FOREWORD


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

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

[ v ]
# Table of Contents

## Chapter

### Medicaid Enhancement

17. Medicaid Enhancement

### Military Service

18. Leaves of Absence for Military Service

### Motor Vehicles

19. Modification of Motor Vehicles

### Rural Health Care

20. Statewide Program of Rural Health Care

### School Personnel

21. Salary Increase for School Service Personnel

### Solid Waste

22. Solid Waste Management

### Resolutions

(Only resolutions of general interest are included herein)

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCR 1</td>
<td>Raising a Joint Assembly to hear an address by His Excellency, the Governor</td>
</tr>
<tr>
<td>HCR 3</td>
<td>Advising the Legislature of the purpose and amount of bonds or other obligations to be issued by the West Virginia Railroad Maintenance Authority</td>
</tr>
</tbody>
</table>

### House

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR 2</td>
<td>A resolution in tribute to Harley O. Staggers, Sr., member of the United States House of Representatives, Second Congressional District</td>
</tr>
<tr>
<td>HR 4</td>
<td>Requesting GTE to retain its customer service office and computer center in St. Marys, Pleasants County</td>
</tr>
</tbody>
</table>

### Third Extraordinary Session

### Magistrates

1. Salaries of magistrates and apportioning the number of magistrates among the counties

### Redistricting

2. Apportionment of the Senate

3. Apportionment of the House of Delegates
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.

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

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

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

(a) For purposes of this section, “alternative fuel vehicles” shall mean motor vehicles whose primary source of fuel is natural gas, methanol, and/or electricity.

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

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

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

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
</tbody>
</table>

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

Any balance remaining from this supplementary appropriation at the close of the fiscal year 1991-92 shall be reappropriated for expenditure during the fiscal year 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

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
</tbody>
</table>

1 2 Service Personnel ........ $ — $ 2,353,945
2 3 Fixed Charges .......... — 197,731
The purpose of this supplementary appropriation bill is to transfer specified unexpended amounts from account no. 6698-95 to supplement and amend account no. 2950, state aid to schools, in the fiscal year 1991-1992. This supplementary appropriation shall be available for such use and expenditure upon passage of 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.]
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

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1 2 Personal Services $</td>
<td>—</td>
</tr>
<tr>
<td>2 4 Employee Benefits</td>
<td>—</td>
</tr>
<tr>
<td>3 5 Unclassified</td>
<td>—</td>
</tr>
</tbody>
</table>

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

The further purpose of this supplementary appropriation is to provide supplementary funding for the operation of the veterans’ field service offices in West 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

<table>
<thead>
<tr>
<th></th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Funds</td>
<td>Fund</td>
</tr>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
</tbody>
</table>

1 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

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>15a</td>
<td>Influenza Vaccine</td>
<td>$37,294</td>
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<tr>
<td>2</td>
<td>32a</td>
<td>In-Home Services</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>for Senior</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>32b</td>
<td>Citizens</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to transfer specified unexpended amounts from account no. 6698-95 to supplement and amend account no. 4190, consolidated medical service fund, in the fiscal year 1991-1992. This supplementary appropriation shall be available for such use and expenditure upon passage of the bill.

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

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

<table>
<thead>
<tr>
<th></th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Funds</td>
<td>Fund</td>
</tr>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
</tbody>
</table>

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

DEPARTMENT OF PUBLIC SAFETY

78—Fire Commission
(WV Code Chapter 29)
Acct. No. 6170

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
<td>$100,000</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>$</td>
<td>$15,722</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>$</td>
<td>$62,062</td>
</tr>
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</table>

The purpose of this supplementary appropriation bill is to transfer specified unexpended amounts from account no. 6698-95 to supplement and amend account no. 6170, fire commission, in the fiscal year 1991-1992. This supplementary appropriation shall be available for 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

Any unexpended cash balances remaining in the account (Account No. 8465-99) at the close of the fiscal year 1990-91 is hereby appropriated for expenditure for the fiscal year 1991-92 appropriation.

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

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<tr>
<th>Federal Funds</th>
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<tbody>
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<table>
<thead>
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<tr>
<td></td>
<td>Employee Benefits</td>
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<tr>
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</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to create a new special revenue account to be designated division of environmental protection, mines and minerals operations fund account, with an account number to be designated by the state auditor, in the fiscal year 1991-1992. This supplementary appropriation shall be available for such use and expenditure upon passage of this bill and the final enactment of Committee Substitute for House Bill 217.
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 moneys of the commission from whatever source derived shall be paid to the treasurer of the state of West Virginia who shall not commingle said moneys, but shall deposit them to a special revenue account to be known as the "State Building Commission Fund." The moneys 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 requis-
14 ition. 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
investigation and pursuit of claims against manufacturers, suppliers and installers of asbestos or asbestos containing materials; (2) all services relating to the litigation involving the state and pertaining to asbestos or asbestos containing materials; (3) the location, treatment and abatement of asbestos or asbestos containing materials by the state; (4) the development of implementation, administration and management manuals pertaining to asbestos or asbestos containing materials and the treatment and/or abatement of asbestos or asbestos containing materials; (5) the design, implementation and management of all state buildings containing asbestos and asbestos containing materials for the proper treatment and/or abatement of asbestos conditions as they arise and as are needed; (6) all other related asbestos activities designed for the location, treatment and abatement of such asbestos or asbestos containing materials as are found in state buildings, including buildings under the control of the university of West Virginia board of trustees or the board of directors of the state college system, and as determined by the secretary of the department of administration; and (7) all costs incurred in the administration of the special revenue account.

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

(d) Disbursements from the special revenue account shall be authorized by the secretary of the department of administration or his designee. Moneys in the special revenue account shall not be available for the payment of any personal injury claims, workers' compensation claims or other types of disability claims. Payment from the special revenue account may be made for any
expense incurred by the attorney general prior to the
effective date of this section, including any expense
incurred in prior fiscal years, if the expense is directly
related to the litigation of matters pertaining to asbestos
and asbestos containing materials in which the state is
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
welfare is harmed or threatened by:

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

3 (2) Sexual abuse or sexual exploitation; or

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

5 In addition to its broader meaning, physical injury
may include an injury to the child as a result of excessive corporal punishment.

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

(c) “Child abuse and neglect” or “child abuse or neglect” means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale, or negligent treatment or maltreatment of a child by a parent, guardian, or custodian who is responsible for the child’s welfare, under circumstances which harm or threaten the health and welfare of the child.

d) “Child abuse and neglect services” means social services which are directed toward:

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

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

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

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

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

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

(e) “Imminent danger to the physical well-being of the child” means an emergency situation in which the
welfare or the life of the child is threatened. Such
emergency situation exists when there is reasonable
cause to believe that any child in the home is or has been
sexually abused or sexually exploited, or reasonable
cause to believe that the following conditions threaten
the health or life of any child in the home:

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

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

(3) Nutritional deprivation; or

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

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

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

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

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

(g) (1) "Neglected child" means a child:
(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

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

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

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

(i) "Sexual abuse" means:

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

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian, or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child
may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procure another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

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

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

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

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

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

(m) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter 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 in the House of Representatives of the Congress of the United States shall be apportioned among the several counties of the state, arranged into three congressional districts, numbered as follows:

First District: Barbour, Brooke, Doddridge, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel and Wood.


AN ACT to amend and reenact article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three, chapter twenty-two-a of said code by adding thereto a new section, designated section eleven-a; and to further amend said chapter twenty-two-a by adding thereto a new article, designated article seven, relating generally to establishing the division of environmental protection; setting forth legislative findings and a declaration of
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. 
§22-1-14. Transfer and allocation of appropriations and 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 fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for our citizens. 

3 (2) The state has the primary responsibility for protecting the environment; other governmental enti-
ties, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

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

(4) The dispersion of environmental protection programs across a number of state agencies and the mixing of environmental programs with policies and programs which promote the development of industrial manufacturing and the production and utilization of natural resources have led to fragmented, duplicative and often inconsistent state policies relating to the protection of the environment.

(5) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making and would benefit from the coordination, consolidation and integration of state programs and agencies which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

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

(7) There is a need for improvement in the management and coordination of state environmental protection programs.

(8) Those functions of government which regulate the environment should be consolidated in a single state agency, in order to accomplish the purposes set forth in this article, to carry out the environmental functions of government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic
Such consolidation, in a phased approach, is best accomplished by action of the executive.

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

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

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

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

(4) To supplement and complement the efforts of the state by coordinating state programs with the efforts of other governmental entities, public and private organizations, and the general public to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries;

(5) Insofar as federal environmental programs require
state participation, to endeavor to obtain and continue state primacy in the administration of such federally-mandated environmental programs, and to endeavor to maximize federal funds which may be available to accomplish the purposes of the state and federal environmental programs and to cooperate with appropriate federal agencies to meet environmental goals;

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

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

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

(9) To increase the accountability of state environmental protection programs to the governor, the Legislature and the public generally.

§22-1-2. Definitions.

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

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

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

(3) The term "division" means the division of environmental protection;

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

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

(6) The term "office" includes any office, board, agency, unit, organizational entity, or component thereof.
§22-1-3. Creation of division of environmental protection; appointment of director.

There is hereby created within the department of commerce, labor and environmental resources an executive agency to be known as the division of environmental protection. The division shall be administered, in accordance with the provisions of this article, under the supervision and direction of the director of the division of environmental protection.

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

(a) Except as otherwise expressly provided in this chapter or in chapter twenty-two-a or twenty-two-b of this code, jurisdiction over the issuance of regulations, or any and all permits and other governmental authorizations required or to be required in all matters pertaining to the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources in this state, including all conservation, land, water, waste disposal, reclamation and environmental regulations, permits and authorizations of such activities called for pursuant to articles five, five-a, five-d and five-f, chapter twenty of this code, and the enforcement and implementation thereof is vested exclusively in the division. The division is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to such activities.

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

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

(a) The director shall be the chief executive officer of the division. Subject to provisions of law, he or she shall organize the division into such offices, sections, agencies
and other units of activity as may be found by the
director to be desirable for the orderly, efficient and
economical administration of the division and for the
accomplishment of its objects and purposes. The director
may appoint assistants, hearing officers, clerks, steno-
graphers, and other officers, technical personnel and
employees needed for the operation of the division and
may prescribe their powers and duties and fix their
compensation within amounts appropriated therefor.

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

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

(d) In addition to other powers, duties and responsi-
ilities granted and assigned to the director by this section or by a transfer of functions or offices in accordance with the provisions of this article, the director is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the "division of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the director to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code.

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

(3) Enter private lands to make surveys and inspections for environmental protection purposes, to investigate for violations of statutes or rules which the division is charged with enforcing, to serve and execute warrants and processes, to make arrests, and to otherwise enforce the statutes or rules which the division is charged with enforcing.

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property.

(5) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of environmental protection programs in this
(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the governor: Provided, That in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the division shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary and the director or in the event of vacancies in both of those offices.

(f) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the director shall take and subscribe to the oath required of public officers prescribed by section five, article four of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in
§22-1-6. Supervisory officers.

(a) There shall be in the division such number of supervisory officers as the director may determine is necessary to administer the functions and offices transferred to the division in accordance with the provisions of this article. Such supervisory officers shall be deemed to be "administrators" as such term is defined in section two, article six, chapter twenty-nine of this code, notwithstanding the fact that the positions filled by such persons are not statutorily created. Any such supervisory officer may be designated by the director as a deputy director, assistant director, chief, administrator, or other administrative title or designation. Such supervisory officers may supervise the general subject areas of administration, mines and minerals, oil and gas, and abandoned mine lands and reclamation, as such functions and offices are transferred to the division in accordance with the provisions of sections seven and eight of this article, and such other functions and offices as may be transferred to the division by executive order in accordance with the provisions of section nine of this article. The governor may, at any time prior to the first day of January, one thousand nine hundred ninety-three, by executive order, redefine the subject areas to be administered by any such supervisory officers, stating in such executive order or orders the title or designation to be assigned to the positions of supervisory officers and the particular functions and offices transferred by this article which are subject to administration by such designated supervisory officers. Each of the supervisory officers shall be appointed by the director and serve at the will and pleasure of the director. The compensation of such supervisory officers shall be fixed by the director. A single individual may be appointed to serve simultaneously in two distinct supervisory positions, but in a case where such dual appointment is made, such supervisory officer shall not receive additional compensation above that which would be paid for serving in one supervisory
(b) A supervisory officer appointed pursuant to the provisions of this section shall report directly to the director and shall, in addition to any functions vested in or required to be delegated to such officer, perform such additional functions as the director may prescribe.

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

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

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

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

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

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

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

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

There are hereby transferred to the division the following offices:

1. All offices in the division of mines and minerals of the department of energy;
2. All offices in the division of abandoned mine lands and reclamation of the department of energy;
3. All offices in the division of oil and gas of the department of energy.

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

(a) The governor may, by executive order, transfer to
the division all or any part of the functions and all or any part of the offices of the division of natural resources relating to restoration, maintenance and protection of the environment. The authority to make transfers as provided in this subsection shall expire on the thirtieth day of June, one thousand nine hundred ninety-two.

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

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

§22-1-10. Effect of transfers.

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

(b) Except for such functions or offices as are transferred pursuant to the provisions of this article, the functions and offices of the department shall not be affected by the enactment of this article or the promulgation of an executive order pursuant to the provisions 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 functions among the officers of the division, and to establish, consolidate, alter or discontinue such offices within the division as may be necessary or appropriate:

Provided, That the authority of the secretary under the provisions of this subsection does not extend to: (1) Any office or other entity transferred to the division and established by statute; (2) the abolition of any office or other entity established by this article; or (3) the alteration of the delegation of functions to any specific office or other entity required by this article.

§22-1-12. Legislative oversight.

(a) Upon the execution of an executive order pursuant to section six or nine of this article, or upon the allocation or reallocation of functions or the alteration, consolidation or discontinuance of offices by the secretary pursuant to section eleven of this article, the governor or the secretary shall cause a copy of the executive order of the governor or notice of the secretary, as the case may be, to be delivered to the president of the Senate and the speaker of the House of Delegates. The secretary and any executive officers or employees affected by a transfer or reorganization, or a proposed transfer or reorganization, when requested by either the president of the Senate or the speaker of the House of Delegates, shall appear before the joint committee on government and finance of the Legislature and be heard with respect to a transfer or reorganization, or a proposed transfer or reorganization, and to answer inquiries relative thereto.

(b) On or before the thirty-first day of December, one thousand nine hundred ninety-one, and every ninety days thereafter, until the thirty-first day of December, one thousand nine hundred ninety-two, the director shall report in writing to the joint committee on government and finance of the Legislature or its designated subcommittee as to the disposition by the division of permit applications and actions pending before the division
during the preceding ninety-day period.


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

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

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

(b) Except as herein exempted and notwithstanding any other provisions in this code to the contrary, the director may, with the exception of the special reclamation fund established in section eleven, article three, chapter twenty-two-a of this code, expend, in accordance with the provisions of chapter five-a of this code, from special revenue accounts, and funds established pursuant to this chapter and chapters twenty-two-a and twenty-two-b of this code, amounts necessary to implement and administer the general powers, duties and responsibilities of the division of environmental protection: Provided, That federal funds required by law to be expended for a specific purpose may not be expended for any purpose contrary to the laws, rules or regula-

(a) With respect to employees affected by the provisions of this article or article seven of chapter twenty-two-a of the code, the layoff and recall rights of such employees within the classified service of the state as provided in subsections (5) and (6), section ten, article six, chapter twenty-nine of this code shall be limited to the department of commerce, labor and environmental resources and further limited to an occupational group substantially similar to the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code.

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

§22-1-16. Saving provisions.

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, or allowed to become effective by the governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this article to the secretary, to the director or to the division, and which are in effect on the date such transfer occurs, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked.
in accordance with the law by the governor, the
director, or other authorized official, a
court of competent jurisdiction, or by operation of law.

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

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

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

(e) If, before the transfer of any function or office pursuant to the provisions of this article, any department, division or other office, or officer thereof in the official capacity of such officer, is a party to a suit, and under this article any function of such department, division or other office, or officer is transferred to the secretary, the director or other officer of the division, then such suit shall be continued with the secretary, the director or other appropriate officer substituted or added as a party.

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

§22-1-17. Advisory boards.

(a) The division of energy advisory board heretofore created under the provisions of the prior enactment of section seven-a of this article is hereby continued and is redesignated the division of environmental protection energy advisory board. Members of the board serving on the effective date of this section shall continue as members of the redesignated board. The energy advisory board shall consist of nine members appointed by the governor, for terms of two years, who shall serve without compensation. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties, in accordance with the reimbursement rates
applied to employees of the division. Three members of
the board shall have significant experience in the energy
industry, three members shall have significant expe-
rience in the advocacy of environmental protection, one
member shall be a representative of organized labor,
one member shall be a member of the House of
Delegates recommended by the speaker of the House of
Delegates, and one member shall be a member of the
Senate recommended by the president of the Senate.
The director shall serve as an ex officio member and
chairman of the board. The energy advisory board shall
meet at least every two months, or upon the call of four
members, to discuss all aspects of the division's envir-
onmental protection and environmental regulatory
functions, collection of penalties and fines, and
responsibilities.

(b) The division of environmental protection reorgan-
ization advisory board is hereby created. The reorgan-
ization advisory board shall consist of fourteen members
appointed by the governor, for terms ending on the
thirtieth day of March, one thousand nine hundred
ninety-three, at which time the reorganization advisory
board shall cease to exist. Members shall serve without
compensation. Each member shall be reimbursed for all
reasonable and necessary expenses actually incurred in
the performance of his or her duties, in accordance with
the reimbursement rates applied to employees of the
division. Four members of the board shall have signif-
icant experience in an industry regulated or proposed
to be regulated by the division, four members shall have
significant experience in the advocacy of environmental
protection, two members shall have significant expe-
rince in the teaching of public administration, two
members shall be members of the House of Delegates
recommended by the speaker of the House of Delegates,
and two members shall be members of the Senate
recommended by the president of the Senate. The
secretary shall serve as an ex officio member and
chairman of the board. The reorganization advisory
board shall meet at least every two months, or upon the
call of six members, to discuss all aspects of the
division's reorganization of functions and offices relating
Ch. 15] ENVIRONMENTAL PROTECTION 49

56 to environmental protection and environmental regulatory functions pursuant to this article.
57
58 (c) The division of energy task force, heretofore constituted and appointed by the joint committee on
government and finance of the Legislature, shall, on or before the fifteenth day of December, one thousand nine
hundred ninety-one, deliver to the secretary a report containing its findings of facts and recommendations
concerning its investigations and deliberations with regard to the environmental regulatory functions of the
department of energy as created by a prior enactment of this article. On or before the fifteenth day of January,
one thousand nine hundred ninety-two, the secretary shall deliver a responsive report to the joint committee
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 state engaging in the privilege of severing, extracting,
reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an annual
tax equal to two cents per ton of coal produced by such person for sale, profit or commercial use during such
person's taxable year. The special tax imposed by this section is in addition to all other taxes levied by law.
In no event may a ton of coal be taxed more than once under the provisions of this section.

11 (b) Payment and collection of tax. — The tax imposed by this section shall be collected by the tax commis-
12 sioner in the same manner, at the same time, and upon the same tonnage as the minimum severance tax
imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall
this tax be construed to be an increase in either the minimum severance tax imposed by said article twelve-
b or the severance tax imposed by article thirteen of said chapter eleven. Every person liable for payment of this
special tax shall pay the amount due without notice or demand for payment. The tax commissioner shall
provide to the director of the division of environmental
protection a quarterly listing of all persons known to be
delinquent in payment of the special tax. The director
of the division of environmental protection may take
such delinquencies into account in making determina-
tions on the issuance, renewal or revision of any permit.

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

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

(e) Crimes and penalties. — Each and every provision
of the "West Virginia Tax Crimes and Penalties Act" set
forth in article nine of said chapter eleven shall apply
to the special tax imposed by this section with like effect
as if such act were applicable only to the special tax
imposed by this section and set forth in extenso in this
article, notwithstanding the provisions of section two of
said article nine.

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

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

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

CHAPTER 22A. MINES AND MINERALS.

Article
3. West Virginia Surface Coal Mining and Reclamation Act.

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

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

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

(b) Such site-specific bonding system shall be estab-
lished by a legislative rule proposed by the director. The
rule shall be proposed for promulgation in accordance
with the provisions of article three, chapter twenty-nine-
a of this code, except as the provisions of this section
otherwise direct. The notice of the proposed promulga-
tion and the text of the proposed rule shall be filed in
the state register in compliance with the requirements
of section five, article three, chapter twenty-nine-a of
this code: Provided, That such filing shall be made on
or before the thirtieth day of June, one thousand nine
hundred ninety-two: Provided, however, That a period
for receiving public comment on the merits of such rule
shall be afforded, which period shall extend for not less
than sixty days next following the filing of the proposed
rule in the state register. The notice establishing the
period for public comment shall also fix a date, time and
place for a hearing for public comment at which both
written and oral presentations may be made, and such
hearing shall be held after the thirtieth day of the public
comment period but before the forty-sixth day of such
comment period. The provisions of section nine, article
three, chapter twenty-nine-a of this code to the contrary
notwithstanding, after the close of the public comment
period, the director shall proceed to agency approval
and final adoption of the rule, including any amend-
ments made by the director prior to such final adoption,
without further hearing or public comment. No such
amendment may change the main purpose of the rule.
Such final adoption shall occur on or before the first day
of November, one thousand nine hundred ninety-two,
and such rule shall become effective, and have the full
force and effect of law on and after the first day of
December, one thousand nine hundred ninety-two,
without submission to the Legislature. Such rule shall
continue in effect until the first day of May, one
thousand nine hundred ninety-three, or until sooner
modified, codified or abrogated by the Legislature. Such
rule shall not be promulgated as an emergency legisla-
tive rule.

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

(1) The amount of a performance bond shall be not
less than one thousand dollars nor more than five
thousand dollars per acre or fraction thereof.
(2) Any such bond, subject to the limitations of subdivision (1) of this subsection, shall reflect a relative potential cost of reclamation associated with the activities proposed to be permitted, which cost would not otherwise be reflected by performance bonds calculated by merely applying a specific dollar amount per acre for all permits.

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

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

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

(2) A consideration of factors which may result in environmental enhancement, as in a case where remining may improve water quality or reduce or eliminate existing highwalls, or a permitted operation may create or improve wetlands; or

(3) An analysis of various factors related to the specific permit applicant, including, but not limited to: (A) The prior mining experience of the applicant with the activities sought to be permitted; and (B) the history of the applicant as it relates to prior compliance with statutory and regulatory requirements designed to protect, maintain or enhance the environment in this or any other state.
(e) It is the intent of the Legislature that a legislative
rule proposed or promulgated pursuant to the provisions
of this section shall be constructed so that when the
findings of fact by the division of environmental
protection with respect to the proposed mining activity
and the particular permit applicant coincide with the
particular factors or criteria to be considered and
analyzed under the rule, the rule will direct a conclusion
as to the amount of the bond to be required, subject to
rebuttal and refutation of the findings by the applicant.
To the extent practicable, the rule shall limit subjectiv-
ity and discretion by the director and the division in
fixing the amount of the bond.

(f) On or before the thirty-first day of December, one
thousand nine hundred ninety-one, and every ninety
days thereafter, the director shall report in writing to
the joint committee on government and finance of the
Legislature or its designated subcommittee as to the
progress of the division in developing or implementing,
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-7-1. Redesignation of the division of health, safety
and training as the office of miners' health, safety and training.

The division of health, safety and training of the
department of energy is hereby redesignated the office
of miners' health, safety and training. The office of
miners' health, safety and training shall be a separate
office within the department of commerce, labor and
environmental resources. The office shall be adminis-
tered, in accordance with the provisions of this article,
under the supervision and direction of the director of the
office of miners' health, safety and training.

§22A-7-2. Definitions.

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

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

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

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

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

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

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

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

(b) The director shall be the chief executive officer of
the office. Subject to provisions of law, he or she shall
organize the office into such offices, sections, agencies
and other units of activity as may be found by the
director to be desirable for the orderly, efficient and
The director shall be appointed by the governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the governor: Provided, That, in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the office shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary or the director or in the event of vacancies in both of those offices.

The director of the office of miners' health, safety and training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' experience in underground coal mining and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. Special reference shall be given to his or her administrative experience and ability. The director shall devote all of his or her time to the duties of the position of director and shall not be directly interested financially in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid
necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section five, article four of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from office funds.

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

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

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

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

§22A-7-6. Offices transferred to the office of miners' health, safety and training.
(a) There are hereby transferred to the office of miners' health, safety and training the following offices:

1. The board of coal mine health and safety established pursuant to article six, chapter twenty-two of this code;
2. The coal mine safety and technical review committee established pursuant to article six, chapter twenty-two of this code;
3. The board of miner training, education and certification established pursuant to article nine, chapter twenty-two of this code;
4. The mine inspectors' examining board established pursuant to article eleven, chapter twenty-two of this code;
5. The board of appeals provided for pursuant to the provisions of article five, chapter twenty-two of this code; and
6. Any and all other offices in the division of health, safety and training of the department of energy.

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

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

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

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

The director shall have the power and authority to
propose or promulgate rules and regulations to organize
the office and to carry out and implement the provisions
of this article and articles one-a, two, five and six of this
chapter and chapter twenty-two of this code relating to
health and safety inspections and enforcement. All rules
and regulations in effect on the effective date of this
article which pertain to the provisions of articles one-
a, two, five and six of this chapter and chapter twenty-
two of this code as they relate to health and safety
inspection and enforcement shall remain in effect until
changed or superseded by the director, or as approp-
riate. Except when specifically exempted by the
provisions of this chapter, or chapter twenty-two of this
code, all rules or changes thereto shall be proposed or
promulgated by the director in accordance with the
provisions of chapter twenty-nine-a of this code.


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

(b) The provisions of this article shall not affect any
proceedings, including notices of proposed rule making,
or any application for any license, permit, certificate, or
financial assistance pending before any department,
division or other office, functions of which are trans-
ferred by this article. Orders shall be issued in such
proceedings, appeals shall be taken therefrom, and
payments shall be made pursuant to such orders, as if
this article had not been enacted; and orders issued in
any such proceedings shall continue in effect until
modified, terminated, superseded, or revoked by the governor, the secretary, the director, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceedings under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this article had not been enacted.

The director is authorized to propose legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the orderly transfer of proceedings continued under the provisions of this subsection.

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

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

(e) If, before the transfer of any function or office pursuant to the provisions of this article, any department, division or other office, or officer thereof in the official capacity of such officer, is a party to a suit, and under this article any function of such department, division or other office, or officer is transferred to the secretary, the director or other officer of the office, then such suit shall be continued with the secretary, the director or other appropriate officer substituted or added as a party.
(f) Orders and actions of the secretary or director in the exercise of functions transferred under this article shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by such department, division or other office, or part thereof, exercising such functions immediately preceding their transfer. Any statutory requirement relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred pursuant to the provisions of this article shall apply to the exercise of such function by the 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 accordance with the following:

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

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

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

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

(5) For inspections of residential occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for each inspection of a residential occupancy. For purposes of this subdivision, "residential occupancies" are those buildings in which sleeping accommodations are provided for normal residential purposes.

(6) For inspections of mercantile occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of mercantile occupancies: Provided, That if such inspection is in response to a complaint made by a member of the public, the state fire marshal shall obtain from the complainant an advance inspection fee of twenty-five dollars. This fee shall be returned to the complainant if, after the state fire marshal has made the inspection, he finds that the complaint was accurate and justified, and
he shall thereafter collect an inspection fee of up to one hundred dollars from the mercantile occupancy. If, after the inspection has been performed, it appears to the state fire marshal that such complaint was not accurate or justified, the state fire marshal shall keep the twenty-five dollar advance inspection fee obtained from the complainant and may not collect any fees from the mercantile occupant. For purposes of this section, “mercantile occupancy” includes stores, markets and other rooms, buildings or structures for the display and sale of merchandise.

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

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

For purposes of this subdivision, an “assembly occupancy” includes, but is not limited to, all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement, or awaiting transportation. For purposes of this section, a “class C assembly facility” is one that accommodates fifty to three hundred persons; a “class B facility” is one which accommodates more than three hundred persons but less than one thousand persons; and a “class A facility” is one which accommodates more than one thousand persons.
(b) The state fire marshal shall have the authority to establish a fee schedule for the fire safety review of plans and specifications for new and existing construction as set forth in this article. Such fee shall be paid by such party or parties receiving the review.

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

(c) All fees authorized and collected pursuant to this article and article three-b of this chapter shall be paid to the state fire marshal and thereafter deposited into a special account for the operation of the state fire commission in administering this article and article three-b of this chapter. The Legislature shall appropriate the moneys in said account by a specific numbered account in the budget bill. Beginning on the first day of July, one thousand nine hundred ninety-two, and every fiscal year thereafter, at the end of each fiscal year there shall be transferred from the special account, to the general revenue fund of the state, ten percent of all money collected by the fire marshal during the year: Provided, That any balance remaining in the special account at the end of any fiscal year, after the transfer of the ten percent, shall be reappropriated to the next fiscal year: Provided, however, That in addition to said ten percent, amounts collected which are found from time to time to exceed the funds needed for purposes for which the fees are collected may be transferred to other accounts or redesignated for other purposes by appropriation of the Legislature.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the state fire marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least forty-eight hours prior to the scheduled inspection the owner or occupant requests the state fire marshal to reschedule such inspection. In the event a second inspection is
required by the state fire marshal as a result of the
owner or occupant failing to be ready for the inspection
when the state fire marshal arrives, the state fire
marshal shall charge the owner or occupant of such
occupancy the inspection fees set forth above for each
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
  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.

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

(a) “Board” means the physician provider medicaid
enhancement board created to develop, review, and
recommend the physician provider fee schedule.

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

(c) “Fund” means the physician provider medicaid
enhancement fund established to receive moneys col-
lected from physician providers, individuals and corporations which will be matched with federal medicaid funds pursuant to Title XIX of the United States Social Security Act and expended in accordance with the provisions of this article.

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

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

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

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

There is hereby created the West Virginia physician provider medicaid enhancement board to consist of seven members. The board shall consist of six members, appointed by the governor, and the secretary, or his or her designee who shall serve as an ex officio, nonvoting member. The members appointed by the governor shall include four allopathic physicians, one osteopathic physician and one lay person. The governor shall select the allopathic physician members from a list of eight recommendations submitted to the governor by the state medical association, the osteopathic physician board member from three recommendations submitted to the governor by the state osteopathic society, and the lay board member, at his or her discretion. The respective associations shall submit their recommendations to the governor within five days of the effective date of this article. The governor shall make all appointments...
within fifteen days from the receipt of all recommendations. After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, made in the same manner as the initial appointment, and the terms of all members expire on the first day of July, one thousand nine hundred ninety-four. The board shall select a member to act as chairperson. The chairperson shall be the chief administrative officer and shall preside over official transactions of the board.

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

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


(a) The board shall:

(1) Develop and recommend a reasonable physician provider fee schedule so that the schedule conforms to the greatest extent possible to usual and customary charges in accordance with federal medicaid laws. In developing the fee schedule, the board shall refer to a nationally published fee schedule selected by the secretary of the department of health and human resources. Upon approval by the single state agency, the single state agency shall implement the physician provider fee schedule. If the single state agency does not approve of the fee schedule as developed by the board, then the board may submit a report to the Legislature including its recommendations and any other information necessary;

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

(3) Meet and confer with representatives from each medical specialty area so that equity in reimbursement increases may be achieved to the greatest extent
(4) Assist and enhance communications between participating physician providers and the department of health and human resources; and

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

(b) The board may receive and transmit to the fund private funds contributed, donated or bequeathed by corporations, individuals or other entities as contemplated and permitted by applicable federal medicaid laws.

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

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

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

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

(1) To increase physician provider medicaid reimbursement adopted by the single state agency through
recommendations by the board;

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

(3) To cover administrative costs.

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

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

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

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

§9-4B-7. Effective date.

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


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

(1) The date upon which an act of Congress becomes effective prohibiting the inclusion of revenue from provider taxes when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars: Provided, That if such act specifies a later date on which such prohibition takes effect, that later effective date controls;
(2) The date upon which a judgment or order of a court of competent jurisdiction becomes final prohibiting the inclusion of revenue from provider taxes when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars: Provided, That if such judgment or order specifies a later date on which the prohibition takes effect, that later effective date controls;

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

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

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

(b) Upon abrogation of this article, the single state agency shall use the moneys remaining in the fund to maintain, to the greatest extent possible, the increased fee schedule as determined by the single state agency. Thereafter, the single state agency shall distribute any moneys insufficient to maintain the increased fee schedule on a proportional basis among all participating providers, from the fund, as determined by the secretary.

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

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

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

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

(c) “Dentist provider” means a dentist, regardless of location, enrolled with the single state agency, rendering services within or without this state, and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity, from this state under the medical assistance program of the Social Security Act: Provided, That this definition does not include a dentist provider to the extent that such person renders cost-based services.
(d) "General health care provider" means an optometrist, an optician, an audiologist, a podiatrist, a chiropractor, a psychologist, a person providing medical equipment and supply services, a person providing laboratory services, a person providing radiology services, a speech therapist, an occupational therapist, a physical therapist, a behavioral health center, or a local health department, regardless of location, enrolled with the single state agency, rendering services within or without this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity, from this state under the medical assistance program of the Social Security Act: Provided, that this definition does not include a general health care provider to the extent that such person renders cost-based services.

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

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

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

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

There is hereby created the general medicaid enhancement board to consist of seventeen members. Sixteen members shall be appointed by the governor, including two lay persons and one representative from each of the following fourteen groups: Chiropractors, optometrists, opticians, audiologists, podiatrists, psychologists, medical equipment and supply services,
laboratory services, radiology services, speech therapists, occupational therapists, physical therapists, behavioral health centers and local health departments. In addition to the sixteen members appointed by the governor, the secretary, or his or her designee, shall serve as an ex officio, nonvoting member of the board. The governor shall make all appointments within twenty days from the effective date of this article. After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, shall be made in the same manner as the initial appointment, and the terms of all members expire on the first day of July, one thousand nine hundred ninety-four.

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

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

§9-4C-4. Ambulance service provider medicaid enhancement board.

There is hereby created the ambulance service provider medicaid enhancement board to consist of seven members. In order to carry out the purpose of this
article, this board shall represent ambulance service providers. The board shall consist of five ambulance service providers, one lay person and the secretary, or his or her designee as an ex officio, nonvoting member. The governor shall make all appointments within twenty days of the effective date of this article. After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, and the terms of all members shall expire on the first day of July, one thousand nine hundred ninety-four.

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

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

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

Each appointed board member for each board created pursuant to this article shall serve without compensation but shall be reimbursed for the cost of reasonable and necessary expenses actually incurred in the performance of his or her duties.
§9-4C-7. Powers and duties.

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

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

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

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

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

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

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

(c) Each board may carry out any other powers and duties as prescribed to it by the secretary.
(d) Nothing in this section gives any board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's medicaid program. The purpose of each board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the health care provider community and the agency.

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

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

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

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

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

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

(3) Any other financial and statistical information necessary for the health care cost review authority to
(c) The secretary shall determine an appropriate resolution for conflicts arising between the various boards.

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

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

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

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

(2) The outpatient hospital medicaid enhancement fund. — All taxes, additions to tax, penalties and interest collected from outpatient hospital providers in accordance with article twenty-six, chapter eleven of this code, all donations and contributions received by the outpatient hospital medicaid enhancement board in accordance with section seven of this article, and all interest earned from the investment of moneys deposited into the fund, shall be deposited into this fund;

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

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

(1) To increase health care provider medicaid reimbursement adopted by the single state agency through recommendations by the boards;

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

(3) To cover administrative costs.

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

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

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

§9-4C-11. Effective date.

The provider fee schedules as adopted by the single state agency through recommendations by each board become effective on the first day of January, one thousand nine hundred ninety-two: Provided, That those fee schedules based upon fees that require prior
approval of the health care financing administration are effective on the effective date approved by the health care financing administration: Provided, however, That for those fees subject to an established medicare upper limit, the effective date is the first day of the month immediately succeeding the date the fees can be raised sufficiently to comply with section ten of this article.

§9-4C-12. Abrogation.

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

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

(2) The date upon which a judgment or order of a court of competent jurisdiction becomes final prohibiting the inclusion of revenue from provider taxes when determining the amount of state expenditures that are claimable as medical assistance for the purpose of obtaining federal matching dollars: Provided, That if such judgment or order specifies a later date on which the prohibition takes effect, that later effective date controls;

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

(4) The date upon which any federal administrative rule or regulation promulgated in conformity with federal law becomes effective which negates the effect or purpose of this article: Provided, That if such federal rule or regulation specifies a later date on which the prohibition takes effect, that later effective date controls: Provided, however, That if any rule or regula-
tion prohibits the inclusion of revenue from taxes collected from a specific provider group defined in section one of this article when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars, such rule or regulation shall not affect, impair or invalidate the application of this article to the remaining health care providers, but shall be confined in its operation to the provider group specifically excluded by such rule or regulation; or

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

(b) Upon abrogation of this article, the single state agency shall use the moneys remaining in the funds to maintain, to the greatest extent possible, the increased fee schedules as determined by the boards. Thereafter, the single state agency shall distribute any moneys insufficient to maintain the increased fee schedules distributed on a proportional basis among all participating health care providers, from their respective funds, as determined by the secretary.

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

CHAPTER 11. TAXATION.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT 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.
§11-26-7. Tax return and payment.
§11-26-8. Extension of time for filing returns.
§11-26-10. Place for filing returns or 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.
§11-26-1. Legislative findings.

1 The Legislature finds and declares that:

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

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

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

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

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

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

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

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

10 (i) By levying a tax on the medicaid reimbursements of health care providers for the purpose of meeting state fund matching requirements pursuant to Title XIX of the Social Security Act, federal matching funds will be increased;
(j) By dedicating such additional revenue to the medicaid program, health care provider fees may conform as closely as possible to usual and customary charges;

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

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

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

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

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

§11-26-3. Definitions.

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

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

(b) “Department” means the West Virginia depart-
(c) "Gross receipts" or "gross proceeds" means all payments received by a health care provider enrolled in this state's medical assistance program for services delivered pursuant to Title XIX of the United States Social Security Act, as amended, and means any and all medicaid reimbursement payments made by the West Virginia department of health and human resources, or a division thereof, within the limitations set forth in this subsection, to such health care provider: Provided, That this definition does not include payments received for medicare coinsurance and deductibles as defined in Title XVIII of the Social Security Act, and does not include reimbursements made for cost-based services.

(d) "Health care provider" or "provider" includes physician providers as defined in section one, article four-b, chapter nine of this code, ambulance service providers, dentist providers, general health care providers, and outpatient hospital service providers as defined in section one, article four-c, chapter nine of this code, and any other person directly receiving enhanced medicaid reimbursement payments pursuant to article four-b or four-c, chapter nine of this code.

(e) "Single state agency" means the single state agency for medicaid in this state.

(f) "Taxpayer" means a health care provider required to pay the medicaid enhancement tax imposed by this article and entitled to receive the increased reimbursement in accordance with article four-b or four-c, chapter nine of this code.

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

(a) There is hereby levied and imposed an excise tax on the gross receipts or gross proceeds derived by health care providers enrolled in this state's medical assistance program. The amount of the tax shall be equal to one
hundred percent of that portion of gross receipts paid to the health care provider by the single state agency from state revenues for all services delivered pursuant to Title XIX of the United States Social Security Act, to individuals who, at the time such services were delivered, were enrolled with the single state agency and eligible to receive medicaid services, whether such health care provider is located within or without this state or such service is delivered within or without this state: Provided, That the following are not subject to the tax imposed in this article:

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

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

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

(b) The tax imposed by this section applies solely and exclusively to that portion of the medicaid reimbursement payment made from state revenue for services delivered by the health care provider pursuant to Title XIX of the United States Social Security Act, as amended, which amount shall be determined as provided in subsection (c) of this section.

(c) From time to time, as is necessary, the secretary shall notify the tax commissioner in writing of the portion, stated as a uniform percentage, of each medicaid reimbursement payment taxable under this
article that constitutes the state's share of medicaid program financial obligations in order to determine and tax only the state revenue share of that medicaid reimbursement payment. After receipt of such notice, the tax commissioner shall immediately cause to be published in the state register notice of that percentage and its effective date for purposes of calculating the tax imposed by this article. Beginning the first day of January, one thousand nine hundred ninety-two, and continuing until a notice of change in this percentage takes effect, the state revenue share of a medicaid reimbursement is twenty-two and thirty-two hundredths percent, except as otherwise provided in this article.

§11-26-5. Administration.

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

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

(2) General medicaid enhancement fund. — All taxes, additions to tax, penalties and interest collected in accordance with this article from those health care providers represented by the general medicaid enhance-
ment board and all donations and contributions received by the board in accordance with section seven, article four-c, chapter nine of this code shall be deposited into the general medicaid enhancement fund;

(3) The outpatient hospital medicaid enhancement fund. — All taxes, additions to tax, penalties and interest collected in accordance with this article from outpatient hospital providers represented by the outpatient hospital provider medicaid enhancement board and all donations and contributions received by the board in accordance with section seven, article four-c, chapter nine of this code shall be deposited into the outpatient hospital medicaid enhancement fund;

(4) The dentist provider medicaid enhancement fund. — All taxes, additions to tax, penalties and interest collected in accordance with this article from dentist providers represented by the dentist provider medicaid enhancement board and all donations and contributions received by the board in accordance with section seven, article four-c, chapter nine of this code shall be deposited into the dentist provider medicaid enhancement fund; and

(5) The ambulance service provider medicaid enhancement fund. — All taxes, additions to tax, penalties and interest collected in accordance with this article from ambulance service providers represented by the ambulance service provider medicaid enhancement board and all donations and contributions received by the board in accordance with section seven, article four-c, chapter nine of this code shall be deposited into the ambulance service provider medicaid enhancement fund.

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

(c) The department shall provide the tax commissioner with any information in its possession that the tax commissioner considers necessary for proper enforcement of this article. Notwithstanding any provision in
this code to the contrary, the tax commissioner may enter into a written exchange of information agreement with the secretary to disclose return information pertaining to the tax imposed by this article for the purpose of facilitating administration of this state's medical assistance program. Any confidential information disclosed under this agreement shall remain confidential in the hands of the receiving agency as provided in section five-d, article ten of this chapter.

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

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

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


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

(b) Change of taxable year. — If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall
be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

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

§11-26-7. **Tax return and payment.**

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

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

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

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

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

(4) Any other information necessary in the computation and collection of the tax which the tax commissioner may require. The taxpayer shall include with the return a remittance for the amount of the tax for the period covered by the return.

(c) On or before the last day of the first month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and
computing the amount of taxes due under this article for the entire taxable year. The tax commissioner shall allow a credit against this annual tax liability for the amount of tax imposed by this article (exclusive of any addition to tax, penalties or interest paid with respect thereto) previously paid by the taxpayer on gross receipts included in the annual return. The taxpayer shall submit with the annual return a remittance for the net amount of tax shown to be due.

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

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


(a) Amount determined on return. — The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

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

(c) No extension for certain deficiencies. — The tax commissioner may not grant an extension under this
section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

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

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


(a) General. — Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

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

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

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

(e) Verification of returns. — Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this
article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-26-12. Records.

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

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

§11-26-13. Refunds and credits.

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

(b) Claim for refund or credit. — No refund or credit shall be made unless the taxpayer filed a timely claim for refund or credit with the tax commissioner setting forth the amount to be refunded along with the reason or reasons why the taxpayer believes the amount should be refunded, or credited to taxpayer's account, and a copy of any papers supporting the taxpayer's claim. A person against whom an assessment, or an administrative decision, has become final with respect to this tax
is not entitled to pay the amount thereof and then file
a claim for refund or credit of the amount paid. The tax
commissioner shall determine the validity of the
taxpayer's claim and notify the taxpayer in writing of
his or her determination.

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

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

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

(f) Refund made or credit established. — The tax
commissioner shall promptly issue his or her requisition
on the treasury or establish a credit, as requested by the
taxpayer, for any amount finally administratively or
judicially determined to be an erroneous payment of any tax administered under this article. The auditor shall issue his or her warrant on the treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the treasurer shall pay such warrant out of the fund into which the amount so refunded was originally paid.

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

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

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

(j) Limitation on claim for refund or credit.

(1) General rule. — Whenever a taxpayer claims to be entitled to a refund or credit for erroneous payment of any tax, additions to tax, penalties or interest paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file his or her claim within three years after the due date of the return in respect of which the tax was imposed or within two years from the date the tax was paid, whichever of such periods expires later, or if no return was filed by the
taxpayer, within two years from the time the tax was paid, and not thereafter.

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

(3) Special rule where agreement to extend time for making an assessment. — Notwithstanding subdivisions (1) and (2) of this subsection, if an agreement is made extending the time period in which an assessment of a tax can be made, then the time period for filing a claim for refund or credit for an erroneous payment of the same tax made during the periods subject to assessment under the erroneous payment of this tax made during the periods subject to assessment under the extension agreement shall also be extended for the period of the extension agreement plus ninety days.

(k) "Erroneous payment" defined. — The term erroneous payment means a payment of the tax imposed by this article or the additions to tax, penalties or interest imposed with respect to this tax pursuant to article ten of this chapter, when such payment is due to a mathematical or clerical error or when such payment is collected after the period of limitation properly applicable thereto.

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

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

§11-26-15. General procedure and administration.
Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter applies, except as expressly provided in this article, to the tax imposed by this article with like effect as if the act were applicable only to the tax imposed by this article and were set forth in extenso in this article.


Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter applies to the tax imposed by this article with like effect as if the act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-26-17. Effective dates.

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

(b) Any change in the percentage of medicaid reimbursement that constitutes state revenue for purposes of calculating this tax, published as provided in subsection (c), section three of this article, applies first to gross receipts received during any calendar month that begins not less than thirty days after notice of a change in the percentage is filed in the state register, or the first day of any later calendar month specified in the notice. The percentage remains in effect until a subsequent change in the percentage takes effect and applies to taxable gross receipts received during the period during which
the percentage was in effect, whether or not the medicaid services were furnished, supplied, or rendered during that period.


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

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

(2) The date upon which a judgment or order of a court of competent jurisdiction becomes final prohibiting the inclusion of revenue from provider taxes when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars: Provided, That if such judgment or order specifies a later date on which the prohibition takes effect, that later effective date controls;

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

(4) The date upon which any federal administrative rule or regulation promulgated in conformity with federal law becomes effective which negates the effect or purpose of this article: Provided, That if such federal rule or regulation specifies a later date on which the prohibition takes effect, that later effective date controls: Provided, however, That if any rule or regulation prohibits the inclusion of revenue from taxes collected from a specific provider group defined in section three of this article, when determining the amount of state expenditures that are claimable as
medical assistance for purposes of obtaining federal matching dollars, such rule or regulation shall not affect, impair or invalidate the application of this article to the remaining health care providers, but shall be confined in its operation to the provider group specifically excluded by such rule or regulation; or

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

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

(c) Upon abrogation of this article, moneys remaining in the funds shall be used to maintain, to the greatest extent possible, the increased fee schedules as adopted by the single state agency through recommendations by the boards. Thereafter, any moneys insufficient to maintain the increased fee schedules shall be distributed on a proportional basis among all participating providers, from their respective funds, as determined by the secretary.

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


If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.
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 or municipalities thereof, who shall be members of the national guard or any military reserve unit of the United States armed services, shall be entitled to leave of absence from their respective offices or employments without loss of pay, status or efficiency rating, on the days during which they shall be engaged in drills, parades or other duty, during business hours ordered by proper authority, or for field training or active service of the state, for a maximum period of thirty working days in any one calendar year: Provided, That effective the second day of August, one thousand nine hundred ninety, all officers and employees of the state, or subdivisions or municipalities thereof, who are ordered or called to active duty by the President of the United States shall be entitled to an additional leave of absence from their respective offices or employments without loss of pay, status or efficiency rating for a maximum period of thirty working days. The term “without loss
of pay” means that the officer or employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that such officer or employee may have received other compensation from federal or 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.

(a) No person may operate upon a public highway any motor vehicle registered or required to be registered in this state if it has been modified by alteration of its height from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front and rear bumper height of motor vehicles whose gross vehicle weight rating is ten thousand pounds or less may be no
less than six inches and no more than thirty-one inches. In the absence of bumpers, and in cases where bumper heights have been altered or modified, height measurements shall be made to the bottom of the frame rail. If a motor vehicle has a bumper, the bumper must be at least three inches in vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance. The provisions of this subsection do not apply to motor vehicles with a gross vehicle weight rating in excess of ten thousand pounds. For the purpose of this subsection, the term “gross vehicle weight ratings” means the manufacturer’s gross vehicle weight ratings established for that vehicle.

(b) The maximum distance between the vehicle body to the vehicle frame may not exceed three inches. The distance from the vehicle body to the vehicle frame shall be measured from the vehicle body mount seat to the vehicle frame mount seat: Provided, That the maximum distance limitation shall not prohibit a body lift kit up to three inches to be added to the manufacturer’s original spacer between the body and the frame. No vehicle may be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation. No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system. Modification of the front end suspension by the use of lift blocks is expressly prohibited.

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

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

(e) This section does not apply to specially designed or modified motor vehicles when operated off the public highways in races and similar events. Such motor vehicles may be lawfully towed on the highways of this
(f) Modifications to motor vehicles, not prohibited herein, shall be made subject to inspection as provided in subsection (g) herein.

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

(h) Any motor vehicle which has been altered from the manufacturer’s specification with respect to bumper height for that vehicle make and model but within the allowable limits of subsection (a) or any motor vehicle which has been altered from the manufacturer’s specification for that vehicle make and model with respect to the distance from the vehicle body to vehicle frame but within the allowable limits of subsection (b) may be operated upon a public highway in this state, subject to inspection hereunder: Provided, That any motor vehicle which has been altered from the manufacturer’s specification by lowering the bumper height for that vehicle make and model within the allowable limits of subsection (a) shall be exempt from the inspection requirements hereunder and may be operated upon a public highway in this state subject to provisions of article sixteen of this chapter. If a motor vehicle and its equipment subject to inspection under this section are inspected and found to be in compliance with the provisions of this section and to be otherwise in safe condition, an official “modified vehicle sticker” shall be issued for display on the vehicle. The fee for the modified vehicle stickers will be twenty-five dollars with the division of public safety establishing rules concerning such inspection. Each municipal, county and state law-enforcement agency must record on accident report forms whether a modified vehicle was involved in the accident.

(i) The division of public safety shall promulgate rules governing a complete safety inspection of these vehicles and other rules as necessary to fully enforce and
implement the provisions of this section. Notwithstanding the provisions of article three, chapter twenty-nine-a of this code, the division of public safety may promulgate emergency legislative rules relating to vehicle modifications under this section and such rules shall be effective for a period of fifteen months beginning with the month of November, one thousand 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 shall be terminated on the date indicated but no governmental entity or program shall be terminated under this article unless a performance audit has been conducted of such entity or program, except as authorized under section fourteen of this article:
(1) On the first day of July, one thousand nine hundred eighty-one: Judicial council of West Virginia; motor vehicle certificate appeal board; and child welfare licensing board.

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

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

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

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

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

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

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

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

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

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

(12) On the first day of July, one thousand nine hundred ninety-two: State water resources board; water resources division, department of natural resources; whitewater advisory board; state board of risk and insurance management; West Virginia's membership in the interstate commission on the Potomac River basin; board of banking and financial institutions; the farm management commission; state building commission; the capitol building commission; the board of examiners in counseling; public service commission; family protection services board; board of examiners of land surveyors; legislative oversight commission on education accountability; West Virginia ethics commission; family law masters system; state lottery commission; the following divisions or programs of the department of agriculture: Soil conservation committee, rural resource division, meat inspection program; women's commission; and the child advocate office of the department of health and human resources.

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

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

(15) On the first day of July, one thousand nine hundred ninety-five: Emergency medical services advisory council; commission on charitable organiza-
tions; information system advisory commission; West Virginia labor-management council; the board of social work examiners; and the rural health initiative advisory panel.

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

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

CHAPTER 18B. HIGHER EDUCATION.

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

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

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

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

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

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

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

ARTICLE 16. HEALTH CARE EDUCATION.
§18B-16-1. Short title.

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

(a) The Legislature hereby finds and declares that the health of the citizens of West Virginia is of paramount importance; that the education of health care professionals must be reshaped; that the delivery of health care services must be improved; that refocusing health sciences education will aid in the recruitment of health care professionals and their retention in the state; that the educational process should incorporate clinical experience in rural areas and provide improved availability of health care services throughout the state, especially in rural areas; and that the state investment in such education and services must be contained within reasonable limits.

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

(c) It is the further finding of the Legislature that the appropriations pursuant to section eight of this article are made with the understanding that the educational and clinical programs existing at the schools of medicine
on the effective date of this section, as well as the goals
of this article, will be met without requests for increases
in the annual appropriations through the fiscal year
beginning on the first day of July, one thousand nine
hundred ninety-five, with the exception of requested
increases in appropriations for the purpose of meeting
any increases in the salaries of personnel as may be
given to other employees at state institutions of higher
education under the board of trustees.

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

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

§18B-16-3. Definitions.

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

(a) “Advisory panel” or “panel” means the rural health
initiative advisory panel created under section six of this
article.

(b) “Allied health care” means health care other than
that provided by physicians, nurses, dentists and mid-
level providers and includes, but is not limited to, care
provided by clinical laboratory personnel, physical therapists, occupational therapists, respiratory therapists, medical records personnel, dietetic personnel, radiologic personnel, speech-language-hearing personnel and dental hygienists.

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

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

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

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

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

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

(i) "Schools of medicine" means the West Virginia University School of Medicine, which is the School of Health Sciences; the Marshall School of Medicine, which is the Marshall Medical School; and the West Virginia
§18B-16-4. Establishment of rural health initiative; goals of rural health initiative.

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

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

(b) The establishment of satellite programs from the primary health care education sites to provide additional opportunities for students and medical residents to serve under role models in rural areas;

(c) The provision of training to all medical students under the direction of primary care physicians practicing in rural areas;

(d) The provision of admission preferences for qualified students entering primary care in needed specialties in underserved areas;

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

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

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

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

(i) The increased placement of primary care physi-
(j) The increased retention of obstetrical providers and the availability of prenatal care;

(k) The increased use of underserved areas of the state in the educational process;

(l) An increase in the number of support services provided to rural practitioners;

(m) An increase in the retention rate of graduates from West Virginia medical schools, nursing schools and allied health care education programs;

(n) The development of effective health promotion and disease prevention programs to enhance wellness; and

(o) The establishment of primary health care education sites which complement existing community health care resources and which do not relocate the fundamental responsibility for health care from the community to the board of trustees.

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

In addition to all other duties assigned to the vice chancellor by the board of trustees, the vice chancellor shall:

(a) Provide assistance to communities in planning an educational and clinical component for the primary health care education sites;

(b) Coordinate and approve the provision of faculty members, students, interns and residents at the education sites;

(c) Report directly to the board of trustees regarding the rural health initiative;

(d) Oversee the administration of the Kellogg foundation grant;

(e) Coordinate the rural health initiative with the allied health care education programs within the state college system;

(f) Prepare the budget for the rural health initiative
and submit the budget to the board of trustees for their
approval;

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

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

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

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

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

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

(a) The rural health initiative advisory panel is hereby
created and shall be composed of eighteen members as
follows: (1) One member shall be the commissioner of
the bureau of public health, who shall chair the panel;
(2) one member shall be a representative of the office
of rural health; (3) one member shall be a representative
of the health care planning commission; (4) one member
shall be a representative of the office of community
health services; (5) five members shall be rural health
care providers, two of whom shall be representatives of
rural health care facilities selected from such lists as
may be submitted by associations interested or involved
in the provision of rural health care, two of whom shall
be physicians engaged in the private practice of rural
medicine, and one of whom shall be an advanced nurse
practitioner or a nurse-midwife with experience in rural
health care delivery; (6) four members shall represent
consumers; (7) one member shall be a president of a
private college or university to represent the health
education programs at the state's private colleges and
universities: Provided, That the presidents of the various
private colleges and universities shall select the member
representing the private colleges and universities and
submit the name to the governor for his appointment:
Provided, however, That such member shall be a
nonvoting member; (8) one member shall be the
president of the West Virginia school of osteopathic
medicine or a designee; (9) one member shall be the vice
president of the West Virginia university school of
medicine or a designee; (10) one member shall be the
vice president of the Marshall university school of
medicine or a designee; and (11) one member shall be
a president of a state college to represent the health
education programs of the state college system, selected
by a vote of the presidents of the state colleges. Those
members representing state institutions of higher
education shall be ex officio, nonvoting members of the
panel.

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

The governor shall make all appointments within ten
days of the effective date of this article, and the vice
chancellor shall convene the advisory panel by the first
day of December, one thousand nine hundred ninety-one.
Thereafter, the chair shall schedule the meetings of the
panel and notify members of such meetings. The panel
shall meet at least monthly until such time as the initial
recommendation has been forwarded to the vice chan-
cello and at least quarterly thereafter or upon the call
of the chair.
Members of the advisory panel shall be reimbursed for the cost of reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That members of the panel who are employed by the state of West Virginia shall not be reimbursed for their expenses under the provisions of this section.

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

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

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

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

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

(a) In addition to the authority granted elsewhere in this chapter, the board of trustees is authorized and
directed to establish at least six primary health care education sites at existing rural health care facilities at which students, interns and residents in health sciences and allied health care education programs may be provided educational and clinical experiences. The board of trustees shall establish at least six sites prior to the first day of January, one thousand nine hundred ninety-four. The vice chancellor shall, where practicable, and based upon recommendations of the joint commission on vocational-technical-occupational education established in section one, article three-a of this chapter, allow for the provision of educational experience to student practical nurses at the primary health care education sites.

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

(c) The advisory panel and the vice chancellor shall employ an open and competitive process in selecting locations for primary health care education sites and shall observe as criteria the following factors: (1) The degree of community interest, support and involvement in seeking award of the site; (2) qualification as a medically underserved or health professional shortage area; (3) the financial need of the community; (4) statewide geographic dispersion; (5) the amount of local financial support available to initiate and continue the site, including the possibility of the site's being financially self-sufficient within a reasonable period of time; (6) the adequacy of facilities available to accommodate the health sciences and allied health care education program; (7) consistency with planning efforts of the office of rural health and the health care planning commission; (8) the amount and manner in which health care needs unique to West Virginia are addressed and will be addressed; (9) the degree to which state institutions of higher education cooperate in the health care education site; (10) the number of patients and
patient encounters; (11) the number of existing health care providers in the area and the degree to which the rural health care facility will work with and impact on those health care providers; and (12) the level of networking among local health care providers serving the area.

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

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


(a) The primary health care education sites established under this article shall be supported financially in part from line item appropriations to the university of West Virginia health sciences account. Funds shall be distributed to the state's schools of medicine upon consideration of the recommendations of the vice chancellor. Appropriations to the university of West Virginia health sciences account to support the rural health initiative shall be by line item, with at least one line item designated for primary health education program support at the schools of medicine and at least one line item designated for rural health initiative site support.

(b) The vice chancellor shall require each school of medicine to submit a detailed proposal which shall state, with specificity, how each school of medicine will be working to further the goals and meet the criteria set
forth in this article and the amount of appropriation which would be needed by each school to implement the proposal.

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

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

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

Notwithstanding the provisions of section twelve, article three, chapter twelve of this code, any funds appropriated to the board of directors in accordance with the provisions of this section that remain unallocated or unexpended at the end of any fiscal year shall not expire, shall remain in the line item to which they were originally appropriated and shall be available in the next fiscal year to the board of directors for allocation or expenditure for the purposes of this article.
(e) Additional financial support shall come from fees generated by services, from grants and contracts, and from community resources. Any fees so generated shall be paid to and expended by the facility established as a primary health care education site unless an alternative fee arrangement is mutually agreed upon by the chief administrator of the site and the vice chancellor for health sciences.

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

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

(b) The vice chancellor, with the guidance and recommendations of the advisory panel, shall develop additional performance indicators, including, but not limited to: (1) An analysis of the health care needs of the targeted areas; (2) the number of persons served and the nature of the services provided; (3) the number of full-time and part-time faculty, students, interns and residents, by discipline, participating in the health science and allied health care education programs; (4) the number of health providers in each community served by primary health care education sites; (5) the financial, social and health status changes in each community served by primary health care education sites; and (6) the extent to which the plans and policies of the office of rural health and the health care planning commission are being effectuated. The vice chancellor shall provide information on the performance indicators to the board of trustees for inclusion in the higher
(c) The advisory panel shall report at least annually to the joint legislative oversight commission on education accountability created under section eleven, article three-a, chapter twenty-nine-a of this code and to the area health education centers subcommittee of the joint committee on government and finance regarding the status of the rural health care initiative, paying particular attention to the role of the communities.

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

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

In addition to the reports otherwise required and commencing with a report for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, the chief administrators shall submit to the board of trustees an annual evaluation of the extent to which the goals set forth in section four of this article
and other goals relating to collaborative efforts between the schools of medicine and rural health care facilities are being attained. Such report shall be forwarded annually in its entirety to the governor, the president of the Senate and the speaker of the House of Delegates no later than the fifteenth day of January.

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

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

(b) Establishment of special account. — There is hereby established a special revolving fund account under the board of trustees in the state treasury to be
known as the health education student loan fund which
shall be used to carry out the purposes of this section.
The fund shall consist of: (1) All funds on deposit in the
medical student loan fund in the state treasury on the
effective date of this section, or which are due or become
due for deposit in the fund as obligations made under
the previous enactment of this section; (2) thirty-three
percent of the annual collections from the medical
education fee established by section four, article ten,
chapter eighteen-b of this code, or such other percentage
as may be established by the board of trustees by
legislative rule subject to approval of the Legislature
pursuant to the provisions of article three-a, chapter
twenty-nine-a of this code; (3) appropriations provided
by the Legislature; (4) penalties assessed to individuals
for failure to perform under the terms of a loan contract
as set forth under this section, and repayment of any
loans which may be made from funds in excess of those
needed for loans under this section; (5) amounts
provided by medical associations, hospitals, or other
medical provider organizations in this state, or by
political subdivisions of the state, under an agreement
which requires the recipient to practice his or her health
profession in this state or in the political subdivision
providing the funds for a predetermined period of time
and in such capacity as set forth in the agreement; and
(6) other amounts which may be available from external
sources. Balances remaining in the fund at the end of
the fiscal year shall not expire or revert. All costs
associated with the administration of this section shall
be paid from the health education student loan fund.

(c) Eligibility and forgiveness requirements for health
education student loan. — An individual is eligible for
a health education student loan if the individual: (1) Is
enrolled or accepted for enrollment at the West Virginia
university school of medicine, Marshall university school
of medicine, the West Virginia school of osteopathic
medicine in a program leading to the degree of medical
doctor (M.D.) or doctor of osteopathy (D.O.): Provided,
that the individual has not yet received one of these
degrees and is not in default of any previous student
loan; (2) meets the established academic standards; and
(3) signs a contract to practice his or her health profession in an underserved area of the state: Provided, however, That for every year that an individual serves in an underserved area, ten thousand dollars of the loan granted to the individual will be forgiven.

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

At the end of each fiscal year, any individual who has received a health education student loan shall submit to the board of trustees a notarized, sworn statement of service on a form provided for that purpose. Upon receipt of such statement in proper form and verification that the individual has complied with the terms under which the loan was granted, the board of trustees shall cancel up to ten thousand dollars of the outstanding loan for every full twelve consecutive calendar months of such service.

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

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

(d) Loans granted under medical student loan program. — Any student granted a medical student loan under the provisions of this section prior to the effective date of the amendment and reenactment of this section...
at the second extraordinary session of the Legislature in
the year one thousand nine hundred ninety-one con-
tinues to be eligible for consideration for receipt of such
a loan, and/or obligated to repay such loan, as the case
may be, under the prior provisions. Thereafter, the
senior administrator may utilize any funds remaining in
the health education student loan fund after all loan
grants have been disposed of for the purposes of the
medical student loan program. An individual is eligible
for loan consideration if the individual demonstrates
financial need, meets established academic standards
and is enrolled or accepted for enrollment at one of the
aforementioned schools of medicine in a program
leading to the degree of medical doctor (M.D.) or doctor
of osteopathy (D.O.): Provided, That the individual has
not yet received one of these degrees and is not in default
of any previous student loan: Provided, however, That
the board of trustees shall give priority for the loans to
residents of this state, as defined by the board of
trustees. At the end of each fiscal year, any individual
who has received a medical student loan and who has
actually rendered services as a medical doctor or a
doctor of osteopathy in this state in a medically
underserved area or in a medical specialty in which
there is a shortage of physicians, as determined by the
division of health at the time the loan was granted, may
submit to the board of trustees a notarized, sworn
statement of service on a form provided for that
purpose. Upon receipt of such statement in proper form
and verification of services rendered, the board of
trustees shall cancel five thousand dollars of the
outstanding loan or loans for every full twelve consec-
tutive calendar months of such service.

(e) Report by senior administrator. — No later than
thirty days following the end of each fiscal year, the
senior administrator shall prepare and submit a report
to the board of trustees for inclusion in the statewide
report card required under section six, article two,
chapter eighteen-b of this code to be submitted to the
legislative oversight commission on education accounta-
bility established under section eleven, article three-a,
chapter twenty-nine-a of this code. The report of the
senior administrator shall include at a minimum the
following information: (1) The number of loans awarded; (2) the total amount of the loans awarded; (3) the amount of any unexpended moneys in the fund; and (4) the rate of default during the previous fiscal year on the repayment of previously awarded loans.

(f) Promulgation of rules. — The secretary of the department of education and the arts shall promulgate 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

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### Class Title

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<td>42</td>
<td>Braille or Sign Language Specialist</td>
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<td>Bus Operator</td>
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<td>44</td>
<td>Buyer</td>
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On and after the first day of July, one thousand nine hundred ninety, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade I" as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the "state minimum pay scale pay grade I" set forth in this section: Provided, That upon the
effective date of this section through the remainder of the school year one thousand nine hundred ninety-one — ninety-two, in lieu of the minimum monthly pay scale pay grade for service employees in effect as set forth in this section, each service employee shall be paid such amount as he or she would be due under the provisions of this section over his or her full employment term on the basis of the “state minimum pay scale pay grade II”. The difference between such amount and any amount already paid to such employee in such school year shall be prorated over such portion of the employees employment term as remains: Provided, however, That the state department of education shall notify each service employee that the amounts paid to them for the remainder of their employment term in the school year one thousand nine hundred ninety-one — ninety-two will be greater than they would normally be due under the minimum monthly pay scale, because of the pro rata distribution, and that their minimum monthly salaries will decrease slightly during the next school year when the salary increase is paid over the full employment term: Provided further, That on and after the first day of July, one thousand nine hundred ninety-two, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade II” as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the “state minimum pay scale pay grade II” set forth in this section. An additional ten dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

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

Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid
shall be paid for such additional hours or fraction thereof at a rate of one and one-half times their usual hourly rate and paid entirely from county board of education funds.

No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, and such employee's required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

The minimum hourly rate of pay for extra-duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra-duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved both by the county board of education and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if so requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra-duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra-duty assignment pay computed as though such an employee were employed 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 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 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 a new section, designated section twenty-five; 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

20. Natural Resources.
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 requires a different meaning:

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

3 (2) "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the solid waste management board, heretofore known as the West Virginia resource recovery — solid waste disposal authority, to effect the intents and purposes of this article.
17. (3) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

20. (4) "Cost" means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this article by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the
provisions of this article.

(5) “Governmental agency” means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(6) “Industrial waste” means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

(7) “Owner” includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(8) “Person” means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity whatever.

(9) “Pollution” means the discharge, release, escape or deposit, directly or indirectly, of solid waste of whatever kind or character, on lands or in waters in the state in an uncontrolled, unregulated or unapproved manner.

(10) “Revenue” means any money or thing of value
collected by, or paid to, the solid waste management board as rent, use fee, service charge or other charge for use of, or in connection with, any solid waste disposal project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the solid waste management board to governmental agencies to finance in whole or in part the acquisition or construction of any solid waste development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

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

(12) "Solid waste facility” means any system, facility, land, contiguous land, improvements on land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(13) "Solid waste disposal project” or “project” means any solid waste facility, wastewater treatment plants, sewer treatment plants, water and sewer systems and connecting pipelines the acquisition or construction of which is authorized by the solid waste management board or any acquisition or construction which is financed in whole or in part from funds made available by grant or loan by, or through, the board as provided in this article, including all buildings and facilities which the board deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

(14) "Solid waste disposal shed” or “shed” means a geographical area which the solid waste management board designates as provided in section eight of this 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.

The West Virginia resource recovery — solid waste disposal authority is hereby continued in all respects as heretofore constituted but is hereafter designated and shall be known as the solid waste management board. All references in this code to the West Virginia resource recovery — solid waste disposal authority shall be construed as references to the solid waste management
board. The board is a governmental instrumentality of the state and a body corporate. The exercise by the board of the powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and are for a public purpose.

The board shall be composed of seven members. The secretary of the department of health and human resources and the director of the division of natural resources, or their designees, shall be members ex officio of the board. The other five members of the board shall be appointed by the governor, on the effective date of this section, by and with the advice and consent of the Senate, for terms of one, two, three, four and five years, respectively. Two appointees shall be persons having at least three years of professional experience in solid waste management, civil engineering or regional planning and three appointees shall be representatives of the general public. The successor of each such appointed member shall be appointed for a term of five years in the same manner the original appointments were made and so that the representation on the board as set forth in this section is preserved, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor.

No more than three of the appointed board members may at any one time be from the same congressional district or belong to the same political party. No appointed board member may be an officer or employee of the United States or this state. Appointed board members may be reappointed to serve additional terms. All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars. Appointed members may be removed from the board only for the same causes as elective state officers may be removed.

Annually the board shall elect one of its appointed
members as chairman, another as vice chairman and appoint a secretary-treasurer, who need not be a member of the board. Four members of the board shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by vote of the board. No vacancy in the membership of the board shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board. The person appointed as secretary-treasurer shall give bond in the sum of fifty thousand dollars. If a board member is appointed as secretary-treasurer, he shall give bond in the sum of twenty-five thousand dollars in addition to the bond required in the preceding paragraph.

The ex officio members of the board shall not receive any compensation for serving as a board member. Each of the five appointed members of the board shall receive compensation of fifty dollars for each day actually spent in attending meetings of the board or in the discharge of his duties as a member of the board, but not to exceed two thousand five hundred dollars in any fiscal year. Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board. All such compensation and expenses incurred by board members shall be payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriation.

The board shall meet at least four times annually and at any time upon the call of its chairman or upon the request in writing to the chairman of four board members.

The board shall appoint a director as its chief executive officer. The director shall have successfully completed an undergraduate education and, in addition, shall have two years of professional experience in solid waste management, civil engineering, public administration 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.

To accomplish the public policy and purpose and to meet the responsibility of the state as set forth in this article, the solid waste management board shall designate and establish solid waste disposal sheds and it may initiate, acquire, construct, maintain, repair and operate solid waste disposal projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects by such persons and governmental agencies; and may issue solid waste disposal revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to governmental agencies, such projects. A solid waste disposal project shall not be undertaken unless the board determines that the project is consistent with federal law, with its solid waste disposal shed plan, with the standards set by the state water resources board and the section of water resources of the division of natural resources for any waters of the state which may be affected thereby, with the air quality standards set by the West Virginia air pollution control commission and with health standards set by the division of health. Any resolution of the board providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the board that such determinations have been made. A loan agreement shall be entered into between the board and each governmental agency to which a loan is made for the acquisition or construction of a solid waste disposal project, which loan agreement shall include without limitation the following provisions:

(1) The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge of all revenues from such project after a reasonable
allowance for operation and maintenance expenses, a

(2) The specific purposes for which the proceeds of
the loan shall be expended, the procedures as to the
disbursement of loan proceeds and the duties and
obligations imposed upon the governmental agency in
regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to
impose, collect, and, if required to repay the obligations
of such governmental agency under the loan agreement,
increase service charges from persons using said
project, which service charges shall be pledged for the
repayment of such loan together with all interest, fees
and charges thereon and all other financial obligations
of such governmental agency under the loan agreement;

(4) The agreement of the governmental agency to
comply with all applicable laws, rules and regulations
issued by the board or other state, federal and local
bodies in regard to the construction, operation, mainte-
nance and use of the project; and

(5) Such other provisions, terms or conditions as the
board may reasonably require.

The board shall comply with all of the provisions of
federal law and of article one of this chapter and any
rules and regulations promulgated thereunder which
pertain to solid waste collection and disposal.

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

(a) The solid waste management board may exercise
all powers necessary or appropriate to carry out and
effectuate its corporate purpose. The board may:

(1) Adopt, and from time to time, amend and repeal
bylaws necessary and proper for the regulation of its
affairs and the conduct of its business, and rules and
regulations, promulgated pursuant to the provisions of
chapter twenty-nine-a of this code, to implement and
make effective its powers and duties.
(2) Adopt an official seal.

(3) Maintain a principal office which shall be in Kanawha County, and, if necessary, regionalsuboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections ten, eleven and sixteen of this article. Any actions against the board shall be brought in the circuit court of Kanawha County.

(5) Make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects and adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, solid waste disposal projects, and, in accordance with chapter twenty-nine-a of this code, adopt rules and regulations for the use of such projects.

(7) Make available the use or services of any solid waste disposal project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds of the state, payable solely from revenues as provided in section ten of this article, unless the bonds are refunded by refunding bond, for the purpose of paying all or any part of the cost of acquiring, constructing, reconstructing, enlarging, improving, furnishing, equipping, or repairing solid waste disposal projects, or making loans to persons or to governmental agencies for the acquisition, design or construction of solid waste disposal projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.
(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any solid waste facility operated under permits issued pursuant to the provisions of article five-f, chapter twenty of this code and owned by any person or governmental agency. This article does not authorize the board to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the board.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the board shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. A contract or lease for the operation of a solid waste disposal project constructed and owned by the board or an agreement for cooperation in the acquisition or construction of a solid waste disposal project pursuant to section sixteen of this article is not subject to the
foregoing requirements and the board may enter into
such contract or lease or such agreement pursuant to
negotiation and upon such terms and conditions and for
such period as it finds to be reasonable and proper
under the circumstances and in the best interests of
proper operation or of efficient acquisition or construc-
tion of such project. The board may reject any and all
bids. A bond with good and sufficient surety, approved
by the board, shall be required of all contractors in an
amount equal to at least fifty percent of the contract
price, conditioned upon the faithful performance of the
contract.

(12) Employ managers, superintendents, engineers,
accountants, auditors and other employees, and retain or
contract with consulting engineers, financial consul-
tants, accounting experts, architects, attorneys and such
other consultants and independent contractors as are
necessary in its judgment to carry out the provisions of
this article, and fix the compensation or fees thereof. All
expenses thereof shall be payable solely from the
proceeds of solid waste disposal revenue bonds or notes
issued by the board, from revenues and from funds
appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency,
subject to the approval of the governor, grants for or in
aid of the construction of any solid waste disposal project
or for research and development with respect to solid
waste disposal projects and solid waste disposal sheds
and receive and accept from any source aid or contrib-
tutions of money, property, labor or other things of
value, to be held, used and applied only for the purposes
for which such grants and contributions are made.

(14) Engage in research and development with
respect to solid waste disposal projects and solid waste
disposal sheds.

(15) Purchase fire and extended coverage and liabil-
ity insurance for any solid waste disposal project and for
the principal office and suboffices of the board, insu-
rance protecting the board and its officers and em-
ployees against liability, if any, for damage to property
or injury to or death of persons arising from its operations and any other insurance the board may agree to provide under any resolution authorizing the issuance of solid waste disposal revenue bonds.

(16) Charge, alter and collect rentals and other charges for the use or services of any solid waste disposal project as provided in this article, and charge and collect reasonable interest, fees and other charges in connection with the making and servicing of loans to governmental agencies in furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the board to secure or to pay the principal of and interest on the bonds and notes issued by the board pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the board in this article.

(b) The solid waste management board may not expend an amount of money greater than one thousand dollars on any one purchase nor disburse grant moneys without first obtaining the written approval of the secretary of commerce, labor and environmental resources.

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

On or before the first day of January, one thousand nine hundred ninety-three, the solid waste management board shall prepare an overall state plan for the proper management of solid waste: Provided, That such plan shall be consistent with the findings and purposes of articles five-f, nine and eleven of chapter twenty of this code: Provided, however, That such plan shall incorporate the county or regional plans developed pursuant to sections seven and twelve-a, article nine, chapter twenty of this code, as amended: Provided further, That such plan shall be updated every two years following its initial preparation.

§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refund-
The board is hereby empowered to issue, from time to time, solid waste disposal revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance in whole or in part by loans to governmental agencies, one or more solid waste development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of one hundred million dollars: Provided, That up to twenty-five million dollars may be issued for projects located or to be located in areas which lack adequate sewer or water service and the area is in need of such services to comply with federal requirements.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste disposal revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes shall be obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge shall be valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board irrespective of whether such parties have notice thereof. All such bonds and notes shall have all the qualities of negotiable instruments.
The bonds and notes shall be authorized by resolution of the board, shall bear such dates and shall mature at such times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the board may authorize. The board may sell such bonds and notes at public or private sale, at the price the board determines. The bonds and notes shall be executed by the chairman and vice chairman of the board, both of whom may use facsimile signatures. The official seal of the board or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery and, in case the seal of the board has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the board to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the board; a covenant to fix, alter and collect rentals, fees, service charges and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance
and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any solid waste disposal project or any other assets of the board; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; agreement of the board to do all things necessary for the authorization, issuance and sale of bonds in such amounts as may be necessary for the timely retirement of notes issued in anticipation of the issuance of bonds; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the holders of which must consent thereto, and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the board for operating, administrative or other expenses of the board; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to the payment of such bonds or notes shall be less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chairman of the board shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state, for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the board to be pledged for payment of such bonds or notes:
Provided, That the Legislature shall not be required to make any appropriation so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

Neither the members of the board nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance 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.

(a) Before issuing any revenue bonds in accordance with the provisions of this article, the board shall consult with and be advised by the West Virginia water development authority as to the feasibility and necessity of the proposed issuance of revenue bonds. Such consultation shall include, but not be limited to, the following subjects:

(1) The relationship of the proposed issuance of revenue bonds to the statutory debt limitation provided for in section ten of this article;

(2) The degree to which the proceeds will be used for capital improvements in the form of real or personal property;

(3) The extent to which the proposed use of proceeds coincides with the purposes of this article;

(4) A weighing of the public benefit to be derived from the issuance as opposed to any private gain; and

(5) The sufficiency of projected revenues available to the board to pay the interest on indebtedness as it falls due, to constitute a sinking fund for the payment thereof at maturity, or to discharge the principal within a prescribed period of time.

(b) Prior to issuing revenue bonds under the provisions of this article, the board shall enter into agreements satisfactory to the water development authority
with regard to the selection of all consultants, advisors
and other experts to be employed in connection with the
issuance of such bonds and the fees and expenses to be
charged by such persons, and to establish any necessary
reserve funds and replacement and improvement funds,
as long as any such bonds remain outstanding, to establish and maintain a sinking fund or funds to retire such bonds and pay the interest thereon
as the same may become due. The amounts in any such
sinking fund, as and when so set apart by the board,
shall be remitted to the West Virginia water development
authority at least thirty days previous to the time
interest or principal payments become due, to be
retained and paid out by the water development
authority, as agent for the board, in a manner consistent
with the provisions of this article and with the resolution
pursuant to which the bonds have been issued. The
water development authority shall act as fiscal agent for
the administration of any sinking fund and reserve fund
established under each resolution authorizing the
issuance of revenue bonds pursuant to the provisions of
this article, and shall invest all funds not required for
immediate disbursement in the same manner as funds
are invested pursuant to the provisions of section
thirteen, article five-c, chapter twenty of this code.

(c) Notwithstanding any other provision of this article
to the contrary, no revenue bonds shall be issued, nor
the proceeds thereof expended or distributed, pursuant
to the provisions of this article, without the prior
approval of the water development authority. Upon such
approval, the proceeds of revenue bonds shall be used
solely for the following purposes:

(1) To pay the cost of acquiring, constructing, reconstruc-
ting, enlarging, improving, furnishing, equipping or repairing solid waste disposal projects;

(2) To make loans to persons or to governmental
agencies for the acquisition, design and construction of
solid waste disposal projects, taking such collateral
security for any such loans as may be approved by the
water development authority; and
69 (3) To pay the costs and expenses incidental to or
70 necessary for the issuance of such bonds.
71
72 (d) If the proceeds of revenue bonds issued for any
73 solid waste disposal project shall exceed the cost thereof,
74 the surplus shall be paid into the fund herein provided
75 for the payment of principal and interest upon such
76 bonds. Such fund may be used by the fiscal agent for
77 the purchase or redemption of any of the outstanding
78 bonds payable from such fund at the market price, but
79 not at a price exceeding the price at which any of such
80 bonds shall in the same year be redeemable, as fixed by
81 the board in its said resolution, and all bonds redeemed
82 or purchased shall forthwith be canceled, and shall not
83 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
issuance of solid waste disposal revenue bonds or except when invested pursuant to section fifteen of this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds of any issue shall provide that any officer to whom such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution provide.

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

Beginning in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, and every second fiscal year thereafter, the Legislature shall cause to be performed a post audit and a performance audit for the intervening two-year period of the recipients of any grant or loan provided by the solid waste management board. The audit shall cover the disbursement of such loans or grants provided pursuant to section thirteen, article nine, chapter twenty of this code, the use of such loans or grants by the recipient as 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.

This section shall apply to any solid waste disposal project or projects which are owned in whole or in part by the board.

The board may charge, alter and collect rentals, fees, service charges or other charges for the use or services of any solid waste disposal project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals, fees, service charges or other charges for such use or services. Such rentals, fees, service charges or other charges shall not be subject to supervision or regulation by any other
authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such solid waste disposal project for such consideration payable over the period of the contract or otherwise as the board in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of solid waste disposal revenue bonds or notes or solid waste disposal revenue refunding bonds of the board. Any governmental agency which has power to construct, operate and maintain solid waste disposal facilities may enter into a contract or lease with the board whereby the use or services of any solid waste disposal project of the board will be made available to such governmental agency and pay for such use or services such rentals, fees, service charges or other charges as may be agreed to by such governmental agency and the board.

Any governmental agency or agencies or combination thereof may cooperate with the board in the acquisition or construction of a solid waste disposal project and shall enter into such agreements with the board as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the board to the extent necessary or appropriate for purposes of the issuance of solid waste disposal revenue bonds by the board. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof, and by the
payment of such appropriated money or the proceeds of such bonds or notes to the board pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held before or after the effective date of this section for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a solid waste disposal project, whether or not the governmental agency at the time of such election had the board to pay the proceeds from such bonds or notes issued in anticipation thereof to the board as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the board in accordance with an agreement between such governmental agency and the board: Provided, That the legislative board of the governmental agency finds and determines that the solid waste disposal project to be acquired or constructed by the board in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the project otherwise proposed to be acquired or constructed by the governmental 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.

Any other provision of this code to the contrary notwithstanding, the director shall receive an annual salary of sixty-five thousand dollars, payable in equal monthly installments, and shall be allowed and paid necessary expenses incident to the performance of his official duties. Prior to the assumption of the duties of
his office, he shall take and subscribe to the oath required of public officers by the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from division funds.

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.


§20-5E-6. Promulgation of regulations by director.


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

(1) "Chief" means the chief of the section of waste management of the division of natural resources;

(2) "Director" means the director of the division of natural resources;

(3) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters;

(4) "Division" means the division of natural resources;

(5) "Generation" means the act or process of producing hazardous waste materials;


(7) "Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may: (A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or
incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

(8) "Hazardous waste fuel" means fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article, or produced from any hazardous waste identified or listed pursuant to section six;

(9) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

(10) "Land disposal" means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;

(11) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

(12) "Person" means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this state or any other state, municipality, county commission or any other political subdivision of a state or any interstate body;


(14) "Section" means the section of waste management of the division of natural resources;

(15) "Site work zones" means an exclusion zone, a decontamination zone, or a clean zone established at a hazardous waste site before clean-up work begins to prevent or reduce the movement of contaminants from
162 SOLID WASTE

the site to uncontaminated areas and to control public,
employee and equipment exposure to hazardous
substances:

(A) The exclusion zone is the innermost of the zones
and is where contamination exists.

(B) The decontamination zone is the zone between the
exclusion zone and the clean zone and serves as a
transition and buffer between the contaminated and
clean zones to further reduce the physical transfer of
contaminating substances to the public, employees and
equipment.

(C) The clean zone is the outermost of the zones and
is uncontaminated;

(16) "Storage" means the containment of hazardous
waste, either on a temporary basis or for a period of
years, in such a manner as not to constitute disposal of
such hazardous waste;

(17) "Subtitle C" means Subtitle C of the Resource
Conservation and Recovery Act;

(18) "Treatment" means any method, technique or
process, including neutralization, designed to change the
physical, chemical or biological character or composi-
tion of any hazardous waste so as to neutralize such
waste or so as to render such waste nonhazardous, safer
for transport, amenable to recovery, amenable to storage
or reduced in volume. Such term includes any activity
or processing designed to change the physical form or
chemical composition of hazardous waste so as to render
it nonhazardous;

(19) "Waste" means any garbage, refuse, sludge from
a waste treatment plant, water supply treatment plant
or air pollution control facility and other discarded
material including solid, liquid, semisolid or contained
gaseous material resulting from industrial, commercial,
mining and agricultural operations, and from communi-

ty activities, but does not include solid or dissolved
material in domestic sewage, or solid or dissolved
materials in irrigation return flows or industrial
discharges which are point sources subject to permits
under Section 402 of the federal Water Pollution Control Act, as amended, or source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954, as amended.

§20-5E-6. Promulgation of regulations by director.

(a) The director has overall responsibility for the promulgation of rules and regulations under this article. The director shall promulgate the following rules and regulations, in consultation with the department of health and human resources, the air pollution control commission, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the division of highways, the department of agriculture, the water resources board and the division of energy, offices of mines and minerals and oil and gas. In promulgating and revising such rules and regulations, the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

(1) Rules and regulations establishing a plan for the safe and effective management of hazardous wastes within the state;

(2) Rules and regulations establishing criteria for identifying the characteristics of hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of this article: Provided, That:

(A) Each waste listed below shall, except as provided in paragraph (B) of this subdivision, be subject only to regulation under other applicable provisions of federal or state law in lieu of this article until proclamation by the governor finding that at least six months have elapsed since the date of submission of the applicable
study required to be conducted under Section 8002 of
the federal Solid Waste Disposal Act, as amended, and
that regulations have been promulgated with respect to
such wastes in accordance with Section 3001 (b)(3)(C) of
the Resource Conservation and Recovery Act, and
finding in the case of the wastes identified in subpara-
graph (iv) of this paragraph that the regulation of such
wastes has been authorized by an act of Congress in
accordance with Section 3001 (b)(2) of the Resource
Conservation and Recovery Act:

(i) Fly ash waste, bottom ash waste, slag waste and
flue gas emission control waste generated primarily
from the combustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and
processing of ores and minerals, including phosphate
rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes
associated with the exploration, development or produc-
tion of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes
listed in paragraph (A) of this subdivision may be
required by the director of the division of natural
resources through regulation prescribed under author-
ity of this section:

(i) As to disposal sites for such wastes which are to
be closed, to identify the locations of such sites through
surveying, platting or other measures, together with
recording of such information on the public record, to
assure that the locations where such wastes are disposed
of are known and can be located in the future; and

(ii) To provide chemical and physical analysis and
composition of such wastes, based on available informa-
tion, to be placed on the public record;

(3) Rules and regulations establishing such standards
applicable to generators of hazardous waste identified
or listed under this article as may be necessary to
protect public health and safety and the environment,
which standards shall establish requirements respecting: (A) Record-keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to public health or the environment and the disposition of such wastes; (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste; (C) use of appropriate containers for such hazardous waste; (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting, treating, storing or disposing of such wastes; (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) with respect to which permits have been issued which are required: (i) By this article or any rule and regulation required by this article to be promulgated; (ii) by Subtitle C of the Resource Conservation and Recovery Act; (iii) by the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the Resource Conservation and Recovery Act; or (iv) by Title I of the federal Marine Protection, Research and Sanctuaries Act; and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules and regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of
such rules and regulations and shall include, but need
not be limited to, requirements respecting: (A) Main-
taining records of all hazardous wastes identified or
listed under this article which are treated, stored or
disposed of, as the case may be, and the manner in
which such wastes were treated, stored or disposed of;
(B) satisfactory reporting, monitoring and inspection
and compliance with the manifest system referred to in
subdivision (3) of subsection (a) of this section; (C)
treatment, storage or disposal of all such waste received
by the facility pursuant to such operating methods,
techniques and practices as may be satisfactory to the
director; (D) the location, design and construction of
such hazardous waste treatment, disposal or storage
facilities; (E) contingency plans for effective action to
minimize unanticipated damage from any treatment,
storage or disposal of any such hazardous waste; (F) the
maintenance of operation of such facilities and requiring
such additional qualifications as to ownership, contin-
uity of operation, training for personnel and financial
responsibility as may be necessary or desirable; how-
ever, no private entity may be precluded by reason of
criteria established under this subsection from the
ownership or operation of facilities providing hazardous
waste treatment, storage or disposal services where such
entity can provide assurances of financial responsibility
and continuity of operation consistent with the degree
and duration of risks associated with the treatment,
storage or disposal of specified hazardous waste; and (G)
compliance with the requirements of section eight of this
article respecting permits for treatment, storage or
disposal;

(5) Rules and regulations specifying the terms and
conditions under which the chief shall issue, modify,
suspend, revoke or deny such permits as may be
required by this article;

(6) Rules and regulations for the establishment and
maintenance of records; the making of reports; the
taking of samples and the performing of tests and
analyses; the installing, calibrating, operating and
maintaining of monitoring equipment or methods; and
(7) Rules and regulations establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites: Provided, That with respect to clean-up operations at any site work zone at a hazardous waste site not having a valid treatment, storage or disposal permit pursuant to section eight of this article, such rules and regulations shall provide that:

(A) Workers engaged in hazardous waste operation within the exclusion zone and the decontamination zone shall first have received a minimum of eighty hours of instruction off the site, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(B) Equipment operators and transport vehicle operators engaged in hazardous waste operation within the exclusion zone and the decontamination zone shall first have received a minimum of forty hours of training, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(C) Supervisors engaged in hazardous waste operation within the exclusion zone and the decontamination zone shall first have received as a minimum the same number of hours of instruction as the workers for whom the supervisor is directly responsible, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor;

(8) Rules and regulations for public participation in the implementation of this article;

(9) Rules and regulations establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(10) Rules and regulations establishing procedures and requirements for the submission and approval of a plan, applicable to owners or operators of hazardous waste storage, treatment and disposal facilities, as
necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences and nonsudden and accidental occurrences;

(11) Rules and regulations establishing a schedule of fees to recover the costs of processing permit applications and permit renewals;

(12) Rules and regulations, including exemptions and variances, as appropriate: (A) Establishing standards and prohibitions relating to the management of hazardous waste by land disposal methods; (B) establishing standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids which are not hazardous wastes; (C) establishing standards applicable to producers, distributors or marketers of hazardous waste fuels; (D) establishing such standards relating to the management of used oil as may be necessary to protect human health and the environment; (E) establishing such standards relating to the management of recycled oil as may be necessary to protect human health and the environment; and (F) as are otherwise necessary to allow the state to assume primacy for the administration of the federal hazardous waste management program under the Resource Conservation and Recovery Act and in particular, the Hazardous and Solid Waste Amendments of 1984: Provided, That such rules and regulations authorized by this subdivision shall be consistent with but no more expansive in coverage nor more stringent in effect than rules and regulations promulgated by the federal environmental protection agency under Subtitle C; and

(13) Such other rules and regulations as are necessary to effectuate the purposes of this article.

(b) The rules and regulations required by this article to be promulgated shall be reviewed and, where necessary, revised not less frequently than every three years. Additionally, the rules and regulations required to be promulgated by this article shall be revised, as necessary, within six months of the effective date of any
amendment of the Resource Conservation and Recovery Act and within six months of the effective date of any adoption or revision of rules and regulations required to be promulgated by the Resource Conservation and Recovery Act.

(c) Notwithstanding any other provision in this article, the director shall not promulgate rules and regulations which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven of this article.


By the first day of September, one thousand nine hundred ninety-two, the director of the division of natural resources shall prepare and submit a report concerning the proper handling and disposal of household hazardous waste. The report shall include:

1. A proposed definition of what constitutes household hazardous waste;
2. An overview of current disposal methods;
3. An analysis of programs in other states designed to address the subject of household hazardous wastes;
4. Recommendations for the establishment of a comprehensive state program to ensure the proper handling and disposal of household hazardous waste;
5. A projection of the potential costs of the program;
6. A recommendation concerning potential funding sources for the program; and
7. Any other matters deemed appropriate and relevant.

Said report shall be submitted to the governor, speaker of the House of Delegates, and the president of the Senate.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-1. Purpose and legislative findings.

§20-5F-2. Definitions.
§20-5F-1. Purpose and legislative findings.

(a) The purpose of this article is to transfer jurisdiction over the management of solid waste under section nine, article one, chapter sixteen of this code from the division of health to the division of natural resources and to establish a comprehensive program of controlling solid waste disposal.

(b) The Legislature finds that uncontrolled, inadequately controlled and improper collection, transportation, processing and disposal of solid waste: (1) Is a public nuisance and a clear and present danger to people; (2) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste; (6) that materials recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, materials recovery or recycling of solid waste is for the general welfare of the citizens of this state.

(c) The Legislature further finds that disposal in West
Virginia of solid waste of unknown composition threatens the environment and the public health, safety and welfare, and therefore, it is in the interest of the public to identify the type, amount and origin of solid waste accepted for disposal at West Virginia solid waste facilities.

(d) The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal in the state of increasingly large amounts of infectious, dangerous and undesirable solid wastes and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

(e) The Legislature further finds that Class A facilities often have capacities far exceeding the needs of the state or the areas of the state which they serve and that such landfills create special environmental problems that require statewide coordination of the management of such landfills.

§20-5F-2. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article the terms:
2 (a) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article.
3 (b) “Backhauling” means the practice of using the same container to transport solid waste to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material used as food by humans.
4 (c) “Chief” means the chief of the section of waste management of the division of natural resources.
5 (d) “Municipal solid waste incineration” means the
burning of any solid waste collected by any municipal
or residential solid waste disposal company.

(e) "Commercial solid waste facility" means any solid
waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility
and shall not include an approved solid waste facility
owned and operated by a person for the sole purpose of
disposing of solid wastes created by that person or such
person and other persons on a cost-sharing or nonprofit
basis and shall not include the legitimate reuse and
recycling of materials for structural fill, road base, mine
reclamation, and similar applications.

(f) "Division" means the division of natural resources.

(g) "Director" means the director of the division of
natural resources.

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

(i) "Person", "persons" or "applicant" mean any
industrial user, public or private corporation, institu-
tion, association, firm or company organized or existing
under the laws of this or any other state or country; state
of West Virginia; governmental agency, including
federal facilities; political subdivision; county commis-
sion; municipal corporation; industry; sanitary district;
public service district; drainage district; soil conserva-
tion district; watershed improvement district; partner-
ship; trust; estate; person or individual; group of persons
or individuals acting individually or as a group; or any
legal entity whatever.

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

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

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

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

(n) "Solid waste facility" means any system, facility,
land, contiguous land, improvements on the land,
structures or other appurtenances or methods used for
processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

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

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

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

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

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

(t) "Materials recovery facility" means any solid waste
facility at which solid wastes are manually or mechanically shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

§20-5F-4. Powers and duties; rules and rule making.

In addition to all other powers, duties, responsibilities and authority granted and assigned to the director and chief in this code and elsewhere described by law, they are hereby empowered as follows:

(a) The director shall adopt rules and regulations in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and regulations and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules and regulations the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, origin or characteristics of the solid waste, potential for contamination of public water supply, requirements for public roadway standards and design for access to the facilities with approval by the commissioner of the department of highways, public sentiment, the financial capability of the applicant, soil and geological considerations and other natural resource considerations. All existing rules and regulations of the department of health relating to solid waste disposal shall remain valid and be enforceable by the division of natural resources on the tenth day of June, one thousand nine hundred eighty-eight, until changed or modified by the director, in compliance with chapter twenty-nine-a of this code.

(b) The chief, after public notice and opportunity for public hearing near the affected community, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or closure of a solid waste facility: Provided, That the
director may deny the issuance of a permit on the basis of information in the application or from other sources including public comment, if the solid waste facility is likely to cause adverse impacts on the environment. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above cited factor and may delete such geographical area from consideration for that type and size solid waste facility.

(c) The director may refuse to grant any permit if he has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or person owning a five percent or more interest, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

1. Has demonstrated, either by his police record or by his record as a former permittee under this chapter, a lack of respect for law and order, generally, or for the laws and rules governing the disposal of solid wastes;

2. Has misrepresented a material fact in applying to the director for a permit;

3. Has been convicted of a felony or other crime involving moral turpitude;

4. Has exhibited a pattern of violating environmental laws in any state or the United States or combination thereof; or

5. Has had any permit revoked under the environmental laws of any state or the United States.

(d) The director, chief or any authorized representative, employee or agent of the division may, at reasonable times, enter onto any approved solid waste facility, open dump or property where solid waste is present for the purpose of making an inspection or investigation of solid waste disposal.

(e) The director, chief or any authorized representa-
tive, employee or agent of the division may, at reasona-
able times, enter any approved solid waste facility, open
dump or property where solid waste is present and take
samples of the waste, soils, air or water or may, upon
issuance of an order, require any person to take and
analyze samples of such waste, soil, air or water.

(f) The director or chief may also perform or require
a person, by order, to perform any and all acts necessary
to carry out the provisions of this article or the rules
promulgated thereunder.

(g) The chief or his authorized representative, em-
ployee or agent shall make periodic inspections at every
approved solid waste facility to effectively implement
and enforce the requirements of this article or its rules
and regulations and may, in coordination with the
commissioner of the department of highways, conduct at
weigh stations or any other adequate site or facility
inspections of solid waste in transit.

(h) The director or chief shall require and set the
amount of performance bonds for persons engaged in
the practice of solid waste disposal in this state,
pursuant to section five-b of this article.

(i) The director shall require: (1) That persons
disposing of solid waste at commercial solid waste
facilities within the state file with the operator of the
commercial solid waste facility records concerning the
type, amount and origin of solid waste disposed of by
them; and (2) that operators of commercial solid waste
facilities within the state maintain records and file them
with the director concerning the type, amount and
origin of solid waste accepted by them.

(j) The director may expend funds from the litter
control fund established pursuant to section twenty-six,
article seven of this chapter to assist county and regional
solid waste authorities in the formulation of their
comprehensive litter and solid waste control plans
pursuant to section seven, article eight of this chapter
and in the construction and maintenance of approved
commercial solid waste facilities and collection equip-
ment, including the provision of grants as well as
bonding assistance for those authorities which would in
the opinion of the director be unable to construct or
maintain an approved commercial solid waste facility
without grant funds.

(k) Identification of interests. — The director shall
require an applicant for a solid waste facility permit to
provide the following information:

(1) The names, addresses and telephone numbers of:

(A) The permit applicant;

(B) Any other person conducting or managing the
affairs of the applicant or of the proposed permitted
premises, including any contractor for gas or energy
recovery from the proposed operation, if the contractor
is a person other than the applicant; and

(C) Parties related to the applicant by blood, mar-
riage or business association, including the relationship
to the applicant.

(2) The names and addresses of the owners of record
of surface and subsurface areas within, and contiguous
to, the proposed permit area.

(3) The names and addresses of the holders of record
to a leasehold interest in surface or subsurface areas
within, and contiguous to, the proposed permit area.

(4) A statement of whether the applicant is an
individual, corporation, partnership, limited partner-
ship, government agency, proprietorship, municipality,
syndicate, joint venture or other entity. For applicants
other than sole proprietorships, the application shall
contain the following information, if applicable:

(A) Names and addresses of every officer, general and
limited partner, director and other persons performing
a function similar to a director of the applicant;

(B) For corporations, the principal shareholders;

(C) For corporations, the names, principal places of
businesses and internal revenue service tax identifica-
tion numbers of United States parent corporations of the
applicant, including ultimate parent corporations and
United States subsidiary corporations of the applicant and the applicant's parent corporations; and

(D) Names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the division, including, but not limited to, associates and agents.

(5) If the applicant or an officer, principal shareholder, general or limited partner or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(A) The name, address and tax identification number or employer identification number of the corporation or other person or municipality; and

(B) The nature of the relationship or participation with the corporation or other person or municipality.

(6) An application shall list permits or licenses, issued by the division or other environmental regulatory agency to each person or municipality identified in paragraph (1) and to other related parties to the applicant, that are currently in effect or have been in effect in at least part of the previous ten years. This list shall include the type of permit or license, number, location, issuance date and when applicable, the expiration date.

(7) An application shall identify the solid waste facilities in the state which the applicant or a person or municipality identified in paragraph (1) of this subdivision and other related parties to the applicant currently owns or operates, or owned or operated in the previous ten years. For each facility, the applicant shall identify the location, type of operation and state or federal permits under which they operate or have operated. Facilities which are no longer permitted or which were never under permit shall also be listed.

(I) Compliance information. — An application shall
contain the following information for the ten-year period prior to the date on which the application is filed:

(1) A description of notices of violation, including the date, location, nature and disposition of the violation, that were sent by the division to the applicant or a related party, concerning any environmental law, regulation, or order of the division, or a condition of a permit or license. In lieu of a description the applicant may provide a copy of notices of violation.

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the division, and civil penalty actions adjudicated by the state, against the applicant or a related party concerning any environmental law, regulation, or order of the division, or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions.

(3) A description of a summary, misdemeanor or felony conviction, a plea of guilty or plea of no contest that has been obtained in this state against the applicant or a related party under any environmental law or regulation concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions.

(4) A description of a court proceeding concerning any environmental law or regulation that was not described under paragraph (3), subdivision (1) of this section in which the applicant or a related party has been party. The description shall include the date, location, nature and disposition of the proceedings.

(5) A description of a consent order, consent adjudication, consent decree or settlement agreement involving the applicant or a related party concerning any environmental law or regulation in which the division, other governmental agencies, the United States Environmental Protection Agency, or a county health department was a party. The description shall include the date,
location, nature and disposition of the action. In lieu of
a description, the applicant may provide a copy of the
order, adjudication, a decree or agreement.

(6) For facilities and activities identified under
paragraph (1) of this subdivision, a statement of whether
the facility or activity was the subject of an administra-
tive order, consent agreement, consent adjudication,
consent order, settlement agreement, court order, civil
penalty, bond forfeiture proceeding, criminal conviction,
guilty or no contest plea to a criminal charge or permit
or license suspension or revocation under the act or the
environmental protection acts. If the facilities or
activities were subject to these actions, the applicant
shall state the date, location, nature and disposition of
the violation. In lieu of a description, the applicant may
provide a copy of the appropriate document. The
application shall also state whether the division has
denied a permit application filed by the applicant or a
related party, based on compliance status.

(7) When the applicant is a corporation, a list of the
principal shareholders that have also been principal
shareholders of other corporations which have commit-
ted violations or any environmental law or regulation.
The list shall include the date, location, nature and
disposition of the violation, and shall explain the
relationship between the principal shareholder and both
the applicant and the other corporation.

(8) A description of a misdemeanor or felony convic-
tion, a plea of guilty and a plea of no contest, by the
applicant or a related party for violations outside of this
state of any environmental protection laws or regula-
tions. The description shall include the date of the
convictions or pleas, and the date, location and nature
of the offense.

(9) A description of final administrative orders, court
orders, court decrees, consent decrees or adjudications,
consent orders, final civil penalty adjudications, final
bond forfeiture actions or settlement agreements
involving the applicant or a related party for violations
outside of this state of any environmental protection
laws or regulations. The description shall include the date of the action and the location and nature of the underlying violation. In lieu of a description, the applicant may provide a copy of the appropriate document.

(m) All of the information provided by the applicant pursuant to this section shall not be confidential and shall be disclosable pursuant to the provisions of chapter 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-five dollars payable upon the filing of the application therefor with the county, county solid waste authority 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 establish and publish a yearly schedule providing for one day per month on which a person not in the business of hauling or disposing of solid waste, who is a resident of the wasteshed in which the facility is located, may dispose of an amount of residential solid waste up to one pick-up truckload or its equivalent, free of all charges 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 nine hundred ninety-one, it shall be unlawful to operate any commercial solid waste facility that handles between ten thousand and thirty thousand tons of solid waste per month, except as provided in section four-d of this article and section twelve-c, twelve-d or twelve-e, article nine of this chapter.

(b) Except as provided in section four-d of this article, the maximum quantity of solid waste which may lawfully be handled at any commercial solid waste 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.
(a) Notwithstanding any provision in this article, article nine of this chapter, article two, chapter twenty-four of this code, any other section of this code, or any prior enactment of the code to the contrary, and notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of the following criteria, any person who on the first day of October, one thousand nine hundred ninety-one, has:

(1) Obtained site approval for a commercial solid waste facility from a county or regional solid waste authority or county commission pursuant to a prior enactment of this code, or has otherwise satisfied the requirements of subsection (a), section twelve-b, article nine of this chapter;

(2) Entered into a contract with a county commission regarding the construction and operation of a solid waste facility, which contract contains rates for the disposal of solid waste originating within the county;

(3) Obtained, pursuant to section one-f, article two, chapter twenty-four of this code, following a public hearing, an order from the public service commission approving the rates established in the contract with the county commission; and

(4) An application for a permit for a commercial solid waste facility pending with the division of natural resources, or is operating under a permit or compliance order, shall be permitted to handle in excess of the limitation established in section four-c of this article up to fifty thousand tons of solid waste per month at a commercial solid waste facility so long as the person complies with the provisions of this section.

(b) Any person desiring to operate a commercial solid waste facility which handles an amount of solid waste per month in excess of the limitation established in section four-c of this article, but not exceeding the tonnage limitation described in subsection (a) of this section may file a notice with the county commission of the county in which the facility is or is to be located requesting a countywide referendum. Upon receipt of
such notice, the county commission shall order a referendum be placed upon the ballot, not less than fifty-six days before the next primary or general election.

(1) Such referendum will be to determine whether it is the will of the voters of the county that a commercial solid waste facility be permitted to handle more than the limitation established in section four-c of this article not to exceed fifty thousand tons per month. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.

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

"Shall a commercial solid waste facility, permitted to handle up to, but no more than fifty thousand tons of solid waste per month be located within __________ County, West Virginia?

☐ For the facility
☐ Against the facility

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

If a majority of the legal votes cast upon the question be against the facility handling an amount of solid waste of up to fifty thousand tons per month then the division of natural resources shall not proceed any further with the application. If a majority of the legal votes cast upon the question be in favor of permitting the facility within the county, then the application process as set forth in this article may proceed: Provided, That such vote shall not be binding on or require the division of natural resources to issue a permit.

(c) If a person submits to a referendum in accordance with this section, all approvals, certificates, and permits granted and all actions undertaken by a regional or county solid waste authority or county commission with
regard to the person's commercial solid waste facility within the county under previously enacted sections of articles five-f and nine of this chapter shall be deemed valid, complete and in full compliance with all the requirements of law and any defects contained in such approvals, certificates, permits or actions shall be deemed cured and such defects may not be invoked to invalidate any such approval, certificate, permit or action.

(d) Notwithstanding any provision of this code to the contrary, any person described in subsection (a) of this section who complies with the referendum requirement of this section and complies with the permitting requirements of the division of natural resources provided in section five, article five-f of this chapter, shall not be required to comply with the requirements of section twelve-b, twelve-c, twelve-d or twelve-e, article nine of this chapter: Provided, That such person shall be entitled to receive a certificate of need pursuant to the provisions of subsection (a), section one-c, article two, chapter twenty-four of this code to handle the tonnage level authorized pursuant to subsection (a) of this section.

(e) The purpose of this section is to allow any person who satisfies the four criteria contained in subsection (a), notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of such criteria, to submit the question of siting a facility that accepts up to fifty thousand tons within the county to a referendum in order to obtain a decision at the county or regional level regarding the siting of the facility and that submission of this question at the county level shall be the only approval, permit or action required at the county or regional level to establish and site the proposed facility.

§20-5F-5. Prohibitions; permits required; priority of disposal.

(a) Open dumps are prohibited and it shall be unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an
open dump to exist on his property unless that open
dump is under a compliance schedule approved by the
chief. Such compliance schedule shall contain an
enforceable sequence of actions leading to compliance
and shall not exceed two years. Open dumps operated
prior to the first day of April, one thousand nine
hundred eighty-eight, by a landowner or tenant for the
disposal of solid waste generated by the landowner or
tenant at his or her residence or farm shall not be
deemed to constitute a violation of this section if such
open dump did not constitute a violation of law on the
first day of January, one thousand nine hundred eighty-
eight, and unauthorized dumps which were created by
unknown persons shall not constitute a violation of this
section: Provided, That no person shall contribute
additional solid waste to any such dump after the first
day of April, one thousand nine hundred eighty-eight,
except that the owners of the land on which unautho-
rized dumps have been or are being made shall not be
liable for such unauthorized dumping unless such
landowners refuse to cooperate with the division of
natural resources in stopping such unauthorized
dumping.

(b) It shall be unlawful for any person, unless he holds
a valid permit from the division to install, establish,
construct, modify, operate or abandon any solid waste
facility. All approved solid waste facilities shall be
installed, established, constructed, modified, operated or
abandoned in accordance with this article, plans,
specifications, orders, instructions and rules in effect.

(c) Any permit issued under this article shall be
issued in compliance with the requirements of this
article, its rules and article five-a and the rules
promulgated thereunder, so that only a single permit
shall be required of a solid waste facility under these
two articles. Each permit issued under this article shall
have a fixed term not to exceed five years: Provided,
That the chief may administratively extend a permit
beyond its five-year term if the approved solid waste
facility is in compliance with this article, its rules and
article five-a of this chapter and the rules promulgated
thereunder: Provided, however, That such administra-
tive extension may not be for more than one year. Upon
expiration of a permit, renewal permits may be issued
in compliance with rules and regulations promulgated
by the director of the division of natural resources.

(d) All existing permits of the division of health for
solid waste facilities under section nine, article one,
chapter sixteen of this code shall continue in full force
and effect until a permit is issued for that approved
solid waste facility under this article: Provided, That all
such existing permits of the division of health shall
expire within five years of the tenth day of June, one
thousand nine hundred eighty-eight. Within four years
of the tenth day of June, one thousand nine hundred
eighty-eight, all persons holding such division of health
permits shall apply to the chief for a permit under this
article: Provided, however, That the chief may require
persons holding such existing health division permits to
reapply under this section prior to four years from the
tenth day of June, one thousand nine hundred eighty-
eight, if persistent violations of this article, any permit
term or condition, orders or rules promulgated under
this article, exist at that facility. Notwithstanding any
other provision contained in this subsection, the division
of natural resources may enter an extension order for
a period of two years while an application for a permit
pursuant to this article is pending.

(e) No person may dispose in the state of any solid
waste, whether such waste originates in state or out of
state, in a manner which endangers the environment or
the public health, safety or welfare as determined by the
director of the division of natural resources: Provided,
That the carcasses of dead animals may be disposed of
in any solid waste facility or in any other manner as
provided for in this code. Upon request by the director
of the division of natural resources, the director of the
division of health shall provide technical advice concern-
ing the disposal of solid waste or carcasses of dead
animals within the state.

(f) To the extent permissible by law, a commercial
solid waste facility shall first ensure that the disposal
needs of the county, or if applicable the region, in which it is located are met. If the county solid waste authority, or regional solid waste authority if applicable, in which the facility is located determines that the present or future disposal needs of the county, or if applicable the region, are not being, or will not be, met by the commercial solid waste facility, such authority may apply to the director of the division of natural resources to modify the applicable permit in order to reduce the total monthly tonnage of out of county waste, or if applicable, out of region waste, the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage generated by the county, or if applicable the region, in which the facility is located.

(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, not otherwise allowed by an existing permit, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division of natural resources in accordance with the provisions of this article.

(h) The director of the division of natural resources shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code which reflect the purposes as set forth in this article.

§20-5F-5a. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected and paid as follows: (1) One dollar and twenty-five cents per ton or part thereof of solid waste; and (2) one additional dollar per ton or part thereof of solid waste for solid waste generated from sources
outside the solid waste disposal shed in which the solid
ing waste disposal facility is located. The fee imposed by this
section shall be in addition to all other fees and taxes
levied by law and shall be added to and constitute part
of any other fee charged by the operator or owner of the
solid waste disposal facility.

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

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

(2) The operator shall remit the fee imposed by this
section to the tax commissioner on or before the fifteenth
day of the month next succeeding the month in which
the fee accrued. Upon remittance of the fee, the operator
shall be required to file returns on forms and in the
manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees
collected under this section and shall hold them in trust
for the state until remitted to the tax commissioner.

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

(5) Whenever any operator fails to collect, truthfully
account for, remit the fee, or file returns with the fee
as required in this section, the tax commissioner may
serve written notice requiring such operator to collect
the fees which become collectible after service of such
notice, to deposit such fees in a bank approved by the
tax commissioner, in a separate account, in trust for and
payable to the tax commissioner, and to keep the amount
of such fees in such account until remitted to the tax
commissioner. Such notice shall remain in effect until
a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

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

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section and section twenty-two, article five, chapter seven of this code shall be considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier’s rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission
shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definition of solid waste disposal facility. — For purposes of this section, the term “solid waste disposal facility” means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste disposal facility within this state that collects the fee imposed by this section. Nothing herein shall be construed to authorize in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions shall be exempt from the fee imposed by this section:

1. Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person’s regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

2. Reuse or recycling of any solid waste; and

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources is exempt from the solid waste assessment fee.

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

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

(h) Dedication of proceeds. — The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited at least monthly in an account designated by the director of the division of natural resources. The director shall allocate twenty-five cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected and shall deposit the total amount so allocated into the “Solid Waste Reclamation and Environmental Response Fund” to be expended for the purposes hereinafter specified. The first one million dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Solid Waste Enforcement Fund” and expended for the purposes hereinafter specified. The next two hundred fifty thousand dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the “Resource Recovery — Solid Waste Disposal Authority Reserve Fund” which shall be renamed and hereinafter referred to as the “Solid Waste Management Board Reserve Fund”, and expended for the purposes hereinafter specified: Provided, That in any year in which the water development authority determines that the solid waste management board reserve fund is adequate to defer any contingent liability of the fund, the water development authority shall so certify to the director of the division of natural resources and the director shall then cause no less than fifty thousand dollars nor more than two hundred fifty thousand dollars to be deposited to the fund: Provided, however, That in any year in which the water development authority determines that the solid waste management board reserve fund is inadequate to defer any contingent liability of the fund, the water development authority shall so certify to the director of the division of natural resources and the director shall then cause not less than two hundred fifty thousand dollars nor more than five hundred thousand dollars to be deposited in the fund: Provided further,
That if a facility owned or operated by the state of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes in whole or in part to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the solid waste management board, then in that event the solid waste management board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The director of the division of natural resources shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the state treasury:

(1) The “Solid Waste Enforcement Fund” which shall be expended by the director of the division of natural resources for administration, inspection, enforcement and permitting activities established pursuant to this article;

(2) The “Solid Waste Management Board Reserve Fund” which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to article twenty-six, chapter sixteen of this code;

(3) The “Solid Waste Reclamation and Environmental Response Fund” which may be expended by the director of the division of natural resources for the purposes of reclamation, clean-up and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

(i) Findings. — In addition to the purposes and legislative findings set forth in section one of this article, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid
waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting such solid waste;

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.

(j) Severability. — If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other person or circumstances shall not be affected thereby.

(k) Effective date. — This section is effective on the first day of July, one thousand nine hundred eighty-eight.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

(a) If the director or chief, upon inspection or investigation by duly authorized representatives or through other means observes, discovers or learns of a violation of this article, its rules, article five-a of this chapter or its rules, or any permit or order issued under this article, he may:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(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
become a final order after the expiration of the twenty-
day period. If a hearing is requested, the director shall
inform the alleged violator of the time and place of the
hearing. The director may appoint an assessment officer
to conduct the informal hearing and then make a
written recommendation to the director concerning the
assessment of a civil administrative penalty. Within
thirty days following the informal hearing, the director
shall issue and furnish to the alleged violator a written
decision, and the reasons therefor, concerning the
assessment of a civil administrative penalty. Within
thirty days after notification of the director's decision,
the alleged violator may request a formal hearing before
the water resources board in accordance with the
provisions of section seven of this article. The authority
to levy a civil administrative penalty shall be in addition
to all other enforcement provisions of this article and the
payment of any assessment shall not be deemed to affect
the availability of any other enforcement provision in
connection with the violation for which the assessment
is levied: Provided, That no combination of assessments
against a violator under this section shall exceed twenty-
five thousand dollars for each day of such violation:
Provided, however, That any violation for which the
violator has paid a civil administrative penalty assessed
under this section shall not be the subject of a separate
civil penalty action under this article to the extent of the
amount of the civil administrative penalty paid. All
administrative penalties shall be levied in accordance
with rules and regulations issued pursuant to subsection
(a), section four of this article. The net proceeds of
assessments collected pursuant to this subsection shall
be deposited in the solid waste reclamation and environ-
nmental response fund established in subdivision (3),
subsection (h), section five-a of this article.

(2) No assessment levied pursuant to subdivision (1),
subsection (c) above shall become due and payable until
the procedures for review of such assessment as set out
in said subsection have been completed.

(d) Any person who violates any provision of this
article, any permit or any rule, regulation or order
issued pursuant to this article shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The director or chief may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule, regulation or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director or chief to post bond nor to allege or prove at any state of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) Upon request of the director or chief, the attorney general or the prosecuting attorney of the county in which the violation occurs shall assist the director in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

(h) In addition to all other grounds for revocation, the director may revoke a permit for any of the following reasons:

(1) Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;

(2) Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage, or disposal of solid waste, or of any rule or regulation adopted pursuant thereto;
§20-5F-8. Limited extension of solid waste facility closure deadline.

(a) The director of the division of natural resources shall grant an extension of the closure deadline up to the thirty-first day of March, one thousand nine hundred ninety-three, to a solid waste facility required by solid waste management regulations to close by the thirtieth day of November, one thousand nine hundred ninety-one, unless the director determines by a preponderance of the evidence that such extension will pose a significant risk to human health or safety or cause irreparable harm to the environment.

(b) No later than the first day of November, one thousand nine hundred ninety-one, any facility seeking an extension of its closure deadline must submit to the division of natural resources an application sufficient to support the requirements of subsection (a) of this section.

(c) The director shall grant or deny the extension no later than the twenty-first day of November, one thousand nine hundred ninety-one. If the director denies an extension, the facility shall cease accepting solid waste on the thirtieth day of November, one thousand nine hundred ninety-one. No person seeking judicial review, pursuant to subsection (d) of this section, of the director's denial of an extension shall accept solid waste at the facility during the pendency of the judicial review process.

(d) Any party who is aggrieved by an order of the director regarding the grant or denial of an extension of the closure deadline for a solid waste facility pursuant to this section may obtain judicial review thereof in the same manner as provided in section four, article five,
chapter twenty-nine-a of this code, which provisions shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in said section, in the circuit court of Kanawha County: Provided, That the court shall not in any manner permit the continued acceptance of solid waste at the facility pending review of the decision of the director.

(e) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(f) The director of the division of natural resources shall grant an extension of the closure deadline not to exceed the thirtieth day of September, one thousand nine hundred ninety-three, to a solid waste facility required by solid waste management regulations to close by the thirtieth day of November, one thousand nine hundred ninety-two.


(a) Notwithstanding any other provision of this code, a permit application for a solid waste landfill facility submitted by any person who has owned, operated or held a permit for a solid waste landfill upon which funds have been, or are to be, expended on pursuant to the provisions of article five-n of this chapter, may be approved under the provisions of this article only if all funds so expended are repaid in full, plus interest, or arrangements, satisfactory to the director, are made for the repayment of the funds and the interest. The repayment shall be made a specific condition of a permit.

(b) In the case where a permittee has entered into a repayment arrangement with the director in order to
obtain a permit under this article, the repayment of the funds shall be considered by the public service commission a reasonable cost of operating the newly permitted landfill in determining rates to be charged at the landfill.

§20-5F-10. Municipal solid waste incineration and backhauling prohibited; exceptions.

(a) Notwithstanding any other provision of this code to the contrary, it shall be unlawful to install, establish or construct a new solid waste facility for the purpose of municipal solid waste incineration prior to the first day of May, one thousand nine hundred ninety-three: Provided, That such prohibition shall not include the development of small-scale demonstration or pilot projects designed to analyze the efficiency or environmental impacts of incineration technologies.

(b) It shall be unlawful to engage in the practice of backhauling as such term is defined in section two of this article.


(a) The director and the chairman of the public service commission shall, on or before the first day of January, one thousand nine hundred ninety-two, present to the governor, the president of the Senate and the speaker of the House of Delegates a report examining the feasibility of the state becoming the exclusive entity for the operation of solid waste disposal facilities.

(b) The report required by subsection (a) of this section shall include, but not be limited to:

(1) Discussion of the feasibility of state ownership of all solid waste disposal facilities;

(2) A determination of the cost of said exclusive state ownership;

(3) Discussion of the legal issues raised by such state ownership;

(4) Discussion of the feasibility of mixed state owner-
ship and operation of solid waste disposal facilities;

(5) Discussion of the impact on the environment of state ownership and control of solid waste disposal facilities; and

(6) Discussion of the public health, welfare and convenience issues raised by state ownership.

(c) The director and the chairman shall utilize as much as practicable the resources, human and otherwise, of the division of natural resources, the public service commission, the solid waste management board and the county and regional solid waste management authorities.

§20-5F-12. County assessment for Class A facilities; amount; restrictions; purposes.

Notwithstanding any provision of this code to the contrary, the county commission of any county containing a Class A facility may, in addition to any fee otherwise imposed by law, impose a fee, not to exceed five dollars per ton of solid waste received from outside the wasteshed in which the facility is located and not to exceed two dollars per ton for solid waste received from within said wasteshed for solid waste disposed in said facility: Provided, That any moneys received by a county commission pursuant to this section shall be expended exclusively for capital improvements to the infrastructure within the county, including, but not limited to, water supply treatment, waste treatment, sewage systems and road maintenance, as well as the 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-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-1. Legislative findings and purpose.

1. The Legislature finds that:

2. There are numerous landfills throughout the state that must be closed before the thirtieth day of November, one thousand nine hundred ninety-two, because they cannot be operated in an environmentally sound manner;

3. The permittees of many of the landfills that will be closing do not have the financial resources to close their landfills in a manner that is timely and environmentally sound;

4. As long as these landfills remain open, the threat of continuing harm to the environment and the health and safety of the citizens of West Virginia exists, and the cost to remediate their adverse effects will continue to grow;

5. The untimely and disorderly closure of these landfills represents a significant threat to the health and safety of the people of West Virginia and its environment; and

6. It is in the best interests of all the citizens of this state to provide a mechanism to assist the permittees of these landfills in properly closing them.

7. Therefore, it is the purpose of this article to provide an assistance program that will be available to permittees of landfills that will facilitate the closure of these landfills in a timely and environmentally sound manner.

§20-5N-2. Definitions.
As used in this article, unless the context clearly requires a different meaning:

(1) "Cost of project" includes the cost of the services authorized in sections three and ten of this article, property, material and labor which are essential thereto, financing charges, interest during construction, and all other expenses, including legal fees, trustees', engineers' and architects' fees which are necessarily or properly incidental to the program;

(2) "Director" means the director of the division of natural resources of the department of commerce, labor and environmental resources, or his or her authorized representative;

(3) "Landfill" means any solid waste facility for the disposal of solid waste on land, and also means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located;

(4) "Permittee" means a person who has or should obtain a permit for a commercial solid waste facility that is a landfill;

(5) "Project" means the providing of closure assistance to one or more landfills under this article.

The definitions provided in section two, article five-f of this chapter, to the extent they are applicable, apply in this article.

§20-5N-3. Commercial solid waste facility closure assistance program.

(a) There is established within the section of waste management of the division of natural resources the commercial solid waste landfill closure assistance program. The purpose of the program is to provide assistance for the closure of landfills which are required
to cease operations pursuant to the closure deadlines provided for in this chapter.

(b) Upon the acceptance of an application of the permittee of a solid waste landfill that satisfies the requirements in section five of this article, the director shall provide, in accordance with the provisions of this article, and to the extent that funds are available, the following closure related services:

(1) Closure design, including an analysis of the effects of the landfill on groundwater and the design of measures necessary to protect and monitor the groundwater;

(2) Construction of all closure-related structures necessary to provide sufficient leachate management, sediment and erosion control, gas management, groundwater monitoring and final cover and cap, all to meet the closure-related requirements of article five-f of this chapter and rules promulgated pursuant thereto; and

(3) All surface water and groundwater monitoring activities required pursuant to articles five-a and five-f of this chapter and applicable rules promulgated thereunder.

(c) To the extent that there are funds available in the fund established in section seven of this article or subdivision (3), subsection (h), section five-a, article five-f of this chapter, the director may take remedial actions necessary to protect the groundwater and surface water, other natural resources and the health and safety of the citizens of this state.

§20-5N-4. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of four dollars per ton or like ratio on any part thereof of solid waste, except as provided in subsections (e) and (i) of this section: Provided, That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that such facility is required by the public
service commission to set aside for the purpose of closure
of that portion of the facility required by the solid waste
management regulations to close by the thirtieth day of
November, one thousand nine hundred ninety-one or
ninety-two, including any extensions authorized pursuant
to section eight, article five-f of this chapter. The fee
imposed by this section is in addition to all other fees
and taxes levied by law and shall be added to and
constitute part of any other fee charged by the operator
or owner of the solid waste disposal facility.

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

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

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

(3) The operator shall account to the state for all fees
collected under this section and shall hold them in trust
for the state until they are remitted to the tax
commissioner.

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

(5) Whenever any operator fails to collect, truthfully
account for, remit the fee, or file returns with the fee
as required in this section, the tax commissioner may
serve written notice requiring such operator to collect
the fees which become collectible after service of such
notice, to deposit such fees in a bank approved by the

law commissioner, in a separate account, in trust for and

payable to the tax commissioner, and to keep the amount

of such fees in such account until remitted to the tax

commissioner. Such notice shall remain in effect until

a notice of cancellation is served on the operator or

owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal

facility leases the solid waste facility to an operator, the

operator shall be primarily liable for collection and

remittance of the fee imposed by this section and the

owner shall be secondarily liable for remittance of the

fee imposed by this section. However, if the operator

fails, in whole or in part, to discharge his obligations

under this section, the owner and the operator of the

solid waste facility shall be jointly and severally

responsible and liable for compliance with the provi-

sions of this section.

(7) If the operator or owner responsible for collecting

the fee imposed by this section is an association or

corporation, the officers thereof shall be liable, jointly

and severally, for any default on the part of the

association or corporation, and payment of the fee and

any additions to tax, penalties and interest imposed by

article ten, chapter eleven of this code may be enforced

against them as against the association or corporation

which they represent.

(8) Each person disposing of solid waste at a solid

waste disposal facility and each person required to

collect the fee imposed by this section shall keep

complete and accurate records in such form as the tax

commissioner may require in accordance with the rules

and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by

this section is a necessary and reasonable cost for motor

carriers of solid waste subject to the jurisdiction of the

public service commission under chapter twenty-four-a

of this code. Notwithstanding any provision of law to the

contrary, upon the filing of a petition by an affected

motor carrier, the public service commission shall,
within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

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

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources as exempt from the solid waste assessment fee.

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

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

(h) Dedication of proceeds. — Fifty percent of the
proceeds of the fee collected pursuant to this article in
excess of thirty thousand tons per month from any
landfill which is permitted to accept in excess of thirty
thousand tons per month pursuant to section four-d,
article five-f of this chapter shall be remitted, at least
monthly, to the county commission in the county in
which the landfill is located. The remainder of the
proceeds of the fee collected pursuant to this section
shall be deposited in the closure cost assistance fund
established pursuant to section seven of this article.

(i) Additional fee for out of shed waste. — In addition
to the four dollar fee imposed pursuant to the provisions
of subsection (a) of this section, on and after the first
day of January, one thousand nine hundred ninety-three,
there shall be imposed an additional two dollar fee on
the disposal of solid waste generated outside of the
wasteshed wherein the solid waste disposal facility is
located.

(j) Effective date. — This section is effective on the
first day of January, one thousand nine hundred ninety-
two.

§20-5N-4a. Solid waste management board empowered
to issue solid waste closure revenue bonds,
renewal notes and refunding bonds; re-
quirements and manner of such issuance.

The solid waste management board is hereby empo-
wered to issue, from time to time, solid waste closure
revenue bonds and notes of the state in such principal
amounts as the board deems necessary to pay the cost
of or finance in whole or in part the closure of solid
waste landfills by the division of natural resources
pursuant to the provisions of this article, but the
aggregate amount of all issues of bonds and notes
outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of one hundred fifty million dollars.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste closure revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes shall be obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge shall be valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board irrespective of whether such parties have notice thereof. All such bonds and notes shall have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the board, shall bear such dates and shall mature at such times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the board may authorize. The board may sell such bonds and notes at public or private sale, at
the price the board determines. The bonds and notes shall be executed by the chairman and vice chairman of the board, both of whom may use facsimile signatures. The official seal of the board or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery and, in case the seal of the board has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the board to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the board; a covenant to fix, alter and collect rentals, fees, service charges and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any solid waste disposal project or any other assets of the board; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such
proceeds to secure the payment of the bonds or notes or of any issue thereof; agreement of the board to do all things necessary for the authorization, issuance and sale of bonds in such amounts as may be necessary for the timely retirement of notes issued in anticipation of the issuance of bonds; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the holders of which must consent thereto, and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the board for operating, administrative or other expenses of the board; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to the payment of such bonds or notes shall be less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chairman of the board shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state, for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the board to be pledged for payment of such bonds or notes: Provided, That the Legislature shall not be required to make any appropriation so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

Neither the members of the board nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance 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.

(a) Before issuing any revenue bonds in accordance with the provisions of this article, the solid waste management board shall consult with and be advised by the West Virginia water development authority as to the feasibility and necessity of the proposed issuance of revenue bonds.

(b) Prior to issuing revenue bonds under the provisions of this article, the board shall enter into agreements satisfactory to the West Virginia water development authority with regard to the selection of all consultants, advisors and other experts to be employed in connection with the issuance of such bonds and the fees and expenses to be charged by such persons, and to establish any necessary reserve funds, replacement and improvement funds, all such funds to be administered by the water development authority, and, so long as any such bonds remain outstanding, to establish and maintain a sinking fund or funds to retire such bonds and pay the interest thereon as the same may become due. The amounts in any such sinking fund, as and when so set apart by the board, shall be remitted to the West Virginia water development authority at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by the water development authority, as agent for the board, in a manner consistent with the provisions of this article and with the resolution pursuant to which the bonds have been issued. The water development authority shall act as fiscal agent for the administration of any sinking fund and reserve fund established under each resolution authorizing the issuance of revenue bonds pursuant to the provisions of this article, and shall invest all funds not required for immediate disbursement in the same manner as funds are invested pursuant to the provisions of section thirteen, article five-c, chapter twenty of this code.
(c) Notwithstanding any other provision of this article to the contrary, no revenue bonds shall be issued, nor the proceeds thereof expended or distributed, pursuant to the provisions of this article, without the prior approval of the water development authority.

(d) If the proceeds of revenue bonds issued for any solid waste landfill closure project shall exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used by the fiscal agent for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but not at a price exceeding the price at which any of such bonds shall in the same year be redeemable, as fixed by the board in its said resolution, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

¶20-5N-4c. Legal remedies of bondholders.

Any holder of solid waste disposal revenue bonds issued under the authority of this article or any of the coupons appertaining thereto, except to the extent the rights given by this article may be restricted by the applicable resolution, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state or granted under this article, by the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, or by the resolution, to be performed by the board or any officer or employee thereof, including the fixing, charging and collecting of sufficient rentals, fees, service charges or other charges.

¶20-5N-4d. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

Solid waste closure revenue bonds and notes and solid waste closure revenue refunding bonds issued under authority of this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any
of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under authority of this article. This article does not authorize the board to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

§20-5N-4e. Solid waste closure revenue bonds lawful investments.

The provisions of sections ten and eleven, article six, chapter twelve of this code notwithstanding, all solid waste closure revenue bonds issued pursuant to this article shall be lawful investments for the West Virginia state board of investments and shall also be lawful investments for financial institutions as defined in section two, article one, chapter thirty-one-a of this code, and for insurance companies.

§20-5N-5. Limitation on assistance.

The director may provide closure assistance only to permittees who meet the following requirements:
(1) The permittee of a landfill that does not have a liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-one, except for those landfills granted a limited extension pursuant to the provisions of section eight, article five-f of this chapter and ceases accepting solid waste on or before the extension deadline as determined by the director; or the permittee of a landfill that has only a single liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-two;

(2) The permittee of the landfill must demonstrate to the satisfaction of the director that it does not have the financial resources on hand or the ability to generate the amounts needed to comply, in a timely manner, with the closure requirements provided in article five-f of this chapter and any rules promulgated pursuant thereto;

(3) The permittee must maintain a permit for the landfill pursuant to the provisions of section five, article five-f of this chapter and maintain the full amount of the bond required to be submitted pursuant to section five-b, article five-f of this chapter.

§20-5N-6. Application for closure assistance.

(a) The director shall provide an application and application procedure for all permittees of solid waste landfills desiring to receive closure assistance under this article. At a minimum the procedure shall require that:

(1) The permittee of a landfill that does not have a liner system must submit its application no later than the fifteenth day of September, one thousand nine hundred ninety-two, except the permittee of a landfill that has been granted a limited extension pursuant to the provisions of section eight, article five-f of this chapter must submit its application no later than the eleven months following the expiration of the extension; and

(2) The permittee of a landfill that has only a single liner system must submit its application no later than
the fifteenth day of April, one thousand nine hundred ninety-three, and not prior to the first day of April, one thousand nine hundred ninety-two.

(b) The director shall, within a reasonable time after receipt of a complete application, notify the applicant of the acceptance or rejection of the application. If the application is rejected, the notice shall contain the reasons for the rejection.

§20-5N-7. Solid waste facility closure cost assistance fund.

(a) The "Closure Cost Assistance Fund" is hereby created as a special revenue account in the state treasury. The fund shall operate as a special fund whereby all deposits and payments thereto shall not expire to the general revenue fund, but shall remain in such account and be available for expenditure in the succeeding fiscal year. Separate sub-accounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion in the fund;

(2) Contributions, grants and gifts from any source, both public and private, which may be used by the director for any project or projects;

(3) Amounts repaid by permittees pursuant to section nine, article five-f of this chapter; and

(4) All interest earned on investments made by the state from moneys deposited in this fund.

(d) The amounts deposited in the fund may be expended only on the cost of projects as provided for in sections three and ten of this article: Provided, That no more than one percent of the annual deposits to such
fund may be used for administrative purposes.


The director shall promulgate rules that are necessary for the efficient and orderly implementation and administration of this article no later than the first day of August, one thousand nine hundred ninety-two. Due to the need for the program provided for in this article to begin as soon as possible the Legislature finds and declares that condition warranting rules to be promulgated as emergency rules does exist and that the promulgation of the initial rules required by this section should be accorded emergency status.

§20-5N-9. Liability of owner or operator.

Nothing in this article relieves the owner, operator or permittee of a landfill of the legal duties, obligations or liabilities incident to the ownership or operation of a landfill, except that the performance by the director of any of the activities set forth in subsection (b), section three of this article relieves the operator from the 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.

When the director, in performing activities pursuant to this article determines action, not set forth in subsection (b), section three of this article, is necessary to prevent or remediate any adverse effects of the landfill he or she shall notify the permittee and make and enter an order directing the permittee to take corrective or remedial action. The order shall contain findings of fact upon which the director based his or her determination to make and enter such order. The director shall fix a time limit for the completion of such action.

The director shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon such person.
If the corrective action is not taken within the time limit or the permittee notifies the director that it is unable to comply with the order, the director may expend amounts, as provided herein, to make the remediation.

The costs reasonably incurred in any remedial action taken by the director as provided in this article may be paid for initially by amounts available to the director in the fund created in subdivision (3), subsection (h), section five-a, article five-f of this chapter or, to the extent funds are available, from the fund created in section seven of this article, and such sums so expended, if not promptly repaid by the permittee upon request of the director, may be recovered from the permittee by appropriate civil action to be initiated by the attorney general upon request of the director. All funds so recovered shall be deposited in the fund from which said funds were expended.

§20-5N-11. Right of entry.

The director or his or her duly authorized representatives have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of a landfill, to determine the feasibility of the remediation or prevention of such adverse effects and to perform the activities set forth in sections three and ten of this article. Such entry is as an exercise of the police power of the state for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon.

§20-5N-12. Authority of director to accept grants and gifts.

The director has the authority, on behalf of the division of natural resources, to accept for deposit in the closure cost assistance fund established in section seven of this article, all gifts, grants, property, funds, security interest, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation,

(a) The director shall manage and control all projects, and may make and enter into all contracts or agreements necessary and incidental to the performance of the duties imposed under this article.

(b) On or before the thirty-first day of December, one thousand nine hundred ninety-two, the director, in consultation with the public service commission, shall complete a statewide closure plan, a comprehensive analysis of the total costs of closure anticipated under such statewide closure plan, and a proposal for implementation of closure assistance funding. The director, in consultation with the public service commission, shall prepare and issue a report which shall include the following:

(1) An identification of specific landfills expected to be closed during the three-year period next following the completion of the plan;

(2) An estimate of the projected closure costs associated with each such identified landfill, including such engineering and technical analysis as may be necessary to provide a reasonable estimate;

(3) The extent to which closure assistance will be needed for each such specific landfill; and

(4) An assessment of the order of priority which should be established for closure of landfills and all moneys potentially available therefor.

The plan and report required pursuant to the provisions of this section shall be submitted to the Legislature 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.
(a) Notwithstanding any provision of this code to the contrary, the ranks within the law-enforcement section of the division of natural resources shall be colonel, lieutenant colonel, major, captain, lieutenant, sergeant, conservation officer and conservation officer-in-training. Each such officer while in uniform shall wear the insignia of rank as provided by the chief conservation officer.

(b) Conservation officers shall be paid the minimum annual salaries based on the following schedule:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation Officer-In-Training</td>
<td>$18,617</td>
</tr>
<tr>
<td>Conservation Officer (second year)</td>
<td>$20,806</td>
</tr>
<tr>
<td>Conservation Officer (third year)</td>
<td>$21,078</td>
</tr>
<tr>
<td>Conservation Officer (fourth year)</td>
<td>$21,290</td>
</tr>
<tr>
<td>Conservation Officer (after fifth year)</td>
<td>$22,868</td>
</tr>
<tr>
<td>Conservation Officer (after tenth year)</td>
<td>$24,446</td>
</tr>
<tr>
<td>Conservation Officer (after fifteenth year)</td>
<td>$25,846</td>
</tr>
<tr>
<td>Sergeant</td>
<td>$29,469</td>
</tr>
<tr>
<td>Lieutenant</td>
<td>$32,289</td>
</tr>
<tr>
<td>Captain</td>
<td>$36,675</td>
</tr>
<tr>
<td>Major</td>
<td>$38,958</td>
</tr>
<tr>
<td>Lieutenant Colonel</td>
<td>$41,000</td>
</tr>
</tbody>
</table>

Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

(c) This section shall not apply to special or emergency conservation officers appointed under the authority of section one of this article.

(d) Nothing in this section shall prohibit other pay increases as provided for under section two, article five, chapter five of this code.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.
§20-9-1. Legislative findings and purposes.
§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.
§20-9-7. 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.
§20-9-12a. 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.

The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and groundwaters which provide essential and irreplaceable sources of domestic and industrial water
supplies; (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal into the state of increasingly large amounts of infectious, dangerous and undesirable solid waste and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

The Legislature further finds that the process of developing rational and sound solid waste plans at the county or regional level is impeded by the proliferation of siting proposals for new solid waste facilities.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the
The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans. It is the further purpose of the Legislature to restrict and regulate persons and firms from exploiting and endangering the public health and welfare of the state by disposing of solid wastes and other dangerous materials which would not be accepted for disposal in the location where such wastes or materials were generated.

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

1. **Source reduction.** — This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste, and similar activities.

2. **Recycling, reuse and materials recovery.** — This involves separating and recovering valuable materials from the waste stream, composting food and yard waste, and marketing of recyclables.

3. **Landfilling.** — To the maximum extent possible, this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.

The Legislature further finds that the potential impacts of proposed commercial solid waste facilities may have a deleterious and debilitating impact upon the transportation network, property values, economic growth, environmental quality, other land uses and the public health and welfare in affected communities. The Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.
The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land use conflicts engendered by these proposed facilities. The Legislature also finds that such local land use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.


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

(a) "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under article five-f of this chapter.

(b) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or nonprofit basis and shall not include the legitimate reuse and recycling of materials for structural fill, road base, mine reclamation, and similar applications.

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

(d) "Class B facility" means a commercial solid waste
facility which receives or is expected to receive an
average daily quantity of mixed solid waste equal to or
exceeding one hundred tons each working day, or serves
or is expected to serve a population equal to or
exceeding forty thousand persons, but which does not
receive solid waste exceeding an aggregate of ten
thousand tons per month. Class B facilities do not
include construction/demolition facilities: Provided,
That the definition of Class B facility may include such
reasonable subdivisions or subclassifications as the
director may establish by legislative rule proposed in
accordance with the provisions of chapter twenty-nine-
a of this code.

(e) "Compliance order" means an administrative
order issued pursuant to section five, article five-f of this
chapter authorizing a solid waste facility to operate
without a solid waste permit.

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

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

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

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

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

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

(l) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource-recovery facilities and other such facilities not herein specified. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

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

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

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

(p) "Materials recovery facility" means any solid waste facility at which solid wastes are manually or mechanically shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

§20-9-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

(a) Each and every county solid waste authority authorized and created by the county commission of any county pursuant to former article sixteen, chapter seven of this code is hereby abolished on and after the first day of January, one thousand nine hundred eighty-nine.
On and after the first day of January, one thousand nine hundred eighty-nine, a new county solid waste authority is hereby created and established as a public agency in every county of the state and shall be the successor to each county solid waste authority which may have been created by the county commission: Provided, That such county solid waste authorities shall not be established or shall cease to exist, as the case may be, in those counties which establish a regional solid waste authority pursuant to section four of this article. The solid waste management board may require a county solid waste authority to cooperate and participate in programs with other authorities if the need arises.

(b) The authority board of directors shall be comprised of five members who shall be appointed as follows: One by the director of the division of natural resources, two by the county commission, one by the board of supervisors for the soil conservation district in which the county is situated and one by the chairman of the public service commission. The members of the board shall be appointed for terms of four years for which the initial terms shall start on the first day of July, one thousand nine hundred eighty-eight: Provided, That the first two members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and for terms of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which shall directly affect the member's personal interests.

§20-9-4. Establishment of regional solid waste authorities authorized; successor to county solid waste
authorities; appointments to board of directors; vacancies.

(a) On and after the first day of January, one thousand nine hundred eighty-nine, any two or more counties within the same solid waste shed and with the approval of the solid waste management board, may establish a regional solid waste authority. Such a regional solid waste authority shall be a public agency and shall be the successor to any county solid waste authority existing on the date of said approval by the solid waste management board. The solid waste management board may require a county authority to cooperate and participate in programs with other county and regional authorities if the need arises.

(b) The board of directors of the regional solid waste authority shall be comprised and appointed as follows:

One by the director of the division of natural resources, two by the county commission of each county participating therein, one appointed by the board of supervisors for each soil conservation district in which a county of the region is situated, one by the chairman of the public service commission and two municipal representatives from each county having one or more participating municipality to be selected by the mayors of the participating municipality from each such county. The members of the board shall be appointed for terms of four years for which the initial terms shall start on the first day of July, one thousand nine hundred eighty-eight: Provided, That the members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and to terms of four years after the expiration of each such initial term. The members of the board shall receive no compensation for their service thereon but shall be reimbursed their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse,
§20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.

Notwithstanding any provision of this article, any county commission which, on the first day of July, one thousand nine hundred eighty-eight, held a valid permit or compliance order for a commercial solid waste transfer station issued pursuant to article five-f of this chapter, may elect to assume all the duties, powers, obligations, rights, title and interests vested in the county solid waste authority by this chapter. A county commission may, prior to the first day of October, one thousand nine hundred eighty-nine, exercise this right of election by entering an order declaring such election and serving a certified copy thereof upon the solid waste management board. Thirty days after entry of said order by the county commission the county solid waste authority shall cease to exist and the county commission shall assume all the duties, powers, obligations, rights, title and interest vested in the former authority pursuant to this chapter.


(a) The management and control of the authority, its property, operations and affairs of any nature shall be vested in and governed by the board of directors.

(b) The expenses of any county solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, in the development of the litter and solid waste control plan under section seven of this article and to provide solid waste collection and disposal services under section nine of this article shall be paid by the county commission from the general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds received by the authority from...
other sources. The county commission shall have the authority to determine the amount to be allocated annually to the authority.

(c) The expenses of any regional solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, or for the development of the litter and solid waste control plan under section seven of this article, or to provide solid waste collection and disposal services under section eight of this article shall be paid by the county commissions of each participating county from general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds from other sources received by the authority. Each county participating in the regional solid waste authority shall pay a pro rata share of such expenses based upon the population of said county in the most recent decennial census conducted by the United States Census Bureau. Prior to any county becoming liable for any expenses of the authority under this subsection, the authority's annual budget must first be approved by the solid waste management board.

(d) An organizational meeting of each board of directors shall be held as soon as practicable at which time a chairman and vice chairman shall be elected from among the members of the board to serve a term of one year after which such officers shall be elected annually. The board of directors shall also appoint a secretary-treasurer, who need not be a member of the board of directors, and who shall give bond in a sum determined adequate to protect the interests of the authority by the director of the division of natural resources. The board shall meet at such times and places as it or the chairman may determine. It shall be the duty of the chairman to call a meeting of the board upon the written request of a majority of the members thereof. The board shall maintain an accurate record and minutes of all its proceedings and shall be subject to the provisions of the freedom of information act and the open governmental proceedings. A majority of the board 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.

(a) Each county and regional solid waste authority shall be required to develop a comprehensive litter and solid waste control plan for its geographic area and to submit said plan to the solid waste management board on or before the first day of July, one thousand nine hundred ninety-one. Each authority shall submit a draft litter and solid waste control plan to the solid waste management board by the thirty-first day of March, one thousand nine hundred ninety-one. The comments received by the county or regional solid waste authority at public hearings, two of which shall be required, shall be considered in developing the final plan.

(b) Each litter and solid waste control plan shall include provisions for:

(1) An assessment of litter and solid waste problems in the county;

(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the public service commission;

(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either: (i) Payment of
garbage collection fee; or (ii) proper disposal at an
approved solid waste facility or in an otherwise lawful
manner;

(5) A recommendation for the siting of one or more
properly permitted public or private solid waste
facilities, whether existing or proposed, to serve the
solid waste needs of the county or the region, as the case
may be, consistent with the comprehensive county plan
prepared by the county planning commission;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and
stabilization of any open and unpermitted dumps;

(8) The coordination of the plan with the related solid
waste collection and disposal services of municipalities
and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of
private industry and civic groups in volunteer cleanup
efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling
efforts;

(11) A program to identify the disposal of solid wastes
which are not generated by sources situated within the
boundaries of the county or the region established
pursuant to this section;

(12) Coordination with the division of highways and
other local, state and federal agencies in the control and
removal of litter and the cleanup of open and unpermit-
ted dumps;

(13) Establishment of a program to encourage and
utilize those individuals incarcerated in the county jail
and those adults and juveniles sentenced to probation for
the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all
refuse from commercial and industrial sources within
the county or region, as the case may be, including
refuse from commercial and industrial sources, but
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
management board, and the bureau of health shall
2 provide technical assistance to each county and regional
3 solid waste authority as reasonable and practicable for
4 the purposes of this article within the existing resources
5 and appropriations of each agency available for such
6 purposes. The attorney general shall provide legal
7 counsel and representation to each county and regional
8 solid waste authority for the purposes of this article
9 within the existing resources and appropriations
10 available for such purposes, or with the written
11 approval of the attorney general, said authority may
12 employ counsel to represent it.
13 (b) The solid waste management board shall provide
14 assistance to the county or regional solid waste author-
§20-9-9. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the public service commission to file report.

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at approved solid waste facilities or in any other lawful manner. The director of the division of natural resources shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars shall be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid.

(b) The solid waste management board in consultation and collaboration with the public service commission shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: Provided, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall be submitted to the governor, the president of the Senate and the speaker of the House of Delegates.

(c) The public service commission in consultation and collaboration with the division of human services shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of reducing solid waste collection fees to individuals who directly pay such fees and who receive public assistance from state or federal government agencies and are therefore limited in their
ability to afford to pay for solid waste disposal. This report shall consider the individual's health and income maintenance and other relevant matters. This report shall also include recommended procedures for individuals or households to qualify for and avail themselves of a reduction in fees. This report shall be submitted to the governor, the president of the Senate and the 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.

Upon approval of the litter and solid waste control plan by the solid waste management board, the county or regional solid waste authority may acquire, by purchase, lease, gift or otherwise, land for the establishment of solid waste facilities and is authorized to construct, operate, maintain and contract for the operation of such facilities. The authority may pay for lease or acquisition of such lands and the construction, operation and maintenance of such solid waste facilities from such fees, grants, financing by the solid waste program of the division of natural resources or funds from other sources as may be available to the authority. The authority may prohibit the deposit of any solid waste in such solid waste facilities owned, leased or operated by the authority which have originated from sources outside the geographic limits of the county or region. The authority board of directors shall establish and charge reasonable fees for the use of such facilities operated by the authority.


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

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

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

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

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

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

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

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

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

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

(10) Make and enter all contracts, leases and agreements and to execute all instruments necessary or incidental to the performance of its duties and powers.
(11) Employ managers, engineers, accountants, attorneys, planners and such other professional and support personnel as are necessary in its judgment to carry out the provisions of this article.

(12) Receive and accept from any source such grants, fees, real and personal property, contributions and funds of any nature as may become available to the authority in order to carry out the purposes of this article.

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

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

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

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

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

All rules and regulations promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of this 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.
(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

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

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

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

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

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

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

(d) The siting plan shall take effect upon approval by the solid waste management board pursuant to the rules and regulations promulgated for this purpose. Upon approval of said plan, the solid waste management board shall transmit a copy thereof to the director of the division of natural resources and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

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

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

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

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

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

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

§20-9-12b. Siting approval for solid waste facilities; effect
on facilities with prior approval.

(a) It is the intent of the Legislature that all commer-
cial solid waste facilities operating in this state must
receive site approval at the local level. Notwithstanding
said intent, facilities which obtained such approval from
either a county or regional solid waste authority, or from
a county commission, under any prior enactment in this
code, and facilities which were otherwise exempted
from local site approval under any prior enactment in
this code, shall be deemed to have satisfied such
requirement. All other facilities, including facilities
which received such local approval but which seek to
expand spatial area or to convert from a Class B facility
to a Class A facility, shall obtain such approval only in
the manner specified in sections twelve-c, twelve-d and
twelve-e of this article.

(b) In considering whether to issue or deny the
certificate of site approval as specified in sections
twelve-c, twelve-d and twelve-e of this article, the county
or regional solid waste authority or county commission
shall base its determination upon the following criteria:
The efficient disposal of solid waste generated within
the county or region, economic development, transpor-
23 station 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
thirty days after the application is determined by the county commission to be filed in a completed manner. The county commission shall hold at least one public hearing and shall solicit public comment prior to acting on the application. The county commission shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.

(b) If applications are approved pursuant to subdivisions (1), (2) and (3), subsection (a) of this section, each county commission shall order that a referendum be placed upon the ballot not less than fifty-six days before the next primary, general or other countywide election.

(1) Such referendum will be to determine whether it is the will of the voters of the county that a Class A facility be located in the county. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.

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

"Shall a solid waste facility handling of between ten and thirty thousand tons of solid waste per month be located within ___________ County, West Virginia?

☐ For the facility

☐ Against the facility

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

(3) If a majority of the legal votes cast upon the question be against the siting of a Class A facility within the county, then the county commission, the county or regional solid waste authority and the division of natural resources shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for siting a Class A facility within the
county, then the application process as set forth in this article and article five-f of this chapter may proceed:

Provided, That such vote shall not be binding on or require the division of natural resources to issue a permit. If the majority of the legal votes cast be against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

(c) After the effective date of this section, the public referendum established in this section shall be mandatory for every new Class A facility applicant which will accept between ten and thirty thousand tons of solid waste per month. A new Class A facility applicant means any applicant for a state solid waste permit for a Class A facility who had not, prior to the effective date of this subsection, obtained a certificate of site approval for a Class A facility from the county or regional solid waste authority to establish, construct or operate a Class A facility, and also means any applicant for a state solid waste permit for a Class A facility if a legal challenge to the issuance of a certificate of site approval by the county or regional solid waste authority or the county commission approval for the proposed Class A facility was pending in any state or federal court as of the first day of September, one thousand nine hundred ninety-one.

§20-9-12d. Approval of conversion from Class B facility to Class A facility.

(a) From and after the effective date of this article, in order to obtain approval to operate as a Class A facility at a site previously permitted to operate as a Class B facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four, and in section five-c, article five-f of this chapter;

(2) File an application for a certificate of site approval
with, and obtain approval from, the county or regional
solid waste authority for the county or counties in which
the facility is located or proposed. Such application shall
be submitted on forms prescribed by the solid waste
management board. The county or regional solid waste
authority shall act on such application and either grant
or deny it within thirty days after the application is
determined by the county or regional solid waste
authority to be filed in a completed manner; and

(3) File an application for approval of operation as a
Class A facility with, and obtain approval from, the
county commission for each county in which the facility
is or would be located. Each county commission shall act
on such application and either grant or deny it within
thirty days after the application is determined by the
county commission to be filed in a completed manner.
The county commission shall hold at least one public
hearing and shall solicit public comment prior to acting
on the application. The county commission shall provide
notice of such public hearing with publication of a Class
II legal advertisement in a qualified newspaper serving
the county where the proposed site is situated.

(b) If applications are approved pursuant to subdivi-
sions (1), (2) and (3), subsection (a) of this section, the
county or regional solid waste authority shall publish a
Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
in a newspaper of general circulation in the counties
wherein the solid waste facility is located. Upon the
written petition of registered voters residing in the
county equal to not less than fifteen percent of the
number of votes cast within the county for governor at
the preceding gubernatorial election, which petition
shall be filed with the county commission within sixty
days after the last date of publication of the notice
provided in this section, the county commission shall,
upon verification of the required number of signatures
on the petition, and not less than fifty-six days before
the election, order a referendum be placed upon the
ballot. Any referendum conducted pursuant to this
section shall be held at the next primary, general or
(1) Such referendum will be to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

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

"Shall the __________ solid waste facility, located within __________ County, West Virginia, be permitted to handle between ten and thirty thousand tons of solid waste per month?

□ For the facility
□ Against the facility

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

(3) If a majority of the legal votes cast upon the question be against the facility, then the county commission, the county or regional solid waste authority and the division of natural resources shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and article five-f of this chapter may proceed: Provided, That such vote shall not be binding on or require the division of natural resources to modify the permit. If the majority of the legal votes cast be against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be
resubmitted to a vote until two years after the date of the previous referendum.

§20-9-12e. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

(a) From and after the effective date of this article, in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility’s permit tonnage limitation within a two-year period, the permittee shall:

(1) File an application for approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located. Such application shall be a modification of the Class A facility’s certificate of site approval. The county or regional solid waste authority shall act upon such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner;

(2) File an application for approval with, and obtain approval from, the public service commission to modify the certificate of need in the manner set forth in section one-c, article two, chapter twenty-four of this code; and

(3) File an application for a major permit modification with the division of natural resources.

(b) If applications are approved pursuant to subdivisions (1) and (2), subsection (a) of this section and an application has been filed pursuant to subdivision (3), subsection (a) of this section, the county or regional solid waste authority shall publish a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the solid waste facility is located. Upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county
commission within sixty days after the last date of
publication of the notice provided in this section, the
county commission shall, upon verification of the
required number of signatures on the petition, and not
less than fifty-six days before the election, order a
referendum be placed upon the ballot. Any referendum
conducted pursuant to this section shall be held at the
next primary, general or other countywide election.

(1) Such referendum will be to determine whether it
is the will of the voters of the county that the Class A
facility applicant be permitted to increase the maximum
tonnage allowed to be handled at the facility not to
exceed thirty thousand tons per month. Any election at
which such question is voted upon shall be held at the
voting precincts established for holding primary or
general elections. All of the provisions of the general
election laws, when not in conflict with the provisions
of this article, shall apply to voting and elections
hereunder, insofar as practicable. The secretary of state
shall prescribe the form of the petition which shall
include the printed name, address and date of birth of
each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substan-
tially the following:

"Shall the _________ solid waste facility located
within _________ County, West Virginia, be allowed
to handle a maximum of _________ solid waste per
month?

☐ For the increase in maximum allowable tonnage
☐ Against the increase in maximum allowable
tonnage

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

(3) If a majority of the legal votes cast upon the
question be against allowing the Class A facility to
increase the maximum tonnage of solid waste allowed
to be handled per month at the facility, then the division
of natural resources shall not proceed to modify the
Class A facility permit to increase the maximum allowable tonnage. If a majority of the legal votes cast upon the question be for allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be handled per month at such facility, then the application process as set forth in this article and article five-f of this chapter may proceed: Provided, That such vote shall not be binding on or require the county or regional solid waste authority or the division of natural resources to approve an application to modify the permit. If the majority of the legal votes cast be against the question, that does not prevent the question from again being submitted to a vote at any subsequent election in the manner provided for in this section: Provided, however, That an applicant may not resubmit the question for a vote prior to a period of two years from the date of the previous referendum herein described.

§20-9-12f. Judicial review of certificate of site approval.

(a) Any party aggrieved by a decision of the county or regional solid waste authority or county commission granting or denying a certificate of site approval may obtain judicial review thereof in the same manner provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in said section, in the circuit court of Kanawha County.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with the supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

§20-9-13. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.
(a) **Imposition.** — Effective the first day of July, one thousand nine hundred eighty-nine, a solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected at the rate of one dollar per ton or part thereof of solid waste. The fee imposed by this section shall be in addition to all other fees levied by law.

(b) **Collection, return, payment and record.** — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

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

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall be required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

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

(5) Whenever any operator fails to collect, truthfully account for, remit the fee, or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the
tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

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

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section and section twenty-two, article five, chapter seven of this code shall be considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier,
the public service commission shall, within fourteen
days, reflect the cost of said fee in said motor carrier's
rates for solid waste removal service. In calculating the
amount of said fee to said motor carrier, the commission
shall use the national average of pounds of waste
generated per person per day as determined by the
United States Environmental Protection Agency.

(d) **Definition of solid waste disposal facility.** — For
purposes of this section, the term "solid waste disposal
facility" means any approved solid waste facility or open
dump in this state and includes a transfer station when
the solid waste collected at the transfer station is not
finally disposed of at a solid waste facility within this
state that collects the fee imposed by this section.
Nothing herein shall be construed to authorize in any
way the creation or operation of or contribution to an
open dump.

(e) **Exemptions.** — The following transactions shall be
exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal
facility by the person who owns, operates or leases the
solid waste disposal facility if it is used exclusively to
dispose of waste originally produced by such person in
such person's regular business or personal activities or
by persons utilizing the facility on a cost-sharing or
nonprofit basis;

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

(3) Disposal of residential solid waste by an individ-
ual not in the business of hauling or disposing of solid
waste on such days and times as designated by the
director of the division of natural resources as exempt
from the fee imposed pursuant to section five-a, article
five-f, chapter twenty of this code.

(f) **Procedure and administration.** — Notwithstand-
ing section three, article ten, chapter eleven of this code,
each and every provision of the "West Virginia Tax
Procedure and Administration Act" set forth in article
ten, chapter eleven of this code shall apply to the fee
imposed by this section with like effect as if said act
were applicable only to the fee imposed by this section and were set forth in extenso herein.

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

(h) **Dedication of proceeds.** — The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited, at least monthly, in a special revenue account known as the "Solid Waste Planning Fund" which is hereby created. The solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over to, each county solid waste authority to be expended for the purposes of this article: Provided, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the solid waste management board for:

(A) Grants to the county or regional solid waste authorities for the purposes of this article; and

(B) Administration, technical assistance or other costs of the solid waste management board necessary to implement the purposes of this article and article twenty-six, chapter sixteen of this code.

(i) **Severability.** — If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in
the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(j) Effective date. — This section is effective on the 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.
§20-11-5. 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.
§20-11-8. 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.
§20-11-12. Recycling facilities exemption.

§20-11-1. Short title.

This article shall be known and cited as the “West Virginia Recycling Act”.

§20-11-2. Legislative findings and purpose.

The Legislature finds that many citizens desire a recycling program in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of solid waste landfills and reduce the need for new landfills.

The Legislature further finds that the identification and creation of local, regional, state and national markets for recyclable materials are necessary for the implementation of effective recycling programs.

The Legislature further finds that recycling programs can most successfully be established by encouraging, and in certain instances requiring, the source
separation of solid waste and the subsequent curbside collection of recyclables.

Therefore, it is the purpose of the Legislature to establish goals for the recycling of solid waste; to require certain municipalities to implement recycling programs; to authorize each county commission, or the citizens of a county by referendum, to adopt a comprehensive recycling program for solid waste; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.


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

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

(c) By the first day of January, one thousand nine hundred ninety-four, it is the interim goal of this state to reduce the disposal of municipal solid waste by twenty percent of the amount of per capita solid waste 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.

(a) Within twelve months following the effective date of this section, each municipality described in subsection (b) of this section shall submit a proposal to the solid waste management board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The solid waste management board shall review the
submitted plans for consistency with the criteria provided in this section, the county or regional solid waste management plan and the statewide management plan. The solid waste management board may make suggested changes to the plan and shall provide technical assistance to the municipalities in the development of the plans.

(b) Within twenty-four months following the effective date of this section, each municipality with a population of ten thousand or more people, as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, shall establish and commence implementation of a source separation and curbside collection program for recyclable materials. Implementation may be phased in over a six month time period. Such program shall include, at a minimum, the following:

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

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

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

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

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

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

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

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

(2) Each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only such solid waste from which recyclable materials in accordance with said county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to section four of this article shall, to the extent practicable, be incorporated in said county's comprehensive recycling program.

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

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

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

“Shall the County Commission be required to estab-
lish a comprehensive recycling program for solid waste in _________ County, West Virginia?

□ For Recycling

□ Against Recycling

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

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

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

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

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

□ Continue Recycling

□ End Recycling

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

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

(h) In the case of any municipality having a population greater than forty thousand persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: Provided, That such materials recovery facility shall be subject to approval by both the public service commission and the solid waste management board upon a finding by both the public service commission and the solid waste management board that the establishment of such materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) Imposition. — Effective the first day of January, one thousand nine hundred ninety-two, a recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate of two dollars per ton or part thereof of solid waste. The fee imposed by this section shall be in addition to all other fees levied by law.

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

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

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall be required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

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

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator shall be primarily liable for collection and remittance of the fee imposed by this section and the owner shall be secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his obligations
under this section, the owner and the operator of the solid waste facility shall be jointly and severally responsible and liable for compliance with the provisions of this section.

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

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section shall be considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section:

"Solid waste disposal facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section.
Nothing herein shall be construed to authorize in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions shall be exempt from the fee imposed by this section:

1. Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person’s regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

2. Reuse or recycling of any solid waste; and

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources by regulation as exempt from the fee imposed pursuant to section five-a, article five-f of this chapter.

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

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

(h) Dedication of proceeds. — The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, in a special revenue account designated as the “Recycling Assistance Fund” which is hereby created. The director of the
division of natural resources shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs, and recycling market procurement efforts, established pursuant to this article. The director of the division of natural resources shall promulgate rules, in accordance with chapter twenty-nine-a of this code, containing application procedures, guidelines for eligibility, reporting requirements and other matters deemed appropriate;

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

(3) Twelve and one-half percent of the total proceeds shall be transferred to the governor's office of community and industrial development, to be used in assisting counties and municipalities in the design and construction of wastewater treatment facilities;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the solid waste reclamation and environmental response fund, established pursuant to section five-a, article five-f of this chapter, to be expended by the division of natural resources to assist in the funding of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse, waste reduction and clean-up activities; and

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

(i) Severability. — If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in
the controversy in which such judgment shall have been
rendered, and the applicability of such provision to other
persons or circumstances shall not be affected thereby.

(j) Effective date. — This section is effective on the
first day of January, one thousand nine hundred ninety-
two.

§20-11-5b. Solid and hazardous waste supplemental
assessment fee.

(a) Imposition. — Effective the first day of January,
one thousand nine hundred ninety-two, a solid and
hazardous waste supplemental assessment fee is hereby
levied and imposed upon the disposal of solid or
hazardous waste at all solid waste or hazardous waste
disposal facilities in this state, to be collected at the rate
of twenty-five cents per ton or part thereof of solid or
hazardous waste. The fee imposed by this section shall
be in addition to all other fees levied by law.

(b) Collection, return, payment and records. — The
person disposing of solid or hazardous waste at the solid
or hazardous waste disposal facility shall pay the fee
imposed by this section, whether or not such person
owns the solid or hazardous waste, and the fee shall be
collected by the operator of the solid or hazardous waste
facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time
the solid or hazardous waste is delivered to the solid or
hazardous waste disposal facility.

(2) The operator shall remit the fee imposed by this
section to the tax commissioner on or before the fifteenth
day of the month next succeeding the month in which
the fee accrued. Upon remittance of the fee, the operator
shall be required to file returns on forms and in the
manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees
collected under this section and shall hold them in trust
for the state until they are remitted to the tax
commissioner.

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

(5) Whenever any operator fails to collect, truthfully
account for, remit the fee, or file returns with the fee
as required in this section, the tax commissioner may
serve written notice requiring such operator to collect
the fees which become collectible after service of such
notice, to deposit such fees in a bank approved by the
tax commissioner, in a separate account, in trust for and
payable to the tax commissioner, and to keep the amount
of such fees in such account until remitted to the tax
commissioner. Such notice shall remain in effect until
a notice of cancellation is served on the operator or
owner by the tax commissioner.

(6) Whenever the owner of a solid or hazardous waste
disposal facility leases the solid or hazardous waste
facility to an operator, the operator shall be primarily
liable for collection and remittance of the fee imposed
by this section and the owner shall be secondarily liable
for remittance of the fee imposed by this section.
However, if the operator fails, in whole or in part, to
discharge his obligations under this section, the owner
and the operator of the solid or hazardous waste disposal
facility shall be jointly and severally responsible and
liable for compliance with the provisions of this section.

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

(8) Each person disposing of solid or hazardous waste
at a solid or hazardous waste disposal facility and each
person required to collect the fee imposed by this section
shall keep complete and accurate records in such form
as the tax commissioner may require in accordance with the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section shall be considered a necessary and reasonable cost for motor carriers of solid or hazardous waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid or hazardous waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section:

(1) "Solid or hazardous waste disposal facility" means any approved solid or hazardous waste facility or open dump in this state and includes a transfer station when the solid or hazardous waste collected at the transfer station is not finally disposed of at a solid or hazardous waste facility within this state that collects the fee imposed by this section;

(2) "Coal combustion byproduct" means the residuals, including fly ash, bottom ash, bed ash and boiler slag produced by coal-fired or coal/gas-fired electrical or steam generating units. For nonelectrical steam generating units burning a combination of solid or hazardous waste and coal, a carbon monoxide level of less than or equal to one hundred parts per million on a twenty-four hour average basis is required for the byproducts to meet this definition. The carbon monoxide level shall be calculated on a dry gas basis corrected to seven percent oxygen; and

(3) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.
Nothing herein shall be construed to authorize in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions shall be exempt from the fee imposed by this section:

(1) Disposal of solid waste in which the recycling assessment fee levied and imposed by section five-a of this article has been paid;

(2) Disposal of sludge or coal combustion byproducts;

and

(3) Reuse or recycling of any solid or hazardous waste.

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

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

(h) *Dedication of proceeds.* — The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, to the hazardous waste emergency response fund established in article five-g of this chapter.

(i) *Severability.* — If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in
the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(j) *Effective date.* — This section is effective on the first day of January, one thousand nine hundred ninety-two.

§20-11-6. Establishment of state recycling program for solid waste.

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

(1) Source separation of at least two recyclable materials; and

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

(b) For purposes of this section, the division of natural resources shall be designated the lead agency to ensure proper compliance and coordination.


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

(1) Twenty percent by the thirty-first day of December, one thousand nine hundred ninety-three; and
(2) Forty percent by the thirty-first day of December, one thousand nine hundred ninety-five.

(b) In furtherance of the aforesaid goal, the secretary of the department of administration in consultation with the director of the division of natural resources shall develop a comprehensive procurement program for recycled products. Such program shall include, but not be limited to:

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

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

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

(4) A requirement that all agencies and instrumentalities of the state use compost in all land maintenance and landscaping activities.

(c) The secretary shall prepare and submit an annual report on the thirty-first day of January of each year following the effective date of this section, summarizing the program's accomplishments, prospects for the future, and any recommendations. Said report shall be submitted to the governor, speaker of the House of 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 prepared and submitted.

(a) Effective the first day of June, one thousand nine
hundred ninety-three, it shall be unlawful to deposit
yard waste, including grass clippings and leaves, lead-
acid batteries, and tires in a solid waste facility in West
Virginia: Provided, That such prohibition does not apply
to a facility designed specifically to compost such yard
waste, or otherwise recycle or reuse such items:
Provided, however, That reasonable and necessary
exceptions to such prohibition may be included as part
of the rules and regulations promulgated pursuant to
subsection (c) of this section.

(b) No later than the first day of May, one thousand
nine hundred ninety-two, the solid waste management
board, in consultation with the division of natural
resources, shall design a comprehensive program to
provide for the proper handling of the items mentioned
in subsection (a) of this section.

(c) No later than the first day of September, one
thousand nine hundred ninety-two, the solid waste
management board shall promulgate rules and regula-
tions, in accordance with chapter twenty-nine-a of this
code, as amended, to implement the program designed
pursuant to subsection (b) of this section.

(d) By the first day of December, one thousand nine
hundred ninety-one, the waste management board shall
prepare and submit a report summarizing the board's
action pursuant to this section and making recommen-
dations, if any, concerning additional items that should
be excluded from certain solid waste facilities. Said
report shall be submitted to the governor, president of
the Senate and the speaker of the House of Delegates.

§20-11-9. Recycled oil advisory committee.

(a) The division of natural resources recycled oil
advisory committee is hereby created. The recycled oil
advisory committee shall consist of nine members
appointed by the governor, for terms of two years, who
shall serve without compensation. One member of the
committee shall have significant experience in the oil
refining industry, one member shall have significant
experience in the jobbing or distributing of motor oil,
one member shall be a representative of retail gasoline
dealers, one member shall be a representative of retail
merchants, one member shall be a representative of the
insurance industry, one member shall be a member of
a county or regional solid waste authority, one member
shall be a member of the general public, one member
shall be a member of the House of Delegates recom-
manded by the speaker of the House of Delegates, and
one member shall be a member of the Senate recom-
manded by the president of the Senate. The director of
the division of natural resources or his or her designated
representative shall be an ex officio member of the
committee and shall serve as chairman of the commit-
tee. The recycled oil advisory committee shall meet at
least monthly, or upon the call of four members, to
discuss all aspects of the collection, handling, transpor-
tation, storage, disposal and recycling of used motor oil.

(b) The functions of the committee shall include, but
not be limited to, the following:

(1) Making recommendations to the division of
natural resources and the Legislature concerning the
adoption of management standards with respect to
collection, handling, transportation, storage, disposal
and recycling of used motor oil. The committee shall
make the first report of its recommendations on or
before the fifteenth day of January, one thousand nine
hundred ninety-two, and other such reports may be
made at such times as the committee deems appropriate.

(2) Carrying out education and promotional activities
regarding the use of recycled oil.

(3) Identifying areas in the public and private sectors
where recycled oil could be utilized.

(4) Entertaining proposals from citizens, corporations
and businesses related to all aspects of used motor oil.

(5) Identifying administrative requirements at both
the state and local levels to ascertain resources and
needs relating to used motor oil.

(6) Examining federal law and regulations, both
existing and proposed, to assure that West Virginia
businesses and individuals who generate used motor oil
may participate in a program of handling and disposing of used motor oil that complies with federal statutes and regulatory requirements.

§20-11-10. Recycled newsprint encouraged; findings; goals; recycled newsprint advisory committee formed; annual report required.

(a) The purpose of this section is to encourage newspapers published and distributed in the state of West Virginia to use recycled newsprint.

(b) The Legislature finds that:

(1) It is the public policy of the state of West Virginia to preserve natural resources, extend the useful life of solid waste facilities, stimulate the demand for recycled products and ensure a more efficient allocation of resources;

(2) The publication of newspapers consumes large quantities of virgin paper;

(3) Discarded newspapers present significant solid waste management problems; and

(4) Encouraging newspaper publishers to use recycled newsprint will help attain the aforementioned public policy.

(c) In furtherance of the public policy set forth in subsection (b) of this section, it is the goal of this state that for the year ending the thirty-first day of December, one thousand nine hundred ninety-six, eighty percent of the newsprint used by newspapers published and distributed in this state shall contain the highest post-consumer recycled paper content practicable.

(d) The division of natural resources recycled newsprint advisory committee is hereby created. The recycled newsprint advisory committee shall consist of seven members appointed by the governor, for terms of two years, who shall serve without compensation. One member of the committee shall be the publisher, or his or her designated representative, of a daily newspaper with a general circulation in excess of twenty-five thousand newspapers per day, one member of the
committee shall be the publisher, or his or her desig-
nated representative, of a daily newspaper with a
general circulation of less than or equal to twenty-five
thousand newspapers per day, one member of the
committee shall be the publisher, or his or her desig-
nated representative, of a weekly newspaper, one
member of the committee shall be a member of the
general public representing environmental interests,
one member of the committee shall be a member of a
county or regional solid waste authority, one member of
the committee shall be a member of the House of
Delegates recommended by the speaker of the House of
Delegates, and one member of the committee shall be
a member of the Senate recommended by the president
of the Senate. The director of the division of natural
resources, or his or her designated representative, shall
serve as an ex officio member of the committee and shall
serve as chair of the committee. The director of the solid
waste management board, or his or her representative,
shall serve as an ex officio member of the committee.
The recycling newspaper advisory committee shall meet
at least quarterly, or upon the call of three members,
to discuss all aspects of encouraging the use of recycled
newsprint and meeting the goals set forth in this section.

(e) On or before the thirty-first day of January, one
thousand nine hundred ninety-three, the recycled
newsprint advisory committee shall prepare and submit
a report to the governor, the speaker of the House of
Delegates and the president of the Senate, summarizing
the activities of the committee, its progress in achieving
the recycled newsprint goal and any recommendations
for legislative action.


1 The director in consultation with the governor's office
of community and industrial development shall develop
a plan for presentation to the governor, the president of
the Senate and the speaker of the House of Delegates
no later than the fifteenth day of January, one thousand
nine hundred ninety-two, which plan shall contain
recommendations relating to the feasibility of establish-
ing glass preparation plants, de-inking plants and re-
refining used motor oil plants.

The plan may include provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of re-refined motor oil, de-inked pulp and prepared glass in all appropriate areas of state and local government;

(2) Encouragement of persons contracting with the state to use re-refined motor oil, de-inked pulp and prepared glass to the maximum extent feasible, consistent with protection of the public health and the environment;

(3) Informing the public of uses of re-refined motor oil, de-inked pulp and prepared glass; and

(4) Establishment and implementation of a program, including any necessary licensing of persons and including the use, where appropriate, of manifests to assure the used re-refined motor oil, de-inked pulp and prepared glass is collected, transported, treated, stored, reused and disposed of, in a manner which does not present a hazard to the public health or the environment.

§20-11-12. Recycling facilities exemption.

Facilities which only accept, buy or transfer source separated material or recycled material for use, resale or transfer for further processing shall be exempt from the provisions of articles five-f and nine of this chapter and sections one-c and one-f, article two, chapter twenty-four of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article
2. Powers and Duties of Public Service Commission.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.
(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b of this code. In addition, after having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, one thousand nine hundred ninety-two. The public service commission may sue and be sued by that name. Such public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired term of members of the public service commission at the time this subsection becomes effective are continued through the thirtieth day of June, one thousand nine hundred seventy-nine. In accordance with the provisions of subsection (a) of this section, the governor shall appoint three commissioners, one for a term of two years, one for a term of four years and one for a term of six years, all the terms beginning on the first day of July, one thousand nine hundred
seventy-nine. All future appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, may serve as a member of the commission or as an employee thereof. Nor may any such commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

(d) Effective the first day of July, one thousand nine hundred eighty-four, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of thirty-nine thousand two hundred forty dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty thousand two hundred ten dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand five hundred twenty-five dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code,
In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand five hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-four.

(e) Effective the first day of July, one thousand nine hundred eighty-five, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of forty-one thousand dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty-one thousand six hundred dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand nine hundred dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand five hundred dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand six hundred seventy-five dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-five.

(f) Effective the first day of July, one thousand nine hundred eighty-eight, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of forty-
four thousand dollars a year to be paid in monthly
installments from the special funds in such amounts as
follows:

(1) From the public service commission fund col-
lected under the provisions of section six, article three
of this chapter, thirty-three thousand nine hundred
dollars;

(2) From the public service commission motor carrier
fund collected under the provisions of section six, article
six, chapter twenty-four-a of this code, eight thousand
five hundred dollars; and

(3) From the public service commission gas pipeline
safety fund collected under the provisions of section
three, article five, chapter twenty-four-b of this code,
one thousand six hundred dollars.

In addition to this salary provided for all commissi-
ners, the chairman of the commission shall receive three
thousand six hundred seventy-five dollars a year to be
paid in monthly installments from the public service
commission fund collected under the provisions of
section six, article three of this chapter, on and after the
first day of July, one thousand nine hundred eighty-
eight.

(g) Effective the first day of January, one thousand
nine hundred ninety, each commissioner shall receive
the salary set forth in section two-a, article seven,
chapter six of this code to be paid in monthly install-
ments from the special funds in such amounts as follows:

(1) From the public service commission fund col-
lected under the provisions of section six, article three
of this chapter, thirty-five thousand five hundred ninety-
five dollars;

(2) From the public service commission motor carrier
fund collected under the provisions of section six, article
six, chapter twenty-four-a of this code, eight thousand
nine hundred twenty-five dollars; and

(3) From the public service commission gas pipeline
safety fund collected under the provisions of section
In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand eight hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of January, one thousand nine hundred ninety.

(h) Effective the first day of November, one thousand nine hundred ninety-one, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive an annual salary of sixty thousand dollars to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, forty-eight thousand dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, ten thousand dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provision of section three, article five, chapter twenty-four-b of this code, two thousand dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of January, 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 public utilities in this state, and shall include any utility engaged in any of the following public services:

2 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: Provided, however, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: Provided further, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the
commission in section four-b of this article: And
provided further, That the decision-making authority
granted to the commission in sections four and four-a
of this article shall, in respect to an application filed by
a public service district, be delegated to a single hearing
examiner appointed from the commission staff, which
hearing examiner shall be authorized to carry out all
decision-making duties assigned to the commission by
said sections, and to issue orders having the full force
and effect of orders of the commission.

The commission may, upon application, waive its
jurisdiction and allow a utility operating in an adjoining
state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably
and economically served by a utility licensed to operate
within the state of West Virginia;

(2) Said area can be provided with utility service by
a utility which operates in a state adjoining West
Virginia;

(3) The utility operating in the adjoining state is
regulated by a regulatory agency or commission of the
adjoining state; and

(4) The number of customers to be served is not
substantial.

The rates the out-of-state utility charges West
Virginia customers shall be the same as the rate the
utility is duly authorized to charge in the adjoining
jurisdiction.

The commission, in the case of any such utility, may
revoke its waiver of jurisdiction for good cause.

§24-2-1b. Additional jurisdiction of commission.

Effective the first day of July, one thousand nine
hundred eighty-eight, in addition to all other powers and
duties of the commission as defined in this article, the
commission shall establish, prescribe and enforce rates
and fees charged by commercial solid waste facilities,
as defined in section two, article five-f, chapter twenty
of this code, that are owned or under the direct control
of persons or entities who are regulated under section five, article two, chapter twenty-four-a of this code. The commission shall establish, prescribe and enforce rules and regulations providing for the safe transportation of solid waste in the state.

The public service commission shall study the feasibility of incorporating and adopting guidelines for solid waste collection fees that are based upon the volume of solid waste generated by any person. This report shall be submitted to the governor and the members of the Legislature on or before the first day of January, one thousand nine hundred ninety-three.

§24-2-1c. Certificate of need required for solid waste facilities; priority of disposal.

(a) Any person who holds a valid permit, compliance order or administrative order allowing continued operation of a commercial solid waste facility in this state on the first day of September, one thousand nine hundred ninety-one, shall submit an application for a certificate of need with the public service commission, on forms prescribed by the commission, prior to the first day of March, one thousand nine hundred ninety-two. The commission shall grant such application within sixty days after submission of a complete application.

(b) Any person applying for a permit to construct, operate or expand a commercial solid waste facility as defined in section two, article five-f, chapter twenty of this code, or any person seeking a major permit modification from the division of natural resources first shall obtain a certificate of need from the public service commission. Application for such certificate shall be submitted on forms prescribed by the commission. The commission shall grant or deny a certificate of need, in accordance with provisions set forth in this chapter. If the commission grants a certificate of need, the commission may include conditions not inconsistent with the criteria set forth in this section.

(c) For purposes of subsections (a) and (b) of this section, a complete application shall consist of the following and notwithstanding any other provision of
this chapter to the contrary, such information contained
in the application provided by the applicant shall not be
confidential and shall be disclosable pursuant to the
provisions of chapter twenty-nine-b of this code:

(1) The names of the owners or operators of the
facility including any officer, director, manager, person
owning five percent or more interest or other person
conducting or managing the affairs of the applicant or
of the proposed facility;

(2) The proposed or existing location of the facility;

(3) A description of the geographic area to be served
by the facility;

(4) The anticipated total number of citizens to be
served by the facility;

(5) The average monthly tonnage of solid waste to be
disposed of by the facility;

(6) The total monthly tonnage of solid waste for which
the facility is seeking a permit from the division of
natural resources;

(7) The anticipated lifespan and closure date of the
facility; and

(8) Any other information requested on the forms
prescribed by the public service commission.

(d) In considering whether to grant a certificate of
need the commission shall consider, but shall not be
limited to considering, the following factors:

(1) The total tonnage of solid waste generated within
the county;

(2) The total tonnage of solid waste generated within
the wasteshed;

(3) The current capacity and lifespan of other solid
waste facilities located within the county, if any;

(4) The current capacity and lifespan of other solid
waste facilities located within the wasteshed, if any;

(5) The current capacity and lifespan of other solid
waste facilities located within this state;
(6) The lifespan of the proposed or existing facility;
(7) The cost of transporting solid waste from the points of generation within the county or wasteshed and the disposal facility;
(8) The impact of the proposed or existing facility on needs and criteria contained in the statewide solid waste management plan; and
(9) Any other criteria which the commission regularly utilizes in making such determinations.
(e) The public service commission shall deny a certificate of need upon one or more of the following findings:
(1) The proposed capacity is unreasonable in light of demonstrated needs;
(2) The location of the facility is inconsistent with the statewide solid waste management plan;
(3) The location of the facility is inconsistent with any applicable county or regional solid waste management plan;
(4) The proposed capacity is not reasonably cost effective in light of alternative disposal sites;
(5) The proposal, taken as a whole, is inconsistent with the needs and criteria contained in the statewide solid waste management plan; or
(6) The proposal, taken as a whole, is inconsistent with the public convenience and necessity.
(f) Any certificates of need granted pursuant to this section shall be conditioned on acceptance of:
(1) Solid waste generated within the county in which the facility is or is to be located; and
(2) Solid waste generated within the wasteshed in which the facility is or is to be located.
(g) An application for a certificate of need shall be submitted prior to submitting an application for
certificate of site approval in accordance with section twelve-a, article nine, chapter twenty of this code. Upon the decision of the commission to grant or deny a certificate of need, the commission shall immediately notify the solid waste management board and the division of natural resources.

(h) Any party aggrieved by a decision of the commission granting or denying a certificate of need may obtain judicial review thereof in the same manner provided in section one, article five of this chapter.

(i) No person may sell, lease or transfer a certificate of need without first obtaining the consent and approval of the commission pursuant to the provisions of section twelve, article two of this chapter.

§24-2-1h. Additional powers and duties of commission to control flow of solid waste.

(a) Upon the petition of any county or regional solid waste authority, motor carrier or solid waste facility, or upon the commission's own motion, the commission may issue an order that solid waste generated in the surrounding geographical area of a solid waste facility and transported for processing or disposal by solid waste collectors and haulers who are "motor carriers", as defined in chapter twenty-four-a of this code, be processed or disposed of at a designated solid waste facility or facilities: Provided, That such order shall not include:

(1) Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

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

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of natural resources pursuant to
the provisions of section four-b, article five-f, chapter twenty of this code.

(b) In determining whether to issue an order establishing flow control to a solid waste facility, the commission shall consider, but shall not be limited to considering, the nature and composition of the solid waste, the environmental impact of controlling the flow of solid waste, the efficient disposal of solid waste, financial feasibility of proposed or existing solid waste facilities, the county or region solid waste control plan, the statewide solid waste control plan and the public convenience and necessity.

(c) The public service commission shall promulgate rules providing standards and criteria to effectuate the purposes of this section.

(d) Notwithstanding any provision of this code to the contrary, excepting rules of the public service commission from legislative rule-making review, the public service commission shall propose a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall mandate that motor carriers transport source-separated recyclable materials to a recycling facility. Such legislative rule shall provide, at a minimum, for a separate rate for the transportation of such materials or that such motor carriers may contract with a customer to waive the charge for transporting such materials in exchange for the value of such materials.

(e) Notwithstanding any provision of this code to the contrary, the public service commission is hereby authorized to employ ten persons, in addition to any personnel positions otherwise authorized or allocated to the commission as of the effective date of this section to facilitate enforcement of duties imposed upon the commission in the regulation of solid waste disposal during the second extraordinary session of the Legislature, 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 specifically otherwise provided, shall not apply to:

2 (1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission;

3 (2) Motor vehicles owned and operated by the United States of America, the state of West Virginia, or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or such other legitimate transportation for the schools as the commission may specifically authorize;

4 (3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to such farms or orchards to be used thereon;

5 (4) Motor vehicles used exclusively in the transportation of human or animal excreta;

6 (5) Motor vehicles used exclusively in ambulance service, or duly chartered rescue squad service;

7 (6) Motor vehicles used exclusively for volunteer fire department service;

8 (7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: Provided, That such vehicles and their operators shall be subject
(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when such transportation is incidental to the business of selling said products: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission; and

(9) Motor vehicles owned, leased by or to, or contracted with a recycling facility and used exclusively for the transportation of source-separated recyclable materials for transport to a facility for recycling: Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the 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
Resolutions

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-
Representatives 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.
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.
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.
(a) The number of magistrates to be elected in each county of this state shall be determined in accordance with the provisions of this section.

(b) On or before the first day of January, one thousand nine hundred ninety-two, and on or before the first day of January in every fourth year thereafter, the supreme court of appeals shall certify to the board of ballot commissioners of each county the number of magistrates to be elected in that county for the term of office commencing on the first day of January of the succeeding year. The number of magistrates so certified shall be determined in accordance with the following:

(1) The court shall not provide:

(A) For the total number of magistrates in the state to exceed one hundred fifty-six in number;

(B) For the number of magistrates in any one county to exceed ten in number; or

(C) For the number of magistrates in any one county to be less than two in number.

(2) The court shall determine the number of magistrates that would be apportioned for each county by the application of an equal proportions formula, as follows:

(A) Two magistrates shall be allocated to each county;

(B) The population of the county shall be divided by a mathematical factor, as established by the equal proportion method, to establish each county's priority claim to additional magistrates above the two magistrates provided for by paragraph (A) of this subdivision; and

(C) Additional numbers of magistrates shall be allocated to the several counties in order of priority claims, beginning with the largest claim, until magistrates have been assigned within the limits of this section.

For purposes of this article, a determination made in accordance with the provisions of this subdivision is the "equal proportion number".
(3) The court shall determine the number of magistrates elected in each county at the last general election in which magistrates were regularly elected next prior to the preceding census taken under the authority of the United States government. For purposes of this article, that number shall be referred to as the "election number".

(4) The court shall determine the number of case filings per magistrate in each magistrate court for the most recent fiscal year preceding the date of certification, and shall rank the magistrate courts from one through fifty-five, in the order of their case filings per magistrate, with the court having the most filings per magistrate being ranked number one, and the court with the least filings per magistrate being ranked number fifty-five.

(5) If the court determines that the equal proportion number for a county is the same as the election number for such county, the court shall certify that number as the number of magistrates to be elected in that county at the next election.

(6) If the court determines that the equal proportion number for a county is different from the election number for such county, the court shall apply the ranking established by subdivision (4) of this subsection and determine the number of magistrates for such county, as follows:

(A) If the equal proportion number exceeds the election number, the number of magistrates to be elected in that county at the next election shall be the election number: Provided, That if the county is ranked as one through five, inclusive, in accordance with subdivision (4) of this subsection, the court shall certify the equal proportion number as the number of magistrates to be elected in that county at the next election.

(B) If the equal proportion number is less than the election number, the number of magistrates to be elected in that county at the next election shall be the equal proportion number: Provided, That if the county is ranked as one through five, inclusive, in accordance
with subdivision (4) of this subsection, the court shall certify the election number as the number of magistrates to be elected in that county at the next election.

(c) If the number of magistrates in a county would have been increased but for the application of the proviso contained in paragraph (A), subdivision (6), subsection (b) of this section, and if the county is ranked as six through ten, inclusive, in accordance with the provisions of subdivision (4), subsection (b) of this section, then the supreme court of appeals shall provide for the appointment of an additional magistrate court deputy clerk for that county, notwithstanding the limitation on the total number of deputy clerks otherwise provided for under the provisions of section nine-a of this article.

(d) Any magistrate in office at the time of the effective date of this section shall continue as a magistrate, unless sooner removed or retired as provided by law, until the first day of January, one thousand nine hundred ninety-three.


(a) The Legislature finds and declares that:

(1) The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the United States Constitution;

(2) The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate article VI, section 39 of the constitution of the state of West Virginia;

(3) The utilization of a two-tiered salary schedule for magistrates is an equitable and rational manner by which magistrates should be compensated for work performed;

(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than eight thousand
five hundred in population and the second tier for magistrates serving eight thousand five hundred or more in population is rational and equitable given current statistical information relating to population and caseload; and

(5) That all magistrates who fall under the same tier should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve less than ten thousand in population shall be paid annual salaries of twenty thousand six hundred twenty-five dollars and magistrates who serve ten thousand or more in population shall be paid annual salaries of twenty-seven thousand dollars: Provided, That on and after the first day of January, one thousand nine hundred ninety-two, magistrates who serve less than ten thousand in population shall be paid annual salaries of twenty-one thousand six hundred twenty-five dollars and magistrates who serve ten thousand or more in population shall be paid annual salaries of twenty-eight thousand dollars: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-three, magistrates who serve less than eight thousand five hundred in population shall be paid annual salaries of twenty-three thousand six hundred twenty-five dollars and magistrates who serve eight thousand five hundred or more in population shall be paid annual salaries of thirty thousand dollars.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

In each county having three or more magistrates the judge of the circuit court or the chief judge thereof, if
there is more than one judge of the circuit court, shall
appoint a magistrate court clerk. In all other counties
such judge may appoint a magistrate court clerk or may
by rule require the duties of the magistrate court clerk
to be performed by the clerk of the circuit court, in
which event such circuit court clerk shall be entitled to
additional compensation in the amount of two thousand
five hundred dollars per year. The magistrate court
clerk shall serve at the will and pleasure of the circuit
judge.

Magistrate court clerks shall be paid a monthly salary
by the state. Magistrate court clerks serving magis-
trates who serve less than ten thousand in population
shall be paid up to one thousand two hundred forty-one
dollars per month and magistrate court clerks serving
magistrates who serve ten thousand or more in popula-
tion shall be paid up to one thousand six hundred fifty
dollars per month: Provided, That on and after the first
day of January, one thousand nine hundred ninety-two,
magistrate court clerks serving magistrates who serve
less than ten thousand in population shall be paid up to
one thousand three hundred twenty-five dollars per
month and magistrate court clerks serving magistrates
who serve ten thousand or more in population shall be
paid up to one thousand seven hundred thirty-four
dollars per month: Provided, however, That on and after
the first day of January, one thousand nine hundred
ninety-three, magistrate court clerks serving magis-
trates who serve less than eight thousand five hundred
in population shall be paid up to one thousand four
hundred fifty dollars per month and magistrate court
clerks serving magistrates who serve eight thousand
five hundred or more in population shall be paid up to
one thousand eight hundred fifty-nine dollars per
month: Provided further, That after the effective date of
this section, any general salary increase granted to all
state employees, whose salaries are not set by statute,
expressed as a percentage increase or an “across-the-
board” increase, may also be granted to magistrate
court clerks. For the purpose of determining the
population served by each magistrate, the number of
magistrates authorized for each county shall be divided
into the population of each county. The salary of the magistrate court clerk shall be established by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, within the limits set forth in this section.

In addition to other duties as may be imposed by the provisions of this chapter or by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, it is the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for the magistrate court, to assist in the preparation of such reports as may be required of the court and to carry out on behalf of the magistrates or chief magistrate if a chief magistrate is appointed, the administrative duties of the court.

The magistrate court clerk or, if there is no magistrate court clerk in the county, the clerk of the circuit court has the authority to issue all manner of civil process and to require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.


In each county there shall be one magistrate assistant for each magistrate. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the county where appointed. For the purpose of this section, immediate family means the relationships of mother, father, sister, brother, child or spouse.

A magistrate assistant shall have such duties, clerical or otherwise, as may be assigned by the magistrate and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and be accountable to the
magistrate court clerks with respect to the following
duties:

(1) The preparation of summons in civil actions;
(2) The assignment of civil actions to the various
magistrates;
(3) The collection of all costs, fees, fines, forfeitures
and penalties which may be payable to the court;
(4) The submission of such moneys, along with an
accounting thereof, to appropriate authorities as
provided by law;
(5) The daily disposition of closed files which are to
be located in the magistrate clerk's office;
(6) All duties related to the gathering of information
and documents necessary for the preparation of admin-
istrative reports and documents required by the rules
of the supreme court of appeals or the judge of the
circuit court, or the chief judge thereof if there is more
than one judge of the circuit court;
(7) All duties relating to the notification, certification
and payment of jurors serving pursuant to the terms of
this chapter;
(8) All other duties or responsibilities whereby the
magistrate assistant is accountable to the magistrate
court clerk as the magistrate determines.

Magistrates assistants shall be paid a monthly salary
by the state. Magistrate assistants serving magistrates
who serve less than ten thousand in population shall be
paid up to nine hundred sixty-seven dollars per month
and magistrate assistants serving magistrates who serve
ten thousand or more in population shall be paid up to
one thousand two hundred twenty-five dollars per
month: Provided, That on and after the first day of
January, one thousand nine hundred ninety-two, mag-
istrate assistants serving magistrates who serve less
than ten thousand in population shall be paid up to one
thousand fifty-one dollars per month and magistrate
assistants serving magistrates who serve ten thousand
or more in population shall be paid up to one thousand
three hundred nine dollars per month: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-three, magistrate assistants serving magistrates who serve less than eight thousand five hundred in population shall be paid up to one thousand one hundred seventy-six dollars per month and magistrate assistants serving magistrates who serve eight thousand five hundred or more in population shall be paid up to one thousand four hundred thirty-four dollars per month: Provided further, That after the effective date of this section, any general salary increase granted to all state employees, whose salaries are not set by statute, expressed as a percentage increase or an "across-the-board" increase, may also be granted to magistrate assistants. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-8. Audits.

The chief inspector of public offices shall perform an annual financial audit of each magistrate court. In addition to and in conjunction with the financial audit, the chief inspector of public offices shall perform or cause to be performed an audit of the case filings of each magistrate court. The chief inspector shall report the annual number of case filings of each magistrate court to be included in the financial audit report to be made to the supreme court of appeals, circuit court of the county and the legislative auditor. The supreme court of appeals shall make a written finding that it has examined the report and that the annual number of case filings in each magistrate court accurately represents the total number of cases actually brought before that magistrate court. This finding shall be made prior to any redistribution of magistrates which is based upon the increase or decrease of case filings in any magistrate court.
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.

(a) This section shall be known and may be cited as "The Senate Redistricting Act of 1991".

(b) As used in this section:

(1) "County" means the territory comprising a county of this state as such county existed on the first day of January, one thousand nine hundred ninety, notwithstanding any boundary changes thereof made subsequent thereto;

(2) "Block", "block group", "census tract" and "voting district" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred ninety census of population and described on census maps prepared by the bureau of the census. Such maps are, at the time of this enactment, maintained by the bureau of the census and filed in the office of legislative services;

(3) "Magisterial district" means the territory compris-
ing a magisterial district of this state as reported to and
used by the bureau of the census of the United States
department of commerce for the taking of the one
thousand nine hundred ninety census of population and
described on census maps prepared by the bureau of the
census;

(4) “Incumbent senator” means a senator elected at
the general election held in the year one thousand nine
hundred ninety or at any general election thereafter,
with an unexpired term of at least two years in duration.

(c) The Legislature recognizes that in dividing the
state into senatorial districts, the Legislature is bound
not only by the United States constitution but also by
the West Virginia constitution; that in any instance
where the West Virginia constitution conflicts with the
United States constitution, the United States constitu-
tion must govern and control, as recognized in section
one, article one of the West Virginia constitution; that
the United States constitution, as interpreted by the
United States supreme court and other federal courts,
requires state legislatures to be apportioned so as to
achieve equality of population as near as is practicable,
population disparities being permissible where justified
by rational state policies; and that the West Virginia
constitution requires two senators to be elected from
each senatorial district for terms of four years each, one
such senator being elected every two years, with one half
of the senators being elected biennially, and requires
senatorial districts to be compact, formed of contiguous
territory and bounded by county lines. The Legislature
finds and declares that it is not possible to divide the
state into senatorial districts so as to achieve equality
of population as near as is practicable as required by
the United States supreme court and other federal
courts and at the same time adhere to all of these
provisions of the West Virginia constitution; but that, in
an effort to adhere as closely as possible to all of these
provisions of the West Virginia constitution, the
Legislature, in dividing the state into senatorial
districts, as described and constituted in subsection (d)
hereof, has:
(1) Adhered to the equality of population concept, while at the same time recognizing that from the formation of this state in the year one thousand eight hundred sixty-three, each constitution of West Virginia and the statutes enacted by the Legislature have recognized political subdivision lines and many functions, policies and programs of government have been implemented along political subdivision lines;

(2) Made the senatorial districts as compact as possible, consistent with the equality of population concept;

(3) Formed the senatorial districts of “contiguous territory” as that term has been construed and applied by the West Virginia supreme court of appeals;

(4) Deviated from the long-established state policy, recognized in (1) above, by crossing county lines only when necessary to ensure that all senatorial districts were formed of contiguous territory or when adherence to county lines produced unacceptable population inequalities and only to the extent necessary in order to maintain contiguity of territory and to achieve acceptable equality of population; and

(5) Also taken into account in crossing county lines, to the extent feasible, the community of interests of the people involved.

(d) The Senate shall be composed of thirty-four senators, one senator to be elected at the general election to be held in the year one thousand nine hundred ninety-two, and biennially thereafter for a four-year term from each of the senatorial districts hereinafter in this subsection described and constituted as follows:

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
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
district EP 66, voting district EP 70, voting district EP
122 72, voting district EP 74 and voting district EP 78 of
123 the West Augusta magisterial district of the county of
124 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,
Block 103, Block 104 and Block 105 of Block Group 1 in Census Tract 0051 contained in voting district EP 60 in the Westmoreland magisterial district of the county of Wayne shall constitute the fifth senatorial district;

(6) The counties of McDowell and Mingo, voting district EP 41, voting district EP 42, voting district EP 49, voting district EP 52, voting district EP 60, voting district EP 61, Block 412B, Block 415, Block 416, Block 417B and Block 422B of Block Group 4 in Census Tract 9509 contained in voting district EP 46, Block 510 of Block Group 5 in Census Tract 9509 contained in voting district EP 46, Block 304B of Block Group 3 in Census Tract 9510 contained in voting district EP 46, Block 405C, Block 412D, Block 414, Block 417, Block 418B, Block 419B, Block 422, Block 423, Block 424 and Block 425 of Block Group 4 in Census Tract 9516 contained in voting district EP 63 of magisterial District III in the county of Mercer, and voting district EP 1, voting district EP 3, voting district EP 5, voting district EP 17, voting district EP 18, voting district EP 19, and Block 510 of Block Group 5 in Census Tract 0204 contained in voting district EP 22, and Block 219, Block 220, Block 221, Block 222, Block 224, Block 225, Block 228, Block 231 and Block 232 of Block Group 2 in Census Tract 0206 contained in voting district EP 22 of the Butler magisterial district in the county of Wayne, and voting district EP 13, voting district EP 15, voting district EP 20, Block 305A, Block 305C, Block 306A, Block 306C and Block 307 of Block Group 3 in Census Tract 0052 contained in voting district EP 11, Block 210A and Block 211A of Block Group 2 in Census Tract 0201 contained in voting district EP 11, Block 102, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121 and Block 199A of Block Group 1 in Census Tract 0202 contained in voting district EP 11, Block 225 and Block 226 of Block Group 2 in Census Tract 0202 contained in voting district EP 11, and Block 218A of Block Group 2 in Census Tract 0203 contained in voting district EP 11, and Block 101A, Block 102A, Block 103, Block 104, Block 120A, Block
(7) The counties of Boone, Lincoln and Logan and that portion of the county of Wayne not included in the fifth or sixth senatorial districts shall constitute the seventh senatorial district;

(8) The county of Kanawha shall constitute the eighth senatorial district;
senatorial district;

(9) The counties of Raleigh and Wyoming shall constitute the ninth senatorial district;

(10) The counties of Monroe and Summers and that portion of the county of Mercer not included in the sixth senatorial district, and voting district EP 68, voting district EP 72 and voting district EP 74 of the New Haven magisterial district of Fayette county, and voting district EP 3, voting district EP 4, voting district EP 5, voting district EP 9, voting district EP 10, voting district EP 11, voting district EP 12, voting district EP 14, voting district EP 19, voting district EP 23, voting district EP 24, Block 226A, Block 228A, Block 229 and Block 230 of Block Group 2 in Census Tract 0202 contained in voting district EP 8, Block 312A, Block 312B, Block 312C, Block 317A, Block 317B, Block 318, Block 319, Block 320A, Block 320B, Block 321, Block 322A, Block 322B, Block 323, Block 324, Block 325, Block 326, Block 327 and Block 328 of Block Group 3 in Census Tract 0202 contained in voting district EP 8, Block 401A, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414A, Block 415, Block 416 and Block 417 of Block Group 4 in Census Tract 0202 contained in voting district EP 8, Block 501A, Block 503, Block 504, Block 505, Block 506, Block 507,
(11) The counties of Clay, Greenbrier, Nicholas and Webster and that portion of the county of Fayette not included in the tenth senatorial district shall constitute the eleventh senatorial district;

(12) The counties of Braxton, Gilmer, Harrison and Lewis shall constitute the twelfth senatorial district;

in Census Tract 0112 contained in voting district EP 48, Block 501B, Block 502A, Block 502B, Block 502C, Block 503A, Block 503B, Block 503C, Block 504A, Block 504B, Block 505A, Block 505B, Block 506, Block 507A, Block 507B, Block 508, Block 509A, Block 509B, Block 510, Block 511, Block 512, Block 513, Block 514A, Block 514B, Block 515A, Block 515B, Block 516A, Block 516B, Block 517, Block 518, Block 519A, Block 519B, Block 520A, Block 520B, Block 521A and Block 521B of Block Group 5 in Census Tract 0112 contained in voting district EP 48, Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 355A, Block 355B, Block 357A, Block 357B, Block 358, Block 360, Block 362 and Block 399 of Block Group 3 in Census Tract 0115 contained in voting district EP 48 of the Western magisterial district of Monongalia county, and that portion of voting district EP 22, that portion of voting district EP 30, voting district EP 32, voting district EP 36, voting district EP 39, voting district EP 76, voting district EP 80, voting district EP 81, voting district EP 82, voting district EP 83, voting district EP 84, voting district EP 86, that portion of voting district EP 87, voting district EP 88, voting district EP 89, voting district EP 91, Block 418B, Block 419C, Block 419D and Block 421B of Block Group 4 in Census Tract 0108 contained in voting district EP 35, Block 101D, Block 102, Block 103, Block 105 and Block 110 of Block Group 1 in Census Tract 0109 contained in voting district EP 35, Block 731B, Block 732B, Block 733 and Block 734B of Block Group 7 in Census Tract 0109 contained in voting district EP 35, Block 801C, Block 802, Block 803, Block 804, Block 805, Block 806B, Block 807, Block 811, Block 812 and Block 813 of Block Group 8 in Census Tract 0109 contained in voting district EP 35, Block 315B of Block Group 3 in Census Tract 0110 contained in voting district EP 35, Block 599A of Block Group 5 in Census Tract 0116 contained in voting district EP 79, Block 126, Block 127, Block 128, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137A, Block 137B, Block 138, Block 139, Block 140, Block 141, Block
346 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156A, Block 156B, Block 157, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169, Block 170, Block 171, Block 172, Block 173, Block 174, Block 175, Block 176, Block 177, Block 178, Block 179, Block 180, Block 181, Block 182, Block 183, Block 184, Block 185, Block 186, Block 187, Block 199A, Block 199B, Block 199F, Block 199G, Block 199H and Block 199J of Block Group 1 in Census Tract 0117 contained in voting district EP 79, Block 613B of Block Group 6 in Census Tract 0110 contained in voting district EP 85, and Block 701, Block 702B and Block 703 of Block Group 7 in Census Tract 0110 contained in voting district EP 85 of the Eastern magisterial district of Monongalia county shall constitute the thirteenth senatorial district;


376 (15) The counties of Hampshire, Hardy, Randolph, Pendleton, Pocahontas and Upshur and that portion of the county of Grant not included in the fourteenth senatorial district, and that portion of the county of Mineral county not included in the fourteenth senatorial district shall constitute the fifteenth senatorial district;

396 (16) The counties of Berkeley, Jefferson and Morgan
shall constitute the sixteenth senatorial district; and

(17) The county of Kanawha shall constitute the seventeenth senatorial district.

(e) The West Virginia constitution further provides, in section four, article VI thereof, that where a senatorial district is composed of more than one county, both senators for such district shall not be chosen from the same county, a residency dispersal provision which is clear with respect to senatorial districts which follow county lines, as required by such constitution, but which is not clear in application with respect to senatorial districts which cross county lines. However, in an effort to adhere as closely as possible to the West Virginia constitution in this regard, the following additional provisions, in furtherance of the rationale of such residency dispersal provision and to give meaning and effect thereto, are hereby established:

(1) With respect to a senatorial district which is composed of one or more whole counties and one or more parts of another county or counties, no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district;

(2) With respect to a senatorial district which does not contain any whole county but only parts of two or more counties, no more than one senator shall be chosen from the same part to represent such senatorial district; and

(3) With respect to superimposed senatorial districts which contain only one whole county, all senators shall be chosen from such county to represent such senatorial districts.

(f) Candidates for the Senate shall be nominated as provided in section four, article five, chapter three of this code, except that such candidates shall be nominated in accordance with the residency dispersal provisions specified in section four, article VI of the West Virginia constitution and the additional residency dispersal provisions specified in subsection (e) hereof. Candidates for the Senate shall also be elected in accordance with the residency dispersal provisions
specified in said section four, article VI of the West Virginia constitution and the additional residency dispersal provisions specified in subsection (e) hereof. In furtherance of the foregoing provisions of this subsection (f), no person may file a certificate of candidacy for election from a senatorial district described and constituted in subsection (d) hereof if he or she resides in the same county and the same such senatorial district wherein also resides an incumbent senator, whether the senatorial district wherein such incumbent senator resides was described and constituted by chapter ninety-nine, acts of the Legislature, one thousand nine hundred eighty-two, or was described and constituted in subsection (d) hereof. Any vacancy in a nomination shall be filled, any appointment to fill a vacancy in the Senate shall be made, and any candidates in an election to fill a vacancy in the Senate shall be chosen, so as to be consistent with the residency dispersal provisions specified in section four, article VI of the West Virginia constitution and the additional residency dispersal provisions specified in subsection (e) hereof.

(g) Regardless of the changes in senatorial district boundaries made by the provisions of subsection (d) hereof, all senators elected at the general election held in the year one thousand nine hundred eighty-eight and at the general election held in the year one thousand nine hundred ninety shall continue to hold their seats as members of the Senate for the term, and as representatives of the senatorial district, for which each thereof, respectively, was elected. Any appointment made or election held to fill a vacancy in the Senate shall be for the remainder of the term, and as a representative of the senatorial district, for which the vacating senator was elected or appointed, and any such election shall be held in the district as the same was described and constituted at the time the vacating senator was elected or appointed.

(h) The secretary of state may promulgate rules and regulations to implement the provisions of this section, including emergency rules and regulations promulgated pursuant to the provisions of section five, article three, 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. (a) This section shall be known and may be cited as "The House of Delegates Apportionment Act of 1991."

(b) As used in this section:

1. (1) "County" means the territory comprising a county of this state as it existed on the first day of January, one thousand nine hundred eighty, notwithstanding any boundary changes made subsequent thereto;

2. (2) "Block," "block group," "census tract," "place" and "voting district" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred ninety census of population and described on census maps prepared by the bureau of the census. Such maps are, at the time of this enactment, maintained by the bureau of the census and filed in the office of legislative services;
(3) "Magisterial district" means the territory comprising a magisterial district of this state as reported to and used by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred ninety census of population and described on census maps prepared by the bureau of the census;

(c) The House of Delegates shall be composed of one hundred members elected from the delegate districts hereinafter described:

(1) The county of Hancock and Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 110, Block 111, Block 125, Block 126, Block 131 and Block 132 of Block Group 1 in Census Tract 0301 contained in voting district EP 26, Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 111, Block 114 and Block 115 of Block Group 1 in Census Tract 0302 contained in voting district EP 26, Block 202, Block 203, Block 204, Block 205 and Block 206 of Block Group 2 in Census Tract 0302 contained in voting district EP 26, Block 109, Block 112, Block 113, Block 114, Block 115, Block 119, Block 120, Block 121, Block 122 and Block 130 of Block Group 1 in Census Tract 0301 contained in voting district EP 34B of the Weirton magisterial district in the county of Brooke shall constitute the first delegate district and shall elect two delegates;

Block 315C, Block 316A and Block 316C of Block Group 3 in Census Tract 0020 contained in voting district EP 14 of the District One magisterial district of Ohio county and voting district EP 134, voting district EP 135, voting district EP 138, voting district EP 141, Block 319, Block 320, Block 321, Block 322 and Block 335 of Block Group 3 in Census Tract 0018 contained in voting district EP 137, and Block 413, Block 424, Block 428, Block 429, Block 430, Block 431, Block 432 and Block 433 of Block Group 4 in Census Tract 0018 contained in voting district EP 137, and Block 504A of Block Group 5 in Census Tract 0018 contained in voting district EP 137, and Block 601A, Block 602A, Block 603A, Block 607A, Block 610, Block 611, Block 612 and Block 613 of Block Group 6 in Census Tract 0018 contained in voting district EP 137, and Block 701A of Block Group 7 in Census Tract 0018 contained in voting district EP 137 of the District Three magisterial district of Ohio county shall constitute the second delegate district and shall elect two delegates;

(3) That portion of Ohio county not included in the second delegate district, except Block 206, Block 216, Block 217, Block 218, Block 220, Block 221, Block 222 and Block 299 of Block Group 2 in Census Tract 0025 contained in voting district EP 100 of magisterial District Three of Ohio county shall constitute the third delegate district and shall elect two delegates;

(4) The county of Marshall and Block 206, Block 216, Block 217, Block 218, Block 220, Block 221, Block 222 and Block 299 of Block Group 2 in Census Tract 0025 contained in voting district EP 100 of magisterial District Three of Ohio county shall constitute the fourth delegate district and shall elect two delegates;

(5) The county of Wetzel except for voting district EP 37 and voting district EP 38 of magisterial District Two shall constitute the fifth delegate district and shall elect one delegate;

(6) The counties of Doddridge and Tyler and voting district EP 37 and voting district EP 38 of magisterial District Two of Wetzel county shall constitute the sixth
(7) The counties of Pleasants and Ritchie and voting district EP 27 and voting district EP 31 of the DeKalb-Troy magisterial district of Gilmer county shall constitute the seventh delegate district and shall elect one delegate;


(10) That portion of Wood county not included in the eighth or ninth delegate district shall constitute the tenth delegate district and shall elect three delegates;

(11) The county of Roane and voting district EP 23 of the Ripley magisterial district and all of the Washington magisterial district of Jackson county shall constitute the eleventh delegate district and shall elect one delegate;

(12) All of the Grant magisterial district of Jackson
county, and that portion of voting district EP 5, voting
district EP 6, voting district EP 10, voting district EP
11, voting district EP 12 and the city of Ravenswood in
the Ravenswood magisterial district of Jackson county,
and voting district EP 21, voting district EP 22, voting
26, voting district EP 28, voting district EP 29, voting
district EP 33 and the city of Ripley in the Ripley
magisterial district of Jackson county shall constitute
the twelfth delegate district and shall elect one delegate;

(13) All of the Union magisterial district and voting
district EP 13 and voting district EP 14 of the
Ravenswood magisterial district of Jackson county, and
all of the Cologne magisterial district, all of the Copper
magisterial district, all of the Graham magisterial
district, all of the Union magisterial district, all of the
Waggener magisterial district and voting district EP 1,
voting district EP 10 and voting district EP 12 of the
Robinson magisterial district of Mason county, and all
of the Buffalo-Union magisterial district, all of the
Pocatalico magisterial district, and voting district EP
27, voting district EP 28 of the Scott magisterial district
and that portion of voting district EP 28 in the Teays
magisterial district of Putnam county shall constitute
the thirteenth delegate district and shall elect two
delegates;

(14) That portion of Mason county not in the thir-
ten delegate district and that portion of Putnam
county not in the thirteenth delegate district shall
constitute the fourteenth delegate district and shall elect
two delegates;

(15) Voting district EP 29, voting district EP 46,
voting district EP 47 and voting district EP 48 of the
District One magisterial district, voting district EP 13,
that portion of voting district EP 19, voting district EP
26, voting district EP 27, voting district EP 28, voting
31, voting district EP 32, voting district EP 33, voting
district EP 34, voting district EP 38, voting district EP
39, that portion of voting district EP 40, that portion of
voting district EP 42, voting district EP 43 and voting
district EP 45 of the District Two magisterial district, voting district EP 14, voting district EP 15, voting district EP 16, voting district EP 17, voting district EP 18, that portion of voting district EP 19, voting district EP 20, voting district EP 21, voting district EP 22, voting district EP 23, that portion of voting district EP 24, that portion of voting district EP 40, voting district EP 41 and that portion of voting district EP 42 of the District Three magisterial district, that portion of voting district EP 24, that portion of voting district EP 47, that portion of Census Tract 0103, Block 199F of Block Group 1 in Census Tract 0104, Block 405A, Block 410, Block 411, Block 412, Block 414C, Block 447, Block 499B, Block 499H and Block 499K of Block Group 4 in Census Tract 0104, and Block 502A, Block 502B and Block 503A of Block Group 5 in Census Tract 0104 of the District Four magisterial district, and that portion of Census Tract 0103, that portion of Census Tract 0104, Block 401 and Block 402 of Block Group 4 in Census Tract 0105, Block Group 1, Block Group 2, Block Group 3 and Block 411 of Block Group 4, and Block 511, Block 512, Block 513, Block 514, Block 522 and Block 523 of Block Group 5 in Census Tract 0106, Block 117, Block 118, Block 119, Block 120, Block 121, Block 132 and Block 133B of Block Group 1, Block Group 2, Block Group 3, Block Group 4 and Block Group 5 in Census Tract 0107, and Census Tract 0108 of the District Five magisterial district of Cabell county and all of the Carroll magisterial district of Lincoln county shall constitute the fifteenth delegate district and shall elect three delegates;

(16) That portion of Cabell county not included in the fifteenth delegate district and voting district EP 59, voting district EP 60, voting district EP 61 and voting district EP 63 of the Westmoreland magisterial district and that portion of voting district EP 59 in the Ceredo magisterial district of Wayne county shall constitute the sixteenth delegate district and shall elect three delegates;

(17) All of the Union magisterial district except voting district EP 54 of Wayne county, and voting district EP 26, voting district EP 30, voting district EP...

(18) That portion of Wayne county not in the sixteenth or seventeenth delegate district shall constitute the eighteenth delegate district and shall elect one delegate;

(19) The county of Mingo and voting district EP 43 of the West magisterial district of Logan county shall constitute the nineteenth delegate district and shall elect two delegates;

(20) All of the county of Logan except voting district EP 43 of the West magisterial district and all of the county of Lincoln except the Carroll magisterial district and voting district EP 1, that portion of voting district EP 2, voting district EP 3, voting district EP 7, voting district EP 15, voting district EP 16, voting district EP 17 and voting district EP 18 of the District Three magisterial district and that portion of voting district EP 2, voting district EP 5 and voting district EP 9 of the District Two magisterial district of Boone county shall constitute the twentieth delegate district and shall elect four delegates: Provided, That not more than three delegates may be nominated, elected or appointed who are residents of any single county within the twentieth delegate district;

(21) That portion of Boone county not included in the twentieth delegate district shall constitute the twenty-first delegate district and shall elect one delegate;

(22) The county of McDowell shall constitute the twenty-second delegate district and shall elect two delegates;

(23) The county of Wyoming and voting district EP 3 and voting district EP 5 of magisterial District I, and


(25) That portion of Mercer county not included in the twenty-third or twenty-fourth delegate district shall constitute the twenty-fifth delegate district and shall elect two delegates;


(27) The county of Raleigh except Block 101, Block 102, Block 103, Block 104, Block 106, Block 107, Block 108, Block 109, Block 137, Block 138, Block 142 and Block 143 of Block Group 1 in Census Tract 0112 contained in voting district EP 61, and Block 301, Block 302, Block 303, Block 305, Block 330, Block 331, Block 332, Block 333, Block 334, Block 347, Block 348, Block 353 and Block 354 of Block Group 3 in Census Tract 0112 contained in voting district EP 61 in the District Two magisterial district and that portion of Summers county not included in the twenty-sixth delegate district shall constitute the twenty-seventh delegate district and shall elect five delegates: Provided, That not more than
four delegates may be nominated, elected or appointed
who are residents of any county within the twenty-
seventh delegate district;

(28) The county of Greenbrier except voting district
EP 54 in the Meadow Bluff magisterial district shall
constitute the twenty-eighth delegate district and shall
elect two delegates;

(29) All of the county of Fayette, voting district EP
54 in the Meadow Bluff magisterial district of Green-
brier county, voting district EP 131 and voting district
EP 132 in the District One magisterial district of
Kanawha county, voting district EP 25 in the Jefferson
magisterial district of Nicholas county, and Block 101,
Block 102, Block 103, Block 104, Block 105, Block 106,
Block 107, Block 108, Block 109, Block 137, Block 138,
Block 142 and Block 143 of Block Group 1 in Census
Tract 0112 contained in voting district EP 61 and Block
301, Block 302, Block 303, Block 305, Block 330, Block
318, Block 332, Block 333, Block 334, Block 347, Block
319, Block 353 and Block 354 of Block Group 3 in Census
Tract 0112 contained in voting district EP 61 in the
District Two magisterial district of Raleigh county shall
constitute the twenty-ninth delegate district and shall
elect three delegates;

(30) That portion of magisterial District One not
included in the twenty-ninth delegate district, all of the
magisterial District Two, voting district EP 307, voting
district EP 310, voting district EP 312, voting district
EP 313, voting district EP 314, voting district EP 350,
voting district EP 352, voting district EP 353, voting
district EP 355, voting district EP 356, voting district
and that portion of Block Group 1 in Census Tract 0132
voting contained in voting district EP 311, Block 201,
Block 206, Block 207 and Block 208 of Block Group 2
in Census Tract 0132 contained in voting district EP
311, that portion of Block Group 3 in Census Tract 0132
contained in voting district EP 311, Block 101, Block
102B, Block 120, Block 121, Block 122, Block 123, Block
124, Block 125, Block 126, Block 127, Block 128, Block
129, Block 130, Block 131, Block 132, Block 133, Block
Ch. 3] REDISTRICTING 327


(31) That portion of magisterial District Five of Kanawha county not included in the thirtieth delegate district shall constitute the thirty-first delegate district and shall elect one delegate;
(32) That portion of Kanawha county not included in the twenty-ninth, thirtieth or thirty-first delegate district shall constitute the thirty-second delegate district and shall elect four delegates;

(33) The counties of Calhoun and Clay and voting district EP 12 and voting district EP 13 of the DeKalb-Troy magisterial district of Gilmer county shall constitute the thirty-third delegate district and shall elect one delegate;

(34) The county of Braxton and the Center magisterial district, the City magisterial district and the Glenville magisterial district of Gilmer county shall constitute the thirty-fourth delegate district and shall elect one delegate;

(35) The Grant magisterial district, the Hamilton magisterial district, the Summersville magisterial district, the Wilderness magisterial district, voting district EP 16 of the Beaver magisterial district, voting district EP 24, voting district EP 26 and voting district EP 27 of the Jefferson magisterial district, and voting district EP 28, voting district EP 29 and voting district EP 30 of the Kentucky magisterial district of Nicholas county shall constitute the thirty-fifth delegate district and shall elect one delegate;

(36) The county of Webster and that portion of Nicholas county not included in the twenty-ninth or thirty-fifth delegate district shall constitute the thirty-sixth delegate district and shall elect one delegate;

(37) The counties of Pocahontas and Randolph shall constitute the thirty-seventh delegate district and shall elect two delegates;

(38) The county of Lewis and voting district EP 4 and voting district EP 7 of the Banks magisterial district of Upshur county shall constitute the thirty-eighth delegate district and shall elect one delegate;

(39) The Buckhannon magisterial district, the Meade magisterial district, the Washington magisterial district, voting district EP 35, that portion of voting district EP 14 and that portion of voting district EP 15
of the Union magisterial district and voting district EP 6 of the Banks magisterial district of Upshur county shall constitute the thirty-ninth delegate district and shall elect one delegate;

(40) The county of Barbour and that portion of Upshur county not included in the thirty-eighth or thirty-ninth delegate district shall constitute the fortieth delegate district and shall elect one delegate;

(41) The county of Harrison shall constitute the forty-first delegate district and shall elect four delegates;

(42) The county of Taylor, voting district EP 125 of the Palatine magisterial district of Marion county, and voting district EP 62 of the Eastern magisterial district of Monongalia county shall constitute the forty-second delegate district and shall elect one delegate;

(43) That portion of Marion county not included in the forty-second delegate district shall constitute the forty-third delegate district and shall elect three delegates;

(44) That portion of Monongalia county not included in the forty-second delegate district shall constitute the forty-fourth delegate district and shall elect four delegates;

(45) All of the Grant magisterial district, all of the Kingwood magisterial district, that portion of voting district EP 6, voting district EP 17, voting district EP 18 and voting district EP 19 of the Portland magisterial district and voting district EP 9, voting district EP 12, that portion of Block Group 1 in Census Tract 9639 contained in voting district EP 10, that portion of Block Group 4 in Census Tract 9639 contained in voting district EP 10, and Block 301, Block 302, Block 303, Block 304, Block 305B, Block 312B, Block 313, Block 314, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 326, Block 337, Block 338 and Block 399 of Block Group 3 in Census Tract 9639 contained in voting district EP 10, and Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338B, Block 340B, Block 349, Block 350, Block 351, Block 352,
Block 353, Block 354, Block 355, Block 356, Block 357, Block 358, Block 359, Block 360, Block 361, Block 362, Block 363, Block 364, Block 365, Block 366, Block 367, Block 368 and Block 399C of Block Group 3 in Census Tract 9643 contained in voting district EP 11 of the Valley magisterial district of Preston county shall constitute the forty-fifth delegate district and shall elect one delegate;

(46) The county of Tucker and that portion of Preston county not included in the forty-fifth delegate district shall constitute the forty-sixth delegate district and shall elect one delegate;

(47) The county of Hardy and all of the county of Pendleton except voting district EP 13 of the Union magisterial district shall constitute the forty-seventh delegate district and shall elect one delegate;


(50) The county of Hampshire and that portion of Mineral county not included in the forty-eighth or forty-ninth delegate district shall constitute the fiftieth delegate district and shall elect one delegate;

(51) The county of Morgan and voting district EP 40,
voting district EP 41 and voting district EP 42 of the Hedgesville magisterial district of Berkeley county shall constitute the fifty-first delegate district and shall elect one delegate;


(53) All of the Gerrardstown magisterial district, all of the Mill Creek magisterial district and voting district EP 29, voting district EP 31, voting district EP 34, voting district EP 35 and Block 119, Block 127, Block 128, Block 130, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142 and Block 143 of Block Group 1 in Census Tract 9720 contained in voting district EP 25 of the Arden magisterial district of Berkeley county shall constitute the fifty-third delegate district and shall elect one delegate;

(54) That portion of Berkeley county not included in the fifty-first, fifty-second or fifty-third delegate district shall constitute the fifty-fourth delegate district and shall elect one delegate;

(55) All of the Middleway magisterial district, all of the Shepherdstown magisterial district, voting district EP 22 of the Kabletown magisterial district and voting district EP 13 of the Harpers Ferry magisterial district of Jefferson county shall constitute the fifty-fifth delegate district and shall elect one delegate; and

(56) That portion of Jefferson county not included in the fifty-fifth delegate district shall constitute the fifty-sixth delegate district and shall elect one delegate.
(d) Regardless of the changes in delegate district boundaries made by the provisions of subsection (c) of this section, the delegates elected at the general election held in the year one thousand nine hundred ninety shall continue to hold their offices as members of the House of Delegates for the term, and as representatives of the county or delegate district, for which each thereof, respectively, was elected. Any appointment made prior to the first day of December, one thousand nine hundred ninety-two, to fill a vacancy in the office of a member of the House of Delegates shall be made for the remainder of the term, and as representative of the county or delegate district, for which the vacating delegate was elected or appointed.

§1-2-2b. Precinct boundary changes.

If an election precinct of this state includes territory contained in more than one senatorial or delegate district, as such senatorial districts are established by subsection (d), section one of this article, and as such delegate districts are established by subsection (c), section two of this article, it shall be the duty of the county commission of the county in which such precinct is located, prior to the fifteenth day of March, one thousand nine hundred ninety-two, to alter the boundary lines of its election precincts so that no precinct contains territory included in more than one senatorial or delegate district. The provisions of this section shall govern and control notwithstanding any conflicting provision of section seven, article one, chapter three of this code.
DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 1991

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>8</td>
<td>24</td>
<td>16</td>
<td>226</td>
</tr>
<tr>
<td>2</td>
<td>214</td>
<td>9</td>
<td>204</td>
<td>17</td>
<td>210</td>
</tr>
<tr>
<td>3</td>
<td>215</td>
<td>10</td>
<td>205</td>
<td>18</td>
<td>203</td>
</tr>
<tr>
<td>4</td>
<td>224</td>
<td>11</td>
<td>228</td>
<td>19</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>209</td>
<td>12</td>
<td>223</td>
<td>20</td>
<td>213</td>
</tr>
<tr>
<td>6</td>
<td>206</td>
<td>13</td>
<td>201</td>
<td>21</td>
<td>211</td>
</tr>
<tr>
<td>7</td>
<td>6</td>
<td>14</td>
<td>221</td>
<td>22</td>
<td>18</td>
</tr>
</tbody>
</table>

Third Extraordinary Session, 1991

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>301</td>
</tr>
</tbody>
</table>
INDEX
SECOND AND THIRD
EXTRAORDINARY SESSIONS, 1991

ALTERNATIVE FUEL:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Alternative fuel initiatives

<table>
<thead>
<tr>
<th>Legislative findings</th>
<th>1</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use in new technologies</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Sales by nonutilities</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

APPROPRIATIONS:

Supplementing, amending, reducing and transferring specified unexpended amounts

<table>
<thead>
<tr>
<th>Account</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney General, Acct. No. 2400—Asbestos Litigation</td>
<td>2</td>
</tr>
<tr>
<td>Board of Trustees of University System, Health Sciences Acct. No. 2855</td>
<td>3</td>
</tr>
<tr>
<td>Department of Education and the Arts, Acct. No. 5342</td>
<td>8</td>
</tr>
<tr>
<td>Division of Health, Acct. No. 4190</td>
<td>7</td>
</tr>
<tr>
<td>Division of Human Services, Acct. No. 4050</td>
<td>6</td>
</tr>
<tr>
<td>Division of Veterans' Affairs, Acct. No. 4040</td>
<td>5</td>
</tr>
<tr>
<td>Fire Commission, Acct. No. 6170</td>
<td>9</td>
</tr>
<tr>
<td>Fire Commission, Acct. No. 8465</td>
<td>10</td>
</tr>
<tr>
<td>Mines and Minerals Operations Fund</td>
<td>11</td>
</tr>
<tr>
<td>State Department of Education, State Aid to Schools, Acct. No. 2950</td>
<td>4</td>
</tr>
</tbody>
</table>

ASBESTOS ACCOUNT:

<table>
<thead>
<tr>
<th>Account</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creation</td>
<td>12</td>
</tr>
<tr>
<td>Disbursements</td>
<td>12</td>
</tr>
<tr>
<td>Funding</td>
<td>12</td>
</tr>
<tr>
<td>Purpose</td>
<td>12</td>
</tr>
<tr>
<td>State Building Commission Fund</td>
<td>12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Account</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audits</td>
<td>12</td>
</tr>
<tr>
<td>Deposit and disbursement funds</td>
<td>12</td>
</tr>
<tr>
<td>Security</td>
<td>12</td>
</tr>
</tbody>
</table>

CHILD WELFARE:

Abuse and neglect

<table>
<thead>
<tr>
<th>Account</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>13</td>
</tr>
<tr>
<td>Redefined</td>
<td>13</td>
</tr>
</tbody>
</table>

CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>1</td>
<td>306</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>2,2b</td>
<td>318</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>28</td>
</tr>
<tr>
<td>4</td>
<td>10</td>
<td>4</td>
<td>104</td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>5:5a*</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>4B*;4C*</td>
<td></td>
<td>66</td>
</tr>
</tbody>
</table>

[335]
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>26*</td>
<td></td>
<td>Health Care Provider Medicaid Enhancement Tax</td>
</tr>
<tr>
<td>15</td>
<td>1F</td>
<td>1</td>
<td>Clarifying terms of entitlement to benefits for officers and employees performing military service</td>
</tr>
<tr>
<td>16</td>
<td>26</td>
<td>3,4,5,6; 6a*:10,11,12,14,15,16</td>
<td>Solid Waste Management Board</td>
</tr>
<tr>
<td>17C</td>
<td>15</td>
<td>1</td>
<td>Bumper height limits and alteration of motor vehicles</td>
</tr>
<tr>
<td>18A</td>
<td>4</td>
<td>8a</td>
<td>Minimum monthly salaries for school service personnel</td>
</tr>
<tr>
<td>18B</td>
<td>3</td>
<td>3</td>
<td>Additional duties of board of directors, state college system</td>
</tr>
<tr>
<td>18B</td>
<td>10</td>
<td>4</td>
<td>Medical education fee</td>
</tr>
<tr>
<td>18B</td>
<td>16*</td>
<td>5</td>
<td>Health care education</td>
</tr>
<tr>
<td>18C</td>
<td>3</td>
<td>1</td>
<td>Health education loan program</td>
</tr>
<tr>
<td>20</td>
<td>1</td>
<td>5</td>
<td>Salary, expenses, oath and bond of Director of Division of Natural Resources</td>
</tr>
<tr>
<td>20</td>
<td>5E</td>
<td>3,6,25*</td>
<td>Hazardous waste definitions, promulgation of regulations by director, household hazardous wastes</td>
</tr>
<tr>
<td>20</td>
<td>5F</td>
<td>1,2,4,4a, 4b,4c*, 4d*, 5,5a, 6,6a*:10,11,12,14,15,16</td>
<td>Solid Waste Management Act</td>
</tr>
<tr>
<td>20</td>
<td>5N*</td>
<td>1</td>
<td>Solid Waste Landfill Closure Assistance Program</td>
</tr>
<tr>
<td>20</td>
<td>7</td>
<td>1c*</td>
<td>Conservation officers, ranks, salary schedule, base pay and exceptions</td>
</tr>
<tr>
<td>20</td>
<td>9</td>
<td>1,2,3,4,5a, 6,7,8,9,10,12,12a,12b, 12c,12d,12e*,12f*,13</td>
<td>County and Regional Solid Waste Authorities</td>
</tr>
<tr>
<td>20</td>
<td>11</td>
<td>1,2,3,5; 5a*,5b*,6,7,8*,9*:10*:11*,12*</td>
<td>West Virginia Recycling Program</td>
</tr>
<tr>
<td>22</td>
<td>1</td>
<td>11a*</td>
<td>Division of Environmental Protection</td>
</tr>
<tr>
<td>22A</td>
<td>3</td>
<td>1</td>
<td>Surface Coal Mining and Reclamation Act, Site-specific bonding</td>
</tr>
<tr>
<td>22A</td>
<td>7*</td>
<td></td>
<td>Office of Miners' Health, Safety and Training</td>
</tr>
<tr>
<td>24</td>
<td>1</td>
<td>3</td>
<td>Compensation, Public Service Commission</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>1,1b,1c,1h*</td>
<td>Powers and duties of Public Service Commission</td>
</tr>
<tr>
<td>24</td>
<td>2D*</td>
<td></td>
<td>Alternative fuel initiatives</td>
</tr>
<tr>
<td>24A</td>
<td>1</td>
<td>3</td>
<td>Exemption from chapter, motor carriers of passengers and property for hire</td>
</tr>
<tr>
<td>29</td>
<td>3</td>
<td>12b</td>
<td>Disposition of fees charged by Fire Marshal</td>
</tr>
<tr>
<td>49</td>
<td>1</td>
<td>3</td>
<td>Redefining terms relating to child abuse and neglect</td>
</tr>
<tr>
<td>50</td>
<td>1</td>
<td>2,3,8,9</td>
<td>Apportionment of magistrates, salary, magistrate court clerks, deputy clerks, magistrate assistants, duties and salaries</td>
</tr>
<tr>
<td>50</td>
<td>3</td>
<td>8</td>
<td>Audits of magistrate courts</td>
</tr>
<tr>
<td>CONGRESSIONAL REAPPORTIONMENT:</td>
<td>Ch.</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-----</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Districts by counties</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td>14</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Second</td>
<td>14</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Third</td>
<td>14</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Map illustrating</td>
<td>14</td>
<td>29</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ENVIRONMENTAL PROTECTION:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Division of Environmental Protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appropriations and personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer and allocation</td>
<td>15</td>
<td>44</td>
</tr>
<tr>
<td>Effect on personnel</td>
<td>15</td>
<td>45</td>
</tr>
<tr>
<td>Coal production</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mines and Minerals Operations Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creation</td>
<td>15</td>
<td>50</td>
</tr>
<tr>
<td>Deposits</td>
<td>15</td>
<td>50</td>
</tr>
<tr>
<td>Special tax</td>
<td>15</td>
<td>49</td>
</tr>
<tr>
<td>Imposition, payment, collection</td>
<td>15</td>
<td>49</td>
</tr>
<tr>
<td>Creation</td>
<td>15</td>
<td>35</td>
</tr>
<tr>
<td>Definitions</td>
<td>15</td>
<td>34</td>
</tr>
<tr>
<td>Director</td>
<td>15</td>
<td>35</td>
</tr>
<tr>
<td>Functions transferred to</td>
<td>15</td>
<td>40</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>15</td>
<td>36,37</td>
</tr>
<tr>
<td>Rules and regulations, legislative proposal</td>
<td>15</td>
<td>44</td>
</tr>
<tr>
<td>Salary</td>
<td>15</td>
<td>38</td>
</tr>
<tr>
<td>Environmental protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reorganization</td>
<td>15</td>
<td>43</td>
</tr>
<tr>
<td>Environmental Protection Energy Advisory Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>15</td>
<td>47</td>
</tr>
<tr>
<td>Redesignation</td>
<td>15</td>
<td>47</td>
</tr>
<tr>
<td>Environmental Protection Reorganization Advisory Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>15</td>
<td>48</td>
</tr>
<tr>
<td>Creation</td>
<td>15</td>
<td>48</td>
</tr>
<tr>
<td>Hearings</td>
<td>15</td>
<td>51</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>15</td>
<td>35</td>
</tr>
<tr>
<td>Legislative findings, statement of policy and purpose</td>
<td>15</td>
<td>31</td>
</tr>
<tr>
<td>Natural Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Functions and offices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer by executive order</td>
<td>15</td>
<td>41</td>
</tr>
<tr>
<td>Offices transferred to</td>
<td>15</td>
<td>41</td>
</tr>
<tr>
<td>Saving provisions of article</td>
<td>15</td>
<td>45</td>
</tr>
<tr>
<td>Supervisory officers</td>
<td>15</td>
<td>39</td>
</tr>
<tr>
<td>Appointment</td>
<td>15</td>
<td>39</td>
</tr>
<tr>
<td>Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixed by director</td>
<td>15</td>
<td>39</td>
</tr>
<tr>
<td>Transfer of duties to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive order</td>
<td>15</td>
<td>39</td>
</tr>
<tr>
<td>Legislative oversight</td>
<td>15</td>
<td>43</td>
</tr>
<tr>
<td>Transfers generally</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect</td>
<td>15</td>
<td>42</td>
</tr>
<tr>
<td>Legislative oversight</td>
<td>15</td>
<td>43</td>
</tr>
<tr>
<td>Saving provisions of article</td>
<td>15</td>
<td>45</td>
</tr>
<tr>
<td>Miners' Health, Safety and Training</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appropriations and personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer and allocation</td>
<td>15</td>
<td>58</td>
</tr>
<tr>
<td>Definitions</td>
<td>15</td>
<td>55</td>
</tr>
<tr>
<td>Director</td>
<td>15</td>
<td>55</td>
</tr>
<tr>
<td>Appointment</td>
<td>15</td>
<td>56</td>
</tr>
<tr>
<td>Functions transferred to</td>
<td>15</td>
<td>57</td>
</tr>
<tr>
<td>Legislative rules</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promulgation</td>
<td>15</td>
<td>58</td>
</tr>
<tr>
<td>Offices transferred to</td>
<td>15</td>
<td>57</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>15</td>
<td>57</td>
</tr>
<tr>
<td>Salary</td>
<td>15</td>
<td>56</td>
</tr>
<tr>
<td>Redesignation</td>
<td>15</td>
<td>54</td>
</tr>
</tbody>
</table>
### ENVIRONMENTAL PROTECTION—(continued):

<table>
<thead>
<tr>
<th>Act</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface Coal Mining and Reclamation Act</td>
<td>15</td>
<td>51</td>
</tr>
<tr>
<td>Site-specific bonding</td>
<td>15</td>
<td>51</td>
</tr>
<tr>
<td>Legislative rule establishing</td>
<td>15</td>
<td>52</td>
</tr>
<tr>
<td>Contents</td>
<td>15</td>
<td>52</td>
</tr>
<tr>
<td>Expiration</td>
<td>15</td>
<td>54</td>
</tr>
</tbody>
</table>

### FIRE MARSHAL:

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees</td>
<td>16</td>
<td>61</td>
</tr>
<tr>
<td>Disposition</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### MAGISTRATES:

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistants</td>
<td>1</td>
<td>304</td>
</tr>
<tr>
<td>Duties</td>
<td>1</td>
<td>304</td>
</tr>
<tr>
<td>Salary</td>
<td>1</td>
<td>303</td>
</tr>
<tr>
<td>Clerks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Magistrate court Duties</td>
<td>1</td>
<td>303</td>
</tr>
<tr>
<td>Salary</td>
<td>1</td>
<td>302</td>
</tr>
<tr>
<td>Magistrate court Audit</td>
<td>1</td>
<td>305</td>
</tr>
<tr>
<td>Number</td>
<td>1</td>
<td>297</td>
</tr>
<tr>
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<td>1</td>
<td>300</td>
</tr>
</tbody>
</table>

### MEDICAID ENHANCEMENT:

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Care Provider Medicaid Enhancement Act</td>
<td>17</td>
<td>80</td>
</tr>
<tr>
<td>Abrogation of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ambulance Service Provider Medicaid Enhancement Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ambulance Service Provider Medicaid Enhancement Fund</td>
<td>17</td>
<td>79</td>
</tr>
<tr>
<td>Composition</td>
<td>17</td>
<td>75</td>
</tr>
<tr>
<td>Creation</td>
<td>17</td>
<td>74</td>
</tr>
<tr>
<td>Department of Health and Human Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties of Secretary</td>
<td>17</td>
<td>77</td>
</tr>
<tr>
<td>Expiration</td>
<td>17</td>
<td>75</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>17</td>
<td>76</td>
</tr>
<tr>
<td>Definitions</td>
<td>17</td>
<td>72</td>
</tr>
<tr>
<td>Dentist Provider Medicaid Enhancement Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>17</td>
<td>74</td>
</tr>
<tr>
<td>Creation</td>
<td>17</td>
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</tr>
<tr>
<td>Dentist Provider Medicaid Enhancement Fund</td>
<td>17</td>
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<td>Department of Health and Human Resources</td>
<td></td>
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<td>Duties of Secretary</td>
<td>17</td>
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</tr>
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<td>Powers and duties</td>
<td>17</td>
<td>76</td>
</tr>
<tr>
<td>Enhancement funds</td>
<td>17</td>
<td>78</td>
</tr>
<tr>
<td>General Medicaid Enhancement Board</td>
<td></td>
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</tr>
<tr>
<td>Composition</td>
<td>17</td>
<td>73</td>
</tr>
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<td>Creation</td>
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<td>73</td>
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<tr>
<td>Department of Health and Human Resources</td>
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<tr>
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<td>17</td>
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<tr>
<td>Powers and duties</td>
<td>17</td>
<td>76</td>
</tr>
<tr>
<td>Outpatient Hospital Medicaid Enhancement Board</td>
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</tr>
<tr>
<td>Citizens members</td>
<td>17</td>
<td>75</td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
<td></td>
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<tr>
<td>Composition</td>
<td>17</td>
<td>75</td>
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<tr>
<td>Creation</td>
<td>17</td>
<td>75</td>
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<tr>
<td>Department of Health and Human Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duties of Secretary</td>
<td>17</td>
<td>77</td>
</tr>
<tr>
<td>Expiration</td>
<td>17</td>
<td>75</td>
</tr>
</tbody>
</table>
### MEDICAID ENHANCEMENT—(continued):

<table>
<thead>
<tr>
<th>Health Care Provider Medicaid Enhancement Act—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outpatient Hospital Medicaid Enhancement Board—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outpatient Hospital Medicaid Enhancement Fund</td>
<td>17</td>
<td>78</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>17</td>
<td>76</td>
</tr>
<tr>
<td>Provider fee schedule</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective date</td>
<td>17</td>
<td>79</td>
</tr>
<tr>
<td>Reimbursement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount and remittance</td>
<td>17</td>
<td>79</td>
</tr>
<tr>
<td>Health Care Provider Medicaid Enhancement Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Periods and methods</td>
<td>17</td>
<td>88</td>
</tr>
<tr>
<td>Administration</td>
<td>17</td>
<td>86</td>
</tr>
<tr>
<td>Article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abrogation</td>
<td>17</td>
<td>97</td>
</tr>
<tr>
<td>Severability</td>
<td>17</td>
<td>98</td>
</tr>
<tr>
<td>Crimes and penalties</td>
<td>17</td>
<td>96</td>
</tr>
<tr>
<td>Definitions</td>
<td>17</td>
<td>83</td>
</tr>
<tr>
<td>Delinquent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cancellation of medicaid certification</td>
<td>17</td>
<td>95</td>
</tr>
<tr>
<td>Effective dates</td>
<td>17</td>
<td>96</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>17</td>
<td>96</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>17</td>
<td>82</td>
</tr>
<tr>
<td>Medical assistance program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health care providers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excise tax</td>
<td>17</td>
<td>84</td>
</tr>
<tr>
<td>Records</td>
<td>17</td>
<td>92</td>
</tr>
<tr>
<td>Payment</td>
<td>17</td>
<td>89</td>
</tr>
<tr>
<td>Delinquent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cancellation of medicaid certification</td>
<td>17</td>
<td>95</td>
</tr>
<tr>
<td>Extension of time</td>
<td>17</td>
<td>90</td>
</tr>
<tr>
<td>Short title</td>
<td>17</td>
<td>83</td>
</tr>
<tr>
<td>Tax return</td>
<td>17</td>
<td>89</td>
</tr>
<tr>
<td>Filing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extension of time</td>
<td>17</td>
<td>90</td>
</tr>
<tr>
<td>Place</td>
<td>17</td>
<td>91</td>
</tr>
<tr>
<td>Refunds and credits</td>
<td>17</td>
<td>92</td>
</tr>
<tr>
<td>Signing</td>
<td>17</td>
<td>91</td>
</tr>
<tr>
<td>Physician Provider Medicaid Enhancement Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abrogation of article</td>
<td>17</td>
<td>70</td>
</tr>
<tr>
<td>Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citizen members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td>17</td>
<td>68</td>
</tr>
<tr>
<td>Composition</td>
<td>17</td>
<td>67</td>
</tr>
<tr>
<td>Creation</td>
<td>17</td>
<td>67</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>17</td>
<td>68</td>
</tr>
<tr>
<td>Definitions</td>
<td>17</td>
<td>66</td>
</tr>
<tr>
<td>Physician provider fee schedule</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective date</td>
<td>17</td>
<td>70</td>
</tr>
<tr>
<td>Physician Provider Medicaid Enhancement Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>17</td>
<td>69</td>
</tr>
<tr>
<td>Reimbursement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount and remittance</td>
<td>17</td>
<td>70</td>
</tr>
</tbody>
</table>

### MILITARY SERVICE:

<table>
<thead>
<tr>
<th>Officer and employee benefits:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance of military service</td>
<td>18</td>
<td>99</td>
</tr>
</tbody>
</table>

### MOTOR VEHICLES:

<table>
<thead>
<tr>
<th>Alterations and modifications</th>
<th>19</th>
<th>100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bumper height</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inspection of vehicles</td>
<td>19</td>
<td>102</td>
</tr>
</tbody>
</table>
### 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**
  - 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
<table>
<thead>
<tr>
<th>SOLID WASTE—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>County and Regional Solid Waste Authorities—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of Directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>22</td>
<td>228</td>
</tr>
<tr>
<td>Composition</td>
<td>22</td>
<td>228</td>
</tr>
<tr>
<td>Expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment</td>
<td>22</td>
<td>230</td>
</tr>
<tr>
<td>Management by</td>
<td>22</td>
<td>230</td>
</tr>
<tr>
<td>Vacancies</td>
<td>22</td>
<td>228</td>
</tr>
<tr>
<td>Class A facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval by referendum</td>
<td>22</td>
<td>243</td>
</tr>
<tr>
<td>Monthly tonnage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in maximum</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval by referendum</td>
<td>22</td>
<td>248</td>
</tr>
<tr>
<td>Class B facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conversion to Class A</td>
<td>22</td>
<td>245</td>
</tr>
<tr>
<td>Approval by referendum</td>
<td>22</td>
<td>247</td>
</tr>
<tr>
<td>Commercial sitting plan</td>
<td>22</td>
<td>239</td>
</tr>
<tr>
<td>Criteria</td>
<td>22</td>
<td>239</td>
</tr>
<tr>
<td>Facilities subject to</td>
<td>22</td>
<td>239</td>
</tr>
<tr>
<td>Public hearings</td>
<td>22</td>
<td>240</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>22</td>
<td>241</td>
</tr>
<tr>
<td>Solid waste facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of site approval</td>
<td></td>
<td>250</td>
</tr>
<tr>
<td>Judicial review</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local approval required</td>
<td>22</td>
<td>242</td>
</tr>
<tr>
<td>County Authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assumption of powers and duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Election by county commission</td>
<td>22</td>
<td>230</td>
</tr>
<tr>
<td>Definitions</td>
<td>22</td>
<td>224</td>
</tr>
<tr>
<td>Health, Bureau of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance</td>
<td>22</td>
<td>234</td>
</tr>
<tr>
<td>Landfills, other facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land acquisition</td>
<td>22</td>
<td>236</td>
</tr>
<tr>
<td>Restrictions on deposits</td>
<td>22</td>
<td>236</td>
</tr>
<tr>
<td>Geographic limitation</td>
<td>22</td>
<td>221</td>
</tr>
<tr>
<td>Legislative findings and purpose</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common waste control plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval</td>
<td>22</td>
<td>234</td>
</tr>
<tr>
<td>Development</td>
<td>22</td>
<td>232</td>
</tr>
<tr>
<td>Management</td>
<td>22</td>
<td>230</td>
</tr>
<tr>
<td>Natural Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance</td>
<td>22</td>
<td>234</td>
</tr>
<tr>
<td>Powers, duties and responsibilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of Directors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>22</td>
<td>229</td>
</tr>
<tr>
<td>Vacancies</td>
<td>22</td>
<td>229</td>
</tr>
<tr>
<td>Establishment authorized</td>
<td>22</td>
<td>228</td>
</tr>
<tr>
<td>Solid waste</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residences or businesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mandatory disposal</td>
<td>22</td>
<td>235</td>
</tr>
<tr>
<td>Public Service Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td>22</td>
<td>235</td>
</tr>
<tr>
<td>Solid Waste Management Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td>22</td>
<td>235</td>
</tr>
<tr>
<td>Solid Waste Management Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance</td>
<td>22</td>
<td>234</td>
</tr>
<tr>
<td>Hazardous Waste Management Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>22</td>
<td>160</td>
</tr>
<tr>
<td>SOLID WASTE—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Hazardous Waste Management Act—(continued):</td>
<td></td>
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<tr>
<td>Household hazardous waste</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Handling and disposal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td></td>
<td>22 169</td>
</tr>
<tr>
<td>Regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promulgation by Director</td>
<td></td>
<td>22 163</td>
</tr>
<tr>
<td>Motor carriers of passengers and property for hire</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemptions from chapter</td>
<td></td>
<td>22 289</td>
</tr>
<tr>
<td>Natural Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Director</td>
<td></td>
<td></td>
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<tr>
<td>Household hazardous waste</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Handling and disposal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td></td>
<td>22 169</td>
</tr>
<tr>
<td>Regulations, hazardous waste management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promulgation</td>
<td></td>
<td>22 163</td>
</tr>
<tr>
<td>Salary, expenses, oath and bond</td>
<td></td>
<td>22 159</td>
</tr>
<tr>
<td>Public Service Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairman</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional compensation</td>
<td></td>
<td>22 279,280,281</td>
</tr>
<tr>
<td>Compensation</td>
<td></td>
<td>22 278,279,280</td>
</tr>
<tr>
<td>Current</td>
<td></td>
<td>22 281</td>
</tr>
<tr>
<td>General provisions</td>
<td></td>
<td>22 276</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td></td>
<td>22 282</td>
</tr>
<tr>
<td>Additional</td>
<td></td>
<td>22 283</td>
</tr>
<tr>
<td>Waiver</td>
<td></td>
<td>22 283</td>
</tr>
<tr>
<td>Solid waste flow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional powers and duties</td>
<td></td>
<td>22 287</td>
</tr>
<tr>
<td>Solid waste assessment interim fee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection, return, payment</td>
<td></td>
<td>22 251</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td></td>
<td>22 254</td>
</tr>
<tr>
<td>Exemptions</td>
<td></td>
<td>22 253</td>
</tr>
<tr>
<td>Imposition</td>
<td></td>
<td>22 251</td>
</tr>
<tr>
<td>Procedure and administration</td>
<td></td>
<td>22 253</td>
</tr>
<tr>
<td>Proceeds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dedication</td>
<td></td>
<td>22 254</td>
</tr>
<tr>
<td>Regulated motor carriers</td>
<td></td>
<td>22 252</td>
</tr>
<tr>
<td>Severability of provisions</td>
<td></td>
<td>22 254</td>
</tr>
<tr>
<td>Solid waste disposal facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td></td>
<td>22 253</td>
</tr>
<tr>
<td>Solid waste facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of need</td>
<td></td>
<td>22 284</td>
</tr>
<tr>
<td>Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td></td>
<td>22 285</td>
</tr>
<tr>
<td>Priority of disposal</td>
<td></td>
<td>22 284</td>
</tr>
<tr>
<td>Solid Waste Landfill Closure Assistance Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment fee</td>
<td></td>
<td>22 204</td>
</tr>
<tr>
<td>Collection, return, payment</td>
<td></td>
<td>22 205</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td></td>
<td>22 207</td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
<td>22 207</td>
</tr>
<tr>
<td>Effective date</td>
<td></td>
<td>22 208</td>
</tr>
<tr>
<td>Exemptions</td>
<td></td>
<td>22 207</td>
</tr>
<tr>
<td>Imposition</td>
<td></td>
<td>22 204</td>
</tr>
<tr>
<td>Out of shed waste</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional fee</td>
<td></td>
<td>22 208</td>
</tr>
<tr>
<td>Procedure and administration</td>
<td></td>
<td>22 207</td>
</tr>
<tr>
<td>Proceeds</td>
<td></td>
<td>22 208</td>
</tr>
<tr>
<td>Regulated motor carriers</td>
<td></td>
<td>22 206</td>
</tr>
<tr>
<td>Assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td></td>
<td>22 215</td>
</tr>
<tr>
<td>Limitation on</td>
<td></td>
<td>22 214</td>
</tr>
<tr>
<td>Closure Cost Assistance Fund</td>
<td></td>
<td>22 216</td>
</tr>
<tr>
<td>Commercial program</td>
<td></td>
<td>22 203</td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
<td>22 202</td>
</tr>
<tr>
<td>SOLID WASTE—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Solid Waste Landfill Closure Assistance Program—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grants and gifts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of Director to accept</td>
<td>22</td>
<td>218</td>
</tr>
<tr>
<td>Legislative findings and purpose</td>
<td>22</td>
<td>202</td>
</tr>
<tr>
<td>Projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Management and control</td>
<td>22</td>
<td>219</td>
</tr>
<tr>
<td>Promulgation of rules</td>
<td>22</td>
<td>217</td>
</tr>
<tr>
<td>Remedial actions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of costs</td>
<td>22</td>
<td>217</td>
</tr>
<tr>
<td>Procedures</td>
<td>22</td>
<td>217</td>
</tr>
<tr>
<td>Right of entry</td>
<td>22</td>
<td>218</td>
</tr>
<tr>
<td>Solid Waste Management Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closure revenue bonds, renewal notes, refunding bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bondholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal remedies</td>
<td>22</td>
<td>213</td>
</tr>
<tr>
<td>Issuance</td>
<td>22</td>
<td>208</td>
</tr>
<tr>
<td>Manner</td>
<td>22</td>
<td>219</td>
</tr>
<tr>
<td>Requirements</td>
<td>22</td>
<td>209</td>
</tr>
<tr>
<td>Lawful investments</td>
<td>22</td>
<td>214</td>
</tr>
<tr>
<td>Not debt of State</td>
<td>22</td>
<td>213</td>
</tr>
<tr>
<td>Proceeds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purposes for use</td>
<td>22</td>
<td>213</td>
</tr>
<tr>
<td>Reserve, replacement, improvement, sinking funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establishment</td>
<td>22</td>
<td>212</td>
</tr>
<tr>
<td>Solid Waste Management Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article governing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orders, inspection and enforcement</td>
<td>22</td>
<td>194</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil and criminal penalties</td>
<td>22</td>
<td>194</td>
</tr>
<tr>
<td>Definitions</td>
<td>22</td>
<td>171</td>
</tr>
<tr>
<td>Municipal solid waste incineration, backhauling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibition against</td>
<td>22</td>
<td>200</td>
</tr>
<tr>
<td>Exception</td>
<td>22</td>
<td>200</td>
</tr>
<tr>
<td>Natural Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Director</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td>22</td>
<td>175</td>
</tr>
<tr>
<td>Rules and rule making</td>
<td>22</td>
<td>175</td>
</tr>
<tr>
<td>Open dumps</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compliance schedule</td>
<td>22</td>
<td>186</td>
</tr>
<tr>
<td>Prohibition against</td>
<td>22</td>
<td>185</td>
</tr>
<tr>
<td>Purpose and legislative findings</td>
<td>22</td>
<td>170</td>
</tr>
<tr>
<td>Residential solid waste disposal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special provision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gratuitous</td>
<td>22</td>
<td>182</td>
</tr>
<tr>
<td>Site approval</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing of certificate</td>
<td>22</td>
<td>182</td>
</tr>
<tr>
<td>Fee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solid waste facilities, commercial</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article governing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil and criminal penalties</td>
<td>22</td>
<td>194</td>
</tr>
<tr>
<td>Assessment fee</td>
<td>22</td>
<td>188</td>
</tr>
<tr>
<td>Exemptions</td>
<td>22</td>
<td>191</td>
</tr>
<tr>
<td>Penalties for noncompliance</td>
<td>22</td>
<td>189,190</td>
</tr>
<tr>
<td>Proceeds from</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dedication</td>
<td>22</td>
<td>192</td>
</tr>
<tr>
<td>Certificate of need</td>
<td>22</td>
<td>284</td>
</tr>
<tr>
<td>Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td>22</td>
<td>285</td>
</tr>
<tr>
<td>Priority of disposal</td>
<td>22</td>
<td>284</td>
</tr>
</tbody>
</table>
### SOLID WASTE—(continued):  
*SOLID WASTE Management Act—(continued):*

#### Solid waste facilities, commercial—(continued):  
**Class A**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>County assessment</td>
<td>22</td>
<td>201</td>
</tr>
<tr>
<td>Amount</td>
<td>22</td>
<td>201</td>
</tr>
<tr>
<td>Restriction</td>
<td>22</td>
<td>201</td>
</tr>
<tr>
<td>Purpose</td>
<td>22</td>
<td>201</td>
</tr>
<tr>
<td>Closure deadline</td>
<td>22</td>
<td>198</td>
</tr>
<tr>
<td>Limited extension</td>
<td>22</td>
<td>198</td>
</tr>
<tr>
<td>Limit on size</td>
<td>22</td>
<td>182</td>
</tr>
<tr>
<td>Exemption</td>
<td>22</td>
<td>182,183</td>
</tr>
<tr>
<td>Referendum</td>
<td>22</td>
<td>184</td>
</tr>
</tbody>
</table>

#### Open dumps

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance schedule</td>
<td>22</td>
<td>186</td>
</tr>
<tr>
<td>Prohibition against</td>
<td>22</td>
<td>186</td>
</tr>
<tr>
<td>Permits</td>
<td>22</td>
<td>186</td>
</tr>
<tr>
<td>Condition on receiving</td>
<td>22</td>
<td>199</td>
</tr>
</tbody>
</table>

#### State ownership

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feasibility and report requirement</td>
<td>22</td>
<td>200</td>
</tr>
</tbody>
</table>

### Solid Waste Management Board

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment</td>
<td>22</td>
<td>143</td>
</tr>
<tr>
<td>Bondholders</td>
<td>22</td>
<td>156</td>
</tr>
<tr>
<td>Legal remedies</td>
<td>22</td>
<td>156</td>
</tr>
</tbody>
</table>

#### Bonds

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuance</td>
<td>22</td>
<td>151</td>
</tr>
<tr>
<td>Proceeds</td>
<td>22</td>
<td>151</td>
</tr>
<tr>
<td>Use</td>
<td>22</td>
<td>151</td>
</tr>
<tr>
<td>Refunding</td>
<td>22</td>
<td>151</td>
</tr>
<tr>
<td>Renewal</td>
<td>22</td>
<td>151</td>
</tr>
<tr>
<td>Reserve, replacement, improvement and sinking funds</td>
<td>22</td>
<td>154</td>
</tr>
</tbody>
</table>

#### Composition

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>22</td>
<td>143</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposal projects</td>
<td>22</td>
<td>138</td>
</tr>
<tr>
<td>Acquisition</td>
<td>22</td>
<td>145</td>
</tr>
<tr>
<td>Bonds, tax levy, assessment</td>
<td>22</td>
<td>145</td>
</tr>
<tr>
<td>Election</td>
<td>22</td>
<td>145</td>
</tr>
<tr>
<td>Loan agreements</td>
<td>22</td>
<td>157</td>
</tr>
<tr>
<td>Rental, fees, service charges</td>
<td>22</td>
<td>157</td>
</tr>
</tbody>
</table>

#### Disposal sheds

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designation and establishment</td>
<td>22</td>
<td>145</td>
</tr>
<tr>
<td>Funds, properties, etc.</td>
<td>22</td>
<td>144</td>
</tr>
<tr>
<td>Audit</td>
<td>22</td>
<td>144</td>
</tr>
<tr>
<td>Use</td>
<td>22</td>
<td>144</td>
</tr>
<tr>
<td>Restrictions</td>
<td>22</td>
<td>144</td>
</tr>
</tbody>
</table>

#### Members

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation</td>
<td>22</td>
<td>144</td>
</tr>
<tr>
<td>Qualifications</td>
<td>22</td>
<td>143</td>
</tr>
<tr>
<td>Reimbursement</td>
<td>22</td>
<td>143</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organization</td>
<td>22</td>
<td>143</td>
</tr>
<tr>
<td>Powers, duties and responsibilities</td>
<td>22</td>
<td>146</td>
</tr>
<tr>
<td>Reserve, replacement, improvement and sinking funds</td>
<td>22</td>
<td>154</td>
</tr>
</tbody>
</table>

#### Solid Waste Management Plan

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development</td>
<td>22</td>
<td>150</td>
</tr>
</tbody>
</table>

### WV Resource Recovery—Solid Waste Disposal Authority

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redesignation</td>
<td>22</td>
<td>142</td>
</tr>
</tbody>
</table>

### West Virginia Recycling Program

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>County recycling programs</td>
<td>22</td>
<td>261</td>
</tr>
<tr>
<td>Assessment fee</td>
<td>22</td>
<td>261</td>
</tr>
<tr>
<td>Collection, return, payment</td>
<td>22</td>
<td>264</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>22</td>
<td>264</td>
</tr>
</tbody>
</table>
## INDEX

**SOLID WASTE**—(continued):

West Virginia Recycling Program—(continued):

County recycling programs—(continued):

Assessment fee—(continued):

- Exemptions
  - Procedure and administration
  - Proceeds
  - Dedication
  - Regulated motor carriers

Solid and hazardous waste

Supplemental fee

- Collection, return, payment
- Criminal penalties
- Definitions
- Effective date
- Exemptions
- Imposition
- Procedure and administration
- Proceeds
- Dedication
- Regulated motor carriers
- Severability of provisions
- Effective date
- Establishment

Election

- Procedures

Petition for referendum

Severability of provisions

Solid waste disposal facility

Definition

Legislative findings and purpose

Recycled newsprint advisory committee

- Legislative findings
- Report

Recycled oil advisory committee

- Functions

Recycling facilities

- Exemption

Recycling goals

Recycling industries

Feasibility study

Short title

State recycling program

Establishment

Recycled products

- Procurement
- Prohibited items
- Disposal