specified unexpended amounts from
7 account no. 6698-95 to supplement and amend account
8 no. 4190, consolidated medical service fund, in the fiscal
9 year 1991-1992. This supplementary appropriation shall
10 be available for such use and expenditure upon passage
11 of the bill.

12 The further purpose of this supplementary appropri-
13 ation is to provide additional funding for in-home health
14 care services as provided by the community care
15 program within the department of health and human
16 resources. Said supplemental appropriation shall not be
17 used for administrative costs except that no more than
18 \$62,000 may be used for monitoring the provision of
19 client care.

CHAPTER 8

(S. B. 24—Originating in the Committee on Finance)

[Passed October 16, 1991; in effect in passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of education and the arts—office of the secretary, account no. 5332, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 2 dated October 1, 1991, setting forth appropriated surplus balance as of the thirty-first day of July, one thousand nine hundred ninety-one, of twenty-one million eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of two hundred thousand dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 5332, department of education and the arts—office of the secretary, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 5332, as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

*62—Department of Education and the Arts—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5332

		Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1	1a	Board of Directors of the	
2	1b	State College System—	
3	1c	Rural Health Initiative	
4	1d	Site Support..... \$ —	\$ 200,000

5 The purpose of this supplementary appropriation bill
6 is to transfer specified unexpended amounts from
7 account no. 6698-95 to supplement and amend account
8 no. 5332, department of education and the arts—office
9 of the secretary, in the fiscal year 1991-1992. This
10 supplementary appropriation shall be available for such
11 use and expenditure upon passage of the bill.

CHAPTER 9

(Com. Sub. for H. B. 204—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 15, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, and transferring specified unexpended amounts in account no. 6698-95, appropriated surplus balance, and transferring such specified amounts for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the department of public safety, fire commission, account no. 6170, all amending chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, The governor submitted to the Legislature a revised statement of revenues, expenditures and changes in fund balance for the general revenue fund in executive message no. 1, dated October 1, 1991, setting forth appropriated surplus balance as of the thirty-first day of July, one thousand nine hundred ninety-one, of twenty-one million, eight hundred sixty-eight thousand dollars; and

WHEREAS, Such appropriated surplus balance has been deposited in account no. 6698-95 in the treasury, in accordance with section eight, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, and remains unexpended on the date of the above-mentioned executive message; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of one hundred seventy-seven thousand seven hundred eighty-four dollars be transferred from account no. 6698-95, appropriated surplus balance, to account no. 6170, fire commission, as set forth in chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, to be added to said account no. 6170 as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF PUBLIC SAFETY

78—*Fire Commission*

(WV Code Chapter 29)

Acct. No. 6170

		Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1	2	Personal Services \$ —	\$ 100,000
2	4	Employee Benefits —	15,722
3	5	Unclassified —	62,062

4 The purpose of this supplementary appropriation bill
5 is to transfer specified unexpended amounts from
6 account no. 6698-95 to supplement and amend account
7 no. 6170, fire commission, in the fiscal year 1991-1992.
8 This supplementary appropriation shall be available for
9 such use and expenditure upon passage of the bill.

CHAPTER 10

(H. B. 205—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 15, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and adding language to the items of the existing appropriations of the fire commission, fire marshal fees, Account No. 8465, as appropriated by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Account No. 8465, fire commission, fire marshal fees, chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be supplemented and amended by adding the following language to the existing appropriation.

TITLE II—APPROPRIATIONS.

Section 3. Appropriations from other funds.

DEPARTMENT OF PUBLIC SAFETY

*140—Fire Commission**Fire Marshal Fees*

(WV Code Chapter 29)

Acct. No. 8465

1 7 Any unexpended cash balances remaining in the
2 8 account (Account No. 8465-99) at the close of the fiscal
3 9 year 1990-91 is hereby appropriated for expenditure
4 10 for the fiscal year 1991-92 appropriation.

5 The purpose for this supplementary appropriation bill
6 is to supplement, amend and add language to the
7 existing appropriation for the designated spending unit
8 to allow any cash balances remaining in the account
9 (Account No. 8465-99) at the close of the fiscal year
10 1990-91 to be expended for the fiscal year 1991-92
11 appropriation. Any cash balances so remaining shall be
12 made available for expenditure upon the effective date
13 of this bill.

CHAPTER 11**(H. B. 228—By Delegates Rutledge and Burk)**

[Passed October 15, 1991; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from a special revenue account, newly created, designated division of environmental protection, mines and minerals operations fund, with an account number to be designated by the state auditor, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the said special revenue account, designated department of environmental protection, mines and minerals operations, with an account number to be designated by the state auditor, all amending chapter thirteen, acts of

the Legislature, one thousand nine hundred ninety-one, known as the budget bill.

WHEREAS, Committee Substitute for House Bill No. 217 amends chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article one, which includes a new section designated section eighteen; and

WHEREAS, Said Committee Substitute for House Bill No. 217 creates in the state treasurer's office a special revenue fund known as the "Mines and Minerals Operations Fund"; and

WHEREAS, Said Committee Substitute for House Bill 217 imposes an additional tax on the severance, extraction and production of coal, and dedicates the proceeds of this tax to the Mines and Minerals Operations Fund; and

WHEREAS, The proceeds from the additional tax provide the revenue necessary to pay the appropriations hereby made; and

WHEREAS, The provisions of this supplementary appropriation will become effective upon the final enactment of Committee Substitute for House Bill 217; and

WHEREAS, It is the purpose of the Legislature, by the terms of this supplementary appropriation bill, to make the following supplementary appropriations to the division of environmental protection, mines and minerals operations fund, of such amount, in accordance with section three, chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, one thousand nine hundred ninety-one, be amended by making a supplementary appropriation of public money, special revenue, out of the treasury, in the amount of one million six hundred forty-three thousand dollars, to a special revenue account newly created, with an account number to be designated by the state auditor, designated division of environmental protection, mines and minerals operations fund, one million six hundred forty-three thousand dollars, to be added to said special revenue account as follows:

TITLE II—APPROPRIATIONS.

Section 3. Appropriations from other funds.DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES*113a—Division of Environmental Protection—
Mines and Minerals Operations Fund*

(WV Code Chapter 22)

Account number to be designated

TO BE PAID FROM SPECIAL REVENUE

			Federal Funds Fiscal Year 1991-92	Other Funds Fiscal Year 1991-92
1	1	Personal Services	\$ —	\$ 1,150,000
2	2	Employee Benefits	\$ —	\$ 368,000
3	3	Current Expenses	\$ —	\$ 50,000
4	4	Equipment	\$ —	\$ 75,000
5	5	Total	\$ —	\$ 1,643,000

6 The purpose of this supplementary appropriation bill
7 is to create a new special revenue account to be
8 designated division of environmental protection, mines
9 and minerals operations fund account, with an account
10 number to be designated by the state auditor, in the
11 fiscal year 1991-1992. This supplementary appropriation
12 shall be available for such use and expenditure upon
13 passage of this bill and the final enactment of Commit-
14 tee Substitute for House Bill 217.

CHAPTER 12

(Com. Sub. for H. B. 223—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 16, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article six by adding thereto a new section, designated section five-a, all relating to the creation of a special revenue account in the state treasury for the state building commission, known as the asbestos account; setting forth the purposes for which funds from the account may be used; specifying the source of moneys for the account; prohibiting payment from the account for any type of disability claims; payment of prior expenses of the attorney general; and repayment of general revenue funds.

Be it enacted by the Legislature of West Virginia:

That section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article six be further amended by adding thereto a new section, designated section five-a, all to read as follows:

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

§5-6-5a. Creation of asbestos account; purpose; funding; disbursements.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

1 Except as provided in section five-a of this article, all
2 moneys of the commission from whatever source derived
3 shall be paid to the treasurer of the state of West
4 Virginia who shall not commingle said moneys, but shall
5 deposit them to a special revenue account to be known
6 as the "State Building Commission Fund." The moneys
7 in the account shall be impressed with and subject to

8 the lien or liens thereon in favor of the bondholders
9 provided in the proceedings for issuance of bonds
10 pursuant to this article. The moneys in the account shall
11 be paid out on check of the treasurer on requisition of
12 the chairman of the commission, or of such other person
13 as the commission may authorize to make such requi-
14 sition. All deposits of such moneys shall, if required by
15 the treasurer or the commission, be secured by obliga-
16 tions of the United States, of the state of West Virginia,
17 or of the commission, of a market value equal at all
18 times to the amount of the deposit, and all banking
19 institutions are authorized to give such security for such
20 deposits. The legislative auditor and his legally autho-
21 rized representatives are hereby authorized and empow-
22 ered from time to time to examine the accounts and
23 books of the commission, including its receipts, disbur-
24 sements, contracts, leases, sinking funds, investments
25 and any other matters relating to its financial standing.

**§5-6-5a. Creation of asbestos account; purpose; funding;
disbursements.**

1 (a) There is hereby created in the state treasury a
2 separate special revenue account, which shall be an
3 interest bearing account, to be known as the "asbestos
4 account." The special revenue account shall consist of
5 recoveries from litigation pertaining to asbestos,
6 appropriations made by the Legislature, income from
7 the investment of moneys held in the special revenue
8 account and all other sums available for deposit to the
9 special revenue account from any source, public or
10 private, and no expenditures for purposes of this section
11 are authorized from collections except in accordance
12 with the provisions of article three, chapter twelve of
13 this code and upon fulfillment of the provisions set forth
14 in article two, chapter five-a of this code. No expenses
15 incurred under this section shall be a charge against the
16 general funds of the state.

17 (b) Moneys in the special revenue account shall be
18 appropriated to the state building commission and used
19 exclusively, in accordance with appropriations by the
20 Legislature, to pay costs, fees and expenses incurred, or
21 to be incurred for the following purposes: (1) The

22 investigation and pursuit of claims against manufactur-
23 ers, suppliers and installers of asbestos or asbestos
24 containing materials; (2) all services relating to the
25 litigation involving the state and pertaining to asbestos
26 or asbestos containing materials; (3) the location,
27 treatment and abatement of asbestos or asbestos
28 containing materials by the state; (4) the development
29 of implementation, administration and management
30 manuals pertaining to asbestos or asbestos containing
31 materials and the treatment and/or abatement of
32 asbestos or asbestos containing materials; (5) the design,
33 implementation and management of all state buildings
34 containing asbestos and asbestos containing materials
35 for the proper treatment and/or abatement of asbestos
36 conditions as they arise and as are needed; (6) all other
37 related asbestos activities designed for the location,
38 treatment and abatement of such asbestos or asbestos
39 containing materials as are found in state buildings,
40 including buildings under the control of the university
41 of West Virginia board of trustees or the board of
42 directors of the state college system, and as determined
43 by the secretary of the department of administration;
44 and (7) all costs incurred in the administration of the
45 special revenue account.

46 (c) Any balance remaining in the special revenue
47 account at the end of any state fiscal year shall not
48 revert to the general revenue fund but shall remain in
49 the special revenue account and shall be used solely in
50 a manner consistent with this section: *Provided*, That
51 over the three succeeding fiscal years after the effective
52 date of this section, any appropriation made to the
53 special revenue account from general revenue shall be
54 repaid to the general revenue fund from moneys
55 available in the special revenue account.

56 (d) Disbursements from the special revenue account
57 shall be authorized by the secretary of the department
58 of administration or his designee. Moneys in the special
59 revenue account shall not be available for the payment
60 of any personal injury claims, workers' compensation
61 claims or other types of disability claims. Payment from
62 the special revenue account may be made for any

63 expense incurred by the attorney general prior to the
64 effective date of this section, including any expense
65 incurred in prior fiscal years, if the expense is directly
66 related to the litigation of matters pertaining to asbestos
67 and asbestos containing materials in which the state is
68 involved.

CHAPTER 13

(H. B. 201—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed September 30, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child welfare; redefining terms relating to child abuse and neglect.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

1 (a) "Abused child" means a child whose health or
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict, or knowingly
5 allows another person to inflict, physical injury, or
6 mental or emotional injury, upon the child or another
7 child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,
10 guardian, or custodian in violation of section sixteen,
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury

13 may include an injury to the child as a result of
14 excessive corporal punishment.

15 (b) "Abusing parent" means a parent, guardian, or
16 other custodian, regardless of his or her age, whose
17 conduct, as alleged in the petition charging child abuse
18 or neglect, has been adjudged by the court to constitute
19 child abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or
21 neglect" means physical injury, mental or emotional
22 injury, sexual abuse, sexual exploitation, sale or
23 attempted sale, or negligent treatment or maltreatment
24 of a child by a parent, guardian, or custodian who is
25 responsible for the child's welfare, under circumstances
26 which harm or threaten the health and welfare of the
27 child.

28 (d) "Child abuse and neglect services" means social
29 services which are directed toward:

30 (1) Protecting and promoting the welfare of children
31 who are abused or neglected;

32 (2) Identifying, preventing and remedying conditions
33 which cause child abuse and neglect;

34 (3) Preventing the unnecessary removal of children
35 from their families by identifying family problems and
36 assisting families in resolving problems which could
37 lead to a removal of children and a breakup of the
38 family;

39 (4) In cases where children have been removed from
40 their families, providing services to the children and the
41 families so as to restore such children to their families;

42 (5) Placing children in suitable adoptive homes when
43 restoring the children to their families is not possible or
44 appropriate; and

45 (6) Assuring the adequate care of children away from
46 their families when the children have been placed in the
47 custody of the department or third parties.

48 (e) "Imminent danger to the physical well-being of the
49 child" means an emergency situation in which the

50 welfare or the life of the child is threatened. Such
51 emergency situation exists when there is reasonable
52 cause to believe that any child in the home is or has been
53 sexually abused or sexually exploited, or reasonable
54 cause to believe that the following conditions threaten
55 the health or life of any child in the home:

56 (1) Nonaccidental trauma inflicted by a parent,
57 guardian, custodian, sibling or a babysitter or other
58 caretaker; or

59 (2) A combination of physical and other signs indicat-
60 ing a pattern of abuse which may be medically diag-
61 nosed as battered child syndrome; or

62 (3) Nutritional deprivation; or

63 (4) Abandonment by the parent, guardian or custo-
64 dian; or

65 (5) Inadequate treatment of serious illness or disease;
66 or

67 (6) Mental or emotional injury inflicted by a parent,
68 guardian or custodian; or

69 (7) Sale or attempted sale of the child by the parent,
70 guardian, or custodian.

71 (f) "Multidisciplinary team" means a group of
72 professionals and paraprofessionals representing a
73 variety of disciplines who interact and coordinate their
74 efforts to identify, diagnose and treat specific cases of
75 child abuse and neglect. Multidisciplinary teams may
76 include, but are not limited to, medical, child care, and
77 law-enforcement personnel, social workers, psycholo-
78 gists, and psychiatrists. Their goal is to pool their
79 respective skills in order to formulate accurate diag-
80 noses and to provide comprehensive coordinated treat-
81 ment with continuity and follow-up for both parents and
82 children. "Community team" means a multidisciplinary
83 group which addresses the general problem of child
84 abuse and neglect in a given community, and may
85 consist of several multidisciplinary teams with different
86 functions.

87 (g) (1) "Neglected child" means a child:

88 (A) Whose physical or mental health is harmed or
89 threatened by a present refusal, failure or inability of
90 the child's parent, guardian or custodian to supply the
91 child with necessary food, clothing, shelter, supervision,
92 medical care or education, when such refusal, failure or
93 inability is not due primarily to a lack of financial
94 means on the part of the parent, guardian or custodian;
95 or

96 (B) Who is presently without necessary food, clothing,
97 shelter, medical care, education or supervision because
98 of the disappearance or absence of the child's parent or
99 custodian.

100 (2) "Neglected child" does not mean a child whose
101 education is conducted within the provisions of section
102 one, article eight, chapter eighteen of this code.

103 (h) "Parenting skills" means a parent's competencies
104 in providing physical care, protection, supervision and
105 psychological support appropriate to a child's age and
106 state of development.

107 (i) "Sexual abuse" means:

108 (A) As to a child who is less than sixteen years of age,
109 any of the following acts which a parent, guardian or
110 custodian shall engage in, attempt to engage in, or
111 knowingly procure another person to engage in, with
112 such child, notwithstanding the fact that the child may
113 have willingly participated in such conduct or the fact
114 that the child may have suffered no apparent physical
115 injury or mental or emotional injury as a result of such
116 conduct:

117 (i) Sexual intercourse; or

118 (ii) Sexual intrusion; or

119 (iii) Sexual contact; or

120 (B) As to a child who is sixteen years of age or older,
121 any of the following acts which a parent, guardian, or
122 custodian shall engage in, attempt to engage in, or
123 knowingly procure another person to engage in, with
124 such child, notwithstanding the fact that the child may
125 have consented to such conduct or the fact that the child

126 may have suffered no apparent physical injury or
127 mental or emotional injury as a result of such conduct:

128 (i) Sexual intercourse; or

129 (ii) Sexual intrusion; or

130 (iii) Sexual contact; or

131 (C) Any conduct whereby a parent, guardian or
132 custodian displays his or her sex organs to a child, or
133 procures another person to display his or her sex organs
134 to a child, for the purpose of gratifying the sexual desire
135 of the parent, guardian or custodian, of the person
136 making such display, or of the child, or for the purpose
137 of affronting or alarming the child.

138 (j) "Sexual contact" means sexual contact as that term
139 is defined in section one, article eight-b, chapter sixty-
140 one of this code.

141 (k) "Sexual exploitation" means an act whereby:

142 (1) A parent, custodian, or guardian, whether for
143 financial gain or not, persuades, induces, entices or
144 coerces a child to engage in sexually explicit conduct as
145 that term is defined in section one, article eight-c,
146 chapter sixty-one of this code;

147 (2) A parent, guardian, or custodian persuades,
148 induces, entices or coerces a child to display his or her
149 sex organs for the sexual gratification of the parent,
150 guardian, custodian, or a third person, or to display his
151 or her sex organs under circumstances in which the
152 parent, guardian, or custodian knows such display is
153 likely to be observed by others who would be affronted
154 or alarmed.

155 (l) "Sexual intercourse" means sexual intercourse as
156 that term is defined in section one, article eight-b,
157 chapter sixty-one of this code.

158 (m) "Sexual intrusion" means sexual intrusion as that
159 term is defined in section one, article eight-b, chapter
160 sixty-one of this code.

CHAPTER 14

(H. B. 221—By Delegates Damron and Staton)

[Passed October 11, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the apportionment of congressional districts in this state; and redistricting same.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-3. Congressional districts.

1 The number of members to which the state is entitled
2 in the House of Representatives of the Congress of the
3 United States shall be apportioned among the several
4 counties of the state, arranged into three congressional
5 districts, numbered as follows:

6 First District: Barbour, Brooke, Doddridge, Grant,
7 Hancock, Harrison, Marion, Marshall, Mineral, Monon-
8 galia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker,
9 Tyler, Wetzel and Wood.

10 Second District: Berkeley, Braxton, Calhoun, Clay,
11 Gilmer, Hampshire, Hardy, Jackson, Jefferson, Kana-
12 wha, Lewis, Mason, Morgan, Nicholas, Pendleton,
13 Putnam, Randolph, Roane, Upshur and Wirt.

14 Third District: Boone, Cabell, Fayette, Greenbrier,
15 Lincoln, Logan, McDowell, Mercer, Mingo, Monroe,
16 Pocahontas, Raleigh, Summers, Wayne, Webster and
17 Wyoming.

policy and purpose; defining certain terms; creating a division of environmental protection; describing the jurisdiction of the division; establishing a director as chief executive officer of the division, and prescribing his or her powers and duties, qualifications and salary; providing for the appointment of supervisory officers; transferring certain functions from the department of energy to the division of environmental protection; transferring certain offices from the department of energy to the division of environmental protection; providing for the transfer of offices and functions within the department of commerce, labor and environmental resources; describing the effect of transfers of functions and offices; authorizing reorganization of the division of environmental protection; providing for legislative oversight; authorizing the promulgation of legislative rules; transferring and allocating appropriations and personnel; describing the effect of transfers upon personnel; setting forth saving provisions; establishing advisory boards; creating a special tax on coal production, effective on the first day of October, one thousand nine hundred ninety-one, to be paid into a special revenue fund for appropriation by the Legislature; providing for the applicability of the "West Virginia Tax Crimes and Penalties Act" to establish certain offenses and the penalties therefor; hearings before division; authorizing a system of site-specific bonding to be established by legislative rule; redesignating the division of health, safety and training as the office of miners' health, safety and training; establishing a director as chief executive officer of the office, and prescribing his or her powers and duties, qualifications and salary; transferring certain functions from the department of energy to the office of miners' health, safety and training; transferring certain offices from the department of energy to the office of miners' health, safety and training; transferring and allocating appropriations and personnel; authorizing the promulgation of legislative rules; and setting forth saving provisions.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-two of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article three, chapter twenty-two-a of said code be amended by adding thereto a new section, designated section eleven-a; and that said chapter twenty-two-a of said code be further amended by adding thereto a new article, designated article seven, all to read as follows:

Chapter

22. Environmental Resources.

22A. Mines and Minerals.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

- §22-1-1. Legislative findings; legislative statement of policy and purpose.
- §22-1-2. Definitions.
- §22-1-3. Creation of division of environmental protection; appointment of director.
- §22-1-4. Jurisdiction vested in division.
- §22-1-5. Director of the division of environmental protection.
- §22-1-6. Supervisory officers.
- §22-1-7. Functions transferred to the director of the division of environmental protection.
- §22-1-8. Offices transferred to the division of environmental protection.
- §22-1-9. Transfer of functions and offices by executive order.
- §22-1-10. Effect of transfers.
- §22-1-11. Reorganization of the division of environmental protection.
- §22-1-12. Legislative oversight.
- §22-1-13. Rules and regulations.
- §22-1-14. Transfer and allocation of appropriations and personnel.
- §22-1-15. Effect on personnel.
- §22-1-16. Saving provisions.
- §22-1-17. Advisory boards.
- §22-1-18. Special tax on coal production; mines and minerals operations fund created.
- §22-1-19. Hearings before division of environmental protection.
- §22-1-1. **Legislative findings; legislative statement of policy and purpose.**

1 (a) The Legislature finds that:

2 (1) Restoring and protecting the environment is
3 fundamental to the health and welfare of individual
4 citizens, and our government has a duty to provide and
5 maintain a healthful environment for our citizens.

6 (2) The state has the primary responsibility for
7 protecting the environment; other governmental enti-

8 ties, public and private organizations and our citizens
9 have the primary responsibility of supporting the state
10 in its role as protector of the environment.

11 (3) Governmental decisions on matters which relate to
12 the use, enhancement, preservation, protection and
13 conservation of the environment should be made after
14 public participation and public hearings.

15 (4) The dispersion of environmental protection pro-
16 grams across a number of state agencies and the mixing
17 of environmental programs with policies and programs
18 which promote the development of industrial manufac-
19 turing and the production and utilization of natural
20 resources have led to fragmented, duplicative and often
21 inconsistent state policies relating to the protection of
22 the environment.

23 (5) Efficiency in the wise use, enhancement, preser-
24 vation, protection and conservation of the environment
25 can best be accomplished by an integrated and interdis-
26 ciplinary approach in decision making and would
27 benefit from the coordination, consolidation and integra-
28 tion of state programs and agencies which are signifi-
29 cantly concerned with the use, enhancement, preserva-
30 tion, protection and conservation of the environment.

31 (6) Governmental and public consideration of issues
32 relating to environmental programs is hindered by the
33 present organizational structure of environmental
34 programs in the executive branch of state government.

35 (7) There is a need for improvement in the manage-
36 ment and coordination of state environmental protection
37 programs.

38 (8) Those functions of government which regulate the
39 environment should be consolidated in a single state
40 agency, in order to accomplish the purposes set forth in
41 this article, to carry out the environmental functions of
42 government in the most efficient and cost effective
43 manner, to protect human health and safety and, to the
44 greatest degree practicable, to prevent injury to plant,
45 animal and aquatic life, improve and maintain the
46 quality of life of our citizens, and promote economic

47 development consistent with environmental goals and
48 standards.

49 (9) Such consolidation, in a phased approach, is best
50 accomplished by action of the executive.

51 (b) The Legislature declares that the establishment of
52 a division of environmental protection is in the public
53 interest and will promote the general welfare of the
54 state of West Virginia without sacrificing social and
55 economic development. It is the policy of the state of
56 West Virginia, in cooperation with other governmental
57 agencies, public and private organizations, and the
58 citizens of this state, to use all practicable means and
59 measures to prevent or eliminate harm to the environ-
60 ment and biosphere, to create and maintain conditions
61 under which man and nature can exist in productive
62 harmony, and fulfill the social, economic and other
63 requirements of present and future generations. The
64 purposes of this article are:

65 (1) To strengthen the commitment of this state to
66 restore, maintain and protect the environment;

67 (2) To authorize the consolidation of environmental
68 regulatory programs in a single state agency in
69 consultation with and subject to oversight and review by
70 the Legislature;

71 (3) To provide a comprehensive program for the
72 conservation, protection, exploration, development,
73 enjoyment and use of the natural resources of the state
74 of West Virginia;

75 (4) To supplement and complement the efforts of the
76 state by coordinating state programs with the efforts of
77 other governmental entities, public and private organ-
78 izations, and the general public to improve the quality
79 of the environment, the public health and public
80 enjoyment of the environment, and the propagation and
81 protection of animal, aquatic and plant life, in a manner
82 consistent with the benefits to be derived from strong
83 agricultural, manufacturing, tourism and energy-
84 producing industries;

85 (5) Insofar as federal environmental programs require

86 state participation, to endeavor to obtain and continue
87 state primacy in the administration of such federally-
88 mandated environmental programs, and to endeavor to
89 maximize federal funds which may be available to
90 accomplish the purposes of the state and federal
91 environmental programs and to cooperate with approp-
92 riate federal agencies to meet environmental goals;

93 (6) To encourage the increased involvement of all
94 citizens in the development and execution of state
95 environmental programs;

96 (7) To promote improvements in the quality of the
97 environment through research, evaluation and sharing
98 of information;

99 (8) To improve the management and effectiveness of
100 state environmental protection programs; and

101 (9) To increase the accountability of state environmen-
102 tal protection programs to the governor, the Legislature
103 and the public generally.

§22-1-2. Definitions.

1 As used in this article, unless otherwise provided or
2 indicated by the context:

3 (1) The term "department" means the department of
4 commerce, labor and environmental resources;

5 (2) The term "secretary" means the secretary of the
6 department of commerce, labor and environmental
7 resources;

8 (3) The term "division" means the division of enviro-
9 nmental protection;

10 (4) The term "director" means the director of the
11 division of environmental protection;

12 (5) The term "function" includes any duty, obligation,
13 power, authority, responsibility, right, privilege, activity
14 or program;

15 (6) The term "office" includes any office, board,
16 agency, unit, organizational entity, or component
17 thereof.

§22-1-3. Creation of division of environmental protection; appointment of director.

1 There is hereby created within the department of
2 commerce, labor and environmental resources an
3 executive agency to be known as the division of
4 environmental protection. The division shall be admin-
5 istered, in accordance with the provisions of this article,
6 under the supervision and direction of the director of the
7 division of environmental protection.

§22-1-4. Jurisdiction vested in division.

1 (a) Except as otherwise expressly provided in this
2 chapter or in chapter twenty-two-a or twenty-two-b of
3 this code, jurisdiction over the issuance of regulations,
4 or any and all permits and other governmental author-
5 izations required or to be required in all matters
6 pertaining to the exploration, development, production,
7 storage and recovery of coal, oil and gas, and other
8 mineral resources in this state, including all conserva-
9 tion, land, water, waste disposal, reclamation and
10 environmental regulations, permits and authorizations
11 of such activities called for pursuant to articles five,
12 five-a, five-d and five-f, chapter twenty of this code, and
13 the enforcement and implementation thereof is vested
14 exclusively in the division. The division is hereby
15 designated as the lead regulatory agency for this state
16 for all purposes of federal legislation relating to such
17 activities.

18 (b) The division shall exercise all power and duties
19 vested in the director of the division of natural resources
20 pursuant to subsection (f), section seven, article five-e,
21 chapter twenty of this code, and in the administrator of
22 the office of oil and gas and shallow gas well review
23 board pursuant to subsection (g), section seven, article
24 five-e, chapter twenty of this code.

§22-1-5. Director of the division of environmental protection.

1 (a) The director shall be the chief executive officer of
2 the division. Subject to provisions of law, he or she shall
3 organize the division into such offices, sections, agencies

4 and other units of activity as may be found by the
5 director to be desirable for the orderly, efficient and
6 economical administration of the division and for the
7 accomplishment of its objects and purposes. The director
8 may appoint assistants, hearing officers, clerks, steno-
9 graphers, and other officers, technical personnel and
10 employees needed for the operation of the division and
11 may prescribe their powers and duties and fix their
12 compensation within amounts appropriated therefor.

13 (b) The director shall have the power to and may
14 designate the supervisory officers or other officers or
15 employees of the division to substitute for him or her on
16 any board or commission established under this chapter
17 or to sit in his or her place in any hearings, appeals,
18 meetings or other activities with such substitute having
19 the same powers, duties, authority and responsibility as
20 the director. Additionally, the director shall have the
21 power to delegate to the supervisory officers or other
22 officers or employees of the division his or her powers,
23 duties, authority and responsibility relating to issuing
24 permits, hiring and training inspectors and other
25 employees of the division, conducting hearings and
26 appeals and such other duties and functions set forth in
27 this chapter or chapters twenty-two-a and twenty-two-
28 b as he or she considers appropriate.

29 (c) The director shall have responsibility for the
30 conduct of the intergovernmental relations of the
31 division, including assuring: (1) That the division carries
32 out its functions in a manner which supplements and
33 complements the environmental policies, programs and
34 procedures of the federal government, other state
35 governments, and other instrumentalities of this state;
36 and (2) that appropriate officers and employees of the
37 division consult with individuals responsible for making
38 policy relating to environmental issues in the federal
39 government, other state governments, and other instru-
40 mentalities of this state concerning differences over
41 environmental policies, programs and procedures and
42 concerning the impact of statutory law and rules and
43 regulations upon the environment of this state.

44 (d) In addition to other powers, duties and responsi-

45 bilities granted and assigned to the director by this
46 section or by a transfer of functions or offices in
47 accordance with the provisions of this article, the
48 director is hereby authorized and empowered to:

49 (1) Sign and execute in the name of the state by the
50 "division of environmental protection" any contract or
51 agreement with the federal government or its depart-
52 ments or agencies, subdivisions of the state, corpora-
53 tions, associations, partnerships or individuals:
54 *Provided*, That the powers granted to the director to
55 enter into agreements or contracts and to make expen-
56 ditures and obligations of public funds under this
57 subdivision shall not exceed or be interpreted as
58 authority to exceed the powers heretofore granted by the
59 Legislature to the various commissioners, directors or
60 board members of the various departments, agencies or
61 boards that comprise and are incorporated into each
62 secretary's department pursuant to the provisions of
63 chapter five-f of this code.

64 (2) Conduct research in improved environmental
65 protection methods and disseminate information to the
66 citizens of this state.

67 (3) Enter private lands to make surveys and inspec-
68 tions for environmental protection purposes, to investi-
69 gate for violations of statutes or rules which the division
70 is charged with enforcing, to serve and execute war-
71 rants and processes, to make arrests, and to otherwise
72 enforce the statutes or rules which the division is
73 charged with enforcing.

74 (4) Acquire for the state in the name of the "division
75 of environmental protection" by purchase, condemna-
76 tion, lease or agreement, or accept or reject for the state,
77 in the name of the division of environmental protection,
78 gifts, donations, contributions, bequests or devises of
79 money, security or property, both real and personal, and
80 any interest in such property.

81 (5) Conduct schools, institutions and other educational
82 programs, apart from or in cooperation with other
83 governmental agencies, for instruction and training in
84 all phases of environmental protection programs in this

85 state.

86 (e) The director shall be appointed by the governor,
87 by and with the advice and consent of the Senate, and
88 shall serve at the will and pleasure of the governor:
89 *Provided*, That in lieu of appointing a director, the
90 governor may order the secretary to directly exercise
91 the powers of the director. The secretary shall designate
92 the order in which other officials of the division shall
93 act for and perform the functions of the secretary or the
94 director during the absence or disability of both the
95 secretary and the director or in the event of vacancies
96 in both of those offices.

97 (f) At the time of his or her initial appointment, the
98 director shall be at least thirty years old and shall be
99 selected with special reference and consideration given
100 to his or her administrative experience and ability, to
101 his or her demonstrated interest in the effective and
102 responsible regulation of the energy industry and the
103 conservation and wise use of natural resources. The
104 director shall have at least a bachelor's degree in a
105 related field and shall have at least three years of
106 experience in a position of responsible charge in at least
107 one discipline relating to the duties and responsibilities
108 for which the director will be responsible upon assump-
109 tion of the office of director. The director shall not be
110 a candidate for or hold any other public office, shall not
111 be a member of any political party committee and shall
112 immediately forfeit and vacate his or her office as
113 director in the event he or she becomes a candidate for
114 or accepts appointment to any other public office or
115 political party committee.

116 (g) The director shall receive an annual salary of
117 sixty-five thousand dollars and shall be allowed and paid
118 necessary expenses incident to the performance of his or
119 her official duties. Prior to the assumption of the duties
120 of his or her office, the director shall take and subscribe
121 to the oath required of public officers prescribed by
122 section five, article four of the constitution of West
123 Virginia and shall execute a bond, with surety approved
124 by the governor, in the penal sum of ten thousand
125 dollars, which executed oath and bond shall be filed in

126 the office of the secretary of state. Premiums on the
127 bond shall be paid from the division funds.

§22-1-6. Supervisory officers.

1 (a) There shall be in the division such number of
2 supervisory officers as the director may determine is
3 necessary to administer the functions and offices
4 transferred to the division in accordance with the
5 provisions of this article. Such supervisory officers shall
6 be deemed to be "administrators" as such term is
7 defined in section two, article six, chapter twenty-nine
8 of this code, notwithstanding the fact that the positions
9 filled by such persons are not statutorily created. Any
10 such supervisory officer may be designated by the
11 director as a deputy director, assistant director, chief,
12 administrator, or other administrative title or designa-
13 tion. Such supervisory officers may supervise the
14 general subject areas of administration, mines and
15 minerals, oil and gas, and abandoned mine lands and
16 reclamation, as such functions and offices are trans-
17 ferred to the division in accordance with the provisions
18 of sections seven and eight of this article, and such other
19 functions and offices as may be transferred to the
20 division by executive order in accordance with the
21 provisions of section nine of this article. The governor
22 may, at any time prior to the first day of January, one
23 thousand nine hundred ninety-three, by executive order,
24 redefine the subject areas to be administered by any
25 such supervisory officers, stating in such executive
26 order or orders the title or designation to be assigned
27 to the positions of supervisory officers and the particular
28 functions and offices transferred by this article which
29 are subject to administration by such designated
30 supervisory officers. Each of the supervisory officers
31 shall be appointed by the director and serve at the will
32 and pleasure of the director. The compensation of such
33 supervisory officers shall be fixed by the director. A
34 single individual may be appointed to serve simultane-
35 ously in two distinct supervisory positions, but in a case
36 where such dual appointment is made, such supervisory
37 officer shall not receive additional compensation above
38 that which would be paid for serving in one supervisory

39 position.

40 (b) A supervisory officer appointed pursuant to the
41 provisions of this section shall report directly to the
42 director and shall, in addition to any functions vested
43 in or required to be delegated to such officer, perform
44 such additional functions as the director may prescribe.

45 (c) The supervisory officers of the division shall,
46 before entering upon the discharge of their duties, take
47 the oath of office prescribed by section five, article four
48 of the constitution of West Virginia, and shall execute
49 a bond in the penalty of two thousand dollars, with
50 security to be approved by the governor, conditioned
51 upon the faithful discharge of their duties, a certificate
52 of which oath and which bond shall be filed in the office
53 of the secretary of state. Premiums on such bond shall
54 be paid from the division funds.

**§22-1-7. Functions transferred to the director of the
division of environmental protection.**

1 (a) All powers vested in the commissioner of the
2 division of energy prior to the effective date of this
3 section shall upon the effective date of this section be
4 vested in the director.

5 (b) There are hereby transferred to the director all
6 functions of the director of the division of mines and
7 minerals of the department of energy as set forth in the
8 prior enactment of section eight-a of this article. The
9 director may delegate to a supervisory officer the
10 authority and duty to execute and carry out, administer
11 and enforce the provisions of this chapter and chapter
12 twenty-two-a of this code relating to surface and
13 underground mining permits and coal mine reclamation
14 inspections.

15 (c) There are hereby transferred to the director all
16 functions of the director of the division of abandoned
17 mine lands and reclamation of the department of energy
18 as set forth in the prior enactment of section ten-a of
19 this article. The director may delegate to a supervisory
20 officer the authority and duty to execute and carry out,
21 administer and enforce the provisions of article three of

22 this chapter related to abandoned mine lands and
23 reclamation.

24 (d) Except for the authority of the shallow gas well
25 review board under article seven of this chapter and of
26 the oil and gas conservation commission under article
27 eight of this chapter and of the oil and gas inspectors
28 examining board under article thirteen of this chapter,
29 there are hereby transferred to the director all functions
30 of the director of the division of oil and gas of the
31 department of energy as set forth in the prior enactment
32 of section twelve of this article. The director may
33 delegate to a supervisory officer the authority and duty
34 to execute and carry out, administer and enforce the
35 provisions of chapter twenty-two-b of this code as they
36 relate to oil and gas.

37 (e) Nothing in the provisions of this section or in the
38 provisions of this chapter shall authorize the transfer to
39 the director of functions of the director of the division
40 of health, safety and training of the department of
41 energy as set forth in the prior enactment of section
42 nine-a of this article. Furthermore, nothing in the
43 provisions of this section will vest the powers of the
44 commissioner of the division of energy, as those powers
45 relate to health, safety and training functions, in the
46 director.

§22-1-8. Offices transferred to the division of environmental protection.

1 There are hereby transferred to the division the
2 following offices:

3 (1) All offices in the division of mines and minerals
4 of the department of energy;

5 (2) All offices in the division of abandoned mine lands
6 and reclamation of the department of energy;

7 (3) All offices in the division of oil and gas of the
8 department of energy.

§22-1-9. Transfer of functions and offices by executive order.

1 (a) The governor may, by executive order, transfer to

2 the division all or any part of the functions and all or
3 any part of the offices of the division of natural
4 resources relating to restoration, maintenance and
5 protection of the environment. The authority to make
6 transfers as provided in this subsection shall expire on
7 the thirtieth day of June, one thousand nine hundred
8 ninety-two.

9 (b) The governor may, by executive order, transfer to
10 or from the division all or any part of the functions and
11 all or any part of the offices of the department not
12 provided for in subsection (a) of this section. The
13 authority to make transfers as provided in this section
14 shall expire on the thirty-first day of December, one
15 thousand nine hundred ninety-two.

16 (c) The authority granted in this article shall not
17 extend to the transfer of offices, functions, property,
18 personnel or funds of the division of natural resources
19 as provided in, or pursuant to, articles one, one-a, two,
20 two-a, two-b, two-c, three, three-b, four-a, seven or
21 seven-a, chapter twenty of this code, or as provided in,
22 or pursuant to, section nineteen-a, article five-a, chapter
23 twenty of this code. In addition, the division shall solicit
24 from the division of natural resources reports and
25 comments concerning all state certifications required
26 under 33 U.S.C. §1341. Such reports and comments shall
27 be directed from the division of natural resources to the
28 division for consideration.

§22-1-10. Effect of transfers.

1 (a) The transfer of a function or office in accordance
2 with the provisions of this article from an officer or
3 agency to the director or to the division includes any
4 aspects of such function or office vested in a subordinate
5 of such officer or in a component of such agency.

6 (b) Except for such functions or offices as are
7 transferred pursuant to the provisions of this article, the
8 functions and offices of the department shall not be
9 affected by the enactment of this article or the promul-
10 gation of an executive order pursuant to the provisions
11 of section nine of this article.

§22-1-11. Reorganization of the division of environmental protection.

1 The secretary is authorized to allocate or reallocate
2 functions among the officers of the division, and to
3 establish, consolidate, alter or discontinue such offices
4 within the division as may be necessary or appropriate:
5 *Provided*, That the authority of the secretary under the
6 provisions of this subsection does not extend to: (1) Any
7 office or other entity transferred to the division and
8 established by statute; (2) the abolition of any office or
9 other entity established by this article; or (3) the
10 alteration of the delegation of functions to any specific
11 office or other entity required by this article.

§22-1-12. Legislative oversight.

1 (a) Upon the execution of an executive order pursuant
2 to section six or nine of this article, or upon the
3 allocation or reallocation of functions or the alteration,
4 consolidation or discontinuance of offices by the secre-
5 tary pursuant to section eleven of this article, the
6 governor or the secretary shall cause a copy of the
7 executive order of the governor or notice of the
8 secretary, as the case may be, to be delivered to the
9 president of the Senate and the speaker of the House of
10 Delegates. The secretary and any executive officers or
11 employees affected by a transfer or reorganization, or
12 a proposed transfer or reorganization, when requested
13 by either the president of the Senate or the speaker of
14 the House of Delegates, shall appear before the joint
15 committee on government and finance of the Legislature
16 and be heard with respect to a transfer or reorganiza-
17 tion, or a proposed transfer or reorganization, and to
18 answer inquiries relative thereto.

19 (b) On or before the thirty-first day of December, one
20 thousand nine hundred ninety-one, and every ninety
21 days thereafter, until the thirty-first day of December,
22 one thousand nine hundred ninety-two, the director shall
23 report in writing to the joint committee on government
24 and finance of the Legislature or its designated subcom-
25 mittee as to the disposition by the division of permit
26 applications and actions pending before the division

27 during the preceding ninety-day period.

§22-1-13. Rules and regulations.

1 The director has the power and authority to propose
2 legislative rules for promulgation in accordance with
3 the provisions of article three, chapter twenty-nine-a of
4 this code for the orderly transfer of functions and offices
5 and the reorganization of the division, and to carry out
6 and implement the provisions of this chapter and
7 chapters twenty-two-a and twenty-two-b of this code or
8 to carry out and implement any other provision of law
9 relating to offices or functions transferred pursuant to
10 this article.

**§22-1-14. Transfer and allocation of appropriations and
personnel.**

1 (a) Except as otherwise provided in this article, the
2 personnel employed in connection with, and the assets,
3 liabilities, contracts, property, records, and unexpended
4 balance of appropriations, authorizations, allocations,
5 and other funds employed, held, used, arising from,
6 available to, or to be made available in connection with
7 the functions and offices transferred by this article, may
8 be transferred by the secretary to the division for
9 appropriate allocation. Unexpended funds transferred
10 pursuant to this subsection shall be used only for the
11 purposes for which the funds were originally authorized
12 and appropriated.

13 (b) Except as herein exempted and notwithstanding
14 any other provisions in this code to the contrary, the
15 director may, with the exception of the special reclama-
16 tion fund established in section eleven, article three,
17 chapter twenty-two-a of this code, expend, in accordance
18 with the provisions of chapter five-a of this code, from
19 special revenue accounts, and funds established pursu-
20 ant to this chapter and chapters twenty-two-a and
21 twenty-two-b of this code, amounts necessary to imple-
22 ment and administer the general powers, duties and
23 responsibilities of the division of environmental protec-
24 tion: *Provided*, That federal funds required by law to be
25 expended for a specific purpose may not be expended
26 for any purpose contrary to the laws, rules or regula-

27 tions of the federal government.

§22-1-15. Effect on personnel.

1 (a) With respect to employees affected by the provi-
2 sions of this article or article seven of chapter twenty-
3 two-a of the code, the layoff and recall rights of such
4 employees within the classified service of the state as
5 provided in subsections (5) and (6), section ten, article
6 six, chapter twenty-nine of this code shall be limited to
7 the department of commerce, labor and environmental
8 resources and further limited to an occupational group
9 substantially similar to the occupational group estab-
10 lished by the classification and compensation plan for
11 the classified service of the agency or board in which
12 the employee was employed: *Provided*, That the em-
13 ployee shall possess the qualifications established for the
14 job class. The duration of recall rights provided in this
15 subsection shall be limited to two years or the length of
16 tenure, whichever is less. Except as provided in this
17 subsection, nothing contained in this section shall be
18 construed to abridge the rights of employees within the
19 classified service of the state as provided in sections ten
20 and ten-a, article six, chapter twenty-nine of this code.

21 (b) The director is empowered to authorize the
22 payment of all or any part of the reasonable expenses
23 of an employee of the division in moving his household
24 furniture and effects as a result of a reassignment of
25 such employee caused by a transfer of functions or
26 offices pursuant to this article.

§22-1-16. Saving provisions.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds, author-
3 izations and privileges which have been issued, made,
4 granted, or allowed to become effective by the governor,
5 any state department or agency or official thereof, or by
6 a court of competent jurisdiction, in the performance of
7 functions which are transferred under this article to the
8 secretary, to the director or to the division, and which
9 are in effect on the date such transfer occurs, shall
10 continue in effect according to their terms until
11 modified, terminated, superseded, set aside, or revoked

12 in accordance with the law by the governor, the
13 secretary, the director, or other authorized official, a
14 court of competent jurisdiction, or by operation of law.

15 (b) The provisions of this article shall not affect any
16 proceedings, including notices of proposed rule making,
17 or any application for any license, permit, certificate, or
18 financial assistance pending before any department,
19 division or other office, functions of which are trans-
20 ferred by this article or article seven, chapter twenty-
21 two-a of this code. Orders shall be issued in such
22 proceedings, appeals shall be taken therefrom, and
23 payments shall be made pursuant to such orders, as if
24 this article had not been enacted; and orders issued in
25 any such proceedings shall continue in effect until
26 modified, terminated, superseded, or revoked by the
27 governor, the secretary, the director, by a court of
28 competent jurisdiction, or by operation of law. Nothing
29 in this subsection shall be deemed to prohibit the
30 discontinuance or modification of any such proceeding
31 under the same terms and conditions and to the same
32 extent that such proceeding could have been discon-
33 tinued or modified if this article had not been enacted.
34 The director is authorized to propose legislative rules in
35 accordance with the provisions of chapter twenty-nine-
36 a of this code for the orderly transfer of proceedings
37 continued under the provisions of this subsection.

38 (c) Except as provided in subsection (e) of this section,
39 the provisions of this article shall not affect suits
40 commenced prior to the effective date of any transfer
41 of functions or offices made pursuant to the provisions
42 of this article, and in all such suits, proceedings shall
43 be had, appeals taken, and judgments rendered in the
44 same manner and with like effect as if this article had
45 not been enacted.

46 (d) No suit, action, or other proceeding commenced by
47 or against any officer in the official capacity of such
48 individual as an officer of any department, division or
49 other office, functions of which are transferred pursuant
50 to the provisions of this article, shall abate by reason of
51 the enactment of this article. No cause of action by or
52 against any department, division or other office,

53 functions of which are transferred pursuant to the
54 provisions of this article, or by or against any officer
55 thereof in the official capacity of such officer, shall abate
56 by reason of the enactment of this article.

57 (e) If, before the transfer of any function or office
58 pursuant to the provisions of this article, any depart-
59 ment, division or other office, or officer thereof in the
60 official capacity of such officer, is a party to a suit, and
61 under this article any function of such department,
62 division or other office, or officer is transferred to the
63 secretary, the director or other officer of the division,
64 then such suit shall be continued with the secretary, the
65 director or other appropriate officer substituted or
66 added as a party.

67 (f) Orders and actions of the secretary or the director
68 in the exercise of functions transferred under this
69 article shall be subject to judicial review to the same
70 extent and in the same manner as if such orders and
71 actions had been by such department, division or other
72 office, or part thereof, exercising such functions
73 immediately preceding their transfer. Any statutory
74 requirements relating to notice, hearings, action upon
75 the record, or administrative review that apply to any
76 function transferred pursuant to the provisions of this
77 article shall apply to the exercise of such function by the
78 secretary, the director or other officer.

§22-1-17. Advisory boards.

1 (a) The division of energy advisory board heretofore
2 created under the provisions of the prior enactment of
3 section seven-a of this article is hereby continued and
4 is redesignated the division of environmental protection
5 energy advisory board. Members of the board serving
6 on the effective date of this section shall continue as
7 members of the redesignated board. The energy advi-
8 sory board shall consist of nine members appointed by
9 the governor, for terms of two years, who shall serve
10 without compensation. Each member shall be reim-
11 bursed for all reasonable and necessary expenses
12 actually incurred in the performance of his or her
13 duties, in accordance with the reimbursement rates

14 applied to employees of the division. Three members of
15 the board shall have significant experience in the energy
16 industry, three members shall have significant expe-
17 rience in the advocacy of environmental protection, one
18 member shall be a representative of organized labor,
19 one member shall be a member of the House of
20 Delegates recommended by the speaker of the House of
21 Delegates, and one member shall be a member of the
22 Senate recommended by the president of the Senate.
23 The director shall serve as an ex officio member and
24 chairman of the board. The energy advisory board shall
25 meet at least every two months, or upon the call of four
26 members, to discuss all aspects of the division's envir-
27 onmental protection and environmental regulatory
28 functions, collection of penalties and fines, and
29 responsibilities.

30 (b) The division of environmental protection reorgan-
31 ization advisory board is hereby created. The reorgan-
32 ization advisory board shall consist of fourteen members
33 appointed by the governor, for terms ending on the
34 thirtieth day of March, one thousand nine hundred
35 ninety-three, at which time the reorganization advisory
36 board shall cease to exist. Members shall serve without
37 compensation. Each member shall be reimbursed for all
38 reasonable and necessary expenses actually incurred in
39 the performance of his or her duties, in accordance with
40 the reimbursement rates applied to employees of the
41 division. Four members of the board shall have signif-
42 icant experience in an industry regulated or proposed
43 to be regulated by the division, four members shall have
44 significant experience in the advocacy of environmental
45 protection, two members shall have significant expe-
46 rience in the teaching of public administration, two
47 members shall be members of the House of Delegates
48 recommended by the speaker of the House of Delegates,
49 and two members shall be members of the Senate
50 recommended by the president of the Senate. The
51 secretary shall serve as an ex officio member and
52 chairman of the board. The reorganization advisory
53 board shall meet at least every two months, or upon the
54 call of six members, to discuss all aspects of the
55 division's reorganization of functions and offices relating

56 to environmental protection and environmental regula-
57 tory functions pursuant to this article.

58 (c) The division of energy task force, heretofore
59 constituted and appointed by the joint committee on
60 government and finance of the Legislature, shall, on or
61 before the fifteenth day of December, one thousand nine
62 hundred ninety-one, deliver to the secretary a report
63 containing its findings of facts and recommendations
64 concerning its investigations and deliberations with
65 regard to the environmental regulatory functions of the
66 department of energy as created by a prior enactment
67 of this article. On or before the fifteenth day of January,
68 one thousand nine hundred ninety-two, the secretary
69 shall deliver a responsive report to the joint committee
70 on government and finance.

**§22-1-18. Special tax on coal production; mines and
minerals operations fund created.**

1 (a) *Imposition of tax.* — Upon every person in this
2 state engaging in the privilege of severing, extracting,
3 reducing to possession or producing coal for sale, profit
4 or commercial use, there is hereby imposed an annual
5 tax equal to two cents per ton of coal produced by such
6 person for sale, profit or commercial use during such
7 person's taxable year. The special tax imposed by this
8 section is in addition to all other taxes levied by law.
9 In no event may a ton of coal be taxed more than once
10 under the provisions of this section.

11 (b) *Payment and collection of tax.* — The tax imposed
12 by this section shall be collected by the tax commis-
13 sioner in the same manner, at the same time, and upon
14 the same tonnage as the minimum severance tax
15 imposed by article twelve-b, chapter eleven of this code
16 is collected: *Provided*, That under no circumstance shall
17 this tax be construed to be an increase in either the
18 minimum severance tax imposed by said article twelve-
19 b or the severance tax imposed by article thirteen of said
20 chapter eleven. Every person liable for payment of this
21 special tax shall pay the amount due without notice or
22 demand for payment. The tax commissioner shall
23 provide to the director of the division of environmental

24 protection a quarterly listing of all persons known to be
25 delinquent in payment of the special tax. The director
26 of the division of environmental protection may take
27 such delinquencies into account in making determina-
28 tions on the issuance, renewal or revision of any permit.

29 (c) *Mines and minerals operations fund.* — There is
30 hereby created in the state treasury a special fund
31 known as the “Mines and Minerals Operations Fund”
32 into which the tax commissioner shall, at least quar-
33 terly, deposit the net amount of tax collected by him or
34 her under this section, including any additions to tax,
35 penalties and interest collected with respect thereto. The
36 treasurer shall deposit all moneys deposited in or
37 credited to this fund in an interest-bearing account, with
38 the amount of interest earned being credited to this fund
39 as it is earned. The moneys in this special fund shall be
40 expended solely for the purposes of carrying out those
41 statutory duties relating to the enforcement of environ-
42 mental regulatory programs for the coal industry as
43 imposed by this chapter and chapter twenty-two-a of
44 this code and the Federal Surface Mining Control and
45 Reclamation Act of 1977 and any amendments thereto.
46 Expenditures from the “Mines and Minerals Operations
47 Fund” are not authorized from collections but are to be
48 made only in accordance with appropriations by the
49 Legislature and in accordance with the provisions of
50 article three, chapter twelve of this code and upon
51 fulfillment of the provisions set forth in article two,
52 chapter five-a of this code.

53 (d) *General procedure and administration.* — Each
54 and every provision of the “West Virginia Tax Proce-
55 dure and Administration Act” set forth in article ten,
56 chapter eleven of the code shall also apply to the special
57 tax imposed by this section with like effect as if such
58 act were applicable only to the special tax imposed by
59 this section and were set forth in extenso in this article,
60 notwithstanding the provisions of section three of said
61 article ten.

62 (e) *Crimes and penalties.* — Each and every provision
63 of the “West Virginia Tax Crimes and Penalties Act” set
64 forth in article nine of said chapter eleven shall apply

65 to the special tax imposed by this section with like effect
66 as if such act were applicable only to the special tax
67 imposed by this section and set forth in extenso in this
68 article, notwithstanding the provisions of section two of
69 said article nine.

70 (f) *Effective date.* — The special tax imposed by this
71 section shall apply to all coal produced in this state after
72 the thirtieth day of September, one thousand nine
73 hundred ninety-one.

§22-1-19. Hearings before division of environmental protection.

1 Any hearing or proceeding before the division on any
2 matter other than rule making shall be conducted and
3 heard by the director or a representative designated by
4 the director and shall be in accordance with the
5 provisions of article five, chapter twenty-nine-a of this
6 code, except where such provisions are inconsistent with
7 this chapter or chapters twenty-two-a or twenty-two-b
8 of this code.

CHAPTER 22A. MINES AND MINERALS.

Article

- 3. West Virginia Surface Coal Mining and Reclamation Act.
- 7. Office of Miners' Health, Safety and Training.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§22A-3-11a. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent; expiration of rule; reporting.

1 (a) Notwithstanding the provisions of section eleven of
2 this article, the director of the division of environmental
3 protection may establish and implement a site-specific
4 bonding system in accordance with the provisions of this
5 section.

6 (b) Such site-specific bonding system shall be estab-
7 lished by a legislative rule proposed by the director. The
8 rule shall be proposed for promulgation in accordance
9 with the provisions of article three, chapter twenty-nine-
10 a of this code, except as the provisions of this section

11 otherwise direct. The notice of the proposed promulga-
12 tion and the text of the proposed rule shall be filed in
13 the state register in compliance with the requirements
14 of section five, article three, chapter twenty-nine-a of
15 this code: *Provided*, That such filing shall be made on
16 or before the thirtieth day of June, one thousand nine
17 hundred ninety-two: *Provided, however*, That a period
18 for receiving public comment on the merits of such rule
19 shall be afforded, which period shall extend for not less
20 than sixty days next following the filing of the proposed
21 rule in the state register. The notice establishing the
22 period for public comment shall also fix a date, time and
23 place for a hearing for public comment at which both
24 written and oral presentations may be made, and such
25 hearing shall be held after the thirtieth day of the public
26 comment period but before the forty-sixth day of such
27 comment period. The provisions of section nine, article
28 three, chapter twenty-nine-a of this code to the contrary
29 notwithstanding, after the close of the public comment
30 period, the director shall proceed to agency approval
31 and final adoption of the rule, including any amend-
32 ments made by the director prior to such final adoption,
33 without further hearing or public comment. No such
34 amendment may change the main purpose of the rule.
35 Such final adoption shall occur on or before the first day
36 of November, one thousand nine hundred ninety-two,
37 and such rule shall become effective, and have the full
38 force and effect of law on and after the first day of
39 December, one thousand nine hundred ninety-two,
40 without submission to the Legislature. Such rule shall
41 continue in effect until the first day of May, one
42 thousand nine hundred ninety-three, or until sooner
43 modified, codified or abrogated by the Legislature. Such
44 rule shall not be promulgated as an emergency legisla-
45 tive rule.

46 (c) A legislative rule proposed or promulgated
47 pursuant to this section must provide, at a minimum,
48 for the following:

49 (1) The amount of a performance bond shall be not
50 less than one thousand dollars nor more than five
51 thousand dollars per acre or fraction thereof.

52 (2) Any such bond, subject to the limitations of
53 subdivision (1) of this subsection, shall reflect a relative
54 potential cost of reclamation associated with the
55 activities proposed to be permitted, which cost would not
56 otherwise be reflected by performance bonds calculated
57 by merely applying a specific dollar amount per acre for
58 all permits.

59 (3) Such bond, subject to the provisions of subdivision
60 (1) of this subsection, shall also reflect an analysis under
61 the legislative rule of various factors, as applicable,
62 which affect the cost of reclamation, including, but not
63 limited to: (A) The general category of mining, whether
64 surface or underground; (B) mining techniques and
65 methods proposed to be utilized; (C) support facilities,
66 fixtures, improvements and equipment; (D) topography
67 and geology; and (E) the potential for degrading or
68 improving water quality.

69 (d) A legislative rule proposed or promulgated
70 pursuant to the provisions of this section may, in
71 addition to the requirements of subsection (c) of this
72 section, provide for a consideration of other factors
73 deemed relevant by the director. For example, such rule
74 may provide for the following:

75 (1) A consideration as to whether the bond relates to
76 a new permit application, a renewal of an existing
77 permit, an application for an incidental boundary
78 revision, or the reactivation of an inactive permit;

79 (2) A consideration of factors which may result in
80 environmental enhancement, as in a case where remin-
81 ing may improve water quality or reduce or eliminate
82 existing highwalls, or a permitted operation may create
83 or improve wetlands; or

84 (3) An analysis of various factors related to the
85 specific permit applicant, including, but not limited to:
86 (A) The prior mining experience of the applicant with
87 the activities sought to be permitted; and (B) the history
88 of the applicant as it relates to prior compliance with
89 statutory and regulatory requirements designed to
90 protect, maintain or enhance the environment in this or
91 any other state.

92 (e) It is the intent of the Legislature that a legislative
 93 rule proposed or promulgated pursuant to the provisions
 94 of this section shall be constructed so that when the
 95 findings of fact by the division of environmental
 96 protection with respect to the proposed mining activity
 97 and the particular permit applicant coincide with the
 98 particular factors or criteria to be considered and
 99 analyzed under the rule, the rule will direct a conclusion
 100 as to the amount of the bond to be required, subject to
 101 rebuttal and refutation of the findings by the applicant.
 102 To the extent practicable, the rule shall limit subjectiv-
 103 ity and discretion by the director and the division in
 104 fixing the amount of the bond.

105 (f) On or before the thirty-first day of December, one
 106 thousand nine hundred ninety-one, and every ninety
 107 days thereafter, the director shall report in writing to
 108 the joint committee on government and finance of the
 109 Legislature or its designated subcommittee as to the
 110 progress of the division in developing or implementing,
 111 as the case may be, the provisions of this section.

ARTICLE 7. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING.

§22A-7-1. Redesignation of the division of health, safety and training as the office of miners' health, safety and training.

§22A-7-2. Definitions.

§22A-7-3. Director of the office of miners' health, safety and training.

§22A-7-4. General powers and duties of the director of the office of miners' health, safety and training.

§22A-7-5. Functions transferred to the director of the office of miners' health, safety and training.

§22A-7-6. Offices transferred to the office of miners' health, safety and training.

§22A-7-7. Transfer and allocation of appropriations and personnel.

§22A-7-8. Director's authority to promulgate rules.

§22A-7-9. Saving provisions.

§22A-7-1. Redesignation of the division of health, safety and training as the office of miners' health, safety and training.

1 The division of health, safety and training of the
 2 department of energy is hereby redesignated the office
 3 of miners' health, safety and training. The office of
 4 miners' health, safety and training shall be a separate

5 office within the department of commerce, labor and
6 environmental resources. The office shall be adminis-
7 tered, in accordance with the provisions of this article,
8 under the supervision and direction of the director of the
9 office of miners' health, safety and training.

§22A-7-2. Definitions.

1 As used in this article, unless otherwise provided or
2 indicated by the context:

3 (1) The term "department" means the department of
4 commerce, labor and environmental resources;

5 (2) The term "secretary" means the secretary of the
6 department of commerce, labor and environmental
7 resources;

8 (3) The term "office", when referring to a specific
9 office, means the office of miners' health, safety and
10 training. The term "office", when used generically,
11 includes any office, board, agency, unit, organizational
12 entity or component thereof;

13 (4) The term "director" means the director of the
14 office of miners' health, safety and training;

15 (5) The term "function" includes any duty, obligation,
16 power, authority, responsibility, right, privilege, activity
17 or program.

**§22A-7-3. Director of the office of miners' health, safety
and training.**

1 (a) The director of the office of miners' health, safety
2 and training shall be responsible for surface and
3 underground safety inspections of coal mines, the
4 administration of the office of miners' health, safety and
5 training and of such other matters as are delegated or
6 assigned to the director by the secretary of the depart-
7 ment of commerce, labor and environmental resources.

8 (b) The director shall be the chief executive officer of
9 the office. Subject to provisions of law, he or she shall
10 organize the office into such offices, sections, agencies
11 and other units of activity as may be found by the
12 director to be desirable for the orderly, efficient and

13 economical administration of the office. The director
14 may appoint such other employees needed for the
15 operation of the office and may prescribe their powers
16 and duties and fix their compensation within amounts
17 appropriated therefor.

18 (c) The director shall be appointed by the governor,
19 by and with the advice and consent of the Senate, and
20 shall serve at the will and pleasure of the governor:
21 *Provided*, That, in lieu of appointing a director, the
22 governor may order the secretary to directly exercise
23 the powers of the director. The secretary shall designate
24 the order in which other officials of the office shall act
25 for and perform the functions of the secretary or the
26 director during the absence or disability of both the
27 secretary or the director or in the event of vacancies in
28 both of those offices.

29 (d) The director of the office of miners' health, safety
30 and training shall be a citizen of West Virginia, shall
31 be a competent person of good repute and temperate
32 habits with a demonstrated interest and five years'
33 experience in underground coal mining and shall have
34 at least three years of experience in a position of
35 responsible charge in at least one discipline relating to
36 the duties and responsibilities for which the director
37 will be responsible upon assumption of the office of
38 director. Special reference shall be given to his or her
39 administrative experience and ability. The director shall
40 devote all of his or her time to the duties of the position
41 of director and shall not be directly interested finan-
42 cially in any mine in this or any other state nor shall
43 the director, either directly or indirectly, be a majority
44 owner of, or have control of or a controlling interest in,
45 a mine in this or any other state. The director shall not
46 be a candidate for or hold any other public office, shall
47 not be a member of any political party committee and
48 shall immediately forfeit and vacate his or her office as
49 director in the event he or she becomes a candidate for
50 or accepts appointment to any other public office or
51 political party committee.

52 (e) The director shall receive an annual salary of
53 sixty-five thousand dollars and shall be allowed and paid

54 necessary expenses incident to the performance of his or
55 her official duties. Prior to the assumption of his or her
56 official duties, the director shall take the oath required
57 of public officials prescribed by section five, article four
58 of the constitution of West Virginia and shall execute
59 a bond, with surety approved by the governor, in the
60 penal sum of ten thousand dollars, which executed oath
61 and bond shall be filed in the office of the secretary of
62 state. Premiums on the bond shall be paid from office
63 funds.

§22A-7-4. General powers and duties of the director of the office of miners' health, safety and training.

1 The director of the office of miners' health, safety and
2 training is hereby empowered and it shall be his or her
3 duty to administer and enforce such provisions of
4 articles one-a, two, five and six of this chapter and
5 chapter twenty-two of this code relating to health and
6 safety inspections and enforcement and training in
7 surface and underground coal mines, underground clay
8 mines, open pit mines, cement manufacturing plants
9 and underground limestone and sandstone mines. The
10 director of the office of miners' health, safety and
11 training shall replace the commissioner of the division
12 of energy and the director of the division of mines and
13 minerals on those boards as set forth in articles nine and
14 eleven of chapter twenty-two. The secretary, or his or
15 her designee, shall replace the commissioner of the
16 division of energy as chairman of the board of coal mine
17 health and safety.

§22A-7-5. Functions transferred to the director of the office of miners' health, safety and training.

1 There are hereby transferred to the director all
2 functions of the director of the division of health, safety
3 and training of the department of energy as set forth
4 in the prior enactment of section nine-a, article one,
5 chapter twenty-two of this code.

§22A-7-6. Offices transferred to the office of miners' health, safety and training.

1 (a) There are hereby transferred to the office of
2 miners' health, safety and training the following offices:

3 (1) The board of coal mine health and safety estab-
4 lished pursuant to article six, chapter twenty-two of this
5 code;

6 (2) The coal mine safety and technical review commit-
7 tee established pursuant to article six, chapter twenty-
8 two of this code;

9 (3) The board of miner training, education and
10 certification established pursuant to article nine,
11 chapter twenty-two of this code;

12 (4) The mine inspectors' examining board established
13 pursuant to article eleven, chapter twenty-two of this
14 code;

15 (5) The board of appeals provided for pursuant to the
16 provisions of article five, chapter twenty-two of this
17 code; and

18 (6) Any and all other offices in the division of health,
19 safety and training of the department of energy.

20 (b) Nothing in this article may authorize the director
21 or the secretary to alter, discontinue or abolish any
22 office, board or commission or the functions thereof,
23 which are established by statute and transferred
24 pursuant to this article.

**§22A-7-7. Transfer and allocation of appropriations and
personnel.**

1 The personnel employed in connection with, and the
2 assets, liabilities, contracts, property, records, and
3 unexpended balance of appropriations, authorizations,
4 allocations, and other funds employed, held, used,
5 arising from, available to, or to be made available in
6 connection with the functions and offices transferred by
7 this article, shall be transferred to the office for
8 appropriate allocation. Unexpended funds transferred
9 pursuant to this section shall be used only for the
10 purposes for which the funds were originally authorized
11 and appropriated.

§22A-7-8. Director's authority to promulgate rules.

1 The director shall have the power and authority to

2 propose or promulgate rules and regulations to organize
3 the office and to carry out and implement the provisions
4 of this article and articles one-a, two, five and six of this
5 chapter and chapter twenty-two of this code relating to
6 health and safety inspections and enforcement. All rules
7 and regulations in effect on the effective date of this
8 article which pertain to the provisions of articles one-
9 a, two, five and six of this chapter and chapter twenty-
10 two of this code as they relate to health and safety
11 inspection and enforcement shall remain in effect until
12 changed or superseded by the director, or as approp-
13 riate. Except when specifically exempted by the
14 provisions of this chapter, or chapter twenty-two of this
15 code, all rules or changes thereto shall be proposed or
16 promulgated by the director in accordance with the
17 provisions of chapter twenty-nine-a of this code.

§22A-7-9. Saving provisions.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses and privileges which
3 have been issued, made, granted, or allowed to become
4 effective by the governor, any state department or
5 agency or official thereof, or by a court of competent
6 jurisdiction, in the performance of functions which are
7 transferred under this article to the secretary, to the
8 director, or to the office, and which are in effect on the
9 date such transfer occurs, shall continue in effect
10 according to their terms until modified, terminated,
11 superseded, set aside or revoked in accordance with law
12 by the governor, the secretary, the director, or other
13 authorized official, a court of competent jurisdiction or
14 by operation of law.

15 (b) The provisions of this article shall not affect any
16 proceedings, including notices of proposed rule making,
17 or any application for any license, permit, certificate, or
18 financial assistance pending before any department,
19 division or other office, functions of which are trans-
20 ferred by this article. Orders shall be issued in such
21 proceedings, appeals shall be taken therefrom, and
22 payments shall be made pursuant to such orders, as if
23 this article had not been enacted; and orders issued in
24 any such proceedings shall continue in effect until

25 modified, terminated, superseded, or revoked by the
26 governor, the secretary, the director, by a court of
27 competent jurisdiction, or by operation of law. Nothing
28 in this subsection shall be deemed to prohibit the
29 discontinuance or modification of any such proceedings
30 under the same terms and conditions and to the same
31 extent that such proceeding could have been discon-
32 tinued or modified if this article had not been enacted.
33 The director is authorized to propose legislative rules in
34 accordance with the provisions of chapter twenty-nine-
35 a of this code for the orderly transfer of proceedings
36 continued under the provisions of this subsection.

37 (c) Except as provided in subsection (e) of this section,
38 the provisions of this article shall not affect suits
39 commenced prior to the effective date of any transfer
40 of functions or offices made pursuant to the provisions
41 of this article, and in all such suits, proceedings shall
42 be had, appeals taken, and judgments rendered in the
43 same manner with like effect as if this article had not
44 been enacted.

45 (d) No suit, action, or other proceeding commenced by
46 or against any officer in the official capacity of such
47 individual as an officer of any department, division or
48 other office, functions of which are transferred pursuant
49 to the provisions of this article, shall abate by reason of
50 the enactment of this article. No cause of action by or
51 against any department, division or other office,
52 functions of which are transferred pursuant to the
53 provisions of this article, or by or against any officer
54 thereof in the official capacity of such officer, shall abate
55 by reason of the enactment of this article.

56 (e) If, before the transfer of any function or office
57 pursuant to the provisions of this article, any depart-
58 ment, division or other office, or officer thereof in the
59 official capacity of such officer, is a party to a suit, and
60 under this article any function of such department,
61 division or other office, or officer is transferred to the
62 secretary, the director or other officer of the office, then
63 such suit shall be continued with the secretary, the
64 director or other appropriate officer substituted or
65 added as a party.

66 (f) Orders and actions of the secretary or director in
67 the exercise of functions transferred under this article
68 shall be subject to judicial review to the same extent and
69 in the same manner as if such orders and actions had
70 been by such department, division or other office, or
71 part thereof, exercising such functions immediately
72 preceding their transfer. Any statutory requirement
73 relating to notice, hearings, action upon the record, or
74 administrative review that apply to any function
75 transferred pursuant to the provisions of this article
76 shall apply to the exercise of such function by the
77 secretary, the director or other officer.

CHAPTER 16

(H. B. 226—By Delegates Browning and Burk)

[Passed October 15, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees charged by fire marshal; fees charged by fire marshal for specified duties; and the deposit and utilization of fees collected.

Be it enacted by the Legislature of West Virginia:

That section twelve-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§29-3-12b. Fees.

1 (a) The state fire marshal may establish fees in
2 accordance with the following:

3 (1) *For blasting.* — Any person storing, selling or
4 using explosives shall first obtain a permit from the
5 state fire marshal. Such permit shall be valid from the
6 first day of July through the thirtieth day of June of the
7 succeeding year beginning on the first day of July, one
8 thousand nine hundred eighty-nine. The state fire
9 marshal may charge a fee not to exceed fifty dollars for

10 such permit.

11 (2) *For inspections of schools or day care facilities.* —
12 The state fire marshal may charge a fee of up to twenty-
13 five dollars per annual inspection for inspection of
14 schools or day care facilities: *Provided*, That only one
15 such fee may be charged per year for any building in
16 which a school and a day care facility are co-located:
17 *Provided, however*, That any school or day care facility
18 may not be charged for an inspection more than one
19 time per twelve-month period.

20 (3) *For inspections of hospitals or nursing homes.* —
21 The state fire marshal may charge an inspection fee of
22 up to one hundred dollars per annual inspection of
23 hospitals or nursing homes: *Provided*, That any hospital
24 or nursing home may not be charged for an inspection
25 more than one time per twelve-month period.

26 (4) *For inspections of personal care homes or board and*
27 *care facilities.* — The state fire marshal may charge an
28 inspection fee of up to fifty dollars per annual inspection
29 for inspections of personal care homes or board and care
30 facilities: *Provided*, That any personal care home or
31 board and care facility may not be charged for an
32 inspection more than one time per twelve-month period.

33 (5) *For inspections of residential occupancies.* — The
34 state fire marshal may charge an inspection fee of up
35 to one hundred dollars for each inspection of a residen-
36 tial occupancy. For purposes of this subdivision,
37 "residential occupancies" are those buildings in which
38 sleeping accommodations are provided for normal
39 residential purposes.

40 (6) *For inspections of mercantile occupancies.* — The
41 state fire marshal may charge an inspection fee of up
42 to one hundred dollars for inspections of mercantile
43 occupancies: *Provided*, That if such inspection is in
44 response to a complaint made by a member of the
45 public, the state fire marshal shall obtain from the
46 complainant an advance inspection fee of twenty-five
47 dollars. This fee shall be returned to the complainant if,
48 after the state fire marshal has made the inspection, he
49 finds that the complaint was accurate and justified, and

50 he shall thereafter collect an inspection fee of up to one
51 hundred dollars from the mercantile occupancy. If, after
52 the inspection has been performed, it appears to the
53 state fire marshal that such complaint was not accurate
54 or justified, the state fire marshal shall keep the twenty-
55 five dollar advance inspection fee obtained from the
56 complainant and may not collect any fees from the
57 mercantile occupant. For purposes of this section,
58 "mercantile occupancy" includes stores, markets and
59 other rooms, buildings or structures for the display and
60 sale of merchandise.

61 (7) *For business occupancies.* — The state fire marshal
62 may charge an inspection fee of up to one hundred
63 dollars for inspections of business occupancies: *Provided,*
64 That the provisions in subdivision (6) of this section shall
65 apply regarding complaints by members of the public.
66 For purposes of this section, "business occupancies" are
67 those buildings used for the transaction of business,
68 other than mercantile occupancies, for the keeping of
69 accounts and records, and similar purposes.

70 (8) *For inspections of assembly occupancies.* — The
71 state fire marshal may charge an inspection fee not
72 more than one time per twelve-month period for the
73 inspection of assembly occupancies. The inspection fee
74 shall be assessed as follows: For class C assembly
75 facilities, an inspection fee not to exceed fifty dollars; for
76 class B assembly facilities, an inspection fee not to
77 exceed seventy-five dollars; and for class A facilities, an
78 inspection fee not to exceed one hundred dollars.

79 For purposes of this subdivision, an "assembly
80 occupancy" includes, but is not limited to, all buildings
81 or portions of buildings used for gathering together fifty
82 or more persons for such purposes as deliberation,
83 worship, entertainment, eating, drinking, amusement,
84 or awaiting transportation. For purposes of this section,
85 a "class C assembly facility" is one that accommodates
86 fifty to three hundred persons; a "class B facility" is one
87 which accommodates more than three hundred persons
88 but less than one thousand persons; and a "class A
89 facility" is one which accommodates more than one
90 thousand persons.

91 (b) The state fire marshal shall have the authority to
92 establish a fee schedule for the fire safety review of
93 plans and specifications for new and existing construc-
94 tion as set forth in this article. Such fee shall be paid
95 by such party or parties receiving the review.

96 The fee schedule shall be based upon existing and
97 projected workloads as advanced by the state fire
98 marshal and the schedule shall be clearly set forth by
99 rules and regulations promulgated by the state fire
100 commission. In no event may this fee exceed ten dollars.

101 (c) All fees authorized and collected pursuant to this
102 article and article three-b of this chapter shall be paid
103 to the state fire marshal and thereafter deposited into
104 a special account for the operation of the state fire
105 commission in administering this article and article
106 three-b of this chapter. The Legislature shall approp-
107 riate the moneys in said account by a specific numbered
108 account in the budget bill. Beginning on the first day
109 of July, one thousand nine hundred ninety-two, and
110 every fiscal year thereafter, at the end of each fiscal
111 year there shall be transferred from the special account,
112 to the general revenue fund of the state, ten percent of
113 all money collected by the fire marshal during the year:
114 *Provided*, That any balance remaining in the special
115 account at the end of any fiscal year, after the transfer
116 of the ten percent, shall be reappropriated to the next
117 fiscal year: *Provided, however*, That in addition to said
118 ten percent, amounts collected which are found from
119 time to time to exceed the funds needed for purposes for
120 which the fees are collected may be transferred to other
121 accounts or redesignated for other purposes by appro-
122 priation of the Legislature.

123 (d) If the owner or occupant of any occupancy
124 arranges a time and place for an inspection with the
125 state fire marshal and is not ready for the occupancy
126 to be inspected at the appointed time and place, the
127 owner or occupant thereof shall be charged the inspec-
128 tion fee provided in this section unless at least forty-
129 eight hours prior to the scheduled inspection the owner
130 or occupant requests the state fire marshal to reschedule
131 such inspection. In the event a second inspection is

132 required by the state fire marshal as a result of the
133 owner or occupant failing to be ready for the inspection
134 when the state fire marshal arrives, the state fire
135 marshal shall charge the owner or occupant of such
136 occupancy the inspection fees set forth above for each
137 inspection trip required.

CHAPTER 17

(Com. Sub. for H. B. 210—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 18, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated articles four-b and four-c; and to amend chapter eleven of said code by adding thereto a new article, designated article twenty-six, all relating to medicaid enhancement; definitions; creating physician provider medicaid enhancement board, general medicaid enhancement board, dentist provider medicaid enhancement board, ambulance service provider medicaid enhancement board and outpatient hospital medicaid enhancement board; expenses for board members; powers and duties of boards; participation and report by health care cost review authority with respect to regulation and rates of ambulance services; creating special revenue accounts for purposes of medicaid enhancement; effective date; termination date of boards; allowing for enhanced reimbursement to providers; abrogation; duties of the secretary of the department of health and human resources; legislative findings; levying a health care provider medicaid enhancement tax assessed against medicaid reimbursements of health care providers; procedures for collecting and administering tax; crimes and penalties; and dedicating proceeds of tax for purposes of medicaid enhancement.

Be it enacted by the Legislature of West Virginia:

That chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated articles four-b and four-c; and that chapter eleven of said code be amended by adding thereto a new article, designated article twenty-six, all to read as follows:

Chapter

9. Human Services.

11. Taxation.

CHAPTER 9. HUMAN SERVICES.

Article

4B. Physician Provider Medicaid Enhancement Act.

4C. Health Care Provider Medicaid Enhancement Act.

ARTICLE 4B. PHYSICIAN PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4B-1. Definitions.

§9-4B-2. Physician provider medicaid enhancement board; creation and composition.

§9-4B-3. Expenses for citizen members.

§9-4B-4. Powers and duties.

§9-4B-5. Physician provider medicaid enhancement fund.

§9-4B-6. Amount and remittance of reimbursement.

§9-4B-7. Effective date.

§9-4B-8. Abrogation.

§9-4B-1. Definitions.

1 The following words when used in this article have
2 meanings ascribed to them in this section, except in
3 those instances where the context clearly indicates a
4 different meaning:

5 (a) "Board" means the physician provider medicaid
6 enhancement board created to develop, review, and
7 recommend the physician provider fee schedule.

8 (b) "Cost-based services" means any service delivered
9 by a physician provider reimbursed under the medical
10 assistance program of this state solely on the basis of
11 costs reported to the single state agency, whether or not
12 the provider operates on a profit or not-for-profit basis.

13 (c) "Fund" means the physician provider medicaid
14 enhancement fund established to receive moneys col-

15 lected from physician providers, individuals and
16 corporations which will be matched with federal
17 medicaid funds pursuant to Title XIX of the United
18 States Social Security Act and expended in accordance
19 with the provisions of this article.

20 (d) "Physician provider" means an allopathic or
21 osteopathic physician, physician assistant, nurse-
22 midwife, nurse anesthetist or advanced practice nurse,
23 regardless of location, enrolled with the single state
24 agency, rendering services within or without this state
25 and receiving reimbursement, directly as an individual
26 provider or indirectly as an employee or agent of a
27 medical clinic, partnership or other business entity,
28 from this state under the medical assistance program of
29 the Social Security Act: *Provided*, That this definition
30 does not include a physician provider to the extent that
31 such person renders cost-based services.

32 (e) "Secretary" means the secretary of the department
33 of health and human resources.

34 (f) "Single state agency" means the single state agency
35 for medicaid in this state.

**§9-4B-2. Physician provider medicaid enhancement
board; creation and composition.**

1 There is hereby created the West Virginia physician
2 provider medicaid enhancement board to consist of
3 seven members. The board shall consist of six members,
4 appointed by the governor, and the secretary, or his or
5 her designee who shall serve as an ex officio, nonvoting
6 member. The members appointed by the governor shall
7 include four allopathic physicians, one osteopathic
8 physician and one lay person. The governor shall select
9 the allopathic physician members from a list of eight
10 recommendations submitted to the governor by the state
11 medical association, the osteopathic physician board
12 member from three recommendations submitted to the
13 governor by the state osteopathic society, and the lay
14 board member, at his or her discretion. The respective
15 associations shall submit their recommendations to the
16 governor within five days of the effective date of this
17 article. The governor shall make all appointments

18 within fifteen days from the receipt of all recommenda-
19 tions. After the initial appointment of the board, any
20 appointment to fill a vacancy shall be for the unexpired
21 term only, made in the same manner as the initial
22 appointment, and the terms of all members expire on
23 the first day of July, one thousand nine hundred ninety-
24 four. The board shall select a member to act as
25 chairperson. The chairperson shall be the chief adminis-
26 trative officer and shall preside over official transac-
27 tions of the board.

§9-4B-3. Expenses for citizen members.

1 Each appointed board member shall serve without
2 compensation but shall be reimbursed for the cost of
3 reasonable and necessary expenses actually incurred in
4 the performance of his or her duties.

§9-4B-4. Powers and duties.

1 (a) The board shall:

2 (1) Develop and recommend a reasonable physician
3 provider fee schedule so that the schedule conforms to
4 the greatest extent possible to usual and customary
5 charges in accordance with federal medicaid laws. In
6 developing the fee schedule, the board shall refer to a
7 nationally published fee schedule selected by the
8 secretary of the department of health and human
9 resources. Upon approval by the single state agency, the
10 single state agency shall implement the physician
11 provider fee schedule. If the single state agency does not
12 approve of the fee schedule as developed by the board,
13 then the board may submit a report to the Legislature
14 including its recommendations and any other informa-
15 tion necessary;

16 (2) Review the fee schedule on a quarterly basis and
17 recommend to the single state agency any adjustments
18 it considers necessary. The single state agency may
19 approve the board's recommendations and implement
20 the adjustments;

21 (3) Meet and confer with representatives from each
22 medical specialty area so that equity in reimbursement
23 increases may be achieved to the greatest extent

24 possible;

25 (4) Assist and enhance communications between
26 participating physician providers and the department of
27 health and human resources; and

28 (5) Review reimbursements in relation to those
29 physician providers who provide early and periodic
30 screening diagnosis and treatment.

31 (b) The board may receive and transmit to the fund
32 private funds contributed, donated or bequeathed by
33 corporations, individuals or other entities as contem-
34 plated and permitted by applicable federal medicaid
35 laws.

36 (c) The board may carry out any other powers and
37 duties as prescribed for it by the secretary.

38 (d) Nothing in this section gives the board the
39 authority to interfere with the discretion and judgment
40 given to the single state agency that administers the
41 state's medicaid program. The purpose of the board is
42 to assist and enhance the role of the single state agency
43 in carrying out its mandate by acting as a means of
44 communication between the medicaid provider com-
45 munity and the agency.

§9-4B-5. Physician provider medicaid enhancement fund.

1 (a) There is hereby created in the state treasury a
2 special revenue account, which shall be an interest
3 bearing account, known as the physician provider
4 medicaid enhancement fund. All taxes, additions to tax,
5 penalties and interest collected from physician providers
6 in accordance with article twenty-six, chapter eleven of
7 this code, all donations and contributions received by the
8 board in accordance with section four of this article, and
9 all interest earned by reason of investment of fund
10 money deposited in the fund, shall be deposited into the
11 fund and shall be used exclusively for the following
12 purposes:

13 (1) To increase physician provider medicaid reimbur-
14 sement adopted by the single state agency through

15 recommendations by the board;

16 (2) To cover the costs of increased utilization due to
17 program growth; and

18 (3) To cover administrative costs.

19 (b) Any balance remaining in the fund at the end of
20 any state fiscal year shall not revert to the general
21 revenue fund but shall remain in the fund and shall be
22 used solely in a manner consistent with this article.

23 (c) Moneys received into the fund shall not be credited
24 as part of the general appropriation by the Legislature
25 on behalf of the state medicaid program.

§9-4B-6. Amount and remittance of reimbursement.

1 Any physician provider required to pay a tax in
2 accordance with article twenty-six, chapter eleven of
3 this code is entitled to receive enhanced medicaid
4 reimbursements in an amount which, at a minimum, is
5 equal to the amount of the tax paid by the individual
6 taxpayer for the taxable year (exclusive of additions to
7 tax, penalties or interest), plus three percent.

§9-4B-7. Effective date.

1 The physician provider fee schedule, as adopted by the
2 single state agency through recommendations by the
3 board, becomes effective on the first day of January, one
4 thousand nine hundred ninety-two.

§9-4B-8. Abrogation.

1 (a) This article abrogates and is of no further force
2 and effect, without any further action required by the
3 Legislature, upon the earliest of the following dates:

4 (1) The date upon which an act of Congress becomes
5 effective prohibiting the inclusion of revenue from
6 provider taxes when determining the amount of state
7 expenditures that are claimable as medical assistance
8 for purposes of obtaining federal matching dollars:
9 *Provided*, That if such act specifies a later date on which
10 such prohibition takes effect, that later effective date
11 controls;

12 (2) The date upon which a judgment or order of a
13 court of competent jurisdiction becomes final prohibit-
14 ing the inclusion of revenue from provider taxes when
15 determining the amount of state expenditures that are
16 claimable as medical assistance for purposes of obtain-
17 ing federal matching dollars: *Provided*, That if such
18 judgment or order specifies a later date on which the
19 prohibition takes effect, that later effective date
20 controls;

21 (3) The date upon which the Legislature appropriates
22 the proceeds from the tax levied under article twenty-
23 six, chapter eleven of this code, for any purpose not in
24 conformity with this article;

25 (4) The date upon which any federal administrative
26 rule or regulation promulgated in conformity with
27 federal law becomes effective which negates the effect
28 or purpose of this article: *Provided*, That if such federal
29 rule or regulation specifies a later date on which the
30 prohibition takes effect, that later effective date
31 controls; or

32 (5) The first day of July, one thousand nine hundred
33 ninety-four.

34 (b) Upon abrogation of this article, the single state
35 agency shall use the moneys remaining in the fund to
36 maintain, to the greatest extent possible, the increased
37 fee schedule as determined by the single state agency.
38 Thereafter, the single state agency shall distribute any
39 moneys insufficient to maintain the increased fee
40 schedule on a proportional basis among all participating
41 providers, from the fund, as determined by the secre-
42 tary.

43 (c) Upon abrogation, the medicaid reimbursement
44 levels shall return to those amounts in existence on the
45 thirty-first day of December, one thousand nine hundred
46 ninety-one.

**ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCE-
MENT ACT.**

§9-4C-1. Definitions.

§9-4C-2. General medicaid enhancement board.

- §9-4C-3. Dentist provider medicaid enhancement board.
- §9-4C-4. Ambulance service provider medicaid enhancement board.
- §9-4C-5. Outpatient hospital medicaid enhancement board.
- §9-4C-6. Expenses for citizen members.
- §9-4C-7. Powers and duties.
- §9-4C-8. Duties of secretary of department of health and human resources.
- §9-4C-9. Provider medicaid enhancement funds.
- §9-4C-10. Amount and remittance of reimbursement.
- §9-4C-11. Effective date.
- §9-4C-12. Abrogation.

§9-4C-1. Definitions.

1 The following words when used in this article have the
2 meanings ascribed to them in this section, except in
3 those instances where the context clearly indicates a
4 different meaning:

5 (a) "Ambulance service provider" means a person,
6 regardless of location, enrolled with the single state
7 agency, rendering ambulance services within or without
8 this state and receiving reimbursement, directly as an
9 individual provider or indirectly as an employee or
10 agent of a medical clinic, partnership or other business
11 entity, from this state under the medical assistance
12 program of the Social Security Act: *Provided*, That this
13 definition does not include an ambulance service
14 provider to the extent that such person renders cost-
15 based services.

16 (b) "Cost-based service" means any service reimbursed
17 under the medical assistance program of this state solely
18 on the basis of costs reported to the single state agency,
19 whether or not such service is rendered on a profit or
20 not-for-profit basis.

21 (c) "Dentist provider" means a dentist, regardless of
22 location, enrolled with the single state agency, rendering
23 services within or without this state, and receiving
24 reimbursement, directly as an individual provider or
25 indirectly as an employee or agent of a medical clinic,
26 partnership or other business entity, from this state
27 under the medical assistance program of the Social
28 Security Act: *Provided*, That this definition does not
29 include a dentist provider to the extent that such person
30 renders cost-based services.

31 (d) "General health care provider" means an optome-
32 trist, an optician, an audiologist, a podiatrist, a chiro-
33 practor, a psychologist, a person providing medical
34 equipment and supply services, a person providing
35 laboratory services, a person providing radiology
36 services, a speech therapist, an occupational therapist,
37 a physical therapist, a behavioral health center, or a
38 local health department, regardless of location, enrolled
39 with the single state agency, rendering services within
40 or without this state and receiving reimbursement,
41 directly as an individual provider or indirectly as an
42 employee or agent of a medical clinic, partnership or
43 other business entity, from this state under the medical
44 assistance program of the Social Security Act: *Provided,*
45 That this definition does not include a general health
46 care provider to the extent that such person renders
47 cost-based services.

48 (e) "Outpatient hospital service provider" means a
49 person, regardless of location, enrolled with the single
50 state agency, rendering outpatient hospital services
51 within or without this state and receiving reimburse-
52 ment, directly as an individual provider or indirectly as
53 an employee or agent of a medical clinic, partnership
54 or other business entity, from this state under the
55 medical assistance program of the Social Security Act:
56 *Provided,* That this definition does not include an
57 outpatient hospital service provider to the extent that
58 such person renders cost-based services.

59 (f) "Secretary" means the secretary of the department
60 of health and human resources.

61 (g) "Single state agency" means the single state
62 agency for medicaid in this state.

§9-4C-2. General medicaid enhancement board.

1 There is hereby created the general medicaid en-
2 hancement board to consist of seventeen members.
3 Sixteen members shall be appointed by the governor,
4 including two lay persons and one representative from
5 each of the following fourteen groups: Chiropractors,
6 optometrists, opticians, audiologists, podiatrists, psy-
7 chologists, medical equipment and supply services,

8 laboratory services, radiology services, speech thera-
9 pists, occupational therapists, physical therapists,
10 behavioral health centers and local health departments.
11 In addition to the sixteen members appointed by the
12 governor, the secretary, or his or her designee, shall
13 serve as an ex officio, nonvoting member of the board.
14 The governor shall make all appointments within
15 twenty days from the effective date of this article. After
16 the initial appointment of the board, any appointment
17 to fill a vacancy shall be for the unexpired term only,
18 shall be made in the same manner as the initial
19 appointment, and the terms of all members expire on
20 the first day of July, one thousand nine hundred ninety-
21 four.

§9-4C-3. Dentist provider medicaid enhancement board.

1 There is hereby created the dentist provider medicaid
2 enhancement board to consist of five members. In order
3 to carry out the purposes of this article, the dentist
4 provider medicaid enhancement board shall represent
5 dentist providers. The board shall consist of three
6 dentists, one lay person and the secretary, or his or her
7 designee who shall serve as an ex officio, nonvoting
8 member. The governor shall select the dentist members
9 from six recommendations submitted to the governor by
10 the state dental association and the lay board member
11 at his or her discretion. The state dental association shall
12 submit all recommendations to the governor within five
13 days of the effective date of this article. The governor
14 shall make all appointments within fifteen days of
15 receipt of all recommendations. After the initial
16 appointment of the board, any appointment to fill a
17 vacancy shall be for the unexpired term only, shall be
18 made in the same manner as the initial appointment,
19 and the terms of all members shall expire on the first
20 day of July, one thousand nine hundred ninety-four.

**§9-4C-4. Ambulance service provider medicaid enhance-
ment board.**

1 There is hereby created the ambulance service
2 provider medicaid enhancement board to consist of
3 seven members. In order to carry out the purpose of this

4 article, this board shall represent ambulance service
5 providers. The board shall consist of five ambulance
6 service providers, one lay person and the secretary, or
7 his or her designee as an ex officio, nonvoting member.
8 The governor shall make all appointments within
9 twenty days of the effective date of this article. After
10 the initial appointment of the board, any appointment
11 to fill a vacancy shall be for the unexpired term only,
12 and the terms of all members shall expire on the first
13 day of July, one thousand nine hundred ninety-four.

§9-4C-5. Outpatient hospital medicaid enhancement board.

1 There is hereby created the outpatient hospital
2 medicaid enhancement board to consist of seven
3 members. In order to carry out the purpose of this
4 article, the board shall represent outpatient hospital
5 service providers. The board shall consist of five
6 representatives of outpatient hospital service providers,
7 one lay person and the secretary, or his or her designee
8 who shall serve as an ex officio, nonvoting member. The
9 secretary shall select the outpatient hospital service
10 provider members from ten recommendations submitted
11 by the West Virginia hospital association and the lay
12 person at his or her discretion. The West Virginia
13 hospital association shall submit all recommendations to
14 the secretary within five days of the effective date of this
15 article and the secretary shall make all appointments
16 within fifteen days of receipt of all recommendations.
17 After the initial appointment of the board, any appoint-
18 ment to fill a vacancy shall be for the unexpired term
19 only, shall be made in the same manner as the initial
20 appointment, and the terms of all members shall expire
21 on the first day of July, one thousand nine hundred
22 ninety-four.

§9-4C-6. Expenses for citizen members.

1 Each appointed board member for each board created
2 pursuant to this article shall serve without compensation
3 but shall be reimbursed for the cost of reasonable and
4 necessary expenses actually incurred in the perform-
5 ance of his or her duties.

§9-4C-7. Powers and duties.

1 (a) Each board created pursuant to this article shall:

2 (1) Develop and recommend a reasonable provider fee
3 schedule, in relation to its respective provider group, so
4 that the schedule conforms, to the greatest extent
5 possible, to usual and customary charges in accordance
6 with federal medicaid laws. In developing the fee
7 schedule the board shall refer to a nationally published
8 fee schedule, if available, as selected by the secretary in
9 accordance with section eight of this article. Upon
10 approval by the single state agency, the single state
11 agency shall implement the provider fee schedule. If the
12 single state agency does not approve of the fee schedule
13 as developed by the board, then the board may submit
14 a report to the Legislature along with its recommenda-
15 tions and any other information necessary;

16 (2) Review its respective provider fee schedule on a
17 quarterly basis and recommend to the single state
18 agency any adjustments it considers necessary. The
19 single state agency may approve a board's recommen-
20 dations and implement the adjustments;

21 (3) Assist and enhance communications between
22 participating providers and the department of health
23 and human resources;

24 (4) Meet and confer with representatives from each
25 specialty area within its respective provider group so
26 that equity in reimbursement increases may be achieved
27 to the greatest extent possible and when appropriate to
28 meet and confer with other provider boards; and

29 (5) Appoint a chairperson to preside over all official
30 transactions of the board.

31 (b) Each board may receive and transmit to its
32 respective fund private moneys contributed, donated or
33 bequeathed by corporations, individuals or other entities
34 as contemplated and permitted by applicable federal
35 medicaid laws.

36 (c) Each board may carry out any other powers and
37 duties as prescribed to it by the secretary.

38 (d) Nothing in this section gives any board the
39 authority to interfere with the discretion and judgment
40 given to the single state agency that administers the
41 state's medicaid program. The purpose of each board is
42 to assist and enhance the role of the single state agency
43 in carrying out its mandate by acting as a means of
44 communication between the health care provider
45 community and the agency.

46 (e) In addition to the duties specified in subsection (a)
47 of this section, the ambulance service provider medicaid
48 enhancement board shall work with the health care cost
49 review authority to develop a method for regulating
50 rates charged by ambulance services. The health care
51 cost review authority shall report its findings to the
52 Legislature by the first day of January, one thousand
53 nine hundred ninety-three. The costs of the report shall
54 be paid by the health care cost review authority. In this
55 capacity only, the chairperson of the health care cost
56 review authority shall serve as an ex officio, nonvoting
57 member of the board.

**§9-4C-8. Duties of secretary of department of health and
human resources.**

1 (a) The secretary, or his or her designee, shall serve
2 on each board created pursuant to this article as an ex
3 officio, nonvoting member and shall keep and maintain
4 records for each board.

5 (b) In relation to outpatient hospital services, the
6 secretary shall cooperate with the health care cost
7 review authority to furnish information needed for
8 reporting purposes. This information includes, but is not
9 limited to, the following:

10 (1) For each hospital, the amount of payments and
11 related billed charges for hospital outpatient services
12 each month;

13 (2) The percentage of the state's share of medicaid
14 program financial obligation from time to time as
15 necessary; and

16 (3) Any other financial and statistical information
17 necessary for the health care cost review authority to

18 determine the net effect of any cost shift.

19 (c) The secretary shall determine an appropriate
20 resolution for conflicts arising between the various
21 boards.

22 (d) The secretary shall purchase nationally published
23 fee schedules to be used, if available, as a reference by
24 the medicaid enhancement boards in developing fee
25 schedules.

§9-4C-9. Provider medicaid enhancement funds.

1 (a) There are hereby created in the state treasury
2 special revenue accounts, which shall be interest
3 bearing accounts, designated as the following:

4 (1) *General medicaid enhancement fund.* — All taxes,
5 additions to tax, penalties and interest collected in
6 accordance with article twenty-six, chapter eleven of
7 this code, from general health care providers, all
8 donations and contributions received by the general
9 medicaid enhancement board in accordance with section
10 seven of this article, and all interest earned from the
11 investment of moneys deposited into the fund, shall be
12 deposited into this fund;

13 (2) *The outpatient hospital medicaid enhancement fund.*
14 — All taxes, additions to tax, penalties and interest
15 collected from outpatient hospital providers in accord-
16 ance with article twenty-six, chapter eleven of this code,
17 all donations and contributions received by the outpa-
18 tient hospital medicaid enhancement board in accord-
19 dance with section seven of this article, and all interest
20 earned from the investment of moneys deposited into the
21 fund, shall be deposited into this fund;

22 (3) *The dentist provider medicaid enhancement fund.* —
23 All taxes, additions to tax, penalties and interest
24 collected from dentist providers in accordance with
25 article twenty-six, chapter eleven of this code, all
26 donations and contributions received by the dentist
27 provider medicaid enhancement board in accordance
28 with section seven of this article, and all interest earned
29 from the investment of moneys deposited into the fund,
30 shall be deposited into this fund; and

31 (4) *The ambulance service provider medicaid enhance-*
32 *ment fund.* — All taxes, additions to tax, penalties and
33 interest collected from ambulance service providers in
34 accordance with article twenty-six, chapter eleven of
35 this code, all donations and contributions received by the
36 ambulance service provider medicaid enhancement
37 board in accordance with section seven of this article,
38 and all interest earned from the investment of moneys
39 deposited into the fund, shall be deposited into this fund.

40 (b) All proceeds from the medicaid enhancement
41 funds shall be used exclusively for the following
42 purposes:

43 (1) To increase health care provider medicaid reim-
44 bursement adopted by the single state agency through
45 recommendations by the boards;

46 (2) To cover the costs of increased utilization due to
47 program growth; and

48 (3) To cover administrative costs.

49 (c) Any balance remaining in the funds at the end of
50 any state fiscal year shall not revert to the general
51 revenue fund but shall remain in the funds and shall be
52 used solely in a manner consistent with this article.

§9-4C-10. Amount and remittance of reimbursement.

1 Any general health care provider, dentist provider,
2 ambulance service provider, or outpatient hospital
3 service provider required to pay tax in accordance with
4 article twenty-six, chapter eleven of this code, is entitled
5 to receive enhanced medicaid reimbursements in an
6 amount which, at a minimum, is equal to the tax paid
7 by the individual taxpayer for the taxable year (exclu-
8 sive of additions to tax, penalties or interest), plus three
9 percent.

§9-4C-11. Effective date.

1 The provider fee schedules as adopted by the single
2 state agency through recommendations by each board
3 become effective on the first day of January, one
4 thousand nine hundred ninety-two: *Provided*, That those
5 fee schedules based upon fees that require prior

6 approval of the health care financing administration are
7 effective on the effective date approved by the health
8 care financing administration: *Provided, however, That*
9 for those fees subject to an established medicare upper
10 limit, the effective date is the first day of the month
11 immediately succeeding the date the fees can be raised
12 sufficiently to comply with section ten of this article.

§9-4C-12. Abrogation.

1 (a) This article abrogates and is of no further force
2 and effect, without any further action by the Legisla-
3 ture, upon the earliest of the following dates:

4 (1) The date upon which an act of Congress becomes
5 effective prohibiting the inclusion of revenue from
6 provider taxes when determining the amount of state
7 expenditures that are claimable as medical assistance
8 for purposes of obtaining federal matching dollars:
9 *Provided, That* if such act specifies a later date on which
10 such prohibition takes effect, that later effective date
11 controls;

12 (2) The date upon which a judgment or order of a
13 court of competent jurisdiction becomes final prohibit-
14 ing the inclusion of revenue from provider taxes when
15 determining the amount of state expenditures that are
16 claimable as medical assistance for the purpose of
17 obtaining federal matching dollars: *Provided, That* if
18 such judgment or order specifies a later date on which
19 the prohibition takes effect, that later effective date
20 controls;

21 (3) The date upon which the Legislature appropriates
22 the proceeds from the tax levied under article twenty-
23 six, chapter eleven of this code, for any purpose not in
24 conformity with this article;

25 (4) The date upon which any federal administrative
26 rule or regulation promulgated in conformity with
27 federal law becomes effective which negates the effect
28 or purpose of this article: *Provided, That* if such federal
29 rule or regulation specifies a later date on which the
30 prohibition takes effect, that later effective date
31 controls: *Provided, however, That* if any rule or regula-

32 tion prohibits the inclusion of revenue from taxes
33 collected from a specific provider group defined in
34 section one of this article when determining the amount
35 of state expenditures that are claimable as medical
36 assistance for purposes of obtaining federal matching
37 dollars, such rule or regulation shall not affect, impair
38 or invalidate the application of this article to the
39 remaining health care providers, but shall be confined
40 in its operation to the provider group specifically
41 excluded by such rule or regulation; or

42 (5) The first day of July, one thousand nine hundred
43 ninety-four.

44 (b) Upon abrogation of this article, the single state
45 agency shall use the moneys remaining in the funds to
46 maintain, to the greatest extent possible, the increased
47 fee schedules as determined by the boards. Thereafter,
48 the single state agency shall distribute any moneys
49 insufficient to maintain the increased fee schedules
50 distributed on a proportional basis among all participat-
51 ing health care providers, from their respective funds,
52 as determined by the secretary.

53 (c) Upon abrogation, the medicaid reimbursement
54 levels shall return to those amounts in existence on the
55 thirty-first day of December, one thousand nine hundred
56 ninety-one.

CHAPTER 11. TAXATION.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID ENHANCE- MENT TAX.

- §11-26-1. Legislative findings.
- §11-26-2. Short title; arrangement and classification.
- §11-26-3. Definitions.
- §11-26-4. Imposition of excise tax; rate and application of tax.
- §11-26-5. Administration.
- §11-26-6. Accounting periods and methods of accounting.
- §11-26-7. Tax return and payment.
- §11-26-8. Extension of time for filing returns.
- §11-26-9. Extension of time for paying tax.
- §11-26-10. Place for filing returns or other documents.
- §11-26-11. Signing of returns and other documents.
- §11-26-12. Records.
- §11-26-13. Refunds and credits.
- §11-26-14. Cancellation of medicaid certification for failure to pay delinquent tax.

- §11-26-15. General procedure and administration.
- §11-26-16. Crimes and penalties.
- §11-26-17. Effective dates.
- §11-26-18. Abrogation.
- §11-26-19. Severability.

§11-26-1. Legislative findings.

1 The Legislature finds and declares that:

2 (a) Medicaid provides access to basic medical care for
3 our citizens who are not physically, mentally or
4 economically able to provide for their own care;

5 (b) Inadequate compensation for health care providers
6 rendering medicaid services is a barrier to indigent
7 persons seeking access to health care services;

8 (c) Health care providers in this state are providing
9 care, without compensation, to many citizens who are
10 not medicaid eligible;

11 (d) Many health care providers are leaving this state
12 due to economic conditions;

13 (e) Without adequate compensation this state cannot
14 attract or retain a sufficient number of health care
15 providers necessary to serve our indigent population;

16 (f) Without additional medicaid funding this state
17 cannot adequately compensate health care providers for
18 the health care services rendered to indigent patients;

19 (g) The Tenth Amendment of the United States
20 Constitution guarantees to the states the power to tax;

21 (h) The Congress of the United States has enacted
22 Section 4701 of the Omnibus Budget Reconciliation Act
23 of 1990, P.L. 101-508, amending Section 1902 of the
24 Social Security Act and authorizing state medicaid
25 agencies to attribute taxes imposed on medicaid
26 providers as part of the state share;

27 (i) By levying a tax on the medicaid reimbursements
28 of health care providers for the purpose of meeting state
29 fund matching requirements pursuant to Title XIX of
30 the Social Security Act, federal matching funds will be
31 increased;

32 (j) By dedicating such additional revenue to the
33 medicaid program, health care provider fees may
34 conform as closely as possible to usual and customary
35 charges;

36 (k) Moneys generated in accordance with this article
37 are supplementary only and shall not be used to reduce
38 the general financial obligations of the state's medical
39 assistance program as appropriated by the Legislature;

40 (l) These funds shall not be used for any purpose other
41 than those purposes stated in this article and articles
42 four-b and four-c, chapter nine of this code; and

43 (m) The medicaid enhancement boards and medicaid
44 enhancement funds created pursuant to articles four-b
45 and four-c, chapter nine of this code are created to carry
46 out the purposes of this article.

§11-26-2. Short title; arrangement and classification.

1 This article may be cited as the "West Virginia Health
2 Care Provider Medicaid Enhancement Tax Act of 1991."
3 No inference, implication or presumption of legislative
4 construction shall be drawn or made by reason of the
5 location or grouping of any particular section or
6 provision or portion of this article, and no legal effect
7 shall be given to any descriptive matter or heading
8 relating to any part, section, subdivision or paragraph
9 of this article.

§11-26-3. Definitions.

1 The following words when used in this article have the
2 meaning ascribed to them in this section, except in those
3 instances where a different meaning is distinctly
4 expressed or the context in which the word is used
5 clearly indicates a different meaning is intended:

6 (a) "Cost-based service" means any service delivered
7 by a health care provider reimbursed under the medical
8 assistance program of this state solely on the basis of
9 costs reported to the single state agency, whether or not
10 the provider is operating on a profit or not-for-profit
11 basis.

12 (b) "Department" means the West Virginia depart-

13 ment of health and human resources. The term “secre-
14 tary” means the secretary of the West Virginia depart-
15 ment of health and human resources, or his or her
16 designee.

17 (c) “Gross receipts” or “gross proceeds” means all
18 payments received by a health care provider enrolled in
19 this state’s medical assistance program for services
20 delivered pursuant to Title XIX of the United States
21 Social Security Act, as amended, and means any and all
22 medicaid reimbursement payments made by the West
23 Virginia department of health and human resources, or
24 a division thereof, within the limitations set forth in this
25 subsection, to such health care provider: *Provided*, That
26 this definition does not include payments received for
27 medicare coinsurance and deductibles as defined in
28 Title XVIII of the Social Security Act, and does not
29 include reimbursements made for cost-based services.

30 (d) “Health care provider” or “provider” includes
31 physician providers as defined in section one, article
32 four-b, chapter nine of this code, ambulance service
33 providers, dentist providers, general health care
34 providers, and outpatient hospital service providers as
35 defined in section one, article four-c, chapter nine of this
36 code, and any other person directly receiving enhanced
37 medicaid reimbursement payments pursuant to article
38 four-b or four-c, chapter nine of this code.

39 (e) “Single state agency” means the single state agency
40 for medicaid in this state.

41 (f) “Taxpayer” means a health care provider required
42 to pay the medicaid enhancement tax imposed by this
43 article and entitled to receive the increased reimburse-
44 ment in accordance with article four-b or four-c, chapter
45 nine of this code.

**§11-26-4. Imposition of excise tax; rate and application of
tax.**

1 (a) There is hereby levied and imposed an excise tax
2 on the gross receipts or gross proceeds derived by health
3 care providers enrolled in this state’s medical assistance
4 program. The amount of the tax shall be equal to one

5 hundred percent of that portion of gross receipts paid
6 to the health care provider by the single state agency
7 from state revenues for all services delivered pursuant
8 to Title XIX of the United States Social Security Act,
9 to individuals who, at the time such services were
10 delivered, were enrolled with the single state agency
11 and eligible to receive medicaid services, whether such
12 health care provider is located within or without this
13 state or such service is delivered within or without this
14 state: *Provided*, That the following are not subject to the
15 tax imposed in this article:

16 (1) Gross receipts or gross proceeds derived by a
17 health care provider from delivering cost-based services;

18 (2) That portion of a health care provider's reimbur-
19 sement when the secretary certifies the state share so
20 that the medicaid reimbursement consists solely of
21 federal financial participation, except that any gross
22 receipts or gross proceeds derived by a health care
23 provider from delivering medicaid services that are not
24 reimbursed on a certified match basis are taxable under
25 this article: *Provided*, That nothing in this section
26 prohibits the department from removing a service, or
27 provider group, from the certified match program and
28 placing that service, or provider group, under full
29 medicaid payments subject to the tax imposed by this
30 article; and

31 (3) Employees or agents of a health care provider
32 when that employee or agent does not directly receive
33 the medicaid reimbursement payment.

34 (b) The tax imposed by this section applies solely and
35 exclusively to that portion of the medicaid reimburse-
36 ment payment made from state revenue for services
37 delivered by the health care provider pursuant to Title
38 XIX of the United States Social Security Act, as
39 amended, which amount shall be determined as pro-
40 vided in subsection (c) of this section.

41 (c) From time to time, as is necessary, the secretary
42 shall notify the tax commissioner in writing of the
43 portion, stated as a uniform percentage, of each
44 medicaid reimbursement payment taxable under this

45 article that constitutes the state's share of medicaid
46 program financial obligations in order to determine and
47 tax only the state revenue share of that medicaid
48 reimbursement payment. After receipt of such notice,
49 the tax commissioner shall immediately cause to be
50 published in the state register notice of that percentage
51 and its effective date for purposes of calculating the tax
52 imposed by this article. Beginning the first day of
53 January, one thousand nine hundred ninety-two, and
54 continuing until a notice of change in this percentage
55 takes effect, the state revenue share of a medicaid
56 reimbursement is twenty-two and thirty-two hundredths
57 percent, except as otherwise provided in this article.

§11-26-5. Administration.

1 (a) The tax commissioner shall collect the tax imposed
2 by this article. After consultation with the secretary, the
3 tax commissioner may establish procedures and pre-
4 scribe forms necessary to implement and enforce this
5 article. The tax commissioner shall account for all
6 collections of the tax imposed by this article and for all
7 collections of additions to tax, penalties and interest
8 imposed with respect to this tax under article ten of this
9 chapter. The amount collected shall be deposited, within
10 fifteen days after its receipt by the tax commissioner,
11 into the special revenue funds created in the state
12 treasury by articles four-b and four-c, chapter nine of
13 this code, as follows:

14 (1) *The physician provider medicaid enhancement*
15 *fund.* — All taxes, additions to tax, penalties and
16 interest collected in accordance with this article from
17 those health care providers represented by the physician
18 medicaid enhancement board and all donations and
19 contributions received by the board in accordance with
20 section five, article four-b, chapter nine of this code shall
21 be deposited into the physician provider medicaid
22 enhancement fund;

23 (2) *General medicaid enhancement fund.* — All taxes,
24 additions to tax, penalties and interest collected in
25 accordance with this article from those health care
26 providers represented by the general medicaid enhance-

27 ment board and all donations and contributions received
28 by the board in accordance with section seven, article
29 four-c, chapter nine of this code shall be deposited into
30 the general medicaid enhancement fund;

31 (3) *The outpatient hospital medicaid enhancement fund.*

32 — All taxes, additions to tax, penalties and interest
33 collected in accordance with this article from outpatient
34 hospital providers represented by the outpatient hospital
35 provider medicaid enhancement board and all donations
36 and contributions received by the board in accordance
37 with section seven, article four-c, chapter nine of this
38 code shall be deposited into the outpatient hospital
39 medicaid enhancement fund;

40 (4) *The dentist provider medicaid enhancement fund.* —

41 All taxes, additions to tax, penalties and interest
42 collected in accordance with this article from dentist
43 providers represented by the dentist provider medicaid
44 enhancement board and all donations and contributions
45 received by the board in accordance with section seven,
46 article four-c, chapter nine of this code shall be
47 deposited into the dentist provider medicaid enhance-
48 ment fund; and

49 (5) *The ambulance service provider medicaid enhance-*

50 *ment fund.* — All taxes, additions to tax, penalties and
51 interest collected in accordance with this article from
52 ambulance service providers represented by the ambu-
53 lance service provider medicaid enhancement board and
54 all donations and contributions received by the board in
55 accordance with section seven, article four-c, chapter
56 nine of this code shall be deposited into the ambulance
57 service provider medicaid enhancement fund.

58 (b) If a health care provider is represented by two or
59 more boards, the tax paid by that provider shall be
60 categorized and identified so that the tax commissioner
61 may deposit the tax collected into the proper fund or
62 funds.

63 (c) The department shall provide the tax commis-
64 sioner with any information in its possession that the tax
65 commissioner considers necessary for proper enforce-
66 ment of this article. Notwithstanding any provision in

67 this code to the contrary, the tax commissioner may
68 enter into a written exchange of information agreement
69 with the secretary to disclose return information
70 pertaining to the tax imposed by this article for the
71 purpose of facilitating administration of this state's
72 medical assistance program. Any confidential informa-
73 tion disclosed under this agreement shall remain
74 confidential in the hands of the receiving agency as
75 provided in section five-d, article ten of this chapter.

76 (d) For fiscal year one thousand nine hundred ninety-
77 two, not more than two hundred thousand dollars from
78 the several medicaid enhancement funds shall be used
79 for administrative purposes with respect to this article
80 and articles four-b and four-c, chapter nine of this code;
81 of this amount, not more than one hundred twenty-five
82 thousand dollars shall be transferred to a special
83 revenue account in the treasury for use by the
84 department of tax and revenue and not more than
85 seventy-five thousand dollars shall be transferred to a
86 special revenue account in the treasury for use by the
87 department of health and human resources.

88 (e) The secretary shall cause the remainder of all
89 moneys deposited in the several medicaid enhancement
90 funds, after administrative expenses, to be transferred
91 to the West Virginia medical services fund.

92 (f) Notwithstanding the provisions of subsections (d)
93 and (e) of this section, for fiscal year one thousand nine
94 hundred ninety-three and for each succeeding fiscal
95 year, no expenditures from any of the several medicaid
96 enhancement funds are authorized except in accordance
97 with appropriations by the Legislature.

§11-26-6. Accounting periods and methods of accounting.

1 (a) *General rule.* — For purposes of the tax imposed
2 by this article, a taxpayer's taxable year shall be the
3 same as the taxpayer's taxable year for federal income
4 tax purposes.

5 (b) *Change of taxable year.* — If a taxpayer's taxable
6 year is changed for federal income tax purposes, the
7 taxpayer's taxable year for purposes of this article shall

8 be similarly changed. The taxpayer shall provide a copy
9 of the authorization for such change from the Internal
10 Revenue Service, with its annual return for the taxable
11 year filed under this article.

12 (c) *Cash methods of accounting required.* — A taxpayer's
13 method of accounting under this article shall be the
14 cash method of accounting, whether or not taxpayer uses
15 the cash method of accounting for federal income tax
16 purposes.

§11-26-7. Tax return and payment.

1 (a) The annual tax levied by this article is due and
2 payable in monthly installments, on or before the
3 fifteenth day of the month succeeding the month in
4 which the taxable gross receipts were received, except
5 that the tax levied for the last month of the taxable year
6 is due and payable on or before the last day of the first
7 month of the next succeeding taxable year.

8 (b) The taxpayer shall, on or before the fifteenth day
9 of each month, except for the last month of the taxable
10 year, complete and mail to the tax commissioner a
11 return for the preceding month, in the form prescribed
12 by the tax commissioner, showing:

13 (1) The total gross receipts or gross proceeds received
14 for services delivered pursuant to Title XIX of the Social
15 Security Act, as amended, for that particular month;

16 (2) The gross proceeds upon which the tax is based;

17 (3) The amount of the tax for which the taxpayer is
18 liable; and

19 (4) Any other information necessary in the computa-
20 tion and collection of the tax which the tax commis-
21 sioner may require. The taxpayer shall include with the
22 return a remittance for the amount of the tax for the
23 period covered by the return.

24 (c) On or before the last day of the first month after
25 the end of the taxable year, every taxpayer subject to
26 the tax imposed by this article shall make and file an
27 annual return for the entire taxable year showing such
28 information as the tax commissioner may require and

29 computing the amount of taxes due under this article
30 for the entire taxable year. The tax commissioner shall
31 allow a credit against this annual tax liability for the
32 amount of tax imposed by this article (exclusive of any
33 addition to tax, penalties or interest paid with respect
34 thereto) previously paid by the taxpayer on gross
35 receipts included in the annual return. The taxpayer
36 shall submit with the annual return a remittance for the
37 net amount of tax shown to be due.

§11-26-8. Extension of time for filing returns.

1 The tax commissioner may, upon written request
2 received on or prior to the due date of the annual return
3 or any periodic estimate, grant a reasonable extension
4 of time for filing any return or other document required
5 by this article, upon such terms as he or she may by rule
6 prescribe, or by contract require, if good cause satisfac-
7 tory to the tax commissioner is provided by the
8 taxpayer.

§11-26-9. Extension of time for paying tax.

1 (a) *Amount determined on return.* — The tax commis-
2 sioner may extend the time for payment of the amount
3 of the tax shown, or required to be shown, on any return
4 required by this article (or any periodic installment
5 payments), for a reasonable period not to exceed six
6 months from the date fixed for payment thereof.

7 (b) *Amount determined as deficiency.* — Under rules
8 prescribed by the tax commissioner, he or she may
9 extend the time for the payment of the amount deter-
10 mined as a deficiency of the taxes imposed by this
11 article for a period not to exceed eighteen months from
12 the date fixed for payment of the deficiency. In
13 exceptional cases, a further period of time not to exceed
14 twelve months may be granted. The tax commissioner
15 may grant an extension under this subsection only
16 where it is shown to his or her satisfaction that payment
17 of a deficiency upon the date fixed for the payment
18 thereof will result in undue hardship to the taxpayer.

19 (c) *No extension for certain deficiencies.* — The tax
20 commissioner may not grant an extension under this

21 section for any deficiency if the deficiency is due to
22 negligence, to intentional disregard of rules and
23 regulations, or to fraud with intent to evade tax.

§11-26-10. Place for filing returns or other documents.

1 Tax returns, statements, or other documents, or copies
2 thereof, required by this article or by rules shall be filed
3 with the tax commissioner by delivery, in person or by
4 mail, to his or her office in Charleston, West Virginia:
5 *Provided*, That the tax commissioner may, by rule,
6 prescribe the place for filing such returns, statements,
7 or other documents, or copies thereof.

§11-26-11. Signing of returns and other documents.

1 (a) *General*. — Any return, statement or other
2 document required to be made under the provisions of
3 this article shall be signed in accordance with instruc-
4 tions or regulations prescribed by the tax commissioner.

5 (b) *Signing of corporation returns*. — The president,
6 vice president, treasurer, assistant treasurer, chief
7 accounting officer or any other duly authorized officer
8 shall sign the return of a corporation. In the case of a
9 return made for a corporation by a fiduciary, the
10 fiduciary shall sign the return. The fact that an
11 individual's name is signed on the return is *prima facie*
12 evidence that the individual is authorized to sign the
13 return on behalf of the corporation.

14 (c) *Signing of partnership returns*. — Any one of the
15 partners shall sign the return of a partnership. The fact
16 that a partner's name is signed on the return is *prima*
17 *facie* evidence that that partner is authorized to sign the
18 return on behalf of the partnership.

19 (d) *Signature presumed authentic*. — The fact that an
20 individual's name is signed to a return, statement, or
21 other document is *prima facie* evidence for all purposes
22 that the return, statement or other document was
23 actually signed by him or her.

24 (e) *Verification of returns*. — Except as otherwise
25 provided by the tax commissioner, any return, declara-
26 tion or other document required to be made under this

27 article shall contain or be verified by a written
28 declaration that it is made under the penalties of
29 perjury.

§11-26-12. Records.

1 (a) Every health care provider liable for reporting or
2 paying tax under this article shall keep such records,
3 receipts, invoices, and other pertinent papers in such
4 forms as the tax commissioner may require.

5 (b) Every taxpayer shall keep such records for not less
6 than three years after the annual return is filed as
7 required under this article, unless the tax commissioner
8 in writing authorizes their earlier destruction. An
9 extension of time for making an assessment shall
10 automatically extend the time period for keeping the
11 records for all years subject to audit covered in the
12 agreement for extension of time.

§11-26-13. Refunds and credits.

1 (a) *General rule.* — In the case of erroneous payment
2 of the tax imposed by this article, or the erroneous
3 payment of additions to tax, penalties or interest
4 imposed, pursuant to article ten of this chapter, with
5 respect to the tax imposed by this article, the tax
6 commissioner shall, subject to the provisions of this
7 section, refund to the taxpayer the amount of the
8 erroneous payment or, if the taxpayer so elects, apply
9 the same as a credit against the taxpayer's liability for
10 this tax for other periods. The amount refunded or
11 credited shall include any interest due the taxpayer
12 under the provisions of section seventeen, article ten of
13 this chapter.

14 (b) *Claim for refund or credit.* — No refund or credit
15 shall be made unless the taxpayer filed a timely claim
16 for refund or credit with the tax commissioner setting
17 forth the amount to be refunded along with the reason
18 or reasons why the taxpayer believes the amount should
19 be refunded, or credited to taxpayer's account, and a
20 copy of any papers supporting the taxpayer's claim. A
21 person against whom an assessment, or an administra-
22 tive decision, has become final with respect to this tax

23 is not entitled to pay the amount thereof and then file
24 a claim for refund or credit of the amount paid. The tax
25 commissioner shall determine the validity of the
26 taxpayer's claim and notify the taxpayer in writing of
27 his or her determination.

28 (c) *Petition for refund or credit; hearing.* — If the
29 taxpayer is not satisfied with the tax commissioner's
30 determination of his or her claim for refund or credit,
31 or if the tax commissioner has not determined the
32 taxpayer's claim within ninety days after the claim was
33 filed, the taxpayer may file with the tax commissioner,
34 either by personal service or by certified mail, a petition
35 for refund or credit: *Provided,* That no petition for
36 refund or credit may be filed more than sixty days after
37 the taxpayer is served with a notice of the denial of his
38 or her claim. The petition for refund or credit shall be
39 in writing, verified under oath by the taxpayer or his
40 or her duly authorized agent having knowledge of the
41 facts, and shall set forth with particularity the items of
42 the determination objected to, together with the reasons
43 for the objections. When a petition for refund or credit
44 is properly filed, the procedures for hearing and for
45 decision prescribed in section nine, article ten of this
46 chapter shall be followed.

47 (d) *Appeal.* — An appeal from the tax commissioner's
48 decision upon the petition for refund or credit may be
49 taken by the taxpayer in the same manner and under
50 the same procedure as that set forth in section eleven,
51 article ten of this chapter relating to an appeal from the
52 tax commissioner's decision on a petition for assessment,
53 but no bond shall be required of the taxpayer.

54 (e) *Decision of the court.* — Whenever an appeal is to
55 review an administrative decision on a petition for
56 refund or credit, the court may determine the legal
57 rights of the parties but in no event shall it enter a
58 judgment for money.

59 (f) *Refund made or credit established.* — The tax
60 commissioner shall promptly issue his or her requisition
61 on the treasury or establish a credit, as requested by the
62 taxpayer, for any amount finally administratively or

63 judicially determined to be an erroneous payment of any
64 tax administered under this article. The auditor shall
65 issue his or her warrant on the treasurer for any refund
66 requisitioned under this subsection payable to the
67 taxpayer entitled to the refund, and the treasurer shall
68 pay such warrant out of the fund into which the amount
69 so refunded was originally paid.

70 (g) *Forms for claim for refund or credit.* — The tax
71 commissioner may prescribe by rule or regulation the
72 forms for claims for refund or credit.

73 (h) *Remedy exclusive.* — The procedure provided by
74 this section constitutes the sole method of obtaining any
75 refund or any credit, it being the intent of this section
76 that the procedure set forth in this article is in lieu of
77 the procedure set forth in section fourteen, article ten
78 of this chapter, and in lieu of any other remedy,
79 including the uniform declaratory judgments act
80 embodied in article thirteen, chapter fifty-five of this
81 code and the provisions of section two-a, article one of
82 this chapter.

83 (i) *Erroneous refund made or credit established.* — If
84 the tax commissioner believes that an erroneous refund
85 has been made or an erroneous credit has been estab-
86 lished, he or she may proceed to investigate and may
87 make an assessment to recover the amount of such
88 refund or credit within two years after the date the
89 refund was paid or the credit was established, unless a
90 fraudulent claim was filed. In that event, the two
91 statutes of limitations shall be six years.

92 (j) *Limitation on claim for refund or credit.*

93 (1) *General rule.* — Whenever a taxpayer claims to be
94 entitled to a refund or credit for erroneous payment of
95 any tax, additions to tax, penalties or interest paid into
96 the treasury of this state, the taxpayer shall, except as
97 provided in subsection (d) of this section, file his or her
98 claim within three years after the due date of the return
99 in respect of which the tax was imposed or within two
100 years from the date the tax was paid, whichever of such
101 periods expires later, or if no return was filed by the

102 taxpayer, within two years from the time the tax was
103 paid, and not thereafter.

104 (2) *Extension of time for filing claim by agreement.* —
105 The tax commissioner and the taxpayer may enter into
106 written agreement to extend the period within which
107 the taxpayer may file a claim for refund or credit, which
108 period shall not exceed two years. The period agreed
109 upon may be extended for additional periods not in
110 excess of two years each by subsequent agreements in
111 writing made before the expiration of the period
112 previously agreed upon.

113 (3) *Special rule where agreement to extend time for*
114 *making an assessment.* — Notwithstanding subdivisions
115 (1) and (2) of this subsection, if an agreement is made
116 under the provisions of section fifteen of this article
117 extending the time period in which an assessment of a
118 tax can be made, then the time period for filing a claim
119 for refund or credit for an erroneous payment of the
120 same tax made during the periods subject to assessment
121 under the erroneous payment of this tax made during
122 the periods subject to assessment under the extension
123 agreement shall also be extended for the period of the
124 extension agreement plus ninety days.

125 (k) *"Erroneous payment" defined.* — The term errone-
126 ous payment means a payment of the tax imposed by
127 this article or the additions to tax, penalties or interest
128 imposed with respect to this tax pursuant to article ten
129 of this chapter, when such payment is due to a mathe-
130 matical or clerical error or when such payment is
131 collected after the period of limitation properly appli-
132 cable thereto.

§11-26-14. Cancellation of medicaid certification for failure to pay delinquent tax.

1 The secretary may cancel or refuse to issue, extend,
2 or reinstate a medicaid enrollment to any provider who
3 has failed to pay any tax that is delinquent under this
4 article.

§11-26-15. General procedure and administration.

1 Each and every provision of the “West Virginia Tax
2 Procedure and Administration Act” set forth in article
3 ten of this chapter applies, except as expressly provided
4 in this article, to the tax imposed by this article with
5 like effect as if the act were applicable only to the tax
6 imposed by this article and were set forth in extenso in
7 this article.

§11-26-16. Crimes and penalties.

1 Each and every provision of the “West Virginia Tax
2 Crimes and Penalties Act” set forth in article nine of
3 this chapter applies to the tax imposed by this article
4 with like effect as if the act were applicable only to the
5 tax imposed by this article and were set forth in extenso
6 in this article.

§11-26-17. Effective dates.

1 (a) The tax imposed by this article takes effect on the
2 first day of January, one thousand nine hundred ninety-
3 two, and applies to gross receipts received on or after
4 that date: *Provided*, That the tax with respect to
5 providers whose fee schedules require prior approval of
6 the health care financing administration is effective on
7 the effective date approved by the health care financing
8 administration: *Provided, however*, That the tax with
9 respect to those providers whose fees are subject to an
10 established medicare upper limit, the effective date is
11 the first day of the month immediately succeeding the
12 date the fees can be raised sufficiently to comply with
13 section ten, article four-c, chapter nine of this code.

14 (b) Any change in the percentage of medicaid reim-
15 bursement that constitutes state revenue for purposes of
16 calculating this tax, published as provided in subsection
17 (c), section three of this article, applies first to gross
18 receipts received during any calendar month that begins
19 not less than thirty days after notice of a change in the
20 percentage is filed in the state register, or the first day
21 of any later calendar month specified in the notice. The
22 percentage remains in effect until a subsequent change
23 in the percentage takes effect and applies to taxable
24 gross receipts received during the period during which

25 the percentage was in effect, whether or not the
26 medicaid services were furnished, supplied, or rendered
27 during that period.

§11-26-18. Abrogation.

1 (a) This tax abrogates and is of no further force and
2 effect, without any further action by the Legislature,
3 upon the earliest of the following dates:

4 (1) The date upon which an act of Congress becomes
5 effective prohibiting the inclusion of revenue from
6 provider taxes when determining the amount of state
7 expenditures that are claimable as medical assistance
8 for purposes of obtaining federal matching dollars:
9 *Provided*, That if such act specifies a later date on which
10 such prohibition takes effect, that later effective date
11 controls;

12 (2) The date upon which a judgment or order of a
13 court of competent jurisdiction becomes final prohibit-
14 ing the inclusion of revenue from provider taxes when
15 determining the amount of state expenditures that are
16 claimable as medical assistance for purposes of obtain-
17 ing federal matching dollars: *Provided*, That if such
18 judgment or order specifies a later date on which the
19 prohibition takes effect, that later effective date
20 controls;

21 (3) The date upon which the Legislature appropriates
22 the proceeds from this tax for any purpose not in
23 conformity with this article;

24 (4) The date upon which any federal administrative
25 rule or regulation promulgated in conformity with
26 federal law becomes effective which negates the effect
27 or purpose of this article: *Provided*, That if such federal
28 rule or regulation specifies a later date on which the
29 prohibition takes effect, that later effective date
30 controls: *Provided, however*, That if any rule or regula-
31 tion prohibits the inclusion of revenue from taxes
32 collected from a specific provider group defined in
33 section three of this article, when determining the
34 amount of state expenditures that are claimable as

35 medical assistance for purposes of obtaining federal
36 matching dollars, such rule or regulation shall not
37 affect, impair or invalidate the application of this article
38 to the remaining health care providers, but shall be
39 confined in its operation to the provider group specif-
40 ically excluded by such rule or regulation; or

41 (5) The first day of July, one thousand nine hundred
42 ninety-four.

43 (b) If this article is abrogated as provided in subsec-
44 tion (a), abrogation applies only with respect to gross
45 receipts received by the health care provider on or after
46 the effective date of the abrogation. With respect to
47 gross receipts received by the health care provider prior
48 to such date, the tax imposed by this article remains in
49 effect and all rights of this state and of the taxpayer
50 with respect to such tax are fully and completely
51 preserved as if this tax had not abrogated.

52 (c) Upon abrogation of this article, moneys remaining
53 in the funds shall be used to maintain, to the greatest
54 extent possible, the increased fee schedules as adopted
55 by the single state agency through recommendations by
56 the boards. Thereafter, any moneys insufficient to
57 maintain the increased fee schedules shall be distributed
58 on a proportional basis among all participating provid-
59 ers, from their respective funds, as determined by the
60 secretary.

61 (d) Upon abrogation, medicaid reimbursement levels
62 shall return to the amounts in existence on the thirty-
63 first day of December, one thousand nine hundred
64 ninety-one.

§11-26-19. Severability.

1 If any provision of this article or the application
2 thereof shall for any reason be adjudged by any court
3 of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair or invalidate the remainder of
5 said article, but shall be confined in its operation to the
6 provision thereof directly involved in the controversy in
7 which such judgment shall have been rendered, and the
8 applicability of such provision to other persons or
9 circumstances shall not be affected thereby.

CHAPTER 18

(Com. Sub. for H. B. 203—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 15, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying terms of entitlement to benefits for officers and employees performing military service.

Be it enacted by the Legislature of West Virginia:

That section one, article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1. Leave of absence for public officials and employees for drills, parades, active duty, etc.

1 All officers and employees of the state, or subdivisions
2 or municipalities thereof, who shall be members of the
3 national guard or any military reserve unit of the
4 United States armed services, shall be entitled to leave
5 of absence from their respective offices or employments
6 without loss of pay, status or efficiency rating, on the
7 days during which they shall be engaged in drills,
8 parades or other duty, during business hours ordered by
9 proper authority, or for field training or active service
10 of the state, for a maximum period of thirty working
11 days in any one calendar year: *Provided*, That effective
12 the second day of August, one thousand nine hundred
13 ninety, all officers and employees of the state, or
14 subdivisions or municipalities thereof, who are ordered
15 or called to active duty by the President of the United
16 States shall be entitled to an additional leave of absence
17 from their respective offices or employments without
18 loss of pay, status or efficiency rating for a maximum
19 period of thirty working days. The term "without loss

20 of pay” means that the officer or employee shall continue
21 to receive his or her normal salary or compensation,
22 notwithstanding the fact that such officer or employee
23 may have received other compensation from federal or
24 state sources during the same period.

CHAPTER 19

(Com. Sub. for S. B. 4—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed October 11, 1991; in effect in passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the alteration of motor vehicles; vehicle height limits; other modifications; exceptions; required inspection; and rules of division of public safety.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-48. Alteration of motor vehicles; bumper height limits; other modifications; exceptions; required inspection; and rules of division of public safety.

1 (a) No person may operate upon a public highway any
2 motor vehicle registered or required to be registered in
3 this state if it has been modified by alteration of its
4 height from the ground to the extent that its bumpers,
5 measured to any point on the lower edge of the main
6 horizontal bumper bar, exclusive of any bumper guards,
7 do not fall within the limits specified herein for its gross
8 vehicle weight rating category. The front and rear
9 bumper height of motor vehicles whose gross vehicle
10 weight rating is ten thousand pounds or less may be no

11 less than six inches and no more than thirty-one inches.
12 In the absence of bumpers, and in cases where bumper
13 heights have been altered or modified, height measure-
14 ments shall be made to the bottom of the frame rail. If
15 a motor vehicle has a bumper, the bumper must be at
16 least three inches in vertical width, centered on the
17 center line of the motor vehicle and not less than the
18 width of the wheel track distance. The provisions of this
19 subsection do not apply to motor vehicles with a gross
20 vehicle weight rating in excess of ten thousand pounds.
21 For the purpose of this subsection, the term "gross
22 vehicle weight ratings" means the manufacturer's gross
23 vehicle weight ratings established for that vehicle.

24 (b) The maximum distance between the vehicle body
25 to the vehicle frame may not exceed three inches. The
26 distance from the vehicle body to the vehicle frame shall
27 be measured from the vehicle body mount seat to the
28 vehicle frame mount seat: *Provided*, That the maximum
29 distance limitation shall not prohibit a body lift kit up
30 to three inches to be added to the manufacturer's
31 original spacer between the body and the frame. No
32 vehicle may be modified to cause the vehicle body or
33 chassis to come in contact with the ground, expose the
34 fuel tank to damage from collision, or cause the wheels
35 to come in contact with the body under normal opera-
36 tion. No part of the original suspension system may be
37 disconnected to defeat the safe operation of the suspen-
38 sion system. Modification of the front end suspension by
39 the use of lift blocks is expressly prohibited.

40 (c) Nothing contained in this section prevents the
41 installation of heavy duty equipment, including shock
42 absorbers and overload springs.

43 (d) Nothing contained in this section prohibits the
44 operation on a public highway of a motor vehicle with
45 normal wear to the suspension system if such normal
46 wear does not adversely affect the control of the vehicle.

47 (e) This section does not apply to specially designed
48 or modified motor vehicles when operated off the public
49 highways in races and similar events. Such motor
50 vehicles may be lawfully towed on the highways of this

51 state.

52 (f) Modifications to motor vehicles, not prohibited
53 herein, shall be made subject to inspection as provided
54 in subsection (g) herein.

55 (g) Nothing contained in this section shall subject a
56 vehicle modified solely by the installation of tires not
57 larger than two sizes beyond the maximum specified by
58 the manufacturer to inspection as provided in subsection
59 (h) herein.

60 (h) Any motor vehicle which has been altered from the
61 manufacturer's specification with respect to bumper
62 height for that vehicle make and model but within the
63 allowable limits of subsection (a) or any motor vehicle
64 which has been altered from the manufacturer's
65 specification for that vehicle make and model with
66 respect to the distance from the vehicle body to vehicle
67 frame but within the allowable limits of subsection (b)
68 may be operated upon a public highway in this state,
69 subject to inspection hereunder: *Provided*, That any
70 motor vehicle which has been altered from the manu-
71 facturer's specification by lowering the bumper height
72 for that vehicle make and model within the allowable
73 limits of subsection (a) shall be exempt from the
74 inspection requirements hereunder and may be operated
75 upon a public highway in this state subject to provisions
76 of article sixteen of this chapter. If a motor vehicle and
77 its equipment subject to inspection under this section
78 are inspected and found to be in compliance with the
79 provisions of this section and to be otherwise in safe
80 condition, an official "modified vehicle sticker" shall be
81 issued for display on the vehicle. The fee for the
82 modified vehicle stickers will be twenty-five dollars with
83 the division of public safety establishing rules concern-
84 ing such inspection. Each municipal, county and state
85 law-enforcement agency must record on accident report
86 forms whether a modified vehicle was involved in the
87 accident.

88 (i) The division of public safety shall promulgate rules
89 governing a complete safety inspection of these vehicles
90 and other rules as necessary to fully enforce and

91 implement the provisions of this section.
92 Notwithstanding the provisions of article three, chapter
93 twenty-nine-a of this code, the division of public safety
94 may promulgate emergency legislative rules relating to
95 vehicle modifications under this section and such rules
96 shall be effective for a period of fifteen months
97 beginning with the month of November, one thousand
98 nine hundred ninety-one.

CHAPTER 20

(Com. Sub. for H. B. 213—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 18, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article three, chapter eighteen-b of said code; to amend and reenact section four, article ten of said chapter; to amend said chapter by adding thereto a new article, designated article sixteen; and to amend and reenact section one, article three, chapter eighteen-c of said code, all relating to establishing a rural health initiative; providing sunset provision for advisory panel; requiring the chancellor of the board of directors to prepare a plan for coordination of allied health care programs with the rural health initiative for submission to the vice chancellor; provision for and disposition of medical education fee; designating a short title; setting forth legislative findings; defining terms; establishing goals of the rural health initiative; setting forth the powers and duties of the vice chancellor for health sciences; creating an advisory panel; providing for appointment, terms and expense reimbursement of members of the advisory panel; setting forth the powers and duties of the advisory panel; establishing primary health care education sites; specifying site selection criteria; providing for financial support of the sites, allocation of appropriations and reappropriation of

certain funds; requiring accountability through reports and audit; requiring development of performance indicators; creating the health education student loan program; establishing a special revolving fund account; requiring a portion of the medical education fee to be deposited into the fund; specifying other moneys to be deposited in the fund; setting forth eligibility requirements for a loan; providing for award and cancellation of loans; defining breach of contract and penalty therefor; continuing eligibility for students granted a loan under the previous section; requiring reports by the senior administrator; and promulgation of rules by the secretary of the department of education and the arts.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article three, chapter eighteen-b of said code be amended and reenacted; that section four, article ten of said chapter be amended and reenacted; that said chapter be amended by adding thereto a new article, designated article sixteen; and that section one, article three, chapter eighteen-c of said code be amended and reenacted, all to read as follows:

Chapter

4. The Legislature.

18B. Higher Education.

18C. Student Loans; Scholarships and State Aid.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs
 2 shall be terminated on the date indicated but no
 3 governmental entity or program shall be terminated
 4 under this article unless a performance audit has been
 5 conducted of such entity or program, except as autho-
 6 rized under section fourteen of this article:

7 (1) On the first day of July, one thousand nine hundred
8 eighty-one: Judicial council of West Virginia; motor
9 vehicle certificate appeal board; and child welfare
10 licensing board.

11 (2) On the first day of July, one thousand nine hundred
12 eighty-two: Ohio River basin commission; commission on
13 postmortem examination; and the state commission on
14 manpower, training and technology.

15 (3) On the first day of July, one thousand nine hundred
16 eighty-three: Anatomical board; economic opportunity
17 advisory committee; and the community development
18 authority board.

19 (4) On the first day of July, one thousand nine hundred
20 eighty-four: The following programs of the department
21 of natural resources: Rabies control, work incentive
22 program; and the West Virginia alcoholic beverage
23 control licensing advisory board.

24 (5) On the first day of July, one thousand nine hundred
25 eighty-five: Beautification commission.

26 (6) On the first day of July, one thousand nine hundred
27 eighty-six: Health resources advisory council.

28 (7) On the first day of July, one thousand nine hundred
29 eighty-seven: Civil service commission advisory board;
30 and the motorcycle safety standards and specifications
31 board.

32 (8) On the first day of July, one thousand nine hundred
33 eighty-eight: Labor management relations board;
34 records management and preservation advisory commit-
35 tee; minimum wage rate board; commission on mass
36 transportation; and the public employees insurance
37 board.

38 (9) On the first day of July, one thousand nine hundred
39 eighty-nine: Mental retardation advisory committee;
40 board of school finance; veteran's affairs advisory
41 council; and the reclamation commission.

42 (10) On the first day of July, one thousand nine
43 hundred ninety: Consumer affairs advisory council;
44 savings and loan association; and the forest industries

45 industrial foundation.

46 (11) On the first day of July, one thousand nine
47 hundred ninety-one: The following divisions or pro-
48 grams of the department of agriculture: Interagency
49 committee on pesticides.

50 (12) On the first day of July, one thousand nine
51 hundred ninety-two: State water resources board; water
52 resources division, department of natural resources;
53 whitewater advisory board; state board of risk and
54 insurance management; West Virginia's membership in
55 the interstate commission on the Potomac River basin;
56 board of banking and financial institutions; the farm
57 management commission; state building commission;
58 the capitol building commission; the board of examiners
59 in counseling; public service commission; family protec-
60 tion services board; board of examiners of land survey-
61 ors; legislative oversight commission on education
62 accountability; West Virginia ethics commission; family
63 law masters system; state lottery commission; the
64 following divisions or programs of the department of
65 agriculture: Soil conservation committee, rural resource
66 division, meat inspection program; women's commission;
67 and the child advocate office of the department of health
68 and human resources.

69 (13) On the first day of July, one thousand nine
70 hundred ninety-three: Commission on uniform state
71 laws; state structural barriers compliance board; the oil
72 and gas inspectors examining board; the tree fruit
73 industry self-improvement program; the oil and gas
74 conservation commission; and the council of finance and
75 administration.

76 (14) On the first day of July, one thousand nine
77 hundred ninety-four: Ohio River valley water sanitation
78 commission; the southern regional education board; real
79 estate commission; the division of labor; division of
80 tourism and parks; division of corrections; and the
81 veteran's council.

82 (15) On the first day of July, one thousand nine
83 hundred ninety-five: Emergency medical services
84 advisory council; commission on charitable organiza-

85 tions; information system advisory commission; West
86 Virginia labor-management council; the board of social
87 work examiners; and the rural health initiative advisory
88 panel.

89 (16) On the first day of July, one thousand nine
90 hundred ninety-six: U.S. geological survey program
91 within the division of natural resources; state geological
92 and economic survey; division of culture and history;
93 and the board of investments.

94 (17) On the first day of July, one thousand nine
95 hundred ninety-seven: The driver's licensing advisory
96 board; department of health and human resources; West
97 Virginia health care cost review authority; and the
98 division of personnel.

CHAPTER 18B. HIGHER EDUCATION.

Article

3. Board of Directors of the State College System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
16. Health Care Education.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-3. Additional duties of board of directors.

1 (a) The board of directors shall determine programs
2 to be offered by state institutions of higher education
3 under its jurisdiction.

4 (b) The board of directors shall govern community
5 colleges and shall organize eight community college
6 service areas in accordance with section four of this
7 article.

8 (c) The board of directors of the state college system
9 shall govern the state college system. The board of
10 directors shall develop by the first day of January, one
11 thousand nine hundred ninety, a proposed classification
12 plan and salary plan for full-time faculty based upon the
13 level of program being taught by said full-time faculty
14 member, whether baccalaureate programs or associate
15 level programs. The classification plan and salary plan
16 shall be submitted to the secretary of education and the

17 arts for approval.

18 (d) The chancellor of the board of directors shall
19 prepare a detailed plan for the coordination of allied
20 health care education programs with the rural health
21 initiative and shall submit the plan, by the first day of
22 January, one thousand nine hundred ninety-two, to the
23 vice chancellor for health sciences created pursuant to
24 section six, article two of this chapter for review and
25 approval. After the vice chancellor for health sciences
26 reviews and approves the plan, the chancellor of the
27 board of directors shall submit the plan to the board of
28 directors for its approval and implementation.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE
INSTITUTIONS OF HIGHER EDUCATION.**

§18B-10-4. Medical education fee.

1 In addition to the fees specifically provided for in
2 sections one, two and three of this article, all medical
3 students enrolled for credit at the West Virginia
4 university school of medicine, Marshall university school
5 of medicine and the West Virginia school of osteopathic
6 medicine shall pay a medical education fee. The board
7 of trustees shall fix the fee rates for students at each
8 institution and may from time to time change these
9 rates. The fee imposed by this section is in addition to
10 the maximum fees allowed to be collected under the
11 provisions of section one of this article and is not limited
12 thereby. Refunds of the fee may be made in the same
13 manner as any other fee collected at state institutions
14 of higher education. Medical education fees collected
15 shall be deposited in a special revenue account which is
16 hereby created in the state treasury for the school at
17 which the fees are collected and shall be used by the
18 school to offset general operating costs: *Provided*, That
19 the board of trustees shall deposit a portion of the total
20 fees collected therein into the health education student
21 loan fund account in accordance with the provisions of
22 article three, chapter eighteen-c of this code. Before the
23 first day of July of each year, the board of trustees shall
24 provide the legislative auditor with a report of the
25 projected fee collections for each of the schools of
26 medicine.

ARTICLE 16. HEALTH CARE EDUCATION.

- §18B-16-1. Short title.
§18B-16-2. Legislative findings and declarations.
§18B-16-3. Definitions.
§18B-16-4. Establishment of rural health initiative; goals of rural health initiative.
§18B-16-5. Powers and duties of the vice chancellor.
§18B-16-6. Creation of advisory panel; termination; powers and duties.
§18B-16-7. Establishment and operation of primary health care education sites.
§18B-16-8. Allocation of appropriations.
§18B-16-9. Accountability; reports and audit required.

§18B-16-1. Short title.

- 1 This article shall be known and may be cited as "The
2 Rural Health Initiative Act of 1991."

§18B-16-2. Legislative findings and declarations.

1 (a) The Legislature hereby finds and declares that the
2 health of the citizens of West Virginia is of paramount
3 importance; that the education of health care profession-
4 als must be reshaped; that the delivery of health care
5 services must be improved; that refocusing health
6 sciences education will aid in the recruitment of health
7 care professionals and their retention in the state; that
8 the educational process should incorporate clinical
9 experience in rural areas and provide improved avail-
10 ability of health care services throughout the state,
11 especially in rural areas; and that the state investment
12 in such education and services must be contained within
13 reasonable limits.

14 (b) The Legislature further hereby finds and declares
15 that the vice chancellor for health sciences shall provide
16 an integral link among the advisory panel created in
17 section six of this article, the health sciences programs
18 at the state institutions of higher education, the
19 governing boards of the state's institutions of higher
20 education and the joint commission for vocational-
21 technical-occupational education to assure cooperation
22 and the coordination of efforts to effectuate the goals set
23 forth in section four of this article.

24 (c) It is the further finding of the Legislature that the
25 appropriations pursuant to section eight of this article
26 are made with the understanding that the educational
27 and clinical programs existing at the schools of medicine

28 on the effective date of this section, as well as the goals
29 of this article, will be met without requests for increases
30 in the annual appropriations through the fiscal year
31 beginning on the first day of July, one thousand nine
32 hundred ninety-five, with the exception of requested
33 increases in appropriations for the purpose of meeting
34 any increases in the salaries of personnel as may be
35 given to other employees at state institutions of higher
36 education under the board of trustees.

37 (d) The Legislature further finds that there is a
38 serious need throughout the state for a greater number
39 of primary care physicians and allied health care
40 professionals and a serious need for improved accessi-
41 bility to adequate health care throughout the state,
42 especially in rural areas; that the state's medical schools
43 are finding it difficult to satisfy the ever increasing
44 demand for qualified persons to deliver these health
45 care services and that the state's institutions of higher
46 education and rural health care facilities existing
47 throughout the state are a major educational resource
48 for training students in these health care services, as
49 well as a major resource for providing health care to
50 underserved citizens of this state.

51 (e) The Legislature further finds that in order to
52 provide adequate health care in rural communities there
53 must be a cooperative initiative among educators,
54 physicians, mid-level providers, allied health care
55 providers and the rural communities.

§18B-16-3. Definitions.

1 For purposes of this article, and in addition to the
2 definitions set forth in section two, article one of this
3 chapter, the terms used in this article have the following
4 definitions ascribed to them:

5 (a) "Advisory panel" or "panel" means the rural health
6 initiative advisory panel created under section six of this
7 article.

8 (b) "Allied health care" means health care other than
9 that provided by physicians, nurses, dentists and mid-
10 level providers and includes, but is not limited to, care

11 provided by clinical laboratory personnel, physical
12 therapists, occupational therapists, respiratory thera-
13 pists, medical records personnel, dietetic personnel,
14 radiologic personnel, speech-language-hearing person-
15 nel and dental hygienists.

16 (c) "Health care planning commission" means the
17 commission created pursuant to article one-a, chapter
18 sixteen of this code.

19 (d) "Mid-level provider" includes, but is not limited to,
20 advanced nurse practitioners, nurse-midwives, and
21 physician assistants.

22 (e) "Office of rural health" means that agency, staff
23 or office within the department of health and human
24 resources which has as its primary focus the delivery of
25 rural health care.

26 (f) "Primary care" means basic or general health care
27 which emphasizes the point when the patient first seeks
28 assistance from the medical care system and the care
29 of the simpler and more common illnesses. This type of
30 care is generally rendered by family practice physi-
31 cians, general practice physicians, general internists,
32 obstetricians, pediatricians, psychiatrists, and mid-level
33 providers.

34 (g) "Primary health care education sites" or "sites",
35 whether the term is used in the plural or singular,
36 means those rural health care facilities established for
37 the provision of educational and clinical experiences
38 pursuant to section seven of this article.

39 (h) "Rural health care facilities" or "facilities",
40 whether the term is used in the plural or singular,
41 means nonprofit, free-standing primary care clinics in
42 medically underserved or health professional shortage
43 areas and nonprofit rural hospitals with one hundred or
44 less licensed acute care beds, located in a nonstandard
45 metropolitan statistical area.

46 (i) "Schools of medicine" means the West Virginia
47 University School of Medicine, which is the School of
48 Health Sciences; the Marshall School of Medicine, which
49 is the Marshall Medical School; and the West Virginia

50 School of Osteopathic Medicine.

51 (j) "Vice chancellor" means the vice chancellor for
52 health sciences provided for under section six, article
53 two of this chapter.

**§18B-16-4. Establishment of rural health initiative; goals
of rural health initiative.**

1 There is hereby established a rural health initiative
2 under the auspices of the board of trustees and under
3 the direction and administration of the vice chancellor.
4 The goals of the rural health initiative include, but are
5 not limited to:

6 (a) The development of at least six primary health
7 care education sites;

8 (b) The establishment of satellite programs from the
9 primary health care education sites to provide addi-
10 tional opportunities for students and medical residents
11 to serve under role models in rural areas;

12 (c) The provision of training to all medical students
13 under the direction of primary care physicians practic-
14 ing in rural areas;

15 (d) The provision of admission preferences for qual-
16 ified students entering primary care in needed special-
17 ties in underserved areas;

18 (e) The creation of medical residency rotations in
19 hospitals and clinics in rural areas and the provision of
20 incentives to medical residents to accept the residencies
21 at these hospitals and clinics;

22 (f) The placement of mid-level providers in rural
23 communities and the provision of support to the mid-
24 level providers;

25 (g) The extension of rural hospital physician respite
26 loan programs to rural primary health care clinics;

27 (h) The development of innovative programs which
28 enhance student interest in rural health care
29 opportunities;

30 (i) The increased placement of primary care physi-

- 31 cians in underserved areas;
- 32 (j) The increased retention of obstetrical providers and
33 the availability of prenatal care;
- 34 (k) The increased use of underserved areas of the state
35 in the educational process;
- 36 (l) An increase in the number of support services
37 provided to rural practitioners;
- 38 (m) An increase in the retention rate of graduates
39 from West Virginia medical schools, nursing schools and
40 allied health care education programs;
- 41 (n) The development of effective health promotion and
42 disease prevention programs to enhance wellness; and
- 43 (o) The establishment of primary health care educa-
44 tion sites which complement existing community health
45 care resources and which do not relocate the fundamen-
46 tal responsibility for health care from the community to
47 the board of trustees.

§18B-16-5. Powers and duties of the vice chancellor.

- 1 In addition to all other duties assigned to the vice
2 chancellor by the board of trustees, the vice chancellor
3 shall:
- 4 (a) Provide assistance to communities in planning an
5 educational and clinical component for the primary
6 health care education sites;
- 7 (b) Coordinate and approve the provision of faculty
8 members, students, interns and residents at the educa-
9 tion sites;
- 10 (c) Report directly to the board of trustees regarding
11 the rural health initiative;
- 12 (d) Oversee the administration of the Kellogg founda-
13 tion grant;
- 14 (e) Coordinate the rural health initiative with the
15 allied health care education programs within the state
16 college system;
- 17 (f) Prepare the budget for the rural health initiative

18 and submit the budget to the board of trustees for their
19 approval;

20 (g) Distribute the funds which were appropriated to
21 the board of trustees and the secretary of the depart-
22 ment of education and the arts, by the Legislature, for
23 the rural health initiative;

24 (h) Mediate any disputes between the institutions of
25 higher education regarding the rural health initiative;

26 (i) Approve the plan submitted by the board of
27 directors under section three, article three of this
28 chapter;

29 (j) Consult with the joint commission for vocational-
30 technical-occupational education established under
31 section one, article three-a of this chapter on the
32 coordination of the education of student practical nurses
33 with the rural health initiative; and

34 (k) Perform such other duties as may be prescribed
35 by this article or as may be necessary to effectuate the
36 provisions of this article.

**§18B-16-6. Creation of advisory panel; termination;
powers and duties.**

1 (a) The rural health initiative advisory panel is hereby
2 created and shall be composed of eighteen members as
3 follows: (1) One member shall be the commissioner of
4 the bureau of public health, who shall chair the panel;
5 (2) one member shall be a representative of the office
6 of rural health; (3) one member shall be a representative
7 of the health care planning commission; (4) one member
8 shall be a representative of the office of community
9 health services; (5) five members shall be rural health
10 care providers, two of whom shall be representatives of
11 rural health care facilities selected from such lists as
12 may be submitted by associations interested or involved
13 in the provision of rural health care, two of whom shall
14 be physicians engaged in the private practice of rural
15 medicine, and one of whom shall be an advanced nurse
16 practitioner or a nurse-midwife with experience in rural
17 health care delivery; (6) four members shall represent
18 consumers; (7) one member shall be a president of a

19 private college or university to represent the health
20 education programs at the state's private colleges and
21 universities: *Provided*, That the presidents of the various
22 private colleges and universities shall select the member
23 representing the private colleges and universities and
24 submit the name to the governor for his appointment:
25 *Provided, however*, That such member shall be a
26 nonvoting member; (8) one member shall be the
27 president of the West Virginia school of osteopathic
28 medicine or a designee; (9) one member shall be the vice
29 president of the West Virginia university school of
30 medicine or a designee; (10) one member shall be the
31 vice president of the Marshall university school of
32 medicine or a designee; and (11) one member shall be
33 a president of a state college to represent the health
34 education programs of the state college system, selected
35 by a vote of the presidents of the state colleges. Those
36 members representing state institutions of higher
37 education shall be ex officio, nonvoting members of the
38 panel.

39 The governor, with the advice and consent of the
40 Senate, shall appoint those individuals who are not
41 members of the panel by virtue of their office. The
42 governor shall appoint those members of the panel who
43 represent health care providers and consumers for
44 staggered, three-year terms, and the resident addresses
45 of such members shall be geographically dispersed
46 throughout the state. All successive appointments shall
47 be for three-year terms. After the initial appointment
48 of the advisory panel, any appointment to fill a vacancy
49 shall be for the unexpired term only.

50 The governor shall make all appointments within ten
51 days of the effective date of this article, and the vice
52 chancellor shall convene the advisory panel by the first
53 day of December, one thousand nine hundred ninety-one.
54 Thereafter, the chair shall schedule the meetings of the
55 panel and notify members of such meetings. The panel
56 shall meet at least monthly until such time as the initial
57 recommendation has been forwarded to the vice chan-
58 cellor and at least quarterly thereafter or upon the call
59 of the chair.

60 Members of the advisory panel shall be reimbursed
61 for the cost of reasonable and necessary expenses
62 actually incurred in the performance of their duties:
63 *Provided*, That members of the panel who are employed
64 by the state of West Virginia shall not be reimbursed
65 for their expenses under the provisions of this section.

66 (b) The advisory panel shall be terminated by the
67 provisions of article ten, chapter four of this code on the
68 first day of July, one thousand nine hundred ninety-five,
69 unless sooner terminated or unless continued or reestab-
70 lished pursuant to that article.

71 (c) The advisory panel has the power and the duty to
72 recommend rural health care facilities to be established
73 as primary health care education sites. Such recommen-
74 dation shall be made to the vice chancellor in accordance
75 with the criteria set forth in section seven of this article.
76 After review of the proposals submitted to the vice
77 chancellor by the schools of medicine pursuant to section
78 eight of this article, the panel's recommendation shall
79 include an estimation of the costs to be allocated per site
80 from available funds in the university of West Virginia
81 health sciences account in the line item designated for
82 rural health initiative site support.

83 (d) The advisory panel shall adopt guidelines regard-
84 ing the application by rural health care facilities for
85 selection as primary health care education sites and
86 shall approve an application form which provides the
87 panel with sufficient information to consider the criteria
88 set forth in section eight of this article. The guidelines
89 and application shall be sent by registered mail to each
90 rural health care facility in the state as soon as
91 practicable after the effective date of this section.

92 (e) The advisory panel shall provide an on-going
93 evaluation of the rural health initiative and shall make
94 the reports required under this article.

**§18B-16-7. Establishment and operation of primary
health care education sites.**

1 (a) In addition to the authority granted elsewhere in
2 this chapter, the board of trustees is authorized and

3 directed to establish at least six primary health care
4 education sites at existing rural health care facilities at
5 which students, interns and residents in health sciences
6 and allied health care education programs may be
7 provided educational and clinical experiences. The
8 board of trustees shall establish at least six sites prior
9 to the first day of January, one thousand nine hundred
10 ninety-four. The vice chancellor shall, where practica-
11 ble, and based upon recommendations of the joint
12 commission on vocational-technical-occupational educa-
13 tion established in section one, article three-a of this
14 chapter, allow for the provision of educational expe-
15 rience to student practical nurses at the primary health
16 care education sites.

17 (b) The advisory panel and the vice chancellor shall
18 carefully analyze prospective sites so that the selection
19 of the primary health care education sites and their
20 satellites meet the ultimate goals of expanding rural
21 health care without adversely impacting on existing
22 health care providers or facilities.

23 (c) The advisory panel and the vice chancellor shall
24 employ an open and competitive process in selecting
25 locations for primary health care education sites and
26 shall observe as criteria the following factors: (1) The
27 degree of community interest, support and involvement
28 in seeking award of the site; (2) qualification as a
29 medically underserved or health professional shortage
30 area; (3) the financial need of the community; (4)
31 statewide geographic dispersion; (5) the amount of local
32 financial support available to initiate and continue the
33 site, including the possibility of the site's being finan-
34 cially self-sufficient within a reasonable period of time;
35 (6) the adequacy of facilities available to accommodate
36 the health sciences and allied health care education
37 program; (7) consistency with planning efforts of the
38 office of rural health and the health care planning
39 commission; (8) the amount and manner in which health
40 care needs unique to West Virginia are addressed and
41 will be addressed; (9) the degree to which state
42 institutions of higher education cooperate in the health
43 care education site; (10) the number of patients and

44 patient encounters; (11) the number of existing health
45 care providers in the area and the degree to which the
46 rural health care facility will work with and impact on
47 those health care providers; and (12) the level of
48 networking among local health care providers serving
49 the area.

50 (d) The vice chancellor shall select the primary health
51 care education sites from the list of recommendations
52 made by the advisory panel in accordance with section
53 six of this article. The vice chancellor shall communicate
54 his or her selection to the board of trustees for final
55 approval by the board. The vice chancellor shall notify
56 the advisory panel and the board of trustees regarding
57 the extent to which the panel's recommendations were
58 adopted by the vice chancellor and his or her reasons
59 for rejecting any recommendations of the panel.

60 (e) The board of trustees may enter into a contractual
61 relationship with each primary health care education
62 site, which shall be in accordance with such laws as may
63 apply to publicly funded partnerships with private,
64 nonprofit entities and the provisions of section three,
65 article five of this chapter.

§18B-16-8. Allocation of appropriations.

1 (a) The primary health care education sites estab-
2 lished under this article shall be supported financially
3 in part from line item appropriations to the university
4 of West Virginia health sciences account. Funds shall be
5 distributed to the state's schools of medicine upon
6 consideration of the recommendations of the vice
7 chancellor. Appropriations to the university of West
8 Virginia health sciences account to support the rural
9 health initiative shall be by line item, with at least one
10 line item designated for primary health education
11 program support at the schools of medicine and at least
12 one line item designated for rural health initiative site
13 support.

14 (b) The vice chancellor shall require each school of
15 medicine to submit a detailed proposal which shall state,
16 with specificity, how each school of medicine will be
17 working to further the goals and meet the criteria set

18 forth in this article and the amount of appropriation
19 which would be needed by each school to implement the
20 proposal.

21 The vice chancellor shall, giving consideration to such
22 proposals, prepare a comprehensive plan to be presented
23 to the board of trustees, which plan shall include a
24 recommendation for allocations of moneys appropriated
25 for program support and a recommendation for the
26 allocation of moneys designated for support of the
27 primary health care education sites commensurate with
28 each school's level of participation in such sites.

29 (c) Notwithstanding the provisions of section twelve,
30 article three, chapter twelve of this code, any funds
31 appropriated to the board of trustees in accordance with
32 the provisions of this section that remain unallocated or
33 unexpended at the end of any fiscal year shall not
34 expire, shall remain in the line item to which they were
35 originally appropriated and shall be available in the
36 next fiscal year to the board of trustees or a school of
37 medicine for allocation or expenditure for the purposes
38 of this article.

39 (d) The rural health initiative shall also be supported,
40 in part, from appropriations made to the secretary of the
41 department of education and the arts, under a separate
42 line item for the board of directors of the state college
43 system for the rural health initiative, for distribution to
44 participating health education programs under the
45 board of directors. Appropriations shall not be expended
46 or allocated until the required plan has been approved
47 by the vice chancellor in accordance with section three,
48 article three of this chapter.

49 Notwithstanding the provisions of section twelve,
50 article three, chapter twelve of this code, any funds
51 appropriated to the board of directors in accordance
52 with the provisions of this section that remain unallo-
53 cated or unexpended at the end of any fiscal year shall
54 not expire, shall remain in the line item to which they
55 were originally appropriated and shall be available in
56 the next fiscal year to the board of directors for
57 allocation or expenditure for the purposes of this article.

58 (e) Additional financial support shall come from fees
59 generated by services, from grants and contracts, and
60 from community resources. Any fees so generated shall
61 be paid to and expended by the facility established as
62 a primary health care education site unless an alterna-
63 tive fee arrangement is mutually agreed upon by the
64 chief administrator of the site and the vice chancellor
65 for health sciences.

§18B-16-9. Accountability; reports and audit required.

1 (a) The vice chancellor, with the assistance of the
2 advisory panel, shall report in detail to the board of
3 trustees on the expenditure and planned expenditure of
4 public funds to the schools of medicine under section
5 eight of this article. The board of trustees shall report
6 to the governor, the president of the Senate and the
7 speaker of the House of Delegates no later than the
8 fifteenth day of February, one thousand nine hundred
9 ninety-two, the thirtieth day of June, one thousand nine
10 hundred ninety-two, the thirty-first day of December,
11 one thousand nine hundred ninety-two, and, thereafter,
12 annually prior to the first day of December as a part
13 of the higher education report cards required by section
14 eight-a, article one of this chapter.

15 (b) The vice chancellor, with the guidance and
16 recommendations of the advisory panel, shall develop
17 additional performance indicators, including, but not
18 limited to: (1) An analysis of the health care needs of
19 the targeted areas; (2) the number of persons served and
20 the nature of the services provided; (3) the number of
21 full-time and part-time faculty, students, interns and
22 residents, by discipline, participating in the health
23 science and allied health care education programs; (4)
24 the number of health providers in each community
25 served by primary health care education sites; (5) the
26 financial, social and health status changes in each
27 community served by primary health care education
28 sites; and (6) the extent to which the plans and policies
29 of the office of rural health and the health care planning
30 commission are being effectuated. The vice chancellor
31 shall provide information on the performance indicators
32 to the board of trustees for inclusion in the higher

33 education accountability report card for health sciences
34 provided for in section eight-a, article one of this
35 chapter.

36 (c) The advisory panel shall report at least annually
37 to the joint legislative oversight commission on educa-
38 tion accountability created under section eleven, article
39 three-a, chapter twenty-nine-a of this code and to the
40 area health education centers subcommittee of the joint
41 committee on government and finance regarding the
42 status of the rural health care initiative, paying
43 particular attention to the role of the communities.

44 (d) The vice chancellor shall report at least annually
45 to the joint legislative oversight commission on educa-
46 tion accountability created under section eleven, article
47 three-a, chapter twenty-nine-a of this code and to the
48 area health education centers subcommittee of the joint
49 committee on government and finance regarding the
50 status of the rural health care initiative, paying
51 particular attention to the role of the schools of
52 medicine.

53 (e) The board of trustees shall facilitate a meeting at
54 least quarterly for the chief administrators of each
55 primary health care education site established pursuant
56 to this article and each chief administrator at other
57 rural health care facilities providing educational and
58 clinical experiences to students, interns and residents at
59 the state's schools of medicine. The meetings shall
60 commence no later than the first day of July, one
61 thousand nine hundred ninety-two, and shall be for the
62 purpose of discussing the status, efficiency and effective-
63 ness of the various programs and their operation and
64 recommending any changes to the board of trustees,
65 which may include statutory recommendations to be
66 made to the Legislature.

67 In addition to the reports otherwise required and
68 commencing with a report for the fiscal year beginning
69 on the first day of July, one thousand nine hundred
70 ninety-one, the chief administrators shall submit to the
71 board of trustees an annual evaluation of the extent to
72 which the goals set forth in section four of this article

73 and other goals relating to collaborative efforts between
74 the schools of medicine and rural health care facilities
75 are being attained. Such report shall be forwarded
76 annually in its entirety to the governor, the president of
77 the Senate and the speaker of the House of Delegates
78 no later than the fifteenth day of January.

79 (f) The legislative auditor, at the direction of the joint
80 committee on government and finance, shall perform on
81 an ongoing basis a fiscal and performance review of the
82 medical education components within the university of
83 West Virginia system, the state college system and the
84 rural health initiative for periodic review by the
85 Legislature.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-1. Health education loan program; establishment; administration; eligibility; penalty for nonperformance of loan terms.

1 (a) *Legislative findings.* — The Legislature finds that
2 there is a critical need for additional practicing health
3 care professionals in West Virginia. Therefore, there is
4 hereby created a health education student loan program
5 to be administered by the senior administrator of the
6 higher education central office. The purpose of this
7 program is to provide a loan for tuition and fees to
8 students enrolled in health education programs at West
9 Virginia institutions of higher education who intend to
10 practice their profession in underserved areas in the
11 state following completion of their studies. The loans are
12 not to be awarded on the basis of the financial need of
13 the student, rather the loans are to be awarded based
14 on the need of the state to retain all levels of health
15 professionals in all areas of the state and where possible
16 to complement the rural health initiative established in
17 article sixteen, chapter eighteen-b of this code.

18 (b) *Establishment of special account.* — There is
19 hereby established a special revolving fund account
20 under the board of trustees in the state treasury to be

21 known as the health education student loan fund which
22 shall be used to carry out the purposes of this section.
23 The fund shall consist of: (1) All funds on deposit in the
24 medical student loan fund in the state treasury on the
25 effective date of this section, or which are due or become
26 due for deposit in the fund as obligations made under
27 the previous enactment of this section; (2) thirty-three
28 percent of the annual collections from the medical
29 education fee established by section four, article ten,
30 chapter eighteen-b of this code, or such other percentage
31 as may be established by the board of trustees by
32 legislative rule subject to approval of the Legislature
33 pursuant to the provisions of article three-a, chapter
34 twenty-nine-a of this code; (3) appropriations provided
35 by the Legislature; (4) penalties assessed to individuals
36 for failure to perform under the terms of a loan contract
37 as set forth under this section, and repayment of any
38 loans which may be made from funds in excess of those
39 needed for loans under this section; (5) amounts
40 provided by medical associations, hospitals, or other
41 medical provider organizations in this state, or by
42 political subdivisions of the state, under an agreement
43 which requires the recipient to practice his or her health
44 profession in this state or in the political subdivision
45 providing the funds for a predetermined period of time
46 and in such capacity as set forth in the agreement; and
47 (6) other amounts which may be available from external
48 sources. Balances remaining in the fund at the end of
49 the fiscal year shall not expire or revert. All costs
50 associated with the administration of this section shall
51 be paid from the health education student loan fund.

52 (c) *Eligibility and forgiveness requirements for health*
53 *education student loan.* — An individual is eligible for
54 a health education student loan if the individual: (1) Is
55 enrolled or accepted for enrollment at the West Virginia
56 university school of medicine, Marshall university school
57 of medicine, the West Virginia school of osteopathic
58 medicine in a program leading to the degree of medical
59 doctor (M.D.) or doctor of osteopathy (D.O.): *Provided,*
60 That the individual has not yet received one of these
61 degrees and is not in default of any previous student
62 loan; (2) meets the established academic standards; and

63 (3) signs a contract to practice his or her health
64 profession in an underserved area of the state: *Provided,*
65 *however,* That for every year that an individual serves
66 in an underserved area, ten thousand dollars of the loan
67 granted to the individual will be forgiven.

68 Loans shall be awarded by the senior administrator,
69 with the advice of the board of trustees, on a priority
70 basis from the pool of all applications with the first
71 priority being a commitment to serve in an underserved
72 area of the state or in a medical specialty in which there
73 is a shortage of practitioners in the state as determined
74 by the state division of health at the time the loan is
75 granted.

76 At the end of each fiscal year, any individual who has
77 received a health education student loan shall submit to
78 the board of trustees a notarized, sworn statement of
79 service on a form provided for that purpose. Upon
80 receipt of such statement in proper form and verifica-
81 tion that the individual has complied with the terms
82 under which the loan was granted, the board of trustees
83 shall cancel up to ten thousand dollars of the outstand-
84 ing loan for every full twelve consecutive calendar
85 months of such service.

86 If an individual fails to submit the required statement
87 of service, or submits a fraudulent statement, in
88 addition to other penalties, the individual is in breach
89 of contract resulting in a penalty of three times the
90 amount of the outstanding balance of the loan granted.

91 A loan recipient who subsequently fails to meet the
92 academic standards necessary for completion of the
93 course of study under which the loan was granted or
94 who fails to complete the course of study under which
95 the original loan was granted is liable for repayment of
96 the loan amount under the terms for the repayment of
97 loans established by the board of trustees at the time the
98 loan contract was executed.

99 (d) *Loans granted under medical student loan pro-*
100 *gram.* — Any student granted a medical student loan
101 under the provisions of this section prior to the effective
102 date of the amendment and reenactment of this section

103 at the second extraordinary session of the Legislature in
104 the year one thousand nine hundred ninety-one con-
105 tinues to be eligible for consideration for receipt of such
106 a loan, and/or obligated to repay such loan, as the case
107 may be, under the prior provisions. Thereafter, the
108 senior administrator may utilize any funds remaining in
109 the health education student loan fund after all loan
110 grants have been disposed of for the purposes of the
111 medical student loan program. An individual is eligible
112 for loan consideration if the individual demonstrates
113 financial need, meets established academic standards
114 and is enrolled or accepted for enrollment at one of the
115 aforementioned schools of medicine in a program
116 leading to the degree of medical doctor (M.D.) or doctor
117 of osteopathy (D.O.): *Provided*, That the individual has
118 not yet received one of these degrees and is not in default
119 of any previous student loan: *Provided, however*, That
120 the board of trustees shall give priority for the loans to
121 residents of this state, as defined by the board of
122 trustees. At the end of each fiscal year, any individual
123 who has received a medical student loan and who has
124 actually rendered services as a medical doctor or a
125 doctor of osteopathy in this state in a medically
126 underserved area or in a medical specialty in which
127 there is a shortage of physicians, as determined by the
128 division of health at the time the loan was granted, may
129 submit to the board of trustees a notarized, sworn
130 statement of service on a form provided for that
131 purpose. Upon receipt of such statement in proper form
132 and verification of services rendered, the board of
133 trustees shall cancel five thousand dollars of the
134 outstanding loan or loans for every full twelve consec-
135 utive calendar months of such service.

136 (e) *Report by senior administrator.* — No later than
137 thirty days following the end of each fiscal year, the
138 senior administrator shall prepare and submit a report
139 to the board of trustees for inclusion in the statewide
140 report card required under section six, article two,
141 chapter eighteen-b of this code to be submitted to the
142 legislative oversight commission on education accounta-
143 bility established under section eleven, article three-a,
144 chapter twenty-nine-a of this code. The report of the
145 senior administrator shall include at a minimum the

146 following information: (1) The number of loans awarded;
147 (2) the total amount of the loans awarded; (3) the amount
148 of any unexpended moneys in the fund; and (4) the rate
149 of default during the previous fiscal year on the
150 repayment of previously awarded loans.

151 (f) *Promulgation of rules.* — The secretary of the
152 department of education and the arts shall promulgate
153 rules necessary for the operation of this section.

CHAPTER 21

(H. B. 211—By Mr. Speaker, Mr. Chambers,
By Request of the Executive)

[Passed October 14, 1991; in effect November 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum monthly salaries for school service personnel; creating “a state minimum monthly pay scale pay grade II”; providing a school service personnel salary increase for the remainder of the employment term, one thousand nine hundred ninety-one — ninety-two, which is based upon a full-years amount under “state minimum pay scale pay grade II”; requiring the state department of education to provide general notification to service personnel of effect of prorationing; providing that, effective the first day of July, one thousand nine hundred ninety-two, the minimum monthly pay for school service personnel shall be in accordance with “state minimum pay scale pay grade II”; deleting certain provision relating to extra-duty minimum pay; and authorizing alternative minimum hourly rate of pay for extra-duty assignments if mutually approved.

Be it enacted by the Legislature of West Virginia:

That section eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE PAY GRADE I

	Years of Employ- ment	A	B	C	D	E	F	G	H
1	0	933	953	993	1,043	1,093	1,153	1,183	1,253
2	1	955	975	1,015	1,065	1,115	1,175	1,205	1,275
3	2	977	997	1,037	1,087	1,137	1,197	1,227	1,297
4	3	999	1,019	1,059	1,109	1,159	1,219	1,249	1,319
5	4	1,021	1,041	1,081	1,131	1,181	1,241	1,271	1,341
6	5	1,043	1,063	1,103	1,153	1,203	1,263	1,293	1,363
7	6	1,065	1,085	1,125	1,175	1,225	1,285	1,315	1,385
8	7	1,087	1,107	1,147	1,197	1,247	1,307	1,337	1,407
9	8	1,109	1,129	1,169	1,219	1,269	1,329	1,359	1,429
10	9	1,131	1,151	1,191	1,241	1,291	1,351	1,381	1,451
11	10	1,153	1,173	1,213	1,263	1,313	1,373	1,403	1,473
12	11	1,175	1,195	1,235	1,285	1,335	1,395	1,425	1,495
13	12	1,197	1,217	1,257	1,307	1,357	1,417	1,447	1,517
14	13	1,219	1,239	1,279	1,329	1,379	1,439	1,469	1,539
15	14	1,241	1,261	1,301	1,351	1,401	1,461	1,491	1,561
16	15	1,263	1,283	1,323	1,373	1,423	1,483	1,513	1,583
17	16	1,285	1,305	1,345	1,395	1,445	1,505	1,535	1,605
18	17	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
19	18	1,329	1,349	1,389	1,439	1,489	1,549	1,579	1,649
20	19	1,351	1,371	1,411	1,461	1,511	1,571	1,601	1,671
21	20	1,373	1,393	1,433	1,483	1,533	1,593	1,623	1,693
22	21	1,395	1,415	1,455	1,505	1,555	1,615	1,645	1,715
23	22	1,417	1,437	1,477	1,527	1,577	1,637	1,667	1,737
24	23	1,439	1,459	1,499	1,549	1,599	1,659	1,689	1,759
25	24	1,461	1,481	1,521	1,571	1,621	1,681	1,711	1,781
26	25	1,483	1,503	1,543	1,593	1,643	1,703	1,733	1,803
27	26	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
28	27	1,527	1,547	1,587	1,637	1,687	1,747	1,777	1,847
29	28	1,549	1,569	1,609	1,659	1,709	1,769	1,799	1,869
30	29	1,571	1,591	1,631	1,681	1,731	1,791	1,821	1,891
31	30	1,593	1,613	1,653	1,703	1,753	1,813	1,843	1,913

STATE MINIMUM PAY SCALE PAY GRADE II

	Years of Employ- ment	A	B	C	D	E	F	G	H
1	0	950	970	1,010	1,060	1,110	1,170	1,200	1,270
2	1	972	992	1,032	1,082	1,132	1,192	1,222	1,292
3	2	994	1,014	1,054	1,104	1,154	1,214	1,244	1,314
4	3	1,016	1,036	1,076	1,126	1,176	1,236	1,266	1,336
5	4	1,038	1,058	1,098	1,148	1,198	1,258	1,288	1,358
6	5	1,060	1,080	1,120	1,170	1,220	1,280	1,310	1,380
7	6	1,082	1,102	1,142	1,192	1,242	1,302	1,332	1,402
8	7	1,104	1,124	1,164	1,214	1,264	1,324	1,354	1,424
9	8	1,126	1,146	1,186	1,236	1,286	1,346	1,376	1,446
10	9	1,148	1,168	1,208	1,258	1,308	1,368	1,398	1,468
11	10	1,170	1,190	1,230	1,280	1,330	1,390	1,420	1,490
12	11	1,192	1,212	1,252	1,302	1,352	1,412	1,442	1,512
13	12	1,214	1,234	1,274	1,324	1,374	1,434	1,464	1,534
14	13	1,236	1,256	1,296	1,346	1,396	1,456	1,486	1,556
15	14	1,258	1,278	1,318	1,368	1,418	1,478	1,508	1,578
16	15	1,280	1,300	1,340	1,390	1,440	1,500	1,530	1,600
17	16	1,302	1,322	1,362	1,412	1,462	1,522	1,552	1,622
18	17	1,324	1,344	1,384	1,434	1,484	1,544	1,574	1,644
19	18	1,346	1,366	1,406	1,456	1,506	1,566	1,596	1,666
20	19	1,368	1,388	1,428	1,478	1,528	1,588	1,618	1,688
21	20	1,390	1,410	1,450	1,500	1,550	1,610	1,640	1,710
22	21	1,412	1,432	1,472	1,522	1,572	1,632	1,662	1,732
23	22	1,434	1,454	1,494	1,544	1,594	1,654	1,684	1,754
24	23	1,456	1,476	1,516	1,566	1,616	1,676	1,706	1,776
25	24	1,478	1,498	1,538	1,588	1,638	1,698	1,728	1,798
26	25	1,500	1,520	1,560	1,610	1,660	1,720	1,750	1,820
27	26	1,522	1,542	1,582	1,632	1,682	1,742	1,772	1,842
28	27	1,544	1,564	1,604	1,654	1,704	1,764	1,794	1,864
29	28	1,566	1,586	1,626	1,676	1,726	1,786	1,816	1,886
30	29	1,588	1,608	1,648	1,698	1,748	1,808	1,838	1,908
31	30	1,610	1,630	1,670	1,720	1,770	1,830	1,860	1,930
32	CLASS TITLE		PAY GRADE						
33	Accountant I	D							
34	Accountant II	E							
35	Accountant III	F							
36	Aide I	A							

37	Aide II	B
38	Aide III	C
39	Aide IV	D
40	Audiovisual Technician	C
41	Auditor	G
42	Braille or Sign Language Specialist	E
43	Bus Operator	D
44	Buyer	F
45	Cabinetmaker	G
46	Cafeteria Manager	D
47	Carpenter I	E
48	Carpenter II	F
49	Chief Mechanic	G
50	Clerk I	B
51	Clerk II	C
52	Computer Operator	E
53	Cook I	A
54	Cook II	B
55	Cook III	C
56	Crew Leader	F
57	Custodian I	A
58	Custodian II	B
59	Custodian III	C
60	Custodian IV	D
61	Director or Coordinator of Services	H
62	Draftsman	D
63	Electrician I	F
64	Electrician II	G
65	Electronic Technician I	F
66	Electronic Technician II	G
67	Executive Secretary	G
68	Food Services Supervisor	G
69	Foreman	G
70	General Maintenance	C
71	Glazier	D
72	Graphic Artist	D
73	Groundsman	B
74	Handyman	B
75	Heating and Air Conditioning Mechanic I	E
76	Heating and Air Conditioning Mechanic II	G
77	Heavy Equipment Operator	E
78	Inventory Supervisor	D

79	Key Punch Operator	B
80	Locksmith	G
81	Lubrication Man	C
82	Machinist	F
83	Mail Clerk.....	D
84	Maintenance Clerk	C
85	Mason	G
86	Mechanic	F
87	Mechanic Assistant	E
88	Office Equipment Repairman I	F
89	Office Equipment Repairman II	G
90	Painter	E
91	Paraprofessional	F
92	Plumber I	E
93	Plumber II	G
94	Printing Operator.....	B
95	Printing Supervisor.....	D
96	Programmer	H
97	Roofing/Sheet Metal Mechanic.....	F
98	Sanitation Plant Operator	F
99	School Bus Supervisor	E
100	Secretary I	D
101	Secretary II	E
102	Secretary III	F
103	Supervisor of Maintenance	H
104	Supervisor of Transportation	H
105	Switchboard Operator-Receptionist	D
106	Truck Driver	D
107	Warehouse Clerk.....	C
108	Watchman.....	B
109	Welder	F

110 On and after the first day of July, one thousand nine
 111 hundred ninety, the minimum monthly pay for each
 112 service employee whose employment is for a period of
 113 more than three and one-half hours a day shall be at
 114 least the amounts indicated in the "state minimum pay
 115 scale pay grade I" as set forth in this section, and the
 116 minimum monthly pay for each service employee whose
 117 employment is for a period of three and one-half hours
 118 or less a day shall be at least one half the amount
 119 indicated in the "state minimum pay scale pay grade I"
 120 set forth in this section: *Provided*, That upon the

121 effective date of this section through the remainder of
122 the school year one thousand nine hundred ninety-one —
123 ninety-two, in lieu of the minimum monthly pay scale
124 pay grade for service employees in effect as set forth in
125 this section, each service employee shall be paid such
126 amount as he or she would be due under the provisions
127 of this section over his or her full employment term on
128 the basis of the “state minimum pay scale pay grade II”.
129 The difference between such amount and any amount
130 already paid to such employee in such school year shall
131 be prorated over such portion of the employees employ-
132 ment term as remains: *Provided, however,* That the state
133 department of education shall notify each service
134 employee that the amounts paid to them for the
135 remainder of their employment term in the school year
136 one thousand nine hundred ninety-one — ninety-two will
137 be greater than they would normally be due under the
138 minimum monthly pay scale, because of the pro rata
139 distribution, and that their minimum monthly salaries
140 will decrease slightly during the next school year when
141 the salary increase is paid over the full employment
142 term: *Provided further,* That on and after the first day
143 of July, one thousand nine hundred ninety-two, the
144 minimum monthly pay for each service employee whose
145 employment is for a period of more than three and one-
146 half hours a day shall be at least the amounts indicated
147 in the “state minimum pay scale pay grade II” as set
148 forth in this section, and the minimum monthly pay for
149 each service employee whose employment is for a period
150 of three and one-half hours or less a day shall be at least
151 one half the amount indicated in the “state minimum
152 pay scale pay grade II” set forth in this section. An
153 additional ten dollars per month shall be added to the
154 minimum monthly pay of each service employee who
155 holds a high school diploma or its equivalent.

156 Any service employee required to work on any legal
157 school holiday shall be paid at a rate one and one-half
158 times such employee’s usual hourly rate.

159 Any full-time service personnel required to work in
160 excess of their normal working day during any week
162 which contains a school holiday for which they are paid

162 shall be paid for such additional hours or fraction
 163 thereof at a rate of one and one-half times their usual
 164 hourly rate and paid entirely from county board of
 165 education funds.

166 No service employee shall have his or her daily work
 167 schedule changed during the school year without such
 168 employee's written consent, and such employee's re-
 169 quired daily work hours shall not be changed to prevent
 170 the payment of time and one-half wages or the employ-
 171 ment of another employee.

172 The minimum hourly rate of pay for extra-duty
 173 assignments as defined in section eight-b of this article
 174 shall be no less than one seventh of the employee's daily
 175 total salary for each hour the employee is involved in
 176 performing the assignment and paid entirely from local
 177 funds: *Provided*, That an alternative minimum hourly
 178 rate of pay for performing extra-duty assignments
 179 within a particular category of employment may be
 180 utilized if the alternate hourly rate of pay is approved
 181 both by the county board of education and by the
 182 affirmative vote of a two-thirds majority of the regular
 183 full-time employees within that classification category of
 184 employment within that county: *Provided, however*, That
 185 the vote shall be by secret ballot if so requested by a
 186 service personnel employee within that classification
 187 category within that county. The salary for any fraction
 188 of an hour the employee is involved in performing the
 189 assignment shall be prorated accordingly. When per-
 190 forming extra-duty assignments, employees who are
 191 regularly employed on a one-half day salary basis shall
 192 receive the same hourly extra-duty assignment pay
 193 computed as though such an employee were employed
 194 on a full-day salary basis.

CHAPTER 22

(Com. Sub. for S. B. 18—By Senator Burdette, Mr. President,
 By Request of the Executive)

[Passed October 18, 1991; in effect in passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, six,

ten, eleven, twelve, fourteen, fifteen and sixteen, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact section five, article one, chapter twenty of said code; to amend and reenact sections three and six, article five-e of said chapter; to further amend said article by adding thereto a new section, designated section twenty-five; to amend and reenact sections one, two, four, four-a, four-b, five, five-a, six and eight, article five-f of said chapter; to further amend said article by adding thereto six new sections, designated sections four-c, four-d, nine, ten, eleven and twelve; to further amend said chapter by adding thereto a new article, designated article five-n; to amend article seven of said chapter by adding thereto a new section, designated section one-c; to amend and reenact sections one, two, three, four, five-a, six, seven, eight, nine, ten, twelve, twelve-a, twelve-b, twelve-c, twelve-d and thirteen, article nine of said chapter; to further amend said article by adding thereto two new sections, designated sections twelve-e and twelve-f; to amend and reenact sections one, two, three, five, six and seven, article eleven of said chapter; to further amend said article by adding thereto seven new sections, designated sections five-a, five-b, eight, nine, ten, eleven and twelve; to amend and reenact section three, article one, chapter twenty-four of said code; to amend and reenact sections one, one-b and one-c, article two of said chapter; to further amend said article by adding thereto a new section, designated section one-h; and to amend and reenact section three, article one, chapter twenty-four-a, all relating to waste management, waste disposal and recycling generally; definitions; continuing solid waste management board; designation of disposal sheds; powers and duties of the solid waste management board; authority to make loans and grants; development of state solid waste management plan; authority to issue bonds, limitations, projects, lawful expenditures; increasing bonding authority; expanding projects; abolishing trustee and trust agreements; establishing reserve funds and sinking funds;

water development authority as fiscal agent; responsibilities of water development authority, technical, financial assistance; criteria for bond issuance; legal remedies; audit of funds disbursed by board; revenues; investments; salary increase, director, division of natural resources; hazardous waste management; definitions; promulgation of rules; certification of personnel; household hazardous waste, study; solid waste management; legislative intent; definitions; powers and duties of director, division of natural resources; promulgation of rules; right of entry; open dumps, prohibitions; expenditure of funds; identification of interests, related parties, compliance, violations, convictions, reporting, disclosure; freedom of information; fee for filing certificate of site approval; relating to free dump day, limitations; limit on size of solid waste facilities; exemption for certain facilities; handling in excess of thirty thousand tons per month, by referendum; prohibitions; disposal of solid waste; dead animal carcasses; unauthorized dumps; open dumps; permit requirements, permit conditions; condition of permit; repayment of closure costs; permit revocation, suspension, modification, additional grounds; imposition of permit fee; describing unlawful activities; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; orders, inspections, enforcement; authority of chief, director; civil penalties; criminal penalties; injunctions; limited extension of landfill closure deadline, procedure, criteria; judicial review; condition on receiving permit, repayment of closure costs; moratorium on municipal solid waste incineration, exceptions; prohibiting backhauling; feasibility of state ownership; county assessment for Class A facilities; landfill closure cost assistance program; definitions; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of

proceeds; criminal penalties; authorizing solid waste management board to issue closure bonds, water development authority, fiscal agent, technical support; establishing accounts; legal remedies of bondholders; bonds and notes not to create debt of state; lawful investments; limitation on assistance; application for closure assistance; solid waste facility closure cost assistance fund; promulgation of rules; personal liability; owner or operator liability; procedure for handling remedial actions; payment of costs for remedial actions; right of entry; authority of director to accept value for fund; management and control of project, report; conservation officers, ranks, salary schedule, base pay, exceptions; county and regional solid waste authorities; legislative intent; definitions; solid waste authorities, continued, appointment of board of directors; regional solid waste authorities, continued, appointment of board of directors; county commission, assumption of powers, time limitation; solid waste authorities, management and control in board; authority to develop litter and solid waste control programs, criteria; assistance provided to authorities; mandatory disposal; civil penalties; solid waste management board and public service commission, joint report, mandatory fee for collection, feasibility; public service commission and division of human services, joint report, low-income assistance for collection fees; acquisitions, public landfills; powers and duties of solid waste authorities, issue bonds, promulgate rules, public facilities, additional powers, construction projects, prohibit dumping outside hours of operation, enforce hours of operation and mandatory disposal; commercial solid waste facility siting plans; certificate of site approval, solid waste authority, criteria, when required, modification; appeal; judicial review; approval of Class A facilities, prerequisites, approval, mandatory referendum, notice, procedure; approval Class B to Class A facility, prerequisites, petition for referendum, notice, procedure; increase monthly tonnage for Class A facility, petition for referendum, prerequisites, notice, procedure; judicial review of certificate of site approval; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or

operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; recycling program; legislative intent; recycling goals generally; mandatory recycling, municipalities, population ten thousand, time period, requirements, public information, education; county recycling referendum, petition, procedure, notice, continuation; exception from mandatory recycling for certain municipalities establishing materials recovery facilities; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; imposition of fees, collection, payment requirements, records, personal liability, officer liability, owner or operator liability; primary, secondary, joint and several liability; tax administration and procedure; exemptions from fees; dedication of proceeds; criminal penalties; statewide recycling program, certain mandatory provisions; procurement of recycled products, goals, state responsibility, discount, procurement procedures, plans, requirements, report; prohibition on grass, leaves, lead-acid batteries and tires in landfill, effective date, solid waste management board, division of natural resources, plan, implementation date, report; establishing recycled oil advisory committee created, members, appointment, duties, functions; newsprint advisory committee created, members, appointment, duties, functions, goals, study, research; feasibility study of recycling industries; special exemptions for certain recycling facilities; public service commission, continued; salary increase for commissioners; powers and duties of commission; jurisdiction of commission; additional jurisdiction over solid waste facilities; certificate of need, criteria, exemptions, application, disclosable information; procedure; appeal; transfer, sale or lease of certificate; public service commission, expanded jurisdiction and duties; solid waste flow control; promulgation of rules and regulations; limited motor carrier exemption from jurisdiction, exceptions.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, ten, eleven, twelve, fourteen, fifteen and sixteen, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-a; that section five, article one, chapter twenty of said code be amended and reenacted; that sections three and six, article five-e of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-five; that sections one, two, four, four-a, four-b, five, five-a, six and eight, article five-f of said chapter be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections four-c, four-d, nine, ten, eleven and twelve; that said chapter be further amended by adding thereto a new article, designated article five-n; that article seven of said chapter be amended by adding thereto a new section, designated section one-c; that sections one, two, three, four, five-a, six, seven, eight, nine, ten, twelve, twelve-a, twelve-b, twelve-c, twelve-d and thirteen, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections twelve-e and twelve-f; that sections one, two, three, five, six and seven, article eleven of said chapter be amended and reenacted; that said article be further amended by adding thereto seven new sections, designated sections five-a, five-b, eight, nine, ten, eleven and twelve; that section three, article one, chapter twenty-four of said code be amended and reenacted; that sections one, one-b and one-c, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-h; and that section three, article one, chapter twenty-four-a of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

20. Natural Resources.

24. Public Service Commission.

24A. Motor Carriers of Passengers and Property for Hire.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.

§16-26-3. Definitions.

§16-26-4. West Virginia resource recovery — solid waste disposal authority redesignated solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.

§16-26-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

§16-26-6. Powers, duties and responsibilities of board generally.

§16-26-6a. Development of state solid waste management plan.

§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

§16-26-11. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.

§16-26-12. Legal remedies of bondholders.

§16-26-14. Use of funds, properties, etc., by board; restrictions thereon.

§16-26-15. Audit of funds disbursed by the board and recipients thereof.

§16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.

§16-26-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Board" means the solid waste management board
4 created in section four of this article, heretofore known
5 as the West Virginia state solid waste authority, the
6 duties, powers, responsibilities and functions of which
7 are specified in this article. All references in this code
8 to the West Virginia resource recovery — solid waste
9 disposal authority shall be construed as references to the
10 solid waste management board.

11 (2) "Bond" or "solid waste disposal revenue bond"
12 means a revenue bond or note issued by the solid waste
13 management board, heretofore known as the West
14 Virginia resource recovery — solid waste disposal
15 authority, to effect the intents and purposes of this
16 article.

17 (3) "Construction" includes reconstruction, enlarge-
18 ment, improvement and providing furnishings or
19 equipment for a solid waste disposal project.

20 (4) "Cost" means, as applied to solid waste disposal
21 projects, the cost of their acquisition and construction;
22 the cost of acquisition of all land, rights-of-way,
23 property, rights, easements, franchise rights and
24 interests required by the board for such acquisition and
25 construction; the cost of demolishing or removing any
26 buildings or structures on land so acquired, including
27 the cost of acquiring any land to which such buildings
28 or structures may be moved; the cost of diverting
29 highways, interchange of highways and access roads to
30 private property, including the cost of land or easements
31 therefor; the cost of all machinery, furnishings and
32 equipment; all financing charges and interest prior to
33 and during construction and for no more than eighteen
34 months after completion of construction; the cost of all
35 engineering services and all expenses of research and
36 development with respect to solid waste facilities; the
37 cost of all legal services and expenses; the cost of all
38 plans, specifications, surveys and estimates of cost and
39 revenues; all working capital and other expenses
40 necessary or incident to determining the feasibility or
41 practicability of acquiring or constructing any such
42 project; all administrative expenses and such other
43 expenses as may be necessary or incident to the
44 acquisition or construction of the project; the financing
45 of such acquisition or construction, including the
46 amount authorized in the resolution of the board
47 providing for the issuance of solid waste disposal
48 revenue bonds to be paid into any special funds from the
49 proceeds of such bonds; and the financing of the placing
50 of any such project in operation. Any obligation or
51 expenses incurred after the effective date of this article
52 by any governmental agency, with the approval of the
53 board, for surveys, borings, preparation of plans and
54 specifications and other engineering services in connec-
55 tion with the acquisition or construction of a project
56 shall be regarded as a part of the cost of such project
57 and shall be reimbursed out of the proceeds of loans or
58 solid waste disposal revenue bonds as authorized by the

59 provisions of this article.

60 (5) "Governmental agency" means the state govern-
61 ment or any agency, department, division or unit
62 thereof; counties; municipalities; watershed improve-
63 ment districts; soil conservation districts; sanitary
64 districts; public service districts; drainage districts;
65 regional governmental authorities and any other
66 governmental agency, entity, political subdivision,
67 public corporation or agency having the authority to
68 acquire, construct or operate solid waste facilities; the
69 United States government or any agency, department,
70 division or unit thereof; and any agency, commission or
71 authority established pursuant to an interstate compact
72 or agreement.

73 (6) "Industrial waste" means any solid waste sub-
74 stance resulting from or incidental to any process of
75 industry, manufacturing, trade or business, or from or
76 incidental to the development, processing or recovery of
77 any natural resource.

78 (7) "Owner" includes all persons, partnerships or
79 governmental agencies having any title or interest in
80 any property rights, easements and interests authorized
81 to be acquired by this article.

82 (8) "Person" means any public or private corporation,
83 institution, association, firm or company organized or
84 existing under the laws of this or any other state or
85 country; the United States or the state of West Virginia;
86 governmental agency; political subdivision; county
87 commission; municipality; industry; sanitary district;
88 public service district; drainage district; soil conserva-
89 tion district; solid waste disposal shed district; partner-
90 ship; trust; estate; individual; group of individuals
91 acting individually or as a group; or any other legal
92 entity whatever.

93 (9) "Pollution" means the discharge, release, escape or
94 deposit, directly or indirectly, of solid waste of whatever
95 kind or character, on lands or in waters in the state in
96 an uncontrolled, unregulated or unapproved manner.

97 (10) "Revenue" means any money or thing of value

98 collected by, or paid to, the solid waste management
99 board as rent, use fee, service charge or other charge
100 for use of, or in connection with, any solid waste disposal
101 project, or as principal of or interest, charges or other
102 fees on loans, or any other collections on loans made by
103 the solid waste management board to governmental
104 agencies to finance in whole or in part the acquisition
105 or construction of any solid waste development project
106 or projects, or other money or property which is received
107 and may be expended for or pledged as revenues
108 pursuant to this article.

109 (11) "Solid waste" means any garbage, paper, litter,
110 refuse, cans, bottles, waste processed for the express
111 purpose of incineration, sludge from a waste treatment
112 plant, water supply treatment plant or air pollution
113 control facility, other discarded material, including
114 offensive or unsightly matter, solid, liquid, semisolid or
115 contained liquid or gaseous material resulting from
116 industrial, commercial, mining or community activities
117 but does not include solid or dissolved material in
118 sewage, or solid or dissolved materials in irrigation
119 return flows or industrial discharges which are point
120 sources and have permits under article five-a, chapter
121 twenty of this code, or source, special nuclear or by-
122 product material as defined by the Atomic Energy Act
123 of 1954, as amended, including any nuclear or by-
124 product material considered by federal standards to be
125 below regulatory concern, or a hazardous waste either
126 identified or listed under article five-e, chapter twenty
127 of this code, or refuse, slurry, overburden or other waste
128 or material resulting from coal-fired electric power or
129 steam generation, the exploration, development, produc-
130 tion, storage and recovery of coal, oil and gas, and other
131 mineral resources placed or disposed of at a facility
132 which is regulated under chapter twenty-two, twenty-
133 two-a or twenty-two-b of this code, so long as such
134 placement or disposal is in conformance with a permit
135 issued pursuant to said chapters. "Solid waste" shall also
136 not include materials which are recycled by being used
137 or reused in an industrial process to make a product,
138 as effective substitutes for commercial products, or are
139 returned to the original process as a substitute for raw

140 material feedstock.

141 (12) "Solid waste facility" means any system, facility,
142 land, contiguous land, improvements on land, structures
143 or other appurtenances or methods used for processing,
144 recycling or disposing of solid waste, including landfills,
145 transfer stations, materials recovery facilities and other
146 such facilities not herein specified. Such facility shall be
147 deemed to be situated, for purposes of this article, in the
148 county where the majority of the spatial area of such
149 facility is located.

150 (13) "Solid waste disposal project" or "project" means
151 any solid waste facility, wastewater treatment plants,
152 sewer treatment plants, water and sewer systems and
153 connecting pipelines the acquisition or construction of
154 which is authorized by the solid waste management
155 board or any acquisition or construction which is
156 financed in whole or in part from funds made available
157 by grant or loan by, or through, the board as provided
158 in this article, including all buildings and facilities
159 which the board deems necessary for the operation of
160 the project, together with all property, rights, easements
161 and interests which may be required for the operation
162 of the project.

163 (14) "Solid waste disposal shed" or "shed" means a
164 geographical area which the solid waste management
165 board designates as provided in section eight of this
166 article for solid waste management.

**§16-26-4. West Virginia resource recovery—solid waste
disposal authority redesignated solid waste
management board; organization of board;
appointment and qualification of board
members; their term of office, compensation
and expenses; director of board.**

1 The West Virginia resource recovery — solid waste
2 disposal authority is hereby continued in all respects as
3 heretofore constituted but is hereafter designated and
4 shall be known as the solid waste management board.
5 All references in this code to the West Virginia resource
6 recovery — solid waste disposal authority shall be
7 construed as references to the solid waste management

8 board. The board is a governmental instrumentality of
9 the state and a body corporate. The exercise by the
10 board of the powers conferred on it by this article and
11 the carrying out of its purposes and duties are essential
12 governmental functions and are for a public purpose.

13 The board shall be composed of seven members. The
14 secretary of the department of health and human
15 resources and the director of the division of natural
16 resources, or their designees, shall be members ex
17 officio of the board. The other five members of the board
18 shall be appointed by the governor, on the effective date
19 of this section, by and with the advice and consent of
20 the Senate, for terms of one, two, three, four and five
21 years, respectively. Two appointees shall be persons
22 having at least three years of professional experience in
23 solid waste management, civil engineering or regional
24 planning and three appointees shall be representatives
25 of the general public. The successor of each such
26 appointed member shall be appointed for a term of five
27 years in the same manner the original appointments
28 were made and so that the representation on the board
29 as set forth in this section is preserved, except that any
30 person appointed to fill a vacancy occurring prior to the
31 expiration of the term for which his predecessor was
32 appointed shall be appointed only for the remainder of
33 such term. Each board member shall serve until the
34 appointment and qualification of his successor.

35 No more than three of the appointed board members
36 may at any one time be from the same congressional
37 district or belong to the same political party. No
38 appointed board member may be an officer or employee
39 of the United States or this state. Appointed board
40 members may be reappointed to serve additional terms.
41 All members of the board shall be citizens of the state.
42 Each appointed member of the board, before entering
43 upon his duties, shall comply with the requirements of
44 article one, chapter six of this code and give bond in the
45 sum of twenty-five thousand dollars. Appointed
46 members may be removed from the board only for the
47 same causes as elective state officers may be removed.

48 Annually the board shall elect one of its appointed

49 members as chairman, another as vice chairman and
50 appoint a secretary-treasurer, who need not be a
51 member of the board. Four members of the board shall
52 constitute a quorum and the affirmative vote of four
53 members shall be necessary for any action taken by vote
54 of the board. No vacancy in the membership of the
55 board shall impair the rights of a quorum by such vote
56 to exercise all the rights and perform all the duties of
57 the board. The person appointed as secretary-treasurer
58 shall give bond in the sum of fifty thousand dollars. If
59 a board member is appointed as secretary-treasurer, he
60 shall give bond in the sum of twenty-five thousand
61 dollars in addition to the bond required in the preceding
62 paragraph.

63 The ex officio members of the board shall not receive
64 any compensation for serving as a board member. Each
65 of the five appointed members of the board shall receive
66 compensation of fifty dollars for each day actually spent
67 in attending meetings of the board or in the discharge
68 of his duties as a member of the board, but not to exceed
69 two thousand five hundred dollars in any fiscal year.
70 Each of the seven board members shall be reimbursed
71 for all reasonable and necessary expenses actually
72 incurred in the performance of his duties as a member
73 of the board. All such compensation and expenses
74 incurred by board members shall be payable solely from
75 funds of the board or from funds appropriated for such
76 purpose by the Legislature and no liability or obligation
77 shall be incurred by the board beyond the extent to
78 which moneys are available from funds of the board or
79 from such appropriation.

80 The board shall meet at least four times annually and
81 at any time upon the call of its chairman or upon the
82 request in writing to the chairman of four board
83 members.

84 The board shall appoint a director as its chief
85 executive officer. The director shall have successfully
86 completed an undergraduate education and, in addition,
87 shall have two years of professional experience in solid
88 waste management, civil engineering, public adminis-
89 tration or regional planning.

§16-26-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

1 To accomplish the public policy and purpose and to
2 meet the responsibility of the state as set forth in this
3 article, the solid waste management board shall design-
4 nate and establish solid waste disposal sheds and it may
5 initiate, acquire, construct, maintain, repair and operate
6 solid waste disposal projects or cause the same to be
7 operated pursuant to a lease, sublease or agreement
8 with any person or governmental agency; may make
9 loans and grants to persons and to governmental
10 agencies for the acquisition or construction of solid
11 waste disposal projects by such persons and governmen-
12 tal agencies; and may issue solid waste disposal revenue
13 bonds of this state, payable solely from revenues, to pay
14 the cost of, or finance, in whole or in part, by loans to
15 governmental agencies, such projects. A solid waste
16 disposal project shall not be undertaken unless the board
17 determines that the project is consistent with federal
18 law, with its solid waste disposal shed plan, with the
19 standards set by the state water resources board and the
20 section of water resources of the division of natural
21 resources for any waters of the state which may be
22 affected thereby, with the air quality standards set by
23 the West Virginia air pollution control commission and
24 with health standards set by the division of health. Any
25 resolution of the board providing for acquiring or
26 constructing such projects or for making a loan or grant
27 for such projects shall include a finding by the board
28 that such determinations have been made. A loan
29 agreement shall be entered into between the board and
30 each governmental agency to which a loan is made for
31 the acquisition or construction of a solid waste disposal
32 project, which loan agreement shall include without
33 limitation the following provisions:

34 (1) The cost of such project, the amount of the loan,
35 the terms of repayment of such loan and the security
36 therefor, which may include, in addition to the pledge
37 of all revenues from such project after a reasonable

38 allowance for operation and maintenance expenses, a
39 deed of trust or other appropriate security instrument
40 creating a lien on such project;

41 (2) The specific purposes for which the proceeds of
42 the loan shall be expended, the procedures as to the
43 disbursement of loan proceeds and the duties and
44 obligations imposed upon the governmental agency in
45 regard to the construction or acquisition of the project;

46 (3) The agreement of the governmental agency to
47 impose, collect, and, if required to repay the obligations
48 of such governmental agency under the loan agreement,
49 increase service charges from persons using said
50 project, which service charges shall be pledged for the
51 repayment of such loan together with all interest, fees
52 and charges thereon and all other financial obligations
53 of such governmental agency under the loan agreement;

54 (4) The agreement of the governmental agency to
55 comply with all applicable laws, rules and regulations
56 issued by the board or other state, federal and local
57 bodies in regard to the construction, operation, mainte-
58 nance and use of the project; and

59 (5) Such other provisions, terms or conditions as the
60 board may reasonably require.

61 The board shall comply with all of the provisions of
62 federal law and of article one of this chapter and any
63 rules and regulations promulgated thereunder which
64 pertain to solid waste collection and disposal.

§16-26-6. Powers, duties and responsibilities of board generally.

1 (a) The solid waste management board may exercise
2 all powers necessary or appropriate to carry out and
3 effectuate its corporate purpose. The board may:

4 (1) Adopt, and from time to time, amend and repeal
5 bylaws necessary and proper for the regulation of its
6 affairs and the conduct of its business, and rules and
7 regulations, promulgated pursuant to the provisions of
8 chapter twenty-nine-a of this code, to implement and
9 make effective its powers and duties.

10 (2) Adopt an official seal.

11 (3) Maintain a principal office which shall be in
12 Kanawha County, and, if necessary, regional suboffices
13 at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and
15 be impleaded in its own name, and particularly to
16 enforce the obligations and covenants made under
17 sections ten, eleven and sixteen of this article. Any
18 actions against the board shall be brought in the circuit
19 court of Kanawha County.

20 (5) Make loans and grants to persons and to govern-
21 mental agencies for the acquisition or construction of
22 solid waste disposal projects and adopt rules and
23 procedures for making such loans and grants.

24 (6) Acquire, construct, reconstruct, enlarge, improve,
25 furnish, equip, maintain, repair, operate, lease or rent
26 to, or contract for operation by a governmental agency
27 or person, solid waste disposal projects, and, in accor-
28 dance with chapter twenty-nine-a of this code, adopt
29 rules and regulations for the use of such projects.

30 (7) Make available the use or services of any solid
31 waste disposal project to one or more persons, one or
32 more governmental agencies, or any combination
33 thereof.

34 (8) Issue solid waste disposal revenue bonds and notes
35 and solid waste disposal revenue refunding bonds of the
36 state, payable solely from revenues as provided in
37 section ten of this article, unless the bonds are refunded
38 by refunding bond, for the purpose of paying all or any
39 part of the cost of acquiring, constructing, reconstruct-
40 ing, enlarging, improving, furnishing, equipping, or
41 repairing solid waste disposal projects, or making loans
42 to persons or to governmental agencies for the acquisi-
43 tion, design or construction of solid waste disposal
44 projects or parts thereof.

45 (9) Acquire by gift or purchase, hold and dispose of
46 real and personal property in the exercise of its powers
47 and the performance of its duties as set forth in this
48 article.

49 (10) Acquire in the name of the state, by purchase or
50 otherwise, on such terms and in such manner as it
51 deems proper, or by the exercise of the right of eminent
52 domain in the manner provided in chapter fifty-four of
53 this code, such public or private lands, or parts thereof
54 or rights therein, rights-of-way, property, rights,
55 easements and interests it deems necessary for carrying
56 out the provisions of this article, but excluding the
57 acquisition by the exercise of the right of eminent
58 domain of any solid waste facility operated under
59 permits issued pursuant to the provisions of article five-
60 f, chapter twenty of this code and owned by any person
61 or governmental agency. This article does not authorize
62 the board to take or disturb property or facilities
63 belonging to any public utility or to a common carrier,
64 which property or facilities are required for the proper
65 and convenient operation of such public utility or
66 common carrier, unless provision is made for the
67 restoration, relocation or duplication of such property or
68 facilities elsewhere at the sole cost of the board.

69 (11) Make and enter into all contracts and agree-
70 ments and execute all instruments necessary or incid-
71 ental to the performance of its duties and the execution
72 of its powers. When the cost under any such contract or
73 agreement, other than compensation for personal
74 services, involves an expenditure of more than two
75 thousand dollars, the board shall make a written
76 contract with the lowest responsible bidder after public
77 notice published as a Class II legal advertisement in
78 compliance with the provisions of article three, chapter
79 fifty-nine of this code, the publication area for such
80 publication to be the county wherein the work is to be
81 performed or which is affected by the contract, which
82 notice shall state the general character of the work and
83 the general character of the materials to be furnished,
84 the place where plans and specifications therefor may
85 be examined and the time and place of receiving bids.
86 A contract or lease for the operation of a solid waste
87 disposal project constructed and owned by the board or
88 an agreement for cooperation in the acquisition or
89 construction of a solid waste disposal project pursuant
90 to section sixteen of this article is not subject to the

91 foregoing requirements and the board may enter into
92 such contract or lease or such agreement pursuant to
93 negotiation and upon such terms and conditions and for
94 such period as it finds to be reasonable and proper
95 under the circumstances and in the best interests of
96 proper operation or of efficient acquisition or construc-
97 tion of such project. The board may reject any and all
98 bids. A bond with good and sufficient surety, approved
99 by the board, shall be required of all contractors in an
100 amount equal to at least fifty percent of the contract
101 price, conditioned upon the faithful performance of the
102 contract.

103 (12) Employ managers, superintendents, engineers,
104 accountants, auditors and other employees, and retain or
105 contract with consulting engineers, financial consul-
106 tants, accounting experts, architects, attorneys and such
107 other consultants and independent contractors as are
108 necessary in its judgment to carry out the provisions of
109 this article, and fix the compensation or fees thereof. All
110 expenses thereof shall be payable solely from the
111 proceeds of solid waste disposal revenue bonds or notes
112 issued by the board, from revenues and from funds
113 appropriated for such purpose by the Legislature.

114 (13) Receive and accept from any federal agency,
115 subject to the approval of the governor, grants for or in
116 aid of the construction of any solid waste disposal project
117 or for research and development with respect to solid
118 waste disposal projects and solid waste disposal sheds
119 and receive and accept from any source aid or contri-
120 butions of money, property, labor or other things of
121 value, to be held, used and applied only for the purposes
122 for which such grants and contributions are made.

123 (14) Engage in research and development with
124 respect to solid waste disposal projects and solid waste
125 disposal sheds.

126 (15) Purchase fire and extended coverage and liabil-
127 ity insurance for any solid waste disposal project and for
128 the principal office and suboffices of the board, insu-
129 rance protecting the board and its officers and em-
130 ployees against liability, if any, for damage to property

131 or injury to or death of persons arising from its
132 operations and any other insurance the board may agree
133 to provide under any resolution authorizing the issuance
134 of solid waste disposal revenue bonds.

135 (16) Charge, alter and collect rentals and other
136 charges for the use or services of any solid waste
137 disposal project as provided in this article, and charge
138 and collect reasonable interest, fees and other charges
139 in connection with the making and servicing of loans to
140 governmental agencies in furtherance of the purposes of
141 this article.

142 (17) Establish or increase reserves from moneys
143 received or to be received by the board to secure or to
144 pay the principal of and interest on the bonds and notes
145 issued by the board pursuant to this article.

146 (18) Do all acts necessary and proper to carry out the
147 powers expressly granted to the board in this article.

148 (b) The solid waste management board may not
149 expend an amount of money greater than one thousand
150 dollars on any one purchase nor disburse grant moneys
151 without first obtaining the written approval of the
152 secretary of commerce, labor and environmental re-
153 sources.

§16-26-6a. Development of state solid waste management plan.

1 On or before the first day of January, one thousand
2 nine hundred ninety-three, the solid waste management
3 board shall prepare an overall state plan for the proper
4 management of solid waste: *Provided*, That such plan
5 shall be consistent with the findings and purposes of
6 articles five-f, nine and eleven of chapter twenty of this
7 code: *Provided, however*, That such plan shall incorpo-
8 rate the county or regional plans developed pursuant to
9 sections seven and twelve-a, article nine, chapter twenty
10 of this code, as amended: *Provided further*, That such
11 plan shall be updated every two years following its
12 initial preparation.

§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refund-

ing bonds; requirements and manner of such issuance.

1 The board is hereby empowered to issue, from time
2 to time, solid waste disposal revenue bonds and notes of
3 the state in such principal amounts as the board deems
4 necessary to pay the cost of or finance in whole or in
5 part by loans to governmental agencies, one or more
6 solid waste development projects, but the aggregate
7 amount of all issues of bonds and notes outstanding at
8 one time for all projects authorized hereunder shall not
9 exceed that amount capable of being serviced by
10 revenues received from such projects, and shall not
11 exceed in the aggregate the sum of one hundred million
12 dollars: *Provided*, That up to twenty-five million dollars
13 may be issued for projects located or to be located in
14 areas which lack adequate sewer or water service and
15 the area is in need of such services to comply with
16 federal requirements.

17 The board may, from time to time, issue renewal
18 notes, issue bonds to pay such notes and whenever it
19 deems refunding expedient, refund any bonds by the
20 issuance of solid waste disposal revenue refunding bonds
21 of the state. Except as may otherwise be expressly
22 provided in this article or by the board, every issue of
23 its bonds or notes shall be obligations of the board
24 payable out of the revenues and reserves created for
25 such purposes by the board, which are pledged for such
26 payment, without preference or priority of the first
27 bonds issued, subject only to any agreements with the
28 holders of particular bonds or notes pledging any
29 particular revenues. Such pledge shall be valid and
30 binding from the time the pledge is made and the
31 revenue so pledged and thereafter received by the board
32 shall immediately be subject to the lien of such pledge
33 without any physical delivery thereof or further act and
34 the lien of any such pledge shall be valid and binding
35 as against all parties having claims of any kind in tort,
36 contract or otherwise against the board irrespective of
37 whether such parties have notice thereof. All such bonds
38 and notes shall have all the qualities of negotiable
39 instruments.

40 The bonds and notes shall be authorized by resolution
41 of the board, shall bear such dates and shall mature at
42 such times, in the case of any such note or any renewals
43 thereof not exceeding five years from the date of issue
44 of such original note, and in the case of any such bond
45 not exceeding fifty years from the date of issue, as such
46 resolution may provide. The bonds and notes shall bear
47 interest at such rate, be in such denominations, be in
48 such form, either coupon or registered, carry such
49 registration privileges, be payable in such medium of
50 payment, at such place and be subject to such terms of
51 redemption as the board may authorize. The board may
52 sell such bonds and notes at public or private sale, at
53 the price the board determines. The bonds and notes
54 shall be executed by the chairman and vice chairman
55 of the board, both of whom may use facsimile signa-
56 tures. The official seal of the board or a facsimile thereof
57 shall be affixed thereto or printed thereon and attested,
58 manually or by facsimile signature, by the secretary-
59 treasurer of the board, and any coupons attached thereto
60 shall bear the signature or facsimile signature of the
61 chairman of the board. In case any officer whose
62 signature, or a facsimile of whose signature, appears on
63 any bonds, notes or coupons ceases to be such officer
64 before delivery of such bonds or notes, such signature
65 or facsimile is nevertheless sufficient for all purposes
66 the same as if he had remained in office until such
67 delivery and, in case the seal of the board has been
68 changed after a facsimile has been imprinted on such
69 bonds or notes, such facsimile seal will continue to be
70 sufficient for all purposes.

71 Any resolution authorizing any bonds or notes or any
72 issue thereof may contain provisions (subject to such
73 agreements with bondholders or noteholders as may
74 then exist, which provisions shall be a part of the
75 contract with the holders thereof) as to pledging all or
76 any part of the revenues of the board to secure the
77 payment of the bonds or notes or of any issue thereof;
78 the use and disposition of revenues of the board; a
79 covenant to fix, alter and collect rentals, fees, service
80 charges and other charges so that pledged revenues will
81 be sufficient to pay the costs of operation, maintenance

82 and repairs, pay principal of and interest on bonds or
83 notes secured by the pledge of such revenues and
84 provide such reserves as may be required by the
85 applicable resolution; the setting aside of reserve funds,
86 sinking funds or replacement and improvement funds
87 and the regulation and disposition thereof; the crediting
88 of the proceeds of the sale of bonds or notes to and
89 among the funds referred to or provided for in the
90 resolution authorizing the issuance of the bonds or notes;
91 the use, lease, sale or other disposition of any solid waste
92 disposal project or any other assets of the board;
93 limitations on the purpose to which the proceeds of sale
94 of bonds or notes may be applied and pledging such
95 proceeds to secure the payment of the bonds or notes or
96 of any issue thereof; agreement of the board to do all
97 things necessary for the authorization, issuance and sale
98 of bonds in such amounts as may be necessary for the
99 timely retirement of notes issued in anticipation of the
100 issuance of bonds; limitations on the issuance of
101 additional bonds or notes; the terms upon which
102 additional bonds or notes may be issued and secured; the
103 refunding of outstanding bonds or notes; the procedure,
104 if any, by which the terms of any contract with
105 bondholders or noteholders may be amended or abro-
106 gated, the holders of which must consent thereto, and
107 the manner in which such consent may be given;
108 limitations on the amount of moneys to be expended by
109 the board for operating, administrative or other
110 expenses of the board; and any other matters, of like or
111 different character, which in any way affect the security
112 or protection of the bonds or notes.

113 In the event that the sum of all reserves pledged to
114 the payment of such bonds or notes shall be less than
115 the minimum reserve requirements established in any
116 resolution or resolutions authorizing the issuance of such
117 bonds or notes, the chairman of the board shall certify,
118 on or before the first day of December of each year, the
119 amount of such deficiency to the governor of the state,
120 for inclusion, if the governor shall so elect, of the amount
121 of such deficiency in the budget to be submitted to the
122 next session of the Legislature for appropriation to the
123 board to be pledged for payment of such bonds or notes:

124 *Provided*, That the Legislature shall not be required to
125 make any appropriation so requested, and the amount
126 of such deficiencies shall not constitute a debt or liability
127 of the state.

128 Neither the members of the board nor any person
129 executing the bonds or notes shall be liable personally
130 on the bonds or notes or be subject to any personal
131 liability or accountability by reason of the issuance
132 thereof.

**§16-26-11. Establishment of reserve funds, replacement
and improvement funds and sinking funds;
fiscal agent; purposes for use of bond
proceeds; application of surplus.**

1 (a) Before issuing any revenue bonds in accordance
2 with the provisions of this article, the board shall consult
3 with and be advised by the West Virginia water
4 development authority as to the feasibility and necessity
5 of the proposed issuance of revenue bonds. Such
6 consultation shall include, but not be limited to, the
7 following subjects:

8 (1) The relationship of the proposed issuance of
9 revenue bonds to the statutory debt limitation provided
10 for in section ten of this article;

11 (2) The degree to which the proceeds will be used for
12 capital improvements in the form of real or personal
13 property;

14 (3) The extent to which the proposed use of proceeds
15 coincides with the purposes of this article;

16 (4) A weighing of the public benefit to be derived
17 from the issuance as opposed to any private gain; and

18 (5) The sufficiency of projected revenues available to
19 the board to pay the interest on indebtedness as it falls
20 due, to constitute a sinking fund for the payment thereof
21 at maturity, or to discharge the principal within a
22 prescribed period of time.

23 (b) Prior to issuing revenue bonds under the provi-
24 sions of this article, the board shall enter into agree-
25 ments satisfactory to the water development authority

26 with regard to the selection of all consultants, advisors
27 and other experts to be employed in connection with the
28 issuance of such bonds and the fees and expenses to be
29 charged by such persons, and to establish any necessary
30 reserve funds and replacement and improvement funds,
31 all such funds to be administered by the water devel-
32 opment authority, and, so long as any such bonds remain
33 outstanding, to establish and maintain a sinking fund or
34 funds to retire such bonds and pay the interest thereon
35 as the same may become due. The amounts in any such
36 sinking fund, as and when so set apart by the board,
37 shall be remitted to the West Virginia water develop-
38 ment authority at least thirty days previous to the time
39 interest or principal payments become due, to be
40 retained and paid out by the water development
41 authority, as agent for the board, in a manner consistent
42 with the provisions of this article and with the resolution
43 pursuant to which the bonds have been issued. The
44 water development authority shall act as fiscal agent for
45 the administration of any sinking fund and reserve fund
46 established under each resolution authorizing the
47 issuance of revenue bonds pursuant to the provisions of
48 this article, and shall invest all funds not required for
49 immediate disbursement in the same manner as funds
50 are invested pursuant to the provisions of section
51 thirteen, article five-c, chapter twenty of this code.

52 (c) Notwithstanding any other provision of this article
53 to the contrary, no revenue bonds shall be issued, nor
54 the proceeds thereof expended or distributed, pursuant
55 to the provisions of this article, without the prior
56 approval of the water development authority. Upon such
57 approval, the proceeds of revenue bonds shall be used
58 solely for the following purposes:

59 (1) To pay the cost of acquiring, constructing,
60 reconstructing, enlarging, improving, furnishing,
61 equipping or repairing solid waste disposal projects;

62 (2) To make loans to persons or to governmental
63 agencies for the acquisition, design and construction of
64 solid waste disposal projects, taking such collateral
65 security for any such loans as may be approved by the
66 water development authority; and

69 (3) To pay the costs and expenses incidental to or
70 necessary for the issuance of such bonds.

71 (d) If the proceeds of revenue bonds issued for any
72 solid waste disposal project shall exceed the cost thereof,
73 the surplus shall be paid into the fund herein provided
74 for the payment of principal and interest upon such
75 bonds. Such fund may be used by the fiscal agent for
76 the purchase or redemption of any of the outstanding
77 bonds payable from such fund at the market price, but
78 not at a price exceeding the price at which any of such
79 bonds shall in the same year be redeemable, as fixed by
80 the board in its said resolution, and all bonds redeemed
81 or purchased shall forthwith be canceled, and shall not
82 again be issued.

§16-26-12. Legal remedies of bondholders.

1 Any holder of solid waste disposal revenue bonds
2 issued under the authority of this article or any of the
3 coupons appertaining thereto, except to the extent the
4 rights given by this article may be restricted by the
5 applicable resolution, may by civil action, mandamus or
6 other proceeding, protect and enforce any rights
7 granted under the laws of this state or granted under
8 this article, by the resolution authorizing the issuance
9 of such bonds, and may enforce and compel the perfor-
10 mance of all duties required by this article, or by the
11 resolution, to be performed by the board or any officer
12 or employee thereof, including the fixing, charging and
13 collecting of sufficient rentals, fees, service charges or
14 other charges.

**§16-26-14. Use of funds, properties, etc., by board;
restrictions thereon.**

1 All moneys, properties and assets acquired by the
2 board, whether as proceeds from the sale of solid waste
3 disposal revenue bonds or as revenues or otherwise, shall
4 be held by it in trust for the purposes of carrying out
5 its powers and duties, and shall be used and reused in
6 accordance with the purposes and provisions of this
7 article. Such moneys shall at no time be commingled
8 with other public funds. Such moneys, except as
9 otherwise provided in any resolution authorizing the

10 issuance of solid waste disposal revenue bonds or except
11 when invested pursuant to section fifteen of this article,
12 shall be kept in appropriate depositories and secured as
13 provided and required by law. The resolution authorizing
14 the issuance of such bonds of any issue shall provide
15 that any officer to whom such moneys are paid shall act
16 as trustee of such moneys and hold and apply them for
17 the purposes hereof, subject to the conditions this article
18 and such resolution provide.

§16-26-15. Audit of funds disbursed by the board and recipients thereof.

1 Beginning in the fiscal year ending the thirtieth day
2 of June, one thousand nine hundred ninety-two, and
3 every second fiscal year thereafter, the Legislature shall
4 cause to be performed a post audit and a performance
5 audit for the intervening two-year period of the
6 recipients of any grant or loan provided by the solid
7 waste management board. The audit shall cover the
8 disbursement of such loans or grants provided pursuant
9 to section thirteen, article nine, chapter twenty of this
10 code, the use of such loans or grants by the recipient as
11 well as all other appropriate subject matter.

§16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.

1 This section shall apply to any solid waste disposal
2 project or projects which are owned in whole or in part
3 by the board.

4 The board may charge, alter and collect rentals, fees,
5 service charges or other charges for the use or services
6 of any solid waste disposal project, and contract in the
7 manner provided by this section with one or more
8 persons, one or more governmental agencies, or any
9 combination thereof, desiring the use or services thereof,
10 and fix the terms, conditions, rentals, fees, service
11 charges or other charges for such use or services. Such
12 rentals, fees, service charges or other charges shall not
13 be subject to supervision or regulation by any other

14 authority, department, commission, board, bureau or
15 agency of the state, and such contract may provide for
16 acquisition by such person or governmental agency of
17 all or any part of such solid waste disposal project for
18 such consideration payable over the period of the
19 contract or otherwise as the board in its sole discretion
20 determines to be appropriate, but subject to the
21 provisions of any resolution authorizing the issuance of
22 solid waste disposal revenue bonds or notes or solid
23 waste disposal revenue refunding bonds of the board.
24 Any governmental agency which has power to construct,
25 operate and maintain solid waste disposal facilities may
26 enter into a contract or lease with the board whereby
27 the use or services of any solid waste disposal project
28 of the board will be made available to such government-
29 al agency and pay for such use or services such rentals,
30 fees, service charges or other charges as may be agreed
31 to by such governmental agency and the board.

32 Any governmental agency or agencies or combination
33 thereof may cooperate with the board in the acquisition
34 or construction of a solid waste disposal project and shall
35 enter into such agreements with the board as are
36 necessary, with a view to effective cooperative action
37 and safeguarding of the respective interests of the
38 parties thereto, which agreements shall provide for such
39 contributions by the parties thereto in such proportion
40 as may be agreed upon and such other terms as may
41 be mutually satisfactory to the parties, including,
42 without limitation, the authorization of the construction
43 of the project by one of the parties acting as agent for
44 all of the parties and the ownership and control of the
45 project by the board to the extent necessary or approp-
46 riate for purposes of the issuance of solid waste disposal
47 revenue bonds by the board. Any governmental agency
48 may provide such contribution as is required under such
49 agreements by the appropriation of money or, if
50 authorized by a favorable vote of the electors to issue
51 bonds or notes or levy taxes or assessments and issue
52 notes or bonds in anticipation of the collection thereof,
53 by the issuance of bonds or notes or by the levying of
54 taxes or assessments and the issuance of bonds or notes
55 in anticipation of the collection thereof, and by the

56 payment of such appropriated money or the proceeds of
57 such bonds or notes to the board pursuant to such
58 agreements.

59 Any governmental agency, pursuant to a favorable
60 vote of the electors in an election held before or after
61 the effective date of this section for the purpose of
62 issuing bonds to provide funds to acquire, construct or
63 equip, or provide real estate and interests in real estate
64 for a solid waste disposal project, whether or not the
65 governmental agency at the time of such election had
66 the board to pay the proceeds from such bonds or notes
67 issued in anticipation thereof to the board as provided
68 in this section, may issue such bonds or notes in
69 anticipation of the issuance thereof and pay the proceeds
70 thereof to the board in accordance with an agreement
71 between such governmental agency and the board:
72 *Provided*, That the legislative board of the governmental
73 agency finds and determines that the solid waste
74 disposal project to be acquired or constructed by the
75 board in cooperation with such governmental agency
76 will serve the same public purpose and meet substan-
77 tially the same public need as the project otherwise
78 proposed to be acquired or constructed by the govern-
79 mental agency with the proceeds of such bonds or notes.

CHAPTER 20. NATURAL RESOURCES.

Article

1. Organization and Administration.
- 5E. Hazardous Waste Management Act.
- 5F. Solid Waste Management Act.
- 5N. Solid Waste Landfill Closure Assistance Program.
7. Law Enforcement, Motorboating, Litter.
9. County and Regional Solid Waste Authorities.
11. West Virginia Recycling Program.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-5. Salary, expenses, oath and bond of director.

1 Any other provision of this code to the contrary
2 notwithstanding, the director shall receive an annual
3 salary of sixty-five thousand dollars, payable in equal
4 monthly installments, and shall be allowed and paid
5 necessary expenses incident to the performance of his
6 official duties. Prior to the assumption of the duties of

7 his office, he shall take and subscribe to the oath
8 required of public officers by the constitution of West
9 Virginia and shall execute a bond, with surety approved
10 by the governor, in the penal sum of ten thousand
11 dollars, which executed oath and bond shall be filed in
12 the office of the secretary of state. Premiums on the
13 bond shall be paid from division funds.

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-3. Definitions.

§20-5E-6. Promulgation of regulations by director.

§20-5E-25. Household hazardous wastes.

§20-5E-3. Definitions.

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

3 (1) "Chief" means the chief of the section of waste
4 management of the division of natural resources;

5 (2) "Director" means the director of the division of
6 natural resources;

7 (3) "Disposal" means the discharge, deposit, injection,
8 dumping, spilling, leaking or placing of any hazardous
9 waste into or on any land or water so that such
10 hazardous waste or any constituent thereof may enter
11 the environment or be emitted into the air, or dis-
12 charged into any waters, including groundwaters;

13 (4) "Division" means the division of natural resources;

14 (5) "Generation" means the act or process of produc-
15 ing hazardous waste materials;

16 (6) "Hazardous and Solid Waste Amendments of
17 1984" means the federal Hazardous and Solid Waste
18 Amendments of 1984 (P.L. 98-616) amending the
19 Resource Conservation and Recovery Act;

20 (7) "Hazardous waste" means a waste or combination
21 of wastes, which because of its quantity, concentration
22 or physical, chemical or infectious characteristics, may:
23 (A) Cause, or significantly contribute to, an increase in
24 mortality or an increase in serious irreversible, or

25 incapacitating reversible, illness; or (B) pose a substan-
26 tial present or potential hazard to human health or the
27 environment when improperly treated, stored, trans-
28 ported, disposed of or otherwise managed;

29 (8) "Hazardous waste fuel" means fuel produced from
30 any hazardous waste identified or listed pursuant to
31 subdivision (2), subsection (a), section six of this article,
32 or produced from any hazardous waste identified or
33 listed pursuant to section six;

34 (9) "Hazardous waste management" means the syste-
35 matic control of the collection, source separation,
36 storage, transportation, processing, treatment, recovery
37 and disposal of hazardous wastes;

38 (10) "Land disposal" means any placement of hazard-
39 ous waste in a landfill, surface impoundment, waste pile,
40 injection well, land treatment facility, salt dome
41 formation, salt bed formation, or underground mine or
42 cave;

43 (11) "Manifest" means the form used for identifying
44 the quantity, composition and the origin, routing and
45 destination of hazardous waste during its transportation
46 from the point of generation to the point of disposal,
47 treatment or storage;

48 (12) "Person" means any individual, trust, firm, joint
49 stock company, public, private or government corpora-
50 tion, partnership, association, state or federal agency,
51 the United States government, this state or any other
52 state, municipality, county commission or any other
53 political subdivision of a state or any interstate body;

54 (13) "Resource Conservation and Recovery Act"
55 means the federal Resource Conservation and Recovery
56 Act of 1976, 90 Stat. 2806, as amended;

57 (14) "Section" means the section of waste management
58 of the division of natural resources;

59 (15) "Site work zones" means an exclusion zone, a
60 decontamination zone, or a clean zone established at a
61 hazardous waste site before clean-up work begins to
62 prevent or reduce the movement of contaminants from

63 the site to uncontaminated areas and to control public,
64 employee and equipment exposure to hazardous
65 substances:

66 (A) The exclusion zone is the innermost of the zones
67 and is where contamination exists.

68 (B) The decontamination zone is the zone between the
69 exclusion zone and the clean zone and serves as a
70 transition and buffer between the contaminated and
71 clean zones to further reduce the physical transfer of
72 contaminating substances to the public, employees and
73 equipment.

74 (C) The clean zone is the outermost of the zones and
75 is uncontaminated;

76 (16) "Storage" means the containment of hazardous
77 waste, either on a temporary basis or for a period of
78 years, in such a manner as not to constitute disposal of
79 such hazardous waste;

80 (17) "Subtitle C" means Subtitle C of the Resource
81 Conservation and Recovery Act;

82 (18) "Treatment" means any method, technique or
83 process, including neutralization, designed to change the
84 physical, chemical or biological character or composi-
85 tion of any hazardous waste so as to neutralize such
86 waste or so as to render such waste nonhazardous, safer
87 for transport, amenable to recovery, amenable to storage
88 or reduced in volume. Such term includes any activity
89 or processing designed to change the physical form or
90 chemical composition of hazardous waste so as to render
91 it nonhazardous;

92 (19) "Waste" means any garbage, refuse, sludge from
93 a waste treatment plant, water supply treatment plant
94 or air pollution control facility and other discarded
95 material including solid, liquid, semisolid or contained
96 gaseous material resulting from industrial, commercial,
97 mining and agricultural operations, and from commun-
98 ity activities, but does not include solid or dissolved
99 material in domestic sewage, or solid or dissolved
100 materials in irrigation return flows or industrial
101 discharges which are point sources subject to permits

102 under Section 402 of the federal Water Pollution Control
103 Act, as amended, or source, special nuclear or by-
104 product material as defined by the federal Atomic
105 Energy Act of 1954, as amended.

§20-5E-6. Promulgation of regulations by director.

1 (a) The director has overall responsibility for the
2 promulgation of rules and regulations under this article.
3 The director shall promulgate the following rules and
4 regulations, in consultation with the department of
5 health and human resources, the air pollution control
6 commission, the office of emergency services, the public
7 service commission, the state fire marshal, the depart-
8 ment of public safety, the division of highways, the
9 department of agriculture, the water resources board
10 and the division of energy, offices of mines and minerals
11 and oil and gas. In promulgating and revising such rules
12 and regulations, the director shall comply with the
13 provisions of chapter twenty-nine-a of this code, shall
14 avoid duplication to the maximum extent practicable
15 with the appropriate provisions of the acts and laws set
16 out in subsection (b), section five of this article and shall
17 be consistent with but no more expansive in coverage
18 nor more stringent in effect than the rules and regula-
19 tions promulgated by the federal environmental protec-
20 tion agency pursuant to the Resource Conservation and
21 Recovery Act:

22 (1) Rules and regulations establishing a plan for the
23 safe and effective management of hazardous wastes
24 within the state;

25 (2) Rules and regulations establishing criteria for
26 identifying the characteristics of hazardous waste,
27 identifying the characteristics of hazardous waste and
28 listing particular hazardous wastes which are subject to
29 the provisions of this article: *Provided, That:*

30 (A) Each waste listed below shall, except as provided
31 in paragraph (B) of this subdivision, be subject only to
32 regulation under other applicable provisions of federal
33 or state law in lieu of this article until proclamation by
34 the governor finding that at least six months have
35 elapsed since the date of submission of the applicable

36 study required to be conducted under Section 8002 of
37 the federal Solid Waste Disposal Act, as amended, and
38 that regulations have been promulgated with respect to
39 such wastes in accordance with Section 3001 (b)(3)(C) of
40 the Resource Conservation and Recovery Act, and
41 finding in the case of the wastes identified in subpara-
42 graph (iv) of this paragraph that the regulation of such
43 wastes has been authorized by an act of Congress in
44 accordance with Section 3001 (b)(2) of the Resource
45 Conservation and Recovery Act:

46 (i) Fly ash waste, bottom ash waste, slag waste and
47 flue gas emission control waste generated primarily
48 from the combustion of coal or other fossil fuels;

49 (ii) Solid waste from the extraction, beneficiation and
50 processing of ores and minerals, including phosphate
51 rock and overburden from the mining of uranium ore;

52 (iii) Cement kiln dust waste; and

53 (iv) Drilling fluids, produced waters and other wastes
54 associated with the exploration, development or produc-
55 tion of crude oil or natural gas or geothermal energy.

56 (B) Owners and operators of disposal sites for wastes
57 listed in paragraph (A) of this subdivision may be
58 required by the director of the division of natural
59 resources through regulation prescribed under author-
60 ity of this section:

61 (i) As to disposal sites for such wastes which are to
62 be closed, to identify the locations of such sites through
63 surveying, platting or other measures, together with
64 recordation of such information on the public record, to
65 assure that the locations where such wastes are disposed
66 of are known and can be located in the future; and

67 (ii) To provide chemical and physical analysis and
68 composition of such wastes, based on available informa-
69 tion, to be placed on the public record;

70 (3) Rules and regulations establishing such standards
71 applicable to generators of hazardous waste identified
72 or listed under this article as may be necessary to
73 protect public health and safety and the environment,

74 which standards shall establish requirements respect-
75 ing: (A) Record-keeping practices that accurately
76 identify the quantities of such hazardous waste gener-
77 ated, the constituents thereof which are significant in
78 quantity or in potential harm to public health or the
79 environment and the disposition of such wastes; (B)
80 labeling practices for any containers used for the
81 storage, transport or disposal of such hazardous waste
82 such as will identify accurately such waste; (C) use of
83 appropriate containers for such hazardous waste; (D)
84 furnishing of information on the general chemical
85 composition of such hazardous wastes to persons
86 transporting, treating, storing or disposing of such
87 wastes; (E) use of a manifest system and any other
88 reasonable means necessary to assure that all such
89 hazardous waste generated is designated for treatment,
90 storage or disposal in, and arrives at treatment, storage
91 or disposal facilities (other than facilities on the
92 premises where the waste is generated) with respect to
93 which permits have been issued which are required: (i)
94 By this article or any rule and regulation required by
95 this article to be promulgated; (ii) by Subtitle C of the
96 Resource Conservation and Recovery Act; (iii) by the
97 laws of any other state which has an authorized
98 hazardous waste program pursuant to Section 3006 of
99 the Resource Conservation and Recovery Act; or (iv) by
100 Title I of the federal Marine Protection, Research and
101 Sanctuaries Act; and (F) the submission of reports to the
102 director at such times as the director deems necessary
103 setting out the quantities of hazardous wastes identified
104 or listed under this article that the generator has
105 generated during a particular time period, and the
106 disposition of all such hazardous waste;

107 (4) Rules and regulations establishing such perfor-
108 mance standards applicable to owners and operators of
109 facilities for the treatment, storage or disposal of
110 hazardous waste identified or listed under this article
111 as may be necessary to protect public health and safety
112 and the environment, which standards shall, where
113 appropriate, distinguish in such standards between
114 requirements appropriate for new facilities and for
115 facilities in existence on the date of promulgation of

116 such rules and regulations and shall include, but need
117 not be limited to, requirements respecting: (A) Main-
118 taining records of all hazardous wastes identified or
119 listed under this article which are treated, stored or
120 disposed of, as the case may be, and the manner in
121 which such wastes were treated, stored or disposed of;
122 (B) satisfactory reporting, monitoring and inspection
123 and compliance with the manifest system referred to in
124 subdivision (3) of subsection (a) of this section; (C)
125 treatment, storage or disposal of all such waste received
126 by the facility pursuant to such operating methods,
127 techniques and practices as may be satisfactory to the
128 director; (D) the location, design and construction of
129 such hazardous waste treatment, disposal or storage
130 facilities; (E) contingency plans for effective action to
131 minimize unanticipated damage from any treatment,
132 storage or disposal of any such hazardous waste; (F) the
133 maintenance of operation of such facilities and requiring
134 such additional qualifications as to ownership, conti-
135 nuity of operation, training for personnel and financial
136 responsibility as may be necessary or desirable; how-
137 ever, no private entity may be precluded by reason of
138 criteria established under this subsection from the
139 ownership or operation of facilities providing hazardous
140 waste treatment, storage or disposal services where such
141 entity can provide assurances of financial responsibility
142 and continuity of operation consistent with the degree
143 and duration of risks associated with the treatment,
144 storage or disposal of specified hazardous waste; and (G)
145 compliance with the requirements of section eight of this
146 article respecting permits for treatment, storage or
147 disposal;

148 (5) Rules and regulations specifying the terms and
149 conditions under which the chief shall issue, modify,
150 suspend, revoke or deny such permits as may be
151 required by this article;

152 (6) Rules and regulations for the establishment and
153 maintenance of records; the making of reports; the
154 taking of samples and the performing of tests and
155 analyses; the installing, calibrating, operating and
156 maintaining of monitoring equipment or methods; and

157 the providing of any other information as may be
158 necessary to achieve the purposes of this article;

159 (7) Rules and regulations establishing standards and
160 procedures for the certification of personnel at hazard-
161 ous waste treatment, storage or disposal facilities or
162 sites: *Provided*, That with respect to clean-up operations
163 at any site work zone at a hazardous waste site not
164 having a valid treatment, storage or disposal permit
165 pursuant to section eight of this article, such rules and
166 regulations shall provide that:

167 (A) Workers engaged in hazardous waste operation
168 within the exclusion zone and the decontamination zone
169 shall first have received a minimum of eighty hours of
170 instruction off the site, and a minimum of three days
171 actual field experience under the direct supervision of
172 a trained, experienced supervisor.

173 (B) Equipment operators and transport vehicle
174 operators engaged in hazardous waste operation within
175 the exclusion zone and the decontamination zone shall
176 first have received a minimum of forty hours of
177 training, and a minimum of three days actual field
178 experience under the direct supervision of a trained,
179 experienced supervisor.

180 (C) Supervisors engaged in hazardous waste operation
181 within the exclusion zone and the decontamination zone
182 shall first have received as a minimum the same
183 number of hours of instruction as the workers for whom
184 the supervisor is directly responsible, and a minimum
185 of three days actual field experience under the direct
186 supervision of a trained, experienced supervisor;

187 (8) Rules and regulations for public participation in
188 the implementation of this article;

189 (9) Rules and regulations establishing procedures and
190 requirements for the use of a manifest during the
191 transport of hazardous wastes;

192 (10) Rules and regulations establishing procedures
193 and requirements for the submission and approval of a
194 plan, applicable to owners or operators of hazardous
195 waste storage, treatment and disposal facilities, as

196 necessary or desirable for closure of the facility, post-
197 closure monitoring and maintenance, sudden and
198 accidental occurrences and nonsudden and accidental
199 occurrences;

200 (11) Rules and regulations establishing a schedule of
201 fees to recover the costs of processing permit applica-
202 tions and permit renewals;

203 (12) Rules and regulations, including exemptions and
204 variances, as appropriate: (A) Establishing standards
205 and prohibitions relating to the management of hazard-
206 ous waste by land disposal methods; (B) establishing
207 standards and prohibitions relating to the land disposal
208 of liquid hazardous wastes or free liquids contained in
209 hazardous wastes and any other liquids which are not
210 hazardous wastes; (C) establishing standards applicable
211 to producers, distributors or marketers of hazardous
212 waste fuels; (D) establishing such standards relating to
213 the management of used oil as may be necessary to
214 protect human health and the environment; (E) estab-
215 lishing such standards relating to the management of
216 recycled oil as may be necessary to protect human
217 health and the environment; and (F) as are otherwise
218 necessary to allow the state to assume primacy for the
219 administration of the federal hazardous waste manage-
220 ment program under the Resource Conservation and
221 Recovery Act and in particular, the Hazardous and
222 Solid Waste Amendments of 1984: *Provided*, That such
223 rules and regulations authorized by this subdivision
224 shall be consistent with but no more expansive in
225 coverage nor more stringent in effect than rules and
226 regulations promulgated by the federal environmental
227 protection agency under Subtitle C; and

228 (13) Such other rules and regulations as are necessary
229 to effectuate the purposes of this article.

230 (b) The rules and regulations required by this article
231 to be promulgated shall be reviewed and, where
232 necessary, revised not less frequently than every three
233 years. Additionally, the rules and regulations required
234 to be promulgated by this article shall be revised, as
235 necessary, within six months of the effective date of any

236 amendment of the Resource Conservation and Recovery
237 Act and within six months of the effective date of any
238 adoption or revision of rules and regulations required to
239 be promulgated by the Resource Conservation and
240 Recovery Act.

241 (c) Notwithstanding any other provision in this
242 article, the director shall not promulgate rules and
243 regulations which are more properly within the juris-
244 diction and expertise of any of the agencies empowered
245 with rule-making authority pursuant to section seven of
246 this article.

§20-5E-25. Household hazardous wastes.

1 By the first day of September, one thousand nine
2 hundred ninety-two, the director of the division of
3 natural resources shall prepare and submit a report
4 concerning the proper handling and disposal of house-
5 hold hazardous waste. The report shall include:

6 (1) A proposed definition of what constitutes house-
7 hold hazardous waste;

8 (2) An overview of current disposal methods;

9 (3) An analysis of programs in other states designed
10 to address the subject of household hazardous wastes;

11 (4) Recommendations for the establishment of a
12 comprehensive state program to ensure the proper
13 handling and disposal of household hazardous waste;

14 (5) A projection of the potential costs of the program;

15 (6) A recommendation concerning potential funding
16 sources for the program; and

17 (7) Any other matters deemed appropriate and
18 relevant.

19 Said report shall be submitted to the governor,
20 speaker of the House of Delegates, and the president of
21 the Senate.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-1. Purpose and legislative findings.

§20-5F-2. Definitions.

- §20-5F-4. Powers and duties, rules and rule making.
- §20-5F-4a. Fee for filing a certificate of site approval.
- §20-5F-4b. Special provision for residential solid waste disposal.
- §20-5F-4c. Limit on the size of solid waste facilities.
- §20-5F-4d. Exemption for solid waste facility handling in excess of thirty thousand tons per month.
- §20-5F-5. Prohibitions; permits required; priority of disposal.
- §20-5F-5a. Solid waste assessment fee; penalties.
- §20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.
- §20-5F-8. Limited extension of solid waste facility closure deadline.
- §20-5F-9. Condition on receiving permit.
- §20-5F-10. Municipal solid waste incineration and backhauling prohibited; exceptions.
- §20-5F-11. Feasibility of state ownership; report requirement.
- §20-5F-12. County assessment for Class A facilities; amount; restrictions; purposes.

§20-5F-1. Purpose and legislative findings.

1 (a) The purpose of this article is to transfer jurisdiction
2 tion over the management of solid waste under section
3 nine, article one, chapter sixteen of this code from the
4 division of health to the division of natural resources and
5 to establish a comprehensive program of controlling
6 solid waste disposal.

7 (b) The Legislature finds that uncontrolled, inade-
8 quately controlled and improper collection, transporta-
9 tion, processing and disposal of solid waste: (1) Is a
10 public nuisance and a clear and present danger to
11 people; (2) provides harborages and breeding places for
12 disease-carrying, injurious insects, rodents and other
13 pests harmful to the public health, safety and welfare;
14 (3) constitutes a danger to livestock and domestic
15 animals; (4) decreases the value of private and public
16 property, causes pollution, blight and deterioration of
17 the natural beauty and resources of the state and has
18 adverse economic and social effects on the state and its
19 citizens; (5) results in the squandering of valuable
20 nonrenewable and nonreplenishable resources contained
21 in solid waste; (6) that materials recovery and recycling
22 reduces the need for landfills and extends their life; and
23 that (7) proper disposal, materials recovery or recycling
24 of solid waste is for the general welfare of the citizens
25 of this state.

26 (c) The Legislature further finds that disposal in West

27 Virginia of solid waste of unknown composition threat-
28 ens the environment and the public health, safety and
29 welfare, and therefore, it is in the interest of the public
30 to identify the type, amount and origin of solid waste
31 accepted for disposal at West Virginia solid waste
32 facilities.

33 (d) The Legislature further finds that other states of
34 these United States of America have imposed stringent
35 standards for the proper collection and disposal of solid
36 waste and that the relative lack of such standards and
37 enforcement for such activities in West Virginia has
38 resulted in the importation and disposal in the state of
39 increasingly large amounts of infectious, dangerous and
40 undesirable solid wastes and hazardous waste from
41 other states by persons and firms who wish to avoid the
42 costs and requirements for proper, effective and safe
43 disposal of such wastes in the states of origin.

44 (e) The Legislature further finds that Class A facil-
45 ities often have capacities far exceeding the needs of the
46 state or the areas of the state which they serve and that
47 such landfills create special environmental problems
48 that require statewide coordination of the management
49 of such landfills.

§20-5F-2. Definitions.

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

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

6 (b) "Backhauling" means the practice of using the
7 same container to transport solid waste to transport any
8 substance or material used as food by humans, animals
9 raised for human consumption or reusable item which
10 may be refilled with any substance or material used as
11 food by humans.

12 (c) "Chief" means the chief of the section of waste
13 management of the division of natural resources.

14 (d) "Municipal solid waste incineration" means the

15 burning of any solid waste collected by any municipal
16 or residential solid waste disposal company.

17 (e) "Commercial solid waste facility" means any solid
18 waste facility which accepts solid waste generated by
19 sources other than the owner or operator of the facility
20 and shall not include an approved solid waste facility
21 owned and operated by a person for the sole purpose of
22 disposing of solid wastes created by that person or such
23 person and other persons on a cost-sharing or nonprofit
24 basis and shall not include the legitimate reuse and
25 recycling of materials for structural fill, road base, mine
26 reclamation, and similar applications.

27 (f) "Division" means the division of natural resources.

28 (g) "Director" means the director of the division of
29 natural resources.

30 (h) "Open dump" means any solid waste disposal
31 which does not have a permit under this article, or is
32 in violation of state law, or where solid waste is disposed
33 in a manner that does not protect the environment.

34 (i) "Person", "persons" or "applicant" mean any
35 industrial user, public or private corporation, institu-
36 tion, association, firm or company organized or existing
37 under the laws of this or any other state or country; state
38 of West Virginia; governmental agency, including
39 federal facilities; political subdivision; county commis-
40 sion; municipal corporation; industry; sanitary district;
41 public service district; drainage district; soil conserva-
42 tion district; watershed improvement district; partner-
43 ship; trust; estate; person or individual; group of persons
44 or individuals acting individually or as a group; or any
45 legal entity whatever.

46 (j) "Sludge" means any solid, semisolid, residue or
47 precipitate, separated from or created by a municipal,
48 commercial or industrial waste treatment plant, water
49 supply treatment plant or air pollution control facility
50 or any other such waste having similar origin.

51 (k) "Solid waste" means any garbage, paper, litter,
52 refuse, cans, bottles, waste processed for the express
53 purpose of incineration, sludge from a waste treatment

54 plant, water supply treatment plant or air pollution
55 control facility, other discarded material, including
56 offensive or unsightly matter, solid, liquid, semisolid or
57 contained liquid or gaseous material resulting from
58 industrial, commercial, mining or community activities
59 but does not include solid or dissolved material in
60 sewage, or solid or dissolved materials in irrigation
61 return flows or industrial discharges which are point
62 sources and have permits under article five-a, chapter
63 twenty of this code, or source, special nuclear or by-
64 product material as defined by the Atomic Energy Act
65 of 1954, as amended, including any nuclear or by-
66 product material considered by federal standards to be
67 below regulatory concern, or a hazardous waste either
68 identified or listed under article five-e, chapter twenty
69 of this code or refuse, slurry, overburden or other wastes
70 or material resulting from coal-fired electric power or
71 steam generation, the exploration, development, produc-
72 tion, storage and recovery of coal, oil and gas, and other
73 mineral resources placed or disposed of at a facility
74 which is regulated under chapter twenty-two, twenty-
75 two-a or twenty-two-b of this code, so long as such
76 placement or disposal is in conformance with a permit
77 issued pursuant to such chapters. "Solid waste" shall not
78 include materials which are recycled by being used or
79 reused in an industrial process to make a product, as
80 effective substitute for commercial products, or are
81 returned to the original process as a substitute for raw
82 material feedstock.

83 (l) "Solid waste disposal" means the practice of
84 disposing of solid waste including placing, depositing,
85 dumping or throwing or causing to be placed, deposited,
86 dumped or thrown any solid waste.

87 (m) "Solid waste disposal shed" means the geographi-
88 cal area which the solid waste management board
89 designates and files in the state register pursuant to
90 section eight, article twenty-six, chapter sixteen of this
91 code.

92 (n) "Solid waste facility" means any system, facility,
93 land, contiguous land, improvements on the land,
94 structures or other appurtenances or methods used for

95 processing, recycling or disposing of solid waste,
96 including landfills, transfer stations, materials recovery
97 facilities and other such facilities not herein specified.
98 Such facility shall be deemed to be situated, for
99 purposes of this article, in the county where the majority
100 of the spatial area of such facility is located.

101 (o) "Class A facility" means a commercial solid waste
102 facility which handles an aggregate of between ten
103 thousand and thirty thousand tons of solid waste per
104 month. "Class A facility" shall include two or more Class
105 B solid waste landfills owned or operated by the same
106 person in the same county, if the aggregate tons of solid
107 waste handled per month by such landfills exceeds nine
108 thousand nine hundred ninety-nine tons of solid waste
109 per month.

110 (p) "Applicant" means the person applying for a
111 commercial solid waste facility permit or similar
112 renewal permit and any person related to such person
113 by virtue of common ownership, common management
114 or family relationships as the director of the division of
115 natural resources may specify including the following:
116 Spouses, parents and children and siblings.

117 (q) "Energy recovery incinerator" means any solid
118 waste facility at which solid wastes are incinerated with
119 the intention of using the resulting energy for the
120 generation of steam, electricity, or any other use not
121 specified herein.

122 (r) "Incineration technologies" means any technology
123 that uses controlled flame combustion to thermally
124 break down solid waste, including refuse-derived fuel,
125 to an ash residue that contains little or no combustible
126 materials, regardless of whether the purpose is process-
127 ing, disposal, electric or steam generation, or any other
128 method by which solid waste is incinerated.

129 (s) "Incinerator" means an enclosed device using
130 controlled flame combustion to thermally break down
131 solid waste, including refuse-derived fuel, to an ash
132 residue that contains little or no combustible materials.

133 (t) "Materials recovery facility" means any solid waste

134 facility at which solid wastes are manually or mechan-
135 ically shredded or separated so that materials are
136 recovered from the general waste stream for purposes
137 of reuse and recycling.

§20-5F-4. Powers and duties; rules and rule making.

1 In addition to all other powers, duties, responsibilities
2 and authority granted and assigned to the director and
3 chief in this code and elsewhere described by law, they
4 are hereby empowered as follows:

5 (a) The director shall adopt rules and regulations in
6 compliance with the West Virginia administrative
7 procedures act to carry out the provisions of this article
8 including modifying any existing rules and regulations
9 and establishing permit application fees up to an
10 amount sufficient to defray the costs of permit review.
11 In promulgating rules and regulations the director shall
12 consider and establish requirements based on the
13 quantity of solid waste to be handled, including different
14 requirements for solid waste facilities or approved solid
15 waste facilities which handle more than one hundred
16 tons of solid waste per day, the environmental impact
17 of solid waste disposal, the nature, origin or character-
18 istics of the solid waste, potential for contamination of
19 public water supply, requirements for public roadway
20 standards and design for access to the facilities with
21 approval by the commissioner of the department of
22 highways, public sentiment, the financial capability of
23 the applicant, soil and geological considerations and
24 other natural resource considerations. All existing rules
25 and regulations of the department of health relating to
26 solid waste disposal shall remain valid and be enforce-
27 able by the division of natural resources on the tenth day
28 of June, one thousand nine hundred eighty-eight, until
29 changed or modified by the director, in compliance with
30 chapter twenty-nine-a of this code.

31 (b) The chief, after public notice and opportunity for
32 public hearing near the affected community, may issue
33 a permit with reasonable terms and conditions for
34 installation, establishment, modification, operation or
35 closure of a solid waste facility: *Provided*, That the

36 director may deny the issuance of a permit on the basis
37 of information in the application or from other sources
38 including public comment, if the solid waste facility is
39 likely to cause adverse impacts on the environment. The
40 director may also prohibit the installation or establish-
41 ment of specific types and sizes of solid waste facilities
42 in a specified geographical area of the state based on
43 the above cited factor and may delete such geographical
44 area from consideration for that type and size solid
45 waste facility.

46 (c) The director may refuse to grant any permit if he
47 has reasonable cause to believe, as indicated by docu-
48 mented evidence, that the applicant, or any officer,
49 director or manager, thereof, or person owning a five
50 percent or more interest, beneficial or otherwise, or
51 other person conducting or managing the affairs of the
52 applicant or of the proposed licensed premises, in whole
53 or in part:

54 (1) Has demonstrated, either by his police record or
55 by his record as a former permittee under this chapter,
56 a lack of respect for law and order, generally, or for the
57 laws and rules governing the disposal of solid wastes;

58 (2) Has misrepresented a material fact in applying to
59 the director for a permit;

60 (3) Has been convicted of a felony or other crime
61 involving moral turpitude;

62 (4) Has exhibited a pattern of violating environmental
63 laws in any state or the United States or combination
64 thereof; or

65 (5) Has had any permit revoked under the environ-
66 mental laws of any state or the United States.

67 (d) The director, chief or any authorized representa-
68 tive, employee or agent of the division may, at reasona-
69 ble times, enter onto any approved solid waste facility,
70 open dump or property where solid waste is present for
71 the purpose of making an inspection or investigation of
72 solid waste disposal.

73 (e) The director, chief or any authorized representa-

74 tive, employee or agent of the division may, at reasona-
75 ble times, enter any approved solid waste facility, open
76 dump or property where solid waste is present and take
77 samples of the waste, soils, air or water or may, upon
78 issuance of an order, require any person to take and
79 analyze samples of such waste, soil, air or water.

80 (f) The director or chief may also perform or require
81 a person, by order, to perform any and all acts necessary
82 to carry out the provisions of this article or the rules
83 promulgated thereunder.

84 (g) The chief or his authorized representative, em-
85 ployee or agent shall make periodic inspections at every
86 approved solid waste facility to effectively implement
87 and enforce the requirements of this article or its rules
88 and regulations and may, in coordination with the
89 commissioner of the department of highways, conduct at
90 weigh stations or any other adequate site or facility
91 inspections of solid waste in transit.

92 (h) The director or chief shall require and set the
93 amount of performance bonds for persons engaged in
94 the practice of solid waste disposal in this state,
95 pursuant to section five-b of this article.

96 (i) The director shall require: (1) That persons
97 disposing of solid waste at commercial solid waste
98 facilities within the state file with the operator of the
99 commercial solid waste facility records concerning the
100 type, amount and origin of solid waste disposed of by
101 them; and (2) that operators of commercial solid waste
102 facilities within the state maintain records and file them
103 with the director concerning the type, amount and
104 origin of solid waste accepted by them.

105 (j) The director may expend funds from the litter
106 control fund established pursuant to section twenty-six,
107 article seven of this chapter to assist county and regional
108 solid waste authorities in the formulation of their
109 comprehensive litter and solid waste control plans
110 pursuant to section seven, article eight of this chapter
111 and in the construction and maintenance of approved
112 commercial solid waste facilities and collection equip-
113 ment, including the provision of grants as well as

114 bonding assistance for those authorities which would in
115 the opinion of the director be unable to construct or
116 maintain an approved commercial solid waste facility
117 without grant funds.

118 (k) *Identification of interests.* — The director shall
119 require an applicant for a solid waste facility permit to
120 provide the following information:

121 (1) The names, addresses and telephone numbers of:

122 (A) The permit applicant;

123 (B) Any other person conducting or managing the
124 affairs of the applicant or of the proposed permitted
125 premises, including any contractor for gas or energy
126 recovery from the proposed operation, if the contractor
127 is a person other than the applicant; and

128 (C) Parties related to the applicant by blood, mar-
129 riage or business association, including the relationship
130 to the applicant.

131 (2) The names and addresses of the owners of record
132 of surface and subsurface areas within, and contiguous
133 to, the proposed permit area.

134 (3) The names and addresses of the holders of record
135 to a leasehold interest in surface or subsurface areas
136 within, and contiguous to, the proposed permit area.

137 (4) A statement of whether the applicant is an
138 individual, corporation, partnership, limited partner-
139 ship, government agency, proprietorship, municipality,
140 syndicate, joint venture or other entity. For applicants
141 other than sole proprietorships, the application shall
142 contain the following information, if applicable:

143 (A) Names and addresses of every officer, general and
144 limited partner, director and other persons performing
145 a function similar to a director of the applicant;

146 (B) For corporations, the principal shareholders;

147 (C) For corporations, the names, principal places of
148 businesses and internal revenue service tax identifica-
149 tion numbers of United States parent corporations of the
150 applicant, including ultimate parent corporations and

151 United States subsidiary corporations of the applicant
152 and the applicant's parent corporations; and

153 (D) Names and addresses of other persons or entities
154 having or exercising control over any aspect of the
155 proposed facility that is regulated by the division,
156 including, but not limited to, associates and agents.

157 (5) If the applicant or an officer, principal share-
158 holder, general or limited partner or other related party
159 to the applicant, has a beneficial interest in, or otherwise
160 manages or controls another person or municipality
161 engaged in the business of solid waste collection,
162 transportation, storage, processing, treatment or dispo-
163 sal, the application shall contain the following
164 information:

165 (A) The name, address and tax identification number
166 or employer identification number of the corporation or
167 other person or municipality; and

168 (B) The nature of the relationship or participation
169 with the corporation or other person or municipality.

170 (6) An application shall list permits or licenses, issued
171 by the division or other environmental regulatory
172 agency to each person or municipality identified in
173 paragraph (1) and to other related parties to the
174 applicant, that are currently in effect or have been in
175 effect in at least part of the previous ten years. This list
176 shall include the type of permit or license, number,
177 location, issuance date and when applicable, the
178 expiration date.

179 (7) An application shall identify the solid waste
180 facilities in the state which the applicant or a person or
181 municipality identified in paragraph (1) of this subdi-
182 vision and other related parties to the applicant
183 currently owns or operates, or owned or operated in the
184 previous ten years. For each facility, the applicant shall
185 identify the location, type of operation and state or
186 federal permits under which they operate or have
187 operated. Facilities which are no longer permitted or
188 which were never under permit shall also be listed.

189 (l) *Compliance information.* — An application shall

190 contain the following information for the ten-year period
191 prior to the date on which the application is filed:

192 (1) A description of notices of violation, including the
193 date, location, nature and disposition of the violation,
194 that were sent by the division to the applicant or a
195 related party, concerning any environmental law,
196 regulation, or order of the division, or a condition of a
197 permit or license. In lieu of a description the applicant
198 may provide a copy of notices of violation.

199 (2) A description of administrative orders, civil
200 penalty assessments and bond forfeiture actions by the
201 division, and civil penalty actions adjudicated by the
202 state, against the applicant or a related party concern-
203 ing any environmental law, regulation, or order of the
204 division, or a condition of a permit or license. The
205 description shall include the date, location, nature and
206 disposition of the actions. In lieu of a description, the
207 applicant may provide a copy of the orders, assessments
208 and actions.

209 (3) A description of a summary, misdemeanor or
210 felony conviction, a plea of guilty or plea of no contest
211 that has been obtained in this state against the applicant
212 or a related party under any environmental law or
213 regulation concerning the storage, collection, treatment,
214 transportation, processing or disposal of solid waste. The
215 description shall include the date, location, nature and
216 disposition of the actions.

217 (4) A description of a court proceeding concerning
218 any environmental law or regulation that was not
219 described under paragraph (3), subdivision (1) of this
220 section in which the applicant or a related party has
221 been party. The description shall include the date,
222 location, nature and disposition of the proceedings.

223 (5) A description of a consent order, consent adjudi-
224 cation, consent decree or settlement agreement involv-
225 ing the applicant or a related party concerning any
226 environmental law or regulation in which the division,
227 other governmental agencies, the United States Envir-
228 onmental Protection Agency, or a county health depart-
229 ment was a party. The description shall include the date,

230 location, nature and disposition of the action. In lieu of
231 a description, the applicant may provide a copy of the
232 order, adjudication, a decree or agreement.

233 (6) For facilities and activities identified under
234 paragraph (1) of this subdivision, a statement of whether
235 the facility or activity was the subject of an administrative
236 order, consent agreement, consent adjudication,
237 consent order, settlement agreement, court order, civil
238 penalty, bond forfeiture proceeding, criminal conviction,
239 guilty or no contest plea to a criminal charge or permit
240 or license suspension or revocation under the act or the
241 environmental protection acts. If the facilities or
242 activities were subject to these actions, the applicant
243 shall state the date, location, nature and disposition of
244 the violation. In lieu of a description, the applicant may
245 provide a copy of the appropriate document. The
246 application shall also state whether the division has
247 denied a permit application filed by the applicant or a
248 related party, based on compliance status.

249 (7) When the applicant is a corporation, a list of the
250 principal shareholders that have also been principal
251 shareholders of other corporations which have committed
252 violations or any environmental law or regulation.
253 The list shall include the date, location, nature and
254 disposition of the violation, and shall explain the
255 relationship between the principal shareholder and both
256 the applicant and the other corporation.

257 (8) A description of a misdemeanor or felony conviction,
258 a plea of guilty and a plea of no contest, by the
259 applicant or a related party for violations outside of this
260 state of any environmental protection laws or regulations.
261 The description shall include the date of the
262 convictions or pleas, and the date, location and nature
263 of the offense.

264 (9) A description of final administrative orders, court
265 orders, court decrees, consent decrees or adjudications,
266 consent orders, final civil penalty adjudications, final
267 bond forfeiture actions or settlement agreements
268 involving the applicant or a related party for violations
269 outside of this state of any environmental protection

270 laws or regulations. The description shall include the
271 date of the action and the location and nature of the
272 underlying violation. In lieu of a description, the
273 applicant may provide a copy of the appropriate
274 document.

275 (m) All of the information provided by the applicant
276 pursuant to this section shall not be confidential and
277 shall be disclosable pursuant to the provisions of chapter
278 twenty-nine-b of this code.

§20-5F-4a. Fee for filing a certificate of site approval.

1 The fee for the certificate of site approval is twenty-
2 five dollars payable upon the filing of the application
3 therefor with the county, county solid waste authority
4 or regional solid waste authority, as the case may be.

§20-5F-4b. Special provision for residential solid waste disposal.

1 All commercial and public solid waste facilities shall
2 establish and publish a yearly schedule providing for
3 one day per month on which a person not in the business
4 of hauling or disposing of solid waste, who is a resident
5 of the watershed in which the facility is located, may
6 dispose of an amount of residential solid waste up to one
7 pick-up truckload or its equivalent, free of all charges
8 and fees.

§20-5F-4c. Limit on the size of solid waste facilities.

1 (a) On and after the first day of October, one thousand
2 nine hundred ninety-one, it shall be unlawful to operate
3 any commercial solid waste facility that handles
4 between ten thousand and thirty thousand tons of solid
5 waste per month, except as provided in section four-d
6 of this article and section twelve-c, twelve-d or twelve-
7 e, article nine of this chapter.

8 (b) Except as provided in section four-d of this article,
9 the maximum quantity of solid waste which may
10 lawfully be handled at any commercial solid waste
11 facility shall be thirty thousand tons per month.

§20-5F-4d. Exemption for solid waste facility handling in excess of thirty thousand tons per month.

1 (a) Notwithstanding any provision in this article,
2 article nine of this chapter, article two, chapter twenty-
3 four of this code, any other section of this code, or any
4 prior enactment of the code to the contrary, and
5 notwithstanding any defects in or challenges to any
6 actions which were or are required to be performed in
7 satisfaction of the following criteria, any person who on
8 the first day of October, one thousand nine hundred
9 ninety-one, has:

10 (1) Obtained site approval for a commercial solid
11 waste facility from a county or regional solid waste
12 authority or county commission pursuant to a prior
13 enactment of this code, or has otherwise satisfied the
14 requirements of subsection (a), section twelve-b, article
15 nine of this chapter;

16 (2) Entered into a contract with a county commission
17 regarding the construction and operation of a solid
18 waste facility, which contract contains rates for the
19 disposal of solid waste originating within the county;

20 (3) Obtained, pursuant to section one-f, article two,
21 chapter twenty-four of this code, following a public
22 hearing, an order from the public service commission
23 approving the rates established in the contract with the
24 county commission; and

25 (4) An application for a permit for a commercial solid
26 waste facility pending with the division of natural
27 resources, or is operating under a permit or compliance
28 order, shall be permitted to handle in excess of the
29 limitation established in section four-c of this article up
30 to fifty thousand tons of solid waste per month at a
31 commercial solid waste facility so long as the person
32 complies with the provisions of this section.

33 (b) Any person desiring to operate a commercial solid
34 waste facility which handles an amount of solid waste
35 per month in excess of the limitation established in
36 section four-c of this article, but not exceeding the
37 tonnage limitation described in subsection (a) of this
38 section may file a notice with the county commission of
39 the county in which the facility is or is to be located
40 requesting a countywide referendum. Upon receipt of

41 such notice, the county commission shall order a
42 referendum be placed upon the ballot, not less than fifty-
43 six days before the next primary or general election.

44 (1) Such referendum will be to determine whether it
45 is the will of the voters of the county that a commercial
46 solid waste facility be permitted to handle more than the
47 limitation established in section four-c of this article not
48 to exceed fifty thousand tons per month. Any such
49 election shall be held at the voting precincts established
50 for holding primary or general elections. All of the
51 provisions of the general election laws, when not in
52 conflict with the provisions of this article, shall apply
53 to voting and elections hereunder, insofar as practicable.

54 (2) The ballot, or the ballot labels where voting
55 machines are used, shall have printed thereon substan-
56 tially the following:

57 "Shall a commercial solid waste facility, permitted to
58 handle up to, but no more than fifty thousand tons
59 of solid waste per month be located within
60 _____ County, West Virginia?

61 For the facility

62 Against the facility

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

65 If a majority of the legal votes cast upon the question
66 be against the facility handling an amount of solid waste
67 of up to fifty thousand tons per month then the division
68 of natural resources shall not proceed any further with
69 the application. If a majority of the legal votes cast upon
70 the question be in favor of permitting the facility within
71 the county, then the application process as set forth in
72 this article may proceed: *Provided*, That such vote shall
73 not be binding on or require the division of natural
74 resources to issue a permit.

75 (c) If a person submits to a referendum in accordance
76 with this section, all approvals, certificates, and permits
77 granted and all actions undertaken by a regional or
78 county solid waste authority or county commission with

79 regard to the person's commercial solid waste facility
80 within the county under previously enacted sections of
81 articles five-f and nine of this chapter shall be deemed
82 valid, complete and in full compliance with all the
83 requirements of law and any defects contained in such
84 approvals, certificates, permits or actions shall be
85 deemed cured and such defects may not be invoked to
86 invalidate any such approval, certificate, permit or
87 action.

88 (d) Notwithstanding any provision of this code to the
89 contrary, any person described in subsection (a) of this
90 section who complies with the referendum requirement
91 of this section and complies with the permitting
92 requirements of the division of natural resources
93 provided in section five, article five-f of this chapter,
94 shall not be required to comply with the requirements
95 of section twelve-b, twelve-c, twelve-d or twelve-e,
96 article nine of this chapter: *Provided*, That such person
97 shall be entitled to receive a certificate of need pursuant
98 to the provisions of subsection (a), section one-c, article
99 two, chapter twenty-four of this code to handle the
100 tonnage level authorized pursuant to subsection (a) of
101 this section.

102 (e) The purpose of this section is to allow any person
103 who satisfies the four criteria contained in subsection
104 (a), notwithstanding any defects in or challenges to any
105 actions which were or are required to be performed in
106 satisfaction of such criteria, to submit the question of
107 siting a facility that accepts up to fifty thousand tons
108 within the county to a referendum in order to obtain a
109 decision at the county or regional level regarding the
110 siting of the facility and that submission of this question
111 at the county level shall be the only approval, permit or
112 action required at the county or regional level to
113 establish and site the proposed facility.

§20-5F-5. Prohibitions; permits required; priority of disposal.

1 (a) Open dumps are prohibited and it shall be
2 unlawful for any person to create, contribute to or
3 operate an open dump or for any landowner to allow an

4 open dump to exist on his property unless that open
5 dump is under a compliance schedule approved by the
6 chief. Such compliance schedule shall contain an
7 enforceable sequence of actions leading to compliance
8 and shall not exceed two years. Open dumps operated
9 prior to the first day of April, one thousand nine
10 hundred eighty-eight, by a landowner or tenant for the
11 disposal of solid waste generated by the landowner or
12 tenant at his or her residence or farm shall not be
13 deemed to constitute a violation of this section if such
14 open dump did not constitute a violation of law on the
15 first day of January, one thousand nine hundred eighty-
16 eight, and unauthorized dumps which were created by
17 unknown persons shall not constitute a violation of this
18 section: *Provided*, That no person shall contribute
19 additional solid waste to any such dump after the first
20 day of April, one thousand nine hundred eighty-eight,
21 except that the owners of the land on which unautho-
22 rized dumps have been or are being made shall not be
23 liable for such unauthorized dumping unless such
24 landowners refuse to cooperate with the division of
25 natural resources in stopping such unauthorized
26 dumping.

27 (b) It shall be unlawful for any person, unless he holds
28 a valid permit from the division to install, establish,
29 construct, modify, operate or abandon any solid waste
30 facility. All approved solid waste facilities shall be
31 installed, established, constructed, modified, operated or
32 abandoned in accordance with this article, plans,
33 specifications, orders, instructions and rules in effect.

34 (c) Any permit issued under this article shall be
35 issued in compliance with the requirements of this
36 article, its rules and article five-a and the rules
37 promulgated thereunder, so that only a single permit
38 shall be required of a solid waste facility under these
39 two articles. Each permit issued under this article shall
40 have a fixed term not to exceed five years: *Provided*,
41 That the chief may administratively extend a permit
42 beyond its five-year term if the approved solid waste
43 facility is in compliance with this article, its rules and
44 article five-a of this chapter and the rules promulgated

45 thereunder: *Provided, however,* That such administra-
46 tive extension may not be for more than one year. Upon
47 expiration of a permit, renewal permits may be issued
48 in compliance with rules and regulations promulgated
49 by the director of the division of natural resources.

50 (d) All existing permits of the division of health for
51 solid waste facilities under section nine, article one,
52 chapter sixteen of this code shall continue in full force
53 and effect until a permit is issued for that approved
54 solid waste facility under this article: *Provided,* That all
55 such existing permits of the division of health shall
56 expire within five years of the tenth day of June, one
57 thousand nine hundred eighty-eight. Within four years
58 of the tenth day of June, one thousand nine hundred
59 eighty-eight, all persons holding such division of health
60 permits shall apply to the chief for a permit under this
61 article: *Provided, however,* That the chief may require
62 persons holding such existing health division permits to
63 reapply under this section prior to four years from the
64 tenth day of June, one thousand nine hundred eighty-
65 eight, if persistent violations of this article, any permit
66 term or condition, orders or rules promulgated under
67 this article, exist at that facility. Notwithstanding any
68 other provision contained in this subsection, the division
69 of natural resources may enter an extension order for
70 a period of two years while an application for a permit
71 pursuant to this article is pending.

72 (e) No person may dispose in the state of any solid
73 waste, whether such waste originates in state or out of
74 state, in a manner which endangers the environment or
75 the public health, safety or welfare as determined by the
76 director of the division of natural resources: *Provided,*
77 That the carcasses of dead animals may be disposed of
78 in any solid waste facility or in any other manner as
79 provided for in this code. Upon request by the director
80 of the division of natural resources, the director of the
81 division of health shall provide technical advice concern-
82 ing the disposal of solid waste or carcasses of dead
83 animals within the state.

84 (f) To the extent permissible by law, a commercial
85 solid waste facility shall first ensure that the disposal

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

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

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

§20-5F-5a. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 to be collected and paid as follows: (1) One dollar and
5 twenty-five cents per ton or part thereof of solid waste;
6 and (2) one additional dollar per ton or part thereof of
7 solid waste for solid waste generated from sources

8 outside the solid waste disposal shed in which the solid
9 waste disposal facility is located. The fee imposed by this
10 section shall be in addition to all other fees and taxes
11 levied by law and shall be added to and constitute part
12 of any other fee charged by the operator or owner of the
13 solid waste disposal facility.

14 (b) *Collection, return, payment and records.* — The
15 person disposing of solid waste at the solid waste
16 disposal facility shall pay the fee imposed by this
17 section, whether or not such person owns the solid waste,
18 and the fee shall be collected by the operator of the solid
19 waste facility who shall remit it to the tax commissioner.

20 (1) The fee imposed by this section accrues at the time
21 the solid waste is delivered to the solid waste disposal
22 facility.

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

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

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

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

47 a notice of cancellation is served on the operator or
48 owner by the tax commissioner.

49 (6) Whenever the owner of a solid waste disposal
50 facility leases the solid waste facility to an operator, the
51 operator shall be primarily liable for collection and
52 remittance of the fee imposed by this section and the
53 owner shall be secondarily liable for remittance of the
54 fee imposed by this section. However, if the operator
55 fails, in whole or in part, to discharge his obligations
56 under this section, the owner and the operator of the
57 solid waste facility shall be jointly and severally
58 responsible and liable for compliance with the provi-
59 sions of this section.

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

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

75 (c) *Regulated motor carriers.* — The fee imposed by
76 this section and section twenty-two, article five, chapter
77 seven of this code shall be considered a necessary and
78 reasonable cost for motor carriers of solid waste subject
79 to the jurisdiction of the public service commission
80 under chapter twenty-four-a of this code.
81 Notwithstanding any provision of law to the contrary,
82 upon the filing of a petition by an affected motor carrier,
83 the public service commission shall, within fourteen
84 days, reflect the cost of said fee in said motor carrier's
85 rates for solid waste removal service. In calculating the
86 amount of said fee to said motor carrier, the commission

87 shall use the national average of pounds of waste
88 generated per person per day as determined by the
89 United States Environmental Protection Agency.

90 (d) *Definition of solid waste disposal facility.* — For
91 purposes of this section, the term “solid waste disposal
92 facility” means any approved solid waste facility or open
93 dump in this state, and includes a transfer station when
94 the solid waste collected at the transfer station is not
95 finally disposed of at a solid waste disposal facility
96 within this state that collects the fee imposed by this
97 section. Nothing herein shall be construed to authorize
98 in any way the creation or operation of or contribution
99 to an open dump.

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

102 (1) Disposal of solid waste at a solid waste disposal
103 facility by the person who owns, operates or leases the
104 solid waste disposal facility if the facility is used
105 exclusively to dispose of waste originally produced by
106 such person in such person’s regular business or
107 personal activities or by persons utilizing the facility on
108 a cost-sharing or nonprofit basis;

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

110 (3) Disposal of residential solid waste by an individual
111 not in the business of hauling or disposing of solid waste
112 on such days and times as designated by the director of
113 the division of natural resources is exempt from the
114 solid waste assessment fee.

115 (f) *Procedure and administration.* — Notwithstanding
116 section three, article ten, chapter eleven of this code,
117 each and every provision of the “West Virginia Tax
118 Procedure and Administration Act” set forth in article
119 ten, chapter eleven of this code shall apply to the fee
120 imposed by this section with like effect as if said act
121 were applicable only to the fee imposed by this section
122 and were set forth in extenso herein.

123 (g) *Criminal penalties.* — Notwithstanding section
124 two, article nine, chapter eleven of this code, sections
125 three through seventeen, article nine, chapter eleven of

126 this code shall apply to the fee imposed by this section
127 with like effect as if said sections were applicable only
128 to the fee imposed by this section and were set forth in
129 extenso herein.

130 (h) *Dedication of proceeds.* — The net proceeds of the
131 fee collected by the tax commissioner pursuant to this
132 section shall be deposited at least monthly in an account
133 designated by the director of the division of natural
134 resources. The director shall allocate twenty-five cents
135 for each ton of solid waste disposed of in this state upon
136 which the fee imposed by this section is collected and
137 shall deposit the total amount so allocated into the “Solid
138 Waste Reclamation and Environmental Response Fund”
139 to be expended for the purposes hereinafter specified.
140 The first one million dollars of the net proceeds of the
141 fee imposed by this section collected in each fiscal year
142 shall be deposited in the “Solid Waste Enforcement
143 Fund” and expended for the purposes hereinafter
144 specified. The next two hundred fifty thousand dollars
145 of the net proceeds of the fee imposed by this section
146 collected in each fiscal year shall be deposited in the
147 “Resource Recovery — Solid Waste Disposal Authority
148 Reserve Fund” which shall be renamed and hereinafter
149 referred to as the “Solid Waste Management Board
150 Reserve Fund”, and expended for the purposes hereinaf-
151 ter specified: *Provided*, That in any year in which the
152 water development authority determines that the solid
153 waste management board reserve fund is adequate to
154 defer any contingent liability of the fund, the water
155 development authority shall so certify to the director of
156 the division of natural resources and the director shall
157 then cause no less than fifty thousand dollars nor more
158 than two hundred fifty thousand dollars to be deposited
159 to the fund: *Provided, however*, That in any year in
160 which the water development authority determines that
161 the solid waste management board reserve fund is
162 inadequate to defer any contingent liability of the fund,
163 the water development authority shall so certify to the
164 director of the division of natural resources and the
165 director shall then cause not less than two hundred fifty
166 thousand dollars nor more than five hundred thousand
167 dollars to be deposited in the fund: *Provided further*,

168 That if a facility owned or operated by the state of West
169 Virginia is denied site approval by a county or regional
170 solid waste authority, and if such denial contributes in
171 whole or in part to a default, or drawing upon a reserve
172 fund, on any indebtedness issued or approved by the
173 solid waste management board, then in that event the
174 solid waste management board or its fiscal agent may
175 withhold all or any part of any funds which would
176 otherwise be directed to such county or regional
177 authority and shall deposit such withheld funds in the
178 appropriate reserve fund. The director of the division of
179 natural resources shall allocate the remainder, if any,
180 of said net proceeds among the following three special
181 revenue accounts for the purpose of maintaining a
182 reasonable balance in each special revenue account,
183 which are hereby continued in the state treasury:

184 (1) The "Solid Waste Enforcement Fund" which shall
185 be expended by the director of the division of natural
186 resources for administration, inspection, enforcement
187 and permitting activities established pursuant to this
188 article;

189 (2) The "Solid Waste Management Board Reserve
190 Fund" which shall be exclusively dedicated to providing
191 a reserve fund for the issuance and security of solid
192 waste disposal revenue bonds issued by the solid waste
193 management board pursuant to article twenty-six,
194 chapter sixteen of this code;

195 (3) The "Solid Waste Reclamation and Environmental
196 Response Fund" which may be expended by the director
197 of the division of natural resources for the purposes of
198 reclamation, clean-up and remedial actions intended to
199 minimize or mitigate damage to the environment,
200 natural resources, public water supplies, water resour-
201 ces and the public health, safety and welfare which may
202 result from open dumps or solid waste not disposed of
203 in a proper or lawful manner.

204 (i) *Findings.* — In addition to the purposes and
205 legislative findings set forth in section one of this article,
206 the Legislature finds as follows:

207 (1) In-state and out-of-state locations producing solid

208 waste should bear the responsibility of disposing of said
209 solid waste or compensate other localities for costs
210 associated with accepting such solid waste;

211 (2) The costs of maintaining and policing the streets
212 and highways of the state and its communities are
213 increased by long distance transportation of large
214 volumes of solid waste; and

215 (3) Local approved solid waste facilities are being
216 prematurely depleted by solid waste originating from
217 other locations.

218 (j) *Severability*. — If any provision of this section or
219 the application thereof shall for any reason be adjudged
220 by any court of competent jurisdiction to be invalid, such
221 judgment shall not affect, impair or invalidate the
222 remainder of this section, but shall be confined in its
223 operation to the provision thereof directly involved in
224 the controversy in which such judgment shall have been
225 rendered, and the applicability of such provision to other
226 person or circumstances shall not be affected thereby.

227 (k) *Effective date*. — This section is effective on the
228 first day of July, one thousand nine hundred eighty-
229 eight.

**§20-5F-6. Orders, inspections and enforcement; civil and
criminal penalties.**

1 (a) If the director or chief, upon inspection or
2 investigation by duly authorized representatives or
3 through other means observes, discovers or learns of a
4 violation of this article, its rules, article five-a of this
5 chapter or its rules, or any permit or order issued under
6 this article, he may:

7 (1) Issue an order stating with reasonable specificity
8 the nature of the alleged violation and requiring
9 compliance immediately or within a specified time. An
10 order under this section includes, but is not limited to,
11 any or all of the following: Orders suspending, revoking
12 or modifying permits, orders requiring a person to take
13 remedial action or cease and desist orders;

14 (2) Seek an injunction in accordance with subsection

15 (e) of this section;

16 (3) Institute a civil action in accordance with subsec-
17 tion (e) of this section; or

18 (4) Request the attorney general, or the prosecuting
19 attorney of the county wherein the alleged violation
20 occurred, to bring an appropriate action, either civil or
21 criminal, in accordance with subsection (b) of this
22 section.

23 (b) Any person who willfully or negligently violates
24 the provisions of this article, any permit or any rule,
25 regulation or order issued pursuant to this article shall
26 be subject to the same criminal penalties as set forth in
27 section nineteen, article five-a of this chapter.

28 (c) Any person who violates any provision of this
29 article, any permit or any rule, regulation or order
30 issued pursuant to this article shall be subject to civil
31 administrative penalty, to be levied by the director, of
32 not more than five thousand dollars for each day of such
33 violation, not to exceed a maximum of twenty thousand
34 dollars.

35 (1) In assessing any such penalty, the director shall
36 take into account the seriousness of the violation and any
37 good faith efforts to comply with the applicable
38 requirements as well as any other appropriate factors
39 as may be established by the director by rules and
40 regulations promulgated pursuant to this article and
41 article three, chapter twenty-nine-a of this code. No
42 assessment shall be levied pursuant to this subsection
43 until after the alleged violator has been notified by
44 certified mail or personal service. The notice shall
45 include a reference to the section of the statute, rule,
46 regulation, order or statement of permit conditions that
47 was allegedly violated, a concise statement of the facts
48 alleged to constitute the violation, a statement of the
49 amount of the administrative penalty to be imposed and
50 a statement of the alleged violator's right to an informal
51 hearing. The alleged violator shall have twenty calendar
52 days from receipt of the notice within which to deliver
53 to the director a written request for an informal
54 hearing. If no hearing is requested, the notice shall

55 become a final order after the expiration of the twenty-
56 day period. If a hearing is requested, the director shall
57 inform the alleged violator of the time and place of the
58 hearing. The director may appoint an assessment officer
59 to conduct the informal hearing and then make a
60 written recommendation to the director concerning the
61 assessment of a civil administrative penalty. Within
62 thirty days following the informal hearing, the director
63 shall issue and furnish to the alleged violator a written
64 decision, and the reasons therefor, concerning the
65 assessment of a civil administrative penalty. Within
66 thirty days after notification of the director's decision,
67 the alleged violator may request a formal hearing before
68 the water resources board in accordance with the
69 provisions of section seven of this article. The authority
70 to levy a civil administrative penalty shall be in addition
71 to all other enforcement provisions of this article and the
72 payment of any assessment shall not be deemed to affect
73 the availability of any other enforcement provision in
74 connection with the violation for which the assessment
75 is levied: *Provided*, That no combination of assessments
76 against a violator under this section shall exceed twenty-
77 five thousand dollars for each day of such violation:
78 *Provided, however*, That any violation for which the
79 violator has paid a civil administrative penalty assessed
80 under this section shall not be the subject of a separate
81 civil penalty action under this article to the extent of the
82 amount of the civil administrative penalty paid. All
83 administrative penalties shall be levied in accordance
84 with rules and regulations issued pursuant to subsection
85 (a), section four of this article. The net proceeds of
86 assessments collected pursuant to this subsection shall
87 be deposited in the solid waste reclamation and environ-
88 mental response fund established in subdivision (3),
89 subsection (h), section five-a of this article.

90 (2) No assessment levied pursuant to subdivision (1),
91 subsection (c) above shall become due and payable until
92 the procedures for review of such assessment as set out
93 in said subsection have been completed.

94 (d) Any person who violates any provision of this
95 article, any permit or any rule, regulation or order

96 issued pursuant to this article shall be subject to a civil
97 penalty not to exceed twenty-five thousand dollars for
98 each day of such violation, which penalty shall be
99 recovered in a civil action either in the circuit court
100 wherein the violation occurs or in the circuit court of
101 Kanawha County.

102 (e) The director or chief may seek an injunction, or
103 may institute a civil action against any person in
104 violation of any provisions of this article or any permit,
105 rule, regulation or order issued pursuant to this article.
106 In seeking an injunction, it is not necessary for the
107 director or chief to post bond nor to allege or prove at
108 any state of the proceeding that irreparable damage will
109 occur if the injunction is not issued or that the remedy
110 at law is inadequate. An application for injunctive relief
111 or a civil penalty action under this section may be filed
112 and relief granted notwithstanding the fact that all
113 administrative remedies provided for in this article have
114 not been exhausted or invoked against the person or
115 persons against whom such relief is sought.

116 (f) Upon request of the director or chief, the attorney
117 general or the prosecuting attorney of the county in
118 which the violation occurs shall assist the director in any
119 civil action under this section.

120 (g) In any civil action brought pursuant to the
121 provisions of this section, the state, or any agency of the
122 state which prevails, may be awarded costs and
123 reasonable attorney's fees.

124 (h) In addition to all other grounds for revocation, the
125 director may revoke a permit for any of the following
126 reasons:

127 (1) Fraud, deceit or misrepresentation in securing the
128 permit, or in the conduct of the permitted activity;

129 (2) Offering, conferring or agreeing to confer any
130 benefit to induce any other person to violate the
131 provisions of this chapter, or of any other law relating
132 to the collection, transportation, treatment, storage, or
133 disposal of solid waste, or of any rule or regulation
134 adopted pursuant thereto;

135 (3) Coercing a customer by violence or economic
136 reprisal or the threat thereof to utilize the services of
137 any permittee; or

138 (4) Preventing, without authorization of the division,
139 any permittee from disposing of solid waste at a licensed
140 treatment, storage or disposal facility.

**§20-5F-8. Limited extension of solid waste facility closure
deadline.**

1 (a) The director of the division of natural resources
2 shall grant an extension of the closure deadline up to
3 the thirty-first day of March, one thousand nine hundred
4 ninety-three, to a solid waste facility required by solid
5 waste management regulations to close by the thirtieth
6 day of November, one thousand nine hundred ninety-
7 one, unless the director determines by a preponderance
8 of the evidence that such extension will pose a signif-
9 icant risk to human health or safety or cause irreparable
10 harm to the environment.

11 (b) No later than the first day of November, one
12 thousand nine hundred ninety-one, any facility seeking
13 an extension of its closure deadline must submit to the
14 division of natural resources an application sufficient to
15 support the requirements of subsection (a) of this
16 section.

17 (c) The director shall grant or deny the extension no
18 later than the twenty-first day of November, one
19 thousand nine hundred ninety-one. If the director denies
20 an extension, the facility shall cease accepting solid
21 waste on the thirtieth day of November, one thousand
22 nine hundred ninety-one. No person seeking judicial
23 review, pursuant to subsection (d) of this section, of the
24 director's denial of an extension shall accept solid waste
25 at the facility during the pendency of the judicial review
26 process.

27 (d) Any party who is aggrieved by an order of the
28 director regarding the grant or denial of an extension
29 of the closure deadline for a solid waste facility pursuant
30 to this section may obtain judicial review thereof in the
31 same manner as provided in section four, article five,

32 chapter twenty-nine-a of this code, which provisions
33 shall apply to and govern such review with like effect
34 as if the provisions of said section were set forth in
35 extenso in this section, except that the petition shall be
36 filed, within the time specified in said section, in the
37 circuit court of Kanawha County: *Provided*, That the
38 court shall not in any manner permit the continued
39 acceptance of solid waste at the facility pending review
40 of the decision of the director.

41 (e) The judgment of the circuit court shall be final
42 unless reversed, vacated or modified on appeal to the
43 supreme court of appeals, in accordance with the
44 provisions of section one, article six, chapter twenty-
45 nine-a of this code, except that notwithstanding the
46 provisions of said section, the petition seeking such
47 review must be filed with said supreme court of appeals
48 within thirty days from the date of entry of the
49 judgment of the circuit court.

50 (f) The director of the division of natural resources
51 shall grant an extension of the closure deadline not to
52 exceed the thirtieth day of September, one thousand
53 nine hundred ninety-three, to a solid waste facility
54 required by solid waste management regulations to close
55 by the thirtieth day of November, one thousand nine
56 hundred ninety-two.

§20-5F-9. Condition on receiving permit.

1 (a) Notwithstanding any other provision of this code,
2 a permit application for a solid waste landfill facility
3 submitted by any person who has owned, operated or
4 held a permit for a solid waste landfill upon which funds
5 have been, or are to be, expended on pursuant to the
6 provisions of article five-n of this chapter, may be
7 approved under the provisions of this article only if all
8 funds so expended are repaid in full, plus interest, or
9 arrangements, satisfactory to the director, are made for
10 the repayment of the funds and the interest. The
11 repayment shall be made a specific condition of a
12 permit.

13 (b) In the case where a permittee has entered into a
14 repayment arrangement with the director in order to

15 obtain a permit under this article, the repayment of the
16 funds shall be considered by the public service commis-
17 sion a reasonable cost of operating the newly permitted
18 landfill in determining rates to be charged at the
19 landfill.

**§20-5F-10. Municipal solid waste incineration and back-
hauling prohibited; exceptions.**

1 (a) Notwithstanding any other provision of this code
2 to the contrary, it shall be unlawful to install, establish
3 or construct a new solid waste facility for the purpose
4 of municipal solid waste incineration prior to the first
5 day of May, one thousand nine hundred ninety-three:
6 *Provided*, That such prohibition shall not include the
7 development of small-scale demonstration or pilot
8 projects designed to analyze the efficiency or environ-
9 mental impacts of incineration technologies.

10 (b) It shall be unlawful to engage in the practice of
11 backhauling as such term is defined in section two of
12 this article.

**§20-5F-11. Feasibility of state ownership; report
requirement.**

1 (a) The director and the chairman of the public
2 service commission shall, on or before the first day of
3 January, one thousand nine hundred ninety-two, present
4 to the governor, the president of the Senate and the
5 speaker of the House of Delegates a report examining
6 the feasibility of the state becoming the exclusive entity
7 for the operation of solid waste disposal facilities.

8 (b) The report required by subsection (a) of this
9 section shall include, but not be limited to:

10 (1) Discussion of the feasibility of state ownership of
11 all solid waste disposal facilities;

12 (2) A determination of the cost of said exclusive state
13 ownership;

14 (3) Discussion of the legal issues raised by such state
15 ownership;

16 (4) Discussion of the feasibility of mixed state owner-

- 17 ship and operation of solid waste disposal facilities;
- 18 (5) Discussion of the impact on the environment of
19 state ownership and control of solid waste disposal
20 facilities; and
- 21 (6) Discussion of the public health, welfare and
22 convenience issues raised by state ownership.
- 23 (c) The director and the chairman shall utilize as
24 much as practicable the resources, human and other-
25 wise, of the division of natural resources, the public
26 service commission, the solid waste management board
27 and the county and regional solid waste management
28 authorities.

**§20-5F-12. County assessment for Class A facilities;
amount; restrictions; purposes.**

1 Notwithstanding any provision of this code to the
2 contrary, the county commission of any county contain-
3 ing a Class A facility may, in addition to any fee
4 otherwise imposed by law, impose a fee, not to exceed
5 five dollars per ton of solid waste received from outside
6 the watershed in which the facility is located and not
7 to exceed two dollars per ton for solid waste received
8 from within said watershed for solid waste disposed in
9 said facility: *Provided*, That any moneys received by a
10 county commission pursuant to this section shall be
11 expended exclusively for capital improvements to the
12 infrastructure within the county, including, but not
13 limited to, water supply treatment, waste treatment,
14 sewage systems and road maintenance, as well as the
15 expenses associated therewith.

**ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE
PROGRAM.**

- §20-5N-1. Legislative findings and purpose.
- §20-5N-2. Definitions.
- §20-5N-3. Commercial solid waste facility closure assistance program.
- §20-5N-4. Solid waste assessment fee; penalties.
- §20-5N-4a. Solid waste management board empowered to issue solid waste closure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- §20-5N-4b. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.

- §20-5N-4c. Legal remedies of bondholders.
- §20-5N-4d. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
- §20-5N-4e. Solid waste closure revenue bonds lawful investments.
- §20-5N-5. Limitation on assistance.
- §20-5N-6. Application for closure assistance.
- §20-5N-7. Solid waste facility closure cost assistance fund.
- §20-5N-8. Promulgation of rules by director.
- §20-5N-9. Liability of owner or operator.
- §20-5N-10. Procedures for handling remedial actions; payment of costs of remedial actions to be paid by owner or operator.
- §20-5N-11. Right of Entry.
- §20-5N-12. Authority of director to accept grants and gifts.
- §20-5N-13. Management and control of project.

§20-5N-1. Legislative findings and purpose.

1 The Legislature finds that:

2 There are numerous landfills throughout the state
3 that must be closed before the thirtieth day of No-
4 vember, one thousand nine hundred ninety-two, because
5 they cannot be operated in an environmentally sound
6 manner;

7 The permittees of many of the landfills that will be
8 closing do not have the financial resources to close their
9 landfills in a manner that is timely and environmentally
10 sound;

11 As long as these landfills remain open, the threat of
12 continuing harm to the environment and the health and
13 safety of the citizens of West Virginia exists, and the
14 cost to remediate their adverse effects will continue to
15 grow;

16 The untimely and disorderly closure of these landfills
17 represents a significant threat to the health and safety
18 of the people of West Virginia and its environment; and

19 It is in the best interests of all the citizens of this state
20 to provide a mechanism to assist the permittees of these
21 landfills in properly closing them.

22 Therefore, it is the purpose of this article to provide
23 an assistance program that will be available to permit-
24 tees of landfills that will facilitate the closure of these
25 landfills in a timely and environmentally sound manner.

§20-5N-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Cost of project" includes the cost of the services
4 authorized in sections three and ten of this article,
5 property, material and labor which are essential thereto,
6 financing charges, interest during construction, and all
7 other expenses, including legal fees, trustees', engineers'
8 and architects' fees which are necessarily or properly
9 incidental to the program;

10 (2) "Director" means the director of the division of
11 natural resources of the department of commerce, labor
12 and environmental resources, or his or her authorized
13 representative;

14 (3) "Landfill" means any solid waste facility for the
15 disposal of solid waste on land, and also means any
16 system, facility, land, contiguous land, improvements on
17 the land, structures or other appurtenances or methods
18 used for processing, recycling or disposing of solid
19 waste, including landfills, transfer stations, resource
20 recovery facilities and other such facilities not herein
21 specified. Such facility shall be deemed to be situated,
22 for purposes of this article, in the county where the
23 majority of the spatial area of such facility is located;

24 (4) "Permittee" means a person who has or should
25 obtain a permit for a commercial solid waste facility
26 that is a landfill;

27 (5) "Project" means the providing of closure assistance
28 to one or more landfills under this article.

29 The definitions provided in section two, article five-
30 f of this chapter, to the extent they are applicable, apply
31 in this article.

**§20-5N-3. Commercial solid waste facility closure assist-
ance program.**

1 (a) There is established within the section of waste
2 management of the division of natural resources the
3 commercial solid waste landfill closure assistance
4 program. The purpose of the program is to provide
5 assistance for the closure of landfills which are required

6 to cease operations pursuant to the closure deadlines
7 provided for in this chapter.

8 (b) Upon the acceptance of an application of the
9 permittee of a solid waste landfill that satisfies the
10 requirements in section five of this article, the director
11 shall provide, in accordance with the provisions of this
12 article, and to the extent that funds are available, the
13 following closure related services:

14 (1) Closure design, including an analysis of the effects
15 of the landfill on groundwater and the design of
16 measures necessary to protect and monitor the
17 groundwater;

18 (2) Construction of all closure-related structures
19 necessary to provide sufficient leachate management,
20 sediment and erosion control, gas management, ground-
21 water monitoring and final cover and cap, all to meet
22 the closure-related requirements of article five-f of this
23 chapter and rules promulgated pursuant thereto; and

24 (3) All surface water and groundwater monitoring
25 activities required pursuant to articles five-a and five-
26 f of this chapter and applicable rules promulgated
27 thereunder.

28 (c) To the extent that there are funds available in the
29 fund established in section seven of this article or
30 subdivision (3), subsection (h), section five-a, article five-
31 f of this chapter, the director may take remedial actions
32 necessary to protect the groundwater and surface water,
33 other natural resources and the health and safety of the
34 citizens of this state.

§20-5N-4. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 in the amount of four dollars per ton or like ratio on any
5 part thereof of solid waste, except as provided in
6 subsections (e) and (i) of this section: *Provided*, That any
7 solid waste disposal facility may deduct from this
8 assessment fee an amount, not to exceed the fee, equal
9 to the amount that such facility is required by the public

10 service commission to set aside for the purpose of closure
11 of that portion of the facility required by the solid waste
12 management regulations to close by the thirtieth day of
13 November, one thousand nine hundred ninety-one or
14 ninety-two, including any extensions authorized pursu-
15 ant to section eight, article five-f of this chapter. The fee
16 imposed by this section is in addition to all other fees
17 and taxes levied by law and shall be added to and
18 constitute part of any other fee charged by the operator
19 or owner of the solid waste disposal facility.

20 (b) *Collection, return, payment and records.* — The
21 person disposing of solid waste at the solid waste
22 disposal facility shall pay the fee imposed by this
23 section, whether or not such person owns the solid waste,
24 and the fee shall be collected by the operator of the solid
25 waste facility who shall remit it to the tax commissioner.

26 (1) The fee imposed by this section accrues at the time
27 the solid waste is delivered to the solid waste disposal
28 facility.

29 (2) The operator shall remit the fee imposed by this
30 section to the tax commissioner on or before the fifteenth
31 day of the month next succeeding the month in which
32 the fee accrued. Upon remittance of the fee, the operator
33 shall file returns on forms and in the manner prescribed
34 by the tax commissioner.

35 (3) The operator shall account to the state for all fees
36 collected under this section and shall hold them in trust
37 for the state until they are remitted to the tax
38 commissioner.

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

44 (5) Whenever any operator fails to collect, truthfully
45 account for, remit the fee, or file returns with the fee
46 as required in this section, the tax commissioner may
47 serve written notice requiring such operator to collect
48 the fees which become collectible after service of such

49 notice, to deposit such fees in a bank approved by the
50 tax commissioner, in a separate account, in trust for and
51 payable to the tax commissioner, and to keep the amount
52 of such fees in such account until remitted to the tax
53 commissioner. Such notice shall remain in effect until
54 a notice of cancellation is served on the operator or
55 owner by the tax commissioner.

56 (6) Whenever the owner of a solid waste disposal
57 facility leases the solid waste facility to an operator, the
58 operator shall be primarily liable for collection and
59 remittance of the fee imposed by this section and the
60 owner shall be secondarily liable for remittance of the
61 fee imposed by this section. However, if the operator
62 fails, in whole or in part, to discharge his obligations
63 under this section, the owner and the operator of the
64 solid waste facility shall be jointly and severally
65 responsible and liable for compliance with the provi-
66 sions of this section.

67 (7) If the operator or owner responsible for collecting
68 the fee imposed by this section is an association or
69 corporation, the officers thereof shall be liable, jointly
70 and severally, for any default on the part of the
71 association or corporation, and payment of the fee and
72 any additions to tax, penalties and interest imposed by
73 article ten, chapter eleven of this code may be enforced
74 against them as against the association or corporation
75 which they represent.

76 (8) Each person disposing of solid waste at a solid
77 waste disposal facility and each person required to
78 collect the fee imposed by this section shall keep
79 complete and accurate records in such form as the tax
80 commissioner may require in accordance with the rules
81 and regulations of the tax commissioner.

82 (c) *Regulated motor carriers.* — The fee imposed by
83 this section is a necessary and reasonable cost for motor
84 carriers of solid waste subject to the jurisdiction of the
85 public service commission under chapter twenty-four-a
86 of this code. Notwithstanding any provision of law to the
87 contrary, upon the filing of a petition by an affected
88 motor carrier, the public service commission shall,

89 within fourteen days, reflect the cost of said fee in said
90 motor carrier's rates for solid waste removal service. In
91 calculating the amount of said fee to said motor carrier,
92 the commission shall use the national average of pounds
93 of waste generated per person per day as determined by
94 the United States Environmental Protection Agency.

95 (d) *Definitions.* — For purposes of this section, the
96 term "solid waste disposal facility" means any approved
97 solid waste facility or open dump in this state, and
98 includes a transfer station when the solid waste collected
99 at the transfer station is not finally disposed of at a solid
100 waste facility within this state that collects the fee
101 imposed by this section. Nothing in this section autho-
102 rizes in any way the creation or operation of or
103 contribution to an open dump.

104 (e) *Exemptions.* — The following transactions are
105 exempt from the fee imposed by this section:

106 (1) Disposal of solid waste at a solid waste disposal
107 facility by the person who owns, operates or leases the
108 solid waste disposal facility if the facility is used
109 exclusively to dispose of waste originally produced by
110 such person in such person's regular business or
111 personal activities or by persons utilizing the facility on
112 a cost-sharing or nonprofit basis;

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

114 (3) Disposal of residential solid waste by an individual
115 not in the business of hauling or disposing of solid waste
116 on such days and times as designated by the director of
117 the division of natural resources as exempt from the
118 solid waste assessment fee.

119 (f) *Procedure and administration.* — Notwithstanding
120 section three, article ten, chapter eleven of this code,
121 each and every provision of the "West Virginia Tax
122 Procedure and Administration Act" set forth in article
123 ten, chapter eleven of this code applies to the fee
124 imposed by this section with like effect as if said act
125 were applicable only to the fee imposed by this section
126 and were set forth in extenso herein.

127 (g) *Criminal penalties.* — Notwithstanding section

128 two, article nine, chapter eleven of this code, sections
129 three through seventeen, article nine, chapter eleven of
130 this code apply to the fee imposed by this section with
131 like effect as if said sections were applicable only to the
132 fee imposed by this section and were set forth in extenso
133 herein.

134 (h) *Dedication of proceeds.* — Fifty percent of the
135 proceeds of the fee collected pursuant to this article in
136 excess of thirty thousand tons per month from any
137 landfill which is permitted to accept in excess of thirty
138 thousand tons per month pursuant to section four-d,
139 article five-f of this chapter shall be remitted, at least
140 monthly, to the county commission in the county in
141 which the landfill is located. The remainder of the
142 proceeds of the fee collected pursuant to this section
143 shall be deposited in the closure cost assistance fund
144 established pursuant to section seven of this article.

145 (i) *Additional fee for out of shed waste.* — In addition
146 to the four dollar fee imposed pursuant to the provisions
147 of subsection (a) of this section, on and after the first
148 day of January, one thousand nine hundred ninety-three,
149 there shall be imposed an additional two dollar fee on
150 the disposal of solid waste generated outside of the
151 watershed wherein the solid waste disposal facility is
152 located.

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

§20-5N-4a. Solid waste management board empowered to issue solid waste closure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

1 The solid waste management board is hereby empo-
2 wered to issue, from time to time, solid waste closure
3 revenue bonds and notes of the state in such principal
4 amounts as the board deems necessary to pay the cost
5 of or finance in whole or in part the closure of solid
6 waste landfills by the division of natural resources
7 pursuant to the provisions of this article, but the
8 aggregate amount of all issues of bonds and notes

9 outstanding at one time for all projects authorized
10 hereunder shall not exceed that amount capable of being
11 serviced by revenues received from such projects, and
12 shall not exceed in the aggregate the sum of one
13 hundred fifty million dollars.

14 The board may, from time to time, issue renewal
15 notes, issue bonds to pay such notes and whenever it
16 deems refunding expedient, refund any bonds by the
17 issuance of solid waste closure revenue refunding bonds
18 of the state. Except as may otherwise be expressly
19 provided in this article or by the board, every issue of
20 its bonds or notes shall be obligations of the board
21 payable out of the revenues and reserves created for
22 such purposes by the board, which are pledged for such
23 payment, without preference or priority of the first
24 bonds issued, subject only to any agreements with the
25 holders of particular bonds or notes pledging any
26 particular revenues. Such pledge shall be valid and
27 binding from the time the pledge is made and the
28 revenue so pledged and thereafter received by the board
29 shall immediately be subject to the lien of such pledge
30 without any physical delivery thereof or further act and
31 the lien of any such pledge shall be valid and binding
32 as against all parties having claims of any kind in tort,
33 contract or otherwise against the board irrespective of
34 whether such parties have notice thereof. All such bonds
35 and notes shall have all the qualities of negotiable
36 instruments.

37 The bonds and notes shall be authorized by resolution
38 of the board, shall bear such dates and shall mature at
39 such times, in the case of any such note or any renewals
40 thereof not exceeding five years from the date of issue
41 of such original note, and in the case of any such bond
42 not exceeding fifty years from the date of issue, as such
43 resolution may provide. The bonds and notes shall bear
44 interest at such rate, be in such denominations, be in
45 such form, either coupon or registered, carry such
46 registration privileges, be payable in such medium of
47 payment, at such place and be subject to such terms of
48 redemption as the board may authorize. The board may
49 sell such bonds and notes at public or private sale, at

50 the price the board determines. The bonds and notes
51 shall be executed by the chairman and vice chairman
52 of the board, both of whom may use facsimile signa-
53 tures. The official seal of the board or a facsimile thereof
54 shall be affixed thereto or printed thereon and attested,
55 manually or by facsimile signature, by the secretary-
56 treasurer of the board, and any coupons attached thereto
57 shall bear the signature or facsimile signature of the
58 chairman of the board. In case any officer whose
59 signature, or a facsimile of whose signature, appears on
60 any bonds, notes or coupons ceases to be such officer
61 before delivery of such bonds or notes, such signature
62 or facsimile is nevertheless sufficient for all purposes
63 the same as if he had remained in office until such
64 delivery and, in case the seal of the board has been
65 changed after a facsimile has been imprinted on such
66 bonds or notes, such facsimile seal will continue to be
67 sufficient for all purposes.

68 Any resolution authorizing any bonds or notes or any
69 issue thereof may contain provisions (subject to such
70 agreements with bondholders or noteholders as may
71 then exist, which provisions shall be a part of the
72 contract with the holders thereof) as to pledging all or
73 any part of the revenues of the board to secure the
74 payment of the bonds or notes or of any issue thereof;
75 the use and disposition of revenues of the board; a
76 covenant to fix, alter and collect rentals, fees, service
77 charges and other charges so that pledged revenues will
78 be sufficient to pay the costs of operation, maintenance
79 and repairs, pay principal of and interest on bonds or
80 notes secured by the pledge of such revenues and
81 provide such reserves as may be required by the
82 applicable resolution; the setting aside of reserve funds,
83 sinking funds or replacement and improvement funds
84 and the regulation and disposition thereof; the crediting
85 of the proceeds of the sale of bonds or notes to and
86 among the funds referred to or provided for in the
87 resolution authorizing the issuance of the bonds or notes;
88 the use, lease, sale or other disposition of any solid waste
89 disposal project or any other assets of the board;
90 limitations on the purpose to which the proceeds of sale
91 of bonds or notes may be applied and pledging such

92 proceeds to secure the payment of the bonds or notes or
93 of any issue thereof; agreement of the board to do all
94 things necessary for the authorization, issuance and sale
95 of bonds in such amounts as may be necessary for the
96 timely retirement of notes issued in anticipation of the
97 issuance of bonds; limitations on the issuance of
98 additional bonds or notes; the terms upon which
99 additional bonds or notes may be issued and secured; the
100 refunding of outstanding bonds or notes; the procedure,
101 if any, by which the terms of any contract with
102 bondholders or noteholders may be amended or abro-
103 gated, the holders of which must consent thereto, and
104 the manner in which such consent may be given;
105 limitations on the amount of moneys to be expended by
106 the board for operating, administrative or other
107 expenses of the board; and any other matters, of like or
108 different character, which in any way affect the security
109 or protection of the bonds or notes.

110 In the event that the sum of all reserves pledged to
111 the payment of such bonds or notes shall be less than
112 the minimum reserve requirements established in any
113 resolution or resolutions authorizing the issuance of such
114 bonds or notes, the chairman of the board shall certify,
115 on or before the first day of December of each year, the
116 amount of such deficiency to the governor of the state,
117 for inclusion, if the governor shall so elect, of the amount
118 of such deficiency in the budget to be submitted to the
119 next session of the Legislature for appropriation to the
120 board to be pledged for payment of such bonds or notes:
121 *Provided*, That the Legislature shall not be required to
122 make any appropriation so requested, and the amount
123 of such deficiencies shall not constitute a debt or liability
124 of the state.

125 Neither the members of the board nor any person
126 executing the bonds or notes shall be liable personally
127 on the bonds or notes or be subject to any personal
128 liability or accountability by reason of the issuance
129 thereof.

§20-5N-4b. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.

1 (a) Before issuing any revenue bonds in accordance
2 with the provisions of this article, the solid waste
3 management board shall consult with and be advised by
4 the West Virginia water development authority as to the
5 feasibility and necessity of the proposed issuance of
6 revenue bonds.

7 (b) Prior to issuing revenue bonds under the provi-
8 sions of this article, the board shall enter into agree-
9 ments satisfactory to the West Virginia water develop-
10 ment authority with regard to the selection of all
11 consultants, advisors and other experts to be employed
12 in connection with the issuance of such bonds and the
13 fees and expenses to be charged by such persons, and
14 to establish any necessary reserve funds and replace-
15 ment and improvement funds, all such funds to be
16 administered by the water development authority, and,
17 so long as any such bonds remain outstanding, to
18 establish and maintain a sinking fund or funds to retire
19 such bonds and pay the interest thereon as the same may
20 become due. The amounts in any such sinking fund, as
21 and when so set apart by the board, shall be remitted
22 to the West Virginia water development authority at
23 least thirty days previous to the time interest or
24 principal payments become due, to be retained and paid
25 out by the water development authority, as agent for the
26 board, in a manner consistent with the provisions of this
27 article and with the resolution pursuant to which the
28 bonds have been issued. The water development author-
29 ity shall act as fiscal agent for the administration of any
30 sinking fund and reserve fund established under each
31 resolution authorizing the issuance of revenue bonds
32 pursuant to the provisions of this article, and shall invest
33 all funds not required for immediate disbursement in
34 the same manner as funds are invested pursuant to the
35 provisions of section thirteen, article five-c, chapter
36 twenty of this code.

37 (c) Notwithstanding any other provision of this article
38 to the contrary, no revenue bonds shall be issued, nor
39 the proceeds thereof expended or distributed, pursuant
40 to the provisions of this article, without the prior
41 approval of the water development authority.

42 (d) If the proceeds of revenue bonds issued for any
43 solid waste landfill closure project shall exceed the cost
44 thereof, the surplus shall be paid into the fund herein
45 provided for the payment of principal and interest upon
46 such bonds. Such fund may be used by the fiscal agent
47 for the purchase or redemption of any of the outstanding
48 bonds payable from such fund at the market price, but
49 not at a price exceeding the price at which any of such
50 bonds shall in the same year be redeemable, as fixed by
51 the board in its said resolution, and all bonds redeemed
52 or purchased shall forthwith be canceled, and shall not
53 again be issued.

§20-5N-4c. Legal remedies of bondholders.

1 Any holder of solid waste disposal revenue bonds
2 issued under the authority of this article or any of the
3 coupons appertaining thereto, except to the extent the
4 rights given by this article may be restricted by the
5 applicable resolution, may by civil action, mandamus or
6 other proceeding, protect and enforce any rights
7 granted under the laws of this state or granted under
8 this article, by the resolution authorizing the issuance
9 of such bonds, and may enforce and compel the perfor-
10 mance of all duties required by this article, or by the
11 resolution, to be performed by the board or any officer
12 or employee thereof, including the fixing, charging and
13 collecting of sufficient rentals, fees, service charges or
14 other charges.

**§20-5N-4d. Bonds and notes not debt of state, county,
municipality or of any political subdivision;
expenses incurred pursuant to article.**

1 Solid waste closure revenue bonds and notes and solid
2 waste closure revenue refunding bonds issued under
3 authority of this article and any coupons in connection
4 therewith shall not constitute a debt or a pledge of the
5 faith and credit or taxing power of this state or of any

6 county, municipality or any other political subdivision
7 of this state, and the holders or owners thereof shall
8 have no right to have taxes levied by the Legislature or
9 taxing authority of any county, municipality or any
10 other political subdivision of this state for the payment
11 of the principal thereof or interest thereon, but such
12 bonds and notes shall be payable solely from the
13 revenues and funds pledged for their payment as
14 authorized by this article unless the notes are issued in
15 anticipation of the issuance of bonds or the bonds are
16 refunded by refunding bonds issued under authority of
17 this article, which bonds or refunding bonds shall be
18 payable solely from revenues and funds pledged for
19 their payment as authorized by this article. All such
20 bonds and notes shall contain on the face thereof a
21 statement to the effect that the bonds or notes, as to both
22 principal and interest, are not debts of the state or any
23 county, municipality or political subdivision thereof, but
24 are payable solely from revenues and funds pledged for
25 their payment.

26 All expenses incurred in carrying out the provisions
27 of this article shall be payable solely from funds
28 provided under authority of this article. This article
29 does not authorize the board to incur indebtedness or
30 liability on behalf of or payable by the state or any
31 county, municipality or political subdivision thereof.

§20-5N-4e. Solid waste closure revenue bonds lawful investments.

1 The provisions of sections ten and eleven, article six,
2 chapter twelve of this code notwithstanding, all solid
3 waste closure revenue bonds issued pursuant to this
4 article shall be lawful investments for the West Virginia
5 state board of investments and shall also be lawful
6 investments for financial institutions as defined in
7 section two, article one, chapter thirty-one-a of this code,
8 and for insurance companies.

§20-5N-5. Limitation on assistance.

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

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

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

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

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

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

5 (1) The permittee of a landfill that does not have a
6 liner system must submit its application no later than
7 the fifteenth day of September, one thousand nine
8 hundred ninety-two, except the permittee of a landfill
9 that has been granted a limited extension pursuant to
10 the provisions of section eight, article five-f of this
11 chapter must submit its application no later than the
12 eleven months following the expiration of the extension;
13 and

14 (2) The permittee of a landfill that has only a single
15 liner system must submit its application no later than

16 the fifteenth day of April, one thousand nine hundred
17 ninety-three, and not prior to the first day of April, one
18 thousand nine hundred ninety-two.

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

§20-5N-7. Solid waste facility closure cost assistance fund.

1 (a) The "Closure Cost Assistance Fund" is hereby
2 created as a special revenue account in the state
3 treasury. The fund shall operate as a special fund
4 whereby all deposits and payments thereto shall not
5 expire to the general revenue fund, but shall remain in
6 such account and be available for expenditure in the
7 succeeding fiscal year. Separate sub-accounts may be
8 established within the special account for the purpose
9 of identification of various revenue resources and
10 payment of specific obligations.

11 (b) Interest earned on any money in the fund shall be
12 deposited to the credit of the fund.

13 (c) The fund consists of the following:

14 (1) Moneys collected and deposited in the state
15 treasury which are specifically designated by acts of the
16 Legislature for inclusion in the fund;

17 (2) Contributions, grants and gifts from any source,
18 both public and private, which may be used by the
19 director for any project or projects;

20 (3) Amounts repaid by permittees pursuant to section
21 nine, article five-f of this chapter; and

22 (4) All interest earned on investments made by the
23 state from moneys deposited in this fund.

24 (d) The amounts deposited in the fund may be
25 expended only on the cost of projects as provided for in
26 sections three and ten of this article: *Provided*, That no
27 more than one percent of the annual deposits to such

28 fund may be used for administrative purposes.

§20-5N-8. Promulgation of rules by director.

1 The director shall promulgate rules that are neces-
2 sary for the efficient and orderly implementation and
3 administration of this article no later than the first day
4 of August, one thousand nine hundred ninety-two. Due
5 to the need for the program provided for in this article
6 to begin as soon as possible the Legislature finds and
7 declares that condition warranting rules to be promul-
8 gated as emergency rules does exist and that the
9 promulgation of the initial rules required by this section
10 should be accorded emergency status.

§20-5N-9. Liability of owner or operator.

1 Nothing in this article relieves the owner, operator or
2 permittee of a landfill of the legal duties, obligations or
3 liabilities incident to the ownership or operation of a
4 landfill, except that the performance by the director of
5 any of the activities set forth in subsection (b), section
6 three of this article relieves the operator from the
7 requirement to perform such activities.

**§20-5N-10. Procedures for handling remedial actions;
payment of costs of remedial actions to be
paid by owner or operator.**

1 When the director, in performing activities pursuant
2 to this article determines action, not set forth in
3 subsection (b), section three of this article, is necessary
4 to prevent or remediate any adverse effects of the
5 landfill he or she shall notify the permittee and make
6 and enter an order directing the permittee to take
7 corrective or remedial action. The order shall contain
8 findings of fact upon which the director based his or her
9 determination to make and enter such order. The
10 director shall fix a time limit for the completion of such
11 action.

12 The director shall cause a copy of any such order to
13 be served by registered or certified mail or by a
14 conservation officer or other law-enforcement officer
15 upon such person.

16 If the corrective action is not taken within the time
17 limit or the permittee notifies the director that it is
18 unable to comply with the order, the director may
19 expend amounts, as provided herein, to make the
20 remediation.

21 The costs reasonably incurred in any remedial action
22 taken by the director as provided in this article may be
23 paid for initially by amounts available to the director
24 in the fund created in subdivision (3), subsection (h),
25 section five-a, article five-f of this chapter or, to the
26 extent funds are available, from the fund created in
27 section seven of this article, and such sums so expended,
28 if not promptly repaid by the permittee upon request of
29 the director, may be recovered from the permittee by
30 appropriate civil action to be initiated by the attorney
31 general upon request of the director. All funds so
32 recovered shall be deposited in the fund from which said
33 funds were expended.

§20-5N-11. Right of entry.

1 The director or his or her duly authorized represen-
2 tatives have the right, upon presentation of proper
3 identification, to enter upon any property for the
4 purpose of conducting studies or exploratory work to
5 determine the existence of adverse effects of a landfill,
6 to determine the feasibility of the remediation or
7 prevention of such adverse effects and to perform the
8 activities set forth in sections three and ten of this
9 article. Such entry is as an exercise of the police power
10 of the state for the protection of public health, safety and
11 general welfare and is not an act of condemnation of
12 property or trespass thereon.

§20-5N-12. Authority of director to accept grants and gifts.

1 The director has the authority, on behalf of the
2 division of natural resources, to accept for deposit in the
3 closure cost assistance fund established in section seven
4 of this article, all gifts, grants, property, funds, security
5 interest, money, materials, labor, supplies or services
6 from the United States of America or from any
7 governmental unit or any person, firm or corporation,

8 and to carry out the terms or provisions of, or make
9 agreements with respect to, or pledge, any gifts or
10 grants, and to do any and all things necessary, useful,
11 desirable or convenient in connection with the procur-
12 ing, acceptance or disposition of gifts or grants.

§20-5N-13. Management and control of project.

1 (a) The director shall manage and control all projects,
2 and may make and enter into all contracts or agree-
3 ments necessary and incidental to the performance of
4 the duties imposed under this article.

5 (b) On or before the thirty-first day of December, one
6 thousand nine hundred ninety-two, the director, in
7 consultation with the public service commission, shall
8 complete a statewide closure plan, a comprehensive
9 analysis of the total costs of closure anticipated under
10 such statewide closure plan, and a proposal for imple-
11 mentation of closure assistance funding. The director, in
12 consultation with the public service commission, shall
13 prepare and issue a report which shall include the
14 following:

15 (1) An identification of specific landfills expected to
16 be closed during the three-year period next following
17 the completion of the plan;

18 (2) An estimate of the projected closure costs asso-
19 ciated with each such identified landfill, including such
20 engineering and technical analysis as may be necessary
21 to provide a reasonable estimate;

22 (3) The extent to which closure assistance will be
23 needed for each such specific landfill; and

24 (4) An assessment of the order of priority which
25 should be established for closure of landfills and all
26 moneys potentially available therefor.

27 The plan and report required pursuant to the provi-
28 sions of this section shall be submitted to the Legislature
29 for its approval or rejection by a concurrent resolution.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

**§20-7-1c. Conservation officers, ranks, salary schedule,
base pay, exceptions.**

1 (a) Notwithstanding any provision of this code to the
 2 contrary, the ranks within the law-enforcement section
 3 of the division of natural resources shall be colonel,
 4 lieutenant colonel, major, captain, lieutenant, sergeant,
 5 conservation officer and conservation officer-in-training.
 6 Each such officer while in uniform shall wear the
 7 insignia of rank as provided by the chief conservation
 8 officer.

9 (b) Conservation officers shall be paid the minimum
 10 annual salaries based on the following schedule:

11 ANNUAL SALARY SCHEDULE (BASE PAY)
 12 SUPERVISORY AND NONSUPERVISORY RANKS

13	Conservation Officer-In-Training (first year)	\$18,617
14	Conservation Officer (second year)	\$20,806
15	Conservation Officer (third year)	\$21,078
16	Conservation Officer (fourth year)	\$21,290
17	Conservation Officer (after fifth year)	\$22,868
18	Conservation Officer (after tenth year)	\$24,446
19	Conservation Officer (after fifteenth year)	\$25,846
20	Sergeant	\$29,469
21	Lieutenant	\$32,289
22	Captain	\$36,675
23	Major	\$38,958
24	Lieutenant Colonel	\$41,000
25	Colonel	

26 Conservation officers in service at the time the
 27 amendment to this section becomes effective shall be
 28 given credit for prior service and shall be paid such
 29 salaries as the same length of service will entitle them
 30 to receive under the provisions hereof.

31 (c) This section shall not apply to special or emer-
 32 gency conservation officers appointed under the author-
 33 ity of section one of this article.

34 (d) Nothing in this section shall prohibit other pay
 35 increases as provided for under section two, article five,
 36 chapter five of this code.

**ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE
 AUTHORITIES.**

- §20-9-1. Legislative findings and purposes.
- §20-9-2. Definitions.
- §20-9-3. Creation of county solid waste authority; appointment to board of directors; vacancies.
- §20-9-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorized; appointments to board of directors; vacancies.
- §20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.
- §20-9-6. Management of authority vested in board of directors; expenses paid by county commissions, procedure.
- §20-9-7. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.
- §20-9-8. Assistance to county or regional solid waste authorities by the solid waste management board, division of natural resources, bureau of health and the attorney general.
- §20-9-9. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the public service commission to file report.
- §20-9-10. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.
- §20-9-12. Powers, duties and responsibilities of authority generally.
- §20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules and regulations.
- §20-9-12b. Siting approval for solid waste facilities; effect on facilities with prior approval.
- §20-9-12c. Approval of new Class A facilities by solid waste authorities and county commissions, and referendum.
- §20-9-12d. Approval of conversion from Class B facility to Class A facility.
- §20-9-12e. Approval of increase in maximum allowable monthly tonnage of Class A facilities.
- §20-9-12f. Judicial review of certificate of site approval.
- §20-9-13. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

§20-9-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncon-
2 trolled collection, transportation, processing and dispo-
3 sal of domestic and commercial garbage, refuse and
4 other solid wastes in the state of West Virginia results
5 in: (1) A public nuisance and a clear and present danger
6 to the citizens of West Virginia; (2) the degradation of
7 the state's environmental quality including both surface
8 and groundwaters which provide essential and irre-
9 placeable sources of domestic and industrial water

10 supplies; (3) provides harborages and breeding places
11 for disease-carrying, injurious insects, rodents and other
12 pests injurious to the public health, safety and welfare;
13 (4) decreases public and private property values and
14 results in the blight and deterioration of the natural
15 beauty of the state; (5) has adverse social and economic
16 effects on the state and its citizens; and (6) results in the
17 waste and squandering of valuable nonrenewable
18 resources contained in such solid wastes which can be
19 recovered through proper recycling and resource-
20 recovery techniques with great social and economic
21 benefits for the state.

22 The Legislature further finds that the proper collec-
23 tion, transportation, processing, recycling and disposal
24 of solid waste is for the general welfare of the citizens
25 of the state and that the lack of proper and effective
26 solid waste collection services and disposal facilities
27 demands that the state of West Virginia and its political
28 subdivisions act promptly to secure such services and
29 facilities in both the public and private sectors.

30 The Legislature further finds that other states of
31 these United States of America have imposed stringent
32 standards for the proper collection and disposal of solid
33 waste and that the relative lack of such standards and
34 enforcement for such activities in West Virginia has
35 resulted in the importation and disposal into the state
36 of increasingly large amounts of infectious, dangerous
37 and undesirable solid waste and hazardous waste from
38 other states by persons and firms who wish to avoid the
39 costs and requirements for proper, effective and safe
40 disposal of such wastes in the states of origin.

41 The Legislature further finds that the process of
42 developing rational and sound solid waste plans at the
43 county or regional level is impeded by the proliferation
44 of siting proposals for new solid waste facilities.

45 Therefore, it is the purpose of the Legislature to
46 protect the public health and welfare by providing for
47 a comprehensive program of solid waste collection,
48 processing, recycling and disposal to be implemented by
49 state and local government in cooperation with the

50 private sector. The Legislature intends to accomplish
51 this goal by establishing county and regional solid waste
52 authorities throughout the state to develop and imple-
53 ment litter and solid waste control plans. It is the
54 further purpose of the Legislature to restrict and
55 regulate persons and firms from exploiting and endan-
56 gering the public health and welfare of the state by
57 disposing of solid wastes and other dangerous materials
58 which would not be accepted for disposal in the location
59 where such wastes or materials were generated.

60 It is further the purpose of the Legislature to reduce
61 our solid waste management problems and to meet the
62 purposes of this article by requiring county and regional
63 solid waste authorities to establish programs and plans
64 based on an integrated waste management hierarchy. In
65 order of preference, the hierarchy is as follows:

66 (1) *Source reduction.* — This involves minimizing
67 waste production and generation through product
68 design, reduction of toxic constituents of solid waste, and
69 similar activities.

70 (2) *Recycling, reuse and materials recovery.* — This
71 involves separating and recovering valuable materials
72 from the waste stream, composting food and yard waste,
73 and marketing of recyclables.

74 (3) *Landfilling.* — To the maximum extent possible,
75 this option should be reserved for nonrecyclables and
76 other materials that cannot practically be managed in
77 any other way. This is the lowest priority in the
78 hierarchy and involves the waste management option of
79 last resort.

80 The Legislature further finds that the potential
81 impacts of proposed commercial solid waste facilities
82 may have a deleterious and debilitating impact upon the
83 transportation network, property values, economic
84 growth, environmental quality, other land uses and the
85 public health and welfare in affected communities. The
86 Legislature also finds that the siting of such facilities
87 is not being adequately addressed to protect these
88 compelling interests of counties and local communities.

89 The Legislature further finds that affected citizens
90 and local governments often look to state environmental
91 regulatory agencies to resolve local land use conflicts
92 engendered by these proposed facilities. The Legislature
93 also finds that such local land use conflicts are most
94 effectively resolved in a local governmental forum
95 where citizens can most easily participate in the
96 decision-making process and the land use values of local
97 communities most effectively identified and incorpo-
98 rated into a comprehensive policy which reflects the
99 values and goals of those communities.

100 Therefore, it is the purpose of the Legislature to
101 enable local citizens to resolve the land-use conflicts
102 which may be created by proposed commercial solid
103 waste facilities through the existing forum of county or
104 regional solid waste authorities.

§20-9-2. Definitions.

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

3 (a) "Approved solid waste facility" means a commer-
4 cial solid waste facility or practice which has a valid
5 permit or compliance order under article five-f of this
6 chapter.

7 (b) "Commercial solid waste facility" means any solid
8 waste facility which accepts solid waste generated by
9 sources other than the owner or operator of the facility
10 and shall not include an approved solid waste facility
11 owned and operated by a person for the sole purpose of
12 disposing of solid wastes created by that person or that
13 person and another person on a cost-sharing or nonprofit
14 basis and shall not include the legitimate reuse and
15 recycling of materials for structural fill, road base, mine
16 reclamation, and similar applications.

17 (c) "Class A facility" means a commercial solid waste
18 facility which handles an aggregate of between ten and
19 thirty thousand tons of solid waste per month. "Class A
20 facility" shall include two or more Class B solid waste
21 landfills owned or operated by the same person in the
22 same county, if the aggregate tons of solid waste

23 handled per month by such landfills exceeds nine
24 thousand nine hundred ninety-nine tons of solid waste
25 per month.

26 (d) "Class B facility" means a commercial solid waste
27 facility which receives or is expected to receive an
28 average daily quantity of mixed solid waste equal to or
29 exceeding one hundred tons each working day, or serves
30 or is expected to serve a population equal to or
31 exceeding forty thousand persons, but which does not
32 receive solid waste exceeding an aggregate of ten
33 thousand tons per month. Class B facilities do not
34 include construction/demolition facilities: *Provided*,
35 That the definition of Class B facility may include such
36 reasonable subdivisions or subclassifications as the
37 director may establish by legislative rule proposed in
38 accordance with the provisions of chapter twenty-nine-
39 a of this code.

40 (e) "Compliance order" means an administrative
41 order issued pursuant to section five, article five-f of this
42 chapter authorizing a solid waste facility to operate
43 without a solid waste permit.

44 (f) "Open dump" means any solid waste disposal
45 which does not have a permit under this article, or is
46 in violation of state law, or where solid waste is disposed
47 in a manner that does not protect the environment.

48 (g) "Person" means any industrial user, public or
49 private corporation, institution, association, firm or
50 company organized or existing under the laws of this or
51 any other state or country; the state of West Virginia;
52 governmental agency, including federal facilities;
53 political subdivision; county commission; municipal
54 corporation; industry; sanitary district; public service
55 district; drainage district; soil conservation district;
56 watershed improvement district; partnership; trust;
57 estate; person or individual; group of persons or
58 individuals acting individually or as a group; or any
59 legal entity whatever.

60 (h) "Sludge" means any solid, semisolid, residue or
61 precipitate, separated from or created by a municipal,
62 commercial or industrial waste treatment plant, water

63 supply treatment plant or air pollution control facility
64 or any other such waste having similar origin.

65 (i) "Solid waste" means any garbage, paper, litter,
66 refuse, cans, bottles, waste processed for the express
67 purpose of incineration, sludge from a waste treatment
68 plant, water supply treatment plant or air pollution
69 control facility, other discarded material, including
70 offensive or unsightly matter, solid, liquid, semisolid or
71 contained liquid or gaseous material resulting from
72 industrial, commercial, mining or community activities
73 but does not include solid or dissolved material in
74 sewage, or solid or dissolved materials in irrigation
75 return flows or industrial discharges which are point
76 sources and have permits under article five-a of this
77 chapter, or source, special nuclear or byproduct mate-
78 rial as defined by the Atomic Energy Act of 1954, as
79 amended, including any nuclear or byproduct material
80 considered by federal standards to be below regulatory
81 concern, or a hazardous waste either identified or listed
82 under article five-e of this chapter, or refuse, slurry,
83 overburden or other waste or material resulting from
84 coal-fired electric power or steam generation, the
85 exploration, development, production, storage and
86 recovery of coal, oil and gas, and other mineral
87 resources placed or disposed of at a facility which is
88 regulated under chapter twenty-two, twenty-two-a or
89 twenty-two-b of this code, so long as such placement or
90 disposal is in conformance with a permit issued
91 pursuant to said chapters. "Solid waste" shall also not
92 include materials which are recycled by being used or
93 reused in an industrial process to make a product, as
94 effective substitutes for commercial products, or are
95 returned to the original process as a substitute for raw
96 material feedstock.

97 (j) "Solid waste disposal" means the practice of
98 disposing of solid waste including placing, depositing,
99 dumping or throwing or causing to be placed, deposited,
100 dumped or thrown any solid waste.

101 (k) "Solid waste disposal shed" means the geographi-
102 cal area which the solid waste management board
103 designates and files in the state register pursuant to

104 section eight, article twenty-six, chapter sixteen of this
105 code.

106 (l) "Solid waste facility" means any system, facility,
107 land, contiguous land, improvements on the land,
108 structures or other appurtenances or methods used for
109 processing, recycling or disposing of solid waste,
110 including landfills, transfer stations, resource-recovery
111 facilities and other such facilities not herein specified.
112 Such facility shall be deemed to be situated, for
113 purposes of this article, in the county where the majority
114 of the spatial area of such facility is located.

115 (m) "Energy recovery incinerator" means any solid
116 waste facility at which solid wastes are incinerated with
117 the intention of using the resulting energy for the
118 generation of steam, electricity, or any other use not
119 specified herein.

120 (n) "Incineration technologies" means any technology
121 that uses controlled flame combustion to thermally
122 break down solid waste, including refuse-derived fuel,
123 to an ash residue that contains little or no combustible
124 materials, regardless of whether the purpose is process-
125 ing, disposal, electric or steam generation, or any other
126 method by which solid waste is incinerated.

127 (o) "Incinerator" means an enclosed device using
128 controlled flame combustion to thermally break down
129 solid waste, including refuse-derived fuel, to an ash
130 residue that contains little or no combustible materials.

131 (p) "Materials recovery facility" means any solid
132 waste facility at which solid wastes are manually or
133 mechanically shredded or separated so that materials
134 are recovered from the general waste stream for
135 purposes of reuse and recycling.

**§20-9-3. Creation of county solid waste authority; ap-
pointment to board of directors; vacancies.**

1 (a) Each and every county solid waste authority
2 authorized and created by the county commission of any
3 county pursuant to former article sixteen, chapter seven
4 of this code is hereby abolished on and after the first
5 day of January, one thousand nine hundred eighty-nine.

6 On and after the first day of January, one thousand nine
7 hundred eighty-nine, a new county solid waste authority
8 is hereby created and established as a public agency in
9 every county of the state and shall be the successor to
10 each county solid waste authority which may have been
11 created by the county commission: *Provided*, That such
12 county solid waste authorities shall not be established or
13 shall cease to exist, as the case may be, in those counties
14 which establish a regional solid waste authority pursu-
15 ant to section four of this article. The solid waste
16 management board may require a county solid waste
17 authority to cooperate and participate in programs with
18 other authorities if the need arises.

19 (b) The authority board of directors shall be com-
20 prised of five members who shall be appointed as
21 follows: One by the director of the division of natural
22 resources, two by the county commission, one by the
23 board of supervisors for the soil conservation district in
24 which the county is situated and one by the chairman
25 of the public service commission. The members of the
26 board shall be appointed for terms of four years for
27 which the initial terms shall start on the first day of
28 July, one thousand nine hundred eighty-eight: *Provided*,
29 That the first two members appointed by the county
30 commission shall be appointed to initial terms of two
31 and four years, respectively, and for terms of four years
32 for each appointment thereafter. The members of the
33 board shall receive no compensation for their service
34 thereon but shall be reimbursed for their actual
35 expenses incurred in the discharge of their duties.
36 Vacancies in the office of member of the board of
37 directors shall be filled for the balance of the remaining
38 term by the appropriate appointing authority within
39 sixty days after such vacancy occurs. No member who
40 has any financial interest in the collection, transporta-
41 tion, processing, recycling or the disposal of refuse,
42 garbage, solid waste or hazardous waste shall vote or act
43 on any matter which shall directly affect the member's
44 personal interests.

**§20-9-4. Establishment of regional solid waste authorities
authorized; successor to county solid waste**

authorities; appointments to board of directors; vacancies.

1 (a) On and after the first day of January, one
2 thousand nine hundred eighty-nine, any two or more
3 counties within the same solid waste shed and with the
4 approval of the solid waste management board, may
5 establish a regional solid waste authority. Such a
6 regional solid waste authority shall be a public agency
7 and shall be the successor to any county solid waste
8 authority existing on the date of said approval by the
9 solid waste management board. The solid waste man-
10 agement board may require a county authority to
11 cooperate and participate in programs with other county
12 and regional authorities if the need arises.

13 (b) The board of directors of the regional solid waste
14 authority shall be comprised and appointed as follows:
15 One by the director of the division of natural resources,
16 two by the county commission of each county participat-
17 ing therein, one appointed by the board of supervisors
18 for each soil conservation district in which a county of
19 the region is situated, one by the chairman of the public
20 service commission and two municipal representatives
21 from each county having one or more participating
22 municipality to be selected by the mayors of the
23 participating municipality from each such county. The
24 members of the board shall be appointed for terms of
25 four years for which the initial terms shall start on the
26 first day of July, one thousand nine hundred eighty-
27 eight: *Provided*, That the members appointed by the
28 county commission shall be appointed to initial terms of
29 two and four years, respectively, and to terms of four
30 years after the expiration of each such initial term. The
31 members of the board shall receive no compensation for
32 their service thereon but shall be reimbursed their
33 actual expenses incurred in the discharge of their
34 duties. Vacancies in the office of member of the board
35 of directors shall be filled for the balance of the
36 remaining term by the appropriate appointing authority
37 within sixty days after such vacancy occurs. No member
38 who has any financial interest in the collection, trans-
39 portation, processing, recycling or the disposal of refuse,

40 garbage, solid waste or hazardous waste shall vote or act
41 on any matter which shall directly affect the member's
42 personal interests.

§20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.

1 Notwithstanding any provision of this article, any
2 county commission which, on the first day of July, one
3 thousand nine hundred eighty-eight, held a valid permit
4 or compliance order for a commercial solid waste
5 transfer station issued pursuant to article five-f of this
6 chapter, may elect to assume all the duties, powers,
7 obligations, rights, title and interests vested in the
8 county solid waste authority by this chapter. A county
9 commission may, prior to the first day of October, one
10 thousand nine hundred eighty-nine, exercise this right
11 of election by entering an order declaring such election
12 and serving a certified copy thereof upon the solid waste
13 management board. Thirty days after entry of said
14 order by the county commission the county solid waste
15 authority shall cease to exist and the county commission
16 shall assume all the duties, powers, obligations, rights,
17 title and interest vested in the former authority
18 pursuant to this chapter.

§20-9-6. Management of authority vested in board of directors; expenses paid by county commissions, procedure.

1 (a) The management and control of the authority, its
2 property, operations and affairs of any nature shall be
3 vested in and governed by the board of directors.

4 (b) The expenses of any county solid waste authority
5 incurred for necessary secretarial and clerical assist-
6 ance, office supplies and general administrative ex-
7 penses, in the development of the litter and solid waste
8 control plan under section seven of this article and to
9 provide solid waste collection and disposal services
10 under section nine of this article shall be paid by the
11 county commission from the general funds in the county
12 treasury to the extent that such expenses are not paid
13 by fees, grants and funds received by the authority from

14 other sources. The county commission shall have the
15 authority to determine the amount to be allocated
16 annually to the authority.

17 (c) The expenses of any regional solid waste authority
18 incurred for necessary secretarial and clerical assist-
19 ance, office supplies and general administrative ex-
20 penses, or for the development of the litter and solid
21 waste control plan under section seven of this article, or
22 to provide solid waste collection and disposal services
23 under section eight of this article shall be paid by the
24 county commissions of each participating county from
25 general funds in the county treasury to the extent that
26 such expenses are not paid by fees, grants and funds
27 from other sources received by the authority. Each
28 county participating in the regional solid waste author-
29 ity shall pay a pro rata share of such expenses based
30 upon the population of said county in the most recent
31 decennial census conducted by the United States Census
32 Bureau. Prior to any county becoming liable for any
33 expenses of the authority under this subsection, the
34 authority's annual budget must first be approved by the
35 solid waste management board.

36 (d) An organizational meeting of each board of
37 directors shall be held as soon as practicable at which
38 time a chairman and vice chairman shall be elected
39 from among the members of the board to serve a term
40 of one year after which such officers shall be elected
41 annually. The board of directors shall also appoint a
42 secretary-treasurer, who need not be a member of the
43 board of directors, and who shall give bond in a sum
44 determined adequate to protect the interests of the
45 authority by the director of the division of natural
46 resources. The board shall meet at such times and places
47 as it or the chairman may determine. It shall be the duty
48 of the chairman to call a meeting of the board upon the
49 written request of a majority of the members thereof.
50 The board shall maintain an accurate record and
51 minutes of all its proceedings and shall be subject to the
52 provisions of the freedom of information act and the
53 open governmental proceedings. A majority of the board
54 shall constitute a quorum for the transaction of business.

§20-9-7. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

1 (a) Each county and regional solid waste authority
2 shall be required to develop a comprehensive litter and
3 solid waste control plan for its geographic area and to
4 submit said plan to the solid waste management board
5 on or before the first day of July, one thousand nine
6 hundred ninety-one. Each authority shall submit a draft
7 litter and solid waste control plan to the solid waste
8 management board by the thirty-first day of March, one
9 thousand nine hundred ninety-one. The comments
10 received by the county or regional solid waste authority
11 at public hearings, two of which shall be required, shall
12 be considered in developing the final plan.

13 (b) Each litter and solid waste control plan shall
14 include provisions for:

15 (1) An assessment of litter and solid waste problems
16 in the county;

17 (2) The establishment of solid waste collection and
18 disposal services for all county residents at their
19 residences, where practicable, or the use of refuse
20 collection stations at disposal access points in areas
21 where residential collection is not practicable. In
22 developing such collection services, primacy shall be
23 given to private collection services currently operating
24 with a certificate of convenience and necessity from the
25 motor carrier division of the public service commission;

26 (3) The evaluation of the feasibility of requiring or
27 encouraging the separation of residential or commercial
28 solid waste at its source prior to collection for the
29 purpose of facilitating the efficient and effective
30 recycling of such wastes and the reduction of those
31 wastes which must be disposed of in landfills or by other
32 nonrecycling means;

33 (4) The establishment of an appropriate mandatory
34 garbage disposal program which shall include methods
35 whereby residents must prove either: (i) Payment of

36 garbage collection fee; or (ii) proper disposal at an
37 approved solid waste facility or in an otherwise lawful
38 manner;

39 (5) A recommendation for the siting of one or more
40 properly permitted public or private solid waste
41 facilities, whether existing or proposed, to serve the
42 solid waste needs of the county or the region, as the case
43 may be, consistent with the comprehensive county plan
44 prepared by the county planning commission;

45 (6) A timetable for the implementation of said plan;

46 (7) A program for the cleanup, reclamation and
47 stabilization of any open and unpermitted dumps;

48 (8) The coordination of the plan with the related solid
49 waste collection and disposal services of municipalities
50 and, if applicable, other counties;

51 (9) A program to enlist the voluntary assistance of
52 private industry and civic groups in volunteer cleanup
53 efforts to the maximum practicable extent;

54 (10) Innovative incentives to promote recycling
55 efforts;

56 (11) A program to identify the disposal of solid wastes
57 which are not generated by sources situated within the
58 boundaries of the county or the region established
59 pursuant to this section;

60 (12) Coordination with the division of highways and
61 other local, state and federal agencies in the control and
62 removal of litter and the cleanup of open and unpermit-
63 ted dumps;

64 (13) Establishment of a program to encourage and
65 utilize those individuals incarcerated in the county jail
66 and those adults and juveniles sentenced to probation for
67 the purposes of litter pickup; and

68 (14) Provision for the safe and sanitary disposal of all
69 refuse from commercial and industrial sources within
70 the county or region, as the case may be, including
71 refuse from commercial and industrial sources, but
72 excluding refuse from sources owned or operated by the

73 state or federal governments.

74 (c) The solid waste management board shall establish
75 advisory rules to guide and assist the counties in the
76 development of the plans required by this section.

77 (d) Each plan prepared under this section shall be
78 subject to approval by the solid waste management
79 board. Any plan rejected by the solid waste manage-
80 ment board shall be returned to the regional or county
81 solid waste authority with a statement of the insufficien-
82 cies in such plan. The authority shall revise the plan to
83 eliminate the insufficiencies and submit it to the
84 director within ninety days.

85 (e) The solid waste management board shall develop
86 a litter and solid waste control plan for any county or
87 regional solid waste authority which fails to submit such
88 a plan on or before the first day of July, one thousand
89 nine hundred ninety-two: *Provided*, That in preparing
90 such plans the director may determine in his discretion
91 whether to prepare a regional or county based plan for
92 those counties which fail to complete such a plan.

**§20-9-8. Assistance to county or regional solid waste
authorities by the solid waste management
board, division of natural resources, bureau
of health and the attorney general.**

1 (a) The division of natural resources, the solid waste
2 management board, and the bureau of health shall
3 provide technical assistance to each county and regional
4 solid waste authority as reasonable and practicable for
5 the purposes of this article within the existing resources
6 and appropriations of each agency available for such
7 purposes. The attorney general shall provide legal
8 counsel and representation to each county and regional
9 solid waste authority for the purposes of this article
10 within the existing resources and appropriations
11 available for such purposes, or with the written
12 approval of the attorney general, said authority may
13 employ counsel to represent it.

14 (b) The solid waste management board shall provide
15 assistance to the county or regional solid waste author-

16 ities, municipalities and other interested parties in
17 identifying and securing markets for recyclables.

§20-9-9. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the public service commission to file report.

1 (a) Each person occupying a residence or operating
2 a business establishment in this state shall either:

3 (1) Subscribe to and use a solid waste collection
4 service and pay the fees established therefor; or

5 (2) Provide proper proof that said person properly
6 disposes of solid waste at approved solid waste facilities
7 or in any other lawful manner. The director of the
8 division of natural resources shall promulgate rules
9 pursuant to chapter twenty-nine-a of this code regarding
10 an approved method or methods of supplying such
11 proper proof. A civil penalty of one hundred fifty dollars
12 shall be assessed to the person not receiving solid waste
13 collection services in addition to the unpaid fees for
14 every year that a fee is not paid.

15 (b) The solid waste management board in consulta-
16 tion and collaboration with the public service commis-
17 sion shall prepare and submit, no later than the first day
18 of October, one thousand nine hundred ninety-two, a
19 report concerning the feasibility of implementing a
20 mandatory fee for the collection and disposal of solid
21 waste in West Virginia: *Provided*, That such plan shall
22 consider such factors as affordability, impact on open
23 dumping and other relevant matters. The report shall
24 be submitted to the governor, the president of the Senate
25 and the speaker of the House of Delegates.

26 (c) The public service commission in consultation and
27 collaboration with the division of human services shall
28 prepare and submit, no later than the first day of
29 October, one thousand nine hundred ninety-two, a report
30 concerning the feasibility of reducing solid waste
31 collection fees to individuals who directly pay such fees
32 and who receive public assistance from state or federal
33 government agencies and are therefore limited in their

34 ability to afford to pay for solid waste disposal. This
35 report shall consider the individual's health and income
36 maintenance and other relevant matters. This report
37 shall also include recommended procedures for individ-
38 uals or households to qualify for and avail themselves
39 of a reduction in fees. This report shall be submitted to
40 the governor, the president of the Senate and the
41 speaker of the House of Delegates.

§20-9-10. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.

1 Upon approval of the litter and solid waste control
2 plan by the solid waste management board, the county
3 or regional solid waste authority may acquire, by
4 purchase, lease, gift or otherwise, land for the establish-
5 ment of solid waste facilities and is authorized to
6 construct, operate, maintain and contract for the
7 operation of such facilities. The authority may pay for
8 lease or acquisition of such lands and the construction,
9 operation and maintenance of such solid waste facilities
10 from such fees, grants, financing by the solid waste
11 program of the division of natural resources or funds
12 from other sources as may be available to the authority.
13 The authority may prohibit the deposit of any solid
14 waste in such solid waste facilities owned, leased or
15 operated by the authority which have originated from
16 sources outside the geographic limits of the county or
17 region. The authority board of directors shall establish
18 and charge reasonable fees for the use of such facilities
19 operated by the authority.

§20-9-12. Powers, duties and responsibilities of authority generally.

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

- 4 (1) Sue and be sued, plead and be impleaded and have
5 and use a common seal.
- 6 (2) To conduct its business in the name of the county

7 solid waste authority or the regional solid waste
8 authority, as the case may be, in the names of the
9 appropriate counties.

10 (3) The authority board of directors shall promulgate
11 rules and regulations to implement the provisions of
12 sections eight and nine of this article and is authorized
13 to promulgate rules and regulations for purposes of this
14 article and the general operation and administration of
15 authority affairs.

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

19 (5) To promulgate such rules and regulations as may
20 be proper and necessary to implement the purposes and
21 duties of this article.

22 (6) Acquire, construct, reconstruct, enlarge, improve,
23 furnish, equip, maintain, repair, operate, lease or rent
24 to, or contract for the operation by any person, partner-
25 ship, corporation or governmental agency, any solid
26 waste facility or collection, transportation and process-
27 ing facilities related thereto.

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

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

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

42 (10) Make and enter all contracts, leases and agree-
43 ments and to execute all instruments necessary or
44 incidental to the performance of its duties and powers.

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

49 (12) Receive and accept from any source such grants,
50 fees, real and personal property, contributions and funds
51 of any nature as may become available to the authority
52 in order to carry out the purposes of this article.

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

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

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

66 (16) Enforce the hours of operation of a solid waste
67 facility and the mandatory disposal provision in section
68 nine of this article by referring violations to the division
69 of natural resources or the appropriate law-enforcement
70 authorities.

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

74 All rules and regulations promulgated by the author-
75 ity pursuant to this article are exempt from the
76 provisions of article three, chapter twenty-nine-a of this
77 code.

**§20-9-12a. Commercial solid waste facility siting plan;
facilities subject to plan; criteria; approval
by solid waste management board; effect
on facility siting; public hearings; rules and
regulations.**

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

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

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

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

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

24 (b) The county or regional solid waste authority shall
25 develop the siting plan authorized by this section based
26 upon the consideration of one or more of the following
27 criteria: The efficient disposal of solid waste, including
28 all solid waste generated within the county or region,
29 economic development, transportation facilities, prop-
30 erty values, groundwater and surface waters, geological
31 and hydrological conditions, aesthetic and environmen-
32 tal quality, historic and cultural resources, the present
33 or potential land uses for residential, commercial,
34 recreational, environmental conservation or industrial
35 purposes and the public health, welfare and conven-
36 ience. The plan shall be developed based upon informa-
37 tion readily available. Due to the limited funds and time
38 available the plan need not be an exhaustive and
39 technically detailed analysis of the criteria set forth
40 above. Unless the information readily available clearly

41 establishes that an area is suitable for the location of a
42 commercial solid waste facility or not suitable for such
43 a facility, the area shall be designated as an area in
44 which the location of a commercial solid waste facility
45 is tentatively prohibited. Any person making an
46 application for the redesignation of a tentatively
47 prohibited area shall make whatever examination is
48 necessary and submit specific detailed information in
49 order to meet the provision established in subsection (g)
50 of this section.

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

64 (d) The siting plan shall take effect upon approval by
65 the solid waste management board pursuant to the rules
66 and regulations promulgated for this purpose. Upon
67 approval of said plan, the solid waste management
68 board shall transmit a copy thereof to the director of the
69 division of natural resources and to the clerk of the
70 county commission of the county encompassed by said
71 plan which county clerk shall file the plan in an
72 appropriate manner and shall make the plan available
73 for inspection by the public.

74 (e) Effective upon approval of the siting plan by the
75 solid waste management board, it shall be unlawful for
76 any person to establish, construct, install or operate a
77 commercial solid waste facility at a site not authorized
78 by the siting plan: *Provided*, That an existing commer-
79 cial solid waste facility which, on the eighth day of
80 April, one thousand nine hundred eighty-nine, held a
81 valid solid waste permit or compliance order issued by

82 the division of natural resources pursuant to article five-
83 f of this chapter may continue to operate but may not
84 expand the spatial land area of the said facility beyond
85 that authorized by said solid waste permit or compliance
86 order, and may not increase the aggregate monthly solid
87 waste capacity in excess of ten thousand tons monthly
88 unless such a facility is authorized by the siting plan.

89 (f) The county or regional solid waste authority may,
90 from time to time, amend the siting plan in a manner
91 consistent with the requirements of this section for
92 completing the initial siting plan and the rules and
93 regulations promulgated by the solid waste manage-
94 ment board for the purpose of such amendments.

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

114 (h) The solid waste management board shall prepare
115 and adopt a siting plan for any county or regional solid
116 waste authority which does not complete and file with
117 the said state authority such a siting plan in compliance
118 with the provisions of this section and the rules and
119 regulations promulgated thereunder. Any siting plan
120 adopted by the solid waste management board pursuant
121 to this subsection shall comply with the provisions of this
122 section, and the rules and regulations promulgated

123 thereunder, and shall have the same effect as a siting
124 plan prepared by a county or regional solid waste
125 authority and approved by the solid waste management
126 board.

127 (i) The siting plan adopted pursuant to this section
128 shall incorporate the provisions of the litter and solid
129 waste control plan, as approved by the solid waste
130 management board pursuant to section seven of this
131 article, regarding collection and disposal of solid waste
132 and the requirements, if any, for additional commercial
133 solid waste facility capacity.

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

**§20-9-12b. Siting approval for solid waste facilities; effect
on facilities with prior approval.**

1 (a) It is the intent of the Legislature that all commer-
2 cial solid waste facilities operating in this state must
3 receive site approval at the local level. Notwithstanding
4 said intent, facilities which obtained such approval from
5 either a county or regional solid waste authority, or from
6 a county commission, under any prior enactment in this
7 code, and facilities which were otherwise exempted
8 from local site approval under any prior enactment in
9 this code, shall be deemed to have satisfied such
10 requirement. All other facilities, including facilities
11 which received such local approval but which seek to
12 expand spatial area or to convert from a Class B facility
13 to a Class A facility, shall obtain such approval only in
14 the manner specified in sections twelve-c, twelve-d and
15 twelve-e of this article.

16 (b) In considering whether to issue or deny the
17 certificate of site approval as specified in sections
18 twelve-c, twelve-d and twelve-e of this article, the county
19 or regional solid waste authority or county commission
20 shall base its determination upon the following criteria:
21 The efficient disposal of solid waste generated within
22 the county or region, economic development, transpor-

23 tation facilities, property values, groundwater and
24 surface waters, geological and hydrological conditions,
25 aesthetic and environmental quality, historic or cultural
26 resources, the present or potential land uses for
27 residential, commercial, recreational, industrial or
28 environmental conservation purposes and the public
29 health, welfare and convenience.

30 (c) The county or regional solid waste authority, or
31 county commission, as appropriate, shall complete
32 findings of fact and conclusions relating to the criteria
33 authorized in subsection (b) hereof which support its
34 decision to issue or deny a certificate of site approval.

**§20-9-12c. Approval of new Class A facilities by solid
waste authorities and county commissions,
and referendum.**

1 (a) Except as provided below with respect to Class B
2 facilities, from and after the effective date of this
3 section, in order to obtain approval to operate a new
4 Class A facility, an applicant shall:

5 (1) File an application for a certificate of need with,
6 and obtain approval from, the public service commission
7 in the manner specified in section one-c, article two,
8 chapter twenty-four of this code and in section five-c,
9 article five-f of this chapter;

10 (2) File an application for a certificate of site approval
11 with, and obtain approval from, the county or regional
12 solid waste authority for the county or counties in which
13 the facility is proposed. Such application shall be
14 submitted on forms prescribed by the solid waste
15 management board. The county or regional solid waste
16 authority shall act on such application and either grant
17 or deny it within thirty days after the application is
18 determined by the county or regional solid waste
19 authority to be filed in a completed manner; and

20 (3) File an application for approval of operation as a
21 Class A facility with, and obtain approval from, the
22 county commission for each county in which the facility
23 would be located. Each county commission shall act on
24 such application and either grant or deny it within

25 thirty days after the application is determined by the
26 county commission to be filed in a completed manner.
27 The county commission shall hold at least one public
28 hearing and shall solicit public comment prior to acting
29 on the application. The county commission shall provide
30 notice of such public hearing with publication of a Class
31 II legal advertisement in a qualified newspaper serving
32 the county where the proposed site is situated.

33 (b) If applications are approved pursuant to subdivi-
34 sions (1), (2) and (3), subsection (a) of this section, each
35 county commission shall order that a referendum be
36 placed upon the ballot not less than fifty-six days before
37 the next primary, general or other countywide election.

38 (1) Such referendum will be to determine whether it
39 is the will of the voters of the county that a Class A
40 facility be located in the county. Any such election shall
41 be held at the voting precincts established for holding
42 primary or general elections. All of the provisions of the
43 general election laws, when not in conflict with the
44 provisions of this article, shall apply to voting and
45 elections hereunder, insofar as practicable.

46 (2) The ballot, or the ballot labels where voting
47 machines are used, shall have printed thereon substan-
48 tially the following:

49 "Shall a solid waste facility handling of between ten
50 and thirty thousand tons of solid waste per month be
51 located within _____ County, West Virginia?"

52 For the facility

53 Against the facility

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

56 (3) If a majority of the legal votes cast upon the
57 question be against the siting of a Class A facility within
58 the county, then the county commission, the county or
59 regional solid waste authority and the division of natural
60 resources shall not proceed any further with the
61 application. If a majority of the legal votes cast upon the
62 question be for siting a Class A facility within the

63 county, then the application process as set forth in this
64 article and article five-f of this chapter may proceed:
65 *Provided*, That such vote shall not be binding on or
66 require the division of natural resources to issue a
67 permit. If the majority of the legal votes cast be against
68 the question, the question may be submitted to a vote
69 at any subsequent election in the manner herein
70 specified: *Provided, however*, That the question may not
71 be resubmitted to a vote until two years after the date
72 of the previous referendum.

73 (c) After the effective date of this section, the public
74 referendum established in this section shall be manda-
75 tory for every new Class A facility applicant which will
76 accept between ten and thirty thousand tons of solid
77 waste per month. A new Class A facility applicant
78 means any applicant for a state solid waste permit for
79 a Class A facility who had not, prior to the effective date
80 of this subsection, obtained a certificate of site approval
81 for a Class A facility from the county or regional solid
82 waste authority to establish, construct or operate a Class
83 A facility, and also means any applicant for a state solid
84 waste permit for a Class A facility if a legal challenge
85 to the issuance of a certificate of site approval by the
86 county or regional solid waste authority or the county
87 commission approval for the proposed Class A facility
88 was pending in any state or federal court as of the first
89 day of September, one thousand nine hundred ninety-
90 one.

**§20-9-12d. Approval of conversion from Class B facility
to Class A facility.**

1 (a) From and after the effective date of this article,
2 in order to obtain approval to operate as a Class A
3 facility at a site previously permitted to operate as a
4 Class B facility, an applicant shall:

5 (1) File an application for a certificate of need with,
6 and obtain approval from, the public service commission
7 in the manner specified in section one-c, article two,
8 chapter twenty-four, and in section five-c, article five-
9 f of this chapter;

10 (2) File an application for a certificate of site approval

11 with, and obtain approval from, the county or regional
12 solid waste authority for the county or counties in which
13 the facility is located or proposed. Such application shall
14 be submitted on forms prescribed by the solid waste
15 management board. The county or regional solid waste
16 authority shall act on such application and either grant
17 or deny it within thirty days after the application is
18 determined by the county or regional solid waste
19 authority to be filed in a completed manner; and

20 (3) File an application for approval of operation as a
21 Class A facility with, and obtain approval from, the
22 county commission for each county in which the facility
23 is or would be located. Each county commission shall act
24 on such application and either grant or deny it within
25 thirty days after the application is determined by the
26 county commission to be filed in a completed manner.
27 The county commission shall hold at least one public
28 hearing and shall solicit public comment prior to acting
29 on the application. The county commission shall provide
30 notice of such public hearing with publication of a Class
31 II legal advertisement in a qualified newspaper serving
32 the county where the proposed site is situated.

33 (b) If applications are approved pursuant to subdivi-
34 sions (1), (2) and (3), subsection (a) of this section, the
35 county or regional solid waste authority shall publish a
36 Class II legal advertisement in compliance with the
37 provisions of article three, chapter fifty-nine of this code,
38 in a newspaper of general circulation in the counties
39 wherein the solid waste facility is located. Upon the
40 written petition of registered voters residing in the
41 county equal to not less than fifteen percent of the
42 number of votes cast within the county for governor at
43 the preceding gubernatorial election, which petition
44 shall be filed with the county commission within sixty
45 days after the last date of publication of the notice
46 provided in this section, the county commission shall,
47 upon verification of the required number of signatures
48 on the petition, and not less than fifty-six days before
49 the election, order a referendum be placed upon the
50 ballot. Any referendum conducted pursuant to this
51 section shall be held at the next primary, general or

52 other countywide election.

53 (1) Such referendum will be to determine whether it
54 is the will of the voters of the county that the Class B
55 facility be converted to a Class A facility. Any election
56 at which such question of locating a solid waste facility
57 is voted upon shall be held at the voting precincts
58 established for holding primary or general elections. All
59 of the provisions of the general election laws, when not
60 in conflict with the provisions of this article, shall apply
61 to voting and elections hereunder, insofar as practicable.
62 The secretary of state shall prescribe the form of the
63 petition which shall include the printed name, address
64 and date of birth of each person whose signature
65 appears on the petition.

66 (2) The ballot, or the ballot labels where voting
67 machines are used, shall have printed thereon substan-
68 tially the following:

69 "Shall the _____ solid waste facility, located
70 within _____ County, West Virginia, be permit-
71 ted to handle between ten and thirty thousand tons of
72 solid waste per month?

73 For the facility

74 Against the facility

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

77 (3) If a majority of the legal votes cast upon the
78 question be against the facility, then the county
79 commission, the county or regional solid waste authority
80 and the division of natural resources shall not proceed
81 any further with the application. If a majority of the
82 legal votes cast upon the question be for the facility, then
83 the application process as set forth in this article and
84 article five-f of this chapter may proceed: *Provided*,
85 That such vote shall not be binding on or require the
86 division of natural resources to modify the permit. If the
87 majority of the legal votes cast be against the question,
88 the question may be submitted to a vote at any
89 subsequent election in the manner herein specified:
90 *Provided, however*, That the question may not be

91 resubmitted to a vote until two years after the date of
92 the previous referendum.

**§20-9-12e. Approval of increase in maximum allowable
monthly tonnage of Class A facilities.**

1 (a) From and after the effective date of this article,
2 in order to increase the maximum allowable monthly
3 tonnage handled at a Class A facility by an aggregate
4 amount of more than ten percent of the facility's permit
5 tonnage limitation within a two-year period, the
6 permittee shall:

7 (1) File an application for approval with, and obtain
8 approval from, the county or regional solid waste
9 authority for the county or counties in which the facility
10 is located. Such application shall be a modification of the
11 Class A facility's certificate of site approval. The county
12 or regional solid waste authority shall act upon such
13 application and either grant or deny it within thirty
14 days after the application is determined by the county
15 or regional solid waste authority to be filed in a
16 completed manner;

17 (2) File an application for approval with, and obtain
18 approval from, the public service commission to modify
19 the certificate of need in the manner set forth in section
20 one-c, article two, chapter twenty-four of this code; and

21 (3) File an application for a major permit modifica-
22 tion with the division of natural resources.

23 (b) If applications are approved pursuant to subdivi-
24 sions (1) and (2), subsection (a) of this section and an
25 application has been filed pursuant to subdivision (3),
26 subsection (a) of this section, the county or regional solid
27 waste authority shall publish a Class II legal advertise-
28 ment in compliance with the provisions of article three,
29 chapter fifty-nine of this code, in a newspaper of general
30 circulation in the counties wherein the solid waste
31 facility is located. Upon the written petition of regis-
32 tered voters residing in the county equal to not less than
33 fifteen percent of the number of votes cast within the
34 county for governor at the preceding gubernatorial
35 election, which petition shall be filed with the county

36 commission within sixty days after the last date of
37 publication of the notice provided in this section, the
38 county commission shall, upon verification of the
39 required number of signatures on the petition, and not
40 less than fifty-six days before the election, order a
41 referendum be placed upon the ballot. Any referendum
42 conducted pursuant to this section shall be held at the
43 next primary, general or other countywide election.

44 (1) Such referendum will be to determine whether it
45 is the will of the voters of the county that the Class A
46 facility applicant be permitted to increase the maximum
47 tonnage allowed to be handled at the facility not to
48 exceed thirty thousand tons per month. Any election at
49 which such question is voted upon shall be held at the
50 voting precincts established for holding primary or
51 general elections. All of the provisions of the general
52 election laws, when not in conflict with the provisions
53 of this article, shall apply to voting and elections
54 hereunder, insofar as practicable. The secretary of state
55 shall prescribe the form of the petition which shall
56 include the printed name, address and date of birth of
57 each person whose signature appears on the petition.

58 (2) The ballot, or the ballot labels where voting
59 machines are used, shall have printed thereon substan-
60 tially the following:

61 "Shall the _____ solid waste facility located
62 within _____ County, West Virginia, be allowed
63 to handle a maximum of _____ solid waste per
64 month?

65 For the increase in maximum allowable tonnage

66 Against the increase in maximum allowable
67 tonnage

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

70 (3) If a majority of the legal votes cast upon the
71 question be against allowing the Class A facility to
72 increase the maximum tonnage of solid waste allowed
73 to be handled per month at the facility, then the division
74 of natural resources shall not proceed to modify the

75 Class A facility permit to increase the maximum
76 allowable tonnage. If a majority of the legal votes cast
77 upon the question be for allowing the Class A facility
78 to increase the maximum tonnage of solid waste allowed
79 to be handled per month at such facility, then the
80 application process as set forth in this article and article
81 five-f of this chapter may proceed: *Provided*, That such
82 vote shall not be binding on or require the county or
83 regional solid waste authority or the division of natural
84 resources to approve an application to modify the
85 permit. If the majority of the legal votes cast be against
86 the question, that does not prevent the question from
87 again being submitted to a vote at any subsequent
88 election in the manner provided for in this section:
89 *Provided, however*, That an applicant may not resubmit
90 the question for a vote prior to a period of two years
91 from the date of the previous referendum herein de-
92 scribed.

§20-9-12f. Judicial review of certificate of site approval.

1 (a) Any party aggrieved by a decision of the county
2 or regional solid waste authority or county commission
3 granting or denying a certificate of site approval may
4 obtain judicial review thereof in the same manner
5 provided in section four, article five, chapter twenty-
6 nine-a of this code, which provisions shall govern such
7 review with like effect as if the provisions of said section
8 were set forth in extenso in this section, except that the
9 petition shall be filed, within the time specified in said
10 section, in the circuit court of Kanawha County.

11 (b) The judgment of the circuit court shall be final
12 unless reversed, vacated or modified on appeal to the
13 supreme court of appeals, in accordance with the
14 provisions of section one, article six, chapter twenty-
15 nine-a of this code, except that notwithstanding the
16 provisions of said section, the petition seeking such
17 review must be filed with the supreme court of appeals
18 within ninety days from the date of entry of the
19 judgment of the circuit court.

§20-9-13. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

1 (a) *Imposition.* — Effective the first day of July, one
2 thousand nine hundred eighty-nine, a solid waste
3 assessment fee is hereby levied and imposed upon the
4 disposal of solid waste at any solid waste disposal facility
5 in this state to be collected at the rate of one dollar per
6 ton or part thereof of solid waste. The fee imposed by
7 this section shall be in addition to all other fees levied
8 by law.

9 (b) *Collection, return, payment and record.* — The
10 person disposing of solid waste at the solid waste
11 disposal facility shall pay the fee imposed by this
12 section, whether or not such person owns the solid waste,
13 and the fee shall be collected by the operator of the solid
14 waste facility who shall remit it to the tax commissioner.

15 (1) The fee imposed by this section accrues at the time
16 the solid waste is delivered to the solid waste disposal
17 facility.

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

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

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

33 (5) Whenever any operator fails to collect, truthfully
34 account for, remit the fee, or file returns with the fee
35 as required in this section, the tax commissioner may
36 serve written notice requiring such operator to collect
37 the fees which become collectible after service of such
38 notice, to deposit such fees in a bank approved by the

39 tax commissioner, in a separate account, in trust for and
40 payable to the tax commissioner, and to keep the amount
41 of such fees in such account until remitted to the tax
42 commissioner. Such notice shall remain in effect until
43 a notice of cancellation is served on the operator or
44 owner by the tax commissioner.

45 (6) Whenever the owner of a solid waste disposal
46 facility leases the solid waste facility to an operator, the
47 operator shall be primarily liable for collection and
48 remittance of the fee imposed by this section and the
49 owner shall be secondarily liable for remittance of the
50 fee imposed by this section. However, if the operator
51 fails, in whole or in part, to discharge his obligations
52 under this section, the owner and the operator of the
53 solid waste facility shall be jointly and severally
54 responsible and liable for compliance with the provi-
55 sions of this section.

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

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

71 (c) *Regulated motor carriers.* — The fee imposed by
72 this section and section twenty-two, article five, chapter
73 seven of this code shall be considered a necessary and
74 reasonable cost for motor carriers of solid waste subject
75 to the jurisdiction of the public service commission
76 under chapter twenty-four-a of this code. Notwith-
77 standing any provision of law to the contrary, upon
78 the filing of a petition by an affected motor carrier,

79 the public service commission shall, within fourteen
80 days, reflect the cost of said fee in said motor carrier's
81 rates for solid waste removal service. In calculating the
82 amount of said fee to said motor carrier, the commission
83 shall use the national average of pounds of waste
84 generated per person per day as determined by the
85 United States Environmental Protection Agency.

86 (d) *Definition of solid waste disposal facility.* — For
87 purposes of this section, the term "solid waste disposal
88 facility" means any approved solid waste facility or open
89 dump in this state and includes a transfer station when
90 the solid waste collected at the transfer station is not
91 finally disposed of at a solid waste facility within this
92 state that collects the fee imposed by this section.
93 Nothing herein shall be construed to authorize in any
94 way the creation or operation of or contribution to an
95 open dump.

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

98 (1) Disposal of solid waste at a solid waste disposal
99 facility by the person who owns, operates or leases the
100 solid waste disposal facility if it is used exclusively to
101 dispose of waste originally produced by such person in
102 such person's regular business or personal activities or
103 by persons utilizing the facility on a cost-sharing or
104 nonprofit basis;

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

106 (3) Disposal of residential solid waste by an individ-
107 ual not in the business of hauling or disposing of solid
108 waste on such days and times as designated by the
109 director of the division of natural resources as exempt
110 from the fee imposed pursuant to section five-a, article
111 five-f, chapter twenty of this code.

112 (f) *Procedure and administration.* — Notwithstand-
113 ing section three, article ten, chapter eleven of this code,
114 each and every provision of the "West Virginia Tax
115 Procedure and Administration Act" set forth in article
116 ten, chapter eleven of this code shall apply to the fee
117 imposed by this section with like effect as if said act

118 were applicable only to the fee imposed by this section
119 and were set forth in extenso herein.

120 (g) *Criminal penalties.* — Notwithstanding section
121 two, article nine, chapter eleven of this code, sections
122 three through seventeen, article nine, chapter eleven of
123 this code shall apply to the fee imposed by this section
124 with like effect as if said sections were the only fee
125 imposed by this section and were set forth in extenso
126 herein.

127 (h) *Dedication of proceeds.* — The net proceeds of the
128 fee collected by the tax commissioner pursuant to this
129 section shall be deposited, at least monthly, in a special
130 revenue account known as the “Solid Waste Planning
131 Fund” which is hereby created. The solid waste
132 management board shall allocate the proceeds of the
133 said fund as follows:

134 (1) Fifty percent of the total proceeds shall be divided
135 equally among, and paid over to, each county solid waste
136 authority to be expended for the purposes of this article:
137 *Provided*, That where a regional solid waste authority
138 exists, such funds shall be paid over to the regional solid
139 waste authority to be expended for the purposes of this
140 article in an amount equal to the total share of all
141 counties within the jurisdiction of said regional solid
142 waste authority; and

143 (2) Fifty percent of the total proceeds shall be
144 expended by the solid waste management board for:

145 (A) Grants to the county or regional solid waste
146 authorities for the purposes of this article; and

147 (B) Administration, technical assistance or other
148 costs of the solid waste management board necessary to
149 implement the purposes of this article and article
150 twenty-six, chapter sixteen of this code.

151 (i) *Severability.* — If any provision of this section or
152 the application thereof shall for any reason be adjudged
153 by any court of competent jurisdiction to be invalid, such
154 judgment shall not affect, impair or invalidate the
155 remainder of this section, but shall be confined in its
156 operation to the provision thereof directly involved in

157 the controversy in which such judgment shall have been
158 rendered, and the applicability of such provision to other
159 persons or circumstances shall not be affected thereby.

160 (j) *Effective date.* — This section is effective on the
161 first day of July, one thousand nine hundred ninety.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

- §20-11-1. Short title.
- §20-11-2. Legislative findings and purpose.
- §20-11-3. Recycling goals.
- §20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.
- §20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.
- §20-11-5b. Solid and hazardous waste supplemental assessment fee.
- §20-11-6. Establishment of state recycling program for solid waste.
- §20-11-7. Procurement of recycled products.
- §20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required; rules required; report to be prepared and submitted.
- §20-11-9. Recycled oil advisory committee.
- §20-11-10. Recycled newsprint encouraged; findings; goals; recycled newsprint advisory committee formed; annual report required.
- §20-11-11. Feasibility study of recycling industries.
- §20-11-12. Recycling facilities exemption.

§20-11-1. Short title.

- 1 This article shall be known and cited as the “West
- 2 Virginia Recycling Act”.

§20-11-2. Legislative findings and purpose.

- 1 The Legislature finds that many citizens desire a
- 2 recycling program in order to conserve limited natural
- 3 resources, reduce litter, recycle valuable materials,
- 4 extend the useful life of solid waste landfills and reduce
- 5 the need for new landfills.

- 6 The Legislature further finds that the identification
- 7 and creation of local, regional, state and national
- 8 markets for recyclable materials are necessary for the
- 9 implementation of effective recycling programs.

- 10 The Legislature further finds that recycling pro-
- 11 grams can most successfully be established by encourag-
- 12 ing, and in certain instances requiring, the source

13 separation of solid waste and the subsequent curbside
14 collection of recyclables.

15 Therefore, it is the purpose of the Legislature to
16 establish goals for the recycling of solid waste; to
17 require certain municipalities to implement recycling
18 programs; to authorize each county commission, or the
19 citizens of a county by referendum, to adopt a compre-
20 hensive recycling program for solid waste; to encourage
21 source separation of solid waste; to increase the
22 purchase of recycled products by the various agencies
23 and instrumentalities of government; and to educate the
24 public concerning the benefits of recycling.

§20-11-3. Recycling goals.

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

6 (b) By the first day of January, two thousand, it is the
7 interim goal of this state to reduce the disposal of
8 municipal solid waste by thirty percent of the amount
9 of per capita solid waste disposed of in one thousand
10 nine hundred ninety-one.

11 (c) By the first day of January, one thousand nine
12 hundred ninety-four, it is the interim goal of this state
13 to reduce the disposal of municipal solid waste by
14 twenty percent of the amount of per capita solid waste
15 disposed of in one thousand nine hundred ninety-one.

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

1 (a) Within twelve months following the effective date
2 of this section, each municipality described in subsection
3 (b) of this section shall submit a proposal to the solid
4 waste management board, consistent with the provisions
5 of this section, describing the establishment and
6 implementation of the mandatory recycling program.
7 The solid waste management board shall review the

8 submitted plans for consistency with the criteria
9 provided in this section, the county or regional solid
10 waste management plan and the statewide management
11 plan. The solid waste management board may make
12 suggested changes to the plan and shall provide
13 technical assistance to the municipalities in the devel-
14 opment of the plans.

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

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

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

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

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

46 (5) A comprehensive public information and educa-

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

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

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

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

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

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

83 (d) For the purposes of this article, recyclable
84 materials shall include, but not be limited to, steel and
85 bi-metallic cans, aluminum, glass, paper and such other

86 solid waste materials as may be specified by either the
87 municipality or county commission with the advice of
88 the county or regional solid waste authority.

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

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

126 "Shall the County Commission be required to estab-

127 lish a comprehensive recycling program for solid waste
128 in _____ County, West Virginia?

129 For Recycling

130 Against Recycling

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

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

148 (f) A comprehensive recycling program for solid
149 waste established by petition and referendum may be
150 rescinded only pursuant to the procedures set out herein
151 to establish the program.

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

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

158 Continue Recycling

159 End Recycling

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

162 (g) If a majority of legal votes cast upon the question
163 be for the termination of a policy of comprehensive

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

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

**§20-11-5a. Recycling assessment fee; regulated motor
carriers; dedication of proceeds; criminal
penalties.**

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

9 (b) *Collection, return, payment and records.* — The
10 person disposing of solid waste at the solid waste
11 disposal facility shall pay the fee imposed by this
12 section, whether or not such person owns the solid waste,

13 and the fee shall be collected by the operator of the solid
14 waste facility who shall remit it to the tax commissioner.

15 (1) The fee imposed by this section accrues at the time
16 the solid waste is delivered to the solid waste disposal
17 facility.

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

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

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

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

45 (6) Whenever the owner of a solid waste disposal
46 facility leases the solid waste facility to an operator, the
47 operator shall be primarily liable for collection and
48 remittance of the fee imposed by this section and the
49 owner shall be secondarily liable for remittance of the
50 fee imposed by this section. However, if the operator
51 fails, in whole or in part, to discharge his obligations

52 under this section, the owner and the operator of the
53 solid waste facility shall be jointly and severally
54 responsible and liable for compliance with the provi-
55 sions of this section.

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

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

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

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

86 "Solid waste disposal facility" means any approved
87 solid waste facility or open dump in this state and
88 includes a transfer station when the solid waste collected
89 at the transfer station is not finally disposed of at a solid
90 waste facility within this state that collects the fee
91 imposed by this section.

92 Nothing herein shall be construed to authorize in any
93 way the creation or operation of or contribution to an
94 open dump.

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

97 (1) Disposal of solid waste at a solid waste facility by
98 the person who owns, operates or leases the solid waste
99 disposal facility if it is used exclusively to dispose of
100 waste originally produced by such person in such
101 person's regular business or personal activities or by
102 persons utilizing the facility on a cost-sharing or
103 nonprofit basis;

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

105 (3) Disposal of residential solid waste by an individ-
106 ual not in the business of hauling or disposing of solid
107 waste on such days and times as designated by the
108 director of the division of natural resources by regula-
109 tion as exempt from the fee imposed pursuant to section
110 five-a, article five-f of this chapter.

111 (f) *Procedure and administration.* — Notwithstand-
112 ing section three, article ten, chapter eleven of this code,
113 each and every provision of the "West Virginia Tax
114 Procedure and Administration Act" set forth in article
115 ten, chapter eleven of this code shall apply to the fee
116 imposed by this section with like effect as if said act
117 were applicable only to the fee imposed by this section
118 and were set forth in extenso herein.

119 (g) *Criminal penalties.* — Notwithstanding section
120 two, article nine, chapter eleven of this code, sections
121 three through seventeen, article nine, chapter eleven of
122 this code shall apply to the fee imposed by this section
123 with like effect as if said sections were the only fee
124 imposed by this section and were set forth in extenso
125 herein.

126 (h) *Dedication of proceeds.* — The proceeds of the fee
127 collected pursuant to this section shall be deposited by
128 the tax commissioner, at least monthly, in a special
129 revenue account designated as the "Recycling Assistance
130 Fund" which is hereby created. The director of the

131 division of natural resources shall allocate the proceeds
132 of the said fund as follows:

133 (1) Fifty percent of the total proceeds shall be
134 provided in grants to assist municipalities, counties and
135 other interested parties in the planning and implemen-
136 tation of recycling programs, public education pro-
137 grams, and recycling market procurement efforts,
138 established pursuant to this article. The director of the
139 division of natural resources shall promulgate rules, in
140 accordance with chapter twenty-nine-a of this code,
141 containing application procedures, guidelines for
142 eligibility, reporting requirements and other matters
143 deemed appropriate;

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

147 (3) Twelve and one-half percent of the total proceeds
148 shall be transferred to the governor's office of commun-
149 ity and industrial development, to be used in assisting
150 counties and municipalities in the design and construc-
151 tion of wastewater treatment facilities;

152 (4) Twelve and one-half percent of the total proceeds
153 shall be transferred to the solid waste reclamation and
154 environmental response fund, established pursuant to
155 section five-a, article five-f of this chapter, to be
156 expended by the division of natural resources to assist
157 in the funding of the pollution prevention and open
158 dumps program (PPOD) which encourages recycling,
159 reuse, waste reduction and clean-up activities; and

160 (5) Twelve and one-half percent of the total proceeds
161 shall be deposited in the hazardous waste emergency
162 response fund established in article five-g of this
163 chapter.

164 (i) *Severability.* — If any provision of this section or
165 the application thereof shall for any reason be adjudged
166 by any court of competent jurisdiction to be invalid, such
167 judgment shall not affect, impair or invalidate the
168 remainder of this section, but shall be confined in its
169 operation to the provision thereof directly involved in

170 the controversy in which such judgment shall have been
171 rendered, and the applicability of such provision to other
172 persons or circumstances shall not be affected thereby.

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

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

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

10 (b) *Collection, return, payment and records.* — The
11 person disposing of solid or hazardous waste at the solid
12 or hazardous waste disposal facility shall pay the fee
13 imposed by this section, whether or not such person
14 owns the solid or hazardous waste, and the fee shall be
15 collected by the operator of the solid or hazardous waste
16 facility who shall remit it to the tax commissioner.

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

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

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

30 (4) If any operator fails to collect the fee imposed by

31 this section, he or she shall be personally liable for such
32 amount as he or she failed to collect, plus applicable
33 additions to tax, penalties and interest imposed by
34 article ten, chapter eleven of this code.

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

47 (6) Whenever the owner of a solid or hazardous waste
48 disposal facility leases the solid or hazardous waste
49 facility to an operator, the operator shall be primarily
50 liable for collection and remittance of the fee imposed
51 by this section and the owner shall be secondarily liable
52 for remittance of the fee imposed by this section.
53 However, if the operator fails, in whole or in part, to
54 discharge his obligations under this section, the owner
55 and the operator of the solid or hazardous waste disposal
56 facility shall be jointly and severally responsible and
57 liable for compliance with the provisions of this section.

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

67 (8) Each person disposing of solid or hazardous waste
68 at a solid or hazardous waste disposal facility and each
69 person required to collect the fee imposed by this section
70 shall keep complete and accurate records in such form

71 as the tax commissioner may require in accordance with
72 the rules and regulations of the tax commissioner.

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

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

88 (1) "Solid or hazardous waste disposal facility" means
89 any approved solid or hazardous waste facility or open
90 dump in this state and includes a transfer station when
91 the solid or hazardous waste collected at the transfer
92 station is not finally disposed of at a solid or hazardous
93 waste facility within this state that collects the fee
94 imposed by this section;

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

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

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

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

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

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

121 (3) Reuse or recycling of any solid or hazardous
122 waste.

123 (f) *Procedure and administration.* — Notwithstand-
124 ing section three, article ten, chapter eleven of this code,
125 each and every provision of the “West Virginia Tax
126 Procedure and Administration Act” set forth in article
127 ten, chapter eleven of this code shall apply to the fee
128 imposed by this section with like effect as if said act
129 were applicable only to the fee imposed by this section
130 and were set forth in extenso herein.

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

138 (h) *Dedication of proceeds.* — The proceeds of the fee
139 collected pursuant to this section shall be deposited by
140 the tax commissioner, at least monthly, to the hazardous
141 waste emergency response fund established in article
142 five-g of this chapter.

143 (i) *Severability.* — If any provision of this section or
144 the application thereof shall for any reason be adjudged
145 by any court of competent jurisdiction to be invalid, such
146 judgment shall not affect, impair or invalidate the
147 remainder of this section, but shall be confined in its
148 operation to the provision thereof directly involved in

149 the controversy in which such judgment shall have been
150 rendered, and the applicability of such provision to other
151 persons or circumstances shall not be affected thereby.

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

§20-11-6. Establishment of state recycling program for solid waste.

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

12 (1) Source separation of at least two recyclable
13 materials; and

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

19 (b) For purposes of this section, the division of
20 natural resources shall be designated the lead agency to
21 ensure proper compliance and coordination.

§20-11-7. Procurement of recycled products.

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

6 (1) Twenty percent by the thirty-first day of De-
7 cember, one thousand nine hundred ninety-three; and

8 (2) Forty percent by the thirty-first day of December,
9 one thousand nine hundred ninety-five.

10 (b) In furtherance of the aforesaid goal, the secretary
11 of the department of administration in consultation with
12 the director of the division of natural resources shall
13 develop a comprehensive procurement program for
14 recycled products. Such program shall include, but not
15 be limited to:

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

20 (2) A review, and subsequent revision, of existing
21 procurement procedures and bid specifications to ensure
22 that, to the maximum extent possible, all agencies and
23 instrumentalities of the state purchase recycled pro-
24 ducts: *Provided*, That recycled paper products shall be
25 given a price preference of ten percent: *Provided*,
26 *however*, That priority shall be given to paper products
27 with the highest post-consumer content;

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

31 (4) A requirement that all agencies and instrumental-
32 ities of the state use compost in all land maintenance
33 and landscaping activities.

34 (c) The secretary shall prepare and submit an annual
35 report on the thirty-first day of January of each year
36 following the effective date of this section, summarizing
37 the program's accomplishments, prospects for the
38 future, and any recommendations. Said report shall be
39 submitted to the governor, speaker of the House of
40 Delegates and president of the Senate.

**§20-11-8. Prohibition on the disposal of certain items;
plans for the proper handling of said items
required; rules required; report to be pre-
pared and submitted.**

1 (a) Effective the first day of June, one thousand nine

2 hundred ninety-three, it shall be unlawful to deposit
3 yard waste, including grass clippings and leaves, lead-
4 acid batteries, and tires in a solid waste facility in West
5 Virginia: *Provided*, That such prohibition does not apply
6 to a facility designed specifically to compost such yard
7 waste, or otherwise recycle or reuse such items:
8 *Provided, however*, That reasonable and necessary
9 exceptions to such prohibition may be included as part
10 of the rules and regulations promulgated pursuant to
11 subsection (c) of this section.

12 (b) No later than the first day of May, one thousand
13 nine hundred ninety-two, the solid waste management
14 board, in consultation with the division of natural
15 resources, shall design a comprehensive program to
16 provide for the proper handling of the items mentioned
17 in subsection (a) of this section.

18 (c) No later than the first day of September, one
19 thousand nine hundred ninety-two, the solid waste
20 management board shall promulgate rules and regula-
21 tions, in accordance with chapter twenty-nine-a of this
22 code, as amended, to implement the program designed
23 pursuant to subsection (b) of this section.

24 (d) By the first day of December, one thousand nine
25 hundred ninety-one, the waste management board shall
26 prepare and submit a report summarizing the board's
27 action pursuant to this section and making recommen-
28 dations, if any, concerning additional items that should
29 be excluded from certain solid waste facilities. Said
30 report shall be submitted to the governor, president of
31 the Senate and the speaker of the House of Delegates.

§20-11-9. Recycled oil advisory committee.

1 (a) The division of natural resources recycled oil
2 advisory committee is hereby created. The recycled oil
3 advisory committee shall consist of nine members
4 appointed by the governor, for terms of two years, who
5 shall serve without compensation. One member of the
6 committee shall have significant experience in the oil
7 refining industry, one member shall have significant
8 experience in the jobbing or distributing of motor oil,
9 one member shall be a representative of retail gasoline

10 dealers, one member shall be a representative of retail
11 merchants, one member shall be a representative of the
12 insurance industry, one member shall be a member of
13 a county or regional solid waste authority, one member
14 shall be a member of the general public, one member
15 shall be a member of the House of Delegates recom-
16 mended by the speaker of the House of Delegates, and
17 one member shall be a member of the Senate recom-
18 mended by the president of the Senate. The director of
19 the division of natural resources or his or her designated
20 representative shall be an ex officio member of the
21 committee and shall serve as chairman of the commit-
22 tee. The recycled oil advisory committee shall meet at
23 least monthly, or upon the call of four members, to
24 discuss all aspects of the collection, handling, transpor-
25 tation, storage, disposal and recycling of used motor oil.

26 (b) The functions of the committee shall include, but
27 not be limited to, the following:

28 (1) Making recommendations to the division of
29 natural resources and the Legislature concerning the
30 adoption of management standards with respect to
31 collection, handling, transportation, storage, disposal
32 and recycling of used motor oil. The committee shall
33 make the first report of its recommendations on or
34 before the fifteenth day of January, one thousand nine
35 hundred ninety-two, and other such reports may be
36 made at such times as the committee deems appropriate.

37 (2) Carrying out education and promotional activities
38 regarding the use of recycled oil.

39 (3) Identifying areas in the public and private sectors
40 where recycled oil could be utilized.

41 (4) Entertaining proposals from citizens, corporations
42 and businesses related to all aspects of used motor oil.

43 (5) Identifying administrative requirements at both
44 the state and local levels to ascertain resources and
45 needs relating to used motor oil.

46 (6) Examining federal law and regulations, both
47 existing and proposed, to assure that West Virginia
48 businesses and individuals who generate used motor oil

49 may participate in a program of handling and disposing
50 of used motor oil that complies with federal statutes and
51 regulatory requirements.

**§20-11-10. Recycled newsprint encouraged; findings;
goals; recycled newsprint advisory committee formed; annual report required.**

1 (a) The purpose of this section is to encourage
2 newspapers published and distributed in the state of
3 West Virginia to use recycled newsprint.

4 (b) The Legislature finds that:

5 (1) It is the public policy of the state of West Virginia
6 to preserve natural resources, extend the useful life of
7 solid waste facilities, stimulate the demand for recycled
8 products and ensure a more efficient allocation of
9 resources;

10 (2) The publication of newspapers consumes large
11 quantities of virgin paper;

12 (3) Discarded newspapers present significant solid
13 waste management problems; and

14 (4) Encouraging newspaper publishers to use re-
15 cycled newsprint will help attain the aforementioned
16 public policy.

17 (c) In furtherance of the public policy set forth in
18 subsection (b) of this section, it is the goal of this state
19 that for the year ending the thirty-first day of De-
20 cember, one thousand nine hundred ninety-six, eighty
21 percent of the newsprint used by newspapers published
22 and distributed in this state shall contain the highest
23 post-consumer recycled paper content practicable.

24 (d) The division of natural resources recycled news-
25 print advisory committee is hereby created. The
26 recycled newsprint advisory committee shall consist of
27 seven members appointed by the governor, for terms of
28 two years, who shall serve without compensation. One
29 member of the committee shall be the publisher, or his
30 or her designated representative, of a daily newspaper
31 with a general circulation in excess of twenty-five
32 thousand newspapers per day, one member of the

33 committee shall be the publisher, or his or her desig-
34 nated representative, of a daily newspaper with a
35 general circulation of less than or equal to twenty-five
36 thousand newspapers per day, one member of the
37 committee shall be the publisher, or his or her desig-
38 nated representative, of a weekly newspaper, one
39 member of the committee shall be a member of the
40 general public representing environmental interests,
41 one member of the committee shall be a member of a
42 county or regional solid waste authority, one member of
43 the committee shall be a member of the House of
44 Delegates recommended by the speaker of the House of
45 Delegates, and one member of the committee shall be
46 a member of the Senate recommended by the president
47 of the Senate. The director of the division of natural
48 resources, or his or her designated representative, shall
49 serve as an ex officio member of the committee and shall
50 serve as chair of the committee. The director of the solid
51 waste management board, or his or her representative,
52 shall serve as an ex officio member of the committee.
53 The recycling newspaper advisory committee shall meet
54 at least quarterly, or upon the call of three members,
55 to discuss all aspects of encouraging the use of recycled
56 newsprint and meeting the goals set forth in this section.

57 (e) On or before the thirty-first day of January, one
58 thousand nine hundred ninety-three, the recycled
59 newsprint advisory committee shall prepare and submit
60 a report to the governor, the speaker of the House of
61 Delegates and the president of the Senate, summarizing
62 the activities of the committee, its progress in achieving
63 the recycled newsprint goal and any recommendations
64 for legislative action.

§20-11-11. Feasibility study of recycling industries.

1 The director in consultation with the governor's office
2 of community and industrial development shall develop
3 a plan for presentation to the governor, the president of
4 the Senate and the speaker of the House of Delegates
5 no later than the fifteenth day of January, one thousand
6 nine hundred ninety-two, which plan shall contain
7 recommendations relating to the feasibility of establish-
8 ing glass preparation plants, de-inking plants and re-

9 refining used motor oil plants.

10 The plan may include provisions to carry out each of
11 the following:

12 (1) Encouragement, to the maximum extent feasible
13 and consistent with the protection of the public health
14 and the environment, of the use of re-refined motor oil,
15 de-inked pulp and prepared glass in all appropriate
16 areas of state and local government;

17 (2) Encouragement of persons contracting with the
18 state to use re-refined motor oil, de-inked pulp and
19 prepared glass to the maximum extent feasible, consist-
20 ent with protection of the public health and the
21 environment;

22 (3) Informing the public of uses of re-refined motor
23 oil, de-inked pulp and prepared glass; and

24 (4) Establishment and implementation of a program,
25 including any necessary licensing of persons and
26 including the use, where appropriate, of manifests to
27 assure the used re-refined motor oil, de-inked pulp and
28 prepared glass is collected, transported, treated, stored,
29 reused and disposed of, in a manner which does not
30 present a hazard to the public health or the environ-
31 ment.

§20-11-12. Recycling facilities exemption.

1 Facilities which only accept, buy or transfer source
2 separated material or recycled material for use, resale
3 or transfer for further processing shall be exempt from
4 the provisions of articles five-f and nine of this chapter
5 and sections one-c and one-f, article two, chapter twenty-
6 four of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article

1. **General Provisions.**

2. **Powers and Duties of Public Service Commission.**

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as
3 provided by this chapter, chapter twenty-four-a and
4 chapter twenty-four-b of this code. In addition, after
5 having conducted a performance audit through its joint
6 committee on government operations, pursuant to
7 section nine, article ten, chapter four of this code, the
8 Legislature hereby finds and declares that the public
9 service commission should be continued and reestab-
10 lished. Accordingly, notwithstanding the provisions of
11 section four, article ten, chapter four of this code, the
12 public service commission shall continue to exist until
13 the first day of July, one thousand nine hundred ninety-
14 two. The public service commission may sue and be sued
15 by that name. Such public service commission shall
16 consist of three members who shall be appointed by the
17 governor with the advice and consent of the Senate. The
18 commissioners shall be citizens and residents of this
19 state and at least one of them shall be duly licensed to
20 practice law in West Virginia, of not less than ten years'
21 actual experience at the bar. No more than two of said
22 commissioners shall be members of the same political
23 party. Each commissioner shall, before entering upon
24 the duties of his office, take and subscribe to the oath
25 provided by section five, article four of the constitution,
26 which oath shall be filed in the office of the secretary
27 of state. The governor shall designate one of the
28 commissioners to serve as chairman at the governor's
29 will and pleasure. The chairman shall be the chief
30 administrative officer of the commission. The governor
31 may remove any commissioner only for incompetency,
32 neglect of duty, gross immorality, malfeasance in office
33 or violation of subsection (c) of this section.

34 (b) The unexpired term of members of the public
35 service commission at the time this subsection becomes
36 effective are continued through the thirtieth day of
37 June, one thousand nine hundred seventy-nine. In
38 accordance with the provisions of subsection (a) of this
39 section, the governor shall appoint three commissioners,
40 one for a term of two years, one for a term of four years
41 and one for a term of six years, all the terms beginning
42 on the first day of July, one thousand nine hundred

43 seventy-nine. All future appointments are for terms of
44 six years, except that an appointment to fill a vacancy
45 is for the unexpired term only. The commissioners
46 whose terms are terminated by the provisions of this
47 subsection are eligible for reappointment.

48 (c) No person while in the employ of, or holding any
49 official relation to, any public utility subject to the
50 provisions of this chapter, or holding any stocks or bonds
51 thereof, or who is pecuniarily interested therein, may
52 serve as a member of the commission or as an employee
53 thereof. Nor may any such commissioner be a candidate
54 for or hold public office, or be a member of any political
55 committee, while acting as such commissioner; nor may
56 any commissioner or employee of said commission
57 receive any pass, free transportation or other thing of
58 value, either directly or indirectly, from any public
59 utility or motor carrier subject to the provisions of this
60 chapter. In case any of the commissioners becomes a
61 candidate for any public office or a member of any
62 political committee, the governor shall remove him from
63 office and shall appoint a new commissioner to fill the
64 vacancy created.

65 (d) Effective the first day of July, one thousand nine
66 hundred eighty-four, and in light of the assignment of
67 new, substantial additional duties embracing new areas
68 and fields of activity under certain legislative enact-
69 ments, each commissioner shall receive a salary of
70 thirty-nine thousand two hundred forty dollars a year
71 to be paid in monthly installments from the special
72 funds in such amounts as follows:

73 (1) From the public service commission fund col-
74 lected under the provisions of section six, article three
75 of this chapter, thirty thousand two hundred ten dollars;

76 (2) From the public service commission motor carrier
77 fund collected under the provisions of section six, article
78 six, chapter twenty-four-a of this code, seven thousand
79 five hundred twenty-five dollars; and

80 (3) From the public service commission gas pipeline
81 safety fund collected under the provisions of section
82 three, article five, chapter twenty-four-b of this code,

83 one thousand five hundred five dollars.

84 In addition to this salary provided for all commission-
85 ers, the chairman of the commission shall receive three
86 thousand five hundred dollars a year to be paid in
87 monthly installments from the public service commis-
88 sion fund collected under the provisions of section six,
89 article three of this chapter, on and after the first day
90 of July, one thousand nine hundred eighty-four.

91 (e) Effective the first day of July, one thousand nine
92 hundred eighty-five, and in light of the assignment of
93 new, substantial additional duties embracing new areas
94 and fields of activity under certain legislative enact-
95 ments, each commissioner shall receive a salary of forty-
96 one thousand dollars a year to be paid in monthly
97 installments from the special funds in such amounts as
98 follows:

99 (1) From the public service commission fund col-
100 lected under the provisions of section six, article three
101 of this chapter, thirty-one thousand six hundred dollars;

102 (2) From the public service commission motor carrier
103 fund collected under the provisions of section six, article
104 six, chapter twenty-four-a of this code, seven thousand
105 nine hundred dollars; and

106 (3) From the public service commission gas pipeline
107 safety fund collected under the provisions of section
108 three, article five, chapter twenty-four-b of this code,
109 one thousand five hundred dollars.

110 In addition to this salary provided for all commission-
111 ers, the chairman of the commission shall receive three
112 thousand six hundred seventy-five dollars a year to be
113 paid in monthly installments from the public service
114 commission fund collected under the provisions of
115 section six, article three of this chapter, on and after the
116 first day of July, one thousand nine hundred eighty-five.

117 (f) Effective the first day of July, one thousand nine
118 hundred eighty-eight, and in light of the assignment of
119 new, substantial additional duties embracing new areas
120 and fields of activity under certain legislative enact-
121 ments, each commissioner shall receive a salary of forty-

122 four thousand dollars a year to be paid in monthly
123 installments from the special funds in such amounts as
124 follows:

125 (1) From the public service commission fund col-
126 lected under the provisions of section six, article three
127 of this chapter, thirty-three thousand nine hundred
128 dollars;

129 (2) From the public service commission motor carrier
130 fund collected under the provisions of section six, article
131 six, chapter twenty-four-a of this code, eight thousand
132 five hundred dollars; and

133 (3) From the public service commission gas pipeline
134 safety fund collected under the provisions of section
135 three, article five, chapter twenty-four-b of this code,
136 one thousand six hundred dollars.

137 In addition to this salary provided for all commission-
138 ers, the chairman of the commission shall receive three
139 thousand six hundred seventy-five dollars a year to be
140 paid in monthly installments from the public service
141 commission fund collected under the provisions of
142 section six, article three of this chapter, on and after the
143 first day of July, one thousand nine hundred eighty-
144 eight.

145 (g) Effective the first day of January, one thousand
146 nine hundred ninety, each commissioner shall receive
147 the salary set forth in section two-a, article seven,
148 chapter six of this code to be paid in monthly install-
149 ments from the special funds in such amounts as follows:

150 (1) From the public service commission fund col-
151 lected under the provisions of section six, article three
152 of this chapter, thirty-five thousand five hundred ninety-
153 five dollars;

154 (2) From the public service commission motor carrier
155 fund collected under the provisions of section six, article
156 six, chapter twenty-four-a of this code, eight thousand
157 nine hundred twenty-five dollars; and

158 (3) From the public service commission gas pipeline
159 safety fund collected under the provisions of section

160 three, article five, chapter twenty-four-b of this code,
161 one thousand six hundred eighty dollars.

162 In addition to this salary provided for all commission-
163 ers, the chairman of the commission shall receive three
164 thousand eight hundred dollars a year to be paid in
165 monthly installments from the public service commis-
166 sion fund collected under the provisions of section six,
167 article three of this chapter, on and after the first day
168 of January, one thousand nine hundred ninety.

169 (h) Effective the first day of November, one thousand
170 nine hundred ninety-one, and in light of the assignment
171 of new, substantial additional duties embracing new
172 areas and fields of activity under certain legislative
173 enactments, each commissioner shall receive an annual
174 salary of sixty thousand dollars to be paid in monthly
175 installments from the special funds in such amounts as
176 follows:

177 (1) From the public service commission fund col-
178 lected under the provisions of section six, article three
179 of this chapter, forty-eight thousand dollars;

180 (2) From the public service commission motor carrier
181 fund collected under the provisions of section six, article
182 six, chapter twenty-four-a of this code, ten thousand
183 dollars; and

184 (3) From the public service commission gas pipeline
185 safety fund collected under the provision of section
186 three, article five, chapter twenty-four-b of this code,
187 two thousand dollars.

188 In addition to this salary provided for all commission-
189 ers, the chairman of the commission shall receive five
190 thousand dollars per annum to be paid in monthly
191 installments from the public service commission fund
192 collected under the provisions of section six, article three
193 of this chapter, on and after the first day of January,
194 one thousand nine hundred ninety-two.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

§24-2-1b. Additional jurisdiction of commission.

§24-2-1c. Certificate of need required for solid waste facilities; priority of disposal.

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

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 The jurisdiction of the commission shall extend to all
2 public utilities in this state, and shall include any utility
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by
5 air, railroad, street railroad, motor or otherwise, by
6 express or otherwise, by land, water or air, whether
7 wholly or partly by land, water or air; transportation of
8 oil, gas or water by pipeline; transportation of coal and
9 its derivatives and all mixtures and combinations
10 thereof with other substances by pipeline; sleeping car
11 or parlor car services; transmission of messages by
12 telephone, telegraph or radio; generation and transmis-
13 sion of electrical energy by hydroelectric or other
14 utilities for service to the public, whether directly or
15 through a distributing utility; supplying water, gas or
16 electricity, by municipalities or others; sewer systems
17 servicing twenty-five or more persons or firms other
18 than the owner of the sewer systems; any public service
19 district created under the provisions of article thirteen-
20 a, chapter sixteen of this code; toll bridges, wharves,
21 ferries; solid waste facilities; and any other public
22 service: *Provided*, That natural gas producers who
23 provide natural gas service to not more than twenty-five
24 residential customers are exempt from the jurisdiction
25 of the commission with regard to the provisions of such
26 residential service: *Provided, however*, That upon
27 request of any of the customers of such natural gas
28 producers, the commission may, upon good cause being
29 shown, exercise such authority as the commission may
30 deem appropriate over the operation, rates and charges
31 of such producer and for such length of time as the
32 commission may consider to be proper: *Provided further*,
33 That the jurisdiction the commission may exercise over
34 the rates and charges of municipally operated public
35 utilities is limited to that authority granted the

36 commission in section four-b of this article: *And*
37 *provided further*, That the decision-making authority
38 granted to the commission in sections four and four-a
39 of this article shall, in respect to an application filed by
40 a public service district, be delegated to a single hearing
41 examiner appointed from the commission staff, which
42 hearing examiner shall be authorized to carry out all
43 decision-making duties assigned to the commission by
44 said sections, and to issue orders having the full force
45 and effect of orders of the commission.

46 The commission may, upon application, waive its
47 jurisdiction and allow a utility operating in an adjoining
48 state to provide service in West Virginia when:

49 (1) An area of West Virginia cannot be practicably
50 and economically served by a utility licensed to operate
51 within the state of West Virginia;

52 (2) Said area can be provided with utility service by
53 a utility which operates in a state adjoining West
54 Virginia;

55 (3) The utility operating in the adjoining state is
56 regulated by a regulatory agency or commission of the
57 adjoining state; and

58 (4) The number of customers to be served is not
59 substantial.

60 The rates the out-of-state utility charges West
61 Virginia customers shall be the same as the rate the
62 utility is duly authorized to charge in the adjoining
63 jurisdiction.

64 The commission, in the case of any such utility, may
65 revoke its waiver of jurisdiction for good cause.

§24-2-1b. Additional jurisdiction of commission.

1 Effective the first day of July, one thousand nine
2 hundred eighty-eight, in addition to all other powers and
3 duties of the commission as defined in this article, the
4 commission shall establish, prescribe and enforce rates
5 and fees charged by commercial solid waste facilities,
6 as defined in section two, article five-f, chapter twenty
7 of this code, that are owned or under the direct control

8 of persons or entities who are regulated under section
9 five, article two, chapter twenty-four-a of this code. The
10 commission shall establish, prescribe and enforce rules
11 and regulations providing for the safe transportation of
12 solid waste in the state.

13 The public service commission shall study the
14 feasibility of incorporating and adopting guidelines for
15 solid waste collection fees that are based upon the
16 volume of solid waste generated by any person. This
17 report shall be submitted to the governor and the
18 members of the Legislature on or before the first day
19 of January, one thousand nine hundred ninety-three.

**§24-2-1c. Certificate of need required for solid waste
facilities; priority of disposal.**

1 (a) Any person who holds a valid permit, compliance
2 order or administrative order allowing continued
3 operation of a commercial solid waste facility in this
4 state on the first day of September, one thousand nine
5 hundred ninety-one, shall submit an application for a
6 certificate of need with the public service commission,
7 on forms prescribed by the commission, prior to the first
8 day of March, one thousand nine hundred ninety-two.
9 The commission shall grant such application within
10 sixty days after submission of a complete application.

11 (b) Any person applying for a permit to construct,
12 operate or expand a commercial solid waste facility as
13 defined in section two, article five-f, chapter twenty of
14 this code, or any person seeking a major permit
15 modification from the division of natural resources first
16 shall obtain a certificate of need from the public service
17 commission. Application for such certificate shall be
18 submitted on forms prescribed by the commission. The
19 commission shall grant or deny a certificate of need, in
20 accordance with provisions set forth in this chapter. If
21 the commission grants a certificate of need, the commis-
22 sion may include conditions not inconsistent with the
23 criteria set forth in this section.

24 (c) For purposes of subsections (a) and (b) of this
25 section, a complete application shall consist of the
26 following and notwithstanding any other provision of

27 this chapter to the contrary, such information contained
28 in the application provided by the applicant shall not be
29 confidential and shall be disclosable pursuant to the
30 provisions of chapter twenty-nine-b of this code:

31 (1) The names of the owners or operators of the
32 facility including any officer, director, manager, person
33 owning five percent or more interest or other person
34 conducting or managing the affairs of the applicant or
35 of the proposed facility;

36 (2) The proposed or existing location of the facility;

37 (3) A description of the geographic area to be served
38 by the facility;

39 (4) The anticipated total number of citizens to be
40 served by the facility;

41 (5) The average monthly tonnage of solid waste to be
42 disposed of by the facility;

43 (6) The total monthly tonnage of solid waste for which
44 the facility is seeking a permit from the division of
45 natural resources;

46 (7) The anticipated lifespan and closure date of the
47 facility; and

48 (8) Any other information requested on the forms
49 prescribed by the public service commission.

50 (d) In considering whether to grant a certificate of
51 need the commission shall consider, but shall not be
52 limited to considering, the following factors:

53 (1) The total tonnage of solid waste generated within
54 the county;

55 (2) The total tonnage of solid waste generated within
56 the watershed;

57 (3) The current capacity and lifespan of other solid
58 waste facilities located within the county, if any;

59 (4) The current capacity and lifespan of other solid
60 waste facilities located within the watershed, if any;

61 (5) The current capacity and lifespan of other solid

62 waste facilities located within this state;

63 (6) The lifespan of the proposed or existing facility;

64 (7) The cost of transporting solid waste from the
65 points of generation within the county or watershed and
66 the disposal facility;

67 (8) The impact of the proposed or existing facility on
68 needs and criteria contained in the statewide solid waste
69 management plan; and

70 (9) Any other criteria which the commission regu-
71 larly utilizes in making such determinations.

72 (e) The public service commission shall deny a
73 certificate of need upon one or more of the following
74 findings:

75 (1) The proposed capacity is unreasonable in light of
76 demonstrated needs;

77 (2) The location of the facility is inconsistent with the
78 statewide solid waste management plan;

79 (3) The location of the facility is inconsistent with any
80 applicable county or regional solid waste management
81 plan;

82 (4) The proposed capacity is not reasonably cost
83 effective in light of alternative disposal sites;

84 (5) The proposal, taken as a whole, is inconsistent
85 with the needs and criteria contained in the statewide
86 solid waste management plan; or

87 (6) The proposal, taken as a whole, is inconsistent
88 with the public convenience and necessity.

89 (f) Any certificates of need granted pursuant to this
90 section shall be conditioned on acceptance of:

91 (1) Solid waste generated within the county in which
92 the facility is or is to be located; and

93 (2) Solid waste generated within the watershed in
94 which the facility is or is to be located.

95 (g) An application for a certificate of need shall be
96 submitted prior to submitting an application for

97 certificate of site approval in accordance with section
98 twelve-a, article nine, chapter twenty of this code. Upon
99 the decision of the commission to grant or deny a
100 certificate of need, the commission shall immediately
101 notify the solid waste management board and the
102 division of natural resources.

103 (h) Any party aggrieved by a decision of the commis-
104 sion granting or denying a certificate of need may
105 obtain judicial review thereof in the same manner
106 provided in section one, article five of this chapter.

107 (i) No person may sell, lease or transfer a certificate
108 of need without first obtaining the consent and approval
109 of the commission pursuant to the provisions of section
110 twelve, article two of this chapter.

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

1 (a) Upon the petition of any county or regional solid
2 waste authority, motor carrier or solid waste facility, or
3 upon the commission's own motion, the commission may
4 issue an order that solid waste generated in the
5 surrounding geographical area of a solid waste facility
6 and transported for processing or disposal by solid waste
7 collectors and haulers who are "motor carriers", as
8 defined in chapter twenty-four-a of this code, be
9 processed or disposed of at a designated solid waste
10 facility or facilities: *Provided*, That such order shall not
11 include:

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

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

20 (3) Disposal of residential solid waste by an individ-
21 ual not in the business of hauling or disposing of solid
22 waste on such days and times as designated by the
23 director of the division of natural resources pursuant to

24 the provisions of section four-b, article five-f, chapter
25 twenty of this code.

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

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

39 (d) Notwithstanding any provision of this code to the
40 contrary, excepting rules of the public service commis-
41 sion from legislative rule-making review, the public
42 service commission shall propose a legislative rule in
43 accordance with the provisions of article three, chapter
44 twenty-nine-a of this code, which shall mandate that
45 motor carriers transport source-separated recyclable
46 materials to a recycling facility. Such legislative rule
47 shall provide, at a minimum, for a separate rate for the
48 transportation of such materials or that such motor
49 carriers may contract with a customer to waive the
50 charge for transporting such materials in exchange for
51 the value of such materials.

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

CHAPTER 24A.
MOTOR CARRIERS OF PASSENGERS
AND PROPERTY FOR HIRE.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specif-
2 ically otherwise provided, shall not apply to:

3 (1) Motor vehicles operated exclusively in the trans-
4 portation of United States mail or in the transportation
5 of newspapers: *Provided*, That such vehicles and their
6 operators shall be subject to the safety rules promul-
7 gated by the commission;

8 (2) Motor vehicles owned and operated by the United
9 States of America, the state of West Virginia, or any
10 county, municipality or county board of education,
11 urban mass transportation authority established and
12 maintained pursuant to article twenty-seven, chapter
13 eight of this code, or by any department thereof, and any
14 motor vehicles operated under a contract with a county
15 board of education exclusively for the transportation of
16 children to and from school or such other legitimate
17 transportation for the schools as the commission may
18 specifically authorize;

19 (3) Motor vehicles used exclusively in the transporta-
20 tion of agricultural or horticultural products, livestock,
21 poultry and dairy products from the farm or orchard on
22 which they are raised or produced to markets, process-
23 ing plants, packing houses, canneries, railway shipping
24 points and cold storage plants, and in the transportation
25 of agricultural or horticultural supplies to such farms
26 or orchards to be used thereon;

27 (4) Motor vehicles used exclusively in the transporta-
28 tion of human or animal excreta;

29 (5) Motor vehicles used exclusively in ambulance
30 service, or duly chartered rescue squad service;

31 (6) Motor vehicles used exclusively for volunteer fire
32 department service;

33 (7) Motor vehicles used exclusively in the transporta-
34 tion of coal from mining operations to loading facilities
35 for further shipment by rail or water carriers: *Provided*,
36 That such vehicles and their operators shall be subject

37 to the safety rules promulgated by the commission;

38 (8) Motor vehicles used by petroleum commission
39 agents and oil distributors solely for the transportation
40 of petroleum products and related automotive products
41 when such transportation is incidental to the business
42 of selling said products: *Provided*, That such vehicles
43 and their operators shall be subject to the safety rules
44 promulgated by the commission; and

45 (9) Motor vehicles owned, leased by or to, or con-
46 tracted with a recycling facility and used exclusively for
47 the transportation of source-separated recyclable
48 materials for transport to a facility for recycling:
49 *Provided*, That such vehicles and their operators shall
50 be subject to the safety rules promulgated by the
51 commission.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 1

(By Delegate Rollins)

[Adopted September 30, 1991]

Raising a Joint Assembly to hear an address by His Excellency, the Governor.

WHEREAS, His Excellency, the Governor, has advised the committee to notify him that the Legislature has assembled in extraordinary session, pursuant to his proclamation, that he would be pleased to address a Joint Assembly of the Senate and House of Delegates at the convenience of the two houses; therefore, be it

Resolved by the Legislature of West Virginia:

That His Excellency, the Governor, be hereby invited to address a Joint Assembly of the Legislature at 6:00 o'clock postmeridian this day; and, be it

Further Resolved, That the President of the Senate and the Speaker of the House of Delegates appoint three members of each of the respective houses of the Legislature as a committee to wait upon His Excellency, the Governor, and escort him into the Hall of the House of Delegates at the time herein appointed for hearing the address.

HOUSE CONCURRENT RESOLUTION 3

(By Mr. Speaker, Mr. Chambers)

[Adopted October 8, 1991]

Relating to advising the Legislature of the purpose and amount of bonds or other obligations to be issued by the West Virginia Railroad Maintenance Authority.

WHEREAS, The West Virginia Railroad Maintenance Authority has the authority under chapter twenty-nine, article eighteen, section ten to issue bonds and renewal notes and refunding bonds; and

WHEREAS, WLR Foods, Inc., has undertaken a forty-two million dollar expansion of its poultry complex location in West Virginia which will generate an additional thirty-five million dollars investment in new poultry houses as well as eight hundred new permanent jobs; and

WHEREAS, Said expansion is dependent upon the South Branch Valley Railroad for reliable, efficient rail transportation of bulk ingredients for poultry feed; and

WHEREAS, The South Branch Valley Railroad is in need of capital improvements to be able to adequately handle the expanded rail service necessitated by the increase in traffic generated by WLR Foods, Inc.; such capital improvements include the construction of several sidings for car storage, the replacement of undersized rail on the South Branch Valley Railroad main line and the purchase of additional locomotives; and

WHEREAS, The West Virginia Railroad Maintenance Authority has determined that it is in the public interest to issue three million five hundred thousand dollars in bonds to finance these various railroad improvements on the South Branch Valley Railroad; and

WHEREAS, The West Virginia Railroad Maintenance Authority is desirous of obtaining the best possible interest rating for its bond issue; therefore, be it

Resolved by the Legislature of West Virginia:

That the issuance and sale by the Authority of bonds or other obligations permitted by the code in an amount sufficient to fund three million five hundred thousand dollars in railroad improvement projects, and all steps necessary or desirable to provide for the security for and sale of such obligations or other financing, are approved by the Legislature.

The proceeds of the bonds or other obligations incurred by the Authority pursuant to the resolution may be used for any and all purposes, costs and expenses of any nature whatsoever as provided under the code; and, be it

Further Resolved, That the Clerk of the House of Delegates transmit a copy of this resolution to the Governor, the

Secretary of the Department of Transportation and the Railroad Maintenance Authority.

HOUSE RESOLUTION 2

(By Mr. Speaker, Mr. Chambers,
Delegates J. Martin and Mezzatesta)

[Adopted September 30, 1991]

A resolution in tribute to the life, public service and accomplishments of the Honorable Harley O. Staggers, Sr., member of the United States House of Representatives, the Gentleman from West Virginia's Second Congressional District.

WHEREAS, It is with profound sorrow that this Legislature learned of the death of the Honorable Harley O. Staggers, Congressman from the Second Congressional District, on August 20, 1991.

Harley Orrin Staggers was born August 3, 1907, in Keyser, Mineral County, West Virginia, the son of Jacob and Frances Cumberledge Staggers.

Harley Staggers was educated in the public schools of Mineral County and graduated from Emory and Henry College, where he received the Bachelor of Arts degree. Upon graduation, he was a high school coach and science teacher in Norton, Virginia, and was appointed coach at Potomac State College in Keyser in 1933. He pursued graduate studies at Duke University and received honorary Doctor of Laws degrees from Emory and Henry College in 1953, from Davis and Elkins College in 1969 and from West Virginia University, Morgantown, and West Virginia Wesleyan College, Buckhannon, in 1971.

In 1937, Mr. Staggers entered public service with his election as Sheriff of Mineral County, serving in that capacity from 1937 until 1941.

During World War II, he volunteered and served nearly four years as navigator in the Naval Air Force in both the Atlantic and the Pacific theatres.

On November 2, 1948, Harley O. Staggers was elected from the Democrat Party to the United States House of Represen-

tatives and was reelected fifteen times to represent the twenty-two county Second Congressional District. Known at one time as the "Dean of the West Virginia Congressional Delegation," he represented West Virginia in the U. S. House of Representatives longer than any person in the State's history, serving for thirty-two years before retiring in 1980.

Mr. Staggers first served in the House of Representatives as a member of the Post Office and Civil Service Committee and the Veterans' Affairs Committee, during which time he won the passage of his first piece of legislation, a bill designed to expand health benefits to World War II veterans.

In 1951, Mr. Staggers was appointed to the Interstate and Foreign Commerce Committee, and was named Chairman of that committee in 1966. During the fourteen years he served as chairman, he oversaw the enactment of legislation dealing with public health, consumer protection, transportation, environmental protection, communications and energy. He was directly responsible for the passage of the Staggers Rail Act of 1980, the complex and lengthy centerpiece of his congressional career, which provided for the regulatory reform of the Nation's railroad system. During the decade following passage of the Act, the Nation witnessed several major railroad mergers.

As Chairman, he also played a role in the location of some visible government and industry projects in his district. The most notable was the experimental Personal Rapid Transit system, which used computer-controlled passenger cars at West Virginia University, and was financed by the Department of Transportation at an eventual cost of \$120 million.

Mr. Staggers also successfully lobbied for legislation which, with certain exceptions, requires uniform observance of daylight saving time in the Nation. During one committee hearing, he cited a Moundsville bus driver who encountered seven time changes while making runs to St. Clairsville, Ohio, a distance of about twenty miles.

At one point during the early 1970's, when the Department of Transportation was studying the turbo train, Mr. Staggers persuaded the Department to experiment with it in northern West Virginia. The train, referred to as Harley's Hornet, was no match for the Allegheny Mountains.

During the 95th Congress, House Speaker Thomas P. "Tip" O'Neill appointed Congressman Staggers to the Ad Hoc Committee on Energy, which shaped the first national energy policy in the United States. During the same session of Congress, at the request of President Carter, Mr. Staggers led a Congressional delegation to the People's Republic of China to open discussions designed to broaden and strengthen that nation's commercial ties to the United States.

In addition to his committee responsibilities, he played an active role in Congressional leadership, having served as Assistant Majority Whip from 1955 until 1977.

Mr. Staggers was the father of six children who remember him as a tender and godly man who, during eighty-four years of reading and studying the Scriptures, had worn out twenty-three Bibles.

In the life of West Virginia, Harley Staggers truly cared, truly was a giant. He loved his family; he loved his neighbor; he loved his State. He was a friend.

A man who was always cheerful, always pleasant and with a smile on his lips, when Harley Staggers walked down the street, he made everyone he saw stand a little taller, feel a little better.

Congressman Staggers' long, productive and colorful life came to a close on August 20, 1991, four score and four years after its beginning in rural West Virginia.

Congressman Staggers is survived by his wife, Mary V. Casey Staggers, and by Margaret Ann, Mary Katherine, Frances Susan, Elizabeth Ellen, Harley O., Jr., and Daniel Casey, his children; therefore, be it

Resolved by the Legislature of West Virginia:

That this Legislature hereby notes the passing of Harley Orrin Staggers, a giant in our eyes, Congressman, statesman, gentleman, husband, father and friend and extends heartfelt condolences to those whom he leaves behind; and, be it

Further Resolved, That this resolution be personally presented to Mrs. Harley O. Staggers, his wife, and to his children.

HOUSE RESOLUTION 4

(By Mr. Speaker, Mr. Chambers, and Delegates Schoonover, Johnson, Taylor, D. Cook, Compton, Fragale, Preece, Mezzatesta, D. Miller, Willison, Leggett, G. Martin, Border, Dempsey, Proudfoot, Carper, Pettit, Meadows, Rollins, Brown, Browning, Prunty, Lindsey, Roop, Huntwork, Beane, Ashley, Campbell, Michael, Parriott, McKinley, Prezioso, Higgins, Riggs, Douglas, Phillips, Brum, Susman, Hendricks, Moore, Murensky, Warner, Kessel, Schadler, Haskins, Sims, Sayre, S. Cook, P. White, Vest, Richards, J. Martin, Reid, Grubb, Fullen, L. White, Love, Reed, Faircloth, Conley, Anderson, Louisos, Pethtel, Beach, Overington, Cerra, M. Miller, Calvert, Staton, Manuel, Wilson, Adkins, Farris, Stewart, Rutledge, Wallace, Carmichael, Evans, Houvouras, Burk, Kiss and Rowe)

[Adopted October 15, 1991]

Requesting GTE to retain its customer service office and computer center in St. Marys, Pleasants County.

WHEREAS, As a result of a merger between GTE and Contel, GTE plans to close the former Contel office in St. Marys; and

WHEREAS, About thirty-two jobs would be lost and West Virginia would be the only state of the forty states served by GTE which would not have a customer contact office; and

WHEREAS, GTE serves ninety-four thousand customers in this State; and

WHEREAS, The St. Marys office is a computer center which could also be used to keep credit union or retirement and benefit records; therefore, be it

Resolved by the House of Delegates:

That GTE is hereby requested to retain its customer service office and computer center in St. Marys, Pleasants County; and, be it

Further Resolved, That the Clerk of the House of Delegates forward copies of this resolution to local GTE representatives and the president of GTE telephone operations.

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 1991

CHAPTER 1

(Com. Sub. for S. B. 2—By Senators Burdette, Mr. President, and Jones)

[Passed December 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article three of said chapter, relating to establishing the number of magistrates in the state and apportioning the number of magistrates among the magistrate courts of each county; providing for additional magistrate court deputy clerks; establishing the salaries of magistrates, magistrate court clerks, magistrate assistants and magistrate court deputy clerks; and audits as to magistrate court case filings.

Be it enacted by the Legislature of West Virginia:

That sections two, three, eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight, article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 (a) The number of magistrates to be elected in each
2 county of this state shall be determined in accordance
3 with the provisions of this section.

4 (b) On or before the first day of January, one thousand
5 nine hundred ninety-two, and on or before the first day
6 of January in every fourth year thereafter, the supreme
7 court of appeals shall certify to the board of ballot
8 commissioners of each county the number of magistrates
9 to be elected in that county for the term of office
10 commencing on the first day of January of the succeed-
11 ing year. The number of magistrates so certified shall
12 be determined in accordance with the following:

13 (1) The court shall not provide:

14 (A) For the total number of magistrates in the state
15 to exceed one hundred fifty-six in number;

16 (B) For the number of magistrates in any one county
17 to exceed ten in number; or

18 (C) For the number of magistrates in any one county
19 to be less than two in number.

20 (2) The court shall determine the number of magis-
21 trates that would be apportioned for each county by the
22 application of an equal proportions formula, as follows:

23 (A) Two magistrates shall be allocated to each county;

24 (B) The population of the county shall be divided by
25 a mathematical factor, as established by the equal
26 proportion method, to establish each county's priority
27 claim to additional magistrates above the two magis-
28 trates provided for by paragraph (A) of this subdivision;
29 and

30 (C) Additional numbers of magistrates shall be
31 allocated to the several counties in order of priority
32 claims, beginning with the largest claim, until magis-
33 trates have been assigned within the limits of this
34 section.

35 For purposes of this article, a determination made in
36 accordance with the provisions of this subdivision is the
37 "equal proportion number".

38 (3) The court shall determine the number of magis-
39 trates elected in each county at the last general election
40 in which magistrates were regularly elected next prior
41 to the preceding census taken under the authority of the
42 United States government. For purposes of this article,
43 that number shall be referred to as the "election
44 number".

45 (4) The court shall determine the number of case
46 filings per magistrate in each magistrate court for the
47 most recent fiscal year preceding the date of certifica-
48 tion, and shall rank the magistrate courts from one
49 through fifty-five, in the order of their case filings per
50 magistrate, with the court having the most filings per
51 magistrate being ranked number one, and the court
52 with the least filings per magistrate being ranked
53 number fifty-five.

54 (5) If the court determines that the equal proportion
55 number for a county is the same as the election number
56 for such county, the court shall certify that number as
57 the number of magistrates to be elected in that county
58 at the next election.

59 (6) If the court determines that the equal proportion
60 number for a county is different from the election
61 number for such county, the court shall apply the
62 ranking established by subdivision (4) of this subsection
63 and determine the number of magistrates for such
64 county, as follows:

65 (A) If the equal proportion number exceeds the
66 election number, the number of magistrates to be
67 elected in that county at the next election shall be the
68 election number: *Provided*, That if the county is ranked
69 as one through five, inclusive, in accordance with
70 subdivision (4) of this subsection, the court shall certify
71 the equal proportion number as the number of magis-
72 trates to be elected in that county at the next election.

73 (B) If the equal proportion number is less than the
74 election number, the number of magistrates to be
75 elected in that county at the next election shall be the
76 equal proportion number: *Provided*, That if the county
77 is ranked as one through five, inclusive, in accordance

78 with subdivision (4) of this subsection, the court shall
79 certify the election number as the number of magis-
80 trates to be elected in that county at the next election.

81 (c) If the number of magistrates in a county would
82 have been increased but for the application of the
83 proviso contained in paragraph (A), subdivision (6),
84 subsection (b) of this section, and if the county is ranked
85 as six through ten, inclusive, in accordance with the
86 provisions of subdivision (4), subsection (b) of this
87 section, then the supreme court of appeals shall provide
88 for the appointment of an additional magistrate court
89 deputy clerk for that county, notwithstanding the
90 limitation on the total number of deputy clerks other-
91 wise provided for under the provisions of section nine-
92 a of this article.

93 (d) Any magistrate in office at the time of the effective
94 date of this section shall continue as a magistrate, unless
95 sooner removed or retired as provided by law, until the
96 first day of January, one thousand nine hundred ninety-
97 three.

§50-1-3. Salary of magistrates.

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia supreme court of appeals has
3 held that a salary system for magistrates which is based
4 upon the population that each magistrate serves does not
5 violate the equal protection clause of the United States
6 Constitution;

7 (2) The West Virginia supreme court of appeals has
8 held that a salary system for magistrates which is based
9 upon the population that each magistrate serves does not
10 violate article VI, section 39 of the constitution of the
11 state of West Virginia;

12 (3) The utilization of a two-tiered salary schedule for
13 magistrates is an equitable and rational manner by
14 which magistrates should be compensated for work
15 performed;

16 (4) Organizing the two tiers of the salary schedule into
17 one tier for magistrates serving less than eight thousand

18 five hundred in population and the second tier for
19 magistrates serving eight thousand five hundred or
20 more in population is rational and equitable given
21 current statistical information relating to population
22 and caseload; and

23 (5) That all magistrates who fall under the same tier
24 should be compensated equally.

25 (b) The salary of each magistrate shall be paid by the
26 state. Magistrates who serve less than ten thousand in
27 population shall be paid annual salaries of twenty
28 thousand six hundred twenty-five dollars and magis-
29 trates who serve ten thousand or more in population
30 shall be paid annual salaries of twenty-seven thousand
31 dollars: *Provided*, That on and after the first day of
32 January, one thousand nine hundred ninety-two, mag-
33 istrates who serve less than ten thousand in population
34 shall be paid annual salaries of twenty-one thousand six
35 hundred twenty-five dollars and magistrates who serve
36 ten thousand or more in population shall be paid annual
37 salaries of twenty-eight thousand dollars: *Provided*,
38 *however*, That on and after the first day of January, one
39 thousand nine hundred ninety-three, magistrates who
40 serve less than eight thousand five hundred in popula-
41 tion shall be paid annual salaries of twenty-three
42 thousand six hundred twenty-five dollars and magis-
43 trates who serve eight thousand five hundred or more
44 in population shall be paid annual salaries of thirty
45 thousand dollars.

46 (c) For the purpose of determining the population
47 served by each magistrate, the number of magistrates
48 authorized for each county shall be divided into the
49 population of each county. For the purpose of this
50 article, the population of each county is the population
51 as determined by the last preceding decennial census
52 taken under the authority of the United States govern-
53 ment.

**§50-1-8. Magistrate court clerks; salaries; duties; duties of
circuit clerk.**

1 In each county having three or more magistrates the
2 judge of the circuit court or the chief judge thereof, if

3 there is more than one judge of the circuit court, shall
4 appoint a magistrate court clerk. In all other counties
5 such judge may appoint a magistrate court clerk or may
6 by rule require the duties of the magistrate court clerk
7 to be performed by the clerk of the circuit court, in
8 which event such circuit court clerk shall be entitled to
9 additional compensation in the amount of two thousand
10 five hundred dollars per year. The magistrate court
11 clerk shall serve at the will and pleasure of the circuit
12 judge.

13 Magistrate court clerks shall be paid a monthly salary
14 by the state. Magistrate court clerks serving magis-
15 trates who serve less than ten thousand in population
16 shall be paid up to one thousand two hundred forty-one
17 dollars per month and magistrate court clerks serving
18 magistrates who serve ten thousand or more in popula-
19 tion shall be paid up to one thousand six hundred fifty
20 dollars per month: *Provided*, That on and after the first
21 day of January, one thousand nine hundred ninety-two,
22 magistrate court clerks serving magistrates who serve
23 less than ten thousand in population shall be paid up to
24 one thousand three hundred twenty-five dollars per
25 month and magistrate court clerks serving magistrates
26 who serve ten thousand or more in population shall be
27 paid up to one thousand seven hundred thirty-four
28 dollars per month: *Provided, however*, That on and after
29 the first day of January, one thousand nine hundred
30 ninety-three, magistrate court clerks serving magis-
31 trates who serve less than eight thousand five hundred
32 in population shall be paid up to one thousand four
33 hundred fifty dollars per month and magistrate court
34 clerks serving magistrates who serve eight thousand
35 five hundred or more in population shall be paid up to
36 one thousand eight hundred fifty-nine dollars per
37 month: *Provided further*, That after the effective date of
38 this section, any general salary increase granted to all
39 state employees, whose salaries are not set by statute,
40 expressed as a percentage increase or an "across-the-
41 board" increase, may also be granted to magistrate
42 court clerks. For the purpose of determining the
43 population served by each magistrate, the number of
44 magistrates authorized for each county shall be divided

45 into the population of each county. The salary of the
46 magistrate court clerk shall be established by the judge
47 of the circuit court, or the chief judge thereof if there
48 is more than one judge of the circuit court, within the
49 limits set forth in this section.

50 In addition to other duties as may be imposed by the
51 provisions of this chapter or by the rules of the supreme
52 court of appeals or the judge of the circuit court, or the
53 chief judge thereof if there is more than one judge of
54 the circuit court, it is the duty of the magistrate court
55 clerk to establish and maintain appropriate dockets and
56 records in a centralized system for the magistrate court,
57 to assist in the preparation of such reports as may be
58 required of the court and to carry out on behalf of the
59 magistrates or chief magistrate if a chief magistrate is
60 appointed, the administrative duties of the court.

61 The magistrate court clerk or, if there is no magis-
62 trate court clerk in the county, the clerk of the circuit
63 court has the authority to issue all manner of civil
64 process and to require the enforcement of subpoenas and
65 subpoenas duces tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 In each county there shall be one magistrate assistant
2 for each magistrate. Each magistrate assistant shall be
3 appointed by the magistrate under whose authority and
4 supervision and at whose will and pleasure he or she
5 shall serve. The assistant shall not be a member of the
6 immediate family of any magistrate and shall not have
7 been convicted of a felony or any misdemeanor involving
8 moral turpitude and shall reside in the county where
9 appointed. For the purpose of this section, immediate
10 family means the relationships of mother, father, sister,
11 brother, child or spouse.

12 A magistrate assistant shall have such duties, clerical
13 or otherwise, as may be assigned by the magistrate and
14 as may be prescribed by the rules of the supreme court
15 of appeals or the judge of the circuit court, or the chief
16 judge thereof if there is more than one judge of the
17 circuit court. In addition to these duties, magistrate
18 assistants shall perform and be accountable to the

19 magistrate court clerks with respect to the following
20 duties:

21 (1) The preparation of summons in civil actions;

22 (2) The assignment of civil actions to the various
23 magistrates;

24 (3) The collection of all costs, fees, fines, forfeitures
25 and penalties which may be payable to the court;

26 (4) The submission of such moneys, along with an
27 accounting thereof, to appropriate authorities as
28 provided by law;

29 (5) The daily disposition of closed files which are to
30 be located in the magistrate clerk's office;

31 (6) All duties related to the gathering of information
32 and documents necessary for the preparation of admin-
33 istrative reports and documents required by the rules
34 of the supreme court of appeals or the judge of the
35 circuit court, or the chief judge thereof if there is more
36 than one judge of the circuit court;

37 (7) All duties relating to the notification, certification
38 and payment of jurors serving pursuant to the terms of
39 this chapter;

40 (8) All other duties or responsibilities whereby the
41 magistrate assistant is accountable to the magistrate
42 court clerk as the magistrate determines.

43 Magistrates assistants shall be paid a monthly salary
44 by the state. Magistrate assistants serving magistrates
45 who serve less than ten thousand in population shall be
46 paid up to nine hundred sixty-seven dollars per month
47 and magistrate assistants serving magistrates who serve
48 ten thousand or more in population shall be paid up to
49 one thousand two hundred twenty-five dollars per
50 month: *Provided*, That on and after the first day of
51 January, one thousand nine hundred ninety-two, mag-
52 istrate assistants serving magistrates who serve less
53 than ten thousand in population shall be paid up to one
54 thousand fifty-one dollars per month and magistrate
55 assistants serving magistrates who serve ten thousand
56 or more in population shall be paid up to one thousand

57 three hundred nine dollars per month: *Provided,*
58 *however,* That on and after the first day of January, one
59 thousand nine hundred ninety-three, magistrate assist-
60 ants serving magistrates who serve less than eight
61 thousand five hundred in population shall be paid up to
62 one thousand one hundred seventy-six dollars per month
63 and magistrate assistants serving magistrates who serve
64 eight thousand five hundred or more in population shall
65 be paid up to one thousand four hundred thirty-four
66 dollars per month: *Provided further,* That after the
67 effective date of this section, any general salary increase
68 granted to all state employees, whose salaries are not set
69 by statute, expressed as a percentage increase or an
70 "across-the-board" increase, may also be granted to
71 magistrate assistants. For the purpose of determining
72 the population served by each magistrate, the number
73 of magistrates authorized for each county shall be
74 divided into the population of each county. The salary
75 of the magistrate assistant shall be established by the
76 magistrate within the limits set forth in this section.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-8. Audits.

1 The chief inspector of public offices shall perform an
2 annual financial audit of each magistrate court. In
3 addition to and in conjunction with the financial audit,
4 the chief inspector of public offices shall perform or
5 cause to be performed an audit of the case filings of each
6 magistrate court. The chief inspector shall report the
7 annual number of case filings of each magistrate court
8 to be included in the financial audit report to be made
9 to the supreme court of appeals, circuit court of the
10 county and the legislative auditor. The supreme court
11 of appeals shall make a written finding that it has
12 examined the report and that the annual number of case
13 filings in each magistrate court accurately represents
14 the total number of cases actually brought before that
15 magistrate court. This finding shall be made prior to
16 any redistribution of magistrates which is based upon
17 the increase or decrease of case filings in any magistrate
18 court.

CHAPTER 2

(S. B. 1—By Senator Wooton)

[Passed December 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to apportionment of the Senate into seventeen senatorial districts for the purpose of electing thirty-four members; defining terms; and requiring all actions necessary and related to such apportionment.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-1. Senatorial districts.

1 (a) This section shall be known and may be cited as
2 "The Senate Redistricting Act of 1991".

3 (b) As used in this section:

4 (1) "County" means the territory comprising a county
5 of this state as such county existed on the first day of
6 January, one thousand nine hundred ninety, notwith-
7 standing any boundary changes thereof made subse-
8 quent thereto;

9 (2) "Block", "block group", "census tract" and "voting
10 district" mean those geographic areas as defined by the
11 bureau of the census of the United States department
12 of commerce for the taking of the one thousand nine
13 hundred ninety census of population and described on
14 census maps prepared by the bureau of the census. Such
15 maps are, at the time of this enactment, maintained by
16 the bureau of the census and filed in the office of
17 legislative services;

18 (3) "Magisterial district" means the territory compris-

19 ing a magisterial district of this state as reported to and
20 used by the bureau of the census of the United States
21 department of commerce for the taking of the one
22 thousand nine hundred ninety census of population and
23 described on census maps prepared by the bureau of the
24 census;

25 (4) "Incumbent senator" means a senator elected at
26 the general election held in the year one thousand nine
27 hundred ninety or at any general election thereafter,
28 with an unexpired term of at least two years in duration.

29 (c) The Legislature recognizes that in dividing the
30 state into senatorial districts, the Legislature is bound
31 not only by the United States constitution but also by
32 the West Virginia constitution; that in any instance
33 where the West Virginia constitution conflicts with the
34 United States constitution, the United States constitu-
35 tion must govern and control, as recognized in section
36 one, article one of the West Virginia constitution; that
37 the United States constitution, as interpreted by the
38 United States supreme court and other federal courts,
39 requires state legislatures to be apportioned so as to
40 achieve equality of population as near as is practicable,
41 population disparities being permissible where justified
42 by rational state policies; and that the West Virginia
43 constitution requires two senators to be elected from
44 each senatorial district for terms of four years each, one
45 such senator being elected every two years, with one half
46 of the senators being elected biennially, and requires
47 senatorial districts to be compact, formed of contiguous
48 territory and bounded by county lines. The Legislature
49 finds and declares that it is not possible to divide the
50 state into senatorial districts so as to achieve equality
51 of population as near as is practicable as required by
52 the United States supreme court and other federal
53 courts and at the same time adhere to all of these
54 provisions of the West Virginia constitution; but that, in
55 an effort to adhere as closely as possible to all of these
56 provisions of the West Virginia constitution, the
57 Legislature, in dividing the state into senatorial
58 districts, as described and constituted in subsection (d)
59 hereof, has:

60 (1) Adhered to the equality of population concept,
61 while at the same time recognizing that from the
62 formation of this state in the year one thousand eight
63 hundred sixty-three, each constitution of West Virginia
64 and the statutes enacted by the Legislature have
65 recognized political subdivision lines and many func-
66 tions, policies and programs of government have been
67 implemented along political subdivision lines;

68 (2) Made the senatorial districts as compact as
69 possible, consistent with the equality of population
70 concept;

71 (3) Formed the senatorial districts of "contiguous
72 territory" as that term has been construed and applied
73 by the West Virginia supreme court of appeals;

74 (4) Deviated from the long-established state policy,
75 recognized in (1) above, by crossing county lines only
76 when necessary to ensure that all senatorial districts
77 were formed of contiguous territory or when adherence
78 to county lines produced unacceptable population
79 inequalities and only to the extent necessary in order to
80 maintain contiguity of territory and to achieve accepta-
81 ble equality of population; and

82 (5) Also taken into account in crossing county lines,
83 to the extent feasible, the community of interests of the
84 people involved.

85 (d) The Senate shall be composed of thirty-four
86 senators, one senator to be elected at the general election
87 to be held in the year one thousand nine hundred ninety-
88 two, and biennially thereafter for a four-year term from
89 each of the senatorial districts hereinafter in this
90 subsection described and constituted as follows:

91 (1) The counties of Brooke and Hancock and all of
92 magisterial District One of Ohio county and voting
93 district EP 9, voting district EP 20, voting district EP
94 28, voting district EP 31, voting district EP 113, voting
95 district EP 115, voting district EP 116, voting district
96 EP 119, voting district EP 120, Block 302D and Block
97 320 of Block Group 3 in Census Tract 0002 contained
98 in voting district EP 24, Block 405B, Block 422 and

99 Block 499B of Block Group 4 in Census Tract 0002
100 contained in voting district EP 24, Block 101, Block 102,
101 Block 103, Block 104, Block 105, Block 106, Block 107,
102 Block 108, Block 109, Block 110, Block 111, Block 112,
103 Block 113, Block 114 and Block 116 of Block Group 1
104 in Census Tract 0004 contained in voting district EP 24,
105 Block 201 of Block Group 2 in Census Tract 0004
106 contained in voting district EP 24, Block 105, Block 106,
107 Block 107, Block 109A and Block 110A of Block Group
108 1 in Census Tract 0014 contained in voting district EP
109 43, Block 209A, Block 210, Block 211 and Block 212 of
110 Block Group 2 in Census Tract 0014 contained in voting
111 district EP 43, and Block 327, Block 328 and Block 329
112 of Block Group 3 in Census Tract 0015 contained in
113 voting district EP 43 of magisterial District Two of Ohio
114 county, and all of magisterial District Three of Ohio
115 county except voting district EP 87, voting district EP
116 95, voting district EP 100, voting district EP 103 and
117 voting district EP 104 shall constitute the first senatorial
118 district;

119 (2) The counties of Doddridge, Marshall, Ritchie,
120 Tyler, Wetzel and that portion of the county of Ohio not
121 included in the first senatorial district and voting
122 district EP 66, voting district EP 70, voting district EP
123 72, voting district EP 74 and voting district EP 78 of
124 the West Augusta magisterial district of the county of
125 Marion shall constitute the second senatorial district;

126 (3) The counties of Calhoun, Pleasants, Wirt and Wood
127 shall constitute the third senatorial district;

128 (4) The counties of Jackson, Mason, Putnam and
129 Roane shall constitute the fourth senatorial district;

130 (5) The county of Cabell and voting district EP 12,
131 voting district VTD 101, Block 103 of Block Group 1 in
132 Census Tract 0202 contained in voting district EP 11,
133 Block 199B of Block Group 1 in Census Tract 0202
134 contained in voting district EP 59, and Block 101B and
135 Block 199E of Block Group 1 in Census Tract 0202
136 contained in voting district EP 21 in the Ceredo
137 magisterial district, and that portion of voting district
138 EP 59, voting district EP 63 and Block 101, Block 102,

139 Block 103, Block 104 and Block 105 of Block Group 1
140 in Census Tract 0051 contained in voting district EP 60
141 in the Westmoreland magisterial district of the county
142 of Wayne shall constitute the fifth senatorial district;

143 (6) The counties of McDowell and Mingo, voting
144 district EP 41, voting district EP 42, voting district EP
145 49, voting district EP 52, voting district EP 60, voting
146 district EP 61, Block 412B, Block 415, Block 416, Block
147 417B and Block 422B of Block Group 4 in Census Tract
148 9509 contained in voting district EP 46, Block 510 of
149 Block Group 5 in Census Tract 9509 contained in voting
150 district EP 46, Block 304B of Block Group 3 in Census
151 Tract 9510 contained in voting district EP 46, Block
152 405C, Block 412D, Block 414, Block 417, Block 418B,
153 Block 419B, Block 422, Block 423, Block 424 and Block
154 425 of Block Group 4 in Census Tract 9516 contained
155 in voting district EP 63 of magisterial District III in the
156 county of Mercer, and voting district EP 1, voting
157 district EP 3, voting district EP 5, voting district EP
158 17, voting district EP 18, voting district EP 19, and
159 Block 510 of Block Group 5 in Census Tract 0204
160 contained in voting district EP 22, and Block 219, Block
161 220, Block 221, Block 222, Block 224, Block 225, Block
162 228, Block 231 and Block 232 of Block Group 2 in Census
163 Tract 0206 contained in voting district EP 22 of the
164 Butler magisterial district in the county of Wayne, and
165 voting district EP 13, voting district EP 15, voting
166 district EP 20, Block 305A, Block 305C, Block 306A,
167 Block 306C and Block 307 of Block Group 3 in Census
168 Tract 0052 contained in voting district EP 11, Block
169 210A and Block 211A of Block Group 2 in Census Tract
170 0201 contained in voting district EP 11, Block 102,
171 Block 104, Block 105, Block 106, Block 107, Block 108,
172 Block 109, Block 110, Block 111, Block 112, Block 113,
173 Block 114, Block 115, Block 116, Block 117, Block 118,
174 Block 119, Block 120, Block 121 and Block 199A of
175 Block Group 1 in Census Tract 0202 contained in voting
176 district EP 11, Block 225 and Block 226 of Block Group
177 2 in Census Tract 0202 contained in voting district EP
178 11, and Block 218A of Block Group 2 in Census Tract
179 0203 contained in voting district EP 11, and Block 101A,
180 Block 102A, Block 103, Block 104, Block 120A, Block

181 122A, Block 122B, Block 124A, Block 156, Block 157
182 and Block 199A of Block Group 1 in Census Tract 0204
183 contained in voting district EP 11, Block 101B, Block
184 102, Block 103, Block 104, Block 105, Block 106, Block
185 107, Block 108, Block 109, Block 110, Block 111, Block
186 112, Block 113B, Block 114, Block 115, Block 116, Block
187 117, Block 119, Block 120, Block 121, Block 122, Block
188 123, Block 124 and Block 134 of Block Group 1 in Census
189 Tract 0203 contained in voting district EP 21, Block
190 401, Block 402, Block 417 and Block 418 of Block Group
191 4 in Census Tract 0203 contained in voting district EP
192 21, Block 505, Block 520, Block 522 and Block 523 of
193 Block Group 5 in Census Tract 0203 contained in voting
194 district EP 21 of the Ceredo magisterial district in the
195 county of Wayne, and voting district EP 30, voting
196 district EP 31, voting district EP 34, voting district EP
197 36, voting district EP 37, and that portion of voting
198 district EP 3 of the Stonewall magisterial district in the
199 county of Wayne, and voting district EP 48, Block 318
200 of Block Group 3 in Census Tract 0206 contained in
201 voting district EP 53, Block 144 and Block 145 of Block
202 Group 1 in Census Tract 0207 contained in voting
203 district EP 53, Block 255B of Block Group 2 in Census
204 Tract 0207 contained in voting district EP 53, Block
205 464B of Block Group 4 in Census Tract 0206 contained
206 in voting district EP 54, and Block 319B, Block 315B
207 and Block 314B of Block Group 3 in Census Tract 0209
208 contained in voting district EP 54 of the Union
209 magisterial district in the county of Wayne, and voting
210 district EP 14, voting district EP 19, voting district EP
211 56, voting district EP 57, voting district EP 58, voting
212 district EP 61, voting district EP 62 and Block 106 of
213 Block Group 1 in Census Tract 0051 contained in voting
214 district EP 60 of the Westmoreland magisterial district
215 in the county of Wayne shall constitute the sixth
216 senatorial district;

217 (7) The counties of Boone, Lincoln and Logan and that
218 portion of the county of Wayne not included in the fifth
219 or sixth senatorial districts shall constitute the seventh
220 senatorial district;

221 (8) The county of Kanawha shall constitute the eighth

222 senatorial district;

223 (9) The counties of Raleigh and Wyoming shall
224 constitute the ninth senatorial district;

225 (10) The counties of Monroe and Summers and that
226 portion of the county of Mercer not included in the sixth
227 senatorial district, and voting district EP 68, voting
228 district EP 72 and voting district EP 74 of the New
229 Haven magisterial district of Fayette county, and voting
230 district EP 3, voting district EP 4, voting district EP
231 5, voting district EP 9, voting district EP 10, voting
232 district EP 11, voting district EP 12, voting district EP
233 14, voting district EP 19, voting district EP 23, voting
234 district EP 24, Block 226A, Block 228A, Block 229 and
235 Block 230 of Block Group 2 in Census Tract 0202
236 contained in voting district EP 8, Block 312A, Block
237 312B, Block 312C, Block 317A, Block 317B, Block 318,
238 Block 319, Block 320A, Block 320B, Block 321, Block
239 322A, Block 322B, Block 323, Block 324, Block 325,
240 Block 326, Block 327 and Block 328 of Block Group 3
241 in Census Tract 0202 contained in voting district EP 8,
242 Block 401A, Block 409, Block 410, Block 411, Block 412,
243 Block 413, Block 414A, Block 415, Block 416 and Block
244 417 of Block Group 4 in Census Tract 0202 contained
245 in voting district EP 8, Block 536, Block 539, Block 540,
246 Block 541, Block 542, Block 543, Block 544, Block 545,
247 Block 546, Block 547, Block 548, Block 552, Block 553,
248 Block 554 and Block 555 of Block Group 5 in Census
249 Tract 0202 contained in voting district EP 8, Block 330,
250 Block 331, Block 334, Block 335, Block 337, Block 338,
251 Block 339, Block 340, Block 342, Block 343, Block 344,
252 Block 345, Block 346 and Block 347 of Block Group 3
253 in Census Tract 0203 contained in voting district EP 13,
254 Block 101A, Block 101B, Block 102A, Block 102B, Block
255 103, Block 104, Block 105, Block 106, Block 108, Block
256 109, Block 110, Block 111, Block 112, Block 113, Block
257 114, Block 116, Block 117, Block 119, Block 120, Block
258 121A, Block 121B, Block 122, Block 123A, Block 123B,
259 Block 124A, Block 124B, Block 125A, Block 126, Block
260 127 and Block 128 of Block Group 1 in Census Tract
261 0204 contained in voting district EP 13, Block 501A,
262 Block 503, Block 504, Block 505, Block 506, Block 507,

263 Block 508, Block 509, Block 510, Block 511, Block 512,
264 Block 513, Block 514, Block 515, Block 516, Block 517,
265 Block 518, Block 519, Block 520, Block 521, Block 522,
266 Block 523A, Block 524, Block 525A, Block 526, Block
267 527A, Block 528A, Block 528B, Block 529A, Block 532,
268 Block 534A, Block 535, Block 537, Block 538, Block 549,
269 Block 550 and Block 551 of Block Group 5 in Census
270 Tract 0202 contained in voting district EP 15, Block
271 601A of Block Group 6 in Census Tract 0202 contained
272 in voting district EP 15, Block 307, Block 309A, Block
273 309B and Block 315 of Block Group 3 in Census Tract
274 0202 contained in voting district EP 16, and Block 234A
275 of Block Group 2 in Census Tract 0206 contained in
276 voting district EP 18 of the Plateau magisterial district
277 of Fayette county shall constitute the tenth senatorial
278 district;

279 (11) The counties of Clay, Greenbrier, Nicholas and
280 Webster and that portion of the county of Fayette not
281 included in the tenth senatorial district shall constitute
282 the eleventh senatorial district;

283 (12) The counties of Braxton, Gilmer, Harrison and
284 Lewis shall constitute the twelfth senatorial district;

285 (13) That portion of the county of Marion not included
286 in the second senatorial district, and all of the Central
287 magisterial district of Monongalia county, and voting
288 district EP 40, voting district EP 41, voting district EP
289 42, voting district EP 44, voting district EP 46, voting
290 district EP 47, voting district EP 49, voting district EP
291 51, voting district EP 52, voting district EP 53, voting
292 district EP 54, voting district EP 55, voting district EP
293 56, voting district EP 58, voting district EP 70, voting
294 district EP 71, voting district EP 72, voting district EP
295 73, voting district EP 74, voting district EP 75 and
296 Block 301B, Block 302B and Block 399B of Block Group
297 3 in Census Tract 0112 contained in voting district EP
298 48, Block 401, Block 402, Block 403, Block 404, Block
299 405, Block 406, Block 407, Block 408, Block 409, Block
300 410, Block 411, Block 412, Block 413A, Block 413B,
301 Block 414, Block 415, Block 416, Block 417, Block 418,
302 Block 419, Block 420, Block 421, Block 422, Block 423,
303 Block 424, Block 425 and Block 499 of Block Group 4

304 in Census Tract 0112 contained in voting district EP 48,
305 Block 501B, Block 502A, Block 502B, Block 502C, Block
306 503A, Block 503B, Block 503C, Block 504A, Block 504B,
307 Block 505A, Block 505B, Block 506, Block 507A, Block
308 507B, Block 508, Block 509A, Block 509B, Block 510,
309 Block 511, Block 512, Block 513, Block 514A, Block
310 514B, Block 515A, Block 515B, Block 516A, Block 516B,
311 Block 517, Block 518, Block 519A, Block 519B, Block
312 520A, Block 520B, Block 521A and Block 521B of Block
313 Group 5 in Census Tract 0112 contained in voting
314 district EP 48, Block 301, Block 302, Block 303, Block
315 304, Block 305, Block 306, Block 307, Block 308, Block
316 309, Block 311, Block 312, Block 313, Block 314, Block
317 315, Block 316, Block 317, Block 355A, Block 355B,
318 Block 357A, Block 357B, Block 358, Block 360, Block
319 362 and Block 399 of Block Group 3 in Census Tract
320 0115 contained in voting district EP 48 of the Western
321 magisterial district of Monongalia county, and that
322 portion of voting district EP 22, that portion of voting
323 district EP 30, voting district EP 32, voting district EP
324 36, voting district EP 39, voting district EP 76, voting
325 district EP 80, voting district EP 81, voting district EP
326 82, voting district EP 83, voting district EP 84, voting
327 district EP 86, that portion of voting district EP 87,
328 voting district EP 88, voting district EP 89, voting
329 district EP 91, Block 418B, Block 419C, Block 419D and
330 Block 421B of Block Group 4 in Census Tract 0108
331 contained in voting district EP 35, Block 101D, Block
332 102, Block 103, Block 105 and Block 110 of Block Group
333 1 in Census Tract 0109 contained in voting district EP
334 35, Block 731B, Block 732B, Block 733 and Block 734B
335 of Block Group 7 in Census Tract 0109 contained in
336 voting district EP 35, Block 801C, Block 802, Block 803,
337 Block 804, Block 805, Block 806B, Block 807, Block 811,
338 Block 812 and Block 813 of Block Group 8 in Census
339 Tract 0109 contained in voting district EP 35, Block
340 315B of Block Group 3 in Census Tract 0110 contained
341 in voting district EP 35, Block 599A of Block Group 5
342 in Census Tract 0116 contained in voting district EP 79,
343 Block 126, Block 127, Block 128, Block 132, Block 133,
344 Block 134, Block 135, Block 136, Block 137A, Block
345 137B, Block 138, Block 139, Block 140, Block 141, Block

346 142, Block 143, Block 144, Block 145, Block 146, Block
347 147, Block 148, Block 149, Block 150, Block 151, Block
348 152, Block 153, Block 154, Block 155, Block 156A, Block
349 156B, Block 157, Block 158, Block 159, Block 160, Block
350 161, Block 162, Block 163, Block 164, Block 165, Block
351 166, Block 167, Block 168, Block 169, Block 170, Block
352 171, Block 172, Block 173, Block 174, Block 175, Block
353 176, Block 177, Block 178, Block 179, Block 180, Block
354 181, Block 182, Block 183, Block 184, Block 185, Block
355 186, Block 187, Block 199A, Block 199B, Block 199F,
356 Block 199G, Block 199H and Block 199J of Block Group
357 1 in Census Tract 0117 contained in voting district EP
358 79, Block 613B of Block Group 6 in Census Tract 0110
359 contained in voting district EP 85, and Block 701, Block
360 702B and Block 703 of Block Group 7 in Census Tract
361 0110 contained in voting district EP 85 of the Eastern
362 magisterial district of Monongalia county shall consti-
363 tute the thirteenth senatorial district;

364 (14) The counties of Barbour, Preston, Taylor and
365 Tucker and that portion of the county of Monongalia not
366 included in the thirteenth senatorial district, and all of
367 the Union magisterial district of Grant county, and all
368 of magisterial District Two of Mineral county, and
369 voting district EP 2, voting district EP 3, voting district
370 EP 4, voting district EP 6, voting district EP 8, voting
371 district EP 27, voting district EP 28, voting district EP
372 29, voting district EP 30, voting district EP 31, voting
373 district EP 35 and that portion of voting district EP 5
374 in magisterial District One of Mineral county, and
375 voting district EP 10, voting district EP 12, voting
376 district EP 13, voting district EP 14, voting district EP
377 15, voting district EP 32 and that portion of voting
378 district EP 5 in magisterial District Three of Mineral
379 county shall constitute the fourteenth senatorial district;

380 (15) The counties of Hampshire, Hardy, Randolph,
381 Pendleton, Pocahontas and Upshur and that portion of
382 the county of Grant not included in the fourteenth
383 senatorial district, and that portion of the county of
384 Mineral county not included in the fourteenth senatorial
385 district shall constitute the fifteenth senatorial district;

386 (16) The counties of Berkeley, Jefferson and Morgan

387 shall constitute the sixteenth senatorial district; and

388 (17) The county of Kanawha shall constitute the
389 seventeenth senatorial district.

390 (e) The West Virginia constitution further provides,
391 in section four, article VI thereof, that where a
392 senatorial district is composed of more than one county,
393 both senators for such district shall not be chosen from
394 the same county, a residency dispersal provision which
395 is clear with respect to senatorial districts which follow
396 county lines, as required by such constitution, but which
397 is not clear in application with respect to senatorial
398 districts which cross county lines. However, in an effort
399 to adhere as closely as possible to the West Virginia
400 constitution in this regard, the following additional
401 provisions, in furtherance of the rationale of such
402 residency dispersal provision and to give meaning and
403 effect thereto, are hereby established:

404 (1) With respect to a senatorial district which is
405 composed of one or more whole counties and one or more
406 parts of another county or counties, no more than one
407 senator shall be chosen from the same county or part
408 of a county to represent such senatorial district;

409 (2) With respect to a senatorial district which does not
410 contain any whole county but only parts of two or more
411 counties, no more than one senator shall be chosen from
412 the same part to represent such senatorial district; and

413 (3) With respect to superimposed senatorial districts
414 which contain only one whole county, all senators shall
415 be chosen from such county to represent such senatorial
416 districts.

417 (f) Candidates for the Senate shall be nominated as
418 provided in section four, article five, chapter three of
419 this code, except that such candidates shall be nomi-
420 nated in accordance with the residency dispersal
421 provisions specified in section four, article VI of the
422 West Virginia constitution and the additional residency
423 dispersal provisions specified in subsection (e) hereof.
424 Candidates for the Senate shall also be elected in
425 accordance with the residency dispersal provisions

426 specified in said section four, article VI of the West
427 Virginia constitution and the additional residency
428 dispersal provisions specified in subsection (e) hereof. In
429 furtherance of the foregoing provisions of this subsection
430 (f), no person may file a certificate of candidacy for
431 election from a senatorial district described and
432 constituted in subsection (d) hereof if he or she resides
433 in the same county and the same such senatorial district
434 wherein also resides an incumbent senator, whether the
435 senatorial district wherein such incumbent senator
436 resides was described and constituted by chapter ninety-
437 nine, acts of the Legislature, one thousand nine hundred
438 eighty-two, or was described and constituted in subsec-
439 tion (d) hereof. Any vacancy in a nomination shall be
440 filled, any appointment to fill a vacancy in the Senate
441 shall be made, and any candidates in an election to fill
442 a vacancy in the Senate shall be chosen, so as to be
443 consistent with the residency dispersal provisions
444 specified in section four, article VI of the West Virginia
445 constitution and the additional residency dispersal
446 provisions specified in subsection (e) hereof.

447 (g) Regardless of the changes in senatorial district
448 boundaries made by the provisions of subsection (d)
449 hereof, all senators elected at the general election held
450 in the year one thousand nine hundred eighty-eight and
451 at the general election held in the year one thousand
452 nine hundred ninety shall continue to hold their seats
453 as members of the Senate for the term, and as repre-
454 sentatives of the senatorial district, for which each
455 thereof, respectively, was elected. Any appointment
456 made or election held to fill a vacancy in the Senate shall
457 be for the remainder of the term, and as a representa-
458 tive of the senatorial district, for which the vacating
459 senator was elected or appointed, and any such election
460 shall be held in the district as the same was described
461 and constituted at the time the vacating senator was
462 elected or appointed.

463 (h) The secretary of state may promulgate rules and
464 regulations to implement the provisions of this section,
465 including emergency rules and regulations promulgated
466 pursuant to the provisions of section five, article three,
467 chapter twenty-nine-a of this code.

CHAPTER 3

(Com. Sub. for H. B. 301—By Delegates Damron and Staton)

[Passed December 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and two-b, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to apportionment of membership of the House of Delegates; describing such delegate districts; and requiring that precinct boundaries comport with senatorial and delegate districts.

Be it enacted by the Legislature of West Virginia:

That sections two and two-b, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-2. Apportionment of membership of House of Delegates.

1 (a) This section shall be known and may be cited as
2 "The House of Delegates Apportionment Act of 1991."

3 (b) As used in this section:

4 (1) "County" means the territory comprising a county
5 of this state as it existed on the first day of January,
6 one thousand nine hundred eighty, notwithstanding any
7 boundary changes made subsequent thereto;

8 (2) "Block," "block group," "census tract," "place" and
9 "voting district" mean those geographic areas as defined
10 by the bureau of the census of the United States
11 department of commerce for the taking of the one
12 thousand nine hundred ninety census of population and
13 described on census maps prepared by the bureau of the
14 census. Such maps are, at the time of this enactment,
15 maintained by the bureau of the census and filed in the
16 office of legislative services;

17 (3) "Magisterial district" means the territory compris-
18 ing a magisterial district of this state as reported to and
19 used by the bureau of the census of the United States
20 department of commerce for the taking of the one
21 thousand nine hundred ninety census of population and
22 described on census maps prepared by the bureau of the
23 census;

24 (c) The House of Delegates shall be composed of one
25 hundred members elected from the delegate districts
26 hereinafter described:

27 (1) The county of Hancock and Block 101, Block 102,
28 Block 103, Block 104, Block 105, Block 106, Block 107,
29 Block 108, Block 110, Block 111, Block 125, Block 126,
30 Block 131 and Block 132 of Block Group 1 in Census
31 Tract 0301 contained in voting district EP 26, Block
32 101, Block 102, Block 103, Block 104, Block 105, Block
33 106, Block 107, Block 108, Block 111, Block 114 and
34 Block 115 of Block Group 1 in Census Tract 0302
35 contained in voting district EP 26, Block 202, Block 203,
36 Block 204, Block 205 and Block 206 of Block Group 2
37 in Census Tract 0302 contained in voting district EP 26,
38 and Block 109, Block 112, Block 113, Block 114, Block
39 115, Block 119, Block 120, Block 121, Block 122 and
40 Block 130 of Block Group 1 in Census Tract 0301
41 contained in voting district EP 34B of the Weirton
42 magisterial district in the county of Brooke shall
43 constitute the first delegate district and shall elect two
44 delegates;

45 (2) That portion of Brooke county not included in the
46 first delegate district, voting district EP 12, voting
47 district EP 13, voting district EP 142, voting district EP
48 146, voting district EP 147, voting district EP 158,
49 voting district EP 159, voting district EP 160, voting
50 district EP 161, and Block 101A, Block 101B, Block
51 101C, Block 102, Block 103, Block 104, Block 105A,
52 Block 105B, Block 106A, Block 106B, Block 107, Block
53 108A, Block 108B, Block 109A, Block 109B, Block 110A,
54 Block 110B, Block 111A, Block 111B, Block 112, Block
55 113A, Block 113B, Block 114, Block 115A, Block 115B
56 and Block 118 of Block Group 1 in Census Tract 0020
57 contained in voting district EP 14, and Block 315A,

58 Block 315C, Block 316A and Block 316C of Block Group
59 3 in Census Tract 0020 contained in voting district EP
60 14 of the District One magisterial district of Ohio county
61 and voting district EP 134, voting district EP 135,
62 voting district EP 138, voting district EP 141, Block
63 319, Block 320, Block 321, Block 322 and Block 335 of
64 Block Group 3 in Census Tract 0018 contained in voting
65 district EP 137, and Block 413, Block 424, Block 428,
66 Block 429, Block 430, Block 431, Block 432 and Block
67 433 of Block Group 4 in Census Tract 0018 contained
68 in voting district EP 137, and Block 504A of Block
69 Group 5 in Census Tract 0018 contained in voting
70 district EP 137, and Block 601A, Block 602A, Block
71 603A, Block 607A, Block 610, Block 611, Block 612 and
72 Block 613 of Block Group 6 in Census Tract 0018
73 contained in voting district EP 137, and Block 701A of
74 Block Group 7 in Census Tract 0018 contained in voting
75 district EP 137 of the District Three magisterial district
76 of Ohio county shall constitute the second delegate
77 district and shall elect two delegates;

78 (3) That portion of Ohio county not included in the
79 second delegate district, except Block 206, Block 216,
80 Block 217, Block 218, Block 220, Block 221, Block 222
81 and Block 299 of Block Group 2 in Census Tract 0025
82 contained in voting district EP 100 of magisterial
83 District Three of Ohio county shall constitute the third
84 delegate district and shall elect two delegates;

85 (4) The county of Marshall and Block 206, Block 216,
86 Block 217, Block 218, Block 220, Block 221, Block 222
87 and Block 299 of Block Group 2 in Census Tract 0025
88 contained in voting district EP 100 of magisterial
89 District Three of Ohio county shall constitute the fourth
90 delegate district and shall elect two delegates;

91 (5) The county of Wetzel except for voting district EP
92 37 and voting district EP 38 of magisterial District Two
93 shall constitute the fifth delegate district and shall elect
94 one delegate;

95 (6) The counties of Doddridge and Tyler and voting
96 district EP 37 and voting district EP 38 of magisterial
97 District Two of Wetzel county shall constitute the sixth

98 delegate district and shall elect one delegate;

99 (7) The counties of Pleasants and Ritchie and voting
100 district EP 27 and voting district EP 31 of the DeKalb-
101 Troy magisterial district of Gilmer county shall consti-
102 tute the seventh delegate district and shall elect one
103 delegate;

104 (8) All of the Union magisterial district, all of the
105 Walker magisterial district, voting district EP 56A, that
106 portion of voting district EP 56 and voting district EP
107 58 of the Clay magisterial district, voting district EP 40
108 and voting district EP 36C of the Parkersburg magis-
109 terial district, and voting district EP 46, voting district
110 EP 47, voting district EP 48, voting district EP 49,
111 voting district EP 49A, voting district EP 50, voting
112 district EP 51, voting district EP 51A and voting
113 district EP 52 of the Williams magisterial district of
114 Wood county shall constitute the eighth delegate district
115 and shall elect one delegate;

116 (9) The county of Wirt and all of the Steele magiste-
117 rial district, all of the Slate magisterial district, that
118 portion of voting district EP 81 in the Tygart magiste-
119 rial district, that portion of voting district EP 81 and
120 voting district EP 82 of the Harris magisterial district,
121 voting district EP 57 and voting district EP 57A of the
122 Clay magisterial district, and voting district EP 27,
123 voting district EP 37A, voting district EP 37C, voting
124 district EP 37D and voting district EP 38 of the
125 Parkersburg magisterial district of Wood county shall
126 constitute the ninth delegate district and shall elect one
127 delegate;

128 (10) That portion of Wood county not included in the
129 eighth or ninth delegate district shall constitute the
130 tenth delegate district and shall elect three delegates;

131 (11) The county of Roane and voting district EP 23
132 of the Ripley magisterial district and all of the Washing-
133 ton magisterial district of Jackson county shall consti-
134 tute the eleventh delegate district and shall elect one
135 delegate;

136 (12) All of the Grant magisterial district of Jackson

137 county, and that portion of voting district EP 5, voting
138 district EP 6, voting district EP 10, voting district EP
139 11, voting district EP 12 and the city of Ravenswood in
140 the Ravenswood magisterial district of Jackson county,
141 and voting district EP 21, voting district EP 22, voting
142 district EP 24, voting district EP 25, voting district EP
143 26, voting district EP 28, voting district EP 29, voting
144 district EP 33 and the city of Ripley in the Ripley
145 magisterial district of Jackson county shall constitute
146 the twelfth delegate district and shall elect one delegate;

147 (13) All of the Union magisterial district and voting
148 district EP 13 and voting district EP 14 of the
149 Ravenswood magisterial district of Jackson county, and
150 all of the Cologne magisterial district, all of the Copper
151 magisterial district, all of the Graham magisterial
152 district, all of the Union magisterial district, all of the
153 Waggener magisterial district and voting district EP 1,
154 voting district EP 10 and voting district EP 12 of the
155 Robinson magisterial district of Mason county, and all
156 of the Buffalo-Union magisterial district, all of the
157 Pocatlico magisterial district, and voting district EP
158 27, voting district EP 28 of the Scott magisterial district
159 and that portion of voting district EP 28 in the Teays
160 magisterial district of Putnam county shall constitute
161 the thirteenth delegate district and shall elect two
162 delegates;

163 (14) That portion of Mason county not in the thir-
164 teenth delegate district and that portion of Putnam
165 county not in the thirteenth delegate district shall
166 constitute the fourteenth delegate district and shall elect
167 two delegates;

168 (15) Voting district EP 29, voting district EP 46,
169 voting district EP 47 and voting district EP 48 of the
170 District One magisterial district, voting district EP 13,
171 that portion of voting district EP 19, voting district EP
172 26, voting district EP 27, voting district EP 28, voting
173 district EP 29, voting district EP 30, voting district EP
174 31, voting district EP 32, voting district EP 33, voting
175 district EP 34, voting district EP 38, voting district EP
176 39, that portion of voting district EP 40, that portion of
177 voting district EP 42, voting district EP 43 and voting

178 district EP 45 of the District Two magisterial district,
179 voting district EP 14, voting district EP 15, voting
180 district EP 16, voting district EP 17, voting district EP
181 18, that portion of voting district EP 19, voting district
182 EP 20, voting district EP 21, voting district EP 22,
183 voting district EP 23, that portion of voting district EP
184 24, that portion of voting district EP 40, voting district
185 EP 41 and that portion of voting district EP 42 of the
186 District Three magisterial district, that portion of
187 voting district EP 24, that portion of voting district EP
188 47, that portion of Census Tract 0103, Block 199F of
189 Block Group 1 in Census Tract 0104, Block 405A, Block
190 410, Block 411, Block 412, Block 414C, Block 447, Block
191 499B, Block 499H and Block 499K of Block Group 4 in
192 Census Tract 0104, and Block 502A, Block 502B and
193 Block 503A of Block Group 5 in Census Tract 0104 of
194 the District Four magisterial district, and that portion
195 of Census Tract 0103, that portion of Census Tract 0104,
196 Block 401 and Block 402 of Block Group 4 in Census
197 Tract 0105, Block Group 1, Block Group 2, Block Group
198 3 and Block 411 of Block Group 4, and Block 511, Block
199 512, Block 513, Block 514, Block 522 and Block 523 of
200 Block Group 5 in Census Tract 0106, Block 116, Block
201 117, Block 118, Block 119, Block 120, Block 121, Block
202 132 and Block 133B of Block Group 1, Block Group 2,
203 Block Group 3, Block Group 4 and Block Group 5 in
204 Census Tract 0107, and Census Tract 0108 of the
205 District Five magisterial district of Cabell county and
206 all of the Carroll magisterial district of Lincoln county
207 shall constitute the fifteenth delegate district and shall
208 elect three delegates;

209 (16) That portion of Cabell county not included in the
210 fifteenth delegate district and voting district EP 59,
211 voting district EP 60, voting district EP 61 and voting
212 district EP 63 of the Westmoreland magisterial district
213 and that portion of voting district EP 59 in the Ceredo
214 magisterial district of Wayne county shall constitute the
215 sixteenth delegate district and shall elect three
216 delegates;

217 (17) All of the Union magisterial district except
218 voting district EP 54 of Wayne county, and voting
219 district EP 26, voting district EP 30, voting district EP

220 36, voting district EP 37, voting district EP 41, voting
221 district EP 42 and voting district EP 45 of the Stonewall
222 magisterial district of Wayne county, and voting district
223 EP 56, voting district EP 57, voting district EP 58,
224 voting district EP 62, that portion of voting district EP
225 14, and that portion of voting district EP 19 of the
226 Westmoreland magisterial district of Wayne county, and
227 voting district EP 22 of the Butler magisterial district
228 of Wayne county shall constitute the seventeenth
229 delegate district and shall elect one delegate;

230 (18) That portion of Wayne county not in the sixteenth
231 or seventeenth delegate district shall constitute the
232 eighteenth delegate district and shall elect one delegate;

233 (19) The county of Mingo and voting district EP 43
234 of the West magisterial district of Logan county shall
235 constitute the nineteenth delegate district and shall elect
236 two delegates;

237 (20) All of the county of Logan except voting district
238 EP 43 of the West magisterial district and all of the
239 county of Lincoln except the Carroll magisterial district
240 and voting district EP 1, that portion of voting district
241 EP 2, voting district EP 3, voting district EP 7, voting
242 district EP 15, voting district EP 16, voting district EP
243 17 and voting district EP 18 of the District Three
244 magisterial district and that portion of voting district
245 EP 2, voting district EP 5 and voting district EP 9 of
246 the District Two magisterial district of Boone county
247 shall constitute the twentieth delegate district and shall
248 elect four delegates: *Provided*, That not more than three
249 delegates may be nominated, elected or appointed who
250 are residents of any single county within the twentieth
251 delegate district;

252 (21) That portion of Boone county not included in the
253 twentieth delegate district shall constitute the twenty-
254 first delegate district and shall elect one delegate;

255 (22) The county of McDowell shall constitute the
256 twenty-second delegate district and shall elect two
257 delegates;

258 (23) The county of Wyoming and voting district EP
259 3 and voting district EP 5 of magisterial District I, and

260 Block 201, Block 202 and Block 204B of Block Group
261 2 in Census Tract 9518 contained in voting district EP
262 96 and that portion of Census Tract 9517 contained in
263 voting district EP 96 of magisterial District II of
264 Mercer county, and voting district EP 41, voting district
265 EP 42, voting district EP 46, voting district EP 49,
266 voting district EP 51, voting district EP 55, voting
267 district EP 60, voting district EP 69 of magisterial
268 District III of Mercer county shall constitute the twenty-
269 third delegate district and shall elect two delegates;

270 (24) All of magisterial District I except voting district
271 EP 1, voting district EP 3 and voting district EP 5, and
272 voting district EP 79 of magisterial District II, and
273 voting district EP 61, voting district EP 63, voting
274 district EP 67 and voting district EP 68 of magisterial
275 District III of Mercer county shall constitute the twenty-
276 fourth delegate district and shall elect one delegate;

277 (25) That portion of Mercer county not included in the
278 twenty-third or twenty-fourth delegate district shall
279 constitute the twenty-fifth delegate district and shall
280 elect two delegates;

281 (26) The county of Monroe and voting district EP 1,
282 voting district EP 13, voting district EP 30, voting
283 district EP 31, voting district EP 32 and voting district
284 EP 33 of the Greenbrier River magisterial district of
285 Summers county shall constitute the twenty-sixth
286 delegate district and shall elect one delegate;

287 (27) The county of Raleigh except Block 101, Block
288 102, Block 103, Block 104, Block 106, Block 107, Block
289 108, Block 109, Block 137, Block 138, Block 142 and
290 Block 143 of Block Group 1 in Census Tract 0112
291 contained in voting district EP 61, and Block 301, Block
292 302, Block 303, Block 305, Block 330, Block 331, Block
293 332, Block 333, Block 334, Block 347, Block 348, Block
294 353 and Block 354 of Block Group 3 in Census Tract
295 0112 contained in voting district EP 61 in the District
296 Two magisterial district and that portion of Summers
297 county not included in the twenty-sixth delegate district
298 shall constitute the twenty-seventh delegate district and
299 shall elect five delegates: *Provided*, That not more than

300 four delegates may be nominated, elected or appointed
301 who are residents of any county within the twenty-
302 seventh delegate district;

303 (28) The county of Greenbrier except voting district
304 EP 54 in the Meadow Bluff magisterial district shall
305 constitute the twenty-eighth delegate district and shall
306 elect two delegates;

307 (29) All of the county of Fayette, voting district EP
308 54 in the Meadow Bluff magisterial district of Green-
309 brier county, voting district EP 131 and voting district
310 EP 132 in the District One magisterial district of
311 Kanawha county, voting district EP 25 in the Jefferson
312 magisterial district of Nicholas county, and Block 101,
313 Block 102, Block 103, Block 104, Block 105, Block 106,
314 Block 107, Block 108, Block 109, Block 137, Block 138,
315 Block 142 and Block 143 of Block Group 1 in Census
316 Tract 0112 contained in voting district EP 61 and Block
317 301, Block 302, Block 303, Block 305, Block 330, Block
318 331, Block 332, Block 333, Block 334, Block 347, Block
319 348, Block 353 and Block 354 of Block Group 3 in Census
320 Tract 0112 contained in voting district EP 61 in the
321 District Two magisterial district of Raleigh county shall
322 constitute the twenty-ninth delegate district and shall
323 elect three delegates;

324 (30) That portion of magisterial District One not
325 included in the twenty-ninth delegate district, all of the
326 magisterial District Two, voting district EP 307, voting
327 district EP 310, voting district EP 312, voting district
328 EP 313, voting district EP 314, voting district EP 350,
329 voting district EP 352, voting district EP 353, voting
330 district EP 355, voting district EP 356, voting district
331 EP 357, voting district EP 360, voting district EP 379
332 and that portion of Block Group 1 in Census Tract 0132
333 voting contained in voting district EP 311, Block 201,
334 Block 206, Block 207 and Block 208 of Block Group 2
335 in Census Tract 0132 contained in voting district EP
336 311, that portion of Block Group 3 in Census Tract 0132
337 contained in voting district EP 311, Block 101, Block
338 102B, Block 120, Block 121, Block 122, Block 123, Block
339 124, Block 125, Block 126, Block 127, Block 128, Block
340 129, Block 130, Block 131, Block 132, Block 133, Block

341 134, Block 140, Block 141, Block 142, Block 143 and
342 Block 199B of Block Group 1 in Census Tract 0134
343 contained in voting district EP 311 of magisterial
344 District Three, voting district EP 412, voting district
345 EP 414, voting district EP 444, voting district EP 447,
346 voting district EP 448, voting district EP 449, voting
347 district EP 450, voting district EP 453, voting district
348 EP 454, voting district EP 455, voting district EP 459,
349 voting district EP 462, voting district EP 463, that
350 portion of voting district EP 311, that portion of voting
351 district EP 350, that portion of voting district EP 355,
352 that portion of voting district EP 360 and that portion
353 of voting district EP 504 of the magisterial District
354 Four, voting district EP 501, voting district EP 502,
355 that portion of voting district EP 504, voting district EP
356 508, voting district EP 509, voting district EP 510,
357 voting district EP 513, voting district EP 515, voting
358 district EP 526, voting district EP 527, voting district
359 EP 528, voting district EP 529, voting district EP 542,
360 voting district EP 546, voting district EP 547, voting
361 district EP 549, voting district EP 553, voting district
362 EP 573, Block 201, Block 202, Block 203, Block 204,
363 Block 205, Block 206, Block 207, Block 208, Block 209,
364 Block 210, Block 211, Block 212, Block 213, Block 214
365 and Block 215 of Block Group 2 in Census Tract 0005
366 contained in voting district EP 541, Block 304 of Block
367 Group 3 in Census Tract 0005 contained in voting
368 district EP 541, Block 305 of Block Group 3 in Census
369 Tract 0011 contained in voting district EP 541, that
370 portion of Census Tract 0110 contained in voting district
371 EP 541, Block 501A and Block 504 of Block Group 5
372 in Census Tract 0011 contained in voting district EP 572
373 of magisterial District Five and voting district EP 617,
374 voting district EP 620, voting district EP 641, voting
375 district EP 642, voting district EP 644 and voting
376 district EP 653 of magisterial District Six of Kanawha
377 county shall constitute the thirtieth delegate district and
378 shall elect seven delegates;

379 (31) That portion of magisterial District Five of
380 Kanawha county not included in the thirtieth delegate
381 district shall constitute the thirty-first delegate district
382 and shall elect one delegate;

383 (32) That portion of Kanawha county not included in
384 the twenty-ninth, thirtieth or thirty-first delegate
385 district shall constitute the thirty-second delegate
386 district and shall elect four delegates;

387 (33) The counties of Calhoun and Clay and voting
388 district EP 12 and voting district EP 13 of the DeKalb-
389 Troy magisterial district of Gilmer county shall consti-
390 tute the thirty-third delegate district and shall elect one
391 delegate;

392 (34) The county of Braxton and the Center magisterial
393 district, the City magisterial district and the Glenville
394 magisterial district of Gilmer county shall constitute the
395 thirty-fourth delegate district and shall elect one
396 delegate;

397 (35) The Grant magisterial district, the Hamilton
398 magisterial district, the Summersville magisterial
399 district, the Wilderness magisterial district, voting
400 district EP 16 of the Beaver magisterial district, voting
401 district EP 24, voting district EP 26 and voting district
402 EP 27 of the Jefferson magisterial district, and voting
403 district EP 28, voting district EP 29 and voting district
404 EP 30 of the Kentucky magisterial district of Nicholas
405 county shall constitute the thirty-fifth delegate district
406 and shall elect one delegate;

407 (36) The county of Webster and that portion of
408 Nicholas county not included in the twenty-ninth or
409 thirty-fifth delegate district shall constitute the thirty-
410 sixth delegate district and shall elect one delegate;

411 (37) The counties of Pocahontas and Randolph shall
412 constitute the thirty-seventh delegate district and shall
413 elect two delegates;

414 (38) The county of Lewis and voting district EP 4 and
415 voting district EP 7 of the Banks magisterial district of
416 Upshur county shall constitute the thirty-eighth dele-
417 gate district and shall elect one delegate;

418 (39) The Buckhannon magisterial district, the Meade
419 magisterial district, the Washington magisterial dis-
420 trict, voting district EP 35, that portion of voting
421 district EP 14 and that portion of voting district EP 15

422 of the Union magisterial district and voting district EP
423 6 of the Banks magisterial district of Upshur county
424 shall constitute the thirty-ninth delegate district and
425 shall elect one delegate;

426 (40) The county of Barbour and that portion of
427 Upshur county not included in the thirty-eighth or
428 thirty-ninth delegate district shall constitute the fortieth
429 delegate district and shall elect one delegate;

430 (41) The county of Harrison shall constitute the forty-
431 first delegate district and shall elect four delegates;

432 (42) The county of Taylor, voting district EP 125 of
433 the Palatine magisterial district of Marion county, and
434 voting district EP 62 of the Eastern magisterial district
435 of Monongalia county shall constitute the forty-second
436 delegate district and shall elect one delegate;

437 (43) That portion of Marion county not included in the
438 forty-second delegate district shall constitute the forty-
439 third delegate district and shall elect three delegates;

440 (44) That portion of Monongalia county not included
441 in the forty-second delegate district shall constitute the
442 forty-fourth delegate district and shall elect four
443 delegates;

444 (45) All of the Grant magisterial district, all of the
445 Kingwood magisterial district, all of the Pleasant
446 magisterial district, that portion of voting district EP
447 6, voting district EP 17, voting district EP 18 and voting
448 district EP 19 of the Portland magisterial district and
449 voting district EP 9, voting district EP 12, that portion
450 of Block Group 1 in Census Tract 9639 contained in
451 voting district EP 10, that portion of Block Group 4 in
452 Census Tract 9639 contained in voting district EP 10,
453 and Block 301, Block 302, Block 303, Block 304, Block
454 305B, Block 312B, Block 313, Block 314, Block 319,
455 Block 320, Block 321, Block 322, Block 323, Block 324,
456 Block 326, Block 337, Block 338 and Block 399 of Block
457 Group 3 in Census Tract 9639 contained in voting
458 district EP 10, and Block 331, Block 332, Block 333,
459 Block 334, Block 335, Block 336, Block 337, Block 338B,
460 Block 340B, Block 349, Block 350, Block 351, Block 352,

461 Block 353, Block 354, Block 355, Block 356, Block 357,
462 Block 358, Block 359, Block 360, Block 361, Block 362,
463 Block 363, Block 364, Block 365, Block 366, Block 367,
464 Block 368 and Block 399C of Block Group 3 in Census
465 Tract 9643 contained in voting district EP 11 of the
466 Valley magisterial district of Preston county shall
467 constitute the forty-fifth delegate district and shall elect
468 one delegate;

469 (46) The county of Tucker and that portion of Preston
470 county not included in the forty-fifth delegate district
471 shall constitute the forty-sixth delegate district and shall
472 elect one delegate;

473 (47) The county of Hardy and all of the county of
474 Pendleton except voting district EP 13 of the Union
475 magisterial district shall constitute the forty-seventh
476 delegate district and shall elect one delegate;

477 (48) The county of Grant and voting district EP 1,
478 voting district EP 2, voting district EP 3, voting district
479 EP 6, voting district EP 8, voting district EP 27, voting
480 district EP 28, voting district EP 29, voting district EP
481 30, voting district EP 31, voting district EP 34 and
482 voting district EP 35 of magisterial District One of
483 Mineral county, and voting district EP 13 of the Union
484 magisterial district of Pendleton county shall constitute
485 the forty-eighth delegate district and shall elect one
486 delegate;

487 (49) All of magisterial District Two, voting district
488 EP 4 and voting district EP 5 of magisterial District
489 One, and that portion of voting district EP 5, voting
490 district EP 7, voting district EP 10, voting district EP
491 12, voting district EP 13, voting district EP 14 and
492 voting district EP 15 of magisterial District Three of
493 Mineral county shall constitute the forty-ninth delegate
494 district and shall elect one delegate;

495 (50) The county of Hampshire and that portion of
496 Mineral county not included in the forty-eighth or forty-
497 ninth delegate district shall constitute the fiftieth
498 delegate district and shall elect one delegate;

499 (51) The county of Morgan and voting district EP 40,

500 voting district EP 41 and voting district EP 42 of the
501 Hedgesville magisterial district of Berkeley county shall
502 constitute the fifty-first delegate district and shall elect
503 one delegate;

504 (52) All of the Martinsburg magisterial district, that
505 portion of voting district EP 2, voting district EP 2A,
506 that portion of voting district EP 5, voting district EP
507 9, voting district EP 11, voting district EP 12, voting
508 district EP 13 and that portion of voting district EP 22
509 of the Arden magisterial district, voting district EP 10,
510 voting district EP 38, voting district EP 39 and voting
511 district VTD 99 of the Hedgesville magisterial district,
512 and voting district EP 15 and voting district EP 17A
513 of the Opequon magisterial district of Berkeley county
514 shall constitute the fifty-second delegate district and
515 shall elect one delegate;

516 (53) All of the Gerrardstown magisterial district, all
517 of the Mill Creek magisterial district and voting district
518 EP 29, voting district EP 31, voting district EP 34,
519 voting district EP 35 and Block 119, Block 127, Block
520 128, Block 130, Block 134, Block 135, Block 136, Block
521 137, Block 138, Block 139, Block 140, Block 141, Block
522 142 and Block 143 of Block Group 1 in Census Tract
523 9720 contained in voting district EP 25 of the Arden
524 magisterial district of Berkeley county shall constitute
525 the fifty-third delegate district and shall elect one
526 delegate;

527 (54) That portion of Berkeley county not included in
528 the fifty-first, fifty-second or fifty-third delegate district
529 shall constitute the fifty-fourth delegate district and
530 shall elect one delegate;

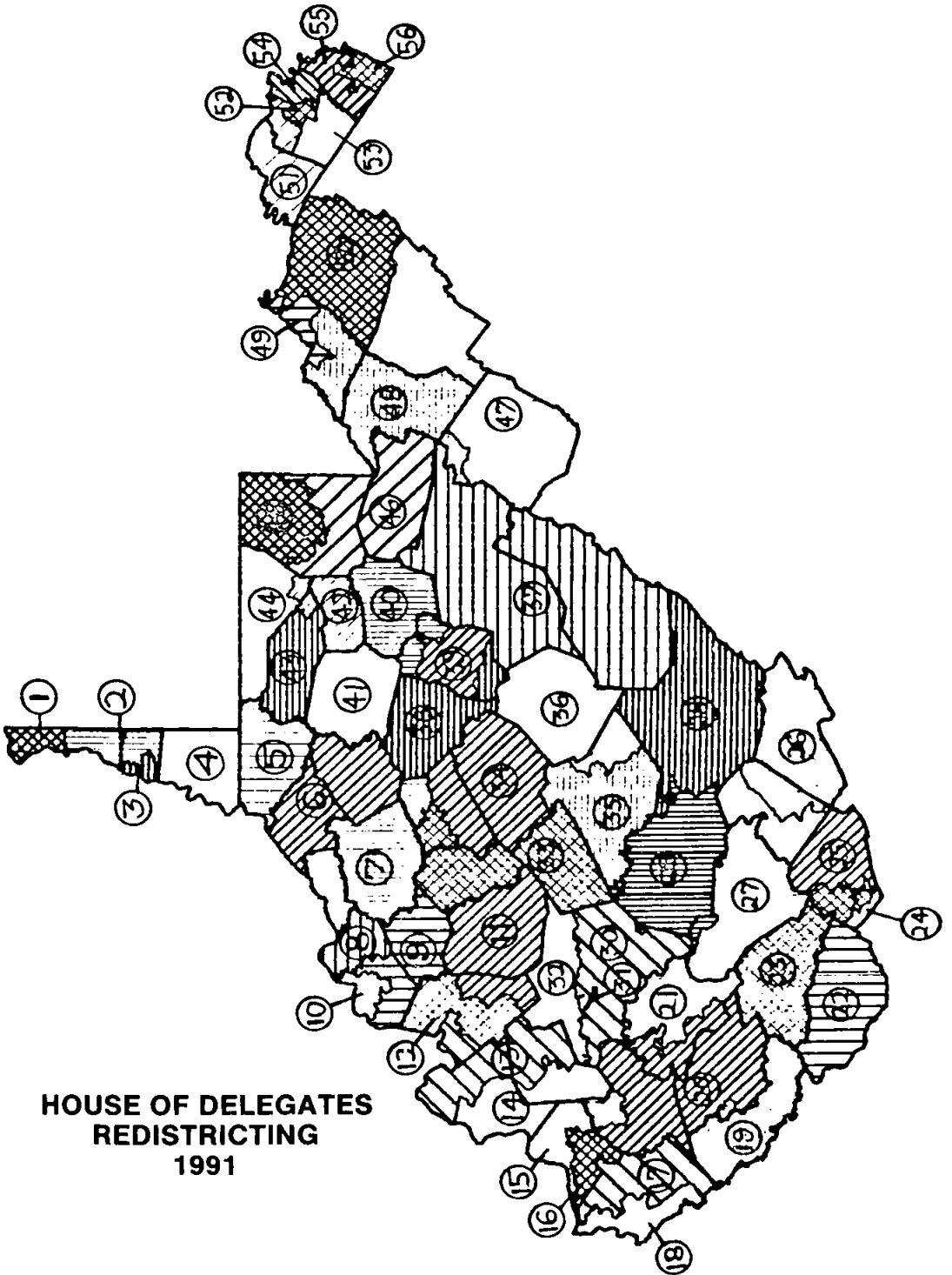
531 (55) All of the Middleway magisterial district, all of
532 the Shepherdstown magisterial district, voting district
533 EP 22 of the Kabletown magisterial district and voting
534 district EP 13 of the Harpers Ferry magisterial district
535 of Jefferson county shall constitute the fifty-fifth
536 delegate district and shall elect one delegate; and

537 (56) That portion of Jefferson county not included in
538 the fifty-fifth delegate district shall constitute the fifty-
539 sixth delegate district and shall elect one delegate.

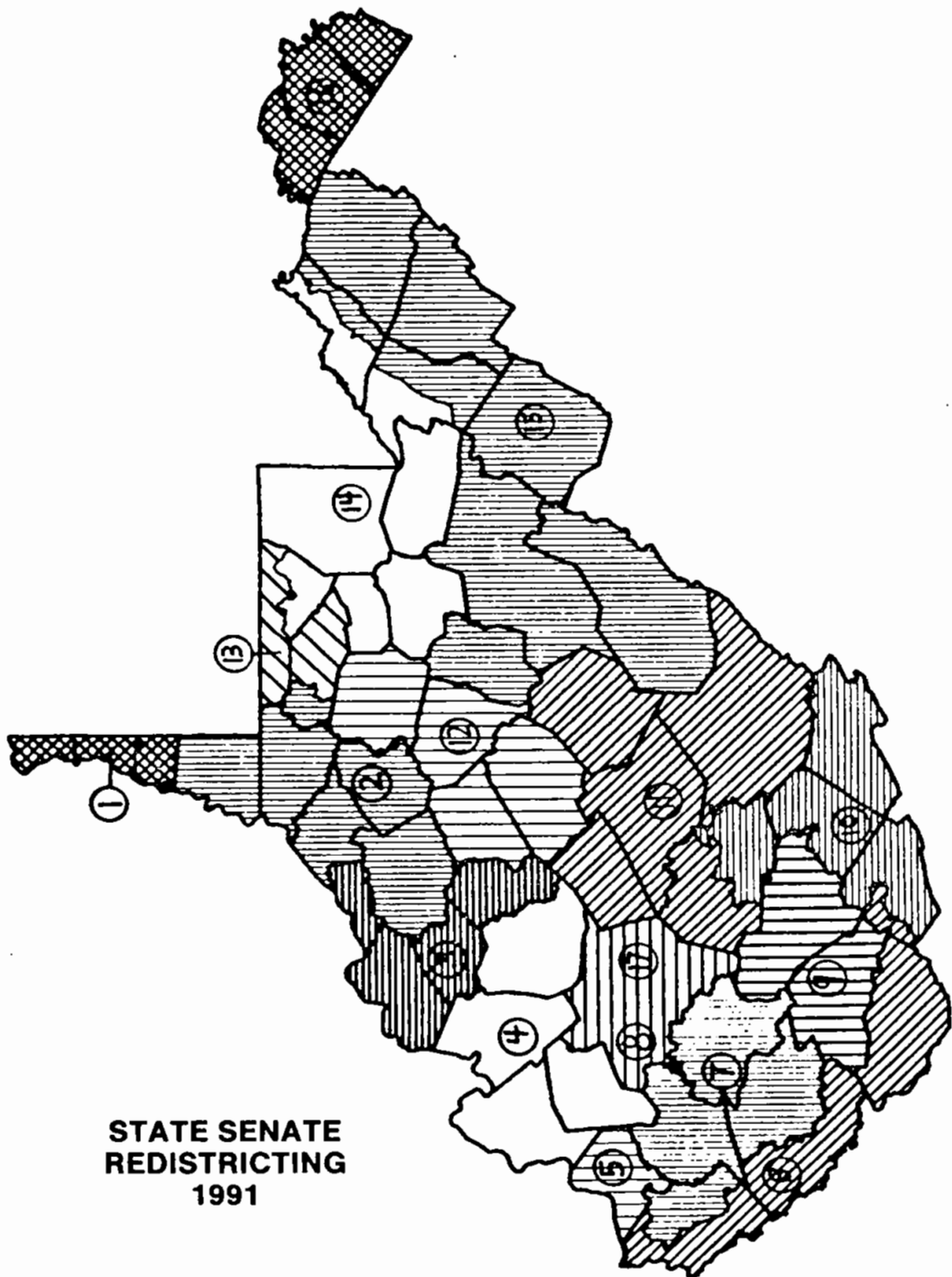
540 (d) Regardless of the changes in delegate district
541 boundaries made by the provisions of subsection (c) of
542 this section, the delegates elected at the general election
543 held in the year one thousand nine hundred ninety shall
544 continue to hold their offices as members of the House
545 of Delegates for the term, and as representatives of the
546 county or delegate district, for which each thereof,
547 respectively, was elected. Any appointment made prior
548 to the first day of December, one thousand nine hundred
549 ninety-two, to fill a vacancy in the office of a member
550 of the House of Delegates shall be made for the
551 remainder of the term, and as representative of the
552 county or delegate district, for which the vacating
553 delegate was elected or appointed.

§1-2-2b. Precinct boundary changes.

1 If an election precinct of this state includes territory
2 contained in more than one senatorial or delegate
3 district, as such senatorial districts are established by
4 subsection (d), section one of this article, and as such
5 delegate districts are established by subsection (c),
6 section two of this article, it shall be the duty of the
7 county commission of the county in which such precinct
8 is located, prior to the fifteenth day of March, one
9 thousand nine hundred ninety-two, to alter the boundary
10 lines of its election precincts so that no precinct contains
11 territory included in more than one senatorial or
12 delegate district. The provisions of this section shall
13 govern and control notwithstanding any conflicting
14 provision of section seven, article one, chapter three of
15 this code.



**HOUSE OF DELEGATES
REDISTRICTING
1991**



**STATE SENATE
REDISTRICTING
1991**

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 1991

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1.....	2	8.....	24	16.....	226
2.....	214	9.....	204	17.....	210
3.....	215	10.....	205	18.....	203
4.....	224	11.....	228	19.....	4
5.....	209	12.....	223	20.....	213
6.....	206	13.....	201	21.....	211
7.....	6	14.....	221	22.....	18
		15.....	217		

Third Extraordinary Session, 1991

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1.....	2	2.....	1	3.....	301

INDEX
SECOND AND THIRD
EXTRAORDINARY SESSIONS, 1991

ALTERNATIVE FUEL:		Ch.	Page
Alternative fuel initiatives			
Legislative findings.....		1	2
Use in new technologies.....		1	2
Sales by nonutilities			
Limitation on commission jurisdiction.....		1	2
APPROPRIATIONS:			
Supplementing, amending, reducing and transferring specified unexpended amounts			
Attorney General, Acct. No. 2400—Asbestos Litigation.....		2	4
Board of Trustees of University System, Health Sciences Acct. No. 2855.....		3	5
Department of Education and the Arts, Acct. No. 5342.....		8	13
Division of Health, Acct. No. 4190.....		7	12
Division of Human Services, Acct. No. 4050.....		6	11
Division of Veterans' Affairs, Acct. No. 4040.....		5	9
Fire Commission, Acct. No. 6170.....		9	16
Fire Commission, Acct. No. 8465.....		10	17
Mines and Minerals Operations Fund.....		11	19
State Department of Education, State Aid to Schools, Acct. No. 2950.....		4	7
ASBESTOS ACCOUNT:			
Creation.....		12	21
Disbursements.....		12	22
Funding.....		12	22
Purpose.....		12	21
State Building Commission Fund			
Audits.....		12	21
Deposit and disbursement funds.....		12	20
Security.....		12	21
CHILD WELFARE:			
Abuse and neglect			
Definitions.....		13	23
Redefined.....		13	24
CODE AMENDED:			
Ch.	Art.	Sec.	Page
1	2	1	306
1	2	2,2b	318
1	2	3	28
4	10	4	104
5	6	5;5a*	12
9	4B*;4C*		66

CODE AMENDED-(Continued):

Ch.	Art.	Sec.		Page
11	26*		Health Care Provider Medicaid Enhancement Tax.....	66
15	1F	1	Clarifying terms of entitlement to benefits for officers and employees performing military service.....	99
16	26	3,4,5,6; 6a*;10,11, 12,14,15,16	Solid Waste Management Board.....	137
17C	15	48	Bumper height limits and alteration of motor vehicles.....	100
18A	4	8a	Minimum monthly salaries for school service personnel.....	126
18B	3	3	Additional duties of board of directors, state college system.....	104
18B	10	4	Medical education fee.....	104
18B	16*		Health care education.....	104
18C	3	1	Health education loan program.....	104
20	1	5	Salary, expenses, oath and bond of Director of Division of Natural Resources.....	137
20	5E	3,6;25*	Hazardous waste definitions, promulgation of regulations by director, household hazardous wastes.....	137
20	5F	1,2,4,4a, 4b;4c*; 4d*;5,5a, 6,8;9*; 10*;11*;12*	Solid Waste Management Act.....	137
20	5N*		Solid Waste Landfill Closure Assistance Program.....	137
20	7	1c*	Conservation officers, ranks, salary schedule, base pay and exceptions.....	137
20	9	1,2,3,4,5a, 6,7,8,9,10, 12,12a,12b, 12c,12d;12e*; 12f*;13	County and Regional Solid Waste Authorities.....	137
20	11	1,2,3,5; 5a*;5b*;6,7; 8*;9*;10*;11*;12*	West Virginia Recycling Program.....	137
22	1		Division of Environmental Protection.....	31
22A	3	11a*	Surface Coal Mining and Reclamation Act, Site-specific bonding.....	31
22A	7*		Office of Miners' Health, Safety and Training.....	31
24	1	3	Compensation, Public Service Commission.....	137
24	2	1,1b,1c;1h*	Powers and duties of Public Service Commission.....	137
24	2D*		Alternative fuel initiatives.....	1
24A	1	3	Exemption from chapter, motor carriers of passengers and property for hire.....	137
29	3	12b	Disposition of fees charged by Fire Marshal.....	61
49	1	3	Redefining terms relating to child abuse and neglect.....	23
50	1	2,3,8,9	Apportionment of magistrates, salary, magistrate court clerks, deputy clerks, magistrate assistants, duties and salaries.....	297
50	3	8	Audits of magistrate courts.....	297

	Ch.	Page
CONGRESSIONAL REAPPORTIONMENT:		
Districts by counties		
First.....	14	28
Second.....	14	28
Third.....	14	28
Map illustrating.....	14	29
ENVIRONMENTAL PROTECTION:		
Division of Environmental Protection		
Appropriations and personnel		
Transfer and allocation.....	15	44
Effect on personnel.....	15	45
Coal production		
Mines and Minerals Operations Fund		
Creation.....	15	50
Deposits.....	15	50
Special tax.....	15	49
Imposition, payment, collection.....	15	49
Creation.....	15	35
Definitions.....	15	34
Director.....	15	35
Functions transferred to.....	15	40
Powers and duties.....	15	36,37
Rules and regulations, legislative proposal.....	15	44
Salary.....	15	38
Environmental protection		
Reorganization.....	15	43
Environmental Protection Energy Advisory Board		
Composition.....	15	47
Redesignation.....	15	47
Environmental Protection Reorganization Advisory Board		
Composition.....	15	48
Creation.....	15	48
Hearings.....	15	51
Jurisdiction.....	15	35
Legislative findings, statement of policy and purpose.....	15	31
Natural Resources		
Functions and offices		
Transfer by executive order.....	15	41
Offices transferred to.....	15	41
Saving provisions of article.....	15	45
Supervisory officers.....	15	39
Appointment.....	15	39
Compensation		
Fixed by director.....	15	39
Transfer of duties to		
Executive order.....	15	39
Legislative oversight.....	15	43
Transfers generally		
Effect.....	15	42
Legislative oversight.....	15	43
Saving provisions of article.....	15	45
Miners' Health, Safety and Training		
Appropriations and personnel		
Transfer and allocation.....	15	58
Definitions.....	15	55
Director.....	15	55
Appointment.....	15	56
Functions transferred to.....	15	57
Legislative rules		
Promulgation.....	15	58
Offices transferred to.....	15	57
Powers and duties.....	15	57
Salary.....	15	56
Redesignation.....	15	54

	Ch.	Page
ENVIRONMENTAL PROTECTION—(continued):		
Surface Coal Mining and Reclamation Act		
Site-specific bonding.....	15	51
Legislative rule establishing		
Contents.....	15	52
Expiration.....	15	52
Reporting.....	15	54
FIRE MARSHAL:		
Fees		
Disposition.....	16	61
MAGISTRATES:		
Assistants		
Duties.....	1	304
Salary.....	1	303
Clerks		
Magistrate court		
Duties.....	1	303
Salary.....	1	302
Magistrate court		
Audit.....	1	305
Number.....	1	297
Salary.....	1	300
MEDICAID ENHANCEMENT:		
Health Care Provider Medicaid Enhancement Act		
Abrogation of article.....	17	80
Ambulance Service Provider Medicaid Enhancement Board		
Ambulance Service Provider Medicaid Enhancement		
Fund.....	17	79
Composition.....	17	75
Creation.....	17	74
Department of Health and Human Resources		
Duties of Secretary.....	17	77
Expiration.....	17	75
Powers and duties.....	17	76
Definitions.....	17	72
Dentist Provider Medicaid Enhancement Board		
Composition.....	17	74
Creation.....	17	74
Dentist Provider Medicaid Enhancement Fund.....	17	78
Department of Health and Human Resources		
Duties of Secretary.....	17	77
Expiration.....	17	74
Powers and duties.....	17	76
Enhancement funds.....	17	78
General Medicaid Enhancement Board		
Composition.....	17	73
Creation.....	17	73
Department of Health and Human Resources		
Duties of Secretary.....	17	77
Expiration.....	17	74
General Medicaid Enhancement Fund.....	17	78
Powers and duties.....	17	76
Outpatient Hospital Medicaid Enhancement Board		
Citizen members		
Expenses.....	17	75
Composition.....	17	75
Creation.....	17	75
Department of Health and Human Resources		
Duties of Secretary.....	17	77
Expiration.....	17	75

	Ch.	Page
MEDICAID ENHANCEMENT—(continued):		
Health Care Provider Medicaid Enhancement Act—(continued):		
Outpatient Hospital Medicaid Enhancement Board—(continued):		
Outpatient Hospital Medicaid Enhancement Fund.....	17	78
Powers and duties.....	17	76
Provider fee schedule		
Effective date.....	17	79
Reimbursement		
Amount and remittance.....	17	79
Health Care Provider Medicaid Enhancement Tax		
Accounting		
Periods and methods.....	17	88
Administration.....	17	86
Article		
Abrogation.....	17	97
Severability.....	17	98
Crimes and penalties.....	17	96
Definitions.....	17	83
Delinquent		
Cancellation of medicaid certification.....	17	95
Effective dates.....	17	96
General procedure and administration.....	17	96
Legislative findings.....	17	82
Medical assistance program		
Health care providers		
Excise tax.....	17	84
Records.....	17	92
Payment.....	17	89
Delinquent		
Cancellation of medicaid certification.....	17	95
Extension of time.....	17	90
Short title.....	17	83
Tax return.....	17	89
Filing		
Extension of time.....	17	90
Place.....	17	91
Refunds and credits.....	17	92
Signing.....	17	91
Physician Provider Medicaid Enhancement Act		
Abrogation of article.....	17	70
Board		
Citizen members		
Expenses.....	17	68
Composition.....	17	67
Creation.....	17	67
Powers and duties.....	17	68
Definitions.....	17	66
Physician provider fee schedule		
Effective date.....	17	70
Physician Provider Medicaid Enhancement Fund		
Created.....	17	69
Reimbursement		
Amount and remittance.....	17	70
MILITARY SERVICE:		
Officer and employee benefits		
Performance of military service		
Clarifying terms of entitlement.....	18	99
MOTOR VEHICLES:		
Alterations and modifications.....	19	100
Bumper height		
Inspection of vehicles.....	19	102

	Ch.	Page
MOTOR VEHICLES—(continued):		
Bumper height—(continued):		
Limitations.....	19	100,101
Exception.....	19	101
REDISTRICTING:		
House of Delegates		
Apportionment.....	3	318
State Senate		
Apportionment.....	2	306
RURAL HEALTH CARE:		
Health care education		
Definitions.....	20	110
Legislative findings, declarations.....	20	109
Primary health care education sites		
Appropriations for operation.....	20	118
Accountability.....	20	120
Reports and audit required.....	20	121
Establishment and operation.....	20	116
Rural health initiative		
Advisory panel		
Appointment.....	20	115
Composition.....	20	114
Creation.....	20	114
Powers and duties.....	20	116
Termination.....	20	116
Establishment.....	20	112
Goals.....	20	112
Short title.....	20	109
Vice Chancellor		
Powers and duties.....	20	113
Health education loan program		
Administration.....	20	122
Eligibility.....	20	123
Establishment.....	20	122
Loan terms		
Penalty for nonperformance.....	20	124
Promulgation of rules.....	20	126
Senior administrator		
Report by.....	20	125
Medical education fee.....	20	108
State college system		
Board of directors		
Additional duties.....	20	107
Sunset provisions.....	20	104
SCHOOL PERSONNEL:		
Service personnel		
Class title.....	21	128
Pay grade.....	21	128
State minimum pay scale		
Grade I.....	21	127
Grade II.....	21	128
SOLID WASTE:		
Conservation officers		
Salary schedule		
Supervisory and nonsupervisory.....	22	220
County and Regional Solid Waste Authorities		
Attorney General		
Assistance.....	22	234

	Ch.	Page
SOLID WASTE—(continued):		
County and Regional Solid Waste Authorities—(continued):		
Board of Directors		
Appointment.....	22	228
Composition.....	22	228
Expenses		
Payment.....	22	230
Management by.....	22	230
Vacancies.....	22	228
Class A facilities		
Approval by referendum.....	22	243
Monthly tonnage		
Increase in maximum		
Approval by referendum.....	22	248
Class B facilities		
Conversion to Class A.....	22	245
Approval by referendum.....	22	247
Commercial siting plan.....	22	239
Criteria.....	22	239
Facilities subject to.....	22	239
Public hearings.....	22	240
Rules and regulations.....	22	241
Solid waste facilities		
Certificate of site approval		
Judicial review.....	22	250
Local approval required.....	22	242
County Authorities		
Assumption of powers and duties		
Election by county commission.....	22	230
Creation.....	22	227
Definitions.....	22	224
Health, Bureau of		
Assistance.....	22	234
Landfills, other facilities		
Land acquisition.....	22	236
Restrictions on deposits		
Geographic limitation.....	22	236
Legislative findings and purpose.....	22	221
Litter and solid waste control plan		
Approval.....	22	234
Development.....	22	232
Management.....	22	230
Natural Resources		
Assistance.....	22	234
Powers, duties and responsibilities.....	22	236
Regional Authorities		
Board of Directors		
Appointment.....	22	229
Vacancies.....	22	229
Establishment authorized.....	22	228
Solid waste		
Residences or businesses		
Mandatory disposal.....	22	235
Public Service Commission		
Report.....	22	235
Solid Waste Management Board		
Report.....	22	235
Solid Waste Management Board		
Assistance.....	22	234
Hazardous Waste Management Act		
Definitions.....	22	160

	Ch.	Page
SOLID WASTE—(continued):		
Hazardous Waste Management Act—(continued):		
Household hazardous waste		
Handling and disposal		
Report.....	22	169
Regulations		
Promulgation by Director.....	22	163
Motor carriers of passengers and property for hire		
Exemptions from chapter.....	22	289
Natural Resources		
Director		
Household hazardous waste		
Handling and disposal		
Report.....	22	169
Regulations, hazardous waste management		
Promulgation.....	22	163
Salary, expenses, oath and bond.....	22	159
Public Service Commission		
Chairman		
Additional compensation.....	22	279,280,281
Compensation.....	22	278,279,280
Current.....	22	281
General provisions.....	22	276
Jurisdiction.....	22	282
Additional.....	22	283
Waiver.....	22	283
Solid waste flow		
Additional powers and duties.....	22	287
Solid waste assessment interim fee		
Collection, return, payment.....	22	251
Criminal penalties.....	22	254
Exemptions.....	22	253
Imposition.....	22	251
Procedure and administration.....	22	253
Proceeds		
Dedication.....	22	254
Regulated motor carriers.....	22	252
Severability of provisions.....	22	254
Solid waste disposal facility		
Definition.....	22	253
Solid waste facilities		
Certificate of need.....	22	284
Application		
Contents.....	22	285
Priority of disposal.....	22	284
Solid Waste Landfill Closure Assistance Program		
Assessment fee.....	22	204
Collection, return, payment.....	22	205
Criminal penalties.....	22	207
Definitions.....	22	207
Effective date.....	22	208
Exemptions.....	22	207
Imposition.....	22	204
Out of shed waste		
Additional fee.....	22	208
Procedure and administration.....	22	207
Proceeds.....	22	208
Regulated motor carriers.....	22	206
Assistance		
Application.....	22	215
Limitation on.....	22	214
Closure Cost Assistance Fund.....	22	216
Commercial program.....	22	203
Definitions.....	22	202

	Ch.	Page
SOLID WASTE—(continued):		
Solid Waste Landfill Closure Assistance Program—(continued):		
Grants and gifts		
Authority of Director to accept.....	22	218
Legislative findings and purpose.....	22	202
Projects		
Management and control.....	22	219
Promulgation of rules.....	22	217
Remedial actions		
Payment of costs.....	22	217
Procedures.....	22	217
Right of entry.....	22	218
Solid Waste Management Board		
Closure revenue bonds, renewal notes, refunding bonds		
Bondholders		
Legal remedies.....	22	213
Issuance.....	22	208
Manner.....	22	210
Requirements.....	22	209
Lawful investments.....	22	214
Not debt of State.....	22	213
Proceeds		
Purposes for use.....	22	213
Reserve, replacement, improvement, sinking funds		
Establishment.....	22	212
Solid Waste Management Act		
Article governing		
Orders, inspection and enforcement.....	22	194
Violations		
Civil and criminal penalties.....	22	194
Definitions.....	22	171
Municipal solid waste incineration, backhauling		
Prohibition against.....	22	200
Exception.....	22	200
Natural Resources		
Director		
Powers and duties.....	22	175
Rules and rule making.....	22	175
Open dumps		
Compliance schedule.....	22	186
Prohibition against.....	22	185
Purpose and legislative findings.....	22	170
Residential solid waste disposal		
Special provision		
Gratuitous.....	22	182
Site approval		
Filing of certificate		
Fee.....	22	182
Solid waste facilities, commercial		
Article governing		
Violations		
Civil and criminal penalties.....	22	194
Assessment fee.....	22	188
Exemptions.....	22	191
Penalties for noncompliance.....	22	189,190
Proceeds from		
Dedication.....	22	192
Certificate of need.....	22	284
Application		
Contents.....	22	285
Priority of disposal.....	22	284

	Ch.	Page
SOLID WASTE—(continued):		
Solid Waste Management Act—(continued):		
Solid waste facilities, commercial—(continued):		
Class A		
County assessment.....	22	201
Amount.....	22	201
Restriction.....	22	201
Purpose.....	22	201
Closure deadline		
Limited extension.....	22	198
Limit on size.....	22	182
Exemption.....	22	182,183
Referendum.....	22	184
Open dumps		
Compliance schedule.....	22	186
Prohibition against.....	22	185
Permits.....	22	186
Condition on receiving.....	22	199
State ownership		
Feasibility and report requirement.....	22	200
Solid Waste Management Board		
Appointment.....	22	143
Bondholders		
Legal remedies.....	22	156
Bonds		
Issuance.....	22	151
Proceeds		
Use.....	22	155
Refunding.....	22	151
Renewal.....	22	151
Reserve, replacement, improvement and sinking funds.....	22	154
Composition.....	22	143
Definitions.....	22	138
Disposal projects		
Acquisition.....	22	145
Bonds, tax levy, assessment		
Election.....	22	158,159
Loan agreements.....	22	145
Rental, fees, service charges.....	22	157
Disposal sheds		
Designation and establishment.....	22	145
Funds, properties, etc.		
Audit.....	22	157
Use.....	22	156
Restrictions.....	22	156
Members		
Compensation.....	22	144
Qualifications.....	22	143
Reimbursement.....	22	144
Organization.....	22	143
Powers, duties and responsibilities.....	22	146
Reserve, replacement, improvement and sinking funds.....	22	154
Solid Waste Management Plan		
Development.....	22	150
WV Resource Recovery—Solid Waste Disposal Authority		
Redesignation.....	22	142
West Virginia Recycling Program		
County recycling programs		
Assessment fee.....	22	261
Collection, return, payment.....	22	261
Criminal penalties.....	22	264

	Ch.	Page
SOLID WASTE—(continued):		
West Virginia Recycling Program—(continued):		
County recycling programs—(continued):		
Assessment fee—(continued):		
Exemptions.....	22	264
Imposition.....	22	261
Procedure and administration.....	22	264
Proceeds		
Dedication.....	22	264
Regulated motor carriers.....	22	263
Solid and hazardous waste		
Supplemental fee.....	22	266
Collection, return, payment.....	22	266
Criminal penalties.....	22	269
Definitions.....	22	268
Effective date.....	22	270
Exemptions.....	22	269
Imposition.....	22	266
Procedure and administration.....	22	269
Proceeds		
Dedication.....	22	269
Regulated motor carriers.....	22	268
Severability of provisions.....	22	269
Effective date.....	22	266
Establishment		
Election		
Procedure.....	22	259
Petition for referendum.....	22	259
Severability of provisions.....	22	265
Solid waste disposal facility		
Definition.....	22	263
Legislative findings and purpose.....	22	255
Recycled newsprint advisory committee		
Legislative findings.....	22	274
Report.....	22	275
Recycled oil advisory committee.....	22	272
Functions.....	22	273
Recycling facilities		
Exemption.....	22	276
Recycling goals.....	22	256
Recycling industries		
Feasibility study.....	22	275
Short title.....	22	255
State recycling program		
Establishment.....	22	270
Recycled products		
Procurement.....	22	270
Prohibited items.....	22	272
Disposal.....	22	272