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DONALD L. KOPP
Clerk

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FOREWORD


Second Regular Session, 1994

The Second Regular Session of the 71st Legislature convened on January 12, 1994. The Constitutional sixty-day limit on the duration of the session was midnight, March 12, 1994. The Governor issued a proclamation on March 10, extending the session for a period of three days for the sole purpose of considering the Budget, and the Legislature adjourned sine die on March 13, 1994.

Bills totaling 1,293 were introduced in the two houses during the session (760 House, 66 of which were carryover bills from the 1993 Regular Session, and 533 Senate). The Legislature passed 196 bills, 118 House and 78 Senate.

The Governor vetoed four House bills (H. B. 4019, Creating the Governor's Work Force Development Council; H. B. 4093, Exempting Division of Natural Resources from travel rules and regulations in the Purchasing Division of the Department of Administration; H. B. 4177, Limiting the authority of the governor to expend excess collections in special revenue accounts; and H. B. 4429, Earmarking one fourth of one percent of a televised racing day's pari-mutuel pool to the Race Track Employees' Pension Trust) and three Senate bills (Com. Sub. for S. B. 130, Relating to solid waste landfill closure assistance program; Com. Sub. for S. B. 357, Exempting municipal power generating facilities from business and occupation tax; and Com. Sub. for S. B. 388, Relating to parkways, economic development and tourism authority), leaving a net total of 189 bills, 114 House and 75 Senate, which became law.

Three bills became law without the Governor's signature: S. B. 306, Relating to certain municipal retirement system funds; Com. Sub. for H. B. 4212, Including service spent by participants in the teachers retirement system as officers for a statewide professional employee organization as service credit; and H. B. 4425, Enlarging the time period in which to file a human rights complaint.

There were 78 Concurrent Resolutions introduced during the session, 40 House and 38 Senate, of which 12 House and 11 Senate were adopted. Twenty House Joint Resolutions and 13 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One House Joint Resolution, Archaic Language Amendment, and one Senate Joint Resolution, Removing Sheriff's Term Limit Amendment, were adopted by the Legislature. The House introduced 24 House Resolutions and the Senate introduced 38 Senate Resolutions, of which 10 House and 33 Senate were adopted.

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The Senate failed to pass 69 House bills passed by the House, and 80 Senate bills failed passage by the House. Four Senate bills and 9 House bills died in conference.

First Extraordinary Session, 1994

The Proclamation calling the Legislature into Extraordinary Session at 12:00 P.M., Noon, March 14, 1994, contained 15 items for consideration.

The Legislature passed 35 bills, 11 House and 24 Senate. The Legislature adopted two Concurrent Resolutions, one Joint Resolution (H. J. R. 500, Infrastructure Improvement Amendment). The House adopted five House resolutions. The Senate adopted six Senate resolutions.

The Legislature adjourned the Extraordinary Session sine die on March 20, 1994.

Second Extraordinary Session, 1993

The Proclamation calling the Legislature into Extraordinary Session at 1:00 P.M., October 17, 1993, contained five items for consideration.

The Legislature passed three Senate bills during this Extraordinary Session: S. B. 100, Relating to bonds issued by school building authority; S. B. 101, Relating to bonds issued by regional jail and correctional facility authority and S. B. 102, Supplementing, amending, reducing and expiring certain accounts of budget bill.

In a mandamus proceeding, submitted November 30, 1993, and filed on December 13, 1993, the Supreme Court declined to issue a writ of mandamus and declared that S. B. 100 violated Section 4, Article X of the Constitution.

One House Concurrent Resolution was adopted by the Legislature, H. C. R. 2, Directing the Farm Management Commission to delay sales of timber from the lands of the former Andrew S. Rowan Home in Monroe County.

The Legislature adjourned the Extraordinary Session sine die on October 18, 1994.

* * * * * * * * * *

These volumes 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 Department of Administration, Purchasing Division Section, State Capitol, Charleston, West Virginia 25305.

DONALD L. KOPP,
Clerk of the House and
Keeper of the Rolls.
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REGULAR SESSION, 1994

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President—Keith Burdette, Parkersburg
President Pro Temp—William R. Sharpe, Jr., Weston
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Estil L. Bevins, Williamson
Doorkeeper—Porter Cotton, Chesapeake

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2 Appointed to fill the vacancy created by the resignation of Charles B. Felton, Jr.

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TOTAL ............................................. 34
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1994

OFFICERS

Speaker—Robert C. Chambers, Huntington
Speaker Pro Tem—Phyllis J. Rutledge, Charleston
Clerk—Donald L. Kopp, Clarksburg
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—E. Don Yoak, Spencer

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<td>Danny L. Ellis (D).</td>
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<td>70th</td>
</tr>
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<td>Larry Hendricks (D).</td>
<td>Chapmanville...</td>
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<td>David E. Whitman (D).</td>
<td>Chapmanville...</td>
<td>Appt. 2/17/89, 69th</td>
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<td>Twenty-first.</td>
<td>Delores W. Cook (D).</td>
<td>Ridgeview...</td>
<td>69th-70th</td>
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<tr>
<td>Twenty-second.</td>
<td>Ernest C. Moore (D).</td>
<td>Thorpe...</td>
<td>60th-63rd: 65th-70th</td>
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<td>Emily W. Yeager (D).</td>
<td>Welch...</td>
<td>Appt. 3/10/93</td>
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<tr>
<td>Twenty-third.</td>
<td>Richard Browning (D).</td>
<td>Oceana...</td>
<td>69th-70th</td>
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<td>W. Richard Staton (D).</td>
<td>Mullens...</td>
<td>69th-70th</td>
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<td>Twenty-fourth.</td>
<td>Eustace Frederick (D).</td>
<td>Bluefield...</td>
<td>Appt. 10/29/93</td>
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<td>Twenty-fifth.</td>
<td>Richard D. Flanigan (D).</td>
<td>Princeton...</td>
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<td></td>
<td>Odell H. Huffman (D).</td>
<td>Princeton...</td>
<td>59th-60th: (Senate 61st-66th): 70th</td>
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<td>Twenty-sixth.</td>
<td>Mary Pearl Compton (D).</td>
<td>Union...</td>
<td>69th-70th</td>
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<tr>
<td>Twenty-seventh</td>
<td>Robert S. Kiss (D)</td>
<td>Beckley</td>
<td>69th-70th</td>
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<td>Warren R. McGraw, II (D)</td>
<td>Beckley</td>
<td>70th</td>
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<td></td>
<td>Robert P. Pulliam (D)</td>
<td>Beckley</td>
<td>67th-69th</td>
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<tr>
<td></td>
<td>Pat Reed (D)</td>
<td>Beckley</td>
<td>70th</td>
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<td>Arnold W. Ryan (D)</td>
<td>Hinton</td>
<td>69th-70th</td>
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<tr>
<td>Twenty-eighth</td>
<td>James J. Rowe (D)</td>
<td>Lewisburg</td>
<td>69th-70th</td>
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<td></td>
<td>Bill Wallace (R)</td>
<td>Clintonville</td>
<td>69th-70th</td>
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<tr>
<td>Twenty-ninth</td>
<td>Tom Louison (D)</td>
<td>Oak Hill</td>
<td>67th-68th</td>
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<td>Bruce N. Petersen (D)</td>
<td>Fayetteville</td>
<td>67th-68th</td>
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<td>John Pino (D)</td>
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<td>67th-68th</td>
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<td>Thirtieth</td>
<td>Bonnie L. Brown (D)</td>
<td>South Charleston</td>
<td>66th-68th</td>
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<td></td>
<td>Joe Farris (D)</td>
<td>Charleston</td>
<td>70th</td>
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<td>Nancy Kessel (D)</td>
<td>Charleston</td>
<td>70th</td>
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<td></td>
<td>Margaret Miller (R)</td>
<td>South Charleston</td>
<td>69th-70th</td>
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<tr>
<td></td>
<td>Phyllis J. Rutledge (D)</td>
<td>Charleston</td>
<td>59th-61st</td>
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<td>Joe F. Smith (D)</td>
<td>Charleston</td>
<td>59th-61st</td>
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<td>Sharon Spencer (D)</td>
<td>Charleston</td>
<td>66th-68th</td>
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<tr>
<td>Thirty-first</td>
<td>Nelson A. Sorah (D)</td>
<td>Charleston</td>
<td>69th</td>
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<tr>
<td>Thirty-second</td>
<td>Steve Harrison (R)</td>
<td>Nitro</td>
<td>70th</td>
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<td></td>
<td>Dick Henderson (R)</td>
<td>St. Albans</td>
<td>69th-70th</td>
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<td></td>
<td>Ronald Neal Walters (R)</td>
<td>Cross Lanes</td>
<td>70th</td>
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<tr>
<td>Thirty-third</td>
<td>Clinton N. Nichols (D)</td>
<td>Clay</td>
<td>69th-70th</td>
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<tr>
<td>Thirty-fourth</td>
<td>John Campbell (D)</td>
<td>Sutton</td>
<td>70th</td>
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<tr>
<td>Thirty-fifth</td>
<td>C. Farrell Johnson (D)</td>
<td>Summersville</td>
<td>68th-70th</td>
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<td>Thirty-sixth</td>
<td>Joseph B. Talbott (D)</td>
<td>Webster Springs</td>
<td>69th</td>
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<tr>
<td>Thirty-seventh</td>
<td>Joe Martin (D)</td>
<td>Elkins</td>
<td>69th-70th</td>
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<td></td>
<td>William D. Proudford (D)</td>
<td>Elkins</td>
<td>70th</td>
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<td>Thirty-eighth</td>
<td>James R. Fealy (D)</td>
<td>Weston</td>
<td>69th-70th</td>
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<tr>
<td>Thirty-ninth</td>
<td>Dale F. Riggs (R)</td>
<td>Buckhannon</td>
<td>69th-70th</td>
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<tr>
<td>Fortieth</td>
<td>Richard H. Ewens (D)</td>
<td>Philippi</td>
<td>70th</td>
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<tr>
<td>Forty-first</td>
<td>Percy C. Ashcraft, II (D)</td>
<td>Clarksburg</td>
<td>66th-70th</td>
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<td></td>
<td>Ron Fragala (D)</td>
<td>Nutter Fort</td>
<td>70th</td>
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<td>Larry A. Linch (D)</td>
<td>Clarksburg</td>
<td>70th</td>
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<td>Barbara A. Warner (D)</td>
<td>Bridgeport</td>
<td>70th</td>
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<td>John F. Bennett (D)</td>
<td>Grafton</td>
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<tr>
<td>Forty-third</td>
<td>Nick Fantasia (D)</td>
<td>Kingmont</td>
<td>52nd-53rd</td>
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<td>Roman W. Prezioso (D)</td>
<td>Fairmont</td>
<td>64th-65th</td>
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<td>William E. Stewart (D)</td>
<td>Fairmont</td>
<td>68th-70th</td>
</tr>
<tr>
<td>Forty-fourth</td>
<td>Robert C. Beach (D)</td>
<td>Core</td>
<td>69th-70th</td>
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<td>Stephen L. Cook (D)</td>
<td>Morgantown</td>
<td>65th (Senate)</td>
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<td></td>
<td>Brian Gallagher (D)</td>
<td>Morgantown</td>
<td>69th</td>
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<td>Michael A. Oliverio, II (D)</td>
<td>Morgantown</td>
<td>69th-70th</td>
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<tr>
<td>Forty-fifth</td>
<td>Larry A. Williams (D)</td>
<td>Tunnelton</td>
<td>62nd-63rd</td>
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<td>David Collins (D)</td>
<td>Davis</td>
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<tr>
<td>Forty-sixth</td>
<td>Harold K. Michael (D)</td>
<td>Moorefield</td>
<td>69th-70th</td>
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<tr>
<td>Forty-seventh</td>
<td>Allen V. Evans (R)</td>
<td>Dowea</td>
<td>70th</td>
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<td>Forty-eighth</td>
<td>James T. Nicol (D)</td>
<td>Keyser</td>
<td>70th</td>
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<tr>
<td>Forty-ninth</td>
<td>Jerry L. Mezzтрадиa (D)</td>
<td>Romney</td>
<td>66th-70th</td>
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<tr>
<td>Fifty-first</td>
<td>Charles S. Trump, 1V (R)</td>
<td>Berkeley Springs</td>
<td>70th</td>
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<td>Fifty-second</td>
<td>Vicki V. Douglas (D)</td>
<td>Martinsburg</td>
<td>70th</td>
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<tr>
<td>Fifty-third</td>
<td>Larry V. Faircloth (R)</td>
<td>Inwood</td>
<td>65th-70th</td>
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<tr>
<td>Fifty-fourth</td>
<td>John Overington (R)</td>
<td>Martinsburg</td>
<td>67th-70th</td>
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<td>Fifty-fifth</td>
<td>John Dolye (D)</td>
<td>Shepherdstown</td>
<td>66th</td>
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<tr>
<td>Fifty-sixth</td>
<td>Dale Manuel (D)</td>
<td>Charles Town</td>
<td>69th-70th</td>
</tr>
</tbody>
</table>

1Appointed to fill the vacancy created by the resignation of William G. Carper, Jr.
2Appointed to fill the vacancy created by the resignation of Randy Schoonover.
3Appointed to fill the vacancy created by the resignation of David F. Miller.

(D) Democrats ........................................... 79
(R) Republicans .......................................... 21

TOTAL .................................................. 100
COMMITTEES OF THE
HOUSE OF DELEGATES
Regular Session, 1994

STANDING

Agriculture and Natural Resources

Beach (Chair of Agriculture), Compton (Vice Chair of Agriculture), Love (Chair of Natural Resources), Johnson (Vice Chair of Natural Resources), Campbell, Fragale, Heck, Linch, McGraw, Nichols, Nicol, Pettit, Preece, Proudfoot, Stewart, Talbott, Vest, Warner, L. Williams, Anderson, Border, Evans, Leggett, Riggs and Willison.

Banking and Insurance

S. Williams (Chair of Banking), Flanigan (Vice Chair of Banking), Phillips (Chair of Insurance), Gallagher (Vice Chair of Insurance), Beane, Collins, S. Cook, Dempsey, Douglas, Farris, Huntwork, Louisos, Michael, Moore, Rutledge, Sorah, Staton, Tribett, Vest, Ashley, Harrison, McKinley, Riggs and L. White.

Constitutional Revision

Brown (Chair), Pethtel (Vice Chair), Beane, Browning, Ellis, Houvouras, Huffman, Kessel, Linch, Lindsey, Manuel, Moore, Petersen, Preece, Prezioso, Pulliam, Ryan, Tribett, H. White, Faircloth, Harrison, McKinley, Overington, Trump and Wallace.

Education

Ashcraft (Chair), Prezioso (Vice Chair), Adkins, Beach, Bennett, Ellis, Everson, Fealy, Hendricks, Nichols, Nicol, Paxton, Pettit, Preece, Proudfoot, Spencer, Talbott, L. Williams, S. Williams, Yeager, Anderson, Harrison, Henderson, Overington and Richards.

Finance

Kiss (Chair), Browning (Vice Chair), Campbell, Compton, D. Cook, S. Cook, Doyle, Farris, Flanigan, Johnson, Leach,
Lindsey, Mezzatesta, Petersen, Pettit, Rutledge, Ryan, Warner, H. White, P. White, Burk, Leggett, McKinley, Miller and Wallace.

**Government Organization**


**Health and Human Resources**

P. White (*Chair*), S. Cook (*Vice Chair*), Brown, Brum, Compton, Douglas, Doyle, Ellis, Fantasia, Fealy, Flanagan, Frederick, Gallagher, Huffman, Kessel, Leach, McGraw, Pettit, Pulliam, Spencer, Facemyer, Henderson, Miller, Richards and Walters.

**Industry and Labor**

Spencer (*Chair*), Reed (*Vice Chair*), Adkins, D. Cook, Farris, Frederick, Heck, Hendricks, Higgins, Louisos, Nichols, Oliverio, Paxton, Petersen, Phillips, Stewart, Varner, Whitman, L. Williams, Yeager, Facemyer, Henderson, Nesbitt, Overington and Walters.

**Judiciary**


**Political Subdivisions**

Manuel (*Chair*), Collins (*Vice Chair*), Beach, Bennett, Doyle, Everson, Fantasia, Huntwork, Johnson, Lindsey, Nicol, Oliverio, Pettit, Pino, Proudfoot, Reed, Ryan, Smith, H. White, Yeager, Anderson, Faircloth, Richards, Trump and Willison.

**Roads and Transportation**

Campbell (*Chair*), Warner (*Vice Chair*), Adkins, Brum,

Rules

Chambers (Chair), Ashcraft, Houvouras, Kiss, Martin, Mezzatesta, Rowe, Staton, P. White, Ashley, Burk and Faircloth.

JOINT

Enrolled Bills

Moore (Cochair), D. Cook (Vice Cochair), Overington and Willison.

Government and Finance

Chambers (Cochair), Ashcraft, Houvouras, Kiss, Rowe, Ashley and Burk.

Government Operations

Martin (Cochair), Love, Michael, Border and Evans.

Legislative Rule-Making Review

Gallagher (Cochair), Douglas (Vice Cochair), Compton, Huntwork, Burk and Faircloth.

Oversight Commission on
Education Accountability

Ashcraft (Cochair), Browning, Mezzatesta, Spencer, S. Williams and Burk.

Oversight Commission on
Regional Jail and Correctional Facility

Rowe (Cochair), Louisos, Love, Martin, Tribett and Riggs.

Pensions and Retirement

Browning (Cochair), Prezioso (Vice Cochair), Campbell, Lindsey, Smith, Ashley and Wallace.
Rules

Chambers (Cochair), and Burk.

SELECT

Select Committee on Health Care Policies

Martin (Chair), P. White (Vice Chair), Beane, Brown, Campbell, Compton, S. Cook, Douglas, Doyle, Fragale, Gallagher, Huntwork, Kessel, Mezzatesta, Michael, Petersen, Phillips, Pulliam, Varner, Vest, Ashley, Border, Burk, Faircloth and Walters.

STATUTORY LEGISLATIVE COMMISSIONS

Interstate Cooperation

Pethtel (Cochair), Beach, Brown, Doyle, Farris, Sorah and L. White.

Juvenile Law

Brown (Chair), Douglas and Trump.

Special Investigations

Chambers (Cochair), Martin, Rowe, Faircloth and Trump.
COMMITTEES OF THE SENATE
Regular Session, 1994

STANDING

Agriculture
Whitlow (Chair), Withers (Vice Chair), Anderson, Chafin, Dittmar, Helmick, Holliday, Miller, Ross and Schoonover.

Banking and Insurance
Minard (Chair), Helmick (Vice Chair), Bailey, Blatnik, Craigo, Dittmar, Jones, Manchin, Sharpe, Tomblin, Wagner, Wooton and Yoder.

Confirmations
Blatnik (Chair), Grubb (Vice Chair), Claypole, Jones, Lucht, Tomblin, Wehrle, Wooton and Boley.

Education
Lucht (Chair), Dalton (Vice Chair), Bailey, Blatnik, Grubb, Humphreys, Jones, Macnaughtan, Miller, Plymale, Wagner, Whitlow, Withers and Boley.

Energy, Industry and Mining
Sharpe (Chair), Macnaughtan (Vice Chair), Chernenko, Dalton, Grubb, Helmick, Manchin, Miller, Ross, Schoonover, Walker, Whitlow, Withers and Yoder.

Finance
Tomblin (Chair), Manchin (Vice Chair), Bailey, Blatnik, Chafin, Chernenko, Craigo, Helmick, Jones, Lucht, Schoonover, Sharpe, Walker, Wehrle, Whitlow, Withers and Boley.

Government Organization
Holliday (Chair), Wagner (Vice Chair), Chernenko, Claypole, Craigo, Jones, Lucht, Manchin, Minard, Plymale, Tomblin, Wehrle, Wiedebusch and Yoder.

Health and Human Resources
Walker (Chair), Macnaughtan (Vice Chair), Blatnik, Chafin, Chernenko, Craigo, Grubb, Holliday, Manchin, Plymale, Sharpe, Wehrle, Wooton and Boley.

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Interstate Cooperation
Wagner (Chair), Claypole (Vice Chair), Anderson, Chafin, Ross, Schoonover and Whitlow.

Judiciary
Wooton (Chair), Wiedebusch (Vice Chair), Anderson, Claypole, Dalton, Dittmar, Grubb, Holliday, Humphreys, Macnaughtan, Miller, Minard, Plymale, Ross, Wagner and Yoder.

Labor
Chernenko (Chair), Claypole (Vice Chair), Bailey, Chafin, Grubb, Holliday, Humphreys, Macnaughtan, Wagner and Wiedebusch.

Military
Helmick (Chair), Bailey (Vice Chair), Chernenko, Dalton, Humphreys, Minard, Wiedebusch, Wooton and Boley.

Natural Resources
Dittmar (Chair), Plymale (Vice Chair), Anderson, Craigo, Helmick, Humphreys, Macnaughtan, Miller, Minard, Ross, Whitlow, Wiedebusch, Withers and Yoder.

Pensions
Wehrle (Chair), Manchin (Vice Chair), Dittmar, Lucht, Miller, Walker and Withers.

Rules
Burdette (Chair), Anderson, Blatnik, Craigo, Lucht, Manchin, Sharpe, Tomblin, Wooton and Boley.

Small Business
Anderson (Chair), Ross (Vice Chair), Blatnik, Craigo, Holliday, Jones, Minard, Plymale, Schoonover, Sharpe, Walker and Wehrle.

Transportation
Plymale (Chair), Withers (Vice Chair), Chafin, Dalton, Dittmar, Tomblin, Wagner, Wiedebusch and Yoder.
SENATE COMMITTEES

JOINT
Commission on Special Investigations
Burdette (Cochair), Blatnik, Craigo, Wooton and Boley.

Enrolled Bills
Bailey (Cochair), Claypole, Dalton, Humphreys and Walker.

Government and Finance
Burdette (Cochair), Craigo, Lucht, Sharpe, Tomblin, Wooton and Boley.

Government Operations
Holliday (Cochair), Chernenko, Manchin, Wiedebusch and Yoder.

Legislative Commission on Juvenile Law
Lucht (Cochair), (Vacancy), Yoder.

Legislative Oversight Commission on
Education Accountability
Lucht (Cochair), Blatnik, (Vacancy), Tomblin, Wagner and Boley.

Legislative Oversight Committee on
Regional Jail and Correctional Facility Authority
Holliday (Cochair), Blatnik, Craigo, Minard, Wiedebusch and Yoder.

Legislative Rule-Making Review
Manchin (Cochair), Grubb (Vice Chair), Anderson, Macnaughtan, Minard and Boley.

Pensions and Retirement
Wehrle (Cochair), Manchin (Vice Chair), Dittmar, Lucht, Miller, Walker and Withers.

Rules
Burdette (Cochair), Craigo and Boley.
AN ACT to amend and reenact sections three, four and five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting the liability of landowners who make their land available to the public; extending the limitation to the granting of easements and licenses on land; extending the limitation to the granting of leases, easements or licenses to federal entities; changing the definitions of “charge” and “recreational purposes”; and adding the definition of “noncommercial recreational activity”.

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-3. Limiting duty of landowner who grants a lease, easement or license of land to federal, state, county or municipal government or any agency thereof.

§19-25-4. Application of article.

§19-25-3. Limiting duty of landowner who grants a lease, easement or license of land to federal, state, county or municipal government or any agency thereof.

Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes does not by giving a lease, easement or license: (a) Extend any assurance to any person using the land that the premises are safe for any purpose; or (b) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise.

§19-25-4. Application of article.

Nothing herein limits in any way any liability which otherwise exists: (a) For willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity; or (b) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the federal government or any agency thereof, the state or any agency thereof, or any county or municipality or agency thereof.

Nothing herein creates a duty of care or ground of liability for injury to person or property.
Nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational or wildlife propagation purposes to exercise due care in his or her use of such land and in his or her activities thereon.

*§19-25-5. Definitions.*

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

(1) "Charge" means:

(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion which may not exceed fifty dollars a year per recreational participant;

(B) For purposes of limiting liability for military training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;

(2) "Land" includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(3) "Noncommercial recreational activity" shall not include any activity for which there is any charge which exceeds fifty dollars per year, per participant;

(4) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

(5) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

*Clerk's Note: This section was also amended by H. B. 4065 (Chapter 61), which passed subsequent to this act.*
(6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface-mining activities, as governed by article three, chapter twenty-two-a of this code, or from the use of surface in the conduct of underground coal mining as governed by articles one, two and three of said chapter, and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of natural resources and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that the premises has the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and

(7) "Military training" includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard, a member of a reserve unit of the armed forces of the United States or a person on active duty in the armed forces of the United States, acting in that capacity.

CHAPTER 2

(Com. Sub. for S. B. 259—By Senators Burdette, Mr. President, Craigo, Wooton, Yoder, Dittmar, Miller, Ross, Dalton, Whitlow, Wagner, Minard, Claypole and Anderson)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fourteen, chapter fifty-five of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to enforcement of foreign judgments generally; entitling citizens of this state against whom a judgment is enforced to the same exemption from execution, attachment or seizure and sale as a citizen of the state from which the judgment was given is entitled; requirements of debt collector; and civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

§55-14-2. Filing and status of foreign judgments.

1 A copy of any foreign judgment authenticated in accordance with an act of Congress or the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of any circuit court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner: Provided, That notwithstanding any other provision of this article to the contrary, a citizen of this state shall be entitled to the same exemption from execution, attachment or seizure and sale as a citizen of the state where the original judgment was entered. A debt collector seeking to enforce a foreign judgment in this state shall ensure that any suggestee execution or other legal process seeking to seize property of a debtor pursuant to a foreign judgment shall clearly state, on the face of the petition or other filing, any property exempt in the state in which the original judgment was entered and it shall specify that the property is exempt from execution, attachment or seizure and sale in this state. Any person seeking to enforce a foreign judgment in this state who violates any provision of this section shall be liable to the person against whom the judgment is sought to be
enforced for actual damages and, in addition thereto, shall be liable to such person for a penalty in an amount not more than one thousand dollars. Any person seeking to enforce a foreign judgment in this state who willfully violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail not more than one year, or both fined and confined.

CHAPTER 3
(S. B. 234—Originating in the Committee on Finance)

[Passed March 9, 1994; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, “former” account no. 6700, “WVFIMS” account no. fund 9017, fiscal year 1994, organization 0803, and division of highways—federal aid highway matching fund, “former” account no. 6701, “WVFIMS” account no. fund 9018, fiscal year 1994, organization 0803, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to “former” account no. 6700, “WVFIMS” account no. fund 9017, fiscal year 1994, organization 0803, and to “former” account no. 6701, “WVFIMS” account no. fund 9018, fiscal year 1994, organization 0803, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, be supplemented, amended, reduced and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.
### Appropriations

**90—Division of Highways**

(WV Code Chapters 17 and 17C)

"Former" Account No. 6700

"WVFIMS" Account No.

**Fund 9017 FY 1994 Org 0803**

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>106</td>
<td>Debt Service</td>
</tr>
<tr>
<td>107</td>
<td>ARC Assessment</td>
</tr>
<tr>
<td>108</td>
<td>Maintenance, Expressway</td>
</tr>
<tr>
<td>109</td>
<td>Trunkline and Feeder</td>
</tr>
<tr>
<td>110</td>
<td>Maintenance, State</td>
</tr>
<tr>
<td>111</td>
<td>Local Services</td>
</tr>
<tr>
<td>112</td>
<td>Maintenance, Contract Paving and Secondary Road</td>
</tr>
<tr>
<td>113</td>
<td>Maintenance</td>
</tr>
<tr>
<td>114</td>
<td>Bridge Repair and Replacement</td>
</tr>
<tr>
<td>115</td>
<td>Industrial Access Roads</td>
</tr>
<tr>
<td>116</td>
<td>Inventory Revolving</td>
</tr>
<tr>
<td>117</td>
<td>Equipment Revolving</td>
</tr>
<tr>
<td>118</td>
<td>General Operations</td>
</tr>
<tr>
<td>119</td>
<td>Interstate Construction</td>
</tr>
<tr>
<td>120</td>
<td>Other Federal Aid Programs</td>
</tr>
<tr>
<td>121</td>
<td>Appalachian Programs</td>
</tr>
<tr>
<td>122</td>
<td>Nonfederal Aid Construction</td>
</tr>
<tr>
<td>123</td>
<td>Highway Litter Control</td>
</tr>
</tbody>
</table>

**Total** | $641,077,502

**91—Division of Highways—Federal Aid Highway Matching Fund**

(WV Code Chapters 17 and 17C)

"Former" Account No. 6701

"WVFIMS" Account No.

**Fund 9018 FY 1994 Org 0803**
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid accounts for the designated spending unit. The amounts as itemized for expenditure in fiscal year 1993-1994 shall be available for expenditure upon the effective date of this bill.

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CHAPTER 4

(H. B. 4556—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of available federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the governor's office—commission for national and community service, account no. 7754, “WVFIMS” account no. fund 8800, fiscal year 1994, organization 0100, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in fiscal year 1993-1994, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended by adding to title two, section five thereof, as follows:
TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations from federal funds.

EXECUTIVE

1910—Governor's Office—

Commission for National and Community Service

"Former" Account No. 7754

"WVFIMS" Account No.

Fund 8800 FY 1994 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Unclassified—Total ........... 096</td>
<td>$ 144,177</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget bill for the fiscal year 1993-1994 by providing for a new item of appropriation to be established therein to appropriate federal moneys available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. Such amount shall be available for expenditure upon passage of this bill.

CHAPTER 5

(H. B. 4330—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury to the department of commerce, labor and environmental resources, bureau of employment programs-workers' compensation fund, "former" account no. 9000, "WVFIMS" account no. fund 3440, fiscal year 1994, organization 0322, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-four, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Whereas, It appears that there now remains unappropriated a balance in “former” account no. 9000, “WVFIMS” account no. fund 3440, fiscal year 1994, organization 0322, available for further appropriation during the fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to “former” account no. 9000, “WVFIMS” account no. fund 3440, fiscal year 1994, organization 0322, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF COMMERCE, LABOR
4 AND ENVIRONMENTAL RESOURCES
5 129—Bureau of Employment Programs—
6 Workers’ Compensation Fund
7 (WV Code Chapter 23)
8 “Former” Account No. 9000
9 “WVFIMS” Account No.
10 Fund 3440 FY 1994 Org 0322
11
12
13 1 Personal Services ................ 001 $11,457,362
14 2 Annual Increment ............... 004 164,826
15 3 Employee Benefits .............. 010 4,363,754
16 4 Unclassified ..................... 099 16,721,807
17 5 Total .................. ........ $32,707,749
The purpose of this supplementary appropriation bill is to supplement and amend this account in the budget bill for the fiscal year 1993-1994 from the unappropriated balance, in order to implement program performance initiatives, by adding four hundred sixty-four thousand, eight hundred twenty dollars to the personal services line item, by adding one hundred seventy thousand, five hundred fourteen dollars to the employee benefits line item, and by adding four million, eight hundred three thousand, eleven dollars to the unclassified line item, for a total increase in authorized spending authority of five million, four hundred thirty-eight thousand, three hundred forty-five dollars to be available for expenditure upon passage of this bill.

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CHAPTER 6

(Com. Sub. for H. B. 4018—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a revenue shortfall reserve fund, funding and use of said fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. FINANCE DIVISION.


(a) Notwithstanding any provision of this section, the governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The governor may, in lieu of imposing a reduction in appropriations, request an appropriation
by the Legislature from the revenue shortfall reserve fund established in this section.

(b) A revenue shortfall reserve fund is hereby created within the state treasury. The revenue shortfall reserve fund shall be funded as set forth herein from surplus revenues, if any, in the state fund, general revenue, as such surplus revenues may accrue from time to time. Commencing with the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four and for each fiscal year thereafter, within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the revenue shortfall reserve fund the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended. The revenue shortfall reserve fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed five percent of the total appropriations from the state fund, general revenue, for the fiscal year just ended. If at the end of any fiscal year the revenue shortfall reserve fund is funded at an amount equal to or exceeding five percent of the state's general revenue fund budget for the fiscal year just ended, then there shall be no further obligation of the secretary under the provisions of this section to apply any surplus revenues as set forth herein until such time as the revenue shortfall reserve fund balance is less than five percent of the total appropriations from the state fund, general revenue.

(c) Not earlier than the first day of November of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the governor to reduce appropriations under section twenty, twenty-one or twenty-two of this article, then in such event the governor may notify in writing the presiding officers of both houses of the Legislature of his or her intention to convene the Legislature pursuant to section 19, article VI of the West Virginia Constitution for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session
of the Legislature to draw money from the surplus
revenue shortfall reserve fund to meet any anticipated
revenue shortfall. If the Legislature fails to enact a
supplementary appropriation from the revenue shortfall
reserve fund during any special legislative session called
for the purposes set forth in this section or during the
next preceding regular session of the Legislature, then
the governor may proceed with a reduction of appropri-
ations pursuant to section twenty-one and section
twenty-two of this article. Should any amount drawn
from the revenue shortfall reserve fund pursuant to an
appropriation made by the Legislature prove insuffi-
cient to address any anticipated shortfall, then the
governor may also proceed with a reduction of appro-
priations pursuant to sections twenty-one and twenty-
two of this article.

CHAPTER 7
(Com. Sub. for S. B. 121—By Senator Minard)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two,
chapter thirty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to collection of moneys from financial institutions and
bank holding companies for assessments, fees and other
necessary expenses for the administration of the division
of banking; payment of assessments and fees into a
special revenue account; setting forth the assessments
for various financial institutions; increasing the assess-
ments for state banking institutions; authority of
commissioner to collect necessary costs and expenses
incurred in connection with an examination for which
assessments are not provided; providing for examination
of records of an out-of-state institution; and allowing the
commissioner to maintain an action for the recovery for
all assessments, costs and expenses.

Be it enacted by the Legislature of West Virginia:
That section eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-8. Commissioner’s assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the “Commissioner’s Assessment and Examination Fund” which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the division of banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the division of banking, the amount of the excess shall be transferred to the general revenue fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) The commissioner of banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the state treasury for the division of banking assessments as follows:

(1) For each state banking institution, a semiannual assessment payable on the first day of January and the first day of July, each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding thirtieth day of June and the thirty-first day of December respectively as follows:
(2) For each industrial loan company an annual assessment as provided for in section thirteen, article seven, chapter thirty-one of this code, as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>36</td>
<td>$0</td>
<td>$2</td>
<td>$0</td>
</tr>
<tr>
<td>37</td>
<td>2</td>
<td>20</td>
<td>3,290</td>
</tr>
<tr>
<td>38</td>
<td>20</td>
<td>100</td>
<td>6,991</td>
</tr>
<tr>
<td>39</td>
<td>100</td>
<td>200</td>
<td>20,151</td>
</tr>
<tr>
<td>40</td>
<td>200</td>
<td>1,000</td>
<td>30,844</td>
</tr>
<tr>
<td>41</td>
<td>1,000</td>
<td>2,000</td>
<td>103,225</td>
</tr>
<tr>
<td>42</td>
<td>2,000</td>
<td>6,000</td>
<td>177,251</td>
</tr>
<tr>
<td>43</td>
<td>6,000</td>
<td>20,000</td>
<td>440,454</td>
</tr>
<tr>
<td>44</td>
<td>20,000</td>
<td>40,000</td>
<td>1,224,292</td>
</tr>
</tbody>
</table>

If an industrial loan company’s records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

(3) For each credit union, an annual assessment as provided for in section six, article ten, chapter thirty-one of this code as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>51</td>
<td>$0</td>
<td>$1,000,000</td>
<td>800</td>
</tr>
<tr>
<td>52</td>
<td>1,000,000</td>
<td>5,000,000</td>
<td>800</td>
</tr>
<tr>
<td>53</td>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,400</td>
</tr>
<tr>
<td>54</td>
<td>10,000,000</td>
<td>—</td>
<td>4,200</td>
</tr>
</tbody>
</table>

If an industrial loan company’s records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.
(4) For each bank holding company, an annual assessment as provided for in section five, article eight-a of this chapter. The annual assessment shall not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(5) For each supervised lender, an annual assessment as provided for in section one hundred five, article four, chapter forty-six-a of this code. Such annual assessment shall not exceed one hundred dollars on the first twenty-five thousand dollars of total outstanding loan balances and installment sales contract balances less unearned finance charges plus forty cents per thousand dollars on the remaining outstanding balances as of the preceding calendar year-end.

(c) The commissioner shall each December and each June prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, each June, prepare and send to each industrial loan company, each state credit union and each supervised lender a statement of the amount of the assessment due. The commissioner shall, annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

Assessments shall be prescribed annually, not later than the fifteenth day of June, by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the division of banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act, under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution
and pay into the special revenue account for the division of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state, or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(f) The commissioner of banking may maintain an action for the recovery of all assessments, costs and expenses in any court of competent jurisdiction.

CHAPTER 8

(H. B. 4616—By Delegates Phillips, S. Williams, Fealy, Kessel, Frederick, Flanigan and Spencer)

{Passed March 12, 1994: in effect ninety days from passage. Approved by the Governor.}

AN ACT to amend and reenact section thirty-five, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing banks to store records of checks and other documents by use of nonerasable optical image disks or by other records retention methods approved by the commissioner of banking.

Be it enacted by the Legislature of West Virginia:

That section thirty-five, article four, chapter thirty-one-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. BANKING INSTITUTIONS AND SERVICES GENERALLY.
§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals.

Any banking institution may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the commissioner of banking, all or any number of its checks, and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings, in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof, shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent, and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original. But every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least six years from the date of the last entry on such books or the date of making of such deposit tickets and card records, or, in the case of a banking institution exercising trust or fiduciary powers, until the expiration of six years from the date of termination of any trust or fiduciary relationship by a final accounting, release, court decree or other proper means of termination.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic
copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

CHAPTER 9

(COM. SUB. FOR H. B. 4130—BY DELEGATES S. WILLIAMS, PHILLIPS, H. WHITE, HARRISON AND RUTLEDGE)

[Passed March 1, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to banking institutions and services generally; the procedures for permissive closing of banking institutions; and required notice of such closings.

Be it enacted by the Legislature of West Virginia:

That section forty, article four, chapter thirty-one-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. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-40. Permissive closing on fixed weekday or portions of weekdays; notice of closings; emergency closings; procedures.

(a) In addition to Sundays and legal holidays any banking institution may remain closed on any one fixed weekday or portion of a day in each calendar week, or on any one fixed weekday and a portion of another weekday in each calendar week, or on portions of two weekdays in each calendar week, which day and/or portion or portions of the day or days when the
institution is to remain closed shall be designated by a
resolution adopted by the board of directors thereof.
Prior to any such closing, the banking institution shall
post a notice in a conspicuous place in its banking room
stating that beginning on a day certain the banking
institution will remain closed on a fixed weekday and/or
portions thereof. Concurrently with the posting of the
notice of closure, the banking institution shall cause a
notice to be published as a Class II legal advertisement
in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for the publication shall be the county in which the
principal office of the bank is located. The notice shall
set forth the time or times on which the bank will
remain closed and the date when the closing becomes
effective. A certified copy of the resolution certified by
the cashier or secretary of the banking institution,
together with an affidavit of posting and proof of
publication of the notice herein required, shall be filed
with the commissioner of banking.

(b) Any banking institution may close, without notice,
during any period of actual or threatened enemy attack
affecting the community in which the banking institu-
tion is located or during any period of other emergency
including, but not limited to, fire, flood, hurricane, riot,
snow or civil commotion: Provided, That the commis-
ioner shall be notified of any closing made pursuant to
this subsection as soon as practical thereafter.

(c) Any fixed weekday and/or portion of one or more
weekdays on which any banking institution shall elect
to close and any period during which the commissioner
may permit it to close pursuant to the authority of this
section shall constitute a legal holiday with respect to
the banking institution and not a business day or
banking day for the purposes of the law relating to
negotiable instruments, and any act or contract autho-
rized, required or permitted to be carried out or
performed at, by or with respect to the banking
institute may be performed on the next business or
banking day, and no liability or loss of rights on the part
of any person or banking institution shall result
therefrom.
AN ACT to amend and reenact section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting banking institutions to open temporary business offices at colleges and universities located in the same county as the banking institution for the limited purposes of opening bank accounts and accepting deposits; time limitations and restrictions; and requisite authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

(a) Except as otherwise provided herein, no banking institution shall engage in business at any place other than at its principal office in this state, at a branch bank in this state permitted by this section as a customer bank communication terminal permitted by section twelve-b of this article or at any loan organization office permitted by section twelve-c of this article.

(1) Acceptance of a deposit at the offices of any subsidiary, as defined in section two, article eight-a of this chapter, for credit to the customer's account at any other subsidiary of the same bank holding company is permissible and does not constitute branch banking.
(2) A banking institution located in a county where there is also a higher educational institution as defined in section two, article one, chapter eighteen-b of this code, may establish a temporary business office on the campus of any such educational institution located in such county for the limited purposes of opening accounts and accepting deposits for a period not in excess of four business days per semester, trimester or quarter:

Provided, That prior to opening any temporary office, a banking institution must first obtain written permission from the institution of higher education. The term “business days,” for the purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.

(3) Any banking institution which on January one, one thousand nine hundred eighty-four, was authorized to operate an off-premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of the seventh day of June, one thousand nine hundred eighty-four, operate such facility as a branch bank and it shall not be necessary, for the continued operation of such branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

(b) Except for a bank holding company, it shall be unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of each of two or more banks, or to control in any manner the election of a majority of the directors of two or more banks.

(c) A banking institution may establish branch banks either by:

(1) The construction, lease or acquisition of branch bank facilities as follows:
(A) After the seventh of June, one thousand nine hundred eighty-four, within the county in which that banking institution’s principal office is located or within the county in which that banking institution had prior to January first, one thousand nine hundred eighty-four, established a branch bank, pursuant to subdivision (2) of this subsection; and

(B) After the thirty-first of December, one thousand nine hundred eighty-six, within any county in this state; or

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) Notwithstanding any other provision of this chapter to the contrary, subject to and in furtherance of the board’s authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (g) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The principal office of a banking institution as of the seventh day of June, one thousand nine hundred eighty-four, shall continue to be the principal office of such banking institution for purposes of establishing branch banks under this section, notwithstanding any subsequent change in the location of such banking institution’s principal office.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank, provide notice of such application to all banking institutions. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereupon become a party to any hearing relating thereto before the board.
The commissioner shall prescribe the form of the application for a branch bank and shall collect an examination and investigation fee of one thousand dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and two thousand five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of five hundred dollars. The board shall complete the examination and investigation within ninety days from the date on which such application and fee are received, unless the board request in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution, in which event such ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of such request and the date such additional information and disclosures are received.

Upon completion of the examination and investigation with respect to such application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

(1) Notice of such hearing shall be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board but shall not be less than ten nor more than thirty days after such notice is given.
(2) At any such hearing a party may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(3) After such hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(j) No state banking institution may establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank: Provided, That no such hearing shall be required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) Public convenience and advantage will be promoted by the establishment of the proposed branch bank;

(2) Local conditions assure reasonable promise of successful operation of the proposed branch bank and of those banks and branches thereof already established in the community;

(3) Suitable physical facilities will be provided for the branch bank;

(4) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish by regulation;

(5) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state; and
(6) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed branch bank in meeting the convenience and needs of the community to be served by that proposed branch bank.

(k) Any party who is adversely affected by the order of the board shall be entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.

(l) Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days' prior public notice given in such form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.

CHAPTER 11

(S. B. 102—By Senators Dittmar, Anderson, Craigo, Sharpe, Withers, Minard and Burdette, Mr. President)

[Passed February 7, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article eight, chapter twenty-nine of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all relating to changing the name of Blennerhassett historical state park to Blennerhassett Island historical state park.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK COMMISSION.

§29-8-2. Blennerhassett Island historical state park commission established; members; terms; meeting; quorum; compensation; expenses.

§29-8-3. General powers of division of commerce with respect to the Blennerhassett Island historical state park.

§29-8-2. Blennerhassett Island historical state park commission established; members; terms; meeting; quorum; compensation; expenses.

1 As of the first day of July, one thousand nine hundred eighty-nine, there is established within the division of commerce the Blennerhassett Island historical state park commission. As of said date, all assets, real and personal property, debts, liabilities, duties, powers and authority of the Blennerhassett Island historical state park commission are hereby transferred to the division of commerce. The Blennerhassett Island historical state park commission shall be maintained as an advisory commission as hereinafter provided. The commission shall be composed of ten members who shall be citizens and residents of this state, appointed by the governor for terms of four years, by and with the advice and consent of the Senate: Provided, That the terms of all members previously appointed to the Blennerhassett historical state park commission prior to the amendment and reenactment of this section shall continue for the periods originally specified, and no such member serving as of the effective date of such amendment and reenactment need be reappointed.

21 Each member shall be qualified to carry out the functions of the commission under this article by reason
of his special interest, training, education or experience.

No person shall be eligible to appointment as a member who is an officer or member of any political party executive committee; or the holder of any other public office or public employment under the United States government or the government of this state or a political subdivision of this state. Not more than six members shall belong to the same political party.

At its first meeting, which shall be held within fifty days after this section takes effect, the commission shall elect from among its members a chairman who shall preside over its meetings until the second Monday in September of the next year. Thereafter, the commission shall elect a chairman from among its members on the second Monday in September of each year.

All members shall be eligible for reappointment once by the governor. A member shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed and has qualified. A vacancy caused by the death, resignation or removal of a member prior to the expiration of his term shall be filled only for the remainder of such term.

For the purpose of carrying out its powers, duties and responsibilities under this article, six members of the commission shall constitute a quorum for the transaction of business. Each member shall be entitled to one vote. The commission shall meet at a time and place designated by the chairman at least four times each fiscal year. Additional meetings may be held when called by the chairman or when requested by five members of the commission or by the governor. All meetings shall comply with the provisions of article nine-a, chapter six of this code. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties under this article.

The commission shall advise the division of commerce in all matters relating to the development, establishment and maintenance of the Blennerhassett Island historical state park.
All employee positions in the former Blennerhassett Island historical state park commission are hereby transferred to the division of commerce and shall be included in the classified service of the civil service system pursuant to article six of this chapter. Any person included in the classified service by the provisions of this section who is employed in any of such positions as of the effective date of this amendment and reenactment shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person included in the classified service by the provisions of this section who is employed in any of such positions as of the effective date of this section shall be thereafter severed, removed or terminated from such employment prior to his entry into the classified service except for cause as if such person had been in the classified service when severed, removed or terminated.

Notwithstanding any provision of this code to the contrary, the division of commerce shall have exclusive regulatory authority over watercraft transport of visitors to the Blennerhassett Island portion of the Blennerhassett Island historical state park and such watercraft transport shall not be subject to the provisions of article eighteen, chapter seventeen of this code.

§29-8-3. General powers of division of commerce with respect to the Blennerhassett Island historical state park.

The administrator of the division of commerce, with respect to developing and maintaining Blennerhassett Island historical state park, may exercise all powers and duties granted to him and his predecessor in respect to the development and operation of other state parks, and in addition, is specifically authorized to:

(1) Establish and maintain an office in the county of Wood;

(2) Exercise his powers in the state of Ohio to the extent permitted by the laws of the state of Ohio;
(3) Enter into any agreement with the state of Ohio or any person, firm or corporation therein for the provision of electricity, water, sewer and such similar services to Blennerhassett Island as are necessary;

(4) Own or operate, or both, individually or in conjunction with any other public agency or any private person, firm or corporation, such facilities and equipment as he considers necessary or convenient for the implementation of his duties under this article. Without limiting the generality of the foregoing, such facilities and equipment may include boats, docks, an amphitheater, parking facilities, the reconstructed Blennerhassett mansion and other buildings; and

(5) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this article and take such other steps as may, in his discretion, be necessary or expedient for the proper and effective development of Blennerhassett Island and related locations in the county of Wood into a major educational, cultural and recreational attraction.

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CHAPTER 12

(H. B. 4123—By Delegates Mezzatesta, Nicol, L. Williams, Willison and Collins)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the liability of blind and disabled persons for the actions of a guide or support dog.

Be it enacted by the Legislature of West Virginia:

That section four, article fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 15. WHITE CANE LAW.

§5-15-4. Equal right to use public facilities.

(a) Blind and disabled persons shall have the same right as persons with normal sight to the full and free use of the highways, roads, streets, sidewalks, walkways, public buildings, public facilities and other public places.

(b) Blind and disabled persons are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, restaurants, other places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(c) Every blind person, every deaf person and every person who is physically disabled because of any neurological, muscular or skeletal disorder that causes weakness or inability to perform any physical function shall have the right to be accompanied by a guide or support dog, wearing a harness, especially trained for the purpose, which serves as a guide, leader, listener or support in any of the places, accommodations or conveyances specified in subsection (b) of this section without being required to pay an extra charge for the admission of such guide or support dog, but the blind, deaf or disabled person shall, upon request, present for inspection credentials issued by an accredited school for training guide or support dogs. The blind, deaf or disabled person shall be liable for any damage done by such guide or support dog to the premises or facilities or to persons using such premises or facilities: Provided, That the blind, deaf or disabled person shall not be liable for any damage done by such guide or support dog to any person or the property of a person who has contributed to or caused the dog's behavior by inciting or provoking such behavior. Such dog shall not occupy a seat in any public conveyance and shall be upon a leash while using the facilities of a common carrier.
AN ACT to amend and reenact section fourteen, article one, chapter thirteen 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 fifteen-a; to amend and reenact sections two and four, article two of said chapter; and to amend and reenact section seven-a, article three of said chapter, all relating to general obligation bonds, the terms and provisions of such bonds, the redemption prior to maturity of such bonds, the refunding of such bonds, the terms and provisions of such refunding bonds, the redemption prior to maturity of such refunding bonds and the escrowing of funds for bond issues, including any redemption premium therefor.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article one, chapter thirteen 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 fifteen-a; that sections two and four, article two of said chapter be amended and reenacted; and that section seven-a, article three of said chapter be amended and reenacted, all to read as follows:

Article
1. Bond Issues for Original Indebtedness.
2. Refunding Bonds.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-15a. Bonds may be subject to redemption.

1 If three fifths of all the votes cast for and against the
2 proposition to incur debt and issue negotiable bonds
3 shall be in favor of the same, the governing body of the
4 political division shall, by resolution, authorize the
5 issuance of such bonds in an amount not exceeding the
6 amount stated in the proposition; fix the date thereof;
7 set forth the denominations in which they shall be
8 issued, which denominations shall be one hundred
9 dollars or multiples thereof; determine the rate or rates
10 of interest which the bonds shall bear, which rate or
11 rates of interest shall be within the maximum rate
12 stated in the proposition submitted to vote and payable
13 semiannually; prescribe the medium with which the
14 bonds shall be payable; require that the bonds shall be
15 made payable at the office of the state board of
16 investments and at such other place or places as the
17 body issuing the same may designate; provide for a
18 sufficient levy to pay the annual interest on the bonds
19 and the principal at maturity; fix the times within the
20 maximum period, as contained in the proposition
21 submitted to vote, when the bonds shall become payable,
22 which shall not exceed thirty-four years from the date
23 thereof; determine whether all or a portion of the bonds
24 shall be subject to redemption prior to the maturity
25 thereof and, if so, the terms of the redemption; and
26 prescribe a form for executing the bonds authorized.

§13-1-15a. Bonds may be subject to redemption.

1 All or a portion of such bonds may be subject to
2 redemption prior to the maturity thereof, at the option
3 of the body issuing the same, at such times and prices
4 and on such terms as shall be designated in the
5 resolution required by section fourteen of this article.
6 The body issuing the bonds may not levy taxes in
7 connection with the redemption of any bonds in excess
8 of the taxes that would have been levied for the payment
9 of principal and interest on such bonds in such year.

ARTICLE 2. REFUNDING BONDS.

§13-2-2. Terms of refunding bonds; time, place and amount of payments.
§13-2-4. Disposition of bonds; cancellation of original bonds.
§13-2-2. Terms of refunding bonds; time, place and amount of payments.

1 Upon determining to issue such refunding bonds, the governing body of such political division shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the principal amount permitted by section one of this article, fix the date thereof, the rate or rates of interest which such bonds shall bear, payable semiannually, and require that the bonds shall bear, payable at the office of the state board of investments and at such other place or places as the body issuing the same may designate. Such resolution shall also provide that such bonds shall mature serially in annual installments beginning not more than three years after the date thereof, and the last of such annual installments shall mature in not exceeding thirty-four years from the date of such bonds. The amount payable in each year on the refunding bonds, together with any unrefunded or unissued bonds of the prior issue, may be so fixed that, when the amount of interest is added to the principal amount to be paid during the respective years, the total amount payable in each year shall be as nearly equal as practicable; or such bonds may be made payable in annual installments as nearly equal in principal as may be practicable.

All or a portion of the refunding bonds may be subject to redemption prior to the maturity thereof, at the option of the body issuing the same, at such times and prices and on such terms as shall be designated in the resolution required by this section. The body issuing the refunding bonds may not levy taxes in connection with the redemption of any refunding bonds in excess of the taxes that would have been levied for the payment of principal of and interest on such refunding bonds in such year.

§13-2-4. Disposition of bonds; cancellation of original bonds.

1 The governing body of the political body of the political subdivision issuing bonds under this article may sell the same or any part thereof and collect the
proceeds, or such bonds may be delivered to the holder
or holders of the bonds to be refunded in exchange
therefor.

It is the intention of this article to authorize political
divisions to issue bonds for the purpose of refunding
outstanding bonds without thereby contracting any
additional indebtedness, and it shall be conditional upon
the delivery of any refunding bonds that the bonds to
be refunded be canceled and paid simultaneously with
the issuance and delivery of such refunding bonds:
Provided, That such refunding bonds shall be issued in
an amount sufficient to effect the refunding and may
include an amount sufficient to pay (1) the principal
amount outstanding of the bonds to be refunded, (2)
interest accrued or to accrue to the date of maturity or
the date of redemption of the bonds to be refunded
(which need not necessarily be on the first available
redemption date), (3) any redemption premiums to be
paid thereon, (4) any reasonable expenses incurred in
connection with such refunding and (5) any other
reasonable costs deemed appropriate by the state,
including without limitation, the expenses of preparing
and delivering the refunding bonds, legal fees, financial
advisor fees, consultant fees, and other expenses
incurred in connection with the issuance, sale and
delivery of the refunding bonds.

For all purposes of this section, bonds shall be
considered to have been canceled and paid in advance
of their due date or date of redemption if there shall
have been deposited with the West Virginia municipal
bond commission either:

(a) Moneys, sufficient to pay when and as due at
maturity or prior redemption all amounts of principal,
redemption premium, if any, and interest payable on
such bonds; or

(b) Direct obligations of the United States of America
or the state of West Virginia, or obligations fully and
irrevocably secured as to the payment of both principal
and interest by such direct obligations, the payment on
which when due will provide moneys, sufficient to pay
when and as due at maturity or prior redemption all amounts of principal, redemption premium, if any, and interest payable on such bonds.

All such amounts shall be set aside and held in trust and irrevocably dedicated solely to the payment of such bonds, except that amount in excess of the amounts required for the payment of the bonds so refunded may be applied to the payment of costs related to the issuance, carrying, insuring or servicing the refunding bonds, including costs of credit or market enhancement services, such as letters of credit, remarketing arrangements and similar services. Any amount deposited pursuant to this section may include amounts already held on deposit by the West Virginia municipal bond commission for the payment of the bonds to be refunded.

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§13-3-7a. Escrowing bond issues.

(a) All bond issues for which the commission is serving as fiscal agent shall be considered to have been canceled and paid in advance of their due date or date of redemption if there shall have been deposited with the commission either:

(1) Moneys sufficient to pay when and as due at maturity or prior redemption all amounts of principal, redemption premium, if any, and interest payable on such bonds; or

(2) Securities of a quality in which the commission is authorized by law to invest moneys under its control, the principal of and interest on which will provide moneys sufficient to pay when and as due at maturity or prior redemption all amounts of principal, redemption premium, if any, and interest payable on such bonds.

(b) The moneys and securities held by the commission pursuant to this section shall be held by the commission in trust and irrevocably dedicated solely to the payment of principal or redemption price, if applicable, of and interest on the bonds: Provided, That this action shall be taken solely at the direction of the issuer. Following such irrevocable commitment of moneys and securities
in trust, funds on account with the commission for said
bonds which are surplus may be immediately returned
to the issuer.

CHAPTER 14
(Com. Sub. for H. B. 4032—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-a, all relating to the allocation of industrial revenue bonds; creating industrial revenue bond allocation review committee; redefining state allocation procedures; and providing a set-aside for classified nonexempt projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.


§13-2C-3a. Creation of industrial revenue bond allocation review committee; appointment, term, etc., of private members; voting; expenses; duties.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.


1 Unless the context clearly indicates otherwise, as used
2 in this article:
(a) "Commercial project" means real or personal property or both, including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, farms, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection with a commercial enterprise or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, and mass commuting facilities, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education, instructional buildings and other facilities used in connection with nonpublic institutions of higher education, facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities.

(b) "Committee" means the industrial revenue bond allocation committee created by section three-a of this article.

(c) "County commission" means the governmental body created by section twenty-two, article VIII of the West Virginia constitution.

(d) "Governmental body" means any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, having power to issue revenue bonds, and the West Virginia public energy authority.

(e) "Industrial project" means any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop,
or processing, assembly, manufacturing or fabricating
project, or warehouse or distribution facility, or
facilities for the extraction, production or distribution of
mineral resources and related facilities, or sewage or
solid waste disposal facilities, or facilities for the local
furnishing of electric energy or gas, or facilities for the
furnishing of water, if available on reasonable demand
to members of the general public, or storage or training
facilities related to any of the foregoing, or research or
development facility or pollution abatement or control
facility and includes the reconstruction, modernization
and modification of any existing industrial project for
the abatement or control of industrial pollution.

(f) "Industrial pollution" means any gaseous, liquid or
solid waste substances or adverse thermal effects or
combinations thereof resulting from any process of
industry, manufacturing, trade or business or from the
development, processing or recovery of any natural
resources which pollute the land, water or air of this
state.

§13-2C-3a. Creation of industrial revenue bond allocation
review committee; appointment, term, etc.,
of private members; voting; expenses;
duties.

(a) There is hereby created the West Virginia indu-
trial revenue bond allocation review committee consist-
ing of five members, two of whom shall be the secretary
of tax and revenue, who shall serve as chair of the
committee, and the executive director of the develop-
ment office, and three of whom shall be chosen from the
general public as private members.

(b) The three private members shall be appointed by
the governor, with the advice and consent of the Senate:
Provided, That one private member shall be appointed
from each congressional district of the state, in such a
manner as to provide a broad geographical distribution
of members of the committee: Provided, however, That
at least one private member appointed pursuant to this
subdivision shall have significant experience in eco-

omy development. No more than two private members
shall be from the same political party.

(c) Not later than the first day of July, one thousand nine hundred ninety-four, the governor shall appoint the three private members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, one at the end of the first year, one at the end of the second year, and one at the end of the third year, after the first day of July, one thousand nine hundred ninety-four. As these original appointments expire, each subsequent appointment shall be for a full three-year term. Any member whose term has expired shall serve until a successor has been duly appointed and qualified. Any member shall be eligible for reappointment. In case of any vacancy in the office of a private member, such vacancy shall be filled by appointment by the governor for the unexpired term. The governor may remove any private member in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare the office vacant and may appoint a person for such vacancy as provided in other cases of vacancy.

(d) Members shall not be entitled to compensation for services performed as members, but shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(e) A majority of the members of the committee shall constitute a quorum for the purpose of conducting business. The affirmative vote of at least the majority of the members present is necessary for any action taken by vote of the committee. No vacancy in the membership of the committee shall impair the right of a quorum to exercise all the rights and perform all the duties of the committee.

(f) The committee shall review and evaluate all applications for reservation of funds submitted to the development office by a governmental body pursuant to the provisions of subsections (d) and (e), section twenty-one of this article, and shall make reservations of the
state allocation (as defined in subdivision (2), subsection (b), section twenty-one of this article) pursuant to subdivision (3), subsection (b) and subsection (c), section twenty-one of this article.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in section 141(a) of the United States Internal Revenue Code of 1986, other than those described in section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code, or under article eighteen, chapter thirty-one of this code, during any calendar year shall not exceed the ceiling established by section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding (i) that the production of bituminous coal in this state has resulted in coal waste, which coal waste is stored in areas generally referred to as gob piles; (ii) that such gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in such gob piles to produce alternative forms of energy needs to be encouraged; (iv) that section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of such private activity bonds; (v) that it is in the best interest of this state and the citizens thereof to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for such projects.

(b) On or before the first day of each calendar year, the executive director of the development office shall determine the state ceiling for such year based on the criteria of the United States Internal Revenue Code,
which annual ceiling shall be allocated among the
several issuers of bonds under this article or under
article eighteen, chapter thirty-one of this code, as
follows:

(1) Fifty million dollars shall be allocated to the West
Virginia housing development fund for the purpose of
issuing qualified mortgage bonds, qualified mortgage
certificates or bonds for qualified residential rental
projects.

(2) The amount remaining after the allocation to the
West Virginia housing development fund described in
subdivision (1) shall be retained by the West Virginia
development office and shall be referred to in this
section as the “state allocation.”

(3) Thirty percent of the state allocation shall be set
aside by the development office to be made available for
lessees, purchasers or owners of proposed projects,
hereafter in this section referred to as “nonexempt
projects”, which do not qualify as exempt facilities as
defined by United States Revenue Code [26 U.S.C.
§142(a)]. All reservations of private activity bonds for
nonexempt projects shall be approved and awarded by
the committee based upon an evaluation of general
economic benefit and any rule or regulation that the
council for community and economic development may
promulgate pursuant to section three, article two,
chapter five-b of this code: Provided, That on the first
day of September of each calendar year, the uncommit-
ted portion of this part of the state allocation shall revert
to and become part of the state allocation portion
described in subsection (c) of this section.

(c) The remaining seventy percent of the state
allocation shall be made available for lessees, purchasers
or owners of proposed commercial or industrial projects
which qualify as exempt facilities as defined by section
142(a) of the United States Internal Revenue Code [26
U.S.C. §142(a)]. All reservations of private activity
bonds for exempt facilities shall be approved and
awarded by the committee based upon an evaluation of
general economic benefit and any rule or regulation that
the council for community and economic development
may promulgate pursuant to section three, article two,
chapter five-b of this code: Provided, That no such
reservation shall be in an amount in excess of fifty
percent of this portion of the state allocation.

(d) No reservation shall be made for any project until
the governmental body seeking the same shall submit
a notice of reservation of funds as provided in subsection
(e) of this section. The governmental body must first
adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum
amount of bonds to be issued. Each governmental body
seeking a reservation of funds following the adoption of
such inducement resolution shall submit a notice of
inducement signed by its clerk, secretary or recorder or
other appropriate official to the development office.
Such notice shall include such information as may be
required by the development office pursuant to any rule
or regulation of the council for community and economic
development. Notwithstanding the foregoing, when a
governmental body proposes to issue bonds for the
purpose of constructing an energy producing project
which relies, in whole or in part, upon coal waste as fuel,
to the extent such project qualifies as a solid waste
facility under section 142(a)(6) of the United States
Internal Revenue Code of 1986, such project may be
awarded a reservation of funds from the state allocation
available for three years subsequent to the year in which
the notice of reservation of funds is submitted, at the
discretion of the executive director of the development
office: Provided, That no such discretionary reservation
may be made for any single project in an amount in
excess of thirty-five percent of the state allocation
available for such year subsequent to the year in which
the request is made. A discretionary reservation of the
state allocation for a project described in the preceding
sentence shall not be granted by the executive director
of the development office unless the project for which
the request is made has received a certification from the
Federal Energy Regulatory Commission as a qualifying
facility or a cogeneration project.
Currently with or following the submission of its notice of inducement, the governmental body at any time deemed expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;

(2) The identity of the governmental body issuing the bonds;

(3) The date of inducement and the prospective date of issuance;

(4) The name of the entity for which the bonds are to be issued;

(5) The amount of the bond issue, or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;

(6) The type of issue; and

(7) A description of the project for which the bonds are to be issued.

The development office shall accept the notice of reservation of funds no earlier than the first calendar work day of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the development office shall immediately note upon the face of such notice the date and time of reception.

If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first day of December following such date of reservation if sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate
152 official of the governmental body reserving the same has 153 not been received by the development office within that 154 time, then such reservation shall expire and be deemed 155 to have been forfeited and the funds so reserved shall 156 be released and revert to the portion of the state 157 allocation from which the funds were originally re- 158 served and shall then be made available for other 159 qualified issues in accordance with this section and the 160 Internal Revenue Code: Provided, That, as to any 161 reservation for a nonexempt project that is forfeited on 162 or after the first day of September in any calendar year, 163 such reservation shall revert to the portion of the state 164 allocation described in subsection (c) of this section: 165 Provided, however, That, as to any notice of reservation 166 of funds received by the development office during the 167 month of December in any calendar year with respect 168 to any project qualifying as an elective carry forward 169 pursuant to section 146(f)(5) of the Internal Revenue 170 Code, such notice of reservation of funds and the 171 reservation to which the same relates shall not expire 172 or be subject to forfeiture: Provided further, That any 173 unused state ceiling as of the thirty-first day of 174 December in any year not otherwise subject to a carry 175 forward pursuant to section 146(f) of the Internal 176 Revenue Code shall be allocated to the West Virginia 177 housing development fund, which shall be deemed to 178 have elected to carry forward the unused state ceiling 179 for the purpose of issuing qualified mortgage bonds, 180 qualified mortgage credit certificates or bonds for 181 qualified residential rental projects, each as defined in 182 the Internal Revenue Code. All requests for subsequent 183 reservation of funds upon loss of a reservation pursuant 184 to this section shall be treated in the same manner as 185 a new notice of reservation of funds in accordance with 186 subsections (d) and (e) above.

187 (h) Once a reservation of funds has been made for an 188 energy producing project which relies, in whole or in 189 part, upon coal waste as fuel and otherwise qualifies as 190 a solid waste facility under section 142(a)(6) of the 191 United States Internal Revenue Code of 1986, notwith- 192 standing the language of subsection (g) of this section, 193 such reservation shall remain fully available with
194 respect to such project until the first day of October in
195 the year from which the reservation was made at which
196 time, if the bond issue has not been finally closed, the
197 reservation shall expire and be deemed forfeited and the
198 funds so reserved shall be released as provided in
199 subsection (g) of this section.

CHAPTER 15
(H. B. 4405—By Delegates Doyle and Manuel)
[Passed March 2, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to the West Virginia boundary commission; establishing and providing for the marking of the boundary line between Jefferson County, West Virginia, and Loudoun County, Virginia; to provide for the effect of this bill as to certain rights and prosecutions; providing for the transmission of this bill to members of the Congress of the United States; to extend the commission studying the boundary; and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. WEST VIRGINIA BOUNDARY COMMISSION.

§29-23-3. Establishing and marking boundary line between Jefferson County, West Virginia, and Loudoun County, Virginia; effect of certain rights and prosecutions; transmission to members of Congress; extending the commission studying the boundary; effective date.

(a) The commissions appointed on behalf of the state
of West Virginia and the commonwealth of Virginia to
study and make a report on the true and correct
boundary between Jefferson County, West Virginia, and
 Loudoun County, Virginia, have completed their inves-
tigations and have agreed upon the boundary line.

(b) The boundary line between Jefferson County, West
Virginia, and Loudoun County, Virginia, is hereby, on
the part of this state, established and declared to be the
watershed line of the top of the ridge of the Blue Ridge
mountains.

(c) No vested right of any individual, partnership or
corporation within the territory affected by this section
shall in any wise be impaired, restricted or affected by
this section. This section shall not be retrospective in its
operation nor shall it in any way affect the rights of any
individual, partnership or corporation in any suit now
pending in any of the courts of this state or of the United
States wherein the cause of action arose over, or is in
any way based upon, the territory affected. This section
shall in no wise preclude the state of West Virginia from
prosecuting any individual, partnership or corporation
for violation of any of the criminal laws of this state
within the territory until this section goes into effect.

(d) The secretary of state shall furnish a certified copy
of this section to the governor of the Commonwealth of
Virginia and shall also furnish certified copies to the
United States senators from the state of West Virginia
and to the representative from the second congressional
district of West Virginia in the House of Representa-
tives, who are requested to have the section presented
to the Congress of the United States for ratification by
the Congress.

(e) The commission created by section two of this
article is continued and is directed, in cooperation with
the like commission created by the commonwealth of
Virginia, or other agency designated by the common-
wealth of Virginia for the purpose to survey and erect
permanent markers designating the boundary line set
forth in this section. The markers shall be of the nature
and kind the commission deems appropriate.
(f) This section shall take effect upon the adoption by the Congress of the United States of appropriate legislation ratifying the boundary line set forth herein.

CHAPTER 16

(Com. Sub. for H. B. 4061—By Delegates Petersen and Pino)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve, relating to creating the commercial bungee jumping safety act; short title; definitions; rules; inspections and permit fees; permits and applications; certificates of inspection; notices of physical injuries or fatality; service of process; requirement of insurance or bond; permitting regulation by cities and counties; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. COMMERCIAL BUNGEE JUMPING SAFETY ACT.

§21-12-1. Short title.

§21-12-2. Definitions.

§21-12-3. Rules.

§21-12-4. Inspection and permit fees.

§21-12-5. Inspectors.

§21-12-6. Permits; application; annual inspection.

§21-12-7. Issuance of permit; certificate of inspection; availability to public.

§21-12-8. Notice of serious physical injury or fatality; investigations; records available to public.

§21-12-9. Service of process.

§21-12-10. Temporary cessation of operation of bungee jumping site or attraction determined to be unsafe.

§21-12-11. Insurance; bond.

§21-12-12. Regulation of commercial bungee jumping events and attractions by cities and counties.

§21-12-13. Criminal penalty for violation.
§21-12-1. Short title.

1 This article shall be known and may be cited as the "Commercial Bungee Jumping Safety Act."

§21-12-2. Definitions.

1 As used in this article:

2 "Bungee jumping" means a commercial recreational activity where participants jump off a platform or other area, whether natural or man-made with a cord or other elastic device attached or otherwise affixed or connected to the jumper in order to prevent the jumper from striking the ground or earth below the jump platform, and which activity is engaged in for the purpose of giving the jumpers amusement, pleasure, thrills or excitement.

§21-12-3. Rules.

1 The division of labor shall promulgate rules for the safe installation, repair, maintenance, use, operation and inspection of all commercial bungee jumping activities. The rules shall be in addition to any existing applicable safety orders and shall be concerned with the elasticity of cords relative to a jumper’s weight; loss of cord elasticity after repetitive jumps; clear area in which the cord and jumper may swing following a jump; risks of falling off of a jump platform, both by customers and employees, equipment quality; engineering force stresses, safety devices and preventative maintenance. The rules shall be promulgated and designed for the purpose of developing commercial bungee jumping as a recreational activity and additional tourist attraction in West Virginia. All rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§21-12-4. Inspection and permit fees.

1 The division shall determine a schedule of inspection and permit fees, which fees shall not exceed one hundred dollars per commercial bungee jumping site per year. All fees received shall be deposited in the
§21-12-5. Inspectors.

The division may hire or contract with inspectors to inspect bungee jumping sites.

§21-12-6. Permits; application; annual inspection.

(a) An operator or owner shall not knowingly permit the operation of a commercial bungee jumping event without a permit issued by the division.

(b) Commercial bungee jumping sites will be inspected at intervals to be determined by the division of labor, but in no event, shall a commercial bungee jumping site be inspected less frequently than once per year.

§21-12-7. Issuance of permit; certificate of inspection; availability to public.

If, after inspection, a commercial bungee jumping site, together with the jump platform and equipment, is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator or owner for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the commercial bungee jumping site or where a commercial bungee jump is located. A copy of certificate, showing the last date of inspection, shall be affixed to the bungee jumping platform upon issuance, or at any other location designated by the commissioner of the division of labor.

§21-12-8. Notice of serious physical injury or fatality; investigations; records available to public.

An owner or operator of a commercial bungee jumping site shall notify the division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the commercial bungee jumping site that results in a serious physical injury requiring medical treatment or results in a loss of consciousness. The notice may be oral or written. The
division shall investigate each fatality or accident and any safety related complaint involving a commercial bungee jumping site in this state about which the division receives notice. Every owner or operator of a commercial bungee jumping site shall keep a record of each accident or fatality and the record shall be kept with the certificate of inspection required by this article and shall be readily accessible to the public for inspection at any reasonable time at the commercial bungee jumping site or where the attraction is located.

§21-12-9. Service of process.

Any person, firm or corporation operating a commercial bungee jumping site may be served with civil process in the same manner as if the owner or operator was a domestic or foreign corporation.

§21-12-10. Temporary cessation of operation of bungee jumping site or attraction determined to be unsafe.

The division may order, in writing, a temporary cessation of operation of a commercial bungee jumping site if it has been determined after inspection to be hazardous or unsafe. Operation shall not resume until the conditions are corrected to the satisfaction of the division.

§21-12-11. Insurance; bond.

No person may operate a commercial bungee jumping site unless at the time there is in existence (a) a policy of insurance approved by the division and obtained from an insurer authorized to do business in this state in an amount of not less than three hundred thousand dollars per person and one million dollars in the aggregate for each commercial bungee jumping site or jump platform location insuring the owner or operator against liability for injury suffered by persons jumping from the jump platform or by persons in, on, under or near the jump platform or commercial bungee jumping site, or (b) a bond in a like amount, as approved by the division: Provided, That the aggregate liability of the surety under any bond shall not exceed the face amount
§21-12-12. Regulation of commercial bungee jumping events and attractions by cities and counties.

Nothing contained in this article prevents cities and counties from regulating commercial bungee jumping sites or events with regard to any aspect not relating to installation, repair, maintenance, use, operation and inspection of the commercial bungee jump site, jump platforms or equipment.

§21-12-13. Criminal penalty for violation.

Any operator or owner who knowingly permits the operation of a commercial bungee jumping site or event in violation of the provisions of section six of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

CHAPTER 17

(Com. Sub. for H. B. 4025—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 2, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-d, relating to the establishment of the office of business registration and centralize records for business registration; legislative findings and declaration of purpose; establishment of an interagency advisory group; establishment of a centralized data base to store registration, licensing and other similar information concerning the initiation of new businesses in West Virginia; development of a single basic registration form and an agency contact list; providing for the confidentiality of records; directing that staffing come from existing positions and
certain costs come from existing appropriations; and
ensuring limited effect so that no existing agency
responsibilities or powers are changed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12D. ESTABLISHMENT OF OFFICE OF BUSINESS
REGISTRATION; CREATION OF CENTRALIZED RECORDS.

§11-12D-1. Legislative findings and declaration of purpose.
§11-12D-2. Establishment of office of business registration; centralized
business registration records.
§11-12D-3. Agency contact list, dispersal of data base information to
agencies, agency contact with prospective businesses.
§11-12D-4. Confidentiality of records of the centralized data base for new
business registration.
§11-12D-5. Staffing for office of business registration; costs of centralized
records system; legislative intent.
§11-12D-6. Limited effect of article; intent of Legislature.

§11-12D-1. Legislative findings and declaration of purpose.

The Legislature hereby finds and declares that the
assistance, promotion, encouragement, development and
advancement of economic prosperity and employment
throughout this state requires an efficient, coherent,
accurate and simplified system for the registration of
businesses with state and local agencies. The Legislature
further finds and declares that the establishment of such
a system will promote consistent, fair and efficient
compliance with registration, licensing and other
similar statutory obligations by all businesses in the
state. The Legislature finds that staff of the secretary
of state, the department of tax and revenue and the
bureau of employment programs, as well as staff from
other state agencies with an interest in the issue, have
studied the need for, and the feasibility of, a simplified
system of business registration and have designed
certain elements of such a system, specifically, a
common data base of information regarding businesses
registering with said agencies. The Legislature recog-
nizes the need for continued involvement and coopera-
tion by said agencies and it is the intent of the
Legislature to build upon the work of these agencies in order to develop a simplified business registration system in the manner contemplated by this article. The purposes of the system created by this article are therefore to make government more responsive to the needs of West Virginia businesses in their dealings with government and to better enable government agencies to assure that all West Virginia businesses comply with legal requirements.

§11-12D-2. Establishment of office of business registration; centralized business registration records.

(a) There is hereby established in the tax division of the department of tax and revenue the office of business registration.

(b) For the purpose of designing and implementing the simplified business registration system contemplated by this article, there is hereby established the business registration interagency advisory group, which shall consist of representatives designated by the secretary of state; the secretary of tax and revenue; the executive director of the development office; secretary of commerce, labor and environmental resources; and the commissioner of the bureau of employment programs. The advisory group shall consult with representatives of such other state offices and agencies as necessary to accomplish the purposes of this article. In implementing the simplified business registration system described in this article, the tax commissioner shall be guided by the recommendations of the advisory group.

(c) The office of business registration, with the cooperation and assistance of all interested governmental entities, shall establish a system of centralized records, which may be in the form of a centralized database, for the acquisition and storage of information the departments, divisions and agencies may require for registration, licensing and other similar statutory purposes related to the initiation of new businesses in West Virginia.

(d) Not later than the thirtieth day of November, one thousand nine hundred ninety-four, the office of business
registration shall design a single basic registration
information form for the purpose of fulfilling, to the
extent feasible, the business registration information
requirements of the department of tax and revenue, the
secretary of state and the bureau of employment
programs. The information to be provided on the form
will include the name, address and telephone number of
the prospective new business; the standard industry
code or codes appropriate to the business; the number
of employees of the business; and such other appropriate
information. Prospective new businesses must register
with the office of business registration and disclose the
business registration information required by that
office.

(e) For each prospective new business seeking to do
business in the state of West Virginia, a record of
registration information will be entered into the
centralized records or data base for new business
registration.

(f) If all of the business registration information
required by the secretary of state, the department of tax
and revenue and the bureau of employment programs
can not feasibly be included in a single form, the office
of business registration will include on the single form
as much of the information as is feasible and will design
a system which avoids, to the maximum extent possible,
duplication of effort by businesses seeking to register.
No later than the thirtieth day of June, one thousand
nine hundred ninety-five, the office of business registra-
tion and the advisory group shall make joint recommend-
dations as to additional measures, whether administra-
tive or legislative, needed in order to:

(1) Permit a business to provide all needed registra-
tion information in a single step;

(2) Bring all interested governmental entities into the
simplified registration system; and

(3) Simplify in any other manner the dealings of
businesses with government agencies in West Virginia,
with particular emphasis on data management tech-
iques.

§11-12D-3. Agency contact list, dispersal of data base
information to agencies, agency contact
with prospective businesses.
(a) An agency contact list consisting of those state
government agencies and offices having registration,
licensing or other similar statutory provisions related to
the initiation of new businesses in West Virginia or
which should otherwise have contact with a new
business, will be maintained by the office of business
registration in conjunction with the centralized records
for new business registration.

(b) Based upon the proposed location, size, number of
employees, type of business, standard industry code or
codes and other pertinent information relating to the
business, each prospective new business, upon having a
record established in the centralized records for new
business registration, shall be informed by the office of
business registration of those state agencies or offices
having a registration, licensing and other similar
statutory provisions related to the initiation of a new
business in West Virginia or other function relating to
prospective new business such that the agency or office
should by law or regulation be given notice of the
establishment or operation of a new business in West
Virginia. The office of business registration shall
establish a record of the new business in the centralized
data base for the use and benefit of any agency or officer
of the state of West Virginia having access to the data
base and which should, by law or regulation, receive
notice of the establishment or operation of a particular
business. The record should contain such information as
is necessary to fulfill the regulatory, registration or
licensing function of that agency, or in lieu of such
information, the name, address and other pertinent
information relating to the particular business whereby
the agency or office may initiate such procedures or
make such contact with the particular business as is
appropriate for the fulfillment of the regulatory,
registration, licensing or other statutory duties of the
office or agency.

§11-12D-4. Confidentiality of records of the centralized
data base for new business registration.

(a) Notwithstanding any other provision of this code,
new business registration information may be dissem-
inated to the state of West Virginia, its political subdivisions, agencies and offices in accordance with this article.

(b) Information from the centralized records for new business registration received by any state, local or municipal agency or office is confidential and the provisions of sections five-d and five-s, article ten of this chapter concerning confidentiality and disclosure of taxpayer information apply to such information.

§11-12D-5. Staffing for office of business registration; costs of centralized records system; legislative intent.

(a) It is the intent of the Legislature that the staff of the office of business registration established by this article be composed of existing positions within the departments, divisions and agencies of the state whose functions are centralized by this article, and particularly from existing staff of the department of tax and revenue and the bureau of employment programs.

(b) It is the intent of the Legislature that costs associated with the office of business registration and the centralized records system established in this article be paid, to the maximum extent possible, from existing appropriations to the department of tax and revenue and the bureau of employment programs, except for such additional costs as may be attributable to the development and maintenance of the centralized records system or data base. To carry out this intent, the governor may redirect funds from such appropriations.

§11-12D-6. Limited effect of article; intent of Legislature.

It is the intent of the Legislature in enacting this article to simplify the methods by which government agencies gather information from businesses for the purposes of registration, licensing or other similar statutory purpose related to the initiation of new businesses in West Virginia: Provided, That this article shall not be construed to change any existing requirement of this code, nor to modify any existing agency responsibility or power, except as may be necessary to simplify the information-gathering functions described in this article.
AN ACT to amend and reenact section sixteen-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the juvenile facilities review panel; and changing expense reimbursement of members.

Be it enacted by the Legislature of West Virginia:

That section sixteen-b, article five, 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 5. JUVENILE PROCEEDINGS.

§49-5-16b. Juvenile facilities review panel; compensation; expenses.

The supreme court of appeals shall appoint and maintain a five-member panel, consisting of five persons who are willing to serve in such capacity, to visit, inspect and interview residents of all juvenile institutions, detention facilities and places in or out of the state wherein West Virginia juveniles may be held involuntarily, to make public reports of such reviews: Provided, That the panel shall not visit, inspect or interview adult inmates of county jails, regional jails or facilities under the direction of the commissioner of corrections used for the incarceration of adult offenders or detainees: Provided, however, That the panel shall have no authority to enforce jail and prison standards for county jails and regional jails as they pertain to adults confined therein. In visiting and inspecting any facility pursuant to the provisions of this section, the panel shall have prompt and direct access to the head of the facility for any purpose pertaining to the performance of functions and responsibilities under this section. The members so appointed shall serve without compensation for their time, however, each member shall receive the same expense reimbursement as is paid to members of the
AN ACT to amend and reenact section ten-a, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rights of supervisors and certain employees in the classified service of the state in circumstances where there is a reduction in force.

Be it enacted by the Legislature of West Virginia:

That section ten-a, article six, 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:

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-10a. Reduction in work force.

1 (a) Notwithstanding any other provision of this article or any rule promulgated thereunder to the contrary, an employee in the classified service who has performed work for a reasonable period of time in a position with
a classification that is higher than the position in which he is employed and classified may, in the event that his regular position would be terminated as a result of a reduction in force in his division, have the right to request that his classification be reviewed and that, in his or her supervisor's discretion, he be promoted to the higher classified position by passing a qualifying examination for such higher position and providing sufficient evidence of his work periods and satisfactory performance of the duties and responsibilities of the higher classified position.

The commission shall provide by legislative rule for the maintenance of records by all covered agencies of the work periods and rating of job performance of employees performing work in a position or positions with a classification that is higher than the position in which he is employed and classified and the duration of work periods required to request review and promotion.

(b) The provisions of this subsection shall be of no force and effect on and after the first day of July, one thousand nine hundred ninety-five. Notwithstanding any other provision of this code to the contrary, a managerial or supervisory employee in the classified service of this state with a classified service pay grade of sixteen or higher who is adversely affected by a reduction in force shall not be entitled to be reassigned, transferred or otherwise retained for any position in state government except as provided in this section, and no regulation or policy shall provide for such a right: Provided, That there shall be no redesignation of the levels of pay grades in the classified service in effect on the first day of May, one thousand nine hundred ninety-four. Any such employee shall have the right, upon notice of and prior to the effective date of the reduction in force, to accept a position in a lower job class at no less than the entry salary of that position if the employee: (1) Has formerly performed the duties of that position or the substantial equivalent thereof and is otherwise qualified within the classified service for that position; and (2) is a more senior employee than the least senior employee then employed in such position. No
provision of this section shall be construed to deny the
right of the appointing authority, in his or her discre-
tion, to reassign, transfer or otherwise retain such
employee to or for another position for which the
employee is qualified within the classified service.
Where the employee is not reassigned, transferred or
otherwise retained pursuant to the provisions of this
section, no provision of this section shall be construed
to deny the employee the opportunity to reapply for
entrance in the classified service of the state through
participation in competitive examinations.

CHAPTER 20
(Com. Sub. for S. B. 517—By Senators Whitlow,
Blatnik, Sharpe and Tomblin)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the
state and its agencies to be moral obligations of the state
and directing the auditor to issue warrants for the
payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the
alcohol beverage control administration; attorney
general; board of barbers and cosmetologists;
board of coal mine safety and technical review
committee; board of education; board of trustees of
the university system of West Virginia; bureau of
employment programs; consolidated medical services
fund; department of administration; department of
education; department of tax and revenue;
division of corrections; division of environmental
protection; division of health; division of highways;
division of human services; division of natural
resources; division of public safety; lottery commis-
sion; office of the chief medical examiner; railroad
The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Alcohol Beverage Control Administration:

<table>
<thead>
<tr>
<th>Offender</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chesapeake and Potomac Telephone Company of WV</td>
<td>$5,199.16</td>
</tr>
<tr>
<td>Exxon Company USA</td>
<td>$29.00</td>
</tr>
</tbody>
</table>

(b) Claims against the Attorney General:

<table>
<thead>
<tr>
<th>Offender</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Larry M. Bonham</td>
<td>$125.00</td>
</tr>
<tr>
<td>The Michie Company</td>
<td>$149.64</td>
</tr>
<tr>
<td>Xerox Corporation</td>
<td>$1,269.60</td>
</tr>
</tbody>
</table>

(c) Claim against the Board of Barbers and Cosmetologists:

<table>
<thead>
<tr>
<th>Offender</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terrill W. Wood</td>
<td>$106.50</td>
</tr>
</tbody>
</table>

(d) Claim against the Board of Coal Mine Safety and Technical Review Committee:

<table>
<thead>
<tr>
<th>Offender</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>MPL Corporation</td>
<td>$1,519.25</td>
</tr>
</tbody>
</table>

(e) Claim against the Board of Education:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) The Board of Education of the County of McDowell .................. $ 461,163.32

Provided, That $461,163.32 shall be paid during the time period beginning the first day of July, one thousand nine hundred ninety-four, and ending the last day of June, one thousand nine hundred ninety-five: Provided, however, That the board of education of the county of McDowell shall be paid the full amount provided for in this bill no later than the last day of June, one thousand ninety-five.

(f) Claim against the Board of Trustees of the University System of West Virginia:

(1) Jared Taylor ......................... $ 59.63

(g) Claims against the Bureau of Employment Programs:

(1) Larry C. McNair ...................... $ 1,030.16

(2) Medical Claims Review Services, Inc. $ 6,422.65

(3) Mary L. Tyburski ...................... $ 250.00

(4) William C. Morgan, Jr., M.D., Inc. $ 450.00

(h) Claims against the Consolidated Medical Services Fund:

(1) R. Dean Coddington, M.D. ........ $ 1,170.00

(2) Helen Keller National Center ........ $ 9,800.00

(3) Kidspeace National Centers for Kids in Crisis .................. $ 6,990.00

(4) Psychiatric Institute of WV, Inc. .... $ 11,794.28

(5) Saint Albans Psychiatric Hospital, Inc. ............ $ 13,372.97

(6) St. Marys Hospital ................... $ 74,611.27

(7) University Health Associates ........ $ 249.00
Claims

(i) Claims against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Chesapeake and Potomac Telephone Company of WV $656.88

(2) Tyler Mountain Water Company, Inc. $215.45

(j) Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Donna E. Kimbrew $293.00

(2) Mary Anne Mullenax $293.00

(3) Carol J. White $293.00

(4) Salena M. Williams $50.00

(k) Claim against the Department of Tax and Revenue:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) IBM Corporation $1,012.00

(l) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Steven W. Adkins $150.00

(2) John A. Bacon $409.80

(3) Barbour County Commission $23,325.00

(4) Boone County Commission $74,025.00

(5) Braxton County Commission $11,220.38

(6) Cabell County Commission $168,150.00

(7) Doddridge County Commission $1,050.00

(8) Fayette County Commission $34,391.38

(9) Gilmer County Commission $5,726.96

(10) Grant County Commission $9,407.54

(11) Greenbrier County Commission $22,986.24

(12) Hancock County Commission $21,908.51

(13) Harrison County Commission $36,050.00

(14) Steven D. Hawley $200.00

(15) Jackson County Commission $20,200.00

(16) Kanawha County Commission $386,729.00

(17) Lewis County Commission $10,901.18

(18) Logan County Commission $40,000.00

(19) Marion County Commission $30,449.58

(20) Marshall County Commission $21,536.76
104 (21) Mason County Commission $12,095.00
105 (22) McDowell County Commission $50,435.00
106 (23) Mercer County Commission $91,925.00
107 (24) Mingo County Commission $39,974.23
108 (25) Monongalia County Commission $62,775.00
109 (26) Monroe County Commission $9,490.77
110 (27) Nicholas County Commission $24,608.00
111 (28) Ohio County Commission $30,400.00
112 (29) Pleasants County Commission $6,850.00
113 (30) Richard L. Porter $1,163.08
114 (31) Preston County Circuit Clerk $69.39
115 (32) Putnam County Commission $63,339.06
116 (33) Raleigh County Commission $32,161.78
117 (34) Regional Jail and Correctional Facility Authority $579,335.69
119 (35) Ritchie County Commission $5,127.00
120 (36) Roane County Commission $10,200.00
121 (37) Taylor County Commission $73,325.00
122 (38) Tyler County Commission $14,850.00
123 (39) Upshur County Commission $25,953.95
124 (40) Wayne County Commission $5,072.45
125 (41) Wetzel County Commission $3,425.00
126 (42) Wirt County Commission $2,200.00
127 (43) Wood County Commission $58,925.00

(m) Claims against the Division of Environmental Protection:

(TO BE PAID FROM SPECIAL REVENUE FUND)

131 (1) IBM Corporation $507.07
132 (2) Manpower Temporary Services $4,967.55
133 (3) Milburn Colliery Company $84.51
134 (4) WVU Extension Continuing Education & Professional Development $4,022.00

(n) Claims against the Division of Health:

(TO BE PAID FROM SPECIAL REVENUE FUND)

139 (1) Datascopc Corporation $1,296.99
140 (2) Mary Hodges $400.00

(o) Claims against the Division of Highways:
<table>
<thead>
<tr>
<th></th>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>142</td>
<td>(1) Judy Bailey</td>
<td>$5,784.95</td>
</tr>
<tr>
<td>143</td>
<td>(2) Roger Balser</td>
<td>$81.51</td>
</tr>
<tr>
<td>144</td>
<td>(3) Ron Bower</td>
<td>$200.00</td>
</tr>
<tr>
<td>145</td>
<td>(4) David Lee and Patricia I. Brewer</td>
<td>$4,450.00</td>
</tr>
<tr>
<td>146</td>
<td>(5) James A. and Sandra J. Cayton</td>
<td>$236.33</td>
</tr>
<tr>
<td>147</td>
<td>(6) John Randolph and John T. Cheetham</td>
<td>$2,019.58</td>
</tr>
<tr>
<td>148</td>
<td>(7) Jan Adrian Creasey</td>
<td>$20.09</td>
</tr>
<tr>
<td>149</td>
<td>(8) Gayle Dingess</td>
<td>$100.00</td>
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<tr>
<td>150</td>
<td>(9) Gary Earp</td>
<td>$494.23</td>
</tr>
<tr>
<td>151</td>
<td>(10) Linda Kay Eddy</td>
<td>$221.72</td>
</tr>
<tr>
<td>152</td>
<td>(11) Rosa Belle Gainer</td>
<td>$427.90</td>
</tr>
<tr>
<td>153</td>
<td>(12) John P. Grimmett, II</td>
<td>$500.00</td>
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<tr>
<td>154</td>
<td>(13) Russell Hammack</td>
<td>$63.55</td>
</tr>
<tr>
<td>155</td>
<td>(14) Hampshire Distributor, Inc</td>
<td>$95.40</td>
</tr>
<tr>
<td>156</td>
<td>(15) Timothy Hudnall</td>
<td>$89.99</td>
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<tr>
<td>157</td>
<td>(16) Ralph J. Lucas</td>
<td>$720.00</td>
</tr>
<tr>
<td>158</td>
<td>(17) William J. Lucas</td>
<td>$4,000.00</td>
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<td>159</td>
<td>(18) Pauline Lucion</td>
<td>$5,943.04</td>
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<td>160</td>
<td>(19) Virgil N. Martin, Jr</td>
<td>$50.83</td>
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<tr>
<td>161</td>
<td>(20) Molly A. McCallister</td>
<td>$1,501.73</td>
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<td>162</td>
<td>(21) Frank McGuire</td>
<td>$202.69</td>
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<tr>
<td>163</td>
<td>(22) Sandra and Charles Miller</td>
<td>$14,996.84</td>
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<tr>
<td>164</td>
<td>(23) Donald K. Navarro</td>
<td>$250.00</td>
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<tr>
<td>165</td>
<td>(24) Cassandra Prater</td>
<td>$16,750.00</td>
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<tr>
<td>166</td>
<td>(25) Roscoe Prater and Cassandra Prater</td>
<td>$11,549.12</td>
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<tr>
<td>167</td>
<td>(26) Edward E. Presley</td>
<td>$871.32</td>
</tr>
<tr>
<td>168</td>
<td>(27) James Allen Sams, Sr., and</td>
<td></td>
</tr>
<tr>
<td>169</td>
<td>Shayne Rene Sams as guardians</td>
<td></td>
</tr>
<tr>
<td>170</td>
<td>for Andrea Gayle Sams</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>171</td>
<td>(28) James Allen Sams, Sr., and</td>
<td></td>
</tr>
<tr>
<td>172</td>
<td>Shayne Rene Sams as guardians</td>
<td></td>
</tr>
<tr>
<td>173</td>
<td>for James Allen Sams, Jr.</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>174</td>
<td>(29) James Allen Sams, Sr., and</td>
<td></td>
</tr>
<tr>
<td>175</td>
<td>Shayne Rene Sams</td>
<td>$3,029.81</td>
</tr>
<tr>
<td>176</td>
<td>(30) Morag Janet Schanz</td>
<td>$1,117.94</td>
</tr>
<tr>
<td>177</td>
<td>(31) Louise Johnson Griffin Simmons</td>
<td>$250.00</td>
</tr>
<tr>
<td>178</td>
<td>(32) Bonnie J. Starkey</td>
<td>$2,142.45</td>
</tr>
<tr>
<td>179</td>
<td>(33) Richard L. Thompson</td>
<td>$311.18</td>
</tr>
<tr>
<td>180</td>
<td>(34) Thomas Treadway</td>
<td>$81.00</td>
</tr>
</tbody>
</table>
CLAIMS

(p) Claims against the Division of Human Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Kanawha County Commission $18,896.00
(2) Marion County Commission $718.11
(3) Putnam County Commission $14,850.00

(q) Claim against the Division of Natural Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Gibbons and Kawash $18,025.00

(r) Claims against the Division of Public Safety:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Baxter & Company, Inc. $485.20
(2) Helicopter Flite Services, Inc. $2,850.69
(3) IBM Corporation $1,018.64
(4) James K. Schubert $300.00

(s) Claim against the Lottery Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

From Account No. 7200

(1) Fahlgren, Inc. $200,000.00

(t) Claim against the Office of the Chief Medical Examiner:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Morgantown Removals, Inc. $1,566.00

(u) Claims against the Railroad Maintenance Authority:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) MARC Train Service $10,000.00

(v) Claim against the State Treasurer:
AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.
The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and entitled to compensation; and in respect to each of such named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

Claims for crime victims compensation awards:

(To be paid from Crime Victims Compensation Fund)

1. Auvil, Rosemarie .............................................. $ 2,500.00
2. Barnes, Maggie A., as guardian of Candy Jo Toppins .............................................. $ 5,000.00
3. Barnes, Maggie A., as guardian of David D. Toppins .............................................. $ 5,000.00
4. Bennett, Beda C. .............................................. $ 5,000.00
5. Bragg, Karen L., as guardian of Laura Randolph .............................................. $ 5,000.00
6. Burton, Vera L. .............................................. $ 1,000.00
7. Bush, Charlotte R., as guardian of Jeddie P. Bush, IV .............................................. $ 5,000.00
8. Bush, Charlotte R., as guardian of Robert C. Bush .............................................. $ 5,000.00
9. Clark, Renwick .............................................. $ 5,000.00
10. Dakon, Christopher L. .............................................. $ 15,000.00
11. Davis, William F. .............................................. $ 1,000.00
12. Davis, William F., as guardian of Barbara Ann Davis .............................................. $ 1,000.00
13. Davis, William F., as guardian of Earl Dwain Smith, Jr. .............................................. $ 1,000.00
14. Davis, William F., as guardian of William Earnest Davis .............................................. $ 1,000.00
15. Dunkin, Maurice L. .............................................. $ 15,000.00
16. Foster, Margaret M. .............................................. $ 10,000.00
17. Foster, Margaret M., as guardian of Charles Foster .............................................. $ 10,000.00
<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Claimant Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Fugate, Sherry L., as guardian</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>19</td>
<td>Gentry, David D.</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>20</td>
<td>Green, Delena M.</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>21</td>
<td>Hall, William H. &amp; Mildred J.,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>as guardians of Amber S. Hall</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>22</td>
<td>Heilig, Garnett M.</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>23</td>
<td>Lemley, Mark N.</td>
<td>$3,450.00</td>
</tr>
<tr>
<td>24</td>
<td>Martin, Lisa A.</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>25</td>
<td>Rucker, Patricia A., as guardian</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of Terry Lee Rucker</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>26</td>
<td>Rucker, Patricia A., as guardian</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of Troy Lee Rucker</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>27</td>
<td>Santer, Joseph, guardian ad litem</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for Michael P. Gordon</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>28</td>
<td>Santer, Joseph, guardian ad litem</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for Billie J. Gordon</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>29</td>
<td>Santer, Joseph, guardian ad litem</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for Keith A. Wright</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>30</td>
<td>Santer, Joseph, guardian ad litem</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for Earl J. Gordon</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>31</td>
<td>Shane, Karen S.</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>32</td>
<td>Smith, Sandra A., as guardian</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of William W. Donelow</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>33</td>
<td>Vanhoose, Darrell G.</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>34</td>
<td>Ward, Michael K.</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>35</td>
<td>Ward, Terry G.</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>36</td>
<td>Wayt, Rodney J.</td>
<td>$15,000.00</td>
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<tr>
<td>37</td>
<td>Wellman, Sheri L.</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>38</td>
<td>Wisenbaler, Judy A., as guardian</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of J.A.W.</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>39</td>
<td>Williamstown National Bank, assignee of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mark N. Lemley</td>
<td>$1,550.00</td>
</tr>
<tr>
<td>40</td>
<td>TOTAL</td>
<td>$207,000.00</td>
</tr>
</tbody>
</table>

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants herein.
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the division of corrections; division of human services; and division of professional and occupational licenses—state athletic commission to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices,
statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) ALCO Health Services Corporation $ 42,320.94
(2) ARA Health Services, dba Correctional Medical Systems $ 78,067.73
(3) James N. Aldridge, Jr., M.D. $ 90.00
(4) R. David Allara, M.D. $ 80.00
(5) American Surgical Associates $ 65.00
(6) Ashmore Optical Company, Inc. $ 92.00
(7) Associated Emergency Physicians, Inc. $ 212.87
(8) Associated Radiologists, Inc. $ 1,485.50
(9) BMA of West Virginia, Inc., dba BMA of Morgantown $ 60,615.00
(10) Gaspar Z. Barcinas, M.D. $ 1,800.00
(11) Robert S. Bear, M.D. $ 460.00
(12) Beckley Hospital, Inc. $ 83.90
(13) Darrell C. Belcher, M.D. $ 876.20
(14) Russell Buindo, M.D. $ 4,070.00
(15) Bluefield Regional Medical Center $ 1,234.11
(16) Rano S. Bofill, M.D. $ 183.00
(17) Braxton County Memorial Hospital $ 1,912.50
(18) Broaddus Hospital Association $ 326.50
(19) John P. Burgess, D.D.S. $ 450.00
(20) John W. Byers, D.D.S. $ 2,004.00
(21) C & C Pharmacy, Inc. $ 1,314.96
(22) CAMC Dental Center $ 309.00
(23) Camden-Clark Memorial Hospital $ 4,362.21
(24) Cardiovascular Associates of WV $ 100.00
(25) Charleston Area Medical Center $ 49,113.02
(26) Chesapeake and Potomac Telephone Co. of WV $ 221.88
(27) Citizens Drug $ 2,465.41
(28) City Pharmacy, Inc. $ 772.73
(29) Community Health Systems, Inc. $ 2,496.61
(30) Community Radiology, Inc. $ 234.00
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<tr>
<th></th>
<th>Claimant Name</th>
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<td>63</td>
<td>Nancy L. Craig, M.D.</td>
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<td>Drs. Black, Jackfert, Gilbert, Yates and Syner</td>
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<td>EENT Physicians and Surgeons</td>
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<td>Ear, Nose and Throat Associates of</td>
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<td>Earl J. Foster, M.D.</td>
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<td>Dominic Gazzino, M.D.</td>
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**Note:** The amounts are in dollars. The table lists various medical and administrative services provided, along with the corresponding amounts charged.
<table>
<thead>
<tr>
<th>Claim Number</th>
<th>Description</th>
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<td>105</td>
<td>(68) Mercer Drug Store Inc.</td>
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147  (106) WVSOM Clinic, Inc. ........................... $ 545.00
148  (107) James D. Weinstein, M.D. ........... $ 160.00
149  (108) Welch Emergency Hospital .............. $ 8,775.66
150  (109) West Virginia University Hospitals, Inc. ........................................ $ 76,503.75
152  (110) Wheeling Clinic, Inc. ................. $ 2,278.45
153  (111) Greg J. Wrobleski, D.D.S. ............. $ 55.00

(b) Claims against the Division of Human Services:

(106) TO BE PAID FROM GENERAL REVENUE FUND
156  (1) Berkeley County Commission ............... $ 2,022.00
157  (2) Brooke County Commission ............... $ 504.00
158  (3) Cabell County Commission .................. $ 3,888.00
159  (4) Greenbrier County Commission ............ $ 675.00
160  (5) Hampshire County Commission ............ $ 1,350.00
161  (6) McDowell County Commission ............. $ 1,350.00
162  (7) Monongalia County Commission ........... $ 675.00
163  (8) Putnam County Commission ................. $ 675.00
164  (9) Raleigh County Commission ............... $ 3,600.00
165  (10) Rose and Quesenberry
166  Funeral Home, Inc. ............................. $ 400.00
167  (11) Wetzel County Commission ............... $ 13,860.00

(c) Claims against the Division of Professional and Occupational Licenses—State Athletic Commission:

(106) TO BE PAID FROM GENERAL REVENUE FUND
171  (1) Robert Lowery ................................ $ 1,044.80

CHAPTER 23

(H. B. 4675—By Delegates Staton, Trump, Gallagher, Ashley and Phillips)

[Passed March 11, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rules of practice and procedure before the court of claims; authorizing the court of claims to compel discovery and order sanctions for failure to comply with an order of discovery; and authorizing the court of claims to strike certain pleadings, motions or papers.
Be it enacted by the Legislature of West Virginia:

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


1 The court shall adopt and may from time to time amend rules of procedure, in accordance with the provisions of this article, governing proceedings before the court. Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. Rules shall permit a claimant to appear in his own behalf or be represented by counsel.

Discovery may be used in a case pending before the court in the same manner that discovery is conducted pursuant to the rules of civil procedure for trial courts of record, rules 26 through 36. The court may compel discovery and impose sanctions for a failure to make discovery, in the same manner as a court is authorized to do under the provisions of rule 37 of the rules of civil procedure for trial courts of record: Provided, That the court of claims shall not find a person in contempt for failure to comply with an order compelling discovery.

The court, upon its own motion or upon motion of a party, may strike a pleading, motion or other paper which: (1) Is not well-grounded in fact; (2) is not warranted by existing law, or is not based on a good faith argument for the extension, modification, or reversal of existing law; or (3) is interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs. An order striking a pleading, motion, or paper may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Under its rules, the court shall not be bound by the usual common law or statutory rules of evidence. The court may accept and weigh, in accordance with its evidential value, any information that will assist the court in determining the factual basis of a claim.
CHAPTER 24
(Com. Sub. for H. B. 4371—By Mr. Speaker, Mr. Chambers, and Delegates Staton, Browning, Whitman, Collins, Frederick and Burk)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one, relating to coalbed methane wells; declaration of public policy; legislative findings; defining certain terms; establishing coalbed methane review board; application of article; exclusions; applications of certain provisions of articles six, seven, eight, nine and ten of this chapter to coalbed methane wells; chief of office of oil and gas to enforce article; duties of same; duties of coalbed methane review board; meetings; notice; powers; duties; promulgation of rules; issuance of permit required for coalbed methane well; permit fee; application for permit; soil erosion control plan; criminal and civil penalties; consent and agreement of coal owner or operator; hearing in lieu of same; notice to owners of application; contents of same; publication; comments and procedure for filing same; hearings on objections or comments by coal owner or operator; review of application; issuance of permits; assessor to receive copy of permits; permit for plugging of wells; inspections; sediment control plan; review board hearing; findings; order; considerations for award or denial of permit; order granting permit to require proof of financial security; forms of same; amount; term; required protective devices; notice of stimulation; results of stimulation; drilling units; pooling of interests; application; contents; notice to owners; review of application; hearing; pooling order; spacing; operation; elections; working interests; royalty interests; carried interests; escrow account for conflicting claims; division order; judicial determination of ownership; operation on drilling units; validity of unit agreements; spacing between wells; workable coal seams; dry or abandoned wells; notice of plugging and reclamation of well; right
to take well; objection; plugging order; plugging for minethrough; method of plugging; existing mining rights; judicial review; appeal to supreme court; legal representation for review board; limitation on actions in trespass; injunctive relief; civil and criminal penalties; construction of article; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-1. Declaration of public policy; legislative findings.


§22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.

§22-21-4. Chief; powers and duties generally.

§22-21-5. Duties of the coalbed methane review board; meetings; notice, powers and duties generally.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

§22-21-7. Consent and agreement of coal owner or operator.

§22-21-8. Performance bonds; corporate surety or other security.


§22-21-11. Objections or comments to coalbed methane wells by coal owner or operator; hearings.

§22-21-12. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

§22-21-13. Review board hearing; findings; order.

§22-21-14. Protective devices required when a coalbed methane well penetrates workable coal bed; when coalbed methane well is drilled through horizon of coal bed from which coal has been removed; notice of stimulation; results of stimulation.

§22-21-15. Drilling units and pooling of interests.


§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.

§22-21-18. Operation on drilling units.


§22-21-20. Spacing.

§22-21-21. Dry or abandoned wells.

§22-21-22. Notice of plugging and reclamation of well; right to take well; objection; plugging order; plugging for minethrough.

§22-21-23. Method of plugging.
§22-21-25. Judicial review; appeal to supreme court of appeals; legal representation for review board.
§22-21-26. Limitation on actions in trespass.
§22-21-27. Injunctive relief.
§22-21-29. Construction.

§22-21-1. Declaration of public policy; legislative findings.

(a) The Legislature hereby declares and finds that the venting of coalbed methane from mine areas and degasification of coal seams has been and continues to be approved by the state for the purpose of ensuring the safe recovery of coal; that the value of coal is far greater than the value of coalbed methane and any development of the coalbed methane should be undertaken in such a way as to protect and preserve coal for future safe mining and maximum recovery of the coal; that subject to the above declarations and findings, commercial recovery and marketing of coalbed methane should in some cases be facilitated because the energy needs of this state and the United States indicate that the fullest practical recovery of both coal and coalbed methane should be encouraged; that the Energy Policy Act of 1992 was enacted in part to encourage coalbed methane development and the state of West Virginia should enact legislation which carries out the purposes of said act; that in order to encourage and ensure the fullest practical recovery of coal and coalbed methane in this state and to further ensure the safe recovery of both natural resources, it is in the public interest to enact this article authorizing coalbed methane well permits, regulating the design of coalbed methane wells and recovery techniques, authorizing coalbed methane well units and pooling of interests therein to provide all coalbed methane operators and coalbed methane owners with an opportunity to recover their just and equitable share of production.

(b) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Preserve coal seams for future safe mining;
facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state, and maintain the ability and absolute right of coal operators at all times to vent coalbed methane from mine areas;

(2) Foster, encourage and promote the commercial development of this state’s coalbed methane by establishing procedures for issuing permits and forming drilling units for coalbed methane wells without adversely affecting the safety of mining or the mineability of coal seams;

(3) Safeguard, protect and enforce the correlative rights of coalbed methane well operators and coalbed methane owners in a pool of coalbed methane to the end that each such operator and owner may obtain his or her just and equitable share of production from coalbed methane recovered and marketed under this article;

(4) Safeguard and protect the mineability of coal during the removal of coalbed methane, as permitted under this article;

(5) Create a state permitting procedure and authority to provide for and facilitate coalbed methane development as encouraged by the Energy Policy Act of 1992; and

(6) Seek the deletion of the state of West Virginia from the list of affected states by the secretary of the United States department of the interior as provided for in the Energy Policy Act of 1992.


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

3 (a) “Review board” means the West Virginia coalbed methane review board which shall be comprised of the members of the West Virginia shallow gas well review board provided for in article eight, chapter twenty-two of this code, the state geologist, a representative of the United Mine Workers of America, an employee of the gas industry, and the director of the office of miners’ health, safety and training, and the chairman of the
review board shall be the chairman of the West Virginia shallow gas review board;

(b) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable, and the noncoal roof and floor of said seam of coal;

(c) "Coalbed methane" means gas which can be produced from a coal seam, the rock or other strata in communication with a coal seam, a mined-out area or a gob well;

(d) "Coalbed methane owner" means any owner of coalbed methane;

(e) "Coalbed methane well" means any hole or well sunk, drilled, bored or dug into the earth for the production of coalbed methane for consumption or sale, including a gob well. The term "well" shall mean a coalbed methane well unless the context indicates otherwise. The term "coalbed methane well" does not include any shaft, hole or well sunk, drilled, bored or dug into the earth for core drilling, production of coal or water, venting gas from a mine area, or degasification of a coal seam;

(f) "Coalbed methane well operator" or "well operator" means any person who has the right to operate or does operate a coalbed methane well;

(g) "Coal operator" means any person who proposes to or does operate a coal mine;

(h) "Coal owner" means any person who owns or leases a coal seam;

(i) "Chief" means the chief of the office of oil and gas of the division of environmental protection provided for in section eight, article one of this chapter;

(j) "Director" means the director of the division of environmental protection;

(k) "Division" means the division of environmental protection;

(l) "Gob well" means a well drilled or vent hole converted to a well pursuant to this article which
produces or is capable of producing coalbed methane or
other natural gas from a destressed zone created above
and below a mined-out coal seam by any prior full seam
extraction of the coal;

(m) "Mine" or "mine areas," including the sub-
definitions under "mine areas," shall have the same
definitions as are provided in section two, article one,
chapter twenty-two-a of this code;

(n) "Office" means office of oil and gas provided for
in section seven, article one of this chapter;

(o) "Person" means any natural person, corporation,
firm, partnership, partnership association, venture,
receiver, trustee, executor, administrator, guardian,
fiduciary, other representative of any kind, any recognized legal entity, or political subdivision or agency
thereof;

(p) "Stimulate" means any action taken to increase the
natural flow of coalbed methane or the inherent
productivity of a coalbed methane well, including, but
not limited to, fracturing, shooting, acidizing or water
flooding, but excluding cleaning out, bailing or work-
over operations;

(q) "Waste" means (i) physical waste as the term is
generally understood in the gas industry and as
provided for in article six of this chapter, but giving
special consideration to coal mining operations and the
safe recovery of coal; (ii) the locating, drilling, equipping,
operating, producing or transporting coalbed
methane in a manner that causes or tends to cause a
substantial reduction in the quantity of coalbed methane
recoverable from a pool under prudent and proper
operations, or that causes or tends to cause a substantial
or unnecessary or excessive surface loss of coalbed
methane; (iii) the drilling of more wells than are
reasonably required to recover efficiently and econom-
ically the maximum amount of coalbed methane from
a pool; or (iv) substantially inefficient, excessive or
improper use, or the substantially unnecessary dissipa-
tion of reservoir pressure. Waste does not include
coalbed methane vented or released from any mine area,
the degasification of a coal seam for the purpose of mining coal, the plugging of coalbed methane wells for the purpose of mining coal, or the conversion of coalbed methane wells to vent holes for the purpose of mining coal;

(r) "Workable coalbed" or "workable coal seam" means any seam of coal twenty inches or more in thickness, or any seam of less thickness which is being commercially mined or can be shown to be capable of being commercially mined.

§22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.

(a) The provisions of this article apply to (1) all lands in this state under which a coalbed is located, including any lands owned or administered by the state or any agency or subdivision thereof, and (2) any coalbed methane well.

(b) This article does not apply to or affect (1) any well otherwise permitted, approved or regulated under article six, seven, eight, nine or ten of this chapter or article eight, chapter twenty-two-c of this code, (2) any ventilation fan, vent hole, mining apparatus, or other facility utilized solely for the purpose of venting any mine or mine area, or (3) the ventilation of any mine or mine area or degasification of any coal seam for the mining of coal.

(c) This article does not apply to or affect subsurface boreholes drilled from the mine face of an underground mine, except that the provisions of sections fifteen, sixteen, seventeen, eighteen and nineteen shall apply.

(d) To the extent that coalbed methane wells are similar to wells, as defined in section one, article six of this chapter of this code, and the production of coalbed methane is similar to the production of natural gas, coalbed methane wells shall be treated as wells and coalbed methane treated as natural gas and subject to the following sections of article six of this chapter:

(1) The provisions of section three pertaining to the
findings and orders of inspectors concerning violations,
determination of reasonable time for abatement, ex-ten-
sions of time for abatement, special inspections, notice
of findings and orders;

(2) The provisions of section four providing for the
review of findings and orders by the chief, special
inspection, annulment, revision of order and notice;

(3) The provisions of section five providing for the
requirements of findings, orders and notices; posting of
findings and orders; and judicial review of final orders
of the chief;

(4) The provisions of section twenty-one providing for
protective devices—installation of freshwater casings;

(5) The provisions of section twenty-two providing for
a well log to be filed, contents, and authority to
promulgate regulations. In addition to the requirements
of such section, the operator shall certify that the well
was drilled and completed as shown on the well plat
required for a coalbed methane well, or in the alterna-
tive, file a revised well plat showing the actual location
of the well and the coal seams in which the well is
completed for production. Such log and certificate shall
be served on all coal owners and operators who must be
named in the permit application under section six of this
article;

(6) The provisions of section twenty-eight providing
for supervision by the chief over drilling and reclamation
operations, complaints, hearings and appeals;

(7) The provisions of section twenty-nine providing for
special reclamation funds and fees;

(8) The provisions of section thirty providing for
reclamation requirements;

(9) The provisions of section thirty-one providing for
preventing waste of gas, plan of operation required for
wasting gas in process of producing oil and rejection
thereof;

(10) The provisions of section thirty-two providing for
the right of adjacent owner or operator to prevent waste
of gas and recovery of costs;

(11) The provisions of section thirty-three providing for restraining waste;

(12) The provisions of section thirty-four providing for offenses and penalties;

(13) The provisions of section thirty-five providing for civil action for contamination or deprivation of freshwater source or supply and presumption;

(14) The provisions of section thirty-six providing for declaration of notice by owners and lessees of coal seams and setting out the form of such declaration; and

(15) The provisions of section thirty-nine providing for injunctive relief.

In addition to the foregoing and subject to the same qualifications, the provisions of article ten of this chapter shall apply to coalbed methane wells. Any well which is abandoned or presumed to be abandoned under the provisions of this article shall be treated as an abandoned well under said article ten.

§22-21-4. Chief; powers and duties generally.

(a) The chief of the office of oil and gas shall have the duty of issuing permits and otherwise supervising the execution and enforcement of the provisions of this article, all subject to the review and approval of the director.

(b) The chief of the office of oil and gas is authorized to enact rules necessary to effectuate the purposes of this article, subject to the review and approval by the director.

(c) In addition to all other powers and duties conferred upon the chief, the chief shall have the power and duty to:

(1) Perform all duties which are expressly imposed upon him by the provisions of this article, as well as duties assigned to him or her by the director;

(2) Perform all duties as the permit issuing authority
for the state in all matters pertaining to the exploration, development, production and recovery of coalbed methane in accordance with the provisions of this article;

(3) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation by establishing programs relating to the exploration, development, production and recovery of coalbed methane, which programs are assumable by the state;

(4) Visit and inspect any coalbed methane well or well site and call for the assistance of any oil and gas inspectors or other employees of the office of oil and gas in the enforcement of the provisions of this article;

(5) Collect the permit application fee for the drilling of a coalbed methane well;

(6) Collect the permit application fee for a drilling unit.

§22-21-5. Duties of the coalbed methane review board; meetings; notice, powers and duties generally.

(a) The board shall meet and hold conferences and hearings at such times and places as are designated by the chairman. The chairman may call a meeting of the board at any time. The chairman shall call a meeting of the board (1) upon receipt from the chief of a completed application for a permit to establish one or more coalbed methane gas drilling units pursuant to this article, (2) upon receipt from the chief of a request pursuant to section seven of this article or comments or objections pursuant to sections ten and eleven of this article, or (3) within twenty days upon the written request by another member of the board. Notice of all meetings shall be given to each member of the board by the chairman at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of this section, the chairman shall also notify the applicant, all persons
to whom copies of the application were required to be mailed pursuant to the provisions of section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of section ten or eleven of this article.

(c) A majority of the members of the board constitute a quorum for the transaction of any business. A majority of the members of the board is required to determine any issue brought before it.

d) The board shall execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the board has jurisdiction and authority over all persons and property necessary therefor: Provided, That the provisions of this article do not grant to the board authority or power to fix prices of coalbed methane gas.

e) Within eighteen months of the effective date of this article, the board shall initiate rule-making proceedings to investigate the feasibility of establishing blanket bonds for financial security in addition to the provisions for bonds for financial security under section thirteen of this article.

(f) The board may:

(1) Take evidence and issue orders concerning applications for drilling permits and coalbed methane gas drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, and enforce reasonable rules necessary to govern the practice and procedure before the board;

(3) Make such relevant investigations of records and facilities as it deems proper; and

(4) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents in its own
§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

(a) It is unlawful for any person to commence, operate, deepen or stimulate any coalbed methane well, to conduct any horizontal drilling of a well commenced from the surface for the purpose of commercial production of coalbed methane, or to convert any existing well, vent hole or other hole to a coalbed methane well, including in any case site preparation work which involves any disturbance of land, without first securing from the chief a permit pursuant to this article.

(b) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person or entity whom the applicant must notify under any section of this article;

(2) The name and address of each coal operator and each coal owner of record or providing a record declaration of notice pursuant to section thirty-six, article six of this chapter of any coal seam which is (i) to be penetrated by a proposed well, (ii) within seven hundred fifty horizontal feet of any portion of the proposed well bore; or (iii) within one hundred vertical feet of the designated completion coal seams of the proposed well, except that in the case of an application to convert a ventilation hole to a gob well, the name and address only of such owner or operator of the seams to be penetrated by a proposed well shall be necessary;

(3) The well name or such other identification as the chief may require;

(4) The approximate depth to which the well is to be drilled, deepened or converted, the coal seams (stating the depth and thickness of each seam) in which the well will be completed for production, and any other coal
(5) A description of any means to be used to stimulate the well;

(6) If the proposed well will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each such string is to be cemented;

(7) If the proposed operation is to convert an existing well, as defined in section one, article six of this chapter, or to convert a vertical ventilation hole to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(8) Except for a gob well or vent hole proposed to be converted to a well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the well which will protect all workable coal seams which will be penetrated by the well;

(9) If the proposed operations will include horizontal drilling of a well commenced on the surface, a description of such operations, including both the vertical and horizontal alignment and extent of the well from the surface to total depth;

(10) Any other relevant information which the chief may require by rule.

(c) Each application for a coalbed methane well permit shall be accompanied by the following:

(1) The applicable bond prescribed by section eight of this article;

(2) A permit application fee of two hundred fifty dollars;

(3) The erosion and sediment control plan required under subsection (d) of this section;

(4) The consent and agreement of the coal owner as
required by section seven and, if applicable, section
twenty of this article;

(5) A plat prepared by a licensed land surveyor or
registered engineer showing the district and county in
which the drill site is located, the name of the surface
owner of the drill site tract, the acreage of the same,
the names of the surface owners of adjacent tracts, the
names of all coal owners underlying the drill site tract,
the proposed or actual location of the well determined
by a survey, the courses and distances of such location
from two permanent points or landmarks on said tract,
the location of any other existing or permitted coalbed
methane well or any oil or gas well located within two
thousand five hundred feet of the drill site, the number
to be given the coalbed methane well, the proposed date
for completion of drilling, the proposed date for any
stimulation of the well, and if horizontal drilling of a
well commenced on the surface is proposed, the vertical
and horizontal alignment and extent of the well;

(6) A certificate by the applicant that the notice
requirements of section nine of this article have been
satisfied by the applicant. Such certification may be by
affidavit of personal service, or the return receipt card,
or other postal receipt, for certified mailing.

(d) An erosion and sediment control plan shall
accompany each application for a permit. Such plan
shall contain methods of stabilization and drainage,
including a map of the project area indicating the
amount of acreage disturbed. The erosion and sediment
control plan shall meet the minimum requirements of
the West Virginia erosion and sediment control manual
as adopted and from time to time amended by the office
of oil and gas in consultation with the several soil
conservation districts pursuant to the control program
established in this state through section 208 of the
federal Water Pollution Control Act Amendments of
1972 [33 U.S.C. 1288]. The erosion and sediment control
plan shall become part of the terms and conditions of
a permit and the provisions of the plan shall be carried
out where applicable in operations under the permit.
The erosion and sediment control plan shall set out the
proposed method of reclamation which shall comply
with the requirements of section thirty, article six of this
chapter.

(e) The well operator named in such application shall
designate the name and address of an agent for such
operator who shall be the attorney-in-fact for the
operator and who shall be a resident of the state of West
Virginia, upon whom notices, orders or other commun-
ications issued pursuant to this article may be served,
and upon whom process may be served. Every well
operator required to designate an agent under this
section shall within five days after the termination of
such designation notify the office of such termination
and designate a new agent.

(f) The well owner or operator shall install the permit
number as issued by the chief in a legible and perman-
ent manner to the well upon completion of any permit-
ted work. The dimensions, specifications and manner of
installation shall be in accordance with the rules of the
chief.

(g) The chief shall deny the issuance of a permit if he
or she determines that the applicant has committed a
substantial violation of a previously issued permit,
including the erosion and sediment control plan, or a
substantial violation of one or more of the rules
promulgated hereunder, and has failed to abate or seek
review of the violation. In the event that the chief finds
that a substantial violation has occurred with respect to
existing operations and that the operator has failed to
abate or seek review of the violation in the time
prescribed, he or she may suspend the permit on which
said violation exists, after which suspension the operator
shall forthwith cease all work being conducted under
the permit until the chief reinstates the permit, at which
time the work may be continued. The chief shall make
written findings of any such determination made by him
or her and may enforce the same in the circuit courts
of this state and the operator may appeal such suspen-
sion pursuant to the provisions of section twenty-five of
this article. The chief shall make a written finding of
any such determination.
(h) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§22-21-7. Consent and agreement of coal owner or operator.

(a) No permit shall be issued for a coalbed methane well unless and until the applicant has obtained and filed with the chief a consent and agreement from each owner and each operator of any workable coal seam twenty-eight inches or more in thickness which is within seven hundred fifty horizontal feet of the proposed well bore and (i) which coal seam the applicant proposes to stimulate or (ii) which coal seam is within one hundred vertical feet above or below a coal seam which the applicant proposes to stimulate. The requirement for consent and agreement contained in this section shall not be considered to impair, abridge or affect any contractual rights or objections arising out of a contract or lease which provides for the development of coalbed methane and stimulation of wells between the applicant and any coal owner or operator and the existence of any such contract or lease shall constitute a waiver of the requirement to file an additional signed consent and agreement. Such consent and agreement must provide:

(i) That such coal owner or operator has been provided with a copy of the application for permit as required by section six of this article and with a copy of all plats and documents which must accompany the application and (ii) that such coal owner or operator consents and agrees to the stimulation of the coal seam as described in such application.

(b) In the absence of the applicant submitting the consent described in subsection (a) above, the applicant may submit a request for hearing before the board accompanied by an affidavit which shall include the following:

(1) A statement that a coal owner or operator as described in subsection (a) of this section has refused to
provide written authorization to stimulate the well;

(2) A statement detailing the efforts undertaken to obtain such authorization;

(3) A statement setting out any known reasons for the authorization not being provided;

(4) A statement or other information in addition to that provided pursuant to subdivision (5), subsection (b), section six of this article necessary to provide prima facie evidence that the proposed method of stimulation will not render the coal seam unworkable, or considering all factors, impair mine safety.

(c) Upon receipt of a request and affidavit as set forth in subsection (b) of this section, the chief shall forward the application to the board to consider the proposed stimulation, or if other objections or notices are filed requiring a hearing before the board, the request hereunder may be included for consideration by the board along with other matters related to the application.

(d) If the authorization of a coal owner or operator has been withheld based upon reasons related to safety, the chief shall, concurrent with submission of the request and affidavit to the board, submit a copy of the application to the director of the office of miners’ health, safety and training who shall review the application as to issues of mine safety and within thirty days submit recommendations to the board.

§22-21-8. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless a bond is or has been furnished as provided in this section.

(b) A separate bond may be furnished for a particular coalbed methane well in the sum of ten thousand dollars, payable to the state of West Virginia, conditioned on full compliance with all laws and rules relating to the drilling, operation and stimulation of such wells, to the plugging, abandonment and reclamation thereof, and
for furnishing such reports and information as may be required by the chief.

(c) When an operator makes or has made application for permits to drill, operate or stimulate more than one coalbed methane well or a combination of coalbed methane wells and wells regulated under article one, chapter twenty-two-b of this code, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the state of West Virginia, and conditioned as stated in subsection (b) of this section.

(d) All bonds submitted hereunder shall have a corporate bonding or surety company authorized to do business in the state of West Virginia as surety thereon, or in lieu of a corporate surety, the operator may elect to deposit with the chief cash, collateral securities or any combination thereof as provided for in subsection (d), section twenty-six, article six of this chapter.

(e) For purposes of bonding requirements, a coalbed methane well shall be treated as a well, as defined and regulated in article one, chapter twenty-two-b of this code, and the provisions of subsections (e), (g), (h), (i) and (j) of section twenty-six thereof shall apply.


(a) Prior to filing an application for a permit for a coalbed methane well under this article, the applicant shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan to the following:

(1) The owners of record of the surface of the tract on which the coalbed methane well is to be located;

(2) The owners of record of the surface of any tract which is to be utilized for roads or other land disturbance;

(3) Each coal owner and each coal operator (i) from whom a consent and agreement provided for in section seven of this article is required, or (ii) whose coal seam
will be penetrated by the proposed coalbed methane well or is within seven hundred fifty feet of any portion of the well bore; and

(4) Each owner and lessee of record and each operator of natural gas surrounding the well bore and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower. Notices to gas operators shall be sufficient if served upon the agent of record with the office of oil and gas.

(b) If more than three tenants in common or other co-owners of interests described in subsection (a) of this section hold interests in such lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code: Provided, That all owners and operators occupying or operating on the tracts where the well work is proposed to be located at the filing date of the permit application shall receive actual service of the documents required by subsection (a) of this section.

(c) Prior to filing an application for a permit for a coalbed methane well under this article, the applicant shall cause to be published in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the chief shall prescribe by rule, with the first publication date being no more than ten days after the filing of the permit application.

(d) Materials served upon persons described in subsections (a) and (b) of this section shall contain a statement of the methods and time limits for filing comment and objection, who may file comment and objection, the name and address of the chief with whom the comment and objection must be filed, the ability to obtain additional information from the chief, the fact that such persons may request notice of the permit decision, and a list of persons qualified to test water as provided in this section.
(e) Any person entitled to submit comment or objection shall also be entitled to receive a copy of the permit as issued or a copy of the order denying the permit if such person requests the receipt thereof as a part of the comment or objection concerning said permit application.

(f) Persons entitled to notice may contact the district office of the office of oil and gas to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the office of oil and gas shall consult with the state and local health departments.


All persons described in subsection (a), section nine of this article may file comments with the chief as to the location or construction of the applicant's proposed well within fifteen days after the application is filed with the chief.

§22-21-11. Objections or comments to coalbed methane wells by coal owner or operator; hearings.

The owner or operator of any coal seam whose interests may be adversely affected by a coalbed methane well may, within fifteen days from the receipt of notice required by section nine of this article, file objections in writing to such proposed drilling with the chief, setting out the grounds on which such objections are based.

§22-21-12. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

The chief shall review each application for a permit and shall determine whether or not a permit shall be issued.

No permit shall be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging shall be issued less than five
8 days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided,
9 That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the permit application, including the erosion and sediment control plan, if required, and the plat required by section six of this article, and further files written statements of no objection by all such persons, the chief may issue the permit at any time.

The chief may cause such inspections to be made of the proposed location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned, including conditions with respect to the location of the well and access roads, prior to issuance if the chief determines that:

(1) The proposed well work will constitute a hazard to the safety of persons; or

(2) The plan for soil erosion and sediment control is not adequate or effective; or

(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies. Upon the issuance of any permit pursuant to the provisions of this article, the chief shall transmit a copy of such permit to the office of the assessor for the county in which the well is located.

§22-21-13. Review board hearing; findings; order.

(a) If comment or objection is filed under section ten or eleven of this article, the chief shall forthwith provide to the chairman of the coalbed methane review board a copy of any such objection or comment, together with the application for a permit for the coalbed methane well in question, the plat filed therewith and such other information accompanying the permit as may relate to the comment or grounds for the objection.

(b) The review board shall forthwith schedule a
hearing for the purpose of considering such objection or comment. Notice shall be given fifteen days in advance of the hearing to any person filing comment or objection, and to any person to whom notice of the application required, and to any applicant, and the review board shall hold such hearing within thirty days after the deadline for filing objection or comment. At such hearing the review board shall consider the matters raised in any objection or comment, including surface topography and use, and with respect to the ability to mine any affected coal seam safely and the protection of any such seam for future mining shall consider the following:

1. Whether the drilling location is above or in close proximity to any mine opening, shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, any abandoned, operating coal mine or any coal mine already surveyed and platted but not yet being operated;

2. Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing or planned pillar of coal, taking into consideration the surface topography;

3. Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal;

4. The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal or coalbed methane;

5. The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article three of this chapter;

6. The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

7. The feasibility of a drilling moratorium for not
more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and coalbed methane;

(9) The practicality of locating the well on a uniform pattern with other wells;

(10) The surface topography and use;

(11) Whether any stimulation of the coal seam will render such seam or any other workable coal seams unmineable or unsafe for mining; and

(12) Whether the director of the office of miners' health, safety and training has submitted recommendations as to the safety of any proposed stimulation. In considering any recommendations made by the director of the office of miners' health, safety and training, the board shall incorporate such recommendations in its findings, conclusions and order unless the board determines that there is clear and convincing evidence on the record supporting a finding, conclusion or order inconsistent with such recommendations.

(c) In weighing the evidence presented to the board the applicant shall have the burden of proving by clear and convincing evidence that stimulation of a workable coal seam of twenty-eight inches or more in thickness will not render such seam or any other workable coal seam of twenty-eight inches or more in thickness unmineable or unsafe for mining.

(d) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon the ability to mine any affected coal seam safely and the protection of any coal seam for safe future mining, shall enter a written order containing findings of fact and conclusions which address any relevant considerations in subsection (b) of this section and based thereon shall issue and file with the chief a written order directing him to:

(1) Refuse a drilling permit; or

(2) Issue a drilling permit for the proposed drilling
location; or

(3) Issue a drilling permit for an alternate drilling location different from that requested by the applicant; or

(4) Issue a drilling permit either for the proposed drilling location or for an alternative drilling location different from that requested by the applicant, provided such alternate location is covered by the agreement and consent required by section seven of this article, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit; or

(5) Issue a permit authorizing the applicant to stimulate the well in the absence of consent of the affected coal operators or owners of workable coal seams of twenty-eight inches or more in thickness as described in subsection (a) of section seven of this article, as proposed or as modified by the order of the board. Such order shall further provide for the applicant to furnish evidence of financial security in one of the following forms: (a) A corporate surety bond having on it a company authorized to do business in this state as surety; (b) bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereof; (c) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia if such other state, territory or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (d) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this state issued pursuant to law and payable from ad valorem taxes levied on all taxable property located herein, that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining
public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt, evidenced by its bonds; (e) revenue bonds issued by this state or any agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (f) revenue bonds issued by a municipality in this state for the acquisition, construction, improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (g) revenue bonds issued by a public service board of a public service district in this state for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement of payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (h) revenue bonds issued by a board of trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; and (i) bonds issued by a federal land bank or home owners’ loan corporation; (j) cash; or (k) any combination of the above. The operator of the well shall be entitled to all interest and income earned on the collateral securities provided pursuant to the order. Such security given shall be
placed in an escrow account. The operator providing
security shall be entitled from time to time to receive,
upon written order of the board, the whole or any
portion of such securities upon depositing in lieu thereof
cash equal to the approved securities of the classes
herein specified.

The amount of such financial security shall be set by
order of the board but shall in no event exceed an
amount of fifty thousand dollars. In setting the amount
of financial security, the board shall consider the total
amount of coal which could be at risk of economic harm,
demonstrated experience in the locale and seams of the
proposed stimulation, the probability of damages to the
seam, and the likelihood of commercial recovery within
thirty years of the date of stimulation.

Such financial security shall remain in force until two
years after the affected coal is mined or for a period of
thirty years after stimulation of the coal seam or until
final resolution of any action timely instituted to collect
the bond proceeds, whichever first occurs.

Any coal owner or operator may assert a claim to the
posted financial security by instituting an action
therefor in the circuit court of the county where the well
is located or where the damages occurred.

Upon receipt of such review board order, the chief
shall promptly undertake the action directed by the
review board, provided that all other provisions of this
article have been complied with. All permits issued by
the chief pursuant to this section shall be effective ten
days after issuance unless the review board orders the
chief to stay the effectiveness of a permit for a period
not to exceed thirty days from the date of issuance.

If a permit is issued, the chief shall indicate the
approved drilling location on the plat filed with the
application for a permit and shall number and keep an
index of and docket each plat, the name of the well
operator, the names and addresses of all persons
notified, the dates of conferences, hearings and all other
actions taken by the chief and the review board. The
chief shall also prepare a record of the proceedings,
which record shall include all applications, plats and 
other documents filed with the chief, all notices given 
and proof of service thereof, all orders issued, all 
permits issued and a transcript of the hearing. The 
record prepared by the chief shall be open to inspection 
by the public.

(e) Notwithstanding any finding or determination 
made by the board, in the event a workable coal seam 
twenty-eight inches or more in thickness is stimulated 
absent the consent of the coal owner or operator, the 
applicant and well operator shall be liable in tort 
without proof of negligence for any damage to such coal 
seam stimulated or any other workable coal seam 
twenty-eight inches or more in thickness within seven 
hundred fifty horizontal feet or one hundred vertical 
feet of the stimulation and for damages to any mining 
equipment proximately caused by such stimulation. 
Such applicant and well operator shall indemnify and 
hold the coal owner and coal operator harmless against 
any liability for injury, death or damage to property 
proximately caused by the stimulation.

§22-21-14. Protective devices required when a coalbed 
methane well penetrates workable coal bed; 
when a coalbed methane well is drilled 
through horizon of coal bed from which 
coal has been removed; notice of stimula-
tion; results of stimulation.

(a) Except for those coalbeds which the coalbed 
methane operator proposes to complete for production of 
coalbed methane or where a ventilation hole is being 
converted to a well, when a well penetrates one or more 
workable coal beds, the well operator shall run and 
cement a string of casing in the hole through the 
workable coalbed or beds in such a manner as will 
exclude all oil, gas or gas pressure as may be found in 
such coalbed or beds. Such string of casing shall be 
circulated and cemented in such a manner as provided 
for in reasonable rules promulgated by the chief in 
accordance with the provisions of chapter twenty-nine-
a. After any such string of casing has been so run and 
cemented to the surface, drilling may proceed to the
permitted depth.

(b) When a coalbed methane well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest sized casing to be used in the well, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon.

(c) At least five days prior to the stimulation of any coal seam the well operator shall give the coal owner and operator notice of the date and time of stimulation and shall allow the coal owner or operator to have an observer present at the site at the coal owner or operator's risk and cost. Within thirty days after stimulation is completed, the well operator shall certify the actual stimulation procedure used including, but not limited to, the fluid injection rate, the injection pressure, the volume and components of fluid injected and the amount and components of the propping agent, if any.

(d) The chief may grant variances to the requirements of this section where such variance would promote the extraction of coalbed methane without affecting mine safety.

§22-21-15. Drilling units and pooling of interests.

(a) In the absence of a voluntary agreement, an operator, owner or other party claiming an ownership interest in the coalbed methane may file an application
with the chief to pool (i) separately owned interests in a single tract, (ii) separately owned tracts, (iii) separately owned interests in any tract, and (iv) any combination of (i), (ii) and (iii) to form a drilling unit for the production of coalbed methane from one or more coalbed methane wells.

(b) The application for a drilling unit may accompany the application for a permit for a coalbed methane well or be filed as a supplement to the permit application. Such application shall be verified by the applicant and contain the following information for the proposed unit:

(1) The identity of each well and operator as set out in the well permit application;

(2) Each well number, if one has been assigned;

(3) The acreage of the proposed unit, the identity and acreage of each separate tract to be included in the proposed unit, and, where parts of tracts are included, the acreage of such parts;

(4) The district and county in which the unit is located;

(5) The names and addresses of the owners of the coal and coalbed methane underlying each separate tract, or the portion thereof which is to be included in the unit, any lessees or operators thereof, any coalbed methane owners not otherwise named, and any other claimants thereto known to the applicant. When any coal seam is separately owned, the list of names shall identify such separate ownership giving the names of the separately owned seams;

(6) A statement describing the actions taken by the applicant to obtain a voluntary agreement from each interest owner or claimant named in the application from which agreement has not been obtained;

(7) Other pertinent and relevant information as the chief may prescribe by rules.

(c) The application for a drilling unit shall be accompanied with the following:

(1) A plat prepared by a licensed land surveyor or
registered professional engineer showing the location of
the coalbed methane well or wells, or proposed well or
wells; the boundary and acreage of the proposed drilling
unit, the boundary and acreage of each tract contained
in the unit and, where parts of tracts are included, the
boundary and acreage of such parts, a name identifica-
tion of each tract, and the district and county in which
the unit is located. All boundaries must be shown with
courses and distances;

(2) A permit application fee of two hundred fifty
dollars;

(3) A certificate by the applicant that the notice
requirements of section sixteen of this article were
satisfied by the applicant. Such certification may be by
affidavit of personal service, or the return receipt card,
or other postal receipt, for certified mailing;

(4) An estimate of the cost, or the actual cost if known,
of drilling, completing, equipping, operating, plugging
and abandoning any well or wells in the proposed unit.


(a) At least thirty days prior to the date set for hearing
under section seventeen of this article, the applicant
shall deliver by personal service or by certified mail,
return receipt requested, notice to the following:

(1) Each coal owner and coal operator of any coal seam
underlying any tract or portion thereof which is
proposed to be included in the unit;

(2) Each owner and lessee of record and each operator
of natural gas surrounding the well bore and existing
in formations above the top of the uppermost member
of the “Onondaga Group” or at a depth less than six
thousand feet, whichever is shallower. Notices to gas
operators shall be sufficient if served upon the agent of
record with the office of oil and gas;

(3) Any coalbed methane owner to the extent not
otherwise named; and

(4) Any other person or entity known to the operator
to have an interest in the coal or coalbed methane.
(b) The notice required by subsection (a) of this section shall specify a time and place for a conference and a hearing on this application, shall advise the persons notified that the applicant has filed an application for a drilling unit for the production of coalbed methane, that they may be present and object or offer comments to the formation of the proposed unit, and shall be accompanied with copies of (i) the permit application for the coalbed methane well, (ii) the permit application for the drilling unit, and (iii) the plat of the drilling unit.

§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.

(a) Prior to the time fixed for a hearing under subsection (b) of this section, the board shall also set a time and place for a conference between the proposed applicant to operate a coalbed methane drilling unit and all persons identified in the application as having an interest in the coalbed methane or being a claimant if such interests are disputed, who have not entered into a voluntary agreement. At such conference the applicant and such other persons present or represented having an interest in the proposed unit shall be given an opportunity to enter into voluntary agreements for the development of the unit upon reasonable terms and conditions.

No order may be issued by the board as to any unit unless the applicant submits at the hearing a verified statement setting forth the results of the conference. If agreement is reached with all parties to the conference, the board shall find the unit is a voluntary unit and issue an order consistent with such finding.

(b) The review board shall, upon request of a proposed applicant for a drilling unit or upon request of a coal owner or operator, provide a convenient date and time for a hearing on the application for a drilling unit, which hearing date shall be no sooner than thirty-five days nor more than sixty days of the date the request
for hearing is made. The review board shall review the application and on the date specified for a hearing shall conduct a public hearing. The review board shall take evidence, making a record thereof, and consider:

(1) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells;

(2) The plan of development of the coal and the need for proper ventilation of any mines or degasification of any affected coal seams;

(3) The nature and character of any coal seam or seams which will be affected by the coalbed methane well or wells;

(4) The surface topography and property lines of the lands underlaid by the coal seams to be included in the unit;

(5) Evidence relevant to the proper boundary of the drilling unit;

(6) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;

(7) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well or wells within the unit; and if so, whether such applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;

(8) Whether a disagreement exists among the coalbed methane owners or claimants over the designation of the operator for any coalbed methane wells within the unit, and if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the unit for the benefit of the majority of the coalbed methane owners;

(9) If more than one person is interested in operating a well within the unit, the estimated cost submitted by each such person for drilling, completing, operating and marketing the coalbed methane from any proposed well
or wells; and

(10) Any other available geological or scientific data pertaining to the pool which is proposed to be developed.

(c) The review board shall take into account the evidence introduced, comments received and any objections at the hearing, and if satisfied that a drilling unit should not be established, shall enter an order denying the application. If the review board is satisfied that a drilling unit should be established, it shall enter a pooling order establishing a drilling unit. Such pooling order shall:

(1) Establish the boundary of the proposed unit, making such adjustment in the boundary as is just;

(2) Authorize the drilling and operation of a coalbed methane well or wells for production of coalbed methane from the pooled acreage;

(3) Establish minimum distances for any wells in the unit and for other wells which would drain the pooled acreage;

(4) Designate the operator who will be authorized to drill, complete and operate any well or wells in the unit;

(5) Establish a reasonable fee for the operator for operating costs, which shall include routine maintenance of the well and all accounting necessary to pay all expenses, royalties and amounts due working interest owners;

(6) Such other findings and provisions as are appropriate for each order.

(d) The operator designated in such order shall be responsible for drilling, completing, equipping, operating, plugging and abandoning the well, shall market all production therefrom, shall collect all proceeds therefrom, and shall distribute such proceeds in accordance with the division order issued by the review board.

(e) Upon issuance of the pooling order, the coalbed methane owners or any lessee of any such owners or any claimants thereeto may make one of the following
101 elections within thirty days after issuance of the order:

102 (1) An election to sell or lease its interest to the operator on such terms as the parties may agree, or if unable to agree, upon such terms as are set forth by the board in its order;

106 (2) An election to become a working interest owner by participating in the risk and cost of the well; or

108 (3) An election to participate in the operation of the well as a carried interest owner.

110 Any entity which does not make an election within said thirty days prescribed herein shall be deemed to have elected to sell or lease under election (1) above.

113 (f) The working interest in the well shall include (i) the right to participate in decisions regarding expenditures in excess of operating costs, taxes, any royalties in excess of one eighth, and other costs and expenses allowed in the pooling order and (ii) the obligation to pay for all expenditures. The working interest shall exist in (i) all owners who participate in the risk and cost of drilling and completing the well and (ii) carried interest owners after recoupment provided in subsection (h) of this section. The working interest owners’ net revenue share shall be seven eighths of the proceeds of sales of coalbed methane at the wellhead after deduction of operating costs, taxes, any royalties in excess of one eighth, and other costs and expenses allowed in a pooling order. Unless the working interest owners otherwise agree, the working interest owners shall share in all costs and decisions in proportion to their ownership interest in the unit. If any working interest owner deposits or contributes amounts in the escrow account which exceed actual costs, such owner shall be entitled to a refund; and if amounts deposited or contributed are less than actual costs, such owner shall make a deposit or contribution for the deficiency.

136 (g) The royalty interest in a well shall include the right to receive one eighth of the gross proceeds resulting from the sale of methane at the wellhead and such interest shall exist in the coalbed methane owners:
Provided, That any coalbed methane owner who in good faith has entered a lease or other contract prior to receiving notice of an application to form the drilling unit as provided herein, shall be entitled to such owner's fractional interest in the royalty calculated at a rate provided for in such contract. Each such owner shall be entitled to share in the royalty in proportion to his or her fractional interest in the unit.

(h) Where a coalbed methane owner elects to become a carried interest owner, such owner shall be entitled to his or her proportionate share of the working interest after the other working interest owners have recouped three hundred percent of the reasonable capital costs of the well or wells, including drilling, completing, equipping, plugging and abandoning and any further costs of reworking or other improvements of a capital nature.

(i) Each pooling order issued shall provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to any conflicting interests shall be deposited and held for the interest of the claimants as follows:

1. Each participating working interest owner, except for the operator, shall deposit in the escrow account its proportionate share of the costs allocable to the ownership interest claimed by such working interest owner.

2. The operator shall deposit in the escrow account all proceeds attributable to the conflicting interests of any coalbed methane owners who lease, or are deemed to have leased, their interest, plus all proceeds in excess of operational expenses, as allowed in the pooling order, attributable to the conflicting working and carried interest owners.

(j) After each coalbed methane owner has made, or has been deemed to have made, an election under subsection (e) of this section, the review board shall enter a division order which shall set out the net revenue interest of each working interest owner, including each carried interest owner and the royalty interest of each coalbed methane owner. Thereafter payments shall be
made to working interest owners, carried interest owners and royalty interest owners in accordance with the division order, except that payments attributable to conflicting claims shall be deposited in the escrow account. The fractional interest of each owner shall be expressed as a decimal carried to the sixth place.

(k) Upon resolution of conflicting claims either by voluntary agreement of the parties or a final judicial determination, the review board shall enter a revised division order in accordance with such agreement or determination and all amounts in escrow shall be distributed as follows:

(1) Each legally entitled working interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests;

(2) Each legally entitled carried interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests, after recoupment of amounts provided in subsection (h) of this section;

(3) Each legally entitled entity leasing, or deemed to have leased, its coalbed methane shall receive a share of the royalty proceeds attributable to the conflicting interests; and

(4) The operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.

(l) The review board shall enact rules for the administration and protection of funds delivered to escrow accounts.

(m) No provision of this section or article shall obviate the requirement that the coal owner’s consent and agreement be obtained prior to the issuance of a permit as required under section seven of this article.

§22-21-18. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered,
are hereby deemed to be operations on each separately
owned tract in the drilling unit by the several owners.
That portion of the production allocated to a separately
owned tract included in a drilling unit is hereby deemed
to be produced from that tract.


No agreement between or among coalbed methane
operators or owners entered into for the development of
coalbed methane or forming drilling units therefor may
be held to violate the statutory or common law of this
state prohibiting monopolies or acts, arrangements,
contracts, combinations or conspiracies in restraint of
trade or commerce.

§22-21-20. Spacing.

No coalbed methane well may be drilled closer than
one hundred feet of the outside boundary of the coal
tract from which coalbed methane is or will be produced
or within one thousand six hundred linear feet of the
location of an existing well for which a permit applica-
tion is on file, unless all owners and operators of any
affected workable coal seams agree in writing. Affected
workable coal seams for purposes of this section shall
be those which will be penetrated or those seams more
than twenty-eight inches in thickness from which
production is targeted. Spacing shall otherwise be as
provided in a pooling order issued by the chief, an order
establishing special field rules or an order issued by the
review board.

§22-21-21. Dry or abandoned wells.

Any coalbed methane well which is completed as a dry
hole or which has not produced coalbed methane in
paying quantities for a period of twelve consecutive
months shall be presumed to have been abandoned and
the operator shall promptly plug the well and reclaim
all surface land affected by the well in accordance with
the provisions of this article, unless the operator
furnishes satisfactory proof to the chief that there is a
bona fide future use for such well in accordance with
the rules promulgated under article six of this chapter.
§22-21-22. Notice of plugging and reclamation of well; right to take well; objection; plugging order; plugging for minethrough.

(a) Prior to the commencement of plugging operations the operator shall give thirty days' advance notice to the chief and to all coal owners and operators whose names and addresses would be required for a permit application under subdivision (2), subsection (b), section six of this article as of the date of the notice. Such notice shall set out the number and other identification of the well, a copy of the well plat, the date plugging will commence, and the manner and method of plugging.

(b) Any coal owner or operator whose coal seam is affected by such well shall have the following rights:

(1) To convert the well to a vent hole or otherwise take the well. In such event the chief, upon determination that the coal owner or operator has placed the well under a mining permit, shall release the well operator's bond and the well operator shall be relieved of further responsibility for the well; and

(2) To file comment or objection with the chief, within fifteen days after receipt of notice of intent to plug, with respect to the proposed manner or method of plugging. The chief shall consider any such comment or objection and issue an order specifying the manner and method of plugging and reclamation.

(c) Whenever any coalbed methane well is located in that portion of a coal seam which will be mined within six months, the well operator shall, within sixty days after notice from the coal owner or coal operator that the well is to be mined through, plug the well in such manner that the well can be safely mined through.

§22-21-23. Method of plugging.

All coalbed methane wells shall be plugged in such a manner that any workable coal seam surrounding the well can be safely mined and that the well can be mined through. The chief shall promulgate rules specifying the manner and method of plugging coalbed methane wells and in doing so, or in entering any order for such
plugging and reclamation, shall give special considera-
tion to the ability to mine any affected coal seam safely
and the protection of any affected coal seam for future
mining.


Nothing in this article shall be construed to affect the
mining and other property rights of any coal owner nor
shall any provision of this article be construed to
preclude a coal operator from removing support of the
surface and any structure or facilities thereon and other
strata as such rights may exist in any severance deed
or other contract.

§22-21-25. Judicial review; appeal to supreme court of
appeals; legal representation for review
board.

(a) Any person adversely affected by an order of the
chief or review board is entitled to judicial review. All
of the pertinent provisions of section four, article five,
chapter twenty-nine-a of this code apply to and govern
the judicial review.

(b) The judgment of the circuit court is 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.

(c) Legal counsel and services for the chief or review
board in all appeal proceedings in any circuit court and
the supreme court of appeals shall be provided by the
attorney general or his or her assistants and in any
circuit court by the prosecuting attorney of the county,
all without additional compensation. The chief or review
board, with the written approval of the attorney general,
may employ special counsel to represent the chief or
review board at any appeal proceedings.

§22-21-26. Limitation on actions in trespass.

In any case where title to subsurface minerals has
been severed in such a way that title to natural gas
underlying such tract and title to coal underlying such
tract are in different persons, it shall be an affirmative
defense to any action for willful trespass arising from
the drilling and commercial production of methane from
any coal seam underlying such tract, that the operator
of such well permitted, drilled and completed such well
under color of title of any instrument, deed, or lease for
oil and gas purposes from the gas owner, or an
instrument, deed or lease for coal mining purposes from
the coal owner.

§22-21-27. Injunctive relief.

(a) Whenever it appears to the chief or review board
that any person has been or is violating or is about to
violate any provision of this article, any rule promul-
gated by the chief or review board, any order or any
final decision of the chief or review board, the chief or
review board may apply, in the name of the state, to the
circuit court of the county in which the violation
occurred, is occurring or is about to occur, or to the
judge thereof in vacation, for injunctive relief against
the person and any other persons who have been, are or
are about to be, involved in any practices, acts or
omissions, in violation, enjoining the violation or
violations. The application may be made and prosecuted
to conclusion whether any violation or violations have
resulted or may result in prosecution or conviction
under the provisions of section six or twenty-eight of this
article.

(b) Upon application by the chief or review board, the
circuit courts of this state may by mandatory or
prohibitory injunction compel compliance with the
provisions of this article, the rules promulgated by the
chief or review board and all orders of the chief or
review board. The court may issue a temporary injunc-
tion in any case pending a decision on the merits of any
application filed. Any other section of this code to the
contrary notwithstanding, the state may not be required
to furnish bond or other undertaking as a prerequisite
to obtaining mandatory, prohibitory or temporary
injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any
application permitted by the provisions of this section is final unless reversed, vacated or modified on appeal to the supreme court of appeals.

(d) The chief or review board shall be represented in all such proceedings by the attorney general or his or her assistants and in proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The chief or review board, with the written approval of the attorney general, may employ special counsel to represent the chief or review board in any proceedings.

(e) If the chief or review board refuses or fails to apply for an injunctive relief to enjoin a violation or threatened violation of any provision of this article, any rule promulgated by the chief or review board hereunder or any order or final decision of the chief or review board, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his or her own behalf for an injunction to enjoin the violation or threatened violation in any court in which the chief or review board might have brought suit. The chief or review board shall be made a party defendant in the application in addition to the person or persons violating or threatening to violate any provision of this article, any rule promulgated by the chief or review board hereunder or any order of the chief or review board. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the chief or review board.


(a) Any person who violates any term or condition of a permit issued under this article, and the violation is found by the chief or review board to have rendered unmineable all or a portion of a workable coal seam, is subject to civil penalties, to be imposed and collected by the chief or review board in an amount not to exceed the reasonably expected net profit lost to the coal owner as a result. All penalties collected shall be transferred
to the special reclamation fund as provided by section twenty-nine, article six of this chapter.

(b) Any person who violates any provision of this article, any of the rules promulgated by the chief or review board or any order of the chief or review board other than a violation governed by the provisions of subsection (c) of this section, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars.

(c) Any person who, with the intention of evading any provision of this article, any of the rules promulgated by the chief or any order of the chief or review board, who makes or causes to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(d) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules promulgated hereunder or any order or final decision of the chief or review board or director, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.

§22-21-29. Construction.

This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

CHAPTER 25

(Com. Sub. for H. B. 4507—By Delegate Phillips)

[Passed March 10, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred two, article one, chapter forty-six-a of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, relating to the definitions of “precomputed loan” and “precomputed sale” under the “West Virginia Consumer Credit and Protection Act.”

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


1 In addition to definitions appearing in subsequent articles, in this chapter: (1) “Actuarial method” means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. A “consumer credit agreement” is an agreement where credit is granted.

(3) “Agricultural purpose” means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. “Agricultural products” includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.
(4) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

(6) The "cash price" of goods, services or an interest in land means the price at which the goods, services or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (a) applicable sales, use, privilege, and excise and documentary stamp taxes, (b) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations and improvements, and (c) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(7) "Closing costs" with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title
65 insurance or similar purposes including surveys;
66 (b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;
68 (c) Escrows for future payments of taxes and insurance;
70 (d) Official fees and fees for notarizing deeds and other documents;
72 (e) Appraisal fees; and
73 (f) Credit reports.
74 (8) “Code” means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.
76 (9) “Commercial facsimile transmission” means the electronic or telephonic transmission in the state to a facsimile device to encourage a person to purchase goods, realty or services.
80 (10) “Commissioner” means the commissioner of banking of West Virginia.
82 (11) “Conspicuous”: A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.
87 (12) “Consumer” means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan.
90 (13) (a) Except as provided in paragraph (b), “consumer credit sale” is a sale of goods, services or an interest in land in which:
93 (i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
96 (ii) The buyer is a person other than an organization;
97 (iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
(iv) Either the debt is payable in installments or a sales finance charge is made; and

(v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

(b) “Consumer credit sale” does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

(14) (a) “Consumer lease” means a lease of goods:

(i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;

(ii) In which the amount payable under the lease does not exceed twenty-five thousand dollars; and

(iii) Which is for a term exceeding four months.

(b) “Consumer lease” does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) “Consumer loan” is a loan made by a person regularly engaged in the business of making loans in which:

(a) The debtor is a person other than an organization;

(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;

(c) Either the debt is payable in installments or a loan finance charge is made; and

(d) Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.

(16) “Cosigner” means a natural person who assumes liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a
consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer’s obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a “cosigner” whether or not the person is designated as such on the credit obligation.

(17) “Credit” means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(18) “Earnings” means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

(19) “Facsimile device” means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines.

(20) “Federal Consumer Credit Protection Act” means the “Consumer Credit Protection Act” (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(21) “Goods” includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(22) “Home solicitation sale” means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller’s business establishment at a fixed location and the buyer’s agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a
preexisting open-end credit account with the seller in
existence for at least three months prior to the transac-
tion, a sale made pursuant to prior negotiations between
the parties at the seller's business establishment at a
fixed location, a sale of motor vehicles, mobile homes or
farm equipment or a sale which may be rescinded under
the Federal Truth in Lending Act (being Title I of the
Federal Consumer Credit Protection Act). A sale which
would be a home solicitation sale if credit were extended
by the seller is a home solicitation sale although the
goods or services are paid for, in whole or in part, by
a consumer loan in which the creditor is subject to
claims and defenses arising from the sale.

(23) Except as otherwise provided, "lender" includes
an assignee of the lender's right to payment but use of
the term does not in itself impose on an assignee any
obligation of the lender.

(24) "Lender credit card or similar arrangement"
means an arrangement or loan agreement, other than
a seller credit card, pursuant to which a lender gives
a debtor the privilege of using a credit card, letter of
credit, or other credit confirmation or identification in
transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order
for the payment of money drawn or accepted by the
consumer;

(b) By the lender's payment or agreement to pay the
consumer's obligations; or

(c) By the lender's purchase from the obligee of the
consumer's obligations.

(25) "Loan" includes:

(a) The creation of debt by the lender's payment of or
agreement to pay money to the consumer or to a third
party for the account of the consumer other than debts
created pursuant to a seller credit card;

(b) The creation of debt by a credit to an account with
the lender upon which the consumer is entitled to draw
immediately;
(c) The creation of debt pursuant to a lender credit card or similar arrangement; and

(d) The forbearance of debt arising from a loan.

(26) (a) “Loan finance charge” means the sum of (i) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

(27) “Merchandise certificate” or “gift certificate” means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(28) “Official fees” means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-
insurance or its equivalent in lieu of perfecting a
security interest otherwise required by the creditor in
connection with the sale, lease or loan, if such premium
or fee does not exceed the fees and charges described
in paragraph (a) which would otherwise be payable.

(29) "Organization" means a corporation, government
or governmental subdivision or agency, trust, estate,
partnership, cooperative or association.

(30) "Payable in installments" means that payment is
required or permitted by agreement to be made in (a)
two or more periodic payments, excluding a down
payment, with respect to a debt arising from a consumer
credit sale pursuant to which a sales finance charge is
made, (b) four or more periodic payments, excluding a
down payment, with respect to a debt arising from a
consumer credit sale pursuant to which no sales finance
charge is made, or (c) two or more periodic payments
with respect to a debt arising from a consumer loan. If
any periodic payment other than the down payment
under an agreement requiring or permitting two or
more periodic payments is more than twice the amount
of any other periodic payment, excluding the down
payment, the consumer credit sale or consumer loan is
"payable in installments."

(31) "Person" or "party" includes a natural person or
an individual, and an organization.

(32) "Person related to" with respect to an individual
means (a) the spouse of the individual, (b) a brother,
brother-in-law, sister or sister-in-law of the individual,
(c) an ancestor or lineal descendant of the individual or
his spouse, and (d) any other relative, by blood or
marriage, of the individual or his spouse who shares the
same home with the individual. "Person related to" with
respect to an organization means (a) a person directly
or indirectly controlling, controlled by or under common
control with the organization, (b) an officer or director
of the organization or a person performing similar
functions with respect to the organization or to a person
related to the organization, (c) the spouse of a person
related to the organization, and (d) a relative by blood
or marriage of a person related to the organization who shares the same home with him.

(33) "Precomputed loan." A loan, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance; or

(B) The loan is expressed in terms of the principal amount; the loan installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the loan or at its final payment as a result of the actual installment payment dates.

(34) "Precomputed sale." A sale, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the amount financed and the amount of the sales finance charge computed in advance; or

(B) The debt is expressed in terms of the principal amount; the debt installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the debt or at its final payment as a result of the actual installment payment dates.

(35) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(36) "Principal" of a loan means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:
(i) Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) Additional charges permitted by this chapter.

(37) "Revolving charge account" means an agreement between a seller and a buyer by which (a) the buyer may purchase goods or services on credit or a seller credit card, (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account, (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time, and (d) there is the privilege of paying the balances in installments.

(38) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which (a) the lender may permit the consumer to obtain loans from time to time, (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time, and (d) there is the privilege of paying the balances in installments.

(39) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.
(41) “Sale of services” means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) “Sales finance charge” means the sum of (a) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer’s default or other credit loss, and (b) charges incurred for investigating the collateral or credit worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(43) Except as otherwise provided, “seller” includes an assignee of the seller’s right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.

(44) “Seller credit card” means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

(45) “Services” includes (a) work, labor and other
personal services, (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(46) "Supervised financial organization" means a person, other than a supervised lender or an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make consumer loans; and

(b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(47) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

(48) "Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed two thousand dollars, and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

CHAPTER 26

(S. B. 36—By Senators Anderson, Claypole, Dittmar, Grubb, Holliday, Macnaughtan, Miller, Plymale, Ross, Wagner, Wiedebusch, Wooton and Yoder)

[Passed March 10, 1994: in effect ninety days from passage. Approved by the Governor.]
five of said chapter by adding thereto three new sections, designated sections one hundred four, one hundred five and one hundred six, all relating to consumer credit protection; prohibiting use of deception in telephone collection activities; awarding attorney fees, court costs and fees in certain claims; additional penalties for certain willful violations; and providing for the adjustment of damages according to the consumer price index.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article
2. Consumer Credit Protection.
5. Civil Liability and Criminal Penalties.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-129a. Deceptive or oppressive telephone calls.

1 No debt collector shall place a telephone call or
2 otherwise communicate by telephone with a consumer
3 or third party, at any place, including a place of
4 employment, falsely stating that the call is "urgent" or
5 an "emergency".

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-104. Attorney fees.
§46A-5-105. Willful violations.
§46A-5-106. Adjustment of damages for inflation.

§46A-5-104. Attorney fees.

1 In any claim brought under this chapter applying to
2 illegal, fraudulent or unconscionable conduct or any
3 prohibited debt collection practice, the court may award
4 all or a portion of the costs of litigation, including
reasonable attorney fees, court costs and fees, to the consumer. On a finding by the court that a claim brought under this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice was brought in bad faith and for the purposes of harassment, the court may award to the defendant reasonable attorney fees.

§46A-5-105. Willful violations.

If a creditor has willfully violated the provisions of this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, in addition to the remedy provided in section one hundred one of this article, the court may cancel the debt when the debt is not secured by a security interest.

§46A-5-106. Adjustment of damages for inflation.

In any claim brought under this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, the court may adjust the damages awarded pursuant to section one hundred one of this article to account for inflation from the time that the West Virginia consumer credit and protection act became operative, specifically 12:01 a.m. on the first day of September, one thousand nine hundred seventy-four, to the time of the award of damages in an amount equal to the consumer price index. Consumer price index means the last consumer price index for all consumers published by the United States department of labor.

CHAPTER 27

(Com. Sub. for H. B. 4169—By Delegate Phillips, S. Williams and Rutledge)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]
provisions; charges for credit life and health insurance; requiring notice of cancellation to consumers and insurers; approved forms, and notice to consumers of certain obligations, procedures and possible refunds of unearned premiums.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

(a) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

(1) Official fees and taxes;

(2) Charges for insurance as described in subsection (b): Provided, That nothing contained in this section with respect to insurance shall be construed as in any way limiting the power and jurisdiction of the insurance commissioner of this state in the premises;

(3) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

(4) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value
to him or her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, That as to insurance, the policy as distinguished from a certificate of coverage thereunder must be issued by an individual licensed under the laws of this state to sell such insurance and the determination of whether the charges therefor are reasonable in relation to the benefits shall be determined by the insurance commissioner of this state;

(5) Reasonable closing costs with respect to a debt secured by an interest in land; and

(6) Documentary charge or any other similar charge for documentary services in relation to securing a title, so long as said charge is applied equally to cash customers and credit customers alike and so long as such documentary charge does not exceed fifty dollars.

(b) A creditor may take, obtain or provide reasonable insurance on the life and earning capacity of any consumer obligated on the consumer credit sale or consumer loan, reasonable insurance on any real or personal property offered as security subject to the provisions of this subsection, and vendor's or creditor's single interest insurance with respect to which the insurer has no right of subrogation. Only one policy of life insurance and/or one policy of health and accident insurance and/or one policy of accident insurance and/or one policy of loss of income insurance on any one consumer may be in force with respect to any one contract or agreement at any one time, but one policy may cover both a consumer and his or her spouse:

(1) The amount, terms and conditions of property insurance shall have a reasonable relation to the existing hazards or risk of loss, damage or destruction and be reasonable in relation to the character and value of the property insured or to be insured; and the term of such insurance shall be reasonable in relation to the terms of
Provided, That nothing shall be deemed to prohibit the consumer from obtaining, at his or her option, greater coverages for longer periods of time if he or she so desires;

(2) Life insurance shall be in an initial amount not to exceed the total amount repayable under the consumer credit agreement, and where a consumer credit sale or consumer loan is repayable in installments, such insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Life insurance authorized by this subdivision shall provide that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for such insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited, then such excess shall be payable to the estate of the consumer. The initial term of such life insurance in connection with a consumer credit sale, other than a sale pursuant to a revolving charge account, or in connection with a consumer loan, other than a loan pursuant to a revolving loan account, shall not exceed the scheduled term of the consumer credit agreement by more than fifteen days.

The aggregate amount of periodic benefits payable by credit accident and health insurance in the event of disability, as defined in the policy, and loss of income insurance in the event of involuntary loss of employment, as defined in the policy, shall not exceed the unpaid amount of such indebtedness; periodic benefits payable in connection with a consumer credit sale pursuant to a revolving charge account or of a consumer loan pursuant to a revolving loan account may be based upon the authorized credit limit;

(3) When the insurance is obtained or provided by or through a creditor, the creditor may collect from the consumer or include as part of the cash price of a consumer credit sale or as part of the principal of a consumer loan, or deduct from the proceeds of any consumer loan the premium, or in the case of group insurance, the identifiable charge. The premium or
identifiable charge for such insurance required or obtained by a creditor may equal, but shall not exceed the premium rate filed by the insurer with the insurance commissioner. In any case, when the creditor collects the entire premium for such insurance in advance, such premium shall be remitted by such creditor to the insurer or the insurance agent, as specified by the insurer, within ten days from or after the end of the month in which such collection was made;

(4) With respect to insurance against loss of or damage to property, or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the debtor may choose the person through whom the insurance is to be obtained;

(5) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor shall require a consumer to purchase such insurance or to purchase such insurance from such creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer;

(6) When a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving such payment shall inform the debtor of the cancellation of any consumer credit insurance providing life, accident, health or loss of income coverage and advise the debtor of the application of any unearned premiums to the loan balance. Notices required by this subdivision shall be made in the following manner:

(A) If such insurance was not sold or provided by the creditor, the creditor receiving the payment shall notify the debtor that he or she may have the right to receive a refund of unearned premiums from any other seller or provider of such insurance, and advise the debtor of his or her obligation to notify any other insurer of the payment of the loan balance and the cancellation of the consumer credit insurance, and request a refund or
credit of unearned premiums, if applicable. Such notice shall be sent on a form as prescribed by the insurance commissioner as provided in chapter twenty-nine-a of this code and shall contain the name and address of the seller and the insurer; or

(B) If the creditor was the seller or provider of the consumer credit insurance, the creditor shall:

(i) Notify the insurer or shall cause the insurer to be notified of the cancellation of such insurance; and

(ii) Notify the debtor of the cancellation of such insurance and of the application of any unearned premiums to the loan balance, which such notice may be on a form consistent with the general course of business of the creditor.

(7) Upon receipt by the insurer of notification of the cancellation of consumer credit insurance, the insurer shall cancel such insurance effective no later than thirty days from the date of receipt of such notice. Within forty-five days following the date of notification of cancellation of such insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer; and

(8) An insurer, seller or creditor who fails to refund any unused insurance premium or provide the proper notification of payoff shall be liable for civil damages up to three times the amount of the unused premium as well as other remedies as provided for by section one hundred nine, article seven of this chapter.

(c) The insurance commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance, and the authority of the insurance commissioner to promulgate the same shall be exclusive notwithstanding any other provisions of this code to the contrary.
CHAPTER 28
(H. B. 4114—By Delegate Phillips, Riggs, Trump and H. White)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred sixteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia consumer credit and protection act; finance charges and related provisions; and change in terms of revolving charge and revolving loan accounts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-116. Change in terms of revolving charge accounts or revolving loan accounts.

(1) If a creditor makes a change in the terms of a revolving charge account or revolving loan account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies provided in this chapter.

(2) A creditor may change the terms of a revolving charge account or revolving loan account whether or not the change is authorized by prior agreement. The creditor shall give to the consumer written notice of such change not less than fifteen days prior to the effective date of such change.

(3) The notice provided for in this section is given to the debtor when mailed to him at the address used by the creditor for mailing periodic billing statements.
(4) Under no circumstances may a change under the provisions of this section be made so as to increase a sales finance charge or loan finance charge above that permitted by the appropriate provisions on sales finance charges or loan finance charges: Provided, That a creditor may apply a higher permitted sales finance charge or loan finance charge to the account balance or debt balance unpaid as of the date the change becomes effective.

CHAPTER 29
(Com. Sub. for S. B. 64—Senator Wagner)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred eight and two hundred ten, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to updating the uniform controlled substances act.

Be it enacted by the Legislature of West Virginia:

That sections two hundred eight and two hundred ten, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-208. Schedule III.

§60A-2-210. Schedule IV.

§60A-2-208. Schedule III.

1 (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

5 (b) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any
quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures or preparations were listed on the twenty-fifth day of August, one thousand nine hundred seventy-one, as excepted compounds under §308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

2. Benzphetamine;

3. Chlorphentermine;

4. Clortermine;

5. Phendimetrazine;

6. Hydrocodone.

(c) *Depressants.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

1. Any compound, mixture or preparation containing:

   A. Amobarbital;

   B. Secobarbital;

   C. Pentobarbital; or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

2. Any suppository dosage form containing:

   A. Amobarbital;

   B. Secobarbital;

   C. Pentobarbital; or any salt of any of these drugs and
approved by the food and drug administration for
marketing only as a suppository;

(3) Any substance which contains any quantity of a
derivative of barbituric acid or any salt thereof;

(4) Chlorhexadol;

(5) Glutethimide;

(6) Lysergic acid;

(7) Lysergic acid amide;

(8) Methyprylon;

(9) Sulfondiethylmethane;

(10) Sulfonethylmethane;

(11) Sulfonmethane;

(12) Tiletamine and zolazepam or any salt thereof;

combination product: Telazol; some trade or other
names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-
cyclohexanone; some trade or other names for zolaze-
pam: 4-(2-flurophenyl)-6, 8-dihydro-1, 3, 8-trimethylpy-
razolo-[3,4-e][1,4)-diazepin -7(1H)-one, flupyrazapon;

(13) Human growth hormones or anabolic steroids.

d) Nalorphine.

(e) Narcotic drugs. — Unless specifically excepted or
unless listed in another schedule, any material, com-
 Pound, mixture or preparation containing limited
quantities of any of the following narcotic drugs or any
salts thereof:

(1) Not more than 1.8 grams of codeine per 100
milliliters and not more than 90 milligrams per dosage
unit, with an equal or greater quantity of an isoquin-
o ligne alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100
milliliters and not more than 90 milligrams per dosage
unit, with one or more active, nonnarcotic ingredients
in recognized therapeutic amounts;
(3) Not more than 300 milligrams of dihydrocodeine or hydrocodone per 100 milliliters and not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeine or hydrocodone per 100 milliliters and not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters and not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams and not more 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams and not more than 2.5 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

§60A-2-210. Schedule IV.

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;
11 (2) Barbital;
12 (3) Bromazepam;
13 (4) Camazepam;
14 (5) Chlortal betaine;
15 (6) Chlortal hydrate;
16 (7) Chlordiazepoxide;
17 (8) Clobazam;
18 (9) Clonazepam;
19 (10) Clorazepate;
20 (11) Clotiazepam;
21 (12) Cloxazolam;
22 (13) Delorazepam;
23 (14) Diazepam;
24 (15) Estazolam;
25 (16) Ethchlorvynol;
26 (17) Ethinamate;
27 (18) Ethylloflazepate;
28 (19) Fludiazepam;
29 (20) Flunitrazepam;
30 (21) Flurazepam;
31 (22) Halazepam;
32 (23) Haloxazolam;
33 (24) Ketazolam;
34 (25) Loprazolam;
35 (26) Lorazepam;
36 (27) Lormetazepam;
37 (28) Mebutamate;
(29) Medazepam;
(30) Meprobamate;
(31) Methohexital;
(32) Methylphenobarbital (mephobarbital);
(33) Medazolam;
(34) Nimetazepam;
(35) Nitrazepam;
(36) Nordiazepam;
(37) Oxazepam;
(38) Oxazolam;
(39) Paraldehyde;
(40) Petrichloral;
(41) Phenobarbital;
(42) Pinazepam;
(43) Prazepam;
(44) Quazepam;
(45) Temazepam;
(46) Tetrazepam;
(47) Triazolam;
(48) Zolpidem.

(c) Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible: Fenfluramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central
nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Cathine ((+)-norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenproporex;
(5) Mazindol;
(6) Mefenorex;
(7) Phentermine;
(8) Pemoline (including organometallic complexes and chelates thereof);
(9) Pipradrol;
(10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(e) Other substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (alpha-(#)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane);
(2) Not more than 1 milligram of difenoxin and not less than 25 micrograms of antropine sulfate per dosage unit;
(3) Pentazocine.

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and not product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.
AN ACT to amend and reenact section three hundred two, article three, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article four of said chapter by adding thereto a new section, designated section four hundred nine, all relating to the establishment of the separate and distinct offenses involving the transportation of controlled substances into this state; exemption of certain acts by certain persons from certain prohibitions provided by said chapter; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 60A.
UNIFORM CONTROLLED SUBSTANCES ACT.

Article
3. Regulation of Manufacture, Distribution and Dispensing of Controlled Substances.
4. Offenses and Penalties.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-302. Registration required; effect of registration; exemptions; waiver; inspections.

1 (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by
the state board of pharmacy or the appropriate department, board, or agency, as the case may be, as specified in section three hundred one, in accordance with its rules.

(b) Persons registered by said state board of pharmacy or said appropriate department, board, or agency, as the case may be, under this act to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) (1) The following persons need not register and may lawfully possess, deliver, or transport into this state controlled substances under this act:

(A) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(B) A common or contract carrier or warehouseman, or an employee thereof, whose possession, delivery, or transportation into this state of any controlled substance is in the usual course of a lawful business or employment;

(2) The following persons need not register and may lawfully possess or transport into this state controlled substances under this act: An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.
(f) The said state board of pharmacy or said appropriate department, board, or agency, as the case may be, may inspect the establishment of a registrant or applicant for registration in accordance with the rule of said state board of pharmacy or said appropriate department, board, or agency, as the case may be.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-409. Prohibited acts—Transportation of controlled substances into state; penalties.

(a) Except as otherwise authorized by the provisions of this code, it shall be unlawful for any person to transport into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II which is a narcotic drug, shall be guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(2) Any other controlled substance classified in Schedule I, II or III, shall be guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(3) A substance classified in Schedule IV, shall be guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(4) A substance classified in Schedule V, shall be guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

(c) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.
AN ACT to amend and reenact section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article nineteen, chapter eight of said code by adding thereto a new section, designated section twenty-one, all relating to specifications for water mains which are newly installed or upgraded.

Be it enacted by the Legislature of West Virginia:

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

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers, improved streets and maintenance of roads not in the state road system.

1 In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: Provided, That the county commission of Webster County is authorized to expend county funds in
the opening of, and upkeep of a sulphur well now situate
on county property: Provided, however, That such
authority and power herein conferred upon county
commissions shall not extend into the territory within
any municipal corporation: Provided further, That any
county commission is hereby authorized to enter into
contracts or agreements with any municipality within
the county, or with a municipality in an adjoining
county, with reference to the exercise of the powers
vested in such commissions by this section.

Considering the importance of public fire protection,
any county commission, public service district, public or
private utility which installs, constructs, maintains, or
upgrades water mains shall ensure that all new mains
specifically intended to provide fire protection are
supplied by mains which are not less than six inches in
diameter. A permit or other written approval shall be
obtained from the department of health and human
resources for each hydrant or group of hydrants
installed in compliance with section nine, article one,
chapter sixteen of the West Virginia code as amended:
Provided, That all newly constructed water distribution
systems transferred to a public or private utility shall
have mains at least six inches in diameter where fire
flows are desired or required by the public or private
utility: Provided, however, That the utility providing
service has sufficient hydraulic capacity as determined
by the department of health and human resources. In
addition to the foregoing, the county commission shall
have the power to improve streets, sidewalks and alleys
and lay sewers and enter into contracts for maintenance
of county roads and subdivision roads used by the public
but not in the state road system as follows: Upon petition
in writing duly verified, of the persons, firms or
corporations owning not less than sixty percent of the
frontage of the lots abutting on both sides of any street
or alley, between any two cross-streets, or between a
cross-street and an alley in any unincorporated com-
munity, requesting the county commission so to do
according to plans and specifications submitted with
such petition and offering to have their property so
abutting assessed not only with their portion of the cost
of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, or the total cost of maintenance of county roads or subdivision roads used by the public but not in the state road system, the county commission may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans and specifications as hereinafter provided: Provided, That the county commission is further authorized, if the said county commission so determines by a unanimous vote of its constituted membership, that two or more intersecting streets, sidewalks, alleys and sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well as drainage problems, then, in that event, the said county commission may order such improvements as one single unit and project, upon petition in writing duly verified of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of all streets or alleys, or portions thereof included by said county commission in said unit and project.

The total cost including labor and materials, engineering, and legal service of grading and paving, curbing, improving any such road, street or alley (including the cost of the intersections) and assessing the cost thereof shall be borne by the owners of the land abutting upon such road, street or alley when the work is completed and accepted according to the following plan, that is to say, payment is to be made by all landowners on either side of such road, street or alley so paved or improved in such proportion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all the land so abutting on such road, street or alley, so paved or improved as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him to the clerk of said commission.

Upon petition in writing duly verified, of the persons,
firms or corporations owning not less than sixty percent of the frontage of the lots abutting on one side of any county or subdivision road or roads between any two cross-roads, all used by the public but not in the state road system or street between any two cross-streets or between a cross-street and an alley in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the total cost thereof, the county commission may cause any sidewalk to be improved, or paved, or repaved, substantially with such materials according to such plans and specifications and the total cost including labor and materials, engineering and legal service of improving, grading, paving or repaving such sidewalk and assessing the cost thereof shall, when the work is completed and accepted, be assessed against the owners of the lots or fractional part of lots abutting on such sidewalk, in such portion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all lots so abutting on such sidewalk so paved or improved, as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the cost, as hereinafter provided, the county commission may lay and construct sanitary sewers in any street or alley with such materials and substantially according to such plans and specifications and when such sewer is completed and accepted, the county engineer or surveyor shall report to the county commission, in writing, the total cost of such sewer and a description of the lots and lands, as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained,
together with the amount chargeable against each lot
and owner, calculated in the following manner: The total
cost of constructing and laying the sewer including
labor, materials, legal and engineering services shall be
borne by the owners of the land abutting upon the
streets and alleys, in which the sewer is laid according
to the following plan: Payment is to be made by each
landowner on either side of such portion of a street or
alley in which such sewer is laid, in such proportions
as the frontage of his land upon said street or alley bears
to the total frontage of all lots so abutting on such street
or alley. In case of a corner lot, frontage is to be
measured along the longest dimensions thereof abutting
on such street or alley in which such sewer is laid. Any
lot having a depth of two hundred feet or more, and
fronting on two streets or alleys, one in the front and
one in the rear of said lot, shall be assessed on both of
said streets or alleys if a sewer is laid in both such
streets and alleys. Where a corner lot has been assessed
on the end it shall not be assessed on the side for the
same sewer and where it has been assessed on the side
it shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such
county road or subdivision road, street, alley or sidewalk
in a manner which does not require the permanent
paving or repaving thereof, the county commission shall
likewise have authority to improve such county road or
subdivision road, street, alley or sidewalk, substantially
as requested in such petition, and the total cost thereof
including labor, materials, engineering and legal
services shall be assessed against the abutting owners
in the proportion which the frontage of their lots
abutting upon such county road or subdivision road,
street, alley or sidewalk bears to the total frontage of
all lots abutting upon such street, alley or sidewalk so
improved.

Upon the filing of such petition and before work is
begun, or let to contract, the county commission shall
fix a time and place for hearing protests and shall
require the petitioners to post notice of such hearing in
at least two conspicuous places on the county road or
subdivision road, street, alley or sidewalk affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the improvement is to be made. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county commission may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving or sewering will result in special benefits to all owners of property abutting on said county road or subdivision road, street, alley or sidewalk in an amount at least equal in value to the cost thereof. The commission shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.

Any owner of property abutting upon said county road or subdivision road, street, alley or sidewalk aggrieved by such order shall have the right to review the same on the record made before the county commission by filing within ten days after the entry of such order a petition with the clerk of the circuit court assigning errors and giving bond in a penalty to be fixed by the circuit court to pay any costs or expenses incurred upon such appeal should the order of the county commission be affirmed. The circuit court shall proceed to review the matter as in other cases of appeal from the county commission.

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens
except those for taxes, and may be enforced by a civil
action in the name of the contractor performing the
work in the same manner as provided for other liens for
permanent improvements. Such assessment shall be
paid in not more than ten equal annual installments,
bearing interest at a rate not to exceed twelve percent
per annum, as follows: The first installment, together
with interest on the whole assessment, shall be paid not
later than one year from the date of such assessment,
and a like installment with interest on the whole amount
remaining unpaid each year thereafter until the
principal and all interest shall have been paid in full.

The county commission may issue coupon-bearing
certificates payable in not more than ten equal annual
installments for the amount of such assessment and the
interest thereon, to be paid by the owner of any lot or
fractional part thereof, fronting on such county road or
subdivision road, street, alley or sidewalk which has
been improved, paved, or repaved or in which a sewer
has been laid, as aforesaid, and the holder of said
certificate shall have a lien having priority over all other
liens except those for taxes upon the lot or part of lot
fronting on such county road or subdivision road, street,
alley or sidewalk, and such certificate shall likewise
draw interest from the date of assessment at a rate not
to exceed twelve percent per annum, and payment
thereof may be enforced in the name of the holder of
said certificate by proper civil action in any court
having jurisdiction to enforce such lien.

Certificates authorized under this section may be
issued, sold or negotiated to the contractor doing the
work, or to his assignee, or to any person, firm or
corporation: Provided, That the county commission in
issuing such certificates shall not be held as a guarantor,
or in any way liable for the payment thereof. Certifi-
cates so issued shall contain a provision to the effect that
in the event of default in the payment of any one or more
of said installments, when due, said default continuing
for a period of sixty days, all unpaid installments shall
thereupon become due and payable, and the owner of
said certificates may proceed to collect the unpaid
balance thereof in the manner hereinbefore provided.

In all cases where petitioners request paving or repaving, or the laying of sewers under the provisions of this section, the county commission shall let the work of grading, paving, curbing or sewering to contract to the lowest responsible bidder. In each such case the county commission shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the contractor to repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county commission of the certificates evidencing the lien, duly canceled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county commission.

The owner of any lot or fractional part of a lot abutting upon such county road or subdivision road, street, alley or sidewalk so improved, paved, repaved, or sewered shall have the right to anticipate the payment of any such assessment or certificate by paying the principal amount due, with interest accrued thereon to date of payment, and also to pay the entire amount, without interest at any time, within thirty days following the date of the assessment.

Nothing in this section contained shall be construed to authorize the county commissions of the various counties to acquire any road construction, ditching or paving equipment. The county commissions are hereby authorized to rent from the state road commissioner or any other person, firm or corporation such equipment as may be necessary from time to time, to improve any county road or subdivision road used by the public but not in the state road system, street or sidewalk which petitioners do not desire to have paved in a permanent manner, and for such purpose to employ such labor as
may be necessary but no expense connected therewith shall be charged to any county funds.

No county commission shall be under any duty after the paving, repaving or improvement of any county road or subdivision road used by the public but not in the state road system, street, alley or sidewalk or the laying of any sanitary sewer under the provisions of this section, to maintain or repair the same, but any such commission shall have authority upon petition duly verified, signed by at least sixty percent of the owners of property abutting upon any improvement made under this section, to maintain or repair such improvement or sewer and to assess the cost thereof against the owners of such abutting property in the same manner as the cost of the original improvement.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.


Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs, constructs, maintains, or upgrades water mains, shall ensure that all new mains specifically intended to provide fire protection are supplied by mains which are not less than six inches in diameter. A permit or other written approval shall be obtained from the department of health and human resources for each hydrant or group of hydrants installed in compliance with section nine, article one, chapter sixteen of the West Virginia code as amended: Provided, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are desired or required by the public or private utility: Provided, however, That the utility providing service has sufficient hydraulic capacity as determined by the department of health and human resources.
AN ACT to amend and reenact section three, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing county commissions to sell or dispose of property belonging to the county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

1 Except as may be prohibited by law or otherwise, the county commission of a county is authorized by law to sell or dispose of any property, either real or personal, belonging to the county or held by it for the use of any district thereof. The property shall be sold at public auction, at the front door of the courthouse of the county, and such sale shall be conducted by the president of the county commission, but before making any such sale, notice of the time, terms and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county: Provided, That this section shall not apply to the sale of any one item of property of less value than one thousand dollars: Provided, however, That the provisions of this section concerning sale at public auction shall not apply to a county commission selling or disposing of its property for a public use to the United States of America, its instrumentalities, agencies or political subdivisions or to the state of West Virginia, or its political subdivisions, including county boards of education, volunteer fire
24 departments and volunteer ambulance services, for an 
25 adequate consideration without considering alone the 
26 present commercial or market value of the property: 
27 Provided further, That all real property conveyed or sold 
28 by a county commission to a volunteer fire department 
29 or volunteer ambulance service under this provision 
30 shall revert back to the county commission if the 
31 volunteer fire department or volunteer ambulance 
32 service ceases to use it for the purpose for which the real 
33 property was conveyed or sold.

CHAPTER 33
(H. B. 4063—By Delegates Rowe and Trump)
[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article nine, chapter fifty-one of said code, all relating to the retirement of judicial officers; providing for the retirement of incapacitated justices, judges and magistrates, and the expulsion of members of the Legislature; and increasing required contributions to the retirement system for judges of courts of record.

Be it enacted by the Legislature of West Virginia:

That section two, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section four, article nine, chapter fifty-one of said code be amended and reenacted, all to read as follows:

Chapter
51. Courts and Their Officers.

CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.
ARTICLE 6. REMOVAL OF OFFICERS.

§6-6-2. Retirement of incapacitated justices, judges and magistrates; expulsion of members of Legislature.

Any justice, judge, or magistrate may be retired from office because of advancing years and attendant physical or mental incapacity, in the manner prescribed in section eight of article eight of the constitution of this state, and by rules prescribed, adopted, promulgated and amended pursuant thereto.

The Senate or House of Delegates may expel a member of the body in the manner prescribed in section twenty-five of article six of the constitution.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

*§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; military service credit and maximum allowable; qualifiable prosecutorial service.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six percent of the salary received by such person out of the state treasury: Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-five, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the judges' retirement fund nine percent of the salary received by that person. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retire-

* Clerk's Note: This section was also amended by H. B. 4081 (Chapter 99), which passed prior to this act.
ment under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the state auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

In drawing warrants for the salary checks of judges, the state auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the consolidated public retirement board to the trust fund: Provided, That on or after the first day of January, one thousand nine hundred ninety-five, the amount so deducted and credited shall be nine percent of each such salary check.

Any judge seeking to qualify military service to be claimed as credited service, in allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same without any required payment in respect thereof to the judges' retirement fund. Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its regular session in the year one thousand nine hundred eighty-seven, who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year one thousand nine hundred eighty-seven, shall be required to pay into the judges' retirement fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year one thousand nine hundred eighty-seven, and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year one thousand nine hundred eighty-eight be considered as eligible service for any purposes of this article.
(b) The Legislature finds that any increase in salary for judges of courts of record directly affects the actuarial soundness of the retirement system for judges of courts of record and, therefore, an increase in the required percentage contributions of members of that retirement system is the same subject for purposes of determining the single object of this bill.

CHAPTER 34

(Com. Sub. for S. B. 41—By Senators Schoonover, Anderson, Bailey, Blatnik, Boley, Burdette, Mr. President, Chaifin, Claypole, Craigo, Dalton, Dittmar, Grubb, Heimick, Holliday, Humphreys, Jones, Lucht, Macnaughtan, Manchin, Miller, Minard, Plymale, Ross, Sharpe, Tomblin, Wagner, Wehrle, Walker, Whitlow, Wiedebusch, Withers, Yoder, Wooton and Chernenko)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the sale or purchase of a child; and creating criminal penalties and exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ADOPTION.

§48-4-16. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

1 (a) Any person or agency who knowingly offers, gives or agrees to give to another person money, property, service or other thing of value in consideration for the recipient's locating, providing or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, shall be guilty of a felony and subject to fine and imprisonment as provided herein.
(b) Any person who knowingly receives, accepts or offers to accept money, property, service or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, shall be guilty of a felony and subject to fine and imprisonment as provided herein.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, may be imprisoned in the penitentiary for not less than one year nor more than five years or, in the discretion of the court, be confined in jail not more than one year and shall be fined not less than one hundred dollars nor more than two thousand dollars.

(d) A child whose parent, guardian or custodian has sold or attempted to sell said child in violation of the provisions of this article may be deemed an abused child as defined by section three, article one, chapter forty-nine of this code. The court may place such a child in the custody of the department of health and human resources or with such other responsible person as the best interests of the child dictate.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the department of health and human resources or any licensed or duly authorized adoption or child-placing agency.

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with legal adoption proceedings.

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother.

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement or placement of a minor child for adoption.
An Act to amend and reenact sections three and four, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections eight and eighteen, article eleven of said chapter; and to amend and reenact section fifteen, article three, chapter sixty-two of said code, all relating to increasing criminal penalties for second degree murder, voluntary manslaughter and attempt to commit a felony; increasing criminal penalties upon the second conviction of certain criminal violations; and increasing the minimum number of years which must be served prior to becoming eligible for parole after certain first degree murder convictions.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections eight and eighteen, article eleven of said chapter be amended and reenacted; and that section fifteen, article three, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter
61. Crimes and Their Punishment.

CHAPTER 61.
CRIMES AND THEIR PUNISHMENT.

Article
2. Crimes Against the Person.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-4. Voluntary manslaughter; penalty.

1 Murder of the second degree shall be punished by a definite term of imprisonment in the penitentiary which is not less than ten nor more than forty years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of ten years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two, whichever is greater.

§61-2-4. Voluntary manslaughter; penalty.

1 Voluntary manslaughter shall be punished by a definite term of imprisonment in the penitentiary which is not less than three nor more than fifteen years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two, whichever is greater.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-8. Attempts; classification and penalties therefor.

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall, where it is not otherwise provided, be punished as follows:

1 (1) If the offense attempted be punishable with life imprisonment, the person making such attempt shall be guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary not less than one nor more than five years.

10 (2) If the offense attempted be punishable by imprisonment in the penitentiary for a term less than life, such person shall be guilty of a felony, and, upon conviction, shall, in the discretion of the court, either be
imprisoned in the penitentiary for not less than one nor
more than three years, or be confined in jail not less
than six nor more than twelve months, and fined not
exceeding five hundred dollars.

(3) If the offense attempted be punishable by confine-
ment in jail, such person shall be guilty of a misdemea-
nor, and, upon conviction, shall be confined in jail not
more than six months, or fined not exceeding one
hundred dollars.

§61-11-18. Punishment for second or third offense of
felony.

(a) Except as provided by subsection (b) of this section,
when any person is convicted of an offense and is subject
to confinement in the penitentiary therefor, and it is
determined, as provided in section nineteen of this
article, that such person had been before convicted in
the United States of a crime punishable by imprison-
ment in a penitentiary, the court shall, if the sentence
to be imposed is for a definite term of years, add five
years to the time for which the person is or would be
otherwise sentenced. Whenever in such case the court
imposes an indeterminate sentence, five years shall be
added to the maximum term of imprisonment otherwise
provided for under such sentence.

(b) Notwithstanding the provisions of subsection (a) or
(c) of this section or any other provision of this code to
the contrary, when any person is convicted of first
degree murder or second degree murder or a violation
of section three, article eight-b, chapter sixty-one of this
code, and it is determined, as provided in section
nineteen of this article, that such person had been before
convicted in this state of first degree murder, second
degree murder or a violation of section three, article
eight-b of said chapter, or has been so convicted under
any law of the United States or any other state for an
offense which has the same elements as any offense
described in this subsection, such person shall be
punished by imprisonment in the penitentiary for life
and is not eligible for parole.

(c) When it is determined, as provided in section
nineteen hereof, that such person shall have been twice
before convicted in the United States of a crime
punishable by confinement in a penitentiary, the person
shall be sentenced to be confined in the penitentiary for
life.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 3. TRIAL OF CRIMINAL CASES.

§62-3-15. Verdict and sentence in murder cases.

If a person indicted for murder be found by the jury
guilty thereof, they shall in their verdict find whether
he or she is guilty of murder of the first degree or second
degree. If the person indicted for murder is found by
the jury guilty thereof, and if the jury find in their
verdict that he or she is guilty of murder of the first
degree, or if a person indicted for murder pleads guilty
of murder of the first degree, he or she shall be punished
by imprisonment in the penitentiary for life, and he or
she, notwithstanding the provisions of article twelve,
chapter sixty-two of this code, shall not be eligible for
parole: Provided, That the jury may, in their discretion,
recommend mercy, and if such recommendation is
added to their verdict, such person shall be eligible for
parole in accordance with the provisions of said article
twelve, except that, notwithstanding any other provision
of this code to the contrary, such person shall not be
eligible for parole until he or she has served fifteen
years: Provided, however, That if the accused pleads
guilty of murder of the first degree, the court may, in
its discretion, provide that such person shall be eligible
for parole in accordance with the provisions of said
article twelve, and, if the court so provides, such person
shall be eligible for parole in accordance with the
provisions of said article twelve in the same manner and
with like effect as if such person had been found guilty
by the verdict of a jury and the jury had recommended
mercy, except that, notwithstanding any provision of
said article twelve or any other provision of this code
to the contrary, such person shall not be eligible for
parole until he or she has served fifteen years.
CHAPTER 36
(Com. Sub. for H. B. 4645—By Mr. Speaker, Mr. Chambers, and
Delegates Riggs, Burk, Douglas and Rowe)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the crime of stalking generally; establishing conditions under which following, harassing, or threatening constitutes stalking; definitions; misdemeanor and felony offenses and penalties therefor; definitions; labor exemption; conditions for probation, restraining orders, and bonds; alternative sentencing.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article two, chapter sixty-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. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; penalties; definitions.

(a) Any person who knowingly, willfully, and repeatedly follows and harasses, or knowingly, willfully, and repeatedly follows and makes a credible threat or knowingly, willfully and repeatedly harasses and makes a credible threat against a person with whom he or she has, or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not such intention is reciprocated, or against a member of that person's immediate family, with the intent to place that person in reasonable apprehension that he or she or a member of his or her immediate family will suffer death, bodily injury, sexual assault, battery or kidnapping, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(b) Notwithstanding the provisions of section ten,
article two-a, chapter forty-eight of this code, any person who violates the provisions of subsection (a) of this section in violation of an order entered by a circuit court, magistrate court or family law master, in effect and entered pursuant to section thirteen or fifteen, article two, chapter forty-eight of this code or section five or six, article two-a, chapter forty-eight is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars nor more than five thousand dollars, or both.

(c) A second conviction for a violation of this section occurring within five years of a prior conviction is punishable by incarceration in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars nor more than five thousand dollars, or both.

(d) A third or subsequent conviction for a violation of this section occurring within five years of a prior conviction is a felony punishable by incarceration in the penitentiary for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(e) Notwithstanding any provision of this code, any person against whom a permanent restraining order issued pursuant to subsection (i) of this section who is convicted of a second or subsequent violation of the provisions of this section shall be incarcerated in the county jail for not less than six months nor more than one year, or fined not less than two thousand dollars nor more than five thousand dollars, or both.

(f) For the purposes of this section:

(1) "Harasses" means knowing and willful conduct directed at a specific person which is done with the intent to cause mental injury or emotional distress;

(2) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat would be carried out;
(3) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

(4) "Immediate family" means a spouse, parent, child, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household.

(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the redress of grievances, including, but not limited to: Any labor dispute; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

(h) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(i) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in such cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(j) It shall be a condition of bond for any person accused of the offense described in this section that the person shall have no contact, direct or indirect, verbal or physical, with the alleged victim.

(k) Nothing in this section shall be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.
AN ACT to amend and reenact sections ten and eleven, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-a, all relating to the reasonable regulation of the use and possession of deadly weapons generally; the unlawful display or offer for rent or sale of deadly weapons by persons and employees; unlawful sale, rental, giving or lending of deadly weapons by person and employee to person prohibited from possessing the same; use of a deadly weapon to cause or threaten a breach of the peace; legislative findings; unlawful possession of deadly weapon on school bus or property and exceptions thereto; unlawful possession of deadly weapon with intent to commit a crime on school bus or property; duty of principal to report; suspension of driver’s license or instruction permit upon adjudication or conviction; duty of parent, custodian or legal guardian to report; unlawful possession of deadly weapon on premises which house court of law or in offices of family law master and exceptions thereto; unlawful possession of deadly weapon with intent to commit a crime on premises which house court of law or in offices of family law master; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.
§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; criminal penalties.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and in offices of family law master.

§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

1 (a) (1) It shall be unlawful for any person to publicly display and offer for rent or sale, or, where the person is other than a natural person, to knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same.

2 (2) Any person violating the provisions of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars or shall be confined in the county jail for not more than one year, or both fined and confined, except that where the person violating the provisions of this subsection is other than a natural person, such person shall be fined not more than ten thousand dollars.

(b) (1) It shall be unlawful for any person to knowingly sell, rent, give or lend, or, where the person is other than a natural person, to knowingly permit an employee thereof to knowingly sell, rent, give or lend, any deadly weapon to a person prohibited from possessing same by any provision of this article.

2 (2) Any person violating the provisions of this subsection shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or shall be imprisoned in the penitentiary of this state for a definite term of years of not less than three years nor more than ten years, or both fined and imprisoned, except that where the person violating the provisions of this subsection is other than
§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; criminal penalties.

It shall be unlawful for any person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, to carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. Any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one thousand dollars, or shall be confined in the county jail not less than ninety days nor more than one year, or both.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and in offices of family law master.

(a) The Legislature hereby finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children in school in this state and for those persons employed with the judicial department of this state. It is for the purpose of providing such assurances of safety, therefore, that subsection (b) of this section is enacted as a reasonable regulation of the manner in which citizens may exercise those rights accorded to them pursuant to section twenty-two, article three of the Constitution of the state of West Virginia.

(b) (1) It shall be unlawful for any person to possess any firearm or any other deadly weapon on any school bus as defined in section one, article one, chapter seventeen-a of this code, or in or on any public or private primary or secondary education building, structure, facility or grounds thereof, including any vocational education building, structure, facility or grounds thereof where secondary vocational education programs are conducted.
21  (2) This subsection shall not apply to:
22    (A) A law-enforcement officer acting in his or her
23      official capacity;
24    (B) A person specifically authorized by the board of
25      education of the county or principal of the school where
26      the property is located to conduct programs with valid
27      educational purposes; or
28    (C) A person who, as otherwise permitted by the
29      provisions of this article, possesses an unloaded firearm
30      or deadly weapon in a motor vehicle or leaves an
31      unloaded firearm or deadly weapon in a locked motor
32      vehicle.
33  (3) Any person violating this subsection shall be guilty
34      of a misdemeanor, and, upon conviction thereof, shall be
35      fined not more than one thousand dollars, or shall be
36      confined in jail not more than one year, or both.
37  (c) (1) It shall be unlawful for any person to possess
38      any firearm or any other deadly weapon with the intent
39      to commit a crime on any school bus or in or on any
40      public or private primary or secondary education
41      building, structure, facility or grounds thereof, includ-
42      ing any vocational education building, structure, facility
43      or grounds thereof where secondary vocational educa-
44      tion programs are conducted.
45      (2) Any person violating this subsection shall be guilty
46      of a felony, and, upon conviction thereof, shall be
47      imprisoned in the penitentiary of this state for a definite
48      term of years of not less than two years nor more than
49      ten years, or fined not more than five thousand dollars,
50      or both.
51  (d) It shall be the duty of the principal of each school
52      subject to the authority of the state board of education
53      to report any violation of subsection (b) or (c) of this
54      section discovered by such principal to the state
55      superintendent of schools within seventy-two hours after
56      such violation occurs. The state board of education shall
57      keep and maintain such reports and may prescribe rules
58      establishing policy and procedures for the making and
59      delivery of the same as required by this subsection. In
addition, it shall be the duty of the principal of each
school subject to the authority of the state board of
education to report any violation of subsection (b) or (c)
of this section discovered by such principal to the
appropriate local office of the division of public safety
within seventy-two hours after such violation occurs.

(e) In addition to the methods of disposition provided
by article five, chapter forty-nine of this code, any court
which adjudicates a person who is fourteen years of age
or older as delinquent for a violation of subsection (b)
or (c) of this section may, in its discretion, order the
division of motor vehicles to suspend any driver's license
or instruction permit issued to such person for such
period of time as the court may deem appropriate, such
suspension, however, not to extend beyond such person's
nineteenth birthday; or, where such person has not been
issued a driver's license or instruction permit by this
state, order the division of motor vehicles to deny such
person's application for the same for such period of time
as the court may deem appropriate, such denial,
however, not to extend beyond such person's nineteenth
birthday. Any suspension ordered by the court pursuant
to this subsection shall be effective upon the date of
entry of such order. Where the court orders the
suspension of a driver's license or instruction permit
pursuant to this subsection, the court shall confiscate
any driver's license or instruction permit in the
adjudicated person's possession and forward the same to
the division of motor vehicles.

(f) (1) If a person eighteen years of age or older is
convicted of violating subsection (b) or (c) of this section,
and if such person does not act to appeal such conviction
within the time periods described in subdivision (2) of
this subsection, such person's license or privilege to
operate a motor vehicle in this state shall be revoked in
accordance with the provisions of this section.

(2) The clerk of the court in which the person is
convicted as described in subdivision (1) of this subsec-
tion shall forward to the commissioner a transcript of
the judgment of conviction. If the conviction is the
judgment of a magistrate court, the magistrate court
clerk shall forward such transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward such transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking such person's license or privilege to operate a motor vehicle in this state for a period of one year, or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of section two, article five-a, chapter seventeen-c of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. Such request for hearing shall be made within ten days after receipt of a copy of the order of suspension. The sole purpose of this hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when such person enters a plea of guilty or is found guilty by a court or jury.
(g) (1) It shall be unlawful for any parent, custodian or other legal guardian of a person less than eighteen years of age who knows that said person is in violation of subsection (b) or (c) of this section, or who has reasonable cause to believe that said person’s violation of said subsections is imminent, to fail to report such knowledge or belief to the appropriate school or law-enforcement officials.

(2) Any person violating this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or shall be confined in jail not more than one year, or both.

(h) (1) It shall be unlawful for any person to possess any firearm or any other deadly weapon on any premises which houses a court of law or in the offices of a family law master.

(2) This subsection shall not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over such premises or offices.

(3) Any person violating this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or shall be confined in jail not more than one year, or both.

(i) (1) It shall be unlawful for any person to possess any firearm or any other deadly weapon on any premises which houses a court of law or in the offices of a family law master with the intent to commit a crime.

(2) Any person violating this subsection shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary of this state for a definite term of years of not less than two years nor more than ten years, or fined not more than five thousand dollars, or both.
CHAPTER 38
(S. B. 37—By Senators Plymale, Wagner, Anderson, Dittmar, Grubb, Holliday, Macnaughtan, Miller, Ross, Wiedebusch and Yoder)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to crimes against the person; creating felony offense involving wanton endangerment with a firearm; definition; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve, to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-12. Wanton endangerment involving a firearm.

Any person who wantonly performs any act with a firearm which creates a substantial risk of death or serious bodily injury to another shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a definite term of years of not less than one year nor more than five years, or, in the discretion of the court, confined in the county jail for not more than one year, or fined not less than two hundred fifty dollars nor more than two thousand five hundred dollars, or both.

For purposes of this section, the term “firearm” shall have the same meaning ascribed to such term as set forth in section two of this article.
AN ACT to amend and reenact section fourteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the felony offense of unlawfully disinterring or displacing a dead human body or part thereof; the creation of the misdemeanor offense of intentionally desecrating a cemetery, graveyard, mausoleum or other designated human burial site; the definition of desecration; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-14. Disinterment or displacement of dead body or part thereof; damage to cemetery or graveyard; penalties; damages in civil action.

1 (a) Any person who unlawfully disinters or displaces a dead human body, or any part of a dead human body, placed or deposited in any vault, mausoleum or any temporary or permanent burial place, is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary or other suitable state correctional facility for a determinate sentence of not less than two nor more than five years.

(b) (1) Any person who intentionally desecrates any cemetery, graveyard, mausoleum or other designated human burial site is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars, or confined in jail not more than one year, or both fined and confined.
For the purposes of this subsection, "desecrate" means defacing, damaging or otherwise physically mistreating in a way that a reasonable person knows will outrage the sensibilities of persons likely to observe or discover his or her actions.

CHAPTER 40
(S. B. 34—By Senators Macnaughtan, Anderson, Dittmar, Grubb and Ross)

[Passed March 10, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-three, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to acts of civil war excused.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§1. Repeal of section relating to acts of civil war excused.

Section twenty-three, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 41
(S. B. 263—By Senators Holliday, Wiedebusch, Humphreys, Yoder, Wagner, Dittmar, Minard and Anderson)

[Passed March 10, 1994: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the home incarceration act; redesignating references to the words "confinement" and "detention" as the word "incarceration"; clarifying that home incarceration is an alternative sentence for any offense unless the statute which
provides the penalty for such offense provides that home incarceration is not to be imposed as an alternative sentence; and clarifying that the alternative sentence of home incarceration is not the only alternative sentence available for an offense unless the statute which provides the penalty for such offense requires mandatory incarceration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-4. Home incarceration; period of home incarceration; applicability.
§62-11B-5. Requirements for order for home incarceration.
§62-11B-6. Circumstances under which home incarceration may not be ordered.
§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.
§62-11B-10. Information to be provided law-enforcement agencies.
§62-11B-11. Discretion of the court; provisions of article not exclusive.


1 This article may be cited as the “Home Incarceration Act”.


1 This article applies to adult offenders and to juveniles who have committed a delinquent act that would be a crime if committed by an adult.


1 As used in this article:

2 (1) “Home” means the actual living area of the temporary or permanent residence of an offender. The term includes, but is not limited to, a hospital, health
5 care facility, hospice, group home, residential treatment
6 facility and boarding house.

7 (2) "Monitoring device" means an electronic device
8 that is:

9 (A) Limited in capability to the recording or transmitting of information regarding an offender's presence or
10 absence from the offender's home;
11 (B) Minimally intrusive upon the privacy of the
12 offender or other persons residing in the offender's
13 home; and
14 (C) Incapable of recording or transmitting:
15 (i) Visual images;
16 (ii) Oral or wire communications or any auditory
17 sound; or
18 (iii) Information regarding the offender's activities
19 while inside the offender's home.

21 (3) "Offender" means any adult convicted of a crime
22 punishable by imprisonment or detention in a county jail
23 or state penitentiary; or a juvenile convicted of a
24 delinquent act that would be a crime punishable by
25 imprisonment or incarceration in the state penitentiary
26 or county jail, if committed by an adult.

§62-11B-4. Home incarceration; period of home incarceration; applicability.

1 (a) As a condition of probation or bail or as an
2 alternative sentence to another form of incarceration for
3 any criminal violation of this code over which a circuit
4 court has jurisdiction, a circuit court may order an
5 offender confined to the offender's home for a period of
6 home incarceration. As an alternative sentence to
7 incarceration in jail, a magistrate may order an adult
8 offender convicted of any criminal violation under this
9 code over which a magistrate court has jurisdiction, be
10 confined to the offender's home for a period of electron-
11 ically monitored home incarceration: Provided, That
electronic monitoring may not be required in a specific
12 case if a circuit court upon petition thereto finds by
order that electronic monitoring is not necessary.

(b) The period of home incarceration may be continuous or intermittent, as the circuit court orders, or continuous except as provided by section five of this article if ordered by a magistrate. However, the aggregate time actually spent in home incarceration may not exceed the term of imprisonment or incarceration prescribed by this code for the offense committed by the offender.

(c) A grant of home incarceration under this article constitutes a waiver of any entitlement to deduction from a sentence for good conduct under the provisions of section twenty-seven, article five, chapter twenty-eight of this code.

§62-11B-5. Requirements for order for home incarceration.

An order for home incarceration of an offender under section four of this article shall include, but not be limited to, the following:

(1) A requirement that the offender be confined to the offender's home at all times except when the offender is:

(A) Working at employment approved by the circuit court or magistrate, or traveling to or from approved employment;

(B) Unemployed and seeking employment approved for the offender by the circuit court or magistrate;

(C) Undergoing medical, psychiatric, mental health treatment, counseling or other treatment programs approved for the offender by the circuit court or magistrate;

(D) Attending an educational institution or a program approved for the offender by the circuit court or magistrate;

(E) Attending a regularly scheduled religious service at a place of worship;

(F) Participating in a community work release or
community service program approved for the offender by the circuit court, in circuit court cases; or

(G) Engaging in other activities specifically approved for the offender by the circuit court or magistrate.

(2) Notice to the offender of the penalties which may be imposed if the circuit court or magistrate subsequently finds the offender to have violated the terms and conditions in the order of home incarceration.

(3) A requirement that the offender abide by a schedule, prepared by the probation officer in circuit court cases, or by the supervisor or sheriff in magistrate court cases, specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.

(4) A requirement that the offender is not to commit another crime during the period of home incarceration ordered by the circuit court or magistrate.

(5) A requirement that the offender obtain approval from the probation officer or supervisor or sheriff before the offender changes residence or the schedule described in subdivision (3) of this section.

(6) A requirement that the offender maintain:

(A) A working telephone in the offender's home;

(B) If ordered by the circuit court or as ordered by the magistrate, an electronic monitoring device in the offender's home, or on the offender's person, or both; and

(C) Electric service in the offender's home if use of a monitoring device is ordered by the circuit court or any time home incarceration is ordered by the magistrate.

(7) A requirement that the offender pay a home incarceration fee set by the circuit court or magistrate. If a magistrate orders home incarceration for an offender, the magistrate shall follow a fee schedule established by the supervising circuit judge in setting the home incarceration fee.

(8) A requirement that the offender abide by other
§62-11B-6. Circumstances under which home incarceration may not be ordered.

(a) A circuit court or magistrate may not order home incarceration for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this article.

(b) A circuit court or magistrate may not order home incarceration for an offender who is being held under a detainer, warrant or process issued by a court of another jurisdiction.

(c) A magistrate may order home incarceration for an offender only with electronic monitoring and only if the county of the offender's home has an established program of electronic monitoring that is equipped, operated and staffed by the county supervisor or sheriff for the purpose of supervising participants in a home incarceration program: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that electronic monitoring is not necessary.

(d) A magistrate may not order home incarceration for an offender convicted of a crime of violence against the person.

(e) Home incarceration shall not be available as a sentence if the language of a criminal statute expressly prohibits its application.


All home incarceration fees ordered by the circuit court shall be paid to the circuit clerk, who shall monthly remit the fees to the sheriff. All home incarceration fees ordered by a magistrate shall be paid to the magistrate court clerk, who shall monthly remit the fees to the county sheriff. The county sheriff shall establish a special fund designated the home incarceration services fund, in which the sheriff shall deposit all home incarceration fees remitted by the clerks. The county commission shall appropriate money from the
§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.

The county commission may employ one or more persons with the approval of the circuit court and who shall be subject to the supervision of the sheriff as a home incarceration supervisor or may designate the county sheriff to supervise offenders ordered to undergo home incarceration and to administer the county's home incarceration program. Any person so supervising shall have authority, equivalent to that granted to a probation officer pursuant to section ten, article twelve of this chapter, to arrest a home incarceration participant when reasonable cause exists to believe that such participant has violated the conditions of his or her home incarceration. Unless otherwise specified, the use of the term "supervisor" in this article shall refer to a home incarceration supervisor.


An offender ordered to undergo home incarceration under section four of this article is responsible for providing his own food, housing, clothing, medical care and other treatment expenses. The offender is eligible to receive government benefits allowable for persons on probation, parole or other conditional discharge from confinement or incarceration.


(a) If at any time during the period of home incarceration there is reasonable cause to believe that a participant in a home incarceration program has violated the terms and conditions of the circuit court's home incarceration order, he or she shall be subject to the procedures and penalties set forth in section ten, article twelve of this chapter.

(b) If at any time during the period of home incarcer-
If at any time during the period of home incarceration there is reasonable cause to believe that a participant sentenced to home incarceration by the circuit court has violated the terms and conditions of the court's order of home incarceration and said participant's participation was imposed as an alternative sentence to another form of incarceration, said participant shall be subject to the same procedures involving revocation as would a probationer charged with a violation of the order of home incarceration. Any participant under an order of home incarceration shall be subject to the same penalty or penalties, upon the circuit court's finding of a violation of the order of home incarceration, as he or she could have received at the initial disposition hearing: Provided, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.

(c) If at any time during the period of home incarceration there is reasonable cause to believe that a participant sentenced to home incarceration by a magistrate has violated the terms and conditions of the magistrate's order of home incarceration as an alternative sentence to incarceration in jail, the supervising authority may arrest the participant upon the obtaining of an order or warrant and take the offender before a magistrate within the county of the offense. The magistrate shall then conduct a prompt and summary hearing on whether the participant's home incarceration should be revoked. If it appears to the satisfaction of the magistrate that any condition of home incarceration has been violated, the magistrate may revoke the home incarceration and order that the sentence of incarceration in jail be executed. Any participant under an order of home incarceration shall be subject to the same penalty or penalties, upon the magistrate's finding of a violation of the order of home incarceration, as the participant could have received at the initial disposition hearing: Provided, That the participant shall receive credit towards any sentence imposed after a finding of violation for the time spent in home incarceration.
§62-11B-10. Information to be provided law-enforcement agencies.

A probation department charged by a circuit court or a supervisor or sheriff charged by a magistrate with supervision of offenders ordered to undergo home incarceration shall provide all law-enforcement agencies having jurisdiction in the place where the probation department or the office of the supervisor or sheriff is located with a list of offenders under home incarceration supervised by the probation department, supervisor or sheriff. The list must include the following information about each offender:

1. The offender's name, any known aliases, and the location of the offender's home incarceration;
2. The crime for which the offender was convicted;
3. The date the offender's home incarceration expires; and
4. The name, address and telephone number of the offender's supervising probation officer or supervisor, as the case may be, for home incarceration.

§62-11B-11. Discretion of the court; provisions of article not exclusive.

Home incarceration pursuant to the provisions of this article may be imposed at the discretion of the circuit court or magistrate court as an alternative means of incarceration for any offense. Except for offenses for which the penalty includes mandatory incarceration, home incarceration shall not be considered an exclusive means of alternative sentencing.


Notwithstanding any provision of this code to the contrary, in any case where a person has been ordered to home incarceration where that person is not in the custody or control of the division of corrections, the circuit court shall have the authority of the board of probation and parole regarding the release, early release or release on parole of the person.
AN ACT to amend and reenact section seventeen-b, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sick leave for sheriffs' deputies; computation; eliminating the cap on sick leave that can be accrued by deputy sheriffs; statement from a physician; and emergency sick leave.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17b. Sick leave for deputy sheriffs.

1. (a) The county commission of each county shall allow the sheriff's deputies sick leave with pay to be computed as follows: Full-time deputies are entitled to one and one-half days sick leave for each calendar month worked, or greater part thereof; part-time deputies are entitled to sick leave at the same rate and in the same proportion that hours actually worked bears to hours regularly scheduled for full-time deputies.

(b) Sick leave may be granted only when illness on the part of or injury to the deputy incapacitates him or her for duty: Provided, That the sheriff of the county in which the deputy is employed has the authority to require the deputy to produce a statement from an attending physician for each day of sick leave beyond two days. This statement shall include dates of treatment and also state that the deputy was unable to work. In the absence of the physician's statement, if required, annual leave shall be charged for the entire period.
(c) In the event of illness, a full-time deputy may take without limit emergency sick leave without pay after all accrued sick leave, annual leave and compensatory time available to the full-time deputy has been exhausted.

CHAPTER 43
(Com. Sub. for S. B. 228—By Senators Boley, Schoonover, Whitlow, Wagner, Tomblin, Burdette, Mr. President, Dalton, Bailey, Anderson and Yoder)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen-d, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child support and educational expenses; eliminating language providing for college educational expenses; preserving eligibility of handicapped and disabled children for child support beyond age eighteen; and providing for modification of orders entered pursuant to prior enactment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15d. Child support beyond age eighteen.

(a) Upon a specific finding of good cause shown and upon findings of fact and conclusions of law in support thereof, an order for child support may provide that payments of such support continue beyond the date when the child reaches the age of eighteen, so long as the child is unmarried and residing with a parent and is enrolled as a full-time student in a secondary educational or vocational program and making substantial progress towards a diploma: Provided, That such
payments may not extend past the date that the child reaches the age of twenty.

(b) Nothing herein shall be construed to abrogate or modify existing case law regarding the eligibility of handicapped or disabled children to receive child support beyond the age of eighteen.

(c) The reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-four shall not, by operation of law, have any effect upon or vacate any order or portion thereof entered under the prior enactment of this section which awarded educational and related expenses for an adult child accepted or enrolled and making satisfactory progress in an educational program at a certified or accredited college. Any such order or portion thereof shall continue in full force and effect until the court, upon motion of a party, modifies or vacates the order upon a finding that:

(1) The facts and circumstances which supported the entry of the original order have changed, in which case the order may be modified;

(2) The facts and circumstances which supported the entry of the original order no longer exist because the child has not been accepted or is not enrolled in and making satisfactory progress in an educational program at a certified or accredited college, or the parent ordered to pay such educational and related expenses is no longer able to make such payments, in which case the order shall be vacated;

(3) The child, at the time the order was entered, was under the age of sixteen years, in which case the order shall be vacated;

(4) The amount ordered to be paid was determined by an application of child support guidelines in accordance with the provisions of section eight, article two, chapter forty-eight-a of this code or legislative rules promulgated thereunder, in which case the order may be modified or vacated; or
(5) The order was entered after the fourteenth day of March, one thousand nine hundred ninety-four, in which case the order shall be vacated.

CHAPTER 44

(Com. Sub. for H. B. 4575—By Delegates Fantasia, Prezioso and Stewart)

[Passed March 11, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to domestic relations; divorce, annulment and separate maintenance; and confidentiality of domestic relations court files.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.


1. All orders in domestic relations cases entered in the civil order books by circuit clerks are public records.
2. For purposes of this section, domestic relations cases shall include actions for divorce, annulment, separate maintenance, paternity, child support, custody, visitation, actions brought under the provisions of the uniform reciprocal enforcement of support act and petitions for writs of habeas corpus wherein the issue is child custody.
3. Upon the filing of a domestic relations case, all pleadings, exhibits or other documents contained in the court file are confidential and not open for public inspection either during the pendency of the case or after the case is closed.
When sensitive information has been disclosed during a hearing or in pleadings, evidence, or documents filed in the record, a circuit judge or family law master may, sua sponte or upon motion of a party, order such information sealed in the court file. Sealed documents or court files shall only be opened by order of a circuit judge or family law master: Provided, That, in any case pending before a family law master, the master may open and inspect the entire contents of the court file.

The parties, their designees, their attorneys, a duly appointed guardian ad litem or any person who has standing to modify or enforce a support order, shall have the right to examine and copy any document in a confidential court file which has not been sealed by order of a circuit judge or family law master. Upon motion and for good cause shown, the circuit court or family law master may permit a person not a party to the action the right to examine and copy such documents as are necessary to further the interests of justice.

CHAPTER 45
(Com. Sub. for H. B. 4013—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]  
[Passed March 2, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, ten and fourteen, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section twenty-eight, all relating to the prevention of domestic violence; extending the period of time for which protective orders may be effective; changing certain terminology; mandating law-enforcement officers to make arrests for observed violations of protective orders; authorizing certain other individuals to seek a warrant for the arrest of a person violating a protective order; revising the provisions governing the arrest of
persons alleged to have committed certain crimes against family or household members; defining the term "credible corroborative evidence"; creating new crimes and providing penalties therefor; and prohibiting actions for false arrest or unlawful detention against officers affecting arrests in connection with crimes involving domestic violence.

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

That sections six, ten and fourteen, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two, chapter sixty-one of said code be amended by adding thereto a new section, designated section twenty-eight, all to read as follows:

Chapter 48. Domestic Relations.

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.


1 (a) At the conclusion of the hearing and if the petitioner has proven the allegations of abuse by a preponderance of the evidence, then the court shall issue a protective order which shall direct the respondent to refrain from abusing the petitioner and/or the minor children. The terms of a protective order may include:

7 (1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

10 (2) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children;

13 (3) Establishing temporary visitation rights with
regard to the minor children and requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(4) Ordering the noncustodial parent to pay to the custodial parent a sum for temporary support and maintenance of the petitioner and children, if any;

(5) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(6) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order;

(7) Directing the respondent to participate in counseling; or

(8) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner in any public place.

(b) Any final protective order shall be for a fixed period of time not to exceed ninety days: Provided, That if a party has filed for divorce, separate maintenance or annulment and no temporary or final divorce order is entered prior to expiration of the protective order, upon petitioner's motion, the protective order shall remain in effect until such temporary or final divorce order is entered. The court may amend its order at any time upon subsequent petition filed by either party. If the court enters an initial order for a period of less than ninety days, it shall, after notice and hearing, extend its initial order for the full ninety-day period if it finds the petitioner or the minor child or children continue to need protection from abuse. The order shall be in full force and effect in every county in this state. The order shall state that it is in full force and effect in every county in this state.

(c) No order under this article shall in any manner affect title to any real property.

(d) Certified copies of any order made under the
provisions of this section shall be issued to the petitioner, the respondent and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the division of public safety within twenty-four hours of the entry of the order.

(e) No mutual protective orders shall be granted unless both parties have filed a petition under section four of this article and have proven the allegations of abuse by a preponderance of the evidence.


(a) Upon issuance of a temporary order as provided in section five of this article, and service thereof upon the respondent, or under relief granted in a protective order as provided in subsections (a) and (b), section six of this article of which the respondent has notice, a copy of such order shall, no later than the close of the next business day, be delivered by the court or the clerk to a local office of the city police, the county sheriff and the West Virginia division of public safety, where it shall be placed in a confidential file, with access provided only to the law-enforcement agency and the respondent named on said order: Provided, That upon the expiration of any order issued pursuant to section five or six of this article, any such law-enforcement agency which has any such order on file shall immediately expunge its confidential file of any reference thereto and destroy all copies of such order in its possession, custody or control. A sworn affidavit may be executed by the party awarded exclusive possession of the residence or household, pursuant to an order entered under subsection (b), section six of this article, and delivered to such law-enforcement agency simultaneously with any such order, giving his or her consent for a law-enforcement officer to enter such residence or household, without a warrant, to enforce such protective order or temporary order. Orders shall be promptly served upon the respondent. Failure to serve shall not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the order.
(b) Any person who observes a violation of such order or the violated party may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(c) Where a law-enforcement officer observes a violation of a valid order, he or she shall immediately arrest the subject of the order. In cases of violation of such orders occurring outside the presence of an officer, any person authorized to file a petition under the provisions of section four of this article or a legal guardian or guardian ad litem may apply to a court in session in the county in which the violation occurred or the county in which the order was issued for a warrant of arrest. If the court finds probable cause to believe that a valid order has been violated, the court shall issue such warrant for the arrest of the subject of the order wherever he or she may be found.

(d) Where there is an arrest, the officer shall take the arrested person before a court or a magistrate and upon a finding of probable cause to believe a violation of an order has taken place, the court or magistrate shall set a time and place for a hearing, to take place within five days, and serve forthwith upon the alleged violator an order to show cause why he or she should not be held in contempt for violation of the prior order, which unless waived by the defendant shall be by trial by a jury of six persons. The remedies provided by this section shall be limited to violations of a temporary order or protective order entered pursuant to subsection (a) or (b), section six of this article. A respondent who shall abuse the petitioner and/or minor children in knowing and willful violation of the terms of a temporary or final protective order issued under the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(a) Notwithstanding any provision of this code, where a family or household member is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against another family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest the alleged perpetrator for said offense when:

(1) The law-enforcement officer has observed credible corroborative evidence that the offense has occurred; and

(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) Credible corroborative evidence means evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense and may include, but is not limited to, the following conditions:

(1) Condition of the alleged victim.—One or more contusions, scratches, cuts, abrasions, swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) Condition of the accused.—Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) Condition of the scene.—Damaged premises or
furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions.—Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) Where an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, such shall constitute prima facie evidence that the person arrested constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

CHAPTER 61.
CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.


(a) Domestic battery.—If any family or household member unlawfully and intentionally makes physical contact of an insulting or provoking nature with another family or household member or unlawfully and intentionally causes physical harm to another family or household member, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not more than twelve months, or fined not more than five hundred dollars, or both fined and confined.

(b) Domestic assault.—If any family or household member unlawfully attempts to commit a violent injury
of another family or household member or unlawfully commits an act which places another family or household member in reasonable apprehension of immediately receiving a violent injury, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not more than six months, or fined not more than one hundred dollars, or both fined and confined.

(c) Third offense.—A family or household member who has been convicted of a third or subsequent domestic battery and/or domestic assault as defined in this section, assault and/or battery as defined in section nine of this article when committed against a family or household member, or any combination of such offenses, is guilty of a felony if such offense occurs within ten years of a prior conviction of any of these offenses, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years and fined not exceeding five hundred dollars.

(d) For the purposes of this section, the term “family or household member” means “family or household member” as defined in section two, article two-a, chapter forty-eight of this code.

(e) A person charged with violation of this section may not also be charged with a violation of subsection (b) or (c), section nine of this article.

(f) No law-enforcement officer shall be subject to any civil or criminal action for false arrest or unlawful detention for affecting an arrest pursuant to this section or pursuant to section fourteen, article two-a, chapter forty-eight of this code.
AN ACT to amend and reenact section one, article two-b, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rights of grandparents of minor children generally; and defining the term “grandparent” for purposes of visitation rights.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. GRANDPARENT VISITATION.

§48-2B-1. Legislative findings; intent; definitions.

(a) The Legislature finds that circumstances may arise where it is appropriate for circuit courts of this state to have jurisdiction to grant to the grandparents of minor children a right of visitation to enhance the best interests of the minor child or children as well as the grandparent. The Legislature further finds that in such situations, as in all situations involving children, the best interests of children must be the paramount consideration. It is the express intent of the Legislature that the provisions for grandparent visitation set forth in this article shall be exclusive and under all circumstances the interests of the child or children involved shall be the court’s first and paramount consideration.

(b) For purposes of this article, “grandparent” means a biological grandparent, a person married or previously married to a biological grandparent, or a person who has previously been granted custody of the parent of a minor child with whom visitation is sought by a court of competent jurisdiction.
CHAPTER 47

(Com. Sub. for H. B. 4657—By Mr. Speaker, Mr. Chambers, and Delegates Kiss, Facemyer, Ashley and Browning)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority of the West Virginia board of education to build a lodge at the camp and conference center at Cedar Lakes; providing authority to issue revenue bonds or notes for said project; requirements and method of issuing bonds or notes; trustee for holder of bonds or notes; contents of trust agreement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-16a. Construction of buildings and recreational facilities at state camp and conference center; charges for use; financing by revenue bonds or notes permissible; trustee for holders of bonds or notes; contents of trust agreement.

The West Virginia board of education is hereby authorized to construct, erect, acquire and improve dining halls, cottages, and other buildings or recreational facilities it considers necessary and beneficial for the proper conduct and management of the camp and conference center and may charge such rates, fees, rentals and other charges for the use of the buildings and recreational facilities as it determines necessary and advisable.

The construction, erection, acquisition and improvement of dining halls, cottages and other buildings or
recreational facilities may be financed by the issuance of revenue bonds or notes of the state of West Virginia payable solely from the revenues derived from the operation of the camp and conference center notwithstanding any of the provisions of section sixteen of this article.

The revenue bonds or notes shall be authorized by resolution of the West Virginia board of education, hereinafter referred to in this section as the "board", and the revenue bonds or notes shall not constitute a debt of the state of West Virginia within the meaning of any of its statutes or constitution.

The principal of and interest on the bonds or notes shall be payable solely from the special fund provided for in this section for such payment. The board shall pledge the moneys in the special fund, except that part of the proceeds of sale of any bonds or notes to be used to pay the cost of a project, for the payment of the principal of and interest on bonds or notes issued pursuant to this section. The pledge shall apply equally and ratably to separate series of bonds or notes or upon such priorities as the board determines. The bonds or notes shall be authorized by resolution of the board which shall recite an estimate of the cost of the project, and shall provide for the issuance of bonds or notes in an amount sufficient, when sold as provided in this section, to produce such cost, less the amount of any funds, grant or grants, gift or gifts, contribution or contributions received, or in the opinion of the board expected to be received from any source. The acceptance by the board of any and all funds, grants, gifts and contributions, whether in money or in land, labor or materials, is hereby expressly authorized. All bonds or notes shall have and are hereby declared to have all the qualities of negotiable instruments. The bonds or notes shall bear interest at not more than twelve percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates of issuance, and may be made redeemable at the option of the board, at such price and under such terms and conditions, as the board may fix prior to the issuance of the bonds or notes. The board shall determine the
form of the bonds or notes, including coupons, if any, to be attached thereto to evidence the right of interest payments, which bonds or notes shall be signed by the chairman and secretary of the board, under the great seal of the state, attested by the secretary of state, and the coupons, if any, attached thereto shall bear the facsimile signature of the chairman of the board. In case any of the officers whose signatures appear on the bonds or notes or coupons issued as authorized under this section shall cease to be such officers before the delivery of the bonds or notes, the signatures are nevertheless valid and sufficient for all purposes the same as if they had remained in office until such delivery. The board shall fix the denominations of the bonds or notes, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia at the state capitol, or at the option of the holder, at some bank or trust company within or without the state of West Virginia to be named in the bonds or notes, in such medium as may be determined by the board. The bonds or notes and interest thereon are exempt from taxation by the state of West Virginia, or any county or municipality in the state. The board may provide for the registration of the bonds or notes in the name of the owners as to principal alone, and as to both principal and interest under such terms and conditions as the board may determine, and shall sell the bonds or notes in such manner as it may determine to be for the best interest of the state and the board, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds or notes when required for payment of the cost of the project, the sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. The proceeds of the bonds or notes shall be used solely for the payment of the cost of the project for which bonds or notes were issued, and shall be deposited and checked out in the same manner as provided by article six, chapter five of this code, and under such further
restrictions, if any, as the board may provide. If the
proceeds of bonds or notes issued for a project or a
specific group of projects exceeds the cost of the project
or projects, the surplus shall be paid into the fund
provided for in this section for payment of the principal
and interest of the bonds or notes. The fund may be used
for the purchase of any of the outstanding bonds or notes
payable from the fund at the market price, but at not
exceeding the price, if any, at which the bonds or notes
are in the same year redeemable. All bonds or notes
redeemed or purchased shall forthwith be canceled, and
shall not again be issued. Prior to the preparation of
definitive bonds or notes, the board may, under like
restrictions, issue temporary bonds or notes with or
without coupons, exchangeable for definitive bonds or
notes upon the issuance of the latter. Notwithstanding
the provisions of sections nine and ten, article six,
chapter twelve of this code, revenue bonds or notes
issued under the authority granted in this section are
eligible as investments for the workers' compensation
fund, teachers retirement fund, division of public safety
death, disability and retirement fund, West Virginia
public employees retirement system and as security for
the deposit of all public funds. The revenue bonds or
notes may be issued without any other proceedings or
the happening of any other conditions or things than
those proceedings, conditions and things which are
specified and required by this article, or by the
constitution of the state. For all projects authorized
under the provisions of this section, the aggregate
amount of all issues of bonds or notes outstanding at one
time shall not exceed two million five hundred thousand
dollars including the renegotiation, reissuance or
refinancing of any bonds or notes.

Notwithstanding anything in this section to the
contrary, the board is authorized to issue bonds or notes
or otherwise finance or refinance the projects in this
section, including the costs of issuance and sale of the
bonds or notes or financing, all necessary financial and
legal expenses and creation of debt service reserve funds
in an amount not to exceed two million five hundred
thousand dollars.
The board may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, whether within or outside of the state, as trustee for the holders of bonds or notes issued under this section, setting forth in the agreement the duties of the state and of the board in respect of the acquisition, construction, improvement, maintenance, operation, repair and insurance of the project, the conservation and application of all moneys, the insurance of moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds or notes, as may be agreed upon with the original purchasers of the bonds or notes. The agreement or agreements shall include provisions restricting the individual right of action of bondholders or noteholders as is customary in trust agreements respecting bonds or notes and debentures of corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders or noteholders, and provide for approval by the original purchasers of the bonds or notes of the appointment of consulting architects, and of the security given by those who contract to construct the project, and by any bank or trust company in which the proceeds of bonds or notes or rentals shall be deposited, and for approval by the consulting architects of all contracts for construction. All expenses incurred in carrying out the agreement may be treated as a part of the cost of maintenance, operation and repairs of the project.

CHAPTER 48

(Com. Sub. for S. B. 42—By Senators Whitlow, Anderson, Miller, Claypole, Ross and Helmick)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-one, relating to county boards of education; prohibiting the prohibition by county school boards of
certain documents based solely on religious references; definitions; and criteria.

_Be it enacted by the Legislature of West Virginia:_

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section forty-one, to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

§18-5-41. Content based censorship of American history prohibited.

1. (a) No county board of education shall prohibit the use as an educational resource or teaching device any historical document related to the founding of the United States of America or any government publication solely because the document contains a religious reference or references: _Provided,_ That the use of such materials must serve a bona fide secular educational purpose which does not advance or inhibit a religion or particular religious belief.

2. (b) (1) As used in subsection (a) of this section, the term "historical document related to the founding of the United States of America" shall include, but not be limited to, such documents as the declaration of independence and the United States constitution.

3. (2) As used in subsection (a) of this section, the term "government publication" shall include, but not be limited to, such documents as decisions of the United States supreme court and acts of Congress.

4. (c) In determining the purpose of the use of a document containing a reference to a deity or a religion, consideration shall be given to the overall context of the document's use.
CHAPTER 49
(Com. Sub. for H. B. 4212—Delegates Browning, Ashcraft, Prezioso,
D. Cook, Compton, Staton and Campbell)

[Passed March 11, 1994; in effect from passage. Became law without Governor’s signature.]

AN ACT to amend and reenact sections seventeen and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article seven-b of said chapter, all relating to computation of retirement service for a participant who served as an officer in a statewide professional teaching association and eligibility of such a person for readmission to the existing teacher retirement system; and the date of payment of monthly annuities.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article seven-b of said chapter be amended and reenacted, all to read as follows:

Article
7A. State Teachers Retirement System.
7B. Teachers’ Defined Contribution Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers’ service.

§18-7A-17. Statement and computation of teachers’ service.

1 Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service.
2 In computing such service, however, it shall credit no period of more than a month’s duration during which
a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a Federal Selective Service Act was in effect. For purposes of this section, "armed forces" shall include Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service.

Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. Such interest shall be deposited in the reserve fund and service credit so granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia.

Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for such transferred service as additional service only: Provided, however, That a transfer of out-of-state service shall be prohibited if such service is used
to obtain a retirement benefit from another retirement
system: *Provided further*, That salaries paid to members
for service prior to entrance into the retirement system
shall not be used to compute the average final salary of
such member under the retirement system.

Service credit for members or retired members shall
not be denied on the basis of minimum income regula-
tions promulgated by the teachers retirement board:
*Provided*, That the member or retired member shall pay
to the system the amount he would have contributed
during the year or years of public school service for
which credit was denied as a result of such minimum
income regulations of the teachers retirement board.

No members shall be deemed absent from service
while serving as a member or employee of the Legisla-
ture of the state of West Virginia during any duly
constituted session of that body or while serving as an
elected member of a county commission during any duly
constituted session of that body: *Provided*, That the
member makes contributions to the system equal to
what would have been contributed during the period of
absence had he performed his duties.

No member shall be deemed absent from service as
a teacher while serving as an officer with a statewide
professional teaching association, or who has served in
such capacity, and no retired teacher, who served in
such capacity while a member, shall be deemed to have
been absent from service as a teacher by reason of such
service: *Provided*, That the period of service credit
granted for such service shall not exceed six years:
*Provided, however*, That a member or retired teacher
who is serving or has served as an officer of a statewide
professional teaching association shall make deposits to
the teachers retirement board, for the time of any such
absence, in an amount double the amount which he
would have contributed in his regular assignment for a
like period of time.

The teachers retirement board shall grant service
credit to any former or present member of the West
Virginia public employees retirement system who has
been a contributing member for more than three years, for service previously credited by the public employees retirement system, and (1) shall require the transfer of the member’s contributions to the teachers retirement system or (2) shall require a repayment of the amount withdrawn any time prior to the member’s retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this paragraph an amount which shall be sufficient to equal the contributions he would have made had the member been under the teachers retirement system during the period of his membership in the public employees retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. Such interest shall be deposited in the reserve fund and service so granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for such transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if such service is used to obtain a retirement benefit from another retirement system.

If a member is not eligible for prior service credit or pension as provided in this article, then his prior service shall not be deemed a part of his total service.

A member who withdrew from membership shall be
permitted to regain his former membership rights as specified in section thirteen of this article only in case he has served two years since his last withdrawal.

Subject to the above provisions, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefor under the provisions of this article. Such certificates shall state the length of such prior service credit, but in no case shall the prior service credit exceed forty years.


Annuitants whose annuities were approved by the retirement board effective before July first, one thousand nine hundred eighty, shall be paid the annuities which were approved by the retirement board.

Annuitants whose annuities were approved by the board effective after June thirty, one thousand nine hundred eighty, shall be computed as provided herein.

Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of the following:

(a) Two percent of the member's average salary multiplied by his total service credit as a teacher. In this paragraph "average salary" shall mean the average of the highest annual salaries received by the member during any five years contained within his last fifteen years of total service credit: Provided, That the highest annual salary used in this calculation for certain members employed by the West Virginia board of regents at institutions of higher education under its control shall be four thousand eight hundred dollars, as provided by section fourteen-a of this article and chapter;

(b) The actuarial equivalent of the voluntary deposits of the member in his individual account up to the time of his retirement, with regular interest.

The disability annuities of all teachers retired for disability shall be based upon a disability table prepared
by a competent actuary approved by the retirement board.

Upon the death of an annuitant who qualified for an annuity as a surviving spouse or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose, shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments.

All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent shall be deemed a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the board receives his application for annuity. Beginning with the first day of July, one thousand nine hundred ninety-four, the monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on the eighteenth day of December. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday.

In case the retirement board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the board received the new data.

Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to July one, one thousand nine hundred forty-one, shall be eligible for prior service credit and for prior service pensions as prescribed in this section.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.
§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.

Beginning the first day of July, one thousand nine hundred ninety-one, the teachers' defined contribution retirement system shall be the single retirement program for all new employees whose employment commences on or after that date. No additional new employees except as may be provided herein may be admitted to the existing retirement system. Members of the existing retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, are not affected by this article and shall continue to contribute and participate in the existing system without change in provisions or benefits.

Notwithstanding the provisions of section twenty-three, article seven-a of this chapter, any employee whose employment terminates after the thirtieth day of June, one thousand nine hundred ninety-one, who is later reemployed by an employer shall be eligible for membership only in the teachers' defined contribution system: Provided, That if such reemployment with an existing employer occurs not more than six months after the employee's previous employment, he or she shall be entitled to readmission to the existing retirement system in which he or she was originally a member: Provided, however, That if such employee has ten or more years of credited service in the existing retirement system, he or she shall be entitled to readmission into the existing retirement system in which he or she was originally a member, so long as he or she has not withdrawn his or her contributions from the existing retirement system: Provided further, That if such employee has withdrawn his or her contribution from the existing retirement system, then readmission shall not be permitted and the employee will be entitled only to the defined contribution system.

An employee whose employment with an employer was suspended or terminated while he or she served as an officer with a statewide professional teaching association is eligible for readmission to the existing retirement system in which he or she was a member.
An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service, or any other approved break in service authorized by the board, is eligible for readmission to the existing retirement system in which he or she was a member.

In all cases where a question exists as to readmission to membership in the existing retirement system, the board shall decide the question.

CHAPTER 50
(Com. Sub. for H. B. 4546—Delegate Hovouras)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance and permitting all children, including those with disabilities or special needs and those scoring in the "average range" of standardized testing to participate in home instruction without discrimination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday.
Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

**Exemption A. Instruction in a private, parochial or other approved school.** — Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years;

**Exemption B. Instruction in home or other approved place.** — (a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years receiving such instruction. The state department of education shall develop guidelines for the homeschooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(b) Notwithstanding the provisions of subsection (a) of
this Exemption B, the person or persons providing home
instruction meet the requirements for Exemption B
when the conditions of this subsection are met: Provided,
That the county superintendent shall have the right to
seek from the circuit court of the county an order
denying the home instruction, which order may be
granted upon a showing of clear and convincing
evidence that the child will suffer educational neglect
or that there are other compelling reasons to deny home
instruction.

(1) The person or persons providing home instruction
present to the county superintendent or county board of
education a notice of intent to provide home instruction
and the name and address of any child of compulsory
school age to be instructed: Provided, That if a child is
enrolled in a public school, notice of intent to provide
home instruction shall be given at least two weeks prior
to withdrawing such child from public school;

(2) The person or persons providing home instruction
submit satisfactory evidence of (i) a high school diploma
or equivalent and (ii) formal education at least four
years higher than the most academically advanced child
for whom the instruction will be provided;

(3) The person or persons providing home instruction
outline a plan of instruction for the ensuing school year;
and

(4) The person or persons providing home instruction
shall annually obtain an academic assessment of the
child for the previous school year. This shall be satisfied
in one of the following ways:

(i) Any child receiving home instruction annually
takes a standardized test, to be administered at a public
school in the county where the child resides, or admin-
istered by a licensed psychologist or other person
authorized by the publisher of the test, or administered
by a person authorized by the county superintendent or
county board of education. The child shall be adminis-
tered a test which has been normed by the test publisher
on that child’s age or grade group. In no event may the
child’s parent or legal guardian administer the test.
Where a test is administered outside of a public school, the child's parent or legal guardian shall pay the cost of administering the test. The public school or other qualified person shall administer to children of compulsory school age the Comprehensive Test of Basic Skills, the California achievement test, the Stanford achievement test, or the Iowa tests of basic skills, achievement and proficiency, or an individual standardized achievement test that is nationally normed and provides statistical results which test will be selected by the public school, or other person administering the test, in the subjects of language, reading, social studies, science and mathematics; and shall be administered under standardized conditions as set forth by the published instructions of the selected test. No test shall be administered if the publication date is more than ten years from the date of the administration of the test. Each child's test results shall be reported as a national percentile for each of the six subjects tested. Each child's test results shall be made available on or before the thirtieth day of June of the school year in which the test is to be administered to the person or persons providing home instruction, the child's parent or legal guardian and the county superintendent. Upon request of a duly authorized representative of the West Virginia department of education, each child's test results shall be furnished by the person or persons providing home instruction, or by the child's parent or legal guardian, to the state superintendent of schools. Upon notification of the mean of the child's test results for any single year has fallen below the fortieth percentile, the county board of education shall notify the parents or legal guardian of said child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services: Provided, That the identification of a disability shall not preclude the continuation of home schooling.

If the mean of the child's test results for any single year for language, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, then the person or persons providing home instruction shall initiate a remedial program to
foster achievement above that level and the student shall show improvement. If, after two calendar years, the mean of the child's test results fall below the fortieth percentile level, home instruction shall no longer satisfy the compulsory school attendance requirement exemption; or

(ii) The county superintendent is provided with a written narrative indicating that a portfolio of samples of the child's work has been reviewed and that the child's academic progress for the year is in accordance with the child's abilities. This narrative shall be prepared by a certified teacher or other person mutually agreed upon by the parent or legal guardian and the county superintendent. It shall be submitted on or before the thirtieth day of June of the school year covered by the portfolio. The parent or legal guardian shall be responsible for payment of fees charged for the narrative; or

(iii) Evidence of an alternative academic assessment of the child's proficiency mutually agreed upon by the parent or legal guardian and the county superintendent is submitted to the county superintendent by the thirtieth day of June of the school year being assessed. The parent or legal guardian shall be responsible for payment of fees charged for the assessment.

The superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, as may assist the person or persons providing home instruction subject to their availability. Any child receiving home instruction may, upon approval of the county board of education, exercise the option to attend any class offered by the county board of education as the person or persons providing home instruction may deem appropriate subject to normal registration and attendance requirements;

Exemption C. Physical or mental incapacity. — Physical or mental incapacity shall consist of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse
shall be required under the provisions of this article:

Provided, That in all cases incapacity shall be narrowly defined and in no case shall the provisions of this article allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education;

Exemption D. Residence more than two miles from school or school bus route. — The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

Exemption E. Hazardous conditions. — Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

Exemption F. High school graduation. — Such exemption shall consist of regular graduation from a standard senior high school;

Exemption G. Granting work permits. — The county superintendent may, after due investigation, grant work permits to youths under sixteen years of age, subject to state and federal labor laws and regulations: Provided, That a work permit may not be granted on behalf of any youth who has not completed the eighth grade of school;

Exemption H. Serious illness or death in the immediate family of the pupil. — It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report same to the county superintendent of schools;

Exemption I. Destitution in the home. — Exemption
210 based on a condition of extreme destitution in the home
211 may be granted only upon the written recommendation
212 of the county attendance director to the county super-
213 intendent following careful investigation of the case. A
214 copy of the report confirming such condition and school
215 exemption shall be placed with the county director of
216 public assistance. This enactment contemplates every
217 reasonable effort that may properly be taken on the part
218 of both school and public assistance authorities for the
219 relief of home conditions officially recognized as being
220 so destitute as to deprive children of the privilege of
221 school attendance. Exemption for this cause shall not be
222 allowed when such destitution is relieved through public
223 or private means;

224 Exemption J. Church ordinances; observances of
225 regular church ordinances. — The county board of
226 education may approve exemption for religious instruc-
227 tion upon written request of the person having legal or
228 actual charge of a child or children: Provided, That such
229 exemption shall be subject to the rules prescribed by the
230 county superintendent and approved by the county
231 board of education;

232 Exemption K. Alternative private, parochial, church or
233 religious school instruction. — In lieu of the provisions
234 of Exemption A hereinabove, exemption shall be made
235 for any child attending any private school, parochial
236 school, church school, school operated by a religious
237 order, or other nonpublic school which elects to comply
238 with the provisions of article twenty-eight, chapter
239 eighteen of the code of West Virginia.

240 The completion of the eighth grade shall not exempt
241 any child under sixteen years of age from the compul-
242 sory attendance provision of this article: Provided, That
243 there is a public high school or other public school of
244 advanced grades or a school bus providing free trans-
245 portation to any such school, the route of which is within
246 two miles of the child’s home by the shortest practicable
247 route or path as hereinbefore specified under Exemp-
248 tion D of this section.
AN ACT to amend article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen; and to amend and reenact sections two, four and eight-a, article four of said chapter, all relating to providing an across the board salary increase for teachers and school service personnel; requiring information regarding school cooks work hours to be reported to the state board; and providing incremental increases to teachers and school service personnel for specialized training or service.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-13. Guidelines for full-day and half-day cooks.

1 Each county board of education shall: (1) Require each school to report: (a) The number of meals served; (b) the number of cooks employed; and (c) the average number of meals served per cooks hours worked; and (2) submit a county-wide report to the state superintendent of schools delineating the above information by the first day of November, one thousand nine hundred ninety-four. The state superintendent of schools shall report such information to the legislative oversight commission on education accountability by the first day of January,
§18A-4-2. State minimum salaries for teachers.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

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

§18A-4-2. State minimum salaries for teachers.

(a) Each teacher shall receive the amount prescribed in "state minimum salary schedule I": Provided, That effective the first day of July, one thousand nine hundred ninety-four, and thereafter, each teacher shall receive the amount prescribed in the "state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

### STATE MINIMUM SALARY SCHEDULE I

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(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. Such payments: (i) Shall be in addition to any amounts prescribed in the "state minimum salary schedule"; (ii) shall be paid in equal monthly installments; and (iii) shall be deemed a part of the state minimum salaries for teachers.
§18A-4-4. Minimum salary schedule for teachers having specialized training.

The state board of education shall establish the minimum salary schedule for teachers where specialized training may be required for vocational, technical and adult education, and such other permits as may be authorized by said board.

On and after the first day of July, one thousand nine hundred eighty-five, any vocational industrial, technical, occupational home economics, or health occupations teacher who is required to hold a vocational certificate and is paid a salary equivalent to the amount prescribed for “A.B. + 15” training classification in the state minimum salary schedule for teachers under section two of this article shall, upon application therefor, receive advanced salary classification and be entitled to increased compensation on and after such date in respect to and based upon additional semester hours, approved by the state board of education and completed either prior to or subsequent to such date. All such hours earned must be from a regionally accredited institution of higher education.

The advanced salary classification shall be as follows:

(1) Those who have earned fifteen such additional semester hours shall receive an amount equal to that prescribed for the “M.A.” training classification under section two of this article.

(2) Those who have earned thirty such additional semester hours shall receive an amount equal to that prescribed for the “M.A. + 15” training classification under section two of this article.

(3) Those who have earned forty-five such additional semester hours shall receive an amount equal to that prescribed for the “M.A. + 30” training classification under section two of this article.

(4) Those who have earned sixty such additional semester hours shall receive an amount equal to that prescribed for the “M.A. + 45” training classification under section two of this article.
Any such teacher who has a permanent vocational certificate and who has earned or earns a bachelor's degree prior or subsequent to the issuance of such certificate shall be entitled to receive the amount prescribed for the “M.A. + 30” training classification upon application: Provided, That any such teacher who has a permanent vocational certificate and who has earned or earns fifteen graduate hours prior or subsequent to the issuance of such certificate shall be entitled to receive the amount prescribed for the “M.A. + 45” training classification upon application therefor, such advanced salary to take effect immediately upon qualification therefor: Provided, however, That any vocational teacher receiving the amount prescribed for the “M.A. + 30” training classification under prior enactments of this section who have not been issued a permanent vocational certificate shall not have such salary reduced as a result of this section: Provided further, That any teacher with a vocational certificate and under contract for the school year one thousand nine hundred eighty-five—eighty-six who has earned a bachelor's degree prior to the end of such school year shall be entitled to receive the amount prescribed for the “M.A. + 30” training classification, upon application therefor, for the school year beginning on the first day of July, one thousand nine hundred eighty-six, and thereafter.

No teacher holding a valid professional certificate shall incur a salary reduction resulting from assignment out of the teacher's field by the superintendent, with the approval of the county board, under any authorization or regulation of the state board.

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

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**STATE MINIMUM PAY SCALE PAY GRADE I**
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(1) 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" and the minimum monthly pay 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" set forth in this section: Provided, That on and after the first day of July, one thousand nine hundred ninety-four, 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.

(2) 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.

(3) An additional ten dollars per month shall also be added to the minimum monthly pay of each service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board of education.

(4) When any part of a school service employee's daily shift of work is performed between the hours of six o'clock p.m. and five o'clock a.m. following, the employee shall be paid no less than an additional ten dollars per month and one half of such pay shall be paid with local funds.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal shall include, but not be limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.
(10) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever such supervision is required.

CHAPTER 52
(Com. Sub. for H. B. 4180—By Delegates Ashcraft and Proudfoot)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, eight-g, fifteen and sixteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to class titles of service personnel; definitions; employment of service personnel substitutes; extracurricular assignments; and termination of seniority for service personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8g. Determination of seniority for service personnel.

§18A-4-15. Employment of service personnel substitutes.

§18A-4-16. Extracurricular assignments.

§18A-4-8. Employment term and class titles of service personnel; definitions.
The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of these personnel for a longer term. The beginning and closing dates of the ten-month employment term shall not exceed forty-three weeks.

Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.

Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

No service employee, without his agreement, shall be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

Should an employee whose regular work week is scheduled from Monday through Friday agree to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each such day he reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he shall be paid for at least a full day of work for each such day.

Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds: Provided, That when engaged in duties of
transporting students exclusively, aides shall not be regarded as working an interrupted schedule.

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

An employee's contract as provided in section five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel.

"Years of employment" means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

"Class title" means the name of the position or job held by service personnel.

"Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

"Accountant II" means personnel employed to maintain accounting records and to be responsible for the
accounting process associated with billing, budgets, purchasing and related operations.

"Accountant III" means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

"Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

"Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title shall be employed as an aide in any special education program.

"Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education.

"Aide IV" means personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.

"Audiovisual technician" means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

"Auditor" means personnel employed to examine and verify accounts of individual schools and to assist schools
and school personnel in maintaining complete and accurate records of their accounts.

"Autism mentor" means personnel who work with autistic students and who meet standards and experience to be determined by the state board: Provided, that the state board shall determine these standards and experience on or before the first day of July, one thousand nine hundred ninety-two.

"Braille or sign language specialist" means personnel employed to provide braille and/or sign language assistance to students.

"Bus operator" means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

"Buyer" means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

"Cabinetmaker" means personnel employed to construct cabinets, tables, bookcases and other furniture.

"Cafeteria manager" means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

"Carpenter I" means personnel classified as a carpenter's helper.

"Carpenter II" means personnel classified as a journeyman carpenter.

"Chief mechanic" means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

"Clerk I" means personnel employed to perform clerical tasks.

"Clerk II" means personnel employed to perform
general clerical tasks, prepare reports and tabulations
and operate office machines.

"Computer operator" means qualified personnel
employed to operate computers.

"Cook I" means personnel employed as a cook's helper.

"Cook II" means personnel employed to interpret
menus, to prepare and serve meals in a food service
program of a school and shall include personnel who
have been employed as a "Cook I" for a period of four
years, if such personnel have not been elevated to this
classification within that period of time.

"Cook III" means personnel employed to prepare and
serve meals, make reports, prepare requisitions for
supplies, order equipment and repairs for a food service
program of a school system.

"Crew leader" means personnel employed to organize
the work for a crew of maintenance employees to carry
out assigned projects.

"Custodian I" means personnel employed to keep
buildings clean and free of refuse.

"Custodian II" means personnel employed as a
watchman or groundsman.

"Custodian III" means personnel employed to keep
buildings clean and free of refuse, to operate the heating
or cooling systems and to make minor repairs.

"Custodian IV" means personnel employed as head
custodians. In addition to providing services as defined
in "Custodian III," their duties may include supervising
other custodian personnel.

"Director or coordinator of services" means personnel
who are assigned to direct a department or division.
Nothing herein shall prohibit professional personnel or
professional educators as defined in section one, article
one of this chapter, from holding this class title, but
professional personnel shall not be defined or classified
as service personnel unless the professional personnel
held a service personnel title under this section prior to
holding class title of "director or coordinator of services": Provided, That funding for professional personnel in positions classified as directors or coordinators of services who were assigned prior to the first day of May, one thousand nine hundred ninety-four, shall not be required to be redirected from service personnel categories as a result of this provision until the first day of July, one thousand nine hundred ninety-six. Thereafter, directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel.

"Draftsman" means personnel employed to plan, design and produce detailed architectural/engineering drawings.

"Electrician I" means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

"Electrician II" means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

"Electronic technician I" means personnel employed at the apprentice level to repair and maintain electronic equipment.

"Electronic technician II" means personnel employed at the journeyman level to repair and maintain electronic equipment.

"Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

"Food services supervisor" means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system's food service program. The duties would include
preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

"Foremen" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

"General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

"Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

"Graphic artist" means personnel employed to prepare graphic illustrations.

"Groundsmen" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

"Handyman" means personnel employed to perform routine manual tasks in any operation of the county school system.

"Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heavy equipment operator" means personnel employed to operate heavy equipment.

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the
receipt, storage, inventory and issuance of materials and
supplies.

"Key punch operator" means qualified personnel
employed to operate key punch machines or verifying
machines.

"Locksmith" means personnel employed to repair and
maintain locks and safes.

"Lubrication man" means personnel employed to
lubricate and service gasoline or diesel-powered equip­
ment of a county school system.

"Machinist" means personnel employed to perform
machinist tasks which include the ability to operate a
lathe, planer, shaper, threading machine and wheel
press. Such personnel should also have ability to work
from blueprints and drawings.

"Mail clerk" means personnel employed to receive,
sort, dispatch, deliver or otherwise handle letters,
parcels and other mail.

"Maintenance clerk" means personnel employed to
maintain and control a stocking facility to keep ade­
quate tools and supplies on hand for daily withdrawal
for all school maintenance crafts.

"Mason" means personnel employed to perform tasks
connected with brick and block laying and carpentry
tasks related to such laying.

"Mechanic" means personnel employed who can
independently perform skilled duties in the maintenance
and repair of automobiles, school buses and other
mechanical and mobile equipment to use in a county
school system.

"Mechanic assistant" means personnel employed as a
mechanic apprentice and helper.

"Multi-classification" means personnel employed to
perform tasks that involve the combination of two or
more class titles in this section. In such instances the
minimum salary scale shall be the higher pay grade of
the class titles involved.
“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Paraprofessional” means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and
ventilation.

"Sanitation plant operator" means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection.

"School bus supervisor" means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

"Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

"Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

"Secretary III" means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "Secretary II" or "Secretary III" herein for eight years.

"Supervisor of maintenance" means skilled personnel
not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board of education.

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods.

"Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

"Welder" means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.
Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court.

Notwithstanding any provisions in this code to the contrary, service personnel who hold a continuing contract in a specific job classification and are physically unable to perform the job's duties as confirmed by a physician chosen by the employee shall be given priority status over any employee not holding a contin-
§18A-4-8g. Determination of seniority for service personnel.

The seniority for service personnel shall be determined in the following manner:

Seniority accumulation for a regular school service employee shall begin on the date such employee enters upon regular employment duties pursuant to a contract as provided in section five, article two of this chapter and shall continue until the employee's employment as a regular employee is severed with the county board of education. Seniority shall not cease to accumulate when an employee is absent without pay as authorized by the county board or the absence is due to illness or other reasons over which the employee has no control as authorized by the county board. Seniority accumulation for a substitute employee shall begin upon the date the employee enters upon the duties of a substitute as provided in section fifteen, article four of this chapter, after executing with the board a contract of employment as provided in section five, article two of this chapter.

The seniority of a substitute employee, once established, shall continue until such employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter or employment as a substitute with the county board of education is severed. Seniority of a regular or substitute employee shall continue to accumulate except during the time when an employee is willfully absent from employment duties because of a concerted work stoppage or strike or is suspended without pay.

For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article: Provided, That when implementing a reduction in force, an employee with the least seniority within a particular classification category shall
be properly released and placed on the preferred recall list. The particular classification title held by an employee within the classification category shall not be taken into consideration when implementing a reduction in force.

On or before the first day of September and the fifteenth day of January of each school year, county boards of education shall post at each county school or working station the current seniority list or lists of each school service classification. Each list shall contain the name of each regularly employed school service personnel employed in each classification and the date that each employee began performing his assigned duties in each classification. Current seniority lists of substitute school service personnel shall be available to employees upon request at the county board of education office.

The seniority of an employee who transfers out of a class title or classification category of employment and subsequently returns to said class title or classification category of employment shall be calculated as follows:

The county board of education shall establish the number of calendar days between the date the employee left the class title or category of employment in question and the date of return to the class title or classification category of employment. This number of days shall be added to the employee's initial seniority date to establish a new beginning seniority date within the class title or classification category. The employee shall then be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date. The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in a like manner.

A substitute school service employee shall acquire regular employment status and seniority if said employee receives a position pursuant to subsections (2) and (5), section fifteen, article four of this chapter. County boards of education shall not be prohibited from
providing any benefits of regular employment for substitute employees, but such benefits shall not include regular employee status and seniority.

If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

A board of education shall conduct such random selection within thirty days upon said employees establishing an identical seniority date. All employees with an identical seniority date within the same class title or classification category shall participate in the random selection. As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board of education shall be permanent for the duration of the employment within the same classification category of said employees by the board of education. This random selection priority shall apply to the filling of vacancies and to the reduction in force of school service personnel.

Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill such vacancy.

Seniority acquired as a substitute and as a regular employee shall be calculated separately and shall not be combined for any purpose. Seniority acquired within different classification categories shall be calculated separately: Provided, That when a school service employee makes application for a position outside of the classification category currently held, if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purposes of bidding on the position.

School service personnel who hold multi-classification titles shall accrue seniority in each classification category of employment which said employee holds and shall be considered an employee of each classification
Multi-classified employees shall be subject to reduction in force in any category of employment contained within their multi-classification title based upon the seniority accumulated within said category of employment: Provided, That if a multi-classified employee is reduced in force in one classification category, said employee shall retain employment in any of the other classification categories that he holds within his multi-classification title. In such a case, the county board of education shall delete the appropriate classification title or classification category from the contract of the multi-classified employee.

When applying to fill a vacancy outside the classification categories held by the multi-classified employee, seniority acquired simultaneously in different classification categories shall be calculated as if accrued in one classification category only.

The seniority conferred herein shall apply retroactively to all affected school service personnel, but the rights incidental thereto shall commence as of the effective date of this section.

§18A-4-15. Employment of service personnel substitutes.

The county board shall employ and the county superintendent, subject to the approval of the county board of education, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

(1) To fill the temporary absence of another service employee;

(2) To fill the position of a regular service employee on leave of absence: Provided, That if such leave of absence is to extend beyond thirty days, the board, within twenty working days from the commencement of the leave of absence, shall give regular employee status to a person hired to fill such position. The person employed on a regular basis shall be selected under the procedure set forth in section eight-b of this article. The substitute shall hold such position and regular employee
status only until the regular employee shall be returned to such position and the substitute shall have and shall be accorded all rights, privileges and benefits pertaining to such position;

(3) To perform the service of a service employee who is authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability or death of the regular service employee who had been assigned to fill such position: Provided, That within twenty working days from the commencement of the vacancy, the board shall fill such vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter and such person hired to fill the vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to such position;

(5) To fill the vacancy created by a regular employee’s suspension: Provided, That if the suspension is for more than thirty working days the substitute service employee shall be assigned to fill the vacancy on a regular basis and shall have and be accorded all rights, privileges and benefits pertaining to such position until such termination by the county board of education becomes final. If the suspended employee is not returned to his job, the board shall fill the vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter; and

(6) To temporarily fill a vacancy in a newly created position prior to employment of a service personnel on a regular basis under the procedure set forth in section eight-b of this article.

Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he began his assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee’s absence
or until the vacancy is filled on a regular basis under the procedures set out in section eight-b of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout such absence.

The salary of a substitute service employee shall be based upon his years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he is employed.

Before any substitute service employee enters upon his duties, he shall execute with the county board of education a written contract as provided in section five, article two of this chapter.

To establish a uniform system of providing a fair and equitable opportunity for substitutes to enter upon their duties for the first time, the following method shall be used: The initial order of assigning newly employed substitutes shall be determined by a random selection system established by the affected substitute employees and approved by the county board. This initial priority order shall be in effect only until the substitute service personnel have entered upon their duties for the first time.

Substitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is
§18A-4-16. Extracurricular assignments.

(1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

(2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

(3) The terms and conditions of the agreement between the employee and the board of education shall be in writing and signed by both parties.

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee’s acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.

(5) The board of education shall fill extracurricular and supplemental school service personnel assignments and vacancies in accordance with section eight-b, article four of this chapter: Provided, That an alternative procedure for making extracurricular and supplemental school service personnel assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment.
CHAPTER 53
(S. B. 222—Senators Blatnik, Lucht, Bailey, Jones and Wagner)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting corporal punishment in the public schools.

Be it enacted by the Legislature of West Virginia:

That section one, article five, 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 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

1 The teacher shall stand in the place of the parent or guardian in exercising authority over the school, and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school. Subject to the rules of the state board of education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to such disease, and shall immediately notify the proper health officer, or medical inspector, of such exclusion. Any pupil so excluded shall not be readmitted to the school until such pupil has complied with all the requirements of the rules governing such cases, or has presented a
certificate of health signed by the medical inspector or other proper health officer. The teacher shall have authority to suspend any pupil guilty of disorderly, refractory, indecent or immoral conduct, and the district board of education may expel or exclude any such pupil if, on investigation, the conduct of such pupil is found to be detrimental to the progress and the general conduct of the school.

Corporal punishment of any pupil by a school employee is prohibited.

The West Virginia board of education and county boards of education shall adopt policies consistent with the provisions of this section encouraging the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parents and guardians in the maintenance of school discipline.

For the purpose of this section: (1) "Pupil" shall include any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: Provided, That in the case of adults the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; (2) "teacher" shall mean all professional educators as defined in section one, article one of this chapter and shall include the driver of a school bus or other mode of transportation.

Teachers shall exercise such other authority and perform such other duties as may be prescribed for them by law or by the rules of the state board of education not inconsistent with the provisions of this chapter and chapter eighteen of this code.
AN ACT to amend and reenact section five, article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation of certain schools; requiring a permit from the board of directors of the state college system; establishing a permit fee and a permit renewal fee; requiring certain bonds; providing for fines for certain solicitations and advertisements; providing a method for resolving disputes; and declaring certain due process rights.

Be it enacted by the Legislature of West Virginia:

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

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

§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

1. (a) It shall be unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as such shall be defined by the board of directors by rule promulgated in accordance with article three-a, chapter twenty-nine-a of this code, to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, from the West Virginia board of directors in the manner and on the terms herein prescribed.

12. All private training or educational institutions,
schools or academies or other organizations shall apply for a permit from the board of directors of the state college system on forms provided by the board. This section does not apply to private organizations that offer only tax return preparation courses. Each initial application shall be accompanied by a nonrefundable fee of two thousand dollars. The board may also assess an additional fee based on any additional expense required to evaluate the application. The board shall make a determination on the initial permit application within ninety days after receipt of the application and fee. An applicant for an initial permit shall show proof at the time of filing an application that adequate facilities are available and ready for occupancy and that all instructional equipment, books and supplies and personnel are in place and ready for operation. A representative of the board shall make an on-site visit to all new applicants' facilities to confirm its readiness for operation prior to issuance of the initial permit if the facilities are located in West Virginia.

A school is considered to be established under the provisions of this article on the date it first begins to lawfully operate. An established school is not required to reapply for a permit as a result of changes in governance; administration; ownership; or form of operation. After the first permit year an annual fee of five hundred dollars is imposed on each school for each campus it operates in this state.

(b) Each application shall be accompanied by a surety bond in the penal sum of thirty-five thousand dollars for any school which has its physical facilities located in this state and which has operated in this state for at least ten years: Provided, That if the school has changed ownership within the last ten years by transfer of ownership control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the surety bond shall continue in the penal sum of thirty-five thousand dollars: Provided, however, That any school which has operated in West Virginia for less than ten years, including those schools which have changed ownership within the last ten years except those schools
noted above who have transferred ownership control to a spouse, parent, sibling, child or grandchild of the previous owner within the last ten years and any school located in another state which applies for a permit hereunder, shall provide a surety bond of fifty thousand dollars: Provided further, That any school may be required to increase its bond to one hundred fifty thousand dollars if its accreditation is terminated for cause or if the school's institutional eligibility under the Higher Education Act of 1965, as amended, has been terminated for cause: And provided further, That expiration, nonrenewal or voluntary relinquishment of accreditation or institutional eligibility under said act, or failure to meet the requirements of one or more programs under said act, shall not be deemed a termination for cause.

In addition, any school may be required to increase its bond to an amount not to exceed four hundred thousand dollars if, in accordance with the standards of the American institute of certified public accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt, and the board of directors determines an increased bond is reasonably necessary to protect the financial obligations legally due the students then enrolled at the institution. A school may be required to maintain the increased bonding requirements described above until all students attending classes at the date of termination either graduate or withdraw. The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring the student's enrollment; failure of the school to meet contractual obligations; or failure of the school to meet the requirements of this section. The bond shall be given by the school itself as a blanket bond covering all of its representatives. The surety on any such bond may cancel the same upon giving thirty days' notice in writing to the principal on said bond and to the state board of directors and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said
(c) A permit shall be valid for one year corresponding
to the effective date of the bond and, upon application,
accompanied by the required fee and the surety bond
as herein required, may be renewed. All fees collected
for the issuance or renewal of such permit shall be
deposited in the state treasury to the credit of the board
of directors.

The board may refuse a permit to any school if the
board finds that the school engages in practices which
are inconsistent with this section or with rules and
regulations issued pursuant thereto. A permit issued
hereunder, upon fifteen days' notice and after a hearing,
if a hearing is requested by the school, may be sus-
pended or revoked by the board of directors for fraud
or misrepresentation in soliciting or enrolling students,
for failure of the school to fulfill its contract with one
or more students who are residents of West Virginia, or
for violation of or failure to comply with any provision
of this section or with any regulation of the state board
of directors pertinent thereto. Prior to the board taking
any adverse action, including refusal, suspension or
revocation of a permit, the school shall be given
reasonable opportunity to take corrective measures. Any
refusal, suspension or revocation of a permit, or any
other adverse action against a school, shall comply with
all constitutional provisions, including due process,
relating to the protection of property rights.

(d) All correspondence, business, occupational or
trade schools which have been issued a permit shall
make annual reports to the board of directors on forms
furnished by the board and shall provide such approp-
riate information as the board reasonably may require.
All correspondence, business, occupational or trade
schools which have been issued a permit shall furnish
to the board of directors a list of its official represen-
tatives. Each school shall be issued a certificate of
identification by the board of directors for each of its
official representatives.

(e) The issuance of a permit pursuant to this section
does not constitute approval or accreditation of any course or school. No school nor any representative of a school shall make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the state of West Virginia, state board of directors or any other department or agency of the state.

The board of directors is hereby authorized to adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas and specialized associate degrees, which standards may include curriculum, personnel, facilities, materials and equipment: Provided, That in the case of accredited correspondence, business, occupational and trade schools under permit on the first day of July, one thousand nine hundred seventy-nine, having their physical facilities located in this state, and which are accredited by the appropriate nationally recognized accrediting agency or association approved by the United States department of education, the accrediting agency’s standards, procedures and criteria shall be accepted as meeting applicable laws, standards and rules of the board of directors: Provided, however, That institutions, which are institutionally accredited by accrediting agencies that are recognized by the United States department of education to establish academic standards for postsecondary education, may offer postsecondary educational programs leading to (and upon successful completion of such programs award graduates) certificates, diplomas and associate degrees in accordance with the academic standards required by such accrediting agency. If a review undertaken by the board indicates there may be deficiencies in the academic standards the institution maintains in its educational programs, that are of such a material nature as to jeopardize continued accreditation, the board shall notify the institution. If the board and the institution are unable to agree on the deficiencies or the steps necessary to correct the deficiencies, the board shall consult with the institution’s accrediting agency regarding an academically appropriate resolution, which resolution may include a joint on-site review by
the board and the accrediting agency. The board may also review the academic standards of unaccredited institutions and may require such institutions to maintain recognized academic standards that are reasonably appropriate to the nature of the institution and the training offered. The board of directors may authorize an investigation of written student complaints alleging a violation of this section, board rules, or accreditation standards and may take appropriate action based on the findings of such an investigation. All evaluations or investigations of correspondence, business, occupational and trade schools, and actions resulting from such evaluations or investigations, shall be made in accordance with rules promulgated by the board of directors pursuant to article three-a, chapter twenty-nine-a of this code.

For the purposes of this section, proprietary schools that award specialized associate degrees shall be defined as institutions of higher education, and specialized associate degrees shall mean degrees awarded by such institutions pursuant to a program of not less than two academic years: Provided, That nothing herein shall be construed to qualify the said proprietary schools for additional state moneys not otherwise qualified for under other provisions of this code.

(f) In regard to private, proprietary educational institutions operating under this section of the code, accredited by a national or regional accrediting agency or association recognized by the United States department of education and which provide training at a campus located in this state:

(1) Any rule or standard which is authorized by this or any section of the code or other law and which is now in effect or promulgated hereafter by the board of directors (or other agency with jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed enabling law and shall be unenforceable and without legal effect unless authorized by an act of the Legislature under the provisions of article three-a, chapter twenty-nine-a of this code.
(2) Notwithstanding any other provision of this section or other law to the contrary, the institution’s accrediting agency standards, procedures and criteria shall be accepted as the standards and rules of the board of directors (or other agency with jurisdiction) and as meeting other law or legal requirements relating to the operation of proprietary institutions which such board or other agency has the legal authority to enforce under any section of the code or other law: Provided, That nothing in this section shall be construed to deny students the use of remedies that would otherwise be available under state or federal consumer laws or federal law relating to federal college financial assistance programs.

(3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress shall be measured and reported in credit hours and all reports/documents filed on a credit hour basis unless the institution notifies the board that it utilizes clock hours as its unit of measurement.

(g) A representative of any school who solicits, sells or offers to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more that two hundred dollars per day per violation, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned. No correspondence, business, occupational or trade school shall maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time the contract was signed by any of the parties thereto. The attorney general or any county prosecuting attorney, at the request of the board of directors or upon his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

(h) In regard to institutions operating under this
section, all substantive standards and procedural requirements established by the board of directors (or the West Virginia state program review entity or other agency with jurisdiction over institutions operating hereunder) shall meet all substantive and procedural standards of due process relating to the protection of an individual citizen's property rights as provided for under the United States Constitution, and shall follow the substantive standards and procedural requirements established by or under authority of this section.

CHAPTER 55
(S. B. 519—By Senators Plymale, Lucht and Macnaughtan)

[Passed March 12, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to repeal section six, article nine, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five and eleven of said article; to further amend said article by adding thereto a new section, designated section twelve; and to amend article eleven of said chapter by adding thereto a new section, designated section four, all relating to higher education classified employees: repealing section relating to review of classification system requiring notice and reports; defining terms; deleting obsolete provisions; establishing new classified pay schedule; making classified salary schedule subject to appropriation; deleting goal of recognizing outstanding performance; recommending seven hundred fifty dollar salary increase to each classified employee; requiring probationary employment at lower salary with written evaluation; deleting certain policy requirements; providing for minimum salary; and requiring creation of two assistive device depositories for provision of specified services.

Be it enacted by the Legislature of West Virginia:

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

Article
9. Classified Employee Salary Schedule and Classification System.
11. Miscellaneous Institutes and Centers.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-3. Higher education classified employee annual salary schedule.
§18B-9-5. Classified employee salary.
§18B-9-11. Institutional salary policies; salary increase authorization.
§18B-9-12. Probationary employees.


1. As used in this article:

2. (a) “Classified employee or employee” means any regular full-time or regular part-time employee of a governing board, including all employees of the West Virginia network for educational telecomputing and beginning the first day of July, one thousand nine hundred ninety, includes employees at the central office of the governing boards, who hold a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by the appropriate governing board and shall include all employees of the West Virginia network for educational telecomputing;

3. (b) “Nonclassified employee” means an individual who is responsible for policy formation at the institutional level or reports directly to the president: Provided, That the percentage of personnel placed in the category of “nonclassified” at any given institution shall not exceed four percent of the total number of employees of that institution who are eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state. Final approval of such placement shall be with the appropriate
governing board;

(c) "Job description" means the specific listing of duties and responsibilities as determined by the appropriate governing board and associated with a particular job title;

(d) "Job title" means the name of the position or job as defined by the appropriate governing board;

(e) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions in accordance with rules established by the appropriate governing board;

(f) "Pay grade" means the number assigned by the appropriate governing board to a particular job title and refers to the vertical column heading of the salary schedule established in section three of this article;

(g) "Personnel classification system" means the process of job categorization adopted by the appropriate governing board by which job title, job description, pay grade and placement on the salary schedule are determined;

(h) "Salary" means the amount of compensation paid through the state treasury per annum to a classified employee;

(i) "Schedule" or "salary schedule" means the grid of annual salary figures established in section three of this article; and

(j) "Years of experience" means the number of years a person has been an employee of the state of West Virginia and refers to the horizontal column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule pursuant to said section, employment for nine months or more shall equal one year of experience, but no classified employee may accrue more than one year of experience during any given fiscal year. Employment for less than full time or less than nine months during any fiscal year shall be prorated. For the purpose of
determining the amount of annual salary increase pursuant to subsection (b), section five of this article, employment for less than twelve months during any fiscal year shall be prorated. In accordance with rules established by the appropriate governing board, a classified employee may be granted additional years of experience not to exceed the actual number of years of prior, relevant work or experience at accredited institutions of higher education other than state institutions of higher education.

§18B-9-3. Higher education classified employee annual salary schedule.

There is hereby established a state annual salary schedule for classified employees consisting of a minimum annual salary for each pay grade in accordance with years of experience: Provided, That payment of the minimum salary shall be subject to the availability of funds, and nothing in this article shall be construed to guarantee payment to any classified employee of the salary indicated on the schedule at the actual years of experience absent specific legislative appropriation therefor. The minimum salary herein indicated shall be prorated for classified employees working less than thirty-seven and one-half hours per week.

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§§18B-9-5. Classified employee salary.

(a) Each classified employee who is employed by a governing board on the first day of July, one thousand nine hundred ninety-three, shall receive for the same employment at the same pay grade during the fiscal year commencing on such date and thereafter, subject to an appropriation by the Legislature therefor, and in addition to the experience increment increase provided for in subsection (b) of this section, a monthly salary which is at least one hundred twenty-five dollars more than the final base monthly salary paid such classified employee for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-two, to be paid in equal installments within the regular pay periods and to be prorated for classified employees working less than thirty-seven and one-half hours per week.

(b) Commencing with the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, and each fiscal year thereafter, each classified employee with three or more years of experience shall receive an annual salary increase equal to thirty-six dollars times the employee's years of experience: Provided, That such annual salary increase shall not exceed the amount granted for the maximum of twenty years of experience. These incremental increases shall be in lieu of any salary increase received pursuant to section two, article five, chapter five of this code; shall be in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature; and shall be paid in like manner as the annual payment to eligible state employees of the incremental salary increases based on years of service under the provisions of said section.
(c) Any classified employee may receive merit increases and/or salary adjustments in accordance with policies established by the board: Provided, That funds for such increases and/or adjustments shall be distributed in accordance with rules of the appropriate governing board and shall be available to all state institutions of higher education on an equitable basis.

(d) The current annual salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article shall be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if such promotion is in accordance with the provisions of this article and the personnel classification system established by the appropriate governing board.

§18B-9-11. Institutional salary policies; salary increase authorization.

(a) Beginning with the fiscal year commencing on the first day of July, one thousand nine hundred ninety-four, classified employee salary increases shall be distributed within each state institution of higher education, to the extent of legislative appropriation therefor, in accordance with a written institutional salary policy which does not conflict with the uniform employee classification system and which achieves or moves toward the following goals:

(1) Each classified employee receives at least the amount indicated by the minimum salary schedules pursuant to section three of this article;

(2) Each classified employee within a classification group receives a salary which will achieve salary equity as defined in the uniform employee classification system established pursuant to subsection (b), section four of this article;

(3) Equity among salaries is maintained; and

(4) The institution's classified employees are effectively involved in the administration of the campus-level classified employee salary policy.
(b) Subject to an appropriation by the Legislature therefor, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety-four, seven hundred fifty dollars per full-time classified employee is recommended to be appropriated and distributed in that fiscal year for salary increases to each classified employee. For the fiscal year commencing on the first day of July, one thousand nine hundred ninety-five, an amount equal to one thousand five hundred dollars per full-time classified employee is recommended to be appropriated and distributed in that fiscal year for salary increases for classified employees, such distribution to be in accordance with the resource allocation policies developed pursuant to the provisions of section two, article five of this chapter and the salary policies required in subsection (a) of this section: Provided, That nothing in this section shall be construed to prohibit future salary increases for classified employees determined to be at the maximum for their pay grade under any new classification system promulgated in accordance with subsection (b), section four of this article and in accordance with policies which shall be adopted by each governing board relating to salary increases for classified employees determined to be at maximum salary.

(c) Subject to appropriations by the Legislature therefor, each classified employee whose annual salary under subsections (a) and (b) of this section is less than the minimum monthly salary for zero years of experience for the appropriate pay grade as set forth in section three of this article shall receive additional compensation such that the monthly salary is at least the minimum amount prescribed for the appropriate pay grade at zero years of experience: Provided, That such amounts may be reduced proportionately based upon the amount of funds available for such purpose.

§18B-9-12. Probationary employees.

Each full-time classified employee hired by the governing boards shall serve an initial six-month probationary period. At the end of said probationary period the employee shall receive a written evaluation
of his or her performance. The employee's supervisor shall meet with the employee and explain the contents of said evaluation and whether the employee is being offered regular employment. Probationary employees shall receive five percent less than the agreed upon entry rate salary for their position in accordance with the salary schedule set forth in section three of this article, as determined by the governing board's policy, during their probationary employment. Whenever probationary employment becomes regular employment, the employee shall receive an immediate five percent salary increase.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-4. Depositories for assistive devices and services.

There is hereby created under the authority, supervision and direction of the two governing boards of the state institutions of higher education, two assistive device depositories, one of which is to be located in a state supported college or university in the northern part of the state and the other depository is to be located in a state supported college or university in the southern part of the state. Each assistive device depository shall obtain assistive devices either through public or private funding, develop an inventory of assistive devices and services for individuals with disabilities, catalog equipment, receive and fulfill requests, and track and maintain assistive devices.

In coordination with the secretary of education and the arts, the governing boards shall establish the depositories upon receipt of line item appropriations by the Legislature for such purposes. Educational agencies, including public and private educational agencies, public and private service agencies, individuals, families and communities shall have access to these depositories and the equipment and services available at each depository. Public and private higher education institutions shall have priority access to the depositories.

Each depository shall coordinate its activities with the West Virginia assistive technology system at the university affiliated center for developmental disabili-
ties. Each depository shall undertake outreach efforts and shall coordinate services and equipment programs with other state and local agencies to share resources. Services to individuals with disabilities in higher education shall include, but not be limited to: Interpreters for the deaf, peer tutors, note takers, readers for the blind; and shall further be defined as community service under provisions of the national and community service act and other applicable state and federal statutes.

CHAPTER 56
(S. B. 424—By Senators Schoonover, Holliday, Whitlow, Anderson, Wagner and Chafin)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to Bluefield state college generally; allowing Bluefield state college to sell certain property contingent on the property being transferred to it by the department of health and human resources; and placing the proceeds of the sale in a special account to be used for repair or prevention of future structural problems not currently evident in the main classroom building.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. MISCELLANEOUS.

§18B-14-4. Bluefield state college authorization to sell property; use of net proceeds.
(a) Contingent on the transfer of the property described in subsection (b) of this section to Bluefield state college from the department of health and human resources and notwithstanding the provisions of article one-a, chapter twenty of this code to the contrary, Bluefield state college, with the approval of the board of directors, is hereby authorized and empowered to sell as surplus real property and deposit the net proceeds from that sale into a special revenue account to be utilized or made available for repair or prevention of future structural problems not currently evident in the main classroom building on the grounds of the former Greenbrier college for women occupied by the Greenbrier community college center of Bluefield state college in Lewisburg, West Virginia.

(b) The property to be sold contingent on the transfer from the department of health and human resources is described as that property situated on McElhenny road in Lewisburg, Greenbrier County, West Virginia, bounded and described as follows:

A parcel of land within the corporate limits of Lewisburg, Greenbrier County, West Virginia, and lying generally on the south side of the McElhenny Road in said Lewisburg, more particularly bounded and described as follows:

Beginning at a fence post, corner of a parcel of the Beni Kedem lands, thence with a fence and its extension through a three-fourths inch steel bar to the center of the aforesaid McElhenny Road, N 77-23-00 E 141.14 feet, and with same the following courses and distances: S 39-09-00 E 39.40 feet, S 43-01-00 E 24.54 feet, S 41-01-00 E 48.51 feet, S 39-40-00 E 41.30 feet, S 39-01-00 E 90.42 feet, S 37-43-00 E 64.97 feet, S 35-26-00 E 74.34 feet, S 36-01-00 E 99.63 feet, S 38-32-30 E 60.56 feet, S 41-26-30 E 71.56 feet, S 46-12-30 E 143.28 feet, S 50-43-00 E 20.82 feet, S 52-19-00 E 34.17 feet, S 56-46-00 E 31.94 feet, S 61-28-00 E 351.64 feet, S 64-48-00 E 29.06 feet, S 69-30-00 E 32.50 feet, S 77-09-00 E 33.00 feet.
feet and S 23-16-00 E 12.67 feet to a point in the center
of said McElhenny Road opposite a fence post corner to
Pietro, thence leaving McElhenny and with a fence and
Pietro, S 03-10-00 E 202.27 feet and S 87-48-00 E 120.69
feet to a one-half inch iron pin found, corner to Pietro,
thence continuing with the fence and with Pietro and
Mareneck, among others, S 36-18-30 E 486.19 feet to a
fence corner and continuing with said fence and with
Taylor, among others, S 51-42-00 W 285.28 feet to a
fence post at the edge of a concrete drive, corner to Breit
and with same and a fence N 06-26-00 W 109.75 feet,
N 83-08-00 W 60.26 feet, S 50-09-00 W 59.44 feet, N 39-
45-00 W 22.08 feet and S 50-57-00 W 183.85 feet to a
fence post corner to Mikeel Don Rich, thence with a
subdivision, and consecutively with Rich, Chu, Aleshire,
Banton and Yarid to a common corner with Hamilton,
the following N 47-58-00 W 375.49 feet and S 55-50-00
W 827.18 feet to a three-fourths inch iron pin set, corner
to Lawson Hamilton and continuing with same and
generally with a fence, N 47-53-00 W 1086.74 feet to a
post with a concrete monument on the line of Dawkins
and continuing with same and a fence and three tracts
of the Beni Kedem Temple, N 72-21-00 E 364.27 feet,
and N 10-50-00 E 1171.56 feet to the place of beginning,
containing 46.91 acres net (meaning less the portion of
McElhenny Road described herein), and being a portion
of the lands conveyed by Greenbrier College Corporation
to the State of West Virginia on May 31, 1973, as
recorded in the County Clerk's Office in Greenbrier
County in Deed Book 280 at page 31.

(c) Prior to the sale, the board of directors of the state
college system shall cause the property to be appraised
by three independent licensed appraisers and shall not
sell the property for less than the average of the three
appraisals.
AN ACT to amend and reenact section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to voting procedures generally; voting procedures where the voter is handicapped; elimination, under certain circumstances, of requirement that person assisting handicapped voters sign a certain oath or affirmation; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

1 (a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If such person is found to be duly registered as a voter at that precinct, he shall be required to sign his name in the space marked “signature of voter” on the pollbook prescribed and provided for the precinct. If such person be physically or otherwise unable to sign his name, his mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter’s mark shall be indicated immediately under such affixation. No ballot shall be given to such person until he so signs his name on the pollbook or his signature is so affixed thereon.

17 (b) The clerk of the county commission is authorized, upon verification that the precinct at which a handi-
capped person is registered to vote is not handicap accessible, to transfer such person's registration to the nearest polling place in the county which is handicap accessible. Requests by such persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a challenged ballot, at a handicap accessible polling place in the county of his or her registration, and, if during the canvass the county commission determines that the person had been registered in a precinct not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of such transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "challenged ballot/handicapped voter." After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved challenged ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to the voter to be voted by him then without leaving the election room. If he returns the ballot spoiled to the clerks, they shall immediately mark such ballot "spoiled" and the same shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side as before done. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his ballot, using a ballpoint pen of not less than five inches in length or
other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It shall be the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark inserted in the appropriate place on the registration record of each voter the fact that such voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, such fact shall be indicated by the poll clerks on the registration record together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e) (1) No voter shall receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:

(A) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided, and, on request, shall read over to such voter the names of candidates on the ballot as so prepared; or

(B) Require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his ballot in the manner hereinbefore provided; or

(C) Be assisted by any person of the voter's choice: Provided, That such assistance may not be given by the voter's present or former employer or agent of that employer or by the officer or agent of a labor union of
which the voter is a past or present member.

(2) Any voter who requests assistance in voting but who is believed not to be qualified for such assistance under the provisions of this section shall nevertheless be permitted to vote a challenged ballot with the assistance of any person herein authorized to render assistance.

(3) Any one or more of the election commissioners or poll clerks in the precinct may challenge such ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion that the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or commissioners or poll clerks making such challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.

(4) An election commissioner or other person who assists a voter in voting:

(A) Shall not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and shall not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and shall not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting such voter on a form prescribed by the secretary of state stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. Such person assisting the voter shall also swear or affirm that he or she believes that the
voter is voting free of intimidation or manipulation: Provided, That no person providing assistance to such voter shall be required to sign such oath or affirmation where the reason for requesting such assistance is the voter's inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code, and such inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(5) In accordance with instructions issued by the secretary of state, the clerk of the county commission shall provide a form entitled “List of Assisted Voters,” the form of which list shall likewise be prescribed by the secretary of state. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter shall have been assisted in voting the ballot as herein provided, the commissioners shall likewise make and subscribe to an oath of that fact on such list.

(f) After preparing the ballot the voter shall fold the same so that the face shall not be exposed and so that the names of the poll clerks thereon shall be seen. The voter shall then announce his name and present his ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box, if such ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding or unrolling it, so as to disclose its content. When the voter has voted, he shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and shall not return, except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters together with the “List of Assisted Voters,” shall be returned by the election commissioners to the clerk of
the county commission along with the election supplies, records and returns, who shall make such oaths, affirmations and list available for public inspection and who shall preserve the same for a period of twenty-two months or until disposition is authorized or directed by the secretary of state, or court of record.

(h) Any person making an oath or affirmation required under the provisions of this section who shall therein knowingly swear falsely, or any person who shall counsel, or advise, aid or abet another in the commission of false swearing under this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail for a period of not more than one year, or both.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when such voter is known to such election commissioner or poll clerk not to require assistance in voting, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the penitentiary for a period of not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 58
(S. B. 520—By Senators Wooton, Wagner, Holliday, Grubb, Dittmar, Macnaughtan and Claypole)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration of voters; providing for a permanent and uniform system of registration; setting forth eligibility requirements; authorizing the secretary of state to supervise voter registration procedures, practices and the maintenance of records, to coordinate the state implementation of the “National Voter Registration Act of 1993” and to
promulgate rules applicable thereto; designating the clerk of the county commission as the chief registration authority of the respective counties; setting forth certain duties and authority of county commission; requiring secretary of state to prescribe forms for registration and providing contents thereof; establishing a statewide bidding procedure for mail registration forms; setting forth the time limits for registration prior to election; providing for registration at the office of the clerk of the county commission; authorizing the establishment of registration outreach services; providing for the appointment of temporary and volunteer registrars to perform such services; prescribing procedures for registration by mail; prescribing procedures for registration in conjunction with motor vehicle driver licensing services; providing for the combined voter registration and driving licensing fund and authorized uses thereof; designating certain agencies to provide voter registration services; requiring such agencies to appoint supervisors to administer registration programs; requiring secretary of state to prescribe appropriate form for agency registration; prohibiting certain activities; requiring confidentiality; prescribing procedures for registration at agencies; prescribing procedures for registration at marriage license offices; setting forth duties of clerk upon receipt of registration application; establishing verification procedure and notice of disposition; mandating the denial of certain applications and prescribing an appeal procedure upon such denial; providing for the establishment and maintenance of certain registration records and files by the clerk of the county commission; providing for maintenance of active and inactive files in precinct record books and county alphabetical registration files; when municipal precinct books may be maintained; requiring municipalities to file boundary information with clerks; establishing a state uniform voter data system for the electronic storage of registration records; establishing procedures for the entry and transfer of voter information into the data system; authorizing the correction of voter records and establishing procedures therefor; requiring clerks to cancel the registrations of deceased and ineligible
voters; providing a systematic purging program for removal of ineligible voters from active files in manual and electronic data systems; when confirmation notices to be mailed; setting forth procedures to be followed by clerk after mailing of confirmation notices; providing for the challenge of a registration; when clerk to cancel registration or remove challenge; providing for the custody of registration records and voter registration data files; when records may be destroyed; requiring records be made available for public inspection; providing for the purchase of voter lists for noncommercial use; requiring the confidentiality of certain information; establishing procedure for voting after registration or change of address within the county; providing for the unlawful registration or rejection of a voter and for the unlawful registration or application by any person; setting forth criminal penalties; criminalizing willful neglect of duty by registration officers and providing a criminal penalty therefor; making it a crime to wrongfully alter or destroy records, to withhold information, to provide certain false information or to allow unlawful registration and providing criminal penalties therefor; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-1. Permanent voter registration law; uniform system of voter registration.

§3-2-2. Eligibility to register to vote.

§3-2-3. State authority relating to voter registration; chief election officer.

§3-2-4. Authority and responsibility of the clerk of the county commission and of the county commission relating to voter registration.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

§3-2-6. Time of registration application before an election.

§3-2-7. Hours and days of registration in the office of the clerk of the county commission; in person application for voter registration identification required.

§3-2-8. Registration outreach services by the clerk of the county commission; challenge of voter's registration.
§3-2-9. Appointment of temporary and volunteer registrars for registration outreach services.

§3-2-10. Application for registration by mail.

§3-2-11. Registration in conjunction with driver licensing.

§3-2-12. Combined voter registration and driver licensing fund.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

§3-2-14. Registration procedures at agencies.

§3-2-15. Special procedures relating to agency registration at marriage license offices.

§3-2-16. Procedures upon receipt of application for registration by clerk of the county commission; verification procedure and notice of disposition of application for registration.

§3-2-17. Denial of registration application; notice; appeal to clerk of the county commission, decision; appeal to county commission, hearing, decision; appeal to circuit court.

§3-2-18. Registration records; active, inactive, canceled, pending and rejected registration files; procedure; voting records.

§3-2-19. Maintenance of active and inactive registration files in precinct record books and county alphabetical registration file.

§3-2-20. Establishment of a state uniform voter data system of digitized electronic storage of voter registration records.

§3-2-21. Maintenance of records in state uniform voter data system in lieu of precinct record books.

§3-2-22. Correction of voter records.

§3-2-23. Cancellation of registration of deceased or ineligible voters.


§3-2-25. Systematic purging program for removal of ineligible voters from active voter registration files for counties with state approved uniform voter data system; modified program for counties using other digitized record storage systems.

§3-2-26. Confirmation notices for systematic purging program.

§3-2-27. Procedure following sending of confirmation notices; correction or cancellation of registrations upon response; designation of inactive when no response; cancellation of inactive voters; records.

§3-2-28. Challenges; notice; cancellation of registration.

§3-2-29. Custody of original registration records and voter registration data files.

§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.

§3-2-31. Rules pertaining to voting after registration or change of address within the county.

§3-2-32. Unlawful registration or rejection of voter; penalties.

§3-2-33. Neglect of duty by registration officers; penalties.

§3-2-34. Alteration or destruction of records; penalties.

§3-2-35. Withholding information; penalties.
§3-2-1. Permanent voter registration law; uniform system of voter registration.

(a) This article, providing a permanent and uniform system for the registration of the voters of the state of West Virginia, may be cited as the “Permanent Voter Registration Law”.

(b) A permanent voter registration system is hereby established which shall be uniform in its requirements throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while continuing to reside within the same county, unless the voter’s registration is canceled as provided in this article.

(c) A person who is not eligible or not duly registered to vote shall not be permitted to vote at any election in any subdivision of the state, except that such a voter may cast a “provisional” or “challenged” ballot as provided in this chapter if the voter’s eligibility or registration is in question, and such “provisional” or “challenged” ballot may be counted only if a positive determination of the voter’s eligibility and proper registration can be ascertained.

§3-2-2. Eligibility to register to vote.

(a) Any person who possesses the constitutional qualifications for voting may register to vote. Such a person shall be a citizen of the United States and a legal resident of West Virginia and of the county where he or she is applying to register, shall be at least eighteen years of age, except that a person who is at least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified: Provided, That a registered voter who has not reached eighteen years of age may vote both partisan and nonpartisan ballots in a state, county or municipal primary election, but is not eligible to vote in a municipal general election or special
(b) Any person who has been convicted of a felony, treason or bribery in an election, under either state or federal law, is disqualified and shall not be eligible to register or to continue to be registered to vote during the term of any sentence for such conviction, including any period of incarceration, probation or parole related thereto. Any person who has been determined to be mentally incompetent by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that determination remains in effect.

§3-2-3. State authority relating to voter registration; chief election officer.

(a) The secretary of state, as chief election official of the state as provided in section six, article one-a of this chapter, shall have general supervision of the voter registration procedures and practices and the maintenance of voter registration records in the state, and shall have authority to require reports and investigate violations to ensure the proper conduct of voter registration throughout the state and all of its subdivisions.

(b) The secretary of state is hereby designated as the chief election official responsible for the coordination of this state's responsibilities under the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg). The secretary of state shall have general supervision of voter registration procedures and practices at agencies and locations providing services as required by the provisions of this article and shall have the authority to propose procedural, interpretive and legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for application for registration, transmission of applications, reporting and maintenance of records required by the provisions of this article and for the development, implementation and application of other provisions of this article.

§3-2-4. Authority and responsibility of the clerk of the county commission and of the county commission relating to voter registration.
(a) Subject to the authority of the secretary of state, the clerk of the county commission shall be the chief registration authority in each respective county and all subdivisions therein, and shall supervise their deputies, employees and registrars in the performance of their respective duties.

(b) The county commission of each county shall allocate sufficient resources for the proper and efficient performance of duties relating to voter registration as required by law, and shall provide for temporary clerical assistance necessary for systematic purging procedures or other duties of short duration required by the provisions of this article.

(c) The county commission shall have authority on its own motion to summon and examine any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers and to conduct hearings on any matters relating to the registration of voters.

(d) The clerk of the county commission shall be responsible for the administration of voter registration within the county and shall establish procedures and practices which ensure the full implementation of the requirements of federal and state laws and rules relating to voter registration, and which ensure nondiscriminatory practices.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a) (1) All state forms for application for voter registration shall be prescribed by the secretary of state and shall conform with the requirements of the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg) and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for motor vehicle driver's license and registration at designated agencies.
These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing, and may be revised and reissued as required by the secretary of state to provide for the efficient administration of voter registration. After the first day of January, one thousand nine hundred ninety-five, all state forms issued for the purpose of voter registration shall be those prescribed pursuant to the provisions of this article, and no form used or issued for voter registration pursuant to laws in effect before that date shall be provided to any person for the purpose of registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to the “Uniformed and Overseas Citizens Absentee Voting Act of 1986” (42 U.S.C. 1973 et seq.), and the mail voter registration application form prescribed by the Federal Election Commission pursuant to the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg) shall be accepted as a valid form of application for registration pursuant to the provisions of this article.

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg);

(3) A notice that a voter may be permitted to vote the partisan primary election ballot of a political party only if the voter has designated that political party on the application for registration, unless the political party has determined otherwise; and

(4) Any other instructions or information essential to complete the application process.

(c) Each application form shall require that the
following be provided by the applicant, under oath, and any application which does not contain each of the following shall be considered incomplete:

(1) The applicant's legal name, including the first name, middle or maiden name and last name;
(2) The month, day and year of the applicant's birth;
(3) The applicant's gender; and
(4) The applicant's residence address, including the number and street or route and city and county of residence except:

(A) In the case of a person eligible to register under the provisions of the "Uniformed and Overseas Citizens Absentee Voting Act", (42 U.S.C. 1973ff), the address at which he or she last resided before leaving the United States or entering the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided; and

(B) In the case of a homeless person having no fixed residence address who nevertheless resides and remains regularly within the county, the address of a shelter, assistance center or family member with whom he or she has regular contact, or other specific location approved by the clerk of the county commission for the purposes of establishing a voting residence;

(5) The applicant's signature, under penalty of perjury, as provided in section thirty-six of this article, to the attestation of eligibility to register to vote and to the truth of the information given; and

(6) The date the application is signed.

(d) The applicant shall be requested to provide the following information, but no application shall be rejected for lack of this information:

(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;
(2) The applicant's choice of political party affiliation, if any, or an indication of no affiliation: Provided, That
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87 any applicant who does not enter any choice of political
88 party affiliation shall be listed as having no party
89 affiliation on the voting record;
90 (3) The applicant's home mailing address, if different
91 than the residence address;
92 (4) The applicant's social security number;
93 (5) The applicant's telephone number; and
94 (6) The address at which the applicant was last
95 registered to vote, if any, for the purpose of canceling
96 or transferring the previous registration.
97 (e) The secretary of state shall prescribe the printing
98 specifications of each type of voter registration applica-
99 tion and the voter registration application portion of any
100 form which is part of a combined agency form.
101 (f) Application forms prescribed in this section may
102 refer to various public officials by title or official
103 position, but in no case may the actual name of any
104 officeholder be printed on the voter registration
105 application or on any portion of a combined application
106 form.
107 (g) No later than the first day of July of each odd-
108 numbered year, the secretary of state shall submit the
109 specifications of the voter registration application by
110 mail for statewide bidding for a contract period
111 beginning the first day of September of each odd-
112 numbered year and continuing for two calendar years.
113 The successful bidder shall produce and supply the
114 required mail voter registration forms at the contract
115 price to all purchasers of the form for the period of the
116 contract.

§3-2-6. Time of registration application before an
1 election.
2 (a) Voter registration for an election shall close on the
3 thirtieth day before the election, or on the first day
4 thereafter which is not a Saturday, Sunday or legal
5 holiday.
6 (b) An application for voter registration, transfer of
registration, change of name or change of political party affiliation submitted by an eligible voter by the close of voter registration shall be effective for any subsequent primary, general or special election if the following conditions are met:

(1) The application contains the required information as set forth in subsection (c), section five of this article: Provided, That incomplete applications for registration containing information which are submitted within the required time may be corrected within four days after the close of registration if the applicant provides the required information; and

(2) The application is received by the appropriate clerk of the county commission no later than the hour of the close of registration or is otherwise submitted by the following deadlines:

(A) If mailed, the application shall be addressed to the appropriate clerk of the county commission and postmarked by the postal service no later than the date of the close of registration: Provided, That if the postmark is missing or illegible, the application shall be presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application shall be received by that agency or office no later than the close of registration;

(C) If accepted through a registration outreach program, the application shall be received by the clerk, deputy clerk or registrar no later than the close of registration; and

(3) The verification notice required by the provisions of section sixteen of this article mailed to the voter at the residence indicated on the application is not returned as undeliverable.

§3-2-7. Hours and days of registration in the office of the clerk of the county commission; in person
application for voter registration; identification required.

(a) The clerk of the county commission shall provide voter registration services at all times when the office of the clerk is open for regular business. In addition, the office of the clerk shall remain open for voter registration from 9:00 a.m. until 8:00 p.m. on the Friday and Monday, and from 9:00 a.m. until 5:00 p.m. on the Saturday, prior to the close of registration for statewide primary and general elections.

(b) Any eligible voter who desires to apply for voter registration in person at the office of the clerk of the county commission shall complete a voter registration application on the prescribed form and shall sign the oath required on that application in the presence of the clerk of the county commission or his or her deputy. The applicant shall then present valid identification and proof of age, except that the clerk may waive the proof of age requirement if the applicant is clearly over the age of eighteen.

(c) The clerk shall attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes.

(d) Upon receipt of the completed registration application, the clerk shall either:

(1) Provide a notice of procedure for verification and notice of disposition of the application and immediately begin the verification process prescribed by the provisions of section sixteen of this article; or

(2) Upon presentation of a current driver's license or state issued identification card containing the residence address as it appears on the voter registration application, issue the receipt of registration.

§3-2-8. Registration outreach services by the clerk of the county commission; challenge of voter’s registration.
(a) Registration outreach services, including application for registration, change of address, name or party affiliation and correction or cancellation of registration, may be provided at locations outside the office of said clerk of the county commission by the clerk, one or more of his or her deputy clerks, or by temporary registrars or volunteer registrars appointed in accordance with the provisions of section nine of this article.

(b) (1) The clerk of the county commission may establish temporary registration offices to provide voter registration services to residents of the county. The clerk shall file a list of the scheduled times and locations of any temporary registration offices with the county commission at least fourteen days prior to opening the temporary office and shall solicit public service advertising of the location and times for any temporary registration office on radio, television and newspapers serving that county.

(2) The clerk of the county commission shall establish an approved program of voter registration services for eligible high school students at each high school within the county and shall conduct that program of voter registration at an appropriate time during each school year, but no later than forty-five days before a statewide primary election held during a school year. The secretary of state shall issue guidelines for approval of programs of voter registration for eligible students, and all such programs shall include opportunities for students to register in person and present identification at the high school where the student is enrolled. Official school records shall be accepted as identification and proof of age for eligible students.

(c) When the boundaries of precincts are altered requiring the transfer of a portion of the voters of one precinct to another precinct, the clerk of the county commission or temporary registrars appointed for the purpose may conduct door-to-door registration services in the areas affected by the boundary changes and may register, alter or transfer the registration of voters found to reside in those areas. Upon a determination that a voter who previously registered in the area
canvassed no longer resides at that address, except for
those persons who are qualified to maintain a legal
residence at the address, the clerk of the county
commission shall challenge the registration of the voter
in accordance with the provisions of section twenty-eight
of this article.

(d) The procedures required upon receipt of an
application for registration as prescribed in subsection
(b), section seven of this article shall also be performed
by the authorized persons conducting the registration
outreach services.

§3-2-9. Appointment of temporary and volunteer registrars for registration outreach services.

(a) Temporary registrars and volunteer registrars
may be appointed to perform registration outreach
services as provided in section eight of this article.
Whenever registration outreach services are conducted
by temporary registrars or volunteer registrars, two
persons of opposite political parties shall serve together.
All temporary registrars and volunteer registrars shall
be trained by the clerk of the county commission before
beginning their duties and shall thereafter be supervised by said clerk.

(b) Temporary registrars and volunteer registrars
shall have the same eligibility qualifications as required
of election officials and shall be subject to suspension by
the same procedures as prescribed for election officials
as provided in section twenty-eight, article one of this
chapter. Eligibility may be suspended for the following
reasons:

(1) Failure to appear at the required time and place
or to perform the duties of a registrar as required by
law;

(2) Alteration or destruction of a voter registration
application;

(3) Improper influence of the choice of party affiliation
of a voter, or other improper interference or
intimidation relating to the voter's decision to register
or not to register to vote; or
(4) Being under the influence of alcohol or drugs, or having anything wagered or bet on an election.

(c) Each temporary or volunteer registrar, before beginning the duties of the office, shall take an oath to perform the duties of the office according to law and the oath shall be filed with the clerk of the county commission.

(d) (1) The county commission may appoint temporary registrars to conduct registration as provided in section eight of this article. An equal number of such registrars shall be selected from the two major political parties. The county commission shall notify each county executive committee, in writing, specifying the number of registrars to be appointed, the general schedule of registration activities to be performed, and the date by which the nominations must be received, which date shall be not less than twenty-eight days following the date of the notice. Each executive committee, by majority vote of the committee, may nominate the number of persons needed to serve as registrars and shall submit the nominations in writing to the county commission by the date specified in the notice. The clerk of the county commission shall notify those persons so nominated and appointed. If any person declines to serve or fails to appear, the clerk of the county commission shall fill the vacancy with a qualified person of the same political party.

(2) Temporary registrars shall be compensated at a rate not less than the federal minimum wage and may be reimbursed for mileage traveled between the county courthouse and any temporary registration site.

(e) The clerk of the county commission may appoint volunteer registrars to conduct registration outreach services as provided in section eight of this article. Volunteer registrars shall serve without compensation. At least fourteen days before beginning any registration outreach service to be conducted by volunteer registrars, the clerk shall notify the county commission in writing listing the proposed schedule for all registration outreach activities and the name and party affiliation of
§3-2-10. Application for registration by mail.

(a) Any qualified person may apply to register, change, transfer or correct his or her voter registration by mail. Application shall be made on a prescribed form as provided by section five of this article, and the voter shall not be required to pay postage to mail the completed application.

(b) To the extent possible with funds allocated annually for such purpose, the secretary of state shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration programs. The secretary of state shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The secretary of state may limit the distribution to a reasonable amount per group.

(c) The clerk of the county commission shall provide up to four mail registration forms to any resident of the county upon request. To the extent possible with funds allocated annually for the purpose, the clerk of the county commission shall make state mail registration forms available for distribution through organized voter registration programs within the county. The clerk of the county commission shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The clerk may limit the distribution to a reasonable amount per group.

(d) The applicant shall provide all required information and only after completing the information, sign the prescribed applicant's oath under penalty of perjury, as provided in section thirty-six of this article. No person may alter or add any entry or make any mark which would alter any material information on the voter registration application after the applicant has signed the oath: Provided, That the clerk of the county
(e) Completed applications shall be mailed or delivered to the clerk of the county commission of the county in which the voter resides. If a clerk receives a completed mail application form from a voter whose residence address is located in another county, the clerk shall forward that application within three days to the clerk of the county commission of the county of the applicant’s residence.

(f) Upon receipt of the application for registration by the appropriate clerk of the county commission, the clerk shall:

(1) Attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes; and

(2) Immediately begin the verification process required by the provisions of section sixteen of this article.

(g) Any person who registers by mail pursuant to this section shall be required to make his or her first vote in person at the polls or in person at the office of the clerk of the circuit court to vote an absentee ballot in order to make the registration valid: Provided, That any person who has applied for an absentee ballot pursuant to the provisions of subdivision (1), subsection (d), section one, article three of this chapter or paragraph (B), subdivision (2) of said subsection or subdivision (3) of said subsection or of subsection (e) of said section shall not have his or her ballot in that election challenged for failure to appear in person or for failure to present identification.

(h) Any person required by this section to make his or her first vote in person shall present valid identification and proof of age to the clerks at the poll or at the office of the clerk of the circuit court or the clerk
of the county commission of the county in which he or she is registered before casting the first ballot.

(i) Any person who submits a state mail voter registration application to the clerk of the county commission in the county in which he or she is currently registered for the purpose of entering a change of address within the county, making a change of party affiliation or recording a change of legal name shall not be required to make his or her first vote in person or to present identification or proof of age.

§3-2-11. Registration in conjunction with driver licensing.

(a) Beginning on the first day of January, one thousand nine hundred ninety-five, the division of motor vehicles and the department of public safety, or such other division or department as may be established by law to perform motor vehicle driver licensing services, shall provide each qualified voter, as an integral and simultaneous part of every process of application for the issuance, renewal or change of address of any motor vehicle driver's license or official identification card, pursuant to the provisions of article two, chapter seventeen-b of this code, a voter registration application form as prescribed in section five of this article.

(b) Any person who fails to sign the voter registration application or who fails to return the voter registration application to a driver licensing facility or to an appropriate voter registration office shall be deemed to have declined to register. Information regarding any person's failure to sign the voter registration application shall be confidential and shall not be used for any purpose other than to determine voter registration.

(c) Any qualified voter who submits the application for registration pursuant to the provisions of subsection (a) of this section in person at a driver licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time shall not be required to make his or her first vote in person or to again present
identification in order to make that registration valid.

(d) Any qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing shall be required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article: Provided, That if the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation or other correction, the presentation of identification and first vote in person shall not be required.

(e) Any application for voter registration submitted pursuant to the provisions of this section shall be considered as updating any previous voter registration by the applicant and shall authorize the cancellation of registration in any other county or state in which the applicant was previously registered.

(f) Any change of address from one residence to another within the same county which is submitted for driver licensing purposes in accordance with applicable law shall also serve as a notice of change of address for voter registration purposes unless the individual indicates on the form that the change of address is not for voter registration purposes.

(g) Completed applications for voter registration or change of address for voting purposes received by any office providing driver licensing services shall be forwarded to the secretary of state within five days of receipt. The secretary of state shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(h) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected and maintained for two years according to procedural rules
§3-2-12. Combined voter registration and driver licensing fund.

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the state treasury to the credit of a special revenue fund to be known as the "Combined Voter Registration and Driver Licensing Fund". The moneys so credited to such fund may be used by the secretary of state for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications;

(2) Printing and distribution of mail voter registration forms for purposes of this article;

(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter's registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state funded agencies designated pursuant to the provisions of this article:
(7) The development of a statewide program of uniform voter registration computerization for use by each county registration office and the secretary of state, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

(8) Payment of up to fifty percent of the costs of conducting a joint program with participating counties to identify ineligible voters by using the United States postal service information as provided in section twenty-five of this article: Provided, That such assistance shall be available only to counties which maintain voter registration lists on the statewide uniform voter data system; and

(9) Payment or reimbursement of other costs associated with implementation of the requirements of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg): Provided, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through (8) of this subsection.

(b) The secretary of state shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of the fund established in subsection (a) of this section.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

(a) For the purposes of this article, "agency" means a department, division or office of state or local government, or a program supported by state funds, which is designated under this section to provide voter registration services, but does not include departments, divisions or offices required by other sections of this article to provide voter registration services.

(b) Beginning on the first day of January, one thousand nine hundred ninety-five, the following
agencies shall provide voter registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide services under the food stamp program, the “Aid to Families with Dependent Children” (AFDC) program, the “Women, Infants and Children” (WIC) program and the medicaid program;

(2) Those state funded agencies primarily engaged in providing services to persons with disabilities;

(3) County marriage license offices; and

(4) Armed services recruitment offices, as required by federal law.

(c) No later than the first day of October, one thousand nine hundred ninety-four, the secretary of state shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and offices established and operating with state funds which administer or provide public assistance or services to persons with disabilities, and shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code designating the specific programs and offices required to provide voter registration services in order to comply with the requirements of this section and the requirements of the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg). The offices and programs so designated shall begin providing voter registration services on the first day of January, one thousand nine hundred ninety-five.

(d) No later than the first day of July, one thousand nine hundred ninety-six, and each even-numbered year thereafter, the secretary of state shall, in conjunction with the designated representatives of the appropriate state agencies, perform the review as required by the provisions of subsection (c) of this section and the secretary of state shall promulgate a legislative rule pursuant to the provisions of chapter twenty-nine-a of this code designating the specific agencies required to provide voter registration services beginning on the first
(e) Each state agency required to provide services pursuant to the provisions of this article shall designate a current employee of that agency to serve as a state supervisor to administer voter registration services required in all programs under their jurisdiction. Each state supervisor shall be responsible for coordination with the secretary of state, overall operation of the program in conjunction with services within the agency, designation and supervision of local coordinators and for the review of any complaints filed against employees relating to voter registration as provided in this chapter.

(f) The state supervisor shall designate a current employee as a local coordinator for voter registration services for each office or program delivery center who shall be responsible for the proper conduct of voter registration services, timely return of completed voter registration applications, proper handling of declinations and reporting requirements. Notice of the designation of these persons shall be made upon request of the secretary of state, and within five days following any change of such designation.

(g) The registration application forms used for agency registration shall be issued pursuant to the provisions of section five of this article.

(h) The secretary of state, in conjunction with those agencies designated to provide voter registration services pursuant to the provisions of this section, shall prescribe the form or portion of the appropriate agency form required by the provisions of Section 7(a)(6)(B) of the “National Voter Registration Act of 1993” (42 U. S. C. 1973gg), containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote. Such form or portion of form is designated the “declination form”.

(i) A person who provides voter registration services shall not:

(1) Seek to influence an applicant's political prefer-
ence or party registration;
(2) Display to any applicant any political preference or party allegiance;
(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.
(j) No information relating to the identity of a voter registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency, may be used for any purpose other than voter registration.
§3-2-14. Registration procedures at agencies.
(a) For the purpose of this section, “applicant” means a person who applies in person, whether at an agency office or other site of direct contact with an agency employee responsible for accepting applications, seeking services or assistance for himself or herself or for a member of his or her immediate family.
(b) No later than the first day of December, one thousand nine hundred ninety-four, the secretary of state shall promulgate procedural rules governing the duties and training of agency employees responsible for providing voter registration services, including the distribution, handling, transmittal and retention of voter registration applications and other forms used in conjunction with agency registration, and any reporting necessary to comply with the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg).
(c) Beginning on the first day of January, one thousand nine hundred ninety-five, or on the first day of July of any subsequent odd-numbered year after which an agency has been designated, each agency
designated under the provisions of section thirteen of this article shall:

(1) Distribute with each application for service or assistance, and with each recertification, renewal or change of address form relating to that service or assistance, the declination form prescribed in subsection (h), section thirteen of this article, and a voter registration application issued for the purposes of agency registration pursuant to the provisions of section five of this article;

(2) Provide to each applicant who does not decline to register to vote the same degree of assistance in voter registration as is provided for the completion of the agency's other forms, unless the applicant refuses assistance;

(3) Accept completed voter registration applications and forward those applications to the secretary of state within five days of receipt;

(4) Accept declination forms and retain or forward those forms in a manner prescribed by procedural rules promulgated by the secretary of state;

(5) Provide, on the request of an applicant or person assisting an applicant, a reasonable number of mail application forms for use by other eligible persons residing with the applicant; and

(6) Make any reports as may be required.

(d) Any applicant who checks "no" or fails to check "yes" or "no" on the declination form shall be deemed to have declined to register; and any applicant who checks "yes" on the declination form, but fails or refuses to sign the voter registration application or fails to return the voter registration application to an agency or to an appropriate voter registration office shall be deemed to have declined to register.

(e) Upon receipt of registration forms from an agency, the secretary of state shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of
the appropriate county commission within five days of receipt.

(f) Any qualified voter who submits the application for registration pursuant to the provisions of this section in person at an agency or to an agency employee providing services at another location, and who presents identification and proof of age at that time or has previously presented identification and proof of age to the same agency, shall not be required to make his or her first vote in person or to again present identification in order to make that registration valid.

(g) Any qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with agency registration shall be required to make his or her first vote in person and to present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article.

(h) Voter registration application forms which are returned to an agency unmarked shall be collected for reuse according to procedures prescribed by the secretary of state.

§3-2-15. Special procedures relating to agency registration at marriage license offices.

When a qualified voter appears in person to apply for a marriage license, the applicant shall be presented a voter registration application. If the applicant does not intend to change his or her legal name or residence address upon marriage, the applicant may immediately apply to register or to update a previous registration, in accordance with the procedures prescribed in section fourteen of this article, except that the completed applications shall be forwarded directly to the registration office of the clerk of the county commission if the residence given is within the same county. If the applicant does intend to change his or her legal name or residence address upon marriage, and desires to register to vote, the applicant shall instead be given a mail registration card for use after the change of name or address has occurred.
§3-2-16. Procedures upon receipt of application for registration by the clerk of the county commission; verification procedure and notice of disposition of application for registration.

(a) Upon receipt of an application for voter registration, the clerk of the county commission shall determine whether the application is complete, whether the applicant appears to be eligible to register to vote within the county and whether the applicant is currently registered within the county. If the application is incomplete or the applicant appears not to be eligible, the clerk shall take the appropriate action as prescribed in section seventeen of this article.

(b) If the application received is complete and appears to be from an eligible person who has not previously been registered within the county, or has not been included within the active voter registration files as defined in section eighteen of this article within the preceding calendar year and does not present a driver's license containing the residence address pursuant to the provisions of subdivision (2), subsection (d), section seven of this article, the clerk of the county commission shall conduct the following verification procedure:

(1) The clerk shall issue or mail, by first-class nonforwardable return requested, a verification notice addressed to the applicant at the residence and mailing address given on the application, except that the mailing address shall not be included on the notice if it appears to identify a distinctly different location from the residence address, such as a business address, another residence or a different city or town, unless the voter has registered as a uniformed services, overseas or homeless voter and provided a local residence address pursuant to the provisions of subdivision (4), subsection (c), section five of this article.

(2) The verification notice shall state the purpose of the procedure, the fact that no further action is required of the applicant, and the fact that a notice of the disposition of the registration application will be mailed after the ten day return period has expired.
(3) If the verification notice is not returned as undeliverable within ten days, the application for registration shall be accepted and entered into the active voter registration files and a registration receipt mailed designating the voter's assigned precinct.

(4) If the verification notice is returned undeliverable within ten days, the clerk shall compare the address given on the voter registration application with the address used on the envelope and, if there is any discrepancy, shall send a second verification notice to the correct address. If there is no discrepancy, the application for registration shall be denied and the notice of denial prescribed in section seventeen of this article shall be mailed.

(5) If the verification notice is returned undeliverable after the registration has been accepted, the clerk shall initiate the confirmation procedure prescribed in section twenty-six of this article.

(c) If the application received is complete and appears to be from an eligible person who is currently registered within the county, or has been included within the active voter registration files as defined in section eighteen of this article within the preceding calendar year, the clerk of the county commission shall send, by first-class nonforwardable return requested mail, a registration receipt or other notice of the disposition of the application; and

(1) If the application is for a change of name, change of address, change of political party affiliation, reinstatement or other correction of the previous voter registration, the clerk shall include a new voter registration receipt;

(2) If the application does not make any change in the previous voter registration, the clerk shall notify the registrant that the voter is not required to reregister or update the registration as long as he or she lives at the same address and has the same legal name; or

(3) If the notice of disposition is returned undeliverable after the registration has been accepted, the clerk
shall initiate the confirmation procedure prescribed in section twenty-six of this article.

(d) If the application contains information indicating the address at which the applicant was previously registered to vote in another county or state, the clerk of the county commission shall give notice to the clerk or registrar of that jurisdiction for the purpose of canceling the previous registration.

§3-2-17. Denial of registration application; notice; appeal to clerk of the county commission, decision; appeal to county commission, hearing, decision; appeal to circuit court.

(a) If the clerk of the county commission finds that any of the following is true, based on the application or official documentation of ineligibility, the clerk shall deny the application for voter registration:

(1) The applicant, at the time the application is received, is not eligible to register in the county and state pursuant to the provisions of section two of this article;

(2) The applicant has submitted an application which is incomplete, pursuant to the provisions of subsection (c), section five of this article; or

(3) The verification notice as required in section sixteen of this article is returned as undeliverable at the address given by the voter.

(b) When the clerk of the county commission determines that the application must be denied, the clerk shall send, by first class forwardable return requested mail, a notice that the application for registration was denied and the reasons therefor.

(1) If the reason for denial is an incomplete application, the clerk shall inform the voter of the right to reapply and shall enclose a mail voter registration form for the purpose.

(2) If the reason for denial is return of the verification notice as undeliverable at the address given, the clerk shall inform the voter of the right to present proof of
(3) If the reason for denial is ineligibility, the notice shall include a statement of eligibility requirements for voter registration and of the applicant's right to appeal the denial.

(c) An applicant whose application for registration is denied by the clerk of the county commission because of ineligibility or for failure to submit proof of residence may make a written request for a reconsideration by the clerk, and may present information relating to his or her eligibility. The clerk shall review the request for consideration and shall issue a decision in writing within fourteen days of the receipt of the request.

(d) If the application is denied upon reconsideration pursuant to the provisions of subsection (c) of this section, the applicant may make a written request for a hearing before the county commission. The county commission shall schedule and conduct the hearing within thirty days of receipt of the request and shall issue a decision, in writing, within fifteen days of the hearing.

(e) An applicant may appeal the decision of the county commission to the circuit court. The circuit court shall only consider the record before the county commission, as authenticated by the clerk of the county commission. The circuit court may affirm the order of the county commission, whether the order be affirmative or negative; but if it deems such order not to be reasonably justified by the evidence considered, it may reverse such orders of the county commission in whole or in part as it deems just and right; and if it deems the evidence considered by the county commission in reaching its decision insufficient, it may remand the proceedings to the county commission for further hearing. Any such order or orders of the circuit court shall be certified to the county commission.

(f) Any party to such appeal may, within thirty days after the date of a final order by the circuit court, apply for an appeal to the supreme court of appeals which may grant or refuse such appeal at its discretion. The
supreme court of appeals shall have jurisdiction to hear
and determine the appeal upon the record before the
circuit court and to enter such order as it may find that
the circuit court should have entered.

(g) It shall be the duty of the circuit court and the
supreme court of appeals, in order to expedite registra-
tion and election procedures, to hold such sessions as
may be necessary to determine any cases involving the
registration of voters. Judges of the circuit court and the
supreme court of appeals in vacation shall have the same
power as that prescribed in this section for their
respective courts.

§3-2-18. Registration records; active, inactive, canceled,
pending and rejected registration files; procedure; voting records.

(a) For the purposes of this article:

(1) "Original voter registration record" means all
records submitted or entered in writing for voter
registration purposes, including:

(A) Any original application or notice submitted by
any person for registration or reinstatement, change of
address, change of name, change of party affiliation,
correction of records, cancellation, confirmation of voter
information or other request or notice for voter regis-
tration purposes; and

(B) Any original entry made on any voter’s registra-
tion record at the polling place, or made or received by
the clerk of the county commission relating to any
voter’s registration, such as records of voting, presenta-
tion of identification and proof of age, challenge of
registration, notice of death or obituary notice, notice of
disqualifying conviction or ruling of mental incompe-
tence or other original document which may affect the
status of any person’s voter registration.

(2) “Active voter registration files” means the files of
registration records, whether maintained on paper
forms or in digitized data format, containing the names,
addresses, birth dates and other required information
for all persons within a county who are registered to
vote and whose registration has not been designated as
"inactive" or "canceled" pursuant to the provisions of
this article.

(3) "Inactive voter registration files" means the files
of registration records, whether maintained on paper
forms or in digitized data format, containing the names,
addresses, birth dates and other required information
for all persons designated "inactive" pursuant to the
provisions of section twenty-seven of this article
following the return of the prescribed notices as
undeliverable at the address entered on the voter
registration. For the purposes of this chapter or of any
other provisions of this code relating to elections
conducted under the provisions of this chapter, whe-
ever a requirement is based on the number of regis-
tered voters, including, but not limited to, the number
of ballots to be printed, the limitations on the size of a
precinct, or the number of petition signatures required
for election purposes, only those registrations included
on the active voter registration files shall be counted and
voter registrations included on the inactive voter
registration files, as defined in this subdivision, shall not
be counted.

(4) "Canceled voter registration files" means the files
containing all required information for all persons who
have been removed from the active and inactive voter
registration files and who are no longer registered to
vote within the county.

(5) "Pending application files" means the temporary
files containing all information submitted on a voter
registration application, pending the expiration of the
verification period.

(6) "Rejected application files" means the files
containing all information submitted on a voter regis-
tration application which was rejected for reasons as
described in this article.

(b) Active voter registration files and inactive voter
registration files may be maintained in the same
physical location or database, providing the records are
coded, marked or arranged in such a way as to make
the status of the registration immediately obvious.
Canceled voter registration files, pending application
files, and rejected application files shall each be
maintained in separate physical locations or databases.

(c) The effective date of any action affecting any
voter's registration status shall be entered on the voter
record in the appropriate file, including the effective
date of registration, change of name, address or party
affiliation or correction of the record, effective date of
transfer to inactive status, return to active status or
cancellation. When any registration is designated
inactive or is canceled, the reason for the designation or
cancellation and any reference notation necessary to
locate the original documentation related to the change
shall be entered on the voter record.

(d) Within one hundred twenty days after each
primary, general, municipal or special election, the
clerk of the county commission shall, as evidenced by the
presence or absence of signatures on the pollbooks for
such election, correct any errors or omissions on the
voter registration records resulting from the poll clerks
erroneously checking or failing to check the registration
records as required by the provisions of section thirty-
four, article one of this chapter, or shall enter the voting
records into the state uniform data system if the
precinct books have been replaced with printed regis-
tration books as provided in section twenty-one of this
article.

§3-2-19. Maintenance of active and inactive registration
files in precinct record books and county
alphabetical registration file.

(a) Each county shall continue to maintain a record
of each active and inactive voter registration in precinct
registration books until the state uniform data system
is adopted pursuant to the provisions of section twenty
of this article, fully implemented and given final
approval by the secretary of state. The precinct
registration books shall be maintained as follows:

(1) Each active voter registration shall be entered in
the precinct book or books for the county precinct in
which the voter’s residence is located and shall be filed alphabetically by name, alphabetically within categories, or by numerical street address, as determined by the clerk of the county commission for the effective administration of registration and elections. No active voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.

(2) Each voter registration which is designated “inactive” pursuant to the procedures prescribed in section twenty-seven of this article shall be retained in the precinct book for the county precinct in which the voter's last recorded residence address is located until the time period expires for which a record must remain on the inactive files. Every inactive registration shall be clearly identified by a prominent tag or notation or arranged in a separate section in the precinct book clearly denoting the registration status. No inactive voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.

(b) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) County precinct books shall be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other precinct books to make up a complete set of registration records for the municipal election precinct.

(2) Separate municipal precinct books may be maintained only in cases where municipal or ward boundaries divide county precincts to the extent that it is
impractical to use county precinct books or separate municipal sections of those precinct books.

(3) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(c) No later than the first day of January, one thousand nine hundred ninety-five, and within thirty days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter’s address is within the boundaries of the municipality.

(d) Each county, so long as precinct registration books are maintained, shall maintain a duplicate record of every active and inactive voter registration in a county alphabetical file. The alphabetical file may be maintained on individual paper forms or, upon approval of the secretary of state of a qualified data storage program, may be maintained in digitized format. A qualified data storage program shall be required to contain the same information for each voter registration as the precinct books, shall be subject to proper security from unauthorized alteration and shall be regularly duplicated to backup data storage to prevent accidental destruction of the information on file.

§3-2-20. Establishment of a state uniform voter data system of digitized electronic storage of voter registration records.

(a) For the purposes of this article, the term “state uniform voter data system” means a uniform software program and system of digitized electronic storage of voter registration records.

(b) A state uniform voter data system shall be established in the state to standardize voter registration
record storage in each county, to provide for the efficient
maintenance and correction of records, to provide for
effective compliance with the "National Voter Registrat-
tion Act of 1993" (42 U.S.C. 1973gg), to simplify record
keeping, training and supervision, and to improve
information sharing and transfer capabilities.

(c) The state uniform voter data system shall include
uniform voter registration software, standard required
data elements, uniform security procedures and access
requirements, the capacity to interface with common
word processing and other software programs, the
capacity to be used on a variety of compatible computer
hardware and the capacity to transmit data to a central
state computer.

(d) The secretary of state, in consultation with the
state election commission and an advisory committee
appointed by the commission, shall develop a compre-
hensive plan for the selection and/or development of
appropriate voter registration software and for the
development and implementation of pilot programs in
at least six counties in the state no later than the thirty-
first day of December, one thousand nine hundred
ninety-five.

(1) The advisory committee shall include at least three
persons who serve as clerks of a county commission in
the state, two persons with expertise in computer
technology and two representatives of the general
public. No person serving on the advisory committee
shall have any previous or current employment with or
significant financial interest in any company which
develops, offers for sale or provides service for any
particular voter registration or election software, or
which offers for sale computer hardware.

(2) Following the development of a proposed compre-
hensive plan pursuant to this subsection, the secretary
of state and the advisory committee shall submit the
plan to the state election commission and shall make the
plan available for public inspection for at least thirty
days prior to requesting proposals or bids.

(3) The uniform software program licenses for the
counties shall be purchased with funds from the combined voter registration and driver licensing fund established in section twelve of this article.

(e) Full implementation of the uniform system within each county of the state shall proceed as soon as possible, subject to the extent of available funding and the limitations of time periods immediately preceding and following elections, and shall be completed in each county no later than the first day of July, one thousand nine hundred ninety-nine.

(f) Counties which adopt and implement the state uniform voter data system shall be eligible for reimbursement pursuant to the provisions of subdivision (7), subsection (a), section twelve of this article for the cost of conversion of existing data or entry of the existing voter records and for the cost of voter list maintenance procedures conducted jointly with other participating counties.

§3-2-21. Maintenance of records in state uniform voter data system in lieu of precinct record books.

(a) The clerk of the county commission of each county, upon installation of the state uniform voter data system, shall prepare a "Voter Registration Data System Record" book into which all required records of appointments of authorized personnel, tests, repairs, program alterations or upgrades and any other action by the clerk of the county commission or by any other person under supervision of the clerk affecting the programming or records contained in the system, other than routine data entry, alteration, use, transfer or transmission of records shall be entered.

(b) The clerk of the county commission shall appoint all personnel authorized to add, change or transfer voter registration information within the state uniform voter data system, and a record of each appointment and the date of authorization shall be entered as provided in subsection (a) of this section. The assignment and confidential record of assigned system identification or authorized user code for each person appointed shall be as prescribed by the secretary of state.
(c) Voter registration records entered into and maintained in the state uniform voter data system shall include the information required for application for voter registration, for maintenance of registration and voting records, for conduct of elections and for statistical purposes, as prescribed by the secretary of state.

(d) No person shall make any entry or alteration of any voter record which is not specifically authorized by law. Each entry or action affecting the status of a voter registration shall be based on information in an original voter registration record, as defined in section eighteen of this article.

(e) The clerk of the county commission shall maintain, within the data system, active and inactive voter registration files, canceled voter registration files, pending application files, and rejected application files, all as defined in section eighteen of this article.

(f) Upon receipt of a completed voter registration application, the clerk shall enter the information provided on the application into the pending application file and initiate the verification or notice of disposition procedure as provided in section sixteen of this article. Upon completion of the verification or notice of disposition, the voter record shall be transferred to the proper file.

(g) Upon receipt of an application or written confirmation from the voter of a change of address within the county, change of name, change of party affiliation or other correction to a registration record in the active voter registration file, the change shall be entered in the record and the required notice of disposition mailed.

(h) Upon receipt of an application or written confirmation from the voter of a change of address within the county, change of name, change of party affiliation or other correction to a registration record in the inactive voter registration file, the change shall be entered in the record, the required notice of disposition mailed and the record transferred to the active registration file or returned to active status, and the date of the transaction shall be recorded.
(i) Upon receipt of a notice of death, a notice of conviction or a notice of a determination of mental incompetence, as provided for in section twenty-three of this article, the date and reason for cancellation shall be entered on the voter’s record and the record shall be transferred to the canceled voter registration file.

(j) Upon receipt from the voter of a request for cancellation or notice of change of address to an address outside the county pursuant to the provisions of section twenty-two of this article, or as a result of a determination of ineligibility through a general program of removing ineligible voters as authorized by the provisions of this article, the date and reason for cancellation shall be entered on the voter’s record and the record shall be transferred to the canceled voter registration file.

(k) At least once each month during a period prescribed by the secretary of state, the clerk of the county commission of each county utilizing the state uniform voter data system shall transmit to the secretary of state, by electronic transmission or by the mailing of one or more data disks or other approved means, a copy of the active, inactive and pending application files as of the date of transmission, for the purpose of comparison of those records to the voter registration records of other counties in the state and for any other list maintenance procedures authorized by the provisions of this article.

(l) The secretary of state shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code establishing procedures for the elimination of separate precinct registration books as the official active and inactive voter registration files and for the use of the state uniform voter data system to maintain all files, to produce voter lists for public inspection and to produce precinct voter records for election day use. Separate precinct registration books shall be maintained pursuant to the provisions of section nineteen of this article until all necessary provisions required for the conduct of elections at the polling place and for the implementation of the provisions of this chapter have been made. When a county is authorized to use the state
uniform voter data system exclusively for all prescribed
files, the clerk of the county commission shall transfer
the original voter records contained in the precinct
registration books to alphabetical record storage files
which shall be retained in accordance with the provi-
sions of section twenty-nine of this article, and any rules
issued pursuant thereto.

§3-2-22. Correction of voter records.

(a) Any registered voter who moves from one resi-
dence to another within the county may file a request
for change of address on the voter registration records
by completing and signing, under penalty of perjury, as
provided in section thirty-six of this article, and filing:

(1) A change of address form at the office of the clerk
of the county commission or through any of the voter
registration outreach services established pursuant to
the provisions of section eight of this article;

(2) A state or federal mail registration form;

(3) A change of address form for driver licensing
purposes;

(4) A change of address form for voter registration
purposes at any authorized voter registration agency;

(5) A confirmation of change of address form received
pursuant to the provisions of section twenty-four, twenty-five, twenty-six or twenty-seven of this article; or

(6) An affidavit of change of address at the polling
place of the precinct in which the new residence is
located on election day.

(b) Upon the receipt of any request for change of
address as provided in subsection (a) of this section, the
clerk shall enter the change, assign the proper county
precinct number and, if applicable, assign the proper
municipal precinct number, and issue an acknowledge-
ment notice or mail that notice to the voter at the new
address.

(c) When the clerk of the county commission receives
notice that a voter may have moved from one residence
to another within the county from the United States postal service or through state programs to compare voting registration records with records of other official state or county agencies which receive, update and utilize residence address information, the clerk shall enter the change of address onto the voter registration record and send the confirmation notice as prescribed in section twenty-six of this article.

(d) Any registered voter who changes his or her legal name through marriage or by order of the circuit court may file a request for change of address on the voter registration records by completing and signing, under penalty of perjury, as provided in section thirty-six of this article, and filing:

(1) Any voter registration application form authorized by this article; or

(2) An affidavit of change of legal name at the polling place on election day.

(e) Upon the receipt of any request for change of legal name as provided in subsection (d) of this section, the clerk shall enter the change and issue an acknowledgement notice or mail the notice to the voter.

(f) Any registered voter who desires to change his or her political party affiliation may do so by filing, no later than the close of voter registration for an election, any voter registration application form authorized by the provisions of this article. Upon receipt of a request for change of political party affiliation, the clerk shall enter the change and issue an acknowledgement notice or mail the notice to the voter.

(g) Any registered voter who finds an error in the information on his or her voter registration record may request a correction of the record by completing, signing and filing any voter registration form authorized by the provisions of this article, or an affidavit requesting such correction at the polling place on election day: Provided, That any voter who, in a primary election, alleges the party affiliation entered on the voter registration record at the polling place is incorrect and who desires to vote
the ballot of a political party for which he or she does not appear to be eligible, may vote a challenged or provisional ballot of the desired political party: Provided, however, That the ballot may be counted in the canvass only if the original voter registration record contains a designation of such political party which has been filed no later than the close of registration for the primary election in issue.

§3-2-23. Cancellation of registration of deceased or ineligible voters.

The clerk of the county commission shall cancel the registration of a voter:

(a) Upon the voter's death as verified by:

(1) A death certificate from the registrar of vital statistics or a notice from the secretary of state that a comparison of the records of the registrar with the county voter registration records show the person to be deceased;

(2) The publication of an obituary clearly identifying the deceased person by name, residence and age corresponding to the voter record; or

(3) An affidavit signed by the parent, legal guardian, child, sibling or spouse of the voter giving the name and birth date of the voter, and date and place of death;

(b) Upon receipt of an official notice from a state or federal court that the person has been convicted of a felony, of treason or bribery in an election, in which event, the clerk shall enter a notation on the voter record of the date upon which the term of any sentence for such conviction will cease, unless sooner vacated by court action or pardon;

(c) Upon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence;

(d) Upon receipt from the voter registration of a written request to cancel the voter's registration, upon confirmation by the voter of a change of address to an address outside the county, upon notice from a voter
registrar of another jurisdiction outside the county or state of the receipt of an application for voter registration in that jurisdiction, or upon notice from the secretary of state that a voter registration application accepted in another county of the state subsequent to the last registration date in the first county, as determined from a comparison of voter records;

(e) Upon failure to respond and produce evidence of continued eligibility to register following the challenge of the voter's registration pursuant to the provisions of section twenty-eight of this article; or

(f) As required under the provisions of section twenty-seven of this article.


(a) In any county maintaining active voter registration files only in paper records in precinct registration books and alphabetical files, as provided in section nineteen of this article, the systematic purging program provided in this section shall begin with the mailing of the first notice no earlier than the first day of October and no later than the first day of November of each odd-numbered year, and shall be completed no later than the first day of February of the following year.

(b) The clerk of the county commission shall first send to every voter whose registration is designated as active and who has not updated his or her voter registration record since the first day of January of the same year a notice by first class mail, nonforwardable, address correction requested, the form of which shall be prescribed or approved by the secretary of state. The notice shall be addressed to the voter's residence address as it appears on the voter registration card. The clerk shall group the mailings by precinct, alphabetical grouping or zip code, and shall record the date on which each grouping was mailed. Upon the receipt of any such notices returned as undeliverable, the clerk shall arrange them in alphabetical order within the selected grouping.
(c) Not less than fourteen nor more than twenty-eight days following the mailing of the first notice to each group, the clerk shall prepare a list containing the name and address of each voter within the group for whom the first notice was returned as undeliverable. The list shall be titled "Systematic Purging Program Notices" and shall include the name of the county, name of the mailing group and the date of the preparation of the list.

(d) The clerk shall then mail to each voter whose name appears on the lists prepared pursuant to subsection (c) of this section a confirmation notice in accordance with the provisions of section twenty-six of this article and of Section 8(d)(2) of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg). All notices mailed to the voters of a particular mailing group shall be mailed on the same day and the date of the mailing of the notice shall be entered on the list. All such notices shall be mailed no later than the thirty-first day of December.

(e) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (d) of this section, the clerk shall immediately enter the date and type of response received on the list of voters prepared pursuant to the provisions of this section and shall then proceed in accordance with the provisions of section twenty-six of this article. For purposes of complying with the record keeping and public inspection requirements of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg), and with the provisions of section twenty-seven of this article, the lists shall be kept in a binder, prepared for such purpose, in the order in which the mailing groups were first given notice, and the binder shall be available for public inspection. Information concerning whether or not each person has responded to the notice shall be available for public inspection as of the date the information is received.

(f) Any voter to whom a confirmation notice was mailed pursuant to the provisions of subsection (d) of this section who fails to respond to the notice or to update his or her voter registration by the first day of February immediately following the completion of the program shall be designated inactive by a clear mark
or tag or placed within the inactive voter registration file as defined in section nineteen of this article.

§3-2-25. Systematic purging program for removal of ineligible voters from active voter registration files for counties with state approved uniform voter data system; modified program for counties using other digitized record storage systems.

(a) In any county maintaining active voter registration files in the state uniform voter data system, as defined in section twenty of this article, the systematic purging program provided for in this section shall begin no earlier than the first day of October of each odd-numbered year and shall be completed no later than the first day of February of the following year. The clerk of the county commission shall transmit or mail on data disk to the secretary of state a copy of the digitized records contained in the active voter registration file as of the first day of October, to be received by the secretary of state no later than the fifteenth day of October.

(b) Upon receipt of the voter records in data format, the secretary of state shall provide for the comparison of data records of all participating counties. The secretary of state shall, based on the comparison, prepare a data file or printed list for each county which shall include the voter registration record for each voter shown on that county's list who appears to have registered or to have updated a voter registration in another county at a subsequent date. The resulting files and/or lists shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure for those voters as prescribed in section twenty-six of this article.

(c) The secretary of state may provide for the comparison of data records of participating counties with the data records of the division of motor vehicles, the registrar of vital statistics and with the data records of any other state agency which maintains records of residents of the state, if the procedure is practical and
the agency agrees to participate. Any resulting information regarding potentially ineligible voters shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure as prescribed in section twenty-six of this article.

(d) The records of all of the voters of all participating counties not identified pursuant to the procedures set forth in subsections (b) and (c) of this section shall be combined for comparison with United States postal service change of address information, as described in Section 8(c)(A) of the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg). The secretary of state shall contract with an authorized vendor of the United States postal service to perform the comparison. Not less than thirty percent nor more than fifty percent of the cost of the change of address comparison procedure shall be paid for from the combined voter registration and licensing fund established in section twelve of this article and participating counties shall reimburse the fund for the balance of the cost prorated on a per voter basis.

(e) The secretary of state shall return to each county the identified matches of the county voter registration records and the postal service change of address records. (1) When the change of address information indicates the voter has moved to a new address within the county, the clerk of the county commission shall enter the new address on the voter record in the active registration file and assign the proper precinct.

(2) The clerk of the county commission shall then mail to each voter who appears to have moved from the residence address shown on the registration records a confirmation notice pursuant to section twenty-six of this article and of section 8(d)(2) of the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg). The notice shall be mailed, no later than the thirty-first day of December, to the new address provided by the postal service records or to the old address if a new address is not available.
(f) The clerk of the county commission shall prepare a list containing the name and address of each voter to whom a confirmation notice was mailed and the date on which the notice was mailed. The list shall be titled "Systematic Purging Program Notices" and shall include the name of the county and the date of the preparation of the list and shall be arranged in alphabetical order within precincts or for the entire county.

(g) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (e) of this section, the clerk shall immediately enter the date and type of response received on the list of voters prepared pursuant to the provisions of this section and shall then proceed in accordance with the provisions of section twenty-six of this article.

(h) For purposes of complying with the record keeping and public inspection requirements of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg), and with the provisions of section twenty-seven of this article, the lists shall be maintained either in printed form kept in a binder prepared for such purpose and available for public inspection or in read-only data format available for public inspection on computer terminals set aside and available for regular use by the general public. Information concerning whether or not each person has responded to the notice shall be entered onto the list upon receipt and shall be available for public inspection as of the date the information is received.

(i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of subsection (e) of this section who fails to respond to the notice or to update his or her voter registration by the first day of February immediately following the completion of the program, shall be designated inactive and placed within the inactive voter registration file, as defined in section nineteen of this article. Any voter designated inactive shall be required to affirm his or her current residence address upon appearing at the polls to vote.
(j) A county which uses a digitized data system for voter registration other than the state uniform voter data system shall conduct the systematic purging program for removal of ineligible voters from active voter registration files by contracting directly with an authorized vendor of the United States postal service for change of address information, at county expense, for the identification of potentially ineligible voters, and upon receipt of the list of matches, shall perform the steps required by the provisions of subsections (e) through (i) of this section within the same time limits and procedures required for those counties participating in the state approved system.

(k) In addition to the preceding purging procedures, all counties using the change of address information of the United States postal service shall also, once each four years during the period established for systematic purging in the year following a presidential election year, conduct the same procedure by mailing a confirmation notice to those persons not identified as potentially ineligible through the change of address comparison procedure but who have not updated their voter registration records and have not voted in any election during the preceding four calendar years. The purpose of this additional systematic confirmation procedure shall be to identify those voters who may have moved without filing a forwarding address, moved with a forwarding address under another name, died in another county or state so that the certificate of death was not returned to the clerk of the county commission, or who otherwise have become ineligible.

§3-2-26. Confirmation notices for systematic purging program.

(a) For purposes of this article, a “confirmation notice” means a specific notice sent to a registered voter when that voter appears to have moved or to have become ineligible to vote, based on:

(1) A mailing returned as undeliverable as provided in sections sixteen, seventeen and twenty of this article; or
(2) Information obtained through a systematic purging program as provided in sections twenty-four and twenty-five of this article.

(b) A confirmation notice shall be sent by first class, forwardable mail and shall include a pre-addressed, postage prepaid or business reply return card on which the registrant may state his or her current address, together with a notice prescribed by the secretary of state to meet the specific requirements of Section 8(d)(2) of the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg).

§3-2-27. Procedure following sending of confirmation notices; correction or cancellation of registrations upon response; designation of inactive when no response; cancellation of inactive voters; records.

(a) Upon receipt of a confirmation response card mailed pursuant to the provisions of section twenty-six of this article and returned completed and signed by the voter, the clerk shall either:

(1) Update the voter registration by noting the confirmation of the current address if no other changes are requested or by entering any change of address within the county, change of name or other correction requested by the voter; or

(2) Cancel the voter's registration if the voter confirms that he or she has moved out of the county.

(b) Upon receipt of the confirmation notice returned undeliverable, the clerk may either:

(1) Send a second confirmation notice to the old residence address if the first notice was sent to a new address provided by the postal service; or

(2) Designate the registration as “inactive” or transfer it to the inactive voter registration file, as defined in section nineteen of this article.

(c) If no response to the confirmation notice is received by the first day of February following the mailing of the confirmation notice, the clerk shall designate the
registration as "inactive" or transfer it to the inactive
voter registration file as provided in section nineteen of
this article.

(d) An inactive voter registration shall be returned to
active status or transferred to the active voter registra-
tion file upon the voter's application to update the
registration or to vote in any election while they remain
on the inactive list.

(e) The clerk of the county commission shall cancel the
records of all voters on the inactive file who have not
responded to the confirmation notice, otherwise updated
their voter registrations or voted in any state, county or
municipal primary, general or special election held
within the county during a period beginning on the date
of the notice and ending on the day after the date of the
second general election for federal office which occurs
after the date of the notice.

§3-2-28. Challenges; notice; cancellation of registration.

(a) The registration of any registered voter may be
challenged by the clerk of the county commission, the
secretary of state, any registrar of the county, the
chairman of any political party committee or by any
voter who shall appear in person at the clerk's office.
The person challenging the registration shall complete
a form prescribed by the secretary of state giving the
name and address of the voter and the reason for
challenge. The challenge shall be filed as a matter of
record in the office of the clerk of the county
commission.

(b) Upon the receipt of a challenge, the clerk of the
county commission shall mail a notice of challenge to the
registrant, setting forth that the voter's registration will
be canceled if the voter does not appear in person during
business hours at the clerk's office within a period of
thirty days from the mailing of the notice and present
evidence of his or her eligibility. The form of the notice
of challenge shall be prescribed by the secretary of state
and shall be mailed by certified mail, return receipt
(c) If the notice of challenge is returned as undeliverable at the registration address, or if the challenged registrant does not appear and present evidence of continued eligibility within the prescribed time, the voter's registration shall be immediately canceled. Returned mail or failure to appear shall be prima facie evidence of the registrant's ineligibility. If the registrant does timely appear and present evidence of his or her eligibility, the clerk shall determine eligibility to be registered as a voter as in any other case. If the reason for ineligibility is that the voter does not reside at the address on the registration and the voter presents evidence of residence elsewhere in the county, the clerk of the county commission shall accept a request for change of address and remove the challenge.

§3-2-29. Custody of original registration records and voter registration data files.

(a) All original registration records and voter registration data files shall remain in the custody of the county commission, by its clerk, and shall not be removed except for use in an election or by the order of a court of record or in compliance with a subpoena duces tecum issued by the secretary of state pursuant to the provisions of section six, article one-a of this chapter.

(b) All original voter registration records shall be retained for a minimum of five years following the last recorded activity relating to the record, except that any application which duplicates and does not alter an existing registration shall be retained for a minimum of two years following its receipt. The secretary of state shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code for the specific retention times and procedures required for original voter registration records.

(c) Prior to the destruction of original voter registration applications or registration cards of voters whose
registration has been canceled at least five years previously, the clerk of the county commission shall notify the secretary of state of the intention to destroy those records. If the secretary of state determines, within ninety days of the receipt of the notice, that those records are of sufficient historical value that microfilm or other permanent data storage is desirable, the secretary of state may require that the records be delivered to a specified location for processing at state expense.

(d) When a county maintains in digitized data format the active, inactive, pending, rejected and canceled registration files, a data format copy of each of the files shall be maintained as a permanent record, as follows:

(1) Individual canceled registration records shall be maintained in a regularly accessible data file for a period of at least three years following cancellation. Upon the expiration of three years, those individual records may be removed from the regularly accessible canceled registration file and stored on tape or disk. The records removed may be added to a single file containing previously canceled registration records for permanent storage, and the tape or disk shall be clearly labeled.

(2) Rejected registration record files shall be maintained in the same manner as provided for canceled registration files.

(3) At least once each calendar year, during the month of February, a data format copy of the active registration file, inactive registration file and pending application file shall be made containing all records maintained in those files as of the date of the copy. The copy shall be stored on tape or disk and shall be clearly labeled with the types of files and the date the copy was made.

§3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit.
(a) The active, inactive, rejected and canceled voter registration records shall be made available for public inspection during office hours of the clerk of the county commission in accordance with the provisions of chapter twenty-nine-b of this code, as follows:

(1) When the active and inactive files are maintained on precinct registration books, any person shall be allowed to examine these files under the supervision of the clerk and obtain copies of records, except when a precinct book is in temporary use for updating and preparing lists, or during the time the books are sealed for use in an election. Other original voter registration records, including canceled voter records, pending applications, rejected applications, records of change requests, reinstatements and other documents shall be available for inspection upon specific request.

(2) When the active, inactive, rejected and canceled voter files are maintained in data format, any person shall be allowed to examine voter record information in printed form or in a read-only data format on a computer terminal set aside for public use, if available. The data files available shall include all registration and voting information maintained in the file, except that the telephone number and social security number of any voter shall not be available for inspection or copying in any format.

(b) Printed lists of registered voters may be purchased for noncommercial use from the clerk of the county commission at a cost of one cent per name.

(1) In counties maintaining active and inactive files on precinct registration books only, a separate list for each of the two major political parties and for voters registered independent or other affiliation shall be prepared for each precinct. The lists shall be arranged in alphabetical order or street order, as the books are maintained, and shall include the name, residence address and party affiliation of the voter, along with a designation of inactive status where applicable. The lists shall be prepared prior to the primary election and the clerk shall not be required to supplement or revise those
lists as registrations are added or canceled.

(2) In counties maintaining active and inactive files in digitized data format, the clerk of the county commission shall, upon request, prepare printed copies of the lists of voters for each precinct. No list prepared under this section may include the telephone number or social security number of the registrant. The clerk shall establish a written policy, which shall be posted within public view, listing the options which may be requested for selection and sorting criteria and available data elements, which shall include at least the name, residence address, political party affiliation and status, and the format of the lists and the times at which lists will be prepared. A copy of the policy shall be filed with the secretary of state no later than the first day of January, one thousand nine hundred ninety-five, and within thirty days after any change in policy.

(c) In counties which maintain voter files in a digitized data format, lists of registered voters may be obtained for noncommercial purposes in data format on disk provided and prepared by the clerk of the county commission at a cost of one cent per name plus ten dollars for each disk required. No data file prepared under this subsection may include the telephone number or social security number of the registrant.

(d) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk for the purpose of defraying the cost of the preparation of the voter lists. Any unexpended balance in the fund shall be transferred to the general fund of the county commission.

(e) After the implementation of the state uniform voter data system, the secretary of state may make voter lists available for sale subject to the limitations as provided in this section for counties, except that the cost shall be one and one-half cents per name plus ten dollars for each disk required. One cent per name for each voter from a particular county on each list sold shall be reimbursed to the appropriate county and one-half cent per name shall be deposited to a special account for
(f) No voter registration lists or data files containing the names, addresses or other information relating to voters derived from voter data files obtained pursuant to the provisions of this article may be used for commercial or charitable solicitations or advertising, sold or reproduced for resale, or provided to any person at less than the prescribed cost for any purpose other than official use.

§3-2-31. Rules pertaining to voting after registration or change of address within the county.

(a) A voter who designates a political affiliation with a major party on a registration application filed at least thirty days before the primary may vote the ballot of that political party in the primary election. Political parties, through the official action of their state executive committees, shall be permitted to determine whether unaffiliated voters or voters of other parties shall be allowed to vote that party's primary election ballot upon request.

(b) A voter whose registration record lists one residence address but the voter has since moved to another residence address within the precinct shall be permitted to update the registration at the polling place and vote without challenge for that reason.

(c) A voter whose registration record lists one residence address but the voter has since moved to another residence address in a different precinct in the same county shall be permitted to update the registration at the polling place serving the new precinct and shall be permitted to vote a challenged or provisional ballot at the new polling place. If the voter's registration is found on the registration records within the county during the canvass and no other challenge of eligibility was entered on election day, the challenge shall be removed and the ballot shall be counted.

(d) A voter whose registration record has been placed on an inactive status or transferred to an inactive file
and who has not responded to a confirmation notice sent 
pursuant to the provisions of section twenty-four, 
twenty-five or twenty-six of this article and who offers 
to vote at the polling place where he or she is registered 
to vote shall be required to affirm his or her present 
residence address under penalty of perjury, as provided 
in section thirty-six of this article.

§3-2-32. Unlawful registration or rejection of voter; 
penalties.

(a) Any registrar or clerk of the county commission 
who knowingly registers or permits to be registered a 
person not lawfully entitled to be registered, or who 
knowingly refuses to register a person entitled to be 
registered, or who knowingly assists in preventing such 
person from being registered, or who intentionally permits to be inserted a name or other entry in 
any registration form or file, knowing or having reason 
to know that the entry should not be made, shall be 
guilty of a misdemeanor and, upon conviction, shall be 
fined not more than one thousand dollars or confined in 
the county jail for not more than one year, or both, in 
the discretion of the court.

(b) Any person who registers or applies to be regis-
tered, or persuades or assists another to be registered, 
or who applies for a change of residence address, 
knowing or having reason to know that he or she is not 
entitled to be registered or to have his or her residence 
address changed on the registration record, or any 
person who declares an address known not to be his or 
her legal residence or who impersonates another in an 
application for registration, shall be guilty of a misde-
meanor and, upon conviction, shall be fined not more 
than one thousand dollars or confined in the county jail 
for not more than one year, or both, in the discretion 
of the court.

§3-2-33. Neglect of duty by registration officers; 
penalties.

Any registrar or clerk of the county commission or his 
or her authorized deputies or any other persons upon 
whom a duty is imposed pursuant to the provisions of
this article, or the rules, regulations or directions 
promulgated or issued by the secretary of state as the 
chief registration official of the state, who shall willfully 
delay, neglect or refuse to perform such duty, shall be 
guilty of a misdemeanor and, upon conviction, shall be 
fined not more than one thousand dollars or confined in 
the county jail for not more than one year, or both, in 
the discretion of the court.

§3-2-34. Alteration or destruction of records; penalties.

(a) Any person who wrongfully and intentionally
inserts or permits to be wrongfully inserted any name 
or material entry on any registration form, file or any 
other record in connection with registration, or who 
wrongfully alters or destroys an entry which has been 
duly made, or who wrongfully takes and removes any 
such registration form, or any other record authorized 
or required in connection with registration from the 
custody of any person having lawful charge thereof, 
shall be guilty of a misdemeanor and, upon conviction, 
shall be fined not more than one thousand dollars or 
confined in the county jail for not more than one year, 
or both, in the discretion of the court.

(b) Any person, in the absence of specific authority 
provided under the provisions of this article, who 
destroy or attempts to destroy any registration docu-
ment or record, or who removes or attempts to remove 
such registration document or record, shall be guilty of 
a misdemeanor and, upon conviction, shall be fined not 
less than one hundred dollars nor more than one 
thousand dollars or confined in the county jail for not 
more than one year, or both, in the discretion of the 
court.

§3-2-35. Withholding information; penalties.

Any person who neglects to or refuses to furnish to 
the secretary of state, to the county commission, or to 
the clerk of the county commission any information 
which he or she is authorized to obtain in connection 
with registration, or to exhibit any records, papers or 
documents herein authorized to be inspected by them, 
shall be guilty of a misdemeanor and, upon conviction 
thereof, shall be fined not more than one thousand
§3-2-36. Crimes and offenses relating to applications for registration or change of registration; penalties.

(a) A person who willfully provides false information concerning a material matter or thing on an application for registration or change of registration, under oath, affirmation or attestation, shall be deemed guilty of perjury; one who induces or procures another person to do so shall be deemed guilty of subordination of perjury.

(b) A person who knowingly offers any application for registration or transfer of registration when the applicant therein is not qualified to register or transfer his registration, or any person who knowingly administers an oath or affirmation to an applicant for registration or change of registration when the application contains false information concerning a material matter or thing, or any person who falsely represents that an oath or affirmation was executed by an applicant for registration or change of registration, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than three years, or fined not less than five hundred dollars nor more than five thousand dollars, or both fined and imprisoned, or, in the discretion of the court, be confined in the county jail for not more than one year, or fined not less than five hundred dollars nor more than five thousand dollars, or both fined and imprisoned.

§3-2-37. Effective date.

(a) Except as may otherwise be specifically provided in this section, the provisions of this article shall take effect on the first day of January, one thousand nine hundred ninety-five. The provisions of this article relating to the preparation for implementation of voter registration programs and procedures under this article and under the “National Voter Registration Act of 1993” (42 U.S.C. 1973gg), including sections three, five, twelve and thirteen of this article and subsections (a) and
(b), section fourteen of this article and subdivision (4), subsection (b), section nineteen of this article and section twenty of this article, shall take effect upon the effective date of this article.

(b) All procedures and requirements established by the previous enactment of this article, except the provisions of subsection (d), section twenty-two of this article, shall continue in effect until the thirty-first day of December, one thousand nine hundred ninety-four inclusive, as if article two of this chapter had not been amended.

CHAPTER 59

(Com. Sub. for S. B. 400—By Senators Craigio, Boley, Humphreys, Bailey, Chafin, Blatnik, Schoonover and Sharpe)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five-a and nine, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to elections generally; authorizing an alternative reporting procedure for certain fund-raising events held by political party executive committees or political action committees representing a political party; requiring certain other information be reported; and authorizing such organizations to expend funds for memorials, flowers or citations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5a. Information required in financial statement.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.
§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article shall contain the following information:

(1) The first name, middle initial, if any, and last name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person, and the full name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars, there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation. A contribution totaling more than fifty dollars by any one contributor is prohibited unless it is made by money order or by check, and a violation of this provision is subject to section five-d of this article. As used herein, the term “check” shall have the meaning ascribed to that term in section one hundred four, article three, chapter forty-six of this code.

(4) The total amount of contributions received during the period covered by the financial statement.

(5) The first name, middle initial, if any, and the last name, residence and mailing address of any individual or the full name and mailing address of each firm, association or committee making or cosigning a loan and the amount of any loan received, the date and terms of the loan, including interest and repayment schedule, along with a copy of the loan agreement.
(6) The first name, middle initial, if any, and the last name, residence and mailing address of any individual or the full name and mailing address of each firm, association or committee having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The first name, middle initial, if any, and the last name, residence and mailing address of any individual, or the full name and mailing address of each firm, association or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a balance in the next following financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held, and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3),
subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate, or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person, firm, association or committee may make any contribution except from their own funds, unless such person, firm, association or committee discloses in writing to the person required to report under this section the first name, middle initial, if any, and the last name in the case of an individual, or the full name in case of a firm, association or committee, residence and mailing address and the major business affiliation and occupation of the person, firm, association or committee which furnished the funds to such contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of
the contributor's identity.

(i) No person, firm, association or committee may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any issue or thing to be voted upon unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any candidate, organization, committee or person receives any anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the general revenue fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction assessing them as part of its membership dues or as a separate assessment may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through such payroll deductions during the reporting period, and to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall
maintain records of the name and yearly payroll
deduction amounts of each participating member.

(3) If any member contributes to the membership
organization through individual voluntary contributions
by means other than payroll deduction, membership
dues, or assessments as provided in this subsection, the
reporting requirements of subdivision (3), subsection (a)
of this section shall apply. Funds raised for political
purposes must be segregated from the funds for other
purposes and listed in its report.

(1) For purposes of this section:

(1) "Political purposes" means advocating or opposing
the nomination, election or defeat of one or more
candidates, supporting the retirement of the debt of a
candidate or activities of an established political party
or an organization which has declared itself a political
party, supporting the administration or activities of a
political committee or advocating or opposing the
passage of a ballot issue.

(2) "Membership organization" means a group that
grants bona fide rights and privileges, such as the right
to vote, to elect officers or directors, and the ability to
hold office, to its members, and which uses a majority
of its membership dues for purposes other than political
purposes. This term shall not include organizations that
grant membership upon receiving a contribution.

(3) "Fund-raising event" means an event such as a
dinner, reception, testimonial, cocktail party, auction or
similar affair through which contributions are solicited
or received by such means as the purchase of a ticket,
payment of an attendance fee or by the purchase of
goods or services.

(m) Notwithstanding the provisions of section five of
this article or of the provisions of this section to the
contrary, an alternative reporting procedure may be
followed by a political party executive committee or a
political action committee representing a political party
in filing financial reports for fund-raising events if the
total profit does not exceed five thousand dollars per
A political party executive committee or a political action committee representing a political party may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party executive committee or a political action committee representing a political party using this alternative method of reporting shall report:

(i) The name of the committee; (ii) the type of fund-raising activity undertaken; (iii) the location where the activity occurred; (iv) the date of the fund raiser; (v) the name of any individual who contributed more than fifty dollars worth of items to be sold; (vi) the name and amount received from any person or organization purchasing more than fifty dollars worth of food, beverages, services, novelty items, raffle tickets or memorabilia; (vii) the gross receipts of the fund raiser; and (viii) the date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than fifty dollars were purchased for resale.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

(a) No candidate, financial agent or treasurer of a political party committee shall pay, give or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance and furnishing of offices to be used as political headquarters and for the payment of necessary clerks, stenographers, typists, janitors and messengers actually employed therein;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses and for the payment of necessary clerks, stenographers and typists, actually employed;
(3) For printing and distributing books, pamphlets, circulars and other printed matter and radio and television broadcasting and painting, printing and posting signs, banners and other advertisements, all relating to political issues and candidates;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents and committees, and for stationery, postage, telegrams, telephone, express, freight and public messenger service;

(6) For preparing, circulating and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase “conducting of public opinion poll or polls” shall mean and be limited to the gathering, collection, collation and evaluation of information reflecting public opinion, needs and preferences as to any candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition or other matter to be voted on by the public at any election: Provided, That nothing herein shall prevent the
use of the results of any such poll or polls to further,
promote or enhance the election of any candidate or
group of candidates or the approval or defeat of any
proposition or other matter to be voted on by the public
at any election;

(11) For legitimate advertising agency services,
including commissions, in connection with any cam-
paign activity for which payment is authorized by
subdivisions (3), (4), (5), (6), (7), (9) and (10) of this
subsection; and

(12) For the purchase of memorials, flowers or
citations by political party executive committees or
political action committees representing a political
party.

(b) Every liability incurred and payment made shall
be at a rate and for a total amount which is proper and
reasonable and fairly commensurate with the services
rendered.

(c) Every advertising agency subject to the provisions
of this article shall file, in the manner and form
required by section five-a of this article, the financial
statements required by section five of this article at the
times required therein and include therein, in itemized
detail, all receipts from and expenditures made on
behalf of a candidate, financial agent or treasurer of a
political party committee.

(d) Any candidate may designate a financial agent by
a writing duly subscribed by him which shall be in such
form and filed in accordance with the provisions of
section four of this article.

CHAPTER 60

(S. B. 107—By Senators Holliday and Claypole)

[Passed March 11, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter
twenty-four of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to local
emergency telephone systems; requiring the successful completion of a nationally recognized forty-hour training course for dispatchers; and requiring each affected county or municipality to appoint an enhanced emergency telephone system advisory committee to monitor the operation of the system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-5. Enhanced emergency telephone system requirements.

(a) An enhanced emergency telephone system, at a minimum, shall provide that:

(1) All the territory in the county, including every municipal corporation in the county, which is served by telephone company central office equipment that will permit such a system to be established shall be included in the system;

(2) Every emergency service provider that provides emergency service within the territory of a county participate in the system;

(3) Each county answering point be operated constantly;

(4) Each emergency service provider participating in the system maintain a telephone number in addition to the one provided for in the system; and

(5) If the county answering point personnel reasonably determine that a call is not an emergency, the personnel provide the caller with the number of the appropriate emergency service provider.

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, the county commission or the department of
24 public safety shall seek the advice of both the telephone
25 companies providing local exchange service within the
26 county and the local emergency providers.
27
28 (d) As a condition of continued employment, persons
29 employed to dispatch emergency calls shall successfully
30 complete a forty-hour nationally recognized training
31 course for dispatchers within one year of the date of
32 their employment; except that persons employed to
33 dispatch emergency calls prior to the effective date of
34 this subsection, as a condition of continuing employ-
35 ment, shall successfully complete such a course not later
36 than the first day of July, one thousand nine hundred
37 ninety-five.
38
39 (e) Each county or municipality shall appoint for each
40 answering point an enhanced emergency telephone
41 system advisory board consisting of at least six members
42 to monitor the operation of the system. The board shall
43 be appointed by the county or municipality and shall
44 include at least one member from affected fire service
45 providers, law-enforcement providers, emergency
46 medical providers and emergency services providers
47 participating in the system and at least one member
48 from the county or municipality. The board may make
49 recommendations to the county or municipality concern-
50 ing the operation of the system.
51
52 In addition, the director of the county or municipal
53 enhanced telephone system shall serve as an ex officio
54 member of the advisory board. The initial advisory
55 board shall serve staggered terms of one, two and three
56 years. The initial terms of these appointees shall
57 commence on the first day of July, one thousand nine
58 hundred ninety-four. All future appointments shall be
59 for terms of three years, except that an appointment to
60 fill a vacancy shall be for the unexpired term. All
61 members shall serve without compensation. The board
62 shall adopt such policies, rules and regulations as are
63 necessary for its own guidance. The board shall meet
64 monthly on the day of each month which the board may
65 designate. The board may make recommendations to the
66 county or municipality concerning the operation of the
67 system.
(f) Any advisory board established prior to the first day of January, one thousand nine hundred ninety-four, shall have three years to meet the criteria of subsection (e) of this section.

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CHAPTER 61

(H. B. 4065—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles twenty and twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal articles five, five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-m, five-n, six-a, nine, ten and ten-a, chapter twenty; to repeal article one-a, chapter twenty-two-a of said code; to repeal articles one-c and one-d, chapter twenty-nine of said code; to amend and reenact section one, article three, chapter five; to amend and reenact section eight, article seven, chapter six; to amend and reenact sections three-aa and three-ff, article one, and section twenty-two, article five, chapter seven; to amend and reenact section seventeen, article twenty, and section twenty-seven, article twenty-four, chapter eight; to amend and reenact section ten, article one-c, sections one and two, article six-a and section six, article thirteen-a, chapter eleven; to amend and reenact section four, article five-a, chapter fifteen; to amend and reenact sections nine and fourteen-a, article one, sections two and three, article nine, section six, article twelve, section twenty-three-a, article thirteen, sections one-b, three, nine and twenty-one, article thirteen-a, section ten, article thirteen-b, and section two, article twenty-seven, chapter sixteen; to amend and reenact sections three, five and seven, article one-b, section five, article twelve-a, section four, article twenty-one-a, and section five, article twenty-five, chapter nineteen; to amend and reenact sections two, seven and fourteen, article one, sections six and ten, article five-j, sections four and
twenty-six, article seven, chapter twenty; to further amend said article seven, by adding thereto two new sections, designated sections twenty-eight and twenty-nine; to amend and reenact section one, article eight and sections four, five-a, five-b, nine and twelve, article eleven of said chapter twenty; to amend and reenact section three, article three-b, chapter twenty-one; to amend and reenact chapter twenty-two; to amend and reenact article one, chapter twenty-two-a; to amend and reenact sections one, two, three, seven, twelve, twenty-three, twenty-five, thirty-three, thirty-six, fifty-three-c, fifty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, article two of said chapter twenty-two-a; to amend and reenact articles three, four, five, six and seven of said chapter twenty-two-a; to further amend said chapter twenty-two-a by adding thereto three new articles, designated articles eight, nine and ten; to amend and reenact chapter twenty-two-b; to amend said code by adding thereto a new chapter, designated chapter twenty-two-c; to amend and reenact section two, article four, chapter twenty-three; to amend and reenact sections one-b, one-c, one-f, one-h, one-i and four-b, article two, chapter twenty-four; to amend and reenact section eleven, article two-b and section five-a, article three, chapter twenty-nine; to amend and reenact section four, article sixteen, section twenty-a, article eighteen and section four, article nineteen, chapter thirty-one; to amend and reenact section nine-a, article four, chapter thirty-six; to amend and reenact section seventeen, article seven and section two, article twelve-a, chapter fifty-five; to amend and reenact section forty-seven, article three, chapter sixty-one, all of said code relating to revising, arranging and consolidating in the code laws relating generally to the environment, the division of environmental protection, laws administered and enforced by the division, laws incidental thereto and the related criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That articles twenty and twenty-six, chapter sixteen of the
code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that articles five, five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-m, five-n, six-a, nine, ten and ten-a, chapter twenty be repealed; that article one-a, chapter twenty-two-a be repealed; that articles one-c and one-d, chapter twenty-nine be repealed; that section one, article three, chapter five be amended and reenacted; that section eight, article seven, chapter six be amended and reenacted; that sections three-aa and three-ff, article one, and section twenty-two, article five, chapter seven be amended and reenacted; that section seventeen, article twenty, and section twenty-seven, article twenty-four, chapter eight be amended and reenacted; that section ten, article one-c, sections one and two, article six-a and section six, article thirteen-a, chapter eleven be amended and reenacted; that section four, article five-a, chapter fifteen be amended and reenacted; that sections nine and fourteen-a, article one, sections two and three, article nine, section six, article twelve, section twenty-three-a, article thirteen, sections one-b, three, nine and twenty-one, article thirteen-a, section ten, article thirteen-b, and section two, article twenty-seven, chapter sixteen be amended and reenacted; that sections three, five and seven, article one-b, section five, article twelve-a, section four, article twenty-one-a, and section five, article twenty-five, chapter nineteen be amended and reenacted; that sections two, seven and fourteen, article one, sections six and ten, article five-j, sections four and twenty-six, article seven, chapter twenty be amended and reenacted; that said article seven be further amended by adding thereto two new sections, designated sections twenty-eight and twenty-nine; that section one, article eight and sections four, five-a, five-b, nine and twelve, article eleven of said chapter twenty be amended and reenacted; that section three, article three-b, chapter twenty-one be amended and reenacted; that chapter twenty-two be amended and reenacted; that article one, chapter twenty-two-a be amended and reenacted; that sections one, two, three, seven, twelve, twenty-three, twenty-five, thirty-three, thirty-six, fifty-three-c, fifty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, article two of said chapter twenty-two-a be amended and reenacted; that articles three, four, five, six and seven of said chapter twenty-two-a be amended and reenacted;
that said chapter twenty-two-a be further amended by adding thereto three new articles, designated articles eight, nine and ten; that chapter twenty-two-b be amended and reenacted; that said code be amended by adding thereto a new chapter, designated chapter twenty-two-c; that section two, article four, chapter twenty-three be amended and reenacted; that sections one-b, one-c, one-f, one-h, one-i and four-b, article two, chapter twenty-four be amended and reenacted; that section eleven, article two-b and section five-a, article three, chapter twenty-nine be amended and reenacted; that section four, article sixteen, section twenty-a, article eighteen and section four, article nineteen, chapter thirty-one be amended and reenacted; that section nine-a, article thirty-six be amended and reenacted; that section seventeen, article seven and section two, article twelve-a, chapter fifty-five be amended and reenacted; that section forty-seven, article three, chapter sixty-one be amended and reenacted, all of said code, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.


7. County Commissions and Officers.


11. Taxation.

15. Public Safety.


19. Agriculture.

20. Natural Resources.


22. Environmental Resources.

22A. Miners' Health, Safety and Training.

22B. Environmental Boards.

22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

23. Workers' Compensation.


29. Miscellaneous Boards and Officers.

36. Estates and Property.
55. Actions, Suits and Arbitration; Judicial Sale.
61. Crimes and Their Punishment.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 3. ATTORNEY GENERAL.

§5-3-1. Written opinions and advice and other legal services; expenditures by state officers, boards and commissions for legal services prohibited.

The attorney general shall give written opinions and advice upon questions of law, and shall prosecute and defend suits, actions, and other legal proceedings, and generally render and perform all other legal services, whenever required to do so, in writing, by the governor, the secretary of state, the auditor, the state superintendent of free schools, the treasurer, the commissioner of agriculture, the board of public works, the tax commissioner, the state archivist and historian, the commissioner of banking, the adjutant general, the director of the division of environmental protection, the superintendent of public safety, the state commissioner of public institutions, the commissioner of the division of highways, the commissioner of the bureau of employment programs, the public service commission, or any other state officer, board or commission, or the head of any state educational, correctional, penal or eleemosynary institution; and it is unlawful from and after the time this section becomes effective for any of the public officers, commissions, or other persons above mentioned to expend any public funds of the state of West Virginia for the purpose of paying any person, firm, or corporation for the performance of any legal services: Provided, That nothing contained in this section impairs or affects any existing valid contracts of employment for the performance of legal services heretofore made.
27 It is also the duty of the attorney general to render
28 to the president of the Senate and/or the speaker of the
29 House of Delegates a written opinion or advice upon any
30 questions submitted to the attorney general by them or
31 either of them whenever he or she is requested in
32 writing so to do.

CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-8. Public carriage for state officials and employees
and the university of West Virginia board of trustees and the board of directors of the state
college system.

1 State law-enforcement officials, including, but not
2 limited to, the director of the division of public safety,
3 the adjutant general of the West Virginia national
4 guard, the director of the office of emergency services,
5 the director of the division of natural resources, the
6 director of the division of environmental protection, the
7 commissioner of the division of corrections, the state fire
8 marshal, state fire administrator and officials of the
9 university of West Virginia board of trustees and the
10 board of directors of the state college system at the
11 discretion of the respective chancellor thereof, have the
12 authority to use, and permit and allow or disallow their
13 designated employees to use, publicly provided carriage
14 to travel from their residences to their workplace and
15 return: Provided, That such usage is subject to the
16 supervision of such official and is directly connected
17 with and required by the nature and in the performance
18 of such official's or designated employee's duties and
19 responsibilities.

CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.

Article
1. County Commissions Generally.
5. Fiscal Affairs.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-3aa. Authority of county commissions to create and fund a hazardous material accident response program.

§7-1-3ff. Duty to require clearance of refuse and debris from private lands; notice of demand thereof; procedure to contest demand.

§7-1-3aa. Authority of county commissions to create and fund a hazardous material accident response program.

In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered to create a hazardous material accident response program. The program may include the establishment of a hazardous materials response team. The hazardous materials response team shall include members of the fire departments, recognized and approved by the West Virginia fire commission in the county, who are designated by the county commission. The team shall also include members of emergency medical services certified pursuant to article four-c, chapter sixteen of this code who are acting in their official capacity by providing ambulance or emergency medical services within the county and who are designated as members of the hazardous materials response team by the county commission. The team may also include other people in the community who are recognized as having expertise with hazardous materials or hazardous material incidents and who are designated by the county commission to serve on the team. The purpose of the team is to respond to hazardous material incidents. The hazardous materials response team shall function and the members shall serve at the will and pleasure of the county commission. The team shall operate in cooperation with the county office of emergency services and other approved fire departments. The commission is authorized to receive donated funds and to expend those funds and to expend its own funds for the acquisition of equipment and materials for use by and training of the members of the team. The county commission is hereby authorized to enter into agreements with other counties to combine or coordinate hazardous material response team training and for the purchase or lease and use of equipment or materials.
Any carrier, owner or generator of hazardous materials who receives the services of a county hazardous materials response team is liable for the cost of necessary services provided by a county hazardous materials response team. County commissions may bill a carrier, owner or generator of hazardous materials for any costs incurred by the team in responding to a hazardous materials incident in which the carrier, owner or generator is involved: Provided, That the carrier, owner or generator may, within thirty days of receipt of the bill, appeal in writing to the county commission to request a hearing to address any costs which may be considered extraordinary for the services of the hazardous materials response team. The carrier, owner or generator will hold payment of the costs in abeyance pending the final written decision of the county commission. Any funds received by the county commission as a result of billing carrier, owners and generators of hazardous materials shall be used by the county commission to implement the provisions of this section and to reimburse the response teams participants for response costs.

Any carrier, owner or generator involved in a hazardous materials incident who fails to pay a bill for services provided by a county hazardous materials incident team within ninety days shall be liable for treble the cost of the services.

For purposes of this section, the term "generator" means any person, corporation, partnership, association or other legal entity, by site location, whose act or process produces hazardous materials as identified or listed by the director of the division of environmental protection in regulations promulgated pursuant to section six, article nineteen, chapter twenty-two of this code, in an amount greater than twelve thousand kilograms per year.

For purposes of this section, the term "carrier" means any person engaged in the off-site transportation of hazardous materials by air, rail, highway or water.

For purposes of this section, "owner" means any
person, corporation, partnership, association or other
legal entity whose hazardous materials are being
transported by the entity or by a carrier.

For the purposes of this section, the term "hazardous
materials" means those materials which are designated
as such pursuant to federal laws and regulations, the
designations of which are adopted by reference as of the
tenth day of July, one thousand nine hundred ninety-
three.

§7-1-3ff. Duty to require clearance of refuse and debris
from private lands; notice of demand thereof; procedure to contest demand.

County commissions, as set forth in this article, county
health officers, as set forth in section two, article two,
chapter sixteen of this code, and state fire marshals as
set forth in section twelve, article three, chapter twenty-
nine of this code, such commissions and health officers
are hereby authorized and obliged to require clearance
of any refuse or debris consisting of remnants or
remains of any unused or unoccupied dwelling, cement
foundation, piping, basements, intact chimneys, non-
farm building, structure or manmade appurtenance on
all private lands within their respective scopes of
authority by the owners thereof that has accumulated
as the result of any natural or manmade fire, force or
effect which presents a safety or health hazard,
including the removal of toxic or contaminant spillage
and seepage or which has deteriorated to such a degree
as to be unsightly, visually offensive and be depressive
of the value of the adjacent properties or uses of such
properties: Provided, That upon request from a land-
downer and a written determination and approval from
the state fire marshal, where appropriate, a landowner
may fill the remains of a basement to ground level with
inert fill material in lieu of complete removal of such
cement foundation, piping and basement.

Upon determination by any state fire marshal that
substantial accumulations or refuse, debris or destroyed
structures or appurtenances, as described above, exist
on the property as a result of a natural or manmade fire,
notice shall be given by the fire marshal and forwarded to the owner immediately informing the landowner of the requirements of this article to effect repair, removal, closure or demolition of the fire damaged property within ninety days of the receipt of such notice.

Upon a determination by a county commission or county health officer that substantial accumulations of refuse or the presence of debris, as described above, exist on any such private lands, notice shall be forwarded to the owner thereof informing the landowner of the following:

(a) Of the commission's or health officer's demand to remove all refuse and debris within ninety days of the receipt of such notice unless an extension be granted by said commission or health officer;

(b) Of the landowner's right to contest such demand and of the proper procedure in which to do so;

(c) That if the landowner fails to both properly contest and comply with the commission's or health officer's demand, that removal will be achieved otherwise and that the reasonable costs incurred thereto will become a civil debt owed by the landowner to the county;

(d) That if the county incurs costs of removal and the landowner fails to pay such costs within two months of such removal that a judgment lien on the subject property will be filed in the county clerk's office wherein the subject property exists.

The commission or health officer shall send notice as described herein by certified mail. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, a Class III-0 legal advertisement shall be published in a newspaper of general circulation in the county wherein such land is situated in order to render proper notice in accordance with this section: Provided, That if the commission or health officer determines, after notice and inquiry as provided herein, that such refuse or debris was created by someone other than the present landowner, without such landowner's expressed or implied
permission, the commission or health officer shall
remove any such refuse or debris and shall apply to and
be eligible to receive from the solid waste reclamation
and environmental response fund created under section
eleven, article fifteen, chapter twenty-two of this code
for reimbursement for all reasonable costs incurred for
such removal.

In the event any landowner desires to contest any
demand brought forth pursuant to this section, the
landowner shall do so in accordance with article three,
chapter fifty-eight of this code.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-22. County solid waste assessment fees authorized.

1 Each county or regional solid waste authority is
2 hereby authorized to impose a similar solid waste
3 assessment fee to that imposed by section eleven, article
4 fifteen, chapter twenty-two of this code at a rate not to
5 exceed fifty cents per ton or part thereof upon the
6 disposal of solid waste in that county or region. All
7 assessments due shall be applied to the reasonable costs
8 of administration of the county’s regional or county solid
9 waste authority including the necessary and reasonable
10 expenses of its members, and any other expenses
11 incurred from refuse cleanup, litter control programs,
12 or any solid waste programs deemed necessary to fulfill
13 its duties.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article
24. Planning and Zoning.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE
SYSTEMS.

§8-20-17. Additional and alternative method for con­
structing, etc., and financing combined
waterworks and sewerage system; cumula­
tive authority.

1 This article is, without reference to any other statute
or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined waterworks and sewerage system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto.

ARTICLE 24. PLANNING AND ZONING.

§8-24-27. Cooperation between planning commissions; cooperation between commissions and governing and administrative bodies and officials.

In the exercise of the powers and authority granted by this article, the planning commission of any municipality or county may cooperate with the planning commissions or governing and administrative bodies and officials of other municipalities within or without such county and of other counties, with a view to coordinating and integrating the planning and zoning of such municipality or county with the plans of such other municipalities and of such other counties, and may appoint such committee or committees and may adopt such rules and regulations as may be thought proper to effect such cooperation. Such planning commissions and governing and administrative bodies and officials of
other municipalities and counties are hereby authorized
to cooperate with such municipal or county planning
commissions for the purposes of such coordination and
integration. Similarly, such municipal or county plan-
ning commissions may cooperate with the division of
environmental protection of this state and make use of
advice and information furnished by such division and
by other appropriate state and federal officials, depart-
ments and agencies, and all state departments and
agencies having information, maps and data pertinent
to the planning and zoning of such municipality or
county may make such available for the use of such
planning commissions.

CHAPTER 11. TAXATION.

Article
1C. Fair and Equitable Property Valuation.
6A. Pollution Control Facilities Tax Treatment.
13A. Severance Taxes.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-10. Valuation of industrial property and natural
resources property by tax commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

(1) "Industrial property" means real and personal
property integrated as a functioning unit intended for
the assembling, processing and manufacturing of
finished or partially finished products.

(2) "Natural resources property" means coal, oil,
natural gas, limestone, fireclay, dolomite, sandstone,
shale, sand and gravel, salt, lead, zinc, manganese, iron
ore, radioactive minerals, oil shale, managed timberland
as defined in section two of this article, and other
minerals.

(b) All owners of industrial property and natural
resources property each year shall make a return to the
state tax commissioner and, if requested in writing by
the assessor of the county where situated, to such county
assessor at a time and in the form specified by the
commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The state tax commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The tax commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the state tax commissioner shall determine the fair market value of all natural resources property in the state. The commissioner shall thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the division of forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property certified as managed
timberland shall be valued according to its use and
productive potential. The tax commissioner shall
promulgate rules for certification as managed
timberland.

(2) In the case of all other natural resources property,
the commissioner shall develop an inventory on a county
by county basis of all such property and may use any
resources, including, but not limited to, geological
survey information; exploratory, drilling, mining and
other information supplied by natural resources prop-
erty owners; and maps and other information on file
with the state division of environmental protection and
office of miners' health, safety and training. Any
information supplied by natural resources owners or any
proprietary or otherwise privileged information sup-
plied by the state division of environmental protection
and office of miner's health, safety and training shall be
kept confidential unless needed to defend an appraisal
challenged by a natural resources owner. Formulas for
natural resources valuation may contain differing
variables based upon known geological or other common
factors. The tax commissioner shall forward each
natural resources property appraisal to the county
assessor of the county in which that property is located
and the assessor shall multiply each such appraisal by
sixty percent and include the resulting assessed value
in the land book or the personal property book, as
appropriate, for each tax year. The commissioner shall
supply support data that the assessor might need to
explain or defend the appraisal. The commissioner shall
directly defend any challenged appraisal when the
assessed value of the property in question exceeds two
million dollars or an owner challenging an appraisal
holds or controls property situated in the same county
with an assessed value exceeding two million dollars. At
least every five years, the commissioner shall review
current technology for the recovery of natural resources
property to determine if valuation methodologies need
to be adjusted to reflect changes in value which result
from development of new recovery technologies.

(e) The tax commissioner shall develop a plan for the
valuation of industrial property and a plan for the 
valuation of natural resources property. The plans shall 
include expected costs and reimbursements, and shall be 
submitted to the property valuation training and 
procedures commission on or before the first day of 
January, one thousand nine hundred ninety-one, for its 
approval on or before the first day of July of such year. 
Such plan shall be revised, resubmitted to the commis-
sion and approved every three years thereafter.

(f) To perform the valuation duties under this section,
the state tax commissioner has the authority to contract 
with a competent property appraisal firm or firms to 
assist with or to conduct the valuation process as to any 
discernible species of property statewide if the contract 
and the entity performing such contract is specifically 
included in a plan required by subsection (e) of this 
section or otherwise approved by the commission. If the 
tax commissioner desires to contract for valuation 
services only in one county or a group of counties, the 
contract must be approved by the commission.

(g) The county assessor may accept the appraisal 
provided, pursuant to this section, by the state tax 
commissioner: Provided, That if the county assessor fails 
to accept the appraisal provided by the state tax 
commissioner, the county assessor shall show just cause 
to the valuation commission for the failure to accept 
such appraisal and shall further provide to the valuation 
commission a plan by which a different appraisal will 
be conducted.

(h) The costs of appraising the industrial and natural 
resources property within each county, and any costs of 
defending same shall be paid by the state: Provided, 
That the office of the state attorney general shall 
provide legal representation on behalf of the tax 
commissioner or assessor, at no cost, in the event the 
industrial and natural resources appraisal is challenged 
in court.

(i) For purposes of revaluing managed timberland as 
defined in section two of this article, any increase or 
decrease in valuation by the commissioner does not
become effective prior to the first day of July, one thousand nine hundred ninety-one. The property owner may request a hearing by the director of the division of forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

ARTICLE 6A. POLLUTION CONTROL FACILITIES TAX TREATMENT.

§11-6A-1. Declaration of policy.
§11-6A-2. Definition.

§11-6A-1. Declaration of policy.

It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state and a reasonable degree of purity of the air resources of the state. In the exercise of the police power of the state to protect the environment and promote the public health, safety and general welfare, the Legislature has enacted the Water Pollution Control Act as article eleven, chapter twenty-two of this code and the Air Pollution Control Act as article five, chapter twenty-two thereof. It is recognized and declared by the Legislature that pollution control facilities, as hereinafter defined, are required for the protection and benefit of the environment and the general welfare of the people, are nonproductive, do not add to the economic value of a business enterprise and do not have a market value after installation in excess of salvage value.

§11-6A-2. Definition.

As used in this article, "pollution control facility" means any personal property designed, constructed or installed primarily for the purpose of abating or reducing water or air pollution or contamination by removing, altering, disposing, treating, storing or dispersing the concentration of pollutants, contaminants, wastes or heat in compliance with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States,
the design, construction and installation of which personal property was approved as a pollution control facility by either the office of water resources or the office of air quality, both of the division of environmental protection, as the case may be.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

(a) Additional coal severance tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or preparing coal (or both severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an additional severance tax, the amount of which shall be equal to the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of this article is measured as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection shall be in addition to the tax imposed by section three of this article, and this additional tax is hereinafter in this section referred to as the “additional tax on coal”.

(b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article ten of the West
Virginia constitution. Seventy-five percent of the net proceeds of this additional tax on coal shall, after appropriation thereof by the Legislature, be distributed by the state treasurer in the manner hereinafter specified, to the various counties of this state in which the coal upon which this additional tax is imposed was located at the time it was severed from the ground. Those counties are hereinafter in this section referred to as the "coal-producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed, after appropriation, among all the counties and municipalities of this state in the manner hereinafter specified.

(c) Such additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by said section three of this article, and all of the enforcement and other provisions of this article shall apply to such additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-seven, article two, chapter twenty-two-a of this code, the tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section: Provided, That notwithstanding any language contained in this code to the contrary, the gross amount of additional tax on coal collected under this article shall be paid over and distributed without the application of any credits against the tax imposed by this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of such additional tax on coal to such coal-producing counties, there is hereby continued in the state treasurer's office the special fund known as the "county coal revenue fund"; and in order to provide a procedure for the
distribution of the remaining twenty-five percent of the net proceeds of such additional tax on coal to all counties and municipalities of the state, without regard to coal having been produced therein, there is also hereby continued in the state treasurer's office the special fund known as the "all counties and municipalities revenue fund".

Seventy-five percent of the net proceeds of such additional tax on coal shall be deposited in the "county coal revenue fund" and twenty-five percent of such net proceeds shall be deposited in the "all counties and municipalities revenue fund", from time to time, as such proceeds are received by the tax commissioner. The moneys in such funds shall, after appropriation thereof by the Legislature, be distributed to the respective counties and municipalities entitled thereto in the manner set forth in subsection (e) of this section.

(e) The moneys in the "county coal revenue fund" and the moneys in the "all counties and municipalities revenue fund" shall be allocated among and distributed quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled thereto on that distribution date. The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

(f) The amount to which a coal-producing county is
(g) The amount to which each county and municipality is entitled from the “all counties and municipalities revenue fund” shall be determined in accordance with the provisions of this subsection. For purposes of this subsection “population” means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the “all counties and municipalities revenue fund” by multiplying the total amount in such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county’s “base share”.

(2) Each county’s “base share” shall then be subdivided into two portions. One portion is determined by multiplying the “base share” by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the “base share” by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the “municipalities’ portion” of the county’s “base share”. The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) All counties and municipalities shall create a “coal severance tax revenue fund” which shall be the depos-
itory for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such “coal severance tax revenue funds”, in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: Provided, That in counties with population in excess of two hundred thousand at least seventy-five percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal-producing area or areas of the county, said coal-producing areas of each county to be determined generally by the state tax commissioner: Provided, however, That a line item budgeted amount from the current levy estimated for a county shall be funded at one hundred percent of the preceding year’s expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: Provided further, That said coal severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

(i) On or before the twenty-eighth day of March, one thousand nine hundred eighty-six, and each twenty-eighth day of March thereafter, each county commission or governing body of a municipality receiving such revenue shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending such revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in said special fund at the close of a fiscal year shall be reappropriated to the budget for the subsequent fiscal year. Such reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before the fifteenth day of July of the current budget year.

(j) On or before the fifteenth day of December, one
thousand nine hundred eighty-six, and each fifteenth day of December thereafter, the tax commissioner shall deliver to the clerk of the Senate and the clerk of the House of Delegates a consolidated report of the special budgets, created by subsection (i) of this section, for all county commissions and municipalities as of the fifteenth day of July of the current year.

(k) The state tax commissioner shall retain for the benefit of the state from the additional taxes on coal collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the tax commissioner.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND COMMUNITY RIGHT-TO-KNOW ACT.


(a) There is hereby created the state emergency response commission.

(b) The state emergency response commission shall consist of eleven members, including the director of the division of environmental protection, the commissioner of the division of public health, the chief of the office of air quality of the division of environmental protection, the director of the office of emergency services, the superintendent of the division of public safety, the commissioner of the division of highways; one designee of the public service commission and one designee of the state fire marshal, all of whom are members ex officio. A representative from the chemical industry, a representative of a municipal or volunteer fire department and a representative of the public who is knowledgeable in the area of emergency response shall be appointed by the governor as public members of the state emergency response commission. The director of the office of emergency services serves as the chair of the commission and may cast a vote only in the event of a tie vote. Members serve without compensation, but shall be reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their duties under this article. The initial public members appointed by the governor shall serve for a term ending on the first day of July, one thousand nine hundred ninety-one. A successor to a public member of the commission shall be appointed in the same manner as the original public members and has a term of office expiring two years from the date of the expiration of the term for which his or her predecessor was appointed. In cases of any vacancy among the public members, such vacancy shall be filled by appointment by the governor. Any member appointed to fill a vacancy on the commission occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Members appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall elect from its membership a vice chair and appoint a secretary. The secretary need not be a member of the commission. The vice chair shall preside over the meetings and hearings of the commission in the absence of the chair. The commission may appoint and employ such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

(d) The commission may establish procedural rules in accordance with chapter twenty-nine-a of the code for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved and attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two members of the commission, all of which meetings shall be general meetings for the consideration of any
and all matters which may properly come before the
commission. A majority of the commission constitutes a
quorum for the transaction of business.

CHAPTER 16. PUBLIC HEALTH.

Article
   Districts.
13A. Public Service Districts for Water, Sewerage and Gas Services.
13B. Community Improvement Act.

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-9. Supervision over local sanitation.
§16-1-14a. Commissioner authorized to designate a representative to serve
   in his or her place on certain boards and commissions.

§16-1-9. Supervision over local sanitation.

1 No person, firm, company, corporation, institution or
2 association, whether public or private, county or
3 municipal, shall install or establish any system or
4 method of drainage, water supply, or sewage or excreta
5 disposal without first obtaining a written permit to
6 install or establish such system or method from the
7 commissioner of the bureau of public health or his or
8 her authorized representative. All such systems or
9 methods shall be installed or established in accordance
10 with plans, specifications and instructions issued by the
11 commissioner or which have been approved in writing
12 by the commissioner or his or her authorized
13 representative.

14 Whenever the commissioner of the bureau of public
15 health or his or her authorized representative finds upon
16 investigation that any system or method of drainage,
17 water supply, or sewage or excreta disposal, whether
18 publicly or privately owned, has not been installed in
19 accordance with plans, specifications and instructions
20 issued by the commissioner approved in writing by the
21 commissioner or his or her duly authorized representa-
22 tive, the commissioner or his or her duly authorized
representative may issue an order requiring the owner of such system or method to make alterations as may be necessary to correct the improper condition. Such alterations shall be made within a reasonable time which shall not exceed thirty days, unless a time extension is authorized by the commissioner or his or her duly authorized representative.

The presence of sewage or excreta being disposed of in a manner not approved by the commissioner of the bureau of public health or his or her authorized representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the bureau of public health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any such system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, who violates any provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. The continued failure or refusal of such convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner of the bureau of public health or his or her duly authorized representative is a separate, distinct and additional offense for each twenty-four hour period of such failure or refusal, and, upon conviction thereof, the violator shall be fined not less than twenty-five dollars nor more than five hundred dollars for each such conviction: Provided, That none of the provisions contained in this section apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia division of environmental protection.
Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section.

§16-1-14a. Commissioner authorized to designate a representative to serve in his or her place on certain boards and commissions.

Notwithstanding any other provision of this code to the contrary, the commissioner may, at his or her discretion, designate in writing a representative to serve in his or her stead at the meetings and in the duties of all boards and commissions on which the commissioner is designated as a member ex officio. Such appropriately designated representative or proxy may act with the full power and authority of the commissioner in voting, acting upon matters concerning the public health and welfare and such other business as may properly be the duty of any such said board or commission, with any such representative serving as proxy for the commissioner at his or her will and pleasure: Provided, That the provisions of this section do not apply to the state board of health, the medical licensing board, the air quality board or any other board, commission or body on which the commissioner is designated by this code as chairman ex officio, secretary ex officio or any board, commission or body on which the commissioner is designated by this code as being that person whose signature must appear on licenses, minutes or other documents necessary to carry out the intents and purposes of said board, commission or body.

ARTICLE 9. OFFENSES GENERALLY.

§16-9-2. Throwing or releasing dead animals or offensive substances into waters used for domestic purposes; penalties; jurisdiction; failure to bury or destroy offensive substances after conviction; successive offenses.

§16-9-3. Depositing dead animals or offensive substances in or near waters or on or near roads or on public or private grounds; penalties; failure to bury or destroy offensive substances after conviction; successive offenses.
§16-9-2. Throwing or releasing dead animals or offensive substances into waters used for domestic purposes; penalties; jurisdiction; failure to bury or destroy offensive substances after conviction; successive offenses.

Any person who knowingly and willfully throws, causes to be thrown or releases any dead animal, carcass, or part thereof, garbage, sink or shower waste, organic substance, human or animal excrement, contents of privy vault, septic tank, cesspool or the effluent from any cesspool or nauseous or offensive or poisonous substances into any well, cistern, spring, brook, pond, stream or other body of water which is used for domestic purposes, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars. None of the provisions contained in this section shall apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia division of environmental protection.

Upon conviction of any such offense, the person convicted shall, within twenty-four hours after such conviction, remove and bury or cause to be buried at least three feet under the ground or destroy or cause to be destroyed as otherwise directed by the commissioner of the bureau of public health or his or her duly authorized representative any of such offensive materials which the person so convicted has thrown, caused to be thrown, released or knowingly permitted to remain in water used for domestic purposes, contrary to the provisions of this section, and his or her failure or refusal to do so is a misdemeanor and a second violation of the provisions of this section. The continued failure or refusal of such convicted person to so bury or destroy such offensive materials is a separate, distinct and additional offense for each successive twenty-four hour period of such failure or refusal. Any person convicted of any offense described in this paragraph shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail not more than ninety days, or both fined and imprisoned.
§16-9-3. Depositing dead animals or offensive substances in or near waters or on or near roads or on public or private grounds; penalties; failure to bury or destroy offensive substances after conviction; successive offenses.

Any person (1) who throws, causes to be thrown or releases any dead animal, carcass, or part thereof, garbage, sink or shower waste, organic substances, contents of a privy vault, septic tank, cesspool or the effluent from any cesspool, spoiled meat or nauseous or offensive or poisonous substances into any river, creek or other stream, or upon the surface of any land adjacent to any river, creek or other stream in such a location that high water or normal drainage conditions will cause such offensive materials to be washed, drained or cast into the river, creek or other stream; or (2) who throws, or causes to be thrown or releases any of such offensive materials upon the surface of any road, right-of-way, street, alley, city or town lot, public ground, market space, common or private land, or (3) who, being the owner, lessee or occupant of any city or town lot, public ground, market space, common or private land knowingly permits any such offensive materials to remain thereon or neglects or refuses to remove or abate the public health menace or nuisance occasioned thereby, within twenty-four hours of the service of notice thereof in writing from the commissioner of the bureau of public health or his or her duly authorized representative, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars. None of the provisions contained in this section apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia division of environmental protection.

Upon a conviction for any such offense, the person shall, within twenty-four hours after such conviction, remove and bury or cause to be buried at least three feet under the ground, or destroy or cause to be destroyed as otherwise directed by the commissioner of the bureau of public health or his or her duly authorized represen-
tative, any of such offensive materials which the person
so convicted has placed or knowingly permitted to
remain upon such city or town lot, public ground,
market space, common or private land, contrary to the
provisions of this section. Such person’s failure or
refusal to do so is a misdemeanor and a second offense
against the provisions of this section. The continued
failure or refusal of such convicted person to remove and
bury or destroy such offensive materials is a separate,
distinct and additional offense for each successive
twenty-four-hour period of such failure and refusal. Any
person convicted of any offense described in this
paragraph shall be fined not less than one hundred
dollars nor more than one thousand dollars, or impri-
soned in the county jail not more than ninety days, or
both fined and imprisoned.

ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.
§16-12-6. Penalty for failure to provide sewers and
sewage treatment plant; duties of the div-
ision of environmental protection and the
bureau of public health; prosecution.

All sanitary districts organized under the provisions
of this article shall proceed as rapidly as possible to
provide sewers and a plant or plants for the treatment
or purification of its sewage, which plant or plants shall
be of suitable kind and sufficient capacity to properly
treat and purify such sewage so as to conduce to the
preservation of the public health, comfort and conven-
ience and to render said sewage harmless, insofar as is
reasonably possible, to animal, fish and plant life. Any
violation of this proviso and any failure to observe and
follow same, by any sanitary district organized under
this article, is a misdemeanor on the part of the sanitary
district and upon conviction, said sanitary district shall
be punished by such fine as law and equity may require,
and the trustees thereof may be removed from office as
trustees of said sanitary district by an order of the court
before whom the cause is heard. It is the duty of the
division of environmental protection or the bureau of
public health or other body having proper supervision
of such matters, to enforce the foregoing provisions; and
upon complaint of said office or bureau it is the duty
of the attorney general or prosecuting attorney of the county in which such violation may occur, to institute and prosecute such cause by indictment or in the manner provided by law.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates or charges for the use of the services and facilities of the existing sewer system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system, or that in any way uses or is served thereby, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage, and the repair, alteration and extension of existing sewer facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system; and the governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of said construction, to be remitted to and administered by the municipal
bond commission by expending and paying said costs and expenses of construction and operation in the manner as provided by said ordinance; and after the completion of the construction such rates or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works. No such rates or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication of such notice as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing the rates or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required. If any rate or charge so
established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality. Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds: Provided, however, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

§16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.

§16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes.

Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district, nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after such board member's
term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each such city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members become members of the board of the district without any further act or proceedings.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as
is necessary to make the number of members of the board equal three; and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four, and the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the
The board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions
of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services
and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval.

Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent
account, shall terminate its water service to the cus-
tomer having the delinquent sewer account: Pro-
vided, however, That any termination of water service
must comply with all rules and orders of the public
service commission.

Any district furnishing sewer facilities within the
district may require, or may by petition to the circuit
court of the county in which the property is located,
compel or may require the bureau of public health to
compel all owners, tenants or occupants of any houses,
dwellings and buildings located near any such sewer
facilities, where sewage will flow by gravity or be
transported by such other methods approved by the
bureau of public health including, but not limited to,
vacuum and pressure systems, approved under the
provisions of section nine, article one, chapter sixteen of
this code, from such houses, dwellings or buildings into
such sewer facilities, to connect with and use such sewer
facilities, and to cease the use of all other means for the
collection, treatment and disposal of sewage and waste
matters from such houses, dwellings and buildings
where there is such gravity flow or transportation by
such other methods approved by the bureau of public
health including, but not limited to, vacuum and
pressure systems, approved under the provisions of
section nine, article one, chapter sixteen of this code, and
such houses, dwellings and buildings can be adequately
served by the sewer facilities of the district, and it is
hereby found, determined and declared that the man-
datory use of such sewer facilities provided for in this
paragraph is necessary and essential for the health and
welfare of the inhabitants and residents of such districts
and of the state: Provided, That if the public service
district determines that the property owner must
connect with the sewer facilities even when sewage from
such dwellings may not flow to the main line by gravity
and the property owner must incur costs for any
changes in the existing dwellings' exterior plumbing in
order to connect to the main sewer line, the public
service district board shall authorize the district to pay
all reasonable costs for such changes in the exterior
plumbing, including, but not limited to, installation,
operation, maintenance and purchase of a pump, or any
other method approved by the bureau of public health;
maintenance and operation costs for such extra instal-
lation should be reflected in the users charge for
approval of the public service commission. The circuit
court shall adjudicate the merits of such petition by
summary hearing to be held not later than thirty days
after service of petition to the appropriate owners,
tenants or occupants.

Whenever any district has made available sewer
facilities to any owner, tenant or occupant of any house,
dwelling or building located near such sewer facility,
and the engineer for the district has certified that such
sewer facilities are available to and are adequate to
serve such owner, tenant or occupant, and sewage will
flow by gravity or be transported by such other methods
approved by the bureau of public health from such
house, dwelling or building into such sewer facilities,
the district may charge, and such owner, tenant or
occupant shall pay the rates and charges for services
established under this article only after thirty-day notice
of the availability of the facilities has been received by
the owner.

All delinquent fees, rates and charges of the district
for either water facilities, sewer facilities or gas
facilities are liens on the premises served of equal
dignity, rank and priority with the lien on such premises
of state, county, school and municipal taxes. In addition
to the other remedies provided in this section, public
service districts are hereby granted a deferral of filing
fees or other fees and costs incidental to the bringing
and maintenance of an action in magistrate court for the
collection of delinquent water, sewer or gas bills. If the
district collects the delinquent account, plus reasonable
costs, from its customer or other responsible party, the
district shall pay to the magistrate the normal filing fee
and reasonable costs which were previously deferred. In
addition, each public service district may exchange with
other public service districts a list of delinquent
accounts.

Anything in this section to the contrary notwithstand-
176 ing, any establishment, as defined in section three, 177 article eleven, chapter twenty-two, now or hereafter 178 operating its own sewage disposal system pursuant to a 179 permit issued by the division of environmental protec- 180 tion, as prescribed by section eleven, article eleven, 181 chapter twenty-two of this code, is exempt from the 182 provisions of this section.

§16-13A-21. Complete authority of article; liberal con- 1 2 struction; district to be public instrumentality; tax exemption.

This article is full and complete authority for the 2 creation of public service districts and for carrying out 3 the powers and duties of same as herein provided. The 4 provisions of this article shall be liberally construed to 5 accomplish its purpose and no procedure or proceedings, 6 notices, consents or approvals, are required in connec- 7 tion therewith except as may be prescribed by this 8 article: Provided, That all functions, powers and duties 9 of the public service commission of West Virginia, the 10 bureau of public health, the division of environmental 11 protection and the environmental quality board remain 12 unaffected by this article. Every district organized, 13 consolidated, merged or expanded under this article is 14 a public instrumentality created and functioning in the 15 interest and for the benefit of the public, and its 16 property and income and any bonds issued by it are 17 exempt from taxation by the state of West Virginia, and 18 the other taxing bodies of the state: Provided, however, 19 That the board of any such district may use and apply 20 any of its available revenues and income for the 21 payment of what such board determines to be tax or 22 license fee equivalents to any local taxing body and in 23 any proceedings for the issuance of bonds of such 24 district may reserve the right to annually pay a fixed 25 or computable sum to such taxing bodies as such tax or 26 license fee equivalent.

ARTICLE 13B. COMMUNITY IMPROVEMENT ACT.

§16-13B-10. Notice to property owners of assessments; 1 hearings, correcting and laying assessments; report on project completion; permits.
(a) After the execution of an agreement or agreements for the construction of a project with another governmental agency or the acceptance by the board of a bid by one or more contractors as contemplated by section nine of this article, but prior to the commencement of construction, the board shall cause the engineer, governmental agency or person charged by the board with the supervision of the project, to prepare a report describing each lot or parcel of land abutting the project in the case of a wastewater or water project, or each lot or parcel on which a flood relief project shall be undertaken or shall protect in the case of such a project; and setting forth the total cost of the project based on the contract with the governmental agency, or the accepted bid or bids, and all other costs incurred prior to the commencement of construction, and the respective amounts chargeable upon each lot or parcel of land which may be assessed and the proper amount to be assessed against the respective lots or parcels of land in accordance with sections eleven and twelve of this article, with a description of the lots and parcels of land as to ownership, frontage and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice to the owners of property to be assessed that on or after a date specified in the notice an assessment may be levied against the property: Provided, That construction of a project shall not commence until the assessment district has laid all assessments on the property to be benefitted by the project and has issued all assessment certificates necessary to evidence the assessments in accordance with section fifteen of this article. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment, and shall show the total cost of the project, whether the assessments will pay for all or part of the total cost of the project, and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to
ownership, frontage and location. The notice shall be published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area for such publication is the assessment district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to lay the assessments as corrected and verified.

(b) Upon completion of a project, or the completion of that portion of a project that provides water, wastewater or flood protection benefits to the property subject to the assessments, the board shall cause the engineer or committee charged by the board with the supervision of the project, to prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is less or greater than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of land pursuant to subsection (a) of this section to reflect the total cost of the project as completed, and in so doing shall, in the case of an assessment increase only, (1) follow the same procedure with regard to notice and providing each owner of assessed property the right to appear before the board to move for the revision or correction of such proposed reassessment as required for the original assessment, and (2) issue such additional assessment certificates as may be necessary to evidence the amount by which the assessment applicable to each lot or parcel of land has increased. If an assessment is decreased, the board shall, by resolution and written notice to the sheriff of the county in which the assessment district is located, cause the next installment or installments of assessment fees then due and payable by each affected property owner to be reduced pro rata, and shall provide written notice to such property owners of the amount of such decrease by the deposit of such notice in the United States mail, postage prepaid. In such cases the board shall also transmit to the sheriff an amount of funds equal to the difference between the cost of the project upon which the assessments were
originally laid and the cost of the project as completed, and the sheriff shall disburse such funds to the holders of the assessment certificates issued in connection with the project on a pro rata basis.

(c) Prior to the construction of a project, the board shall obtain all permits and licenses required by law for the construction and operation of the project: Provided, that the board is not required to obtain a certificate of public convenience from the public service commission under article two, chapter twenty-four of this code: Provided, however, That prior to the construction of each project, the board shall apply to the public service commission for authorization enabling the construction and shall submit with said application any certificate required by the division of public health, any certification or permit required by the division of environmental protection, the contract for utility service, if a utility will be involved, a copy of the utility's applicable, existing rate tariff, a copy of the order or ordinance creating the board and a certificate of a qualified professional engineer that the utility providing service has the capacity to provide or treat, as the case may be. The public service commission shall render its final decision on any application filed under the provisions of this section within (i) ninety days in the case of a project serving twenty-five or fewer residential customers, or (ii) one hundred twenty days in the case projects serving commercial customers or more than twenty-five residential customers, following the submission of such application and all information herein required.

ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

(a) No person shall store or dispose of any radioactive waste material within the state: Provided, That the provisions of this section do not prohibit (1) the storage or disposal of such material produced within the state as a result of medical, educational, research or industrial activities and so stored or disposed of in compliance with all applicable state and federal laws, or (2) the
transportation of such material out of or through the state when done in compliance with all applicable state and federal laws: Provided, however, That such waste from industrial activities does not include, for the purpose of this article, such material produced from the operation of any nuclear power generation facility, nuclear processing facility, or nuclear reprocessing facility.

(b) The disposal of radioactive waste material in a solid waste facility or in a commercial solid waste facility, as defined in section two, article fifteen, chapter twenty-two of this code, is prohibited.

CHAPTER 19. AGRICULTURE.

Article 1B. Sediment Control During Commercial Timber Harvesting Operations.

§19-1B-3. Definitions.

(a) "Best management practices" means sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting.

(b) "Chief" means the chief of the office of water resources of the division of environmental protection, or his or her designee.

(c) "Director" means the director of the division of forestry of the department of commerce, labor and environmental resources, or his or her authorized designee.

(d) "Operator" means any person who conducts timbering operations.

*Clerk's Note: This section was also amended by H. B. 4402 (Chapter 119), which passed prior to this act.
“(e) “Timbering operations” means activities directly related to the severing or removal of standing trees from the forest as a raw material for commercial processes or purposes. For the purpose of this article, timbering operations do not include the severing of evergreens grown for and severed for the traditional Christmas holiday season, or the severing of trees incidental to ground-disturbing construction activities, including well sites, access roads and gathering lines for oil and natural gas operations, or the severing of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities or any company subject to the jurisdiction of the federal energy regulatory commission unless the trees so severed are being sold or provided as raw material for commercial wood product purposes, or the severing of trees by an individual on the individual’s own property for his or her individual use provided that the individual does not have the severing done by a person whose business is the severing or removal of trees.

(f) “Sediment” means solid particulate matter, usually soil or minute rock fragments, moved by wind, rainfall or snowmelt into the streams of the state.

§19-1B-5. Compliance orders, suspension of timbering operating license.

(a) Upon a finding by the chief that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the chief shall notify the director of the location of the site, the problem associated with the site, and any suggested corrective action. Upon the failure of the director to take appropriate action within three days of providing notice to the director, the chief may seek relief through the conference panel in accordance with section eleven of this article.

(b) Upon notification of the chief or upon a finding by the director that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or
water pollution, the director shall issue a written compliance order requiring the person conducting the timber operation to take corrective action. The order shall mandate compliance within a reasonable and practical time, not to exceed ten days. The person subject to the order may appeal the order within forty-eight hours of its issuance to the conference panel in accordance with section eleven of this article.

(c) In any circumstance where observed damage or circumstances on a logging operation, in the opinion of the director, are sufficient to endanger life or result in uncorrectable soil erosion or water pollution, or if the operator is not licensed pursuant to this article, or if a certified logger is not supervising the operation, the director shall order the immediate suspension of the timber operation and the operation shall remain suspended until the corrective action mandated in the compliance order suspending the operation is instituted. The director shall not issue an order cancelling the suspension order until compliance is satisfactory or until overruled on appeal. Failure to comply with any compliance order is a violation of this article. The person subject to the order may appeal to the conference panel in accordance with the provisions of section eleven of this article.

(d) The director may suspend the license of any person conducting a timbering operation or the certification of any certified logger supervising a timbering operation, for no less than thirty nor more than ninety days, if the person is found in violation of this article or article eleven, chapter twenty-two of this code, for a second time within any two-year period: Provided, That one or more violations for the same occurrence is only one violation for purposes of this subsection.

(e) The director may revoke the license of any person conducting timbering operations or the certification of any certified logger if the person is found in violation of this article or article eleven, chapter twenty-two of this code, for a third time within any two-year period: Provided, That one or more violations for the same occurrence is only one violation for purposes of this
subsection. A revoked license is not subject to reissue during the licensing period for which it was issued.

(f) The director shall notify the chief of any order issued or any suspension or revocation of a license pursuant to this section within three days of the date of the director's action.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

(a) After the first day of July, one thousand nine hundred ninety-three, any individual supervising any timbering operation must be certified pursuant to this article.

(b) The director is responsible for the development of standards and criteria for establishment of a regularly scheduled program of education, training and examination that all persons must successfully complete in order to be certified to supervise any timbering operation. The program for certified loggers shall provide, at a minimum, for education and training in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices to prevent, in-so-far as possible, soil erosion on timbering operations. The goals of this program will be to assure that timbering operations are conducted in accordance with applicable state and federal safety regulations in a manner that is safest for the individuals conducting the operations and that they are performed in an environmentally sound manner.

(c) The director shall provide for such programs by using the resources of the division, other appropriate state agencies, educational systems, and other qualified persons. Each inspector under the jurisdiction of the chief shall attend a certification program free of charge and complete the certification requirements of this section.

(d) The director shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a, of this code, which provide the procedure by which
certification pursuant to this article may be obtained and shall require the payment of an application fee and an annual renewal fee of fifty dollars.

(e) Upon a person's successful completion of the certification requirements, the director shall provide that person with proof of the completion by issuing a numbered certificate and a wallet-sized card to that person. The division shall maintain a record of each certificate issued and the person to whom it was issued.

(f) A certification granted pursuant to this section is renewable only for two succeeding years. For the third renewal and every third renewal thereafter, the licensee shall first attend a program designed by the director to update the training.

(g) After the first day of July, one thousand nine hundred ninety-three, every timbering operation must have at least one person certified pursuant to this section supervising the operation at any time the timbering operation is being conducted and all timbering operators shall be guided by the West Virginia forest practice standards and the West Virginia silvicultural best management practices in selecting practices appropriate and adequate for reducing sediment movement during a timber operation.

(h) The director shall, at no more than three-year intervals after the effective date of this article, convene a committee to review the best management practices so as to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person doing research in the field of silvicultural best management practices, a person doing research in the field of silviculture, two loggers certified under this article, a representative of the office of water resources of the division of environmental protection, and a representative of an environmentally active organization. The director shall chair the committee and may adjust the then current best management practices according to the suggestions of the committee in time for the next certification cycle.

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

(a) On or before the first day of July, one thousand nine hundred ninety, the commission shall meet and confer with respect to the development of a management plan to determine the optimum use or disposition of all institutional farms, at which time the farm management director shall provide the commission with a complete inventory of all institutional farms, and such information relating to easements, mineral rights, appurtenances, farm equipment, agricultural products, livestock, inventories and farm facilities as may be necessary to develop such management plan. The commission shall complete and provide to the governor a management plan, which plan shall set forth the objectives of the commission with respect to institutional farms, the criteria by which the commission shall determine the optimum use or disposition of such property, and determinations as to whether each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the adoption of any plan, the commission shall consult with the secretaries of the various departments of state government and shall request from such secretaries suggestions for land use and resource development on farm commission lands. On or before the first day of December, one thousand nine hundred ninety, such management plan shall be presented to the Legislature, by providing a copy to the president of the Senate and the speaker of the House of Delegates. The commission may confer with any other agency or individual in implementing and adjusting its management plan. The management plan established pursuant to this subsection may be amended, from time to time, as may be necessary.

(b) The commission shall manage its institutional farms, equipment and other property in order to most efficiently produce food products for state institutions and shall implement the intent of the Legislature as set forth by this article. From the total amount of food, milk and other commodities produced on institutional farms, the commission shall sell, at prevailing wholesale prices,
and each of the institutions under the control of the
bureau of public health and the division of corrections
shall purchase, a proportionate amount of these products
based on the dietary needs of each institution.

(c) If requested by the commissioner of corrections,
the commission may authorize the division of corrections
to operate a farm or other enterprise using inmates as
labor on such lands. The commissioner of corrections is
responsible for the selection, direction and supervision
of the inmates and shall assign the work to be performed
by inmates.

(d) The commission is hereby authorized and empo-
wered to:

(1) Lease to public or private parties, for purposes
including agricultural production or experimentation,
public necessity, or other purposes permitted by the
management plan, any land, easements, equipment, or
other property, except that property may not be leased
for any use in any manner that would render the land
toxic for agricultural use, nor may toxic or hazardous
materials as identified by the commissioner of agricul-
ture be used or stored upon such property unless all
applicable state and federal permits necessary are
obtained. Any lease for an annual consideration of one
thousand dollars or more shall be by sealed bid auction
and the commission shall give notice of such auction by
publication thereof as a Class II-0 legal advertisement
in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication is the county in which the property
to be leased is located;

(2) Transfer to the public land corporation land
designated in its management plan as land to be
disposed of, which land shall be sold, exchanged or
otherwise transferred pursuant to sections four and five,
article one-a, chapter twenty of this code: Provided, That
the net proceeds of the sale of farm commission lands
shall be deposited in the general revenue fund of the
state: Provided, however, That no sale may be concluded
until on or after the fifteenth day of March, one
thousand nine hundred ninety-one, except with respect to: (A) Properties located at institutions closed on or before the effective date of this section, the tenth day of March, one thousand nine hundred ninety; or (B) properties conveyed to or from the farm management commission to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the regional jail and correctional facilities authority or the state building commission, with the decision to execute any such conveyance being solely within the discretion of, and at the direction of, the regional jail and correctional facilities authority;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the division of environmental protection will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) above;

(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(e) Notwithstanding the provisions of subsection (d) herein, no timberland may be leased, sold, exchanged or otherwise disposed of unless the division of forestry of the department of commerce, labor and environmental resources certifies that there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange or other disposition is accomplished by the sealed bid auction procedure provided above in subdivisions (1) or (2), as applicable.

(f) The commission shall promulgate, pursuant to chapter twenty-nine-a of this code, rules and regulations relating to the powers and duties of the commission as enumerated in this section.

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.
§19-21A-4. State soil conservation committee; continuation.

(a) The state soil conservation committee is continued. It is to serve as an agency of the state and to perform the functions conferred upon it in this article. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the division of environmental protection; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members thus appointed shall be four years, except that of the first members so appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. The committee is empowered to secure necessary and suitable office accommodations, and the necessary supplies and equipment. Upon request of the committee, for the purpose
of carrying out any of its functions, the supervising
officer of any state agency, or of any state institution of
learning shall, insofar as may be possible, under
available appropriations, and having due regard to the
needs of the agency to which the request is directed,
assign or detail to the committee, members of the staff
or personnel of such agency or institution of learning,
and make such special reports, surveys or studies as the
committee may request.

(c) A member of the committee shall hold office so
long as he shall retain the office by virtue of which he
shall be serving on the committee. A majority of the
committee shall constitute a quorum, and the concur-
rence of a majority in any matter within their duties
shall be required for its determination. The chairman
and members of the committee shall receive no compen-
sation for their services on the committee, but shall be
entitled to expenses, including traveling expenses,
necessarily incurred in the discharge of their duties on
the committee. The committee shall provide for the
execution of surety bonds for all employees and officers
who shall be entrusted with funds or property; shall
provide for the keeping of a full and accurate public
record of all proceedings and of all resolutions, rules and
orders issued or adopted; and shall provide for an
annual audit of the accounts of receipts and
disbursements.

(d) In addition to the duties and powers hereinafter
conferred upon the state soil conservation committee, it
shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to
the supervisors of soil conservation districts, organized
as provided hereinafter, in the carrying out of any of
their powers and programs;

(2) To keep the supervisors of each of the several
districts, organized under the provisions of this article,
informed of the activities and experience of all other
districts organized hereunder, and to facilitate an
interchange of advice and experience between such
districts and cooperation between them;
(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable;

(6) To accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise, from the United States or any of its agencies, from the state of West Virginia, or from other sources, and to use or expend such money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services or materials in part to the various soil conservation districts created by this article in order to assist them in carrying on their operations; and

(7) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, operate and improve any properties acquired, to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties or in otherwise carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state soil conservation committee and expended as herein provided.

After having conducted a performance audit through its joint committee on government operations, pursuant
to article ten, chapter four of this code, the Legislature hereby finds and declares that the state soil conservation committee should be continued and reestablished. Accordingly, pursuant to the provisions of section five of said article, the state soil conservation committee shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.


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

3 (1) “Charge” means:

4 (A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, incident, experience or occasion which may not exceed fifty dollars a year per recreational participant;

12 (B) For purposes of limiting liability for military training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;

16 (2) “Land” includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

20 (3) “Noncommercial recreational activity” shall not include any activity for which there is any charge which exceeds fifty dollars per year, per participant;

23 (4) “Owner” includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

26 (5) “Recreational purposes” includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking.

* Clerk's Note: This section was also amended by S. B. 426 (Chapter 1), which passed prior to this act.
pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

(6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface mining activities, as governed by article three, chapter twenty-two of this code, or from the use of surface in the conduct of underground coal mining as governed by said article, and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of environmental protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that the premises has the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and

(7) "Military training" includes, but it not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard, a member of a reserve unit of the armed forces of the United States or a person on active duty in the armed forces of the United States, acting in that capacity.

CHAPTER 20. NATURAL RESOURCES.
ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Agency" means any branch, department or unit of the state government, however designated or constituted.

"Alien" means any person not a citizen of the United States.

"Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any licensee.

"Bona fide resident, tenant or lessee" means a person who permanently resides on the land.

"Citizen" means any native born citizen of the United States, and foreign born persons who have procured their final naturalization papers.

"Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

"Commission" means the natural resources commission.

"Commissioner" means a member of the advisory commission of the natural resources commission.

"Director" means the director of the division of natural resources.

"Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

"Fur-bearing animals" include: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h) the red fox; (i) the gray fox; (j) the wildcat.

* Clerk’s Note: This section was also amended by S. B. 334 (Chapter 120), which passed prior to this act.
"Game" means game animals, game birds and game fish as herein defined.

"Game animals" include: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases — red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar.

"Game birds" include: (a) The Anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the Rallidae, commonly known as rails, sora, coots, mudhens and gallinaries; (c) the Limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the Galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); and (e) the Columbidae, commonly known as doves, and the Icteridae, commonly known as blackbirds, redwings and grackle.

"Game fish" include: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) Kokanee salmon; (f) largemouth bass; (g) smallmouth bass; (h) Kentucky or spotted bass; (i) striped bass; (j) pickerel; (k) muskellunge; (l) walleye pike or pike perch; (m) northern pike; (n) rock bass; (o) white bass; (p) white and black crappie; (q) all sunfish; (r) channel and flathead catfish; and (s) sauger.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals.

"Lands" means land, waters and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the "Migratory Bird Treaty Act", for the protection of migratory birds and game mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of
February, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not been a domiciled resident of the state of West Virginia for a period of thirty consecutive days immediately prior to the date of his or her application for a license or permit except any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner, and shall include both the first and the last day of the season or period designated by the director.

"Person" except as otherwise defined elsewhere in this chapter, means the plural "persons" and shall include individuals, partnerships, corporations or other legal entities.

"Preserve" means all duly licensed private game farmlands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds".

"Resident" means any person who is a citizen of the United States and who has been a domiciled resident of the state of West Virginia for a period of thirty consecutive days or more immediately prior to the date of his or her application for license or permit: Provided, that a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his or her entry into such service, and any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition, shall be considered a resident under the provisions of this chapter.
"Roadside menagerie" means any place of business, other than commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

"Take" means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so.

"Unprotected birds" shall include: (a) The English sparrow, (b) the European starling, (c) the cowbird, and (d) the crow.

"Wild animals" means all mammals native to the state of West Virginia occurring either in a natural state or in captivity, except house mice or rats.

"Wild birds" shall include all birds other than: (a) Domestic poultry — chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (a) Those occurring in a natural state in West Virginia; or (b) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

"Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.

§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties and responsibilities granted and assigned to the director in this
chapter and elsewhere by law, the director is hereby
authorized and empowered to:

(1) With the advice of the commission, prepare and
administer, through the various divisions created by this
chapter, a long-range comprehensive program for the
conservation of the natural resources of the state which
best effectuates the purpose of this chapter and which
makes adequate provisions for the natural resources
laws of the state;

(2) Sign and execute in the name of the state by the
"division of natural resources" any contract or agree-
ment with the federal government or its departments or
agencies, subdivisions of the state, corporations, associ-
ations, partnerships or individuals;

(3) Conduct research in improved conservation
methods and disseminate information matters to the
residents of the state;

(4) Conduct a continuous study and investigation of
the habits of wildlife, and for purposes of control and
protection, to classify by regulation the various species
into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and
method by which the various species of wildlife may be
taken, or chased, unless otherwise specified by this
chapter;

(6) Hold at least six meetings each year at such time
and at such points within the state, as in the discretion
of the natural resources commission may appear to be
necessary and proper for the purpose of giving inter-
ested persons in the various sections of the state an
opportunity to be heard concerning open season for their
respective areas, and report the results of the meetings
to the natural resources commission before such season
and bag limits are fixed by it;

(7) Suspend open hunting season upon any or all
wildlife in any or all counties of the state with the prior
approval of the governor in case of an emergency such
as a drought, forest fire hazard or epizootic disease
among wildlife. The suspension shall continue during
the existence of the emergency and until rescinded by
the director. Suspension, or reopening after such
suspension, of open seasons may be made upon twenty-
four hours' notice by delivery of a copy of the order of
suspension or reopening to the wire press agencies at the
state capitol;

(8) Supervise the fiscal affairs and responsibilities of
the division;

(9) Designate such localities as he or she shall
determine to be necessary and desirable for the perpe-
tuation of any species of wildlife;

(10) Enter private lands to make surveys or inspec-
tions for conservation purposes, to investigate for
violations of provisions of this chapter, to serve and
execute warrants and processes, to make arrests and to
otherwise effectively enforce the provisions of this
chapter;

(11) Acquire for the state in the name of the "division
of natural resources" by purchase, condemnation, lease
or agreement, or accept or reject for the state, in the
name of the division of natural resources, gifts, dona-
tions, contributions, bequests or devises of money,
security or property, both real and personal, and any
interest in such property, including lands and waters,
which he or she deems suitable for the following
purposes:

(a) For state forests for the purpose of growing
timber, demonstrating forestry, furnishing or protecting
watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose
of preserving scenic, aesthetic, scientific, cultural,
archeological or historical values or natural wonders,
or providing public recreation;

(c) For public hunting, trapping or fishing grounds
or waters for the purpose of providing areas in which
the public may hunt, trap or fish, as permitted by the
provisions of this chapter, and the rules issued
hereunder;
(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his or her supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell, with the approval in writing of the governor, timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha state forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. When the appraised value of the timber to be sold is more than five hundred dollars, the director, before making sale thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he or she deems appropriate, but the sale price shall not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section
shall extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber shall not be validated by this section if the same be otherwise invalid. The proceeds arising from the sale of the timber so sold, shall be paid to the treasurer of the state of West Virginia, and shall be credited to the division and used exclusively for the purposes of this chapter: Provided, That nothing contained herein shall prohibit the sale of timber which otherwise would be removed from rights-of-way necessary for and strictly incidental to the extraction of minerals;

(14) Sell or lease, with the approval in writing of the governor, coal, oil, gas, sand, gravel and any other minerals that may be found in the lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The director, before making sale or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which such lands are located. The minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the proper performance of the sales contract or lease as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from any such sale or lease shall be paid to the treasurer of the state of West Virginia and shall be credited to the division and used exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for the protection of forests, and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(16) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;
(17) Report to the governor each year all information relative to the operation and functions of the division and the director shall make such other reports and recommendations as may be required by the governor, including an annual financial report covering all receipts and disbursements of the division for each fiscal year, and he or she shall deliver such report to the governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office, except as otherwise provided by law;

(19) Offer and pay, in his or her discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he or she may deem to be necessary from any person issued a license or permit under the provisions of this chapter, but no person shall be required to disclose secret processes or confidential data of competitive significance;

(21) Purchase as provided by law all equipment necessary for the conduct of the division;

(22) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(23) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the division for any and all purposes specified in this chapter, and he or she shall account for
and report on all such receipts and expenditures to the governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parks as he or she deems advisable;

(26) Maintain in his or her office at all times, properly indexed by subject matter, and also, in chronological sequence, all rules and regulations made or issued under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his or her office, except the power to execute contracts, to appointees and employees of the division, who shall act under the direction and supervision of the director and for whose acts he or she shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the division in moving his or her household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months; and

(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.
§20-1-14. Sections within division.

Sections of wildlife resources and of law enforcement are hereby continued within the division of natural resources. Subject to provisions of law, the director of the division of natural resources shall allocate the functions and services of the division to the sections, offices and activities thereof and may from time to time establish and abolish other sections, offices and activities within the division in order to carry out fully and in an orderly manner the powers, duties and responsibilities of the office as director. The director shall select and designate a competent and qualified person to be chief of each section. The chief is the principal administrative officer of that section and is accountable and responsible for the orderly and efficient performance of the duties, functions and services thereof.

ARTICLE 5J. MEDICAL WASTE ACT.

§20-5J-6. Powers of secretary; authority to promulgate rules.

(a) The secretary shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, necessary to effectuate the findings and purposes of this article. Said rules shall include, but not be limited to, the following:

(1) A plan designed to encourage and foster reduction in the volume of infectious and noninfectious medical waste and the separation of infectious and noninfectious medical waste;

(2) Guidelines and procedures for the development and implementation of local infectious medical waste management plans, to be followed by all generators, that set forth proper methods for the management of infectious and noninfectious medical waste;

(3) Criteria for identifying the characteristics of infectious medical waste and identifying the characteristics of noninfectious medical waste;
(4) Standards applicable to generators of medical waste necessary to protect public health, safety and the environment, which standards shall establish requirements respecting:

(A) Record-keeping practices that accurately identify the quantities of infectious medical waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such waste;

(B) Labeling practices for containers used in the storage, transportation or disposal of infectious medical waste which will accurately identify such waste;

(C) Use of appropriate containers for infectious medical waste;

(D) Furnishing of information regarding the general composition of infectious medical wastes to persons transporting, treating, storing or disposing of such waste;

(E) Use of a manifest system and other reasonable means to assure that all infectious medical waste is designated for and arrives at treatment, storage or disposal facilities for which the secretary has issued permits, other than facilities on the premises where the waste is generated; and

(F) The submission of reports to the secretary, at such times as the secretary deems necessary, setting out the quantity of infectious medical waste generated during a particular time period, and the disposition of such infectious medical waste;

(5) Performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of infectious medical waste necessary to protect public health and safety and the environment, which standards shall include, but need not be limited to, requirements respecting:

(A) Maintaining records of all infectious medical waste and the manner in which such waste was treated, stored or disposed of;
(B) Reporting, monitoring and inspection of and compliance with the manifest system referred to in subdivision (4), subsection (a) of this section;

(C) Treatment, storage or disposal of all infectious medical waste received by the facility pursuant to operating methods, techniques and practices as may be satisfactory to the secretary;

(D) The location, design and construction of infectious medical waste treatment, disposal or storage facilities;

(E) Contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of infectious medical waste;

(F) The maintenance or operation of such facilities and requiring additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable: Provided, That no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing infectious medical 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 infectious medical waste; and

(G) Compliance with the requirements of this article respecting permits for treatment, storage or disposal;

(6) The terms and conditions under which the secretary shall issue, modify, suspend, revoke or deny permits required by this article. The legislative rules required by this subdivision shall be promulgated by the first day of August, one thousand nine hundred ninety-one;

(7) Establishing and maintaining records; making reports; taking samples and performing tests and analyses; installing, calibrating, operating and maintaining monitoring equipment or methods; and providing any other information necessary to achieve the purposes of this article;
(8) Standards and procedures for the certification of personnel at infectious medical waste treatment, storage or disposal facilities or sites;

(9) Procedures for public participation in the implementation of this article;

(10) Procedures and requirements for the use of manifests during the transportation of infectious medical wastes;

(11) Procedures and requirements for the submission and approval of a plan by the owners or operators of infectious medical waste storage, treatment and disposal facilities, for closure of such facilities, post-closure monitoring and maintenance, and for both sudden and nonsudden accidental occurrences; and

(12) A schedule of fees to recover the costs of processing permit applications and renewals, training, enforcement, inspections and program development.

(b) The legislative rules required by subsection (a) shall be promulgated within six months after the effective date of this article.

(c) Within twelve months after the effective date of this article, the secretary shall conduct and publish a study of infectious medical waste management in this state which shall include, but not be limited to:

(1) A description of the sources of infectious medical waste generation within the state, including the types and quantities of such waste;

(2) A description of current infectious medical waste management practices and costs, including treatment, storage and disposal within the state; and

(3) An inventory of existing infectious medical waste treatment, storage and disposal sites.

(d) Any person aggrieved or adversely affected by an order of the secretary pursuant to this article, or by the denial or issuance of a permit, or the failure or refusal of said secretary to act within a reasonable time on an application for a permit or the terms or conditions of
a permit granted under the provisions of this article, may appeal to a special hearing examiner appointed to hear contested cases in accordance with the provisions of chapter twenty-nine-a of this code. The secretary shall promulgate legislative rules establishing procedures for appeal and the conduct of hearings.

(e) In addition to those enforcement and inspection powers conferred upon the secretary elsewhere by law, the secretary has the enforcement and inspection powers as provided in sections seven, eight and nine of this article.

(f) Nothing in this section diminishes or alters the authority of the director of the division of environmental protection under article five, chapter twenty-two of this code.

§20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.

(a) On and after the first day of July, one thousand nine hundred ninety-one, collectors, haulers and transporters of infectious medical waste who are “common carriers by motor vehicle,” as defined in section two, article one, chapter twenty-four-a of this code, shall be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a and rules promulgated thereunder. The rules of the public service commission shall not conflict nor take precedence over the rules promulgated by the secretary.

(b) The commission shall provide a separate and distinct category of special certificates of convenience and necessity for infectious medical waste collectors, haulers and transporters regulated by this section: Provided, That within six months of the effective date of this article, the commission may issue such special certificates to existing common carriers of solid waste who are presently transporting infectious medical waste and who demonstrate that they are in compliance with the provisions of this article: Provided, however, That such common carriers need not make any additional demonstration of public convenience and necessity.
Regulation of collectors, haulers and transporters of medical waste shall be separate and distinct from the regulation of solid waste collectors, haulers and transporters provided for in section twenty-three, article three, chapter twenty-two-c of this code.

(c) At any hearing conducted by the public service commission pertaining to infectious medical waste collectors, haulers and transporters, the secretary may appear before the commission and present evidence.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of conservation officers.

Conservation officers and all other persons authorized to enforce the provisions of this chapter shall be under the supervision and direction of the director in the performance of their duties as herein provided. The authority, powers and duties of the conservation officers shall be statewide and they shall have authority to:

(1) Arrest on sight, without warrant or other court process, any person or persons committing a criminal offense in violation of any of the laws of this state, in the presence of such officer, but no such arrest shall be made where any form of administrative procedure is prescribed by this chapter for the enforcement of any of the particular provisions contained herein;

(2) Carry such arms and weapons as may be prescribed by the director in the course and performance of their duties, but no license or other authorization shall be required of such officers for this privilege;

(3) Search and examine, in the manner provided by law, any boat, vehicle, automobile, conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat, or any other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish,
amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of any provisions of this chapter;

(4) Execute and serve any search warrant, notice or any process of law issued under the authority of this chapter or any law relating to wildlife, forests, and all other natural resources, by a magistrate or any court having jurisdiction thereof, in the same manner, with the same authority, and with the same legal effect, as any sheriff can serve or execute such warrant, notice or process;

(5) Require the operator of any motor vehicle or other conveyance on or about the public highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of allowing such officers to conduct game-kill surveys;

(6) Summon aid in making arrests or seizures or in executing any warrants, notices or processes, and they shall have the same rights and powers as sheriffs have in their respective counties in so doing;

(7) Enter private lands or waters within the state while engaged in the performance of their official duties hereunder;

(8) Arrest on sight, without warrant or other court process, subject to the limitations set forth in subdivision (1) of this section, any person or persons committing a criminal offense in violation of any law of this state in the presence of any such officer on any state-owned lands and waters and lands and waters under lease by the division of natural resources and all national forest lands, waters and parks, and U.S. Corps of Army Engineers' properties within the boundaries of the state of West Virginia, and, in addition to any authority conferred in the other subdivisions of this section, execute all warrants of arrest on such state and national lands, waters and parks, and U.S. Corps of Army Engineers' properties, consistent with the provisions of article one, chapter sixty-two of this code;
(9) Arrest any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage, or carry away, or cause to be cut, damaged, or carried away any timber, trees, logs, posts, fruit, nuts, growing plants, or products of any growing plant. Any person convicted of the foregoing shall be liable to the owner in the amount of three times the value of the timber, trees, logs, posts, fruit, nuts, growing plants, or products of any growing plant, which shall be in addition to and notwithstanding any other penalties by law provided by section thirteen, article three, chapter sixty-one of this code; and

(10) Do all things necessary to carry into effect the provisions of this chapter.

PART III. WEST VIRGINIA LITTER CONTROL PROGRAM.

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

(a) (1) Any person who places, deposits, dumps or throws or causes to be placed, deposited, dumped or thrown any litter as defined in section twenty-four of this article, in or upon any public or private highway, road, street or alley, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than in such place as may be set aside for such purpose by the governing body having charge thereof, is guilty of a misdemeanor, and, upon his or her first conviction, shall be fined not less than fifty dollars nor more than five hundred dollars: Provided, That a person shall not be held responsible for the actions of animals under their direct control. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any public highway, road, street, alley or any other public park or public property as designated by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof,
offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. For the first offense, the alternative sentence of litter pickup shall be not less than eight hours nor more than sixteen hours in lieu of other such fine. For purposes of this subdivision, the term "court" includes circuit, magistrate and municipal courts.

(2) Upon his or her second conviction, such person shall be fined not less than two hundred fifty dollars nor more than one thousand dollars and imprisoned in the county jail not less than twenty-four hours nor more than six months: Provided, That a person shall not be held responsible for the actions of animals under their direct control. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any public highway, road, street, alley or any other public park or public property as designated by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. For the second offense, the alternative sentence of litter pickup shall be not less than sixteen hours nor more than thirty-two hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term "court" shall include circuit and magistrate courts.

(3) Upon such person's third and successive conviction, he or she shall be fined not less than five hundred dollars nor more than two thousand dollars and imprisoned in the county jail not less than forty-eight hours nor more than one year: Provided, That a person shall not be held responsible for the actions of animals under their direct control. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any public highway, road, street, alley or any other public park or public property as designated by the court, any and all
litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. Upon a third conviction, the alternative sentence of litter pickup shall be not less than thirty-two hours nor more than sixty-four hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term “court” includes circuit and magistrate courts.

(4) The alternative sentence of litter pickup herein set forth shall be verified by the conservation officers from the division of natural resources or environmental inspectors from the division of environmental protection or a regional engineering technician from the division of environmental protection pollution prevention and open dumps program (PPOD) of the county in which the offense occurred. Any defendant receiving the herein specified alternative sentence of litter pickup shall provide within a time to be set by the court written acknowledgement from said conservation officers or environmental officers that the sentence has been completed.

(5) Any person who has been found by the court to have willfully failed to comply with the terms of an alternative sentence imposed by the court pursuant to this section is subject at the discretion of the court to up to twice the original penalty provisions available to the court at the time of conviction.

(6) If any litter is thrown or cast from a motor vehicle or boat, such action is prima facie evidence that the driver of such motor vehicle or boat intended to violate the provisions of this section. If any litter is dumped or discharged from a motor vehicle or boat, such action is prima facie evidence that the owner and driver of such motor vehicle or boat intended to violate the provisions of this section.

(b) Any litter found on any public or private property with any indication of ownership on it will be evidence
creating a rebuttable inference it was deposited improperly by the person whose identity is indicated, and any person who improperly disposes of litter is subject to either a civil fine of up to five hundred dollars for such litter or required to pay the costs of removal of such litter if the removal of such litter is required to be done by the division, at the discretion of the director. All such fines and costs shall be deposited to the litter control fund: Provided, That no inference shall be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced identifying character appearing on litter found.

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

The clerk of the circuit court, magistrate court or municipal court wherein such additional costs are imposed shall, on or before the last day of each month, transmit all such costs received under this subsection to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the litter control fund which is hereby continued. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, expenditures shall be authorized from collections. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) (1) The commissioner of the division of motor
vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a copy of subsection (a) of this section.

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

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

(f) No portion of this section shall be construed to restrict a private owner in the use of the owner's own private property in any manner otherwise authorized by law.

(g) Any law-enforcement officer who shall observe a person violating the provisions of this section has a mandatory duty to arrest or otherwise prosecute the violator to the limits provided herein. The West Virginia division of highways shall investigate and cause to be prosecuted violations of this section occurring upon the highways of the state as the term “highways” is defined in chapter seventeen of this code.

§20-7-28. Litter along streams, criminal penalties, enforcement.
(a) It is unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter as defined in section twenty-four of this article and also any garbage, refuse, trash, can, bottle, paper, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter into any river, stream, creek, branch, brook, lake or pond, or upon the surface of any land within one hundred yards thereof, or in such location that high water or normal drainage conditions will cause any such materials or substances to be washed into any river, stream, creek, branch, brook, lake or pond.

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

(c) In addition to enforcement by the director, the director of the division of environmental protection, the chief of the office of water resources of the division of environmental protection, and the division of natural resources’ chief law-enforcement officer, the provisions
of this section may be enforced by all other proper law-

43 enforcement agencies.

44 (d) (1) Any person violating any provision of this
45 section is guilty of a misdemeanor, and, upon his or her
46 first conviction, shall be fined not less than fifty nor
47 more than five hundred dollars. At the request of the
48 defendant or in the discretion of the court, the court may
49 sentence the defendant to pick up and remove from any
50 area of a bank of any river, stream, creek, branch,
51 brook, lake or pond, or other property with prior
52 permission of the owner, the area to be specified by the
53 court, any and all litter, garbage, refuse, trash, cans,
54 bottles, papers, ashes, carcass of any dead animal or any
55 part thereof, offal or any other offensive or unsightly
56 matter placed, deposited, dumped or thrown contrary to
57 the provisions of this section by anyone prior to the date
58 of such conviction. For the first offense, the alternative
59 sentence of litter pickup shall be not less than eight
60 hours nor more than sixteen hours in lieu of a fine. For
61 purposes of this subdivision, the term “court” includes
62 circuit, magistrate and municipal courts.

63 (2) Upon his or her second conviction, such person
64 shall be fined not less than two hundred fifty dollars nor
65 more than one thousand dollars and imprisoned in the
66 county jail not less than twenty-four hours nor more
67 than six months. At the request of the defendant or in
68 the discretion of the court, the court may sentence the
69 defendant to pick up and remove from any area of a
70 bank of any river, stream, creek, branch, brook, lake or
71 pond, or other property with prior permission of the
72 owner, the area to be specified by the court, any and all
73 litter, garbage, refuse, trash, cans, bottles, papers,
74 ashes, carcass of any dead animal or any part thereof,
75 offal or any other offensive or unsightly matter placed,
76 deposited, dumped or thrown contrary to the provisions
77 of this section by anyone prior to the date of such
78 conviction. For the second offense, the alternative
79 sentence of litter pickup shall be not less than sixteen
80 hours nor more than thirty-two hours in lieu of such fine
81 or incarceration, but not both. For purposes of this
82 subdivision, the term “court” includes circuit and
(3) Upon such person’s third and successive conviction, he or she shall be fined not less than five hundred dollars nor more than two thousand dollars and imprisoned in the county jail not less than forty-eight hours nor more than one year. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior permission of the owner, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. Upon a third conviction the alternative sentence of litter pickup shall be not less than thirty-two hours nor more than sixty-four hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term “court” includes circuit and magistrate courts.

(4) The alternative sentence of litter pickup herein set forth shall be verified by division of natural resources conservation officers or by environmental inspectors from the division of environmental protection or a regional engineering technician from the pollution prevention and open dumps program (PPOD) of the division of environmental protection, of the county in which the offense occurred. Any defendant receiving the herein specified alternative sentence of litter pickup shall provide within a time to be set by the court written acknowledgement from said conservation officers or environmental officers that the sentence has been completed.

(5) Any person who has been found by the court to have willfully failed to comply with the terms of an alternative sentence imposed by the court pursuant to this section is subject at the discretion of the court to up to twice the original penalty provisions available to the court at the time of conviction.
§20-7-29. Assistance to solid waste authorities.

The director may expend funds from the litter control fund established pursuant to section twenty-six of this article to assist county and regional solid waste authorities in the formulation of their comprehensive litter and solid waste control plans pursuant to section eight, article four, chapter twenty-two-c of this code and in the construction and maintenance of approved commercial solid waste facilities and collection equipment, 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.

ARTICLE 8. GENERAL AND MISCELLANEOUS PROVISIONS.

§20-8-1. Transition in terms; continuity.

Whenever in this code and elsewhere in law the terms "the conservation commission of West Virginia," "conservation commission," "director of conservation" and similar and related terms are used and referenced, they shall be read, understood and construed in the light of the enactment of this chapter by which the conservation commission and the office of director of conservation are abolished and the responsibilities, functions and services thereof are transferred to and absorbed in the division of natural resources, the natural resources commission and the office of director of the division of natural resources as in this chapter provided.

Any litigation instituted, entered into or pending to which any of the governmental corporations and agencies abolished by this chapter are named parties may be continued and prosecuted to completion in such party names or, at the option of the litigants and by leave of court, such party names may be amended or changed to correspond with the names of the successor governmental corporations and agencies as in this chapter provided.

All contracts, compacts and agreements, heretofore entered into by any of the governmental corporations and agencies hereby abolished, shall continue to be the
obligations of the respective successor corporations and agencies as in this chapter provided. No provision of this chapter shall be construed as impairing the obligation of any contract.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-4. Recycling plans.
§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.
§20-11-5b. Solid and hazardous waste supplemental assessment fee.
§20-11-9. Recycled oil advisory committee.
§20-11-12. Recycling facilities exemption.

§20-11-4. Recycling plans.

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

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

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

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

§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 is in addition to all other fees levied by law.
(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not 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 is 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 remains 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 is primarily liable for collection and remittance
of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and 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 are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them and against the association or corporation which they represent.

(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 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:

"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 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 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 environmental protection by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) **Procedure and administration.** — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if 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 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 West Virginia development office, 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 eleven, article fifteen, chapter twenty-two of this code, to be expended by the division of environmental protection to assist in the funding of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse, waste reduction and clean-up activities; and

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

(i) **Severability.** — If any provision of this section or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, such judgment does not affect, impair or invalidate the
remainder of this section, but is confined in its operation
to the provision thereof directly involved in the controv-
ersy in which such judgment is rendered, and the
applicability of such provision to other persons or
circumstances is not 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
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 is 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 remains 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 is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid or hazardous waste disposal facility are 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 are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them and against the association or corporation which they represent.

(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 is 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 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 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 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;
3. Reuse or recycling of any solid or hazardous waste; or
4. 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 environmental protection by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) **Procedure and administration.** — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if 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 nineteen, chapter twenty-two of this code.
(i) **Severability.**—If any provision of this section or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, such judgment does not affect, impair or invalidate the remainder of this section, but is confined in its operation to the provision thereof directly involved in the controversy in which such judgment is rendered, and the applicability of such provision to other persons or circumstances is not affected thereby.

(j) **Effective date.**—This section is effective on the first day of January, one thousand nine hundred ninety-two.

§20-11-9. **Recycled oil advisory committee.**

(a) The division of natural resources recycled oil advisory committee is continued. The recycled oil advisory committee shall consist of nine members appointed by the governor, for terms of two years, who 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 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 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 chair of the committee. 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, transportation, storage, disposal and recycling of used motor oil.
(b) The functions of the committee include, but are not limited to, the following:

1. Making recommendations to the division of natural resources, division of environmental protection 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.

§20-11-12. Recycling facilities exemption.

Recycling facilities, as defined in section two, article fifteen of chapter twenty-two of this code, whose only function is to accept free-of-charge, buy or transfer source separated material or recycled material for resale or transfer for further processing shall be exempt from the provisions of said article and article four of chapter twenty-two-c and sections one-c and one-f, article two, chapter twenty-four of this code.
§21-3B-3. Environmental assistance resource board.

There is hereby created within the division of labor an environmental assistance resource board to advise and assist the commissioner of labor in developing the technical resources necessary to administer the provisions of this article. The board is composed of the commissioner of the division of labor, who serves as chair; the chief of the office of air quality of the division of environmental protection; the chief of the office of water resources of the division of environmental protection; the chief of the office of waste management of the division of environmental protection; the director of the division of environmental protection; one member of the House of Delegates appointed by the speaker of the House; and one member of the Senate appointed by the president of the Senate. Terms of legislative members of the board run concurrent with the member’s legislative term of office.

The board shall meet within thirty days of the effective date of this article and thereafter at the call of the chair. The board shall establish an information network wherein the commissioner of labor and any consultant advising employers, in order to provide accurate information regarding compliance with environmental and hazardous waste rules, may access written materials or staff having technical expertise within the agencies represented on the board. At the request of the board, the secretary of the department of commerce, labor and environmental resources is authorized to direct the assignment of staff, on a temporary or permanent basis, from any agency represented on the board to the division of labor to assist in the implementation of the employer assistance program set forth in this article.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

Article
1. Division of Environmental Protection.
1A. Private Real Property Protection.
2. Abandoned Mine Lands and Reclamation Act.
3. Surface Coal Mining and Reclamation Act.
4. Surface Mining and Reclamation of Minerals Other Than Coal.
5. Air Pollution Control.
6. Office of Oil and Gas; Oil and Gas Wells; Administration; Enforcement.
7. Oil and Gas Production Damage Compensation.
8. Transportation of Oils.
10. Abandoned Well Act.
11. Water Pollution Control Act.
15. Solid Waste Management Act.
16. Solid Waste Landfill Closure Assistance Program.
20. Environmental Advocate.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings, legislative statement of policy and purpose.

§22-1-2. Definitions.

§22-1-3. Rule making generally; relationship to federal programs.

§22-1-3a. Rules — New or amended environmental provisions.

§22-1-4. Division of environmental protection; appointment of director.

§22-1-5. Jurisdiction vested in division.

§22-1-6. Director of the division of environmental protection.

§22-1-7. Offices within division.


§22-1-10. Allocation of appropriations and effect on personnel.


§22-1-14. Stream restoration fund; creation; special account; purposes and expenditures.

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds that:

1 (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.
6 (2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

6 (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.

6 (4) 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 (5) Those functions of government which regulate the environment should be consolidated 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 development consistent with environmental goals and standards.

6 (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 chapter are:

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

(2) To consolidate environmental regulatory programs in a single state agency;

(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) "Department" means the department of commerce, labor and environmental resources.

(2) "Director" means the director of the division of environmental protection.

(3) "Division" means the division of environmental protection.

(4) "Function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity or program.

(5) "Office" includes any office, board, agency, unit, organizational entity, or component thereof.

(6) "Secretary" means the secretary of the department of commerce, labor and environmental resources.

§22-1-3. Rule making generally; relationship to federal programs.

(a) 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 to carry out and implement the provisions of this chapter and to carry out and implement any other provision of law relating to offices or functions of the division.

(b) The requirements and limitations set forth in this section apply to any rule-making authority granted pursuant to this chapter or chapters twenty-two-b and twenty-two-c of this code.

(c) Prior to the proposal of any new rule, the director shall consult with the division of environmental protection advisory council and after such consultation, the director may determine that such a rule should be the same in substance as a counterpart federal regulation. If the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practicable, such proposed rule shall
incorporate by reference the counterpart federal regulation. The director shall file, contemporaneously with the proposed rule, a statement setting forth whether the rule is the same in substance as a counterpart federal regulation. If the director determines that the rule should not be the same in substance as a counterpart federal regulation, then the director shall file contemporaneously with the proposed rule, a statement setting forth the differences between the proposed rule and the counterpart federal regulation. In addition, the director shall file a statement setting forth the results of the consultation with the advisory council.

(d) Whenever any existing rule is modified, amended or replaced, the provisions of subsection (c) of this section apply to the proposal of any such modification, amendment or replacement rule.

(e) Notwithstanding the provisions of article three, chapter twenty-nine-a of this code, at least one public hearing shall be held by the division in conjunction with each rule making prior to the expiration of the public comment period for the proposed rules.

§22-1-3a. Rules — New or amended environmental provisions.

Except for legislative rules promulgated for the purpose of implementing the provisions of section four, article twelve, section six, article seventeen, and section six, article eighteen, all of this chapter, and notwithstanding the provisions of section four, article five of this chapter, legislative rules promulgated by the director which become effective on or after the first day of July, one thousand nine hundred ninety-four, may include new or amended environmental provisions which are more stringent than the counterpart federal rule or program to the extent that the director first provides specific written reasons which demonstrate that such provisions are reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated
18 legislative findings, policies or purposes relied upon by
19 the director in making such determination. In the case
20 of specific rules which have a technical basis, the
21 director shall also provide the specific technical basis
22 upon which the director has relied.

23 In the event that legislative rules promulgated by the
director which become effective on or after the first day
24 of July, one thousand nine hundred ninety-four, include
25 new or amended environmental provisions which are
26 less stringent than a counterpart federal rule which
27 recommends, but does not require, a particular standard
28 or any federally recommended environmental standard
29 whether or not there be a counterpart federal rule, the
30 division shall first provide specific written reasons
31 which demonstrate that such provisions are not reason-
32 ably necessary to protect, preserve or enhance the
33 quality of West Virginia's environment or human health
34 or safety, taking into consideration the scientific
35 evidence, specific environmental characteristic of West
36 Virginia or an area thereof, or stated legislative
37 findings, policies or purposes relied upon by the director
38 in making such determination. In the case of specific
39 rules which have a technical basis, the director shall also
40 provide the specific technical basis upon which the
41 director has relied.

42 In the absence of a federal rule, the adoption of a state
43 rule shall not be construed to be more stringent than a
44 federal rule, unless the absence of a federal rule is the
45 result of a specific federal exemption.

§22-1-4. Division of environmental protection; appoint-
ment of director.

1 The division of environmental protection is continued
2 within the department of commerce, labor and environ-
3 mental resources. The division shall be administered, in
4 accordance with the provisions of this article, under the
5 supervision and direction of the director.

§22-1-5. Jurisdiction vested in division.

1 Except as may be otherwise provided in this code,
2 the division is hereby designated as the lead regulatory
agency for this state for all purposes of federal legislation relating to all activities regulated under this chapter.

§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the director 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, stenographers, 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 has the power to and may designate supervisory officers or other officers or employees of the division to substitute for him or her on any board or commission established under this code 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 has the power to delegate, as he or she considers appropriate, to 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 elsewhere in this code.

(c) The director has 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 instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the director by this chapter, 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; issue orders, which for the purposes of this chapter include consent agreements; 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, condemna-
tion, 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) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director; and

(6) Issue certifications required under 33 U.S.C. §1341. Prior to issuing any such certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration.

(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves 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 the office of the secretary of state. Premiums on the bond shall be paid from the division funds.

§22-1-7. Offices within division.

Consistent with the provisions of this article the director shall, at a minimum, maintain the following offices within the division:

(1) The office of abandoned mine lands and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article two of this chapter;

(2) The office of mining and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director the provisions of articles three and four of this chapter;
(3) The office of air quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

(4) The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

(5) The office of water resources, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven, twelve, thirteen and fourteen of this chapter; and

(6) The office of waste management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter.


(a) The director shall appoint a competent and qualified person to be chief of each office specified in section seven of this article. The chief is the principal administrative officer of that office and is accountable and responsible for the orderly and efficient performance of the duties, functions and services of her or his office.

(b) There shall be in the division such other supervisory officers as the director determines is necessary to administer the functions of the division. Such supervisory officers are “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. 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 position.

(c) 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.

(d) 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.


(a) There is created within the department of commerce, labor and environmental resources the environmental protection advisory council. The environmental protection advisory council consists of seven members. The director serves as an ex officio member of the council and as its chair. The remaining six members are appointed by the governor. Each member serves for a term of four years and may be reappointed. Of the members of the council first appointed, two shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-six, and two each for terms ending one and two years thereafter. Vacancies on the council shall be filled within sixty days after the vacancy occurs.

(b) Two members of the council shall represent industries regulated by the division or their trade associations. Two members shall represent organizations advocating environmental protection. One member shall represent organizations representing local govern-
ments. One member shall represent public service
districts. In making subsequent appointments this
balance of membership shall be maintained.

(c) Appointed members shall be paid the same
compensation and expense reimbursement as is paid to
members of the Legislature for their interim duties as
recommended by the citizens legislative compensation
commission and authorized by law for each day or
portion thereof engaged in the discharge of official
duties.

(d) The council shall meet at least once every quarter
and at the call of the chair.

(e) The council shall:

(1) Consult with and advise the director on program
and policy development, problem solving and other
appropriate subjects;

(2) Identify and define problems associated with the
implementation of the policy set forth in section one of
this article;

(3) Provide and disseminate to industry and the public
early identification of major federal program and
regulatory changes;

(4) Provide a forum for the resolution of conflicts
between constituency groups;

(5) To the extent possible, strive for consensus on the
development of overall environmental policy; and

(6) Provide an annual report to the joint committee
on government and finance on or before the first day of
January of each year relating to its findings with regard
to the division's performance during the previous year.
The report will specifically address the division's
performance in accomplishing the nine purposes set
forth in subsection (b), section one of this article.

§22-1-10. Allocation of appropriations and effect on
personnel.

(a) The director may, with the exception of the special
reclamation fund established in section eleven, article
three of this chapter, 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-b and twenty-two-c 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 regulations of the federal government.

(b) With respect to employees affected by the creation of the division or the transfer of functions and offices to the division 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 are 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 has the qualifications established for the job class. The duration of recall rights provided in this subsection is limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section abridges 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.

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


(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, author-
izations 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 have been transferred to the director or to the division, and were in effect on the date such transfer occurred continue in effect, for the benefit of the division, according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the governor, the secretary, the director, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) 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 were transferred to the division are not affected by the transfer. 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 prohibits 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 discontinued or modified if the division had not been created or if functions or offices had not been transferred to the division. 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 creation of the division and the subsequent transfer of functions to it do not affect suits commenced prior to the effective date of the creation or any transfer of functions or offices to it, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with like effect as if the creation or transfer had not occurred.

(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 were transferred to the
division abates by reason of such transfer. No cause of
action by or against any department, division or other
office, functions of which were transferred to the
division, or by or against any officer thereof in the
official capacity of such officer, abates by reason of the
transfer.

(e) If, before the transfer, any department, division or
other office, or officer thereof in the official capacity of
such officer, was a party to a suit, and any function of
such department, division or other office, or officer was
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.


The division shall collect, organize and from time to
time distribute to the public, through news media or
otherwise, interesting facts, information and data
concerning the state's environment and its environmen-
tal regulatory programs. The director may organize and
promote lectures, demonstrations, symposiums, schools
and other educational programs relating to the state's
environment and its protection. Video tapes, motion
pictures, slide films and other photographic services
may be provided for instruction on the environment and
its protection for schools, other governmental agencies,
and civic organizations under such rules as may be
prescribed by the director.

The director shall select and designate a competent
and qualified person as division public information
officer, who is responsible for the organization and
management of the division's public information and
public affairs programs.


Any person may request the director to notify the
person of a decision to issue or deny a specific permit
applied for under this chapter. The request must be in writing and received by the director within the public comment period or at a public hearing held for the specific permit application. If there is no public comment period or public hearing held for the specific permit application the director is required to make the notification under this section only if the request for notification is received by the director at least two working days prior to notifying the applicant of the decision. The director shall notify all persons who have made a timely request under this section of the decision on the application at the same time the applicant is notified of the decision. The notification shall advise the person of any appeal rights under this chapter.

§22-1-14. Stream restoration fund; creation; special account; purposes and expenditures.

(a) There is hereby created in the state treasury a special interest bearing account known as the "stream restoration fund." Moneys received by the division pursuant to transfers from any other account lawfully transferred, from the federal government and other sources, from mitigation, moneys, from gifts, bequests, donations and contributions, and other moneys lawfully received from whatever source, may be deposited in the state treasury to the credit of the stream restoration fund.

(b) Expenditures from the fund are not authorized from collections but shall only be authorized by line item appropriation by the Legislature. The moneys are to be used and expended for the restoration and enhancement of the streams and water resources of this state which have been affected by coal mining or acid mine drainage.

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

(a) The director shall promulgate rules to require the certification of laboratories conducting waste and wastewater tests and analyses to be used for purposes
of demonstrating compliance under the covered statutory programs, including reasonable annual certification fees based upon the type or classification of tests or analyses being conducted by laboratories not to exceed an annual program aggregate of one hundred fifty thousand dollars, to be assessed against laboratory owners or operators in such an amount as is necessary to cover the actual costs of administration of this program and the processing of certification applications, to be deposited in the state environmental laboratory certification fund created pursuant to this section. By the first day of July of each year beginning the first day of July, one thousand nine hundred ninety-five, the director shall provide to the secretary a written report reflecting funds collected, how the funds were expended, and an assessment of the adequacy of the funding to administer the program.

(b) After the effective date of the rules promulgated pursuant to this section, waste and wastewater tests and analyses conducted in laboratories that are not certified for the parameters or toxicity being tested or analyses shall not be accepted by the division, except as otherwise provided, as being in compliance with the requirements, rules or orders of the division issued under authority of one or more of the covered statutory programs: Provided, That field tests and remote monitoring or testing equipment which is conducted or located away from any laboratory shall not be deemed a laboratory for purposes of assessing the fee but shall be subject to such quality assurance and quality control standards as may be established by the director in rules promulgated pursuant to this section. The director shall provide by rule for the granting of certification for laboratories located outside of West Virginia without performance testing or assessment of certification fee pursuant to this section if such laboratories provide written documentation that approval has been received under requirements in another state determined by the director to be equivalent to the West Virginia laboratory certification program. Such reciprocal certification shall be granted only for testing methods and parameters for which the laboratory holds a valid authorization in such other state.
and only for laboratories in states which allow reciprocity with respect to laboratories located in this state.

(c) Application shall be made to the director for approval or certification by laboratories on forms and in a manner prescribed by the director.

(d) Certification shall be renewed on an annual basis. The existing certification shall remain in effect until the director notifies the applicant for renewal that renewal of certification has been granted or denied.

(e) Certification shall be granted for those tests or parameters for which the laboratory demonstrates adequate performance on performance evaluation tests based on the criteria established in rules by the director. The director shall, by rule, establish criteria governing what shall be considered in any decision to deny or issue a certification.

(f) Failure to comply with the requirements of the applicable analytical methods and procedures or standards specified in the rules of the director shall be grounds for revocation or suspension of certification for the affected test procedures or parameters.

(g) No person subject to the covered statutory programs shall be allowed to use data or test results from waste and wastewater tests and analyses conducted at laboratories lacking certification for purposes of demonstrating compliance under the covered statutory programs: Provided, That any person whose data or test results are invalidated because such person relied upon a laboratory which loses its certification, shall be granted thirty days after notice thereof by the director during which data or test results may be repeated or reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered statutory programs.

(h) A special revenue fund designated the "environmental laboratory certification fund" shall be established in the state treasury on the first day of July, one thousand nine hundred ninety-four. The net proceeds of all fees collected pursuant to this section shall be
deposited in the environmental laboratory certification fund. Upon line item appropriation by the Legislature, the director shall expend the proceeds of the environmental laboratory certification fund solely for the administration of the requirements of this section: 

provided, That for fiscal year one thousand nine hundred ninety-five, expenditures are permitted from collection without further appropriation by the Legislature.

(i) For purposes of this section, “covered statutory program” means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature: Water Pollution Control Act, article eleven of this chapter; Hazardous Waste Management Act, article eighteen of this chapter; Hazardous Waste Emergency Response Fund Act, article nineteen of this chapter; Underground Storage Tank Act, article seventeen of this chapter; the Solid Waste Management Act, article fifteen of this chapter; or the Groundwater Protection Act, article twelve of this chapter.

(j) Any person adversely affected by an order or action by the director pursuant to this section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by the action of the director in granting or denying a certification or renewal thereof, may appeal to the environmental quality board pursuant to article one, chapter twenty-two-b of this code.

(k) The provisions of this section shall apply only to tests and analyses of waste or wastewater subject to regulation by the division of environmental protection. The provisions of this section do not apply to tests or analyses of potable or drinking water.

ARTICLE 1A. PRIVATE REAL PROPERTY PROTECTION.

§22-1A-1. Short title.
§22-1A-2. Legislative findings and purpose.
§22-1A-3. Actions by division of environmental protection; requirement for assessment.
§22-1A-4. Buffer zones.
§22-1A-5. Remedies
§22-1A-6. Scope of application
§22-1A-1. Short title.

This article shall be known and may be cited as the "Private Real Property Protection Act".

§22-1A-2. Legislative findings and purpose.

It is the policy of this state that action by the division of environmental protection affecting private real property is subject to such protection as is afforded by the constitutions of the United States and of West Virginia and the principles of nuisance law. The Legislature intends that the division of environmental protection follow certain procedures to ensure constitutional protection of private real property rights, while also meeting its obligation to protect the quality of the environment, and reduce the burden on citizens, local governments and this state caused by certain actions affecting private real property. The purpose of this article is to establish an orderly, consistent process that better enables the division to evaluate how potential administrative action by it may affect privately owned real property. It is not the purpose of this article to reduce or expand the scope of private real property protections provided in section nine, article three of the constitution of West Virginia and the fifth and fourteenth amendments of the constitution of the United States, as those provisions have been and may in the future be interpreted by the state and federal courts of competent jurisdiction with respect to such matters for this state.

§22-1A-3. Actions by division of environmental protection; requirement for assessment.

(a) Whenever the division of environmental protection considers any action within its statutory authority that is reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her private real property, it shall prepare an assessment that includes, but need not be limited to, the following:

(1) An identification of the risk created by the private real property use, and a description of the environmen-
tual, health, safety, or other benefit to be achieved by the proposed action;

(2) The anticipated effects, if any, on other real property owners or on the environment if the division does not take the proposed action;

(3) An explanation of how the division believes its action advances the purpose of protecting against the risk;

(4) The reasons that the division believes that its action is likely to result in requiring the state, under applicable constitutional principles and case law, to compensate the owner of private real property, including a description of how the action affects the use or value of private real property;

(5) Alternatives, if any, to the proposed action that the division believes will fulfill the legal obligations of the division, reduce the impact on the private real property owner and reduce the likelihood of requiring compensation; and

(6) An estimate of the cost to the state for compensation in the event such compensation is required.

No assessment is required under this article, unless the West Virginia Supreme Court of Appeals or the United State Supreme Court has under similar factual circumstances required compensation to be paid.

(b) In the case of an immediate threat to human health and safety that constitutes an emergency and requires an immediate response, the assessment required by this section may be delayed until after the emergency response is completed.

(c) The following do not require an assessment under this section:

(1) Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(2) Rules and emergency rules of the division that are
reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(3) Enforcement actions undertaken by the division pursuant to any applicable state or federal statutes, rules or regulations.

§22-1A-4. Buffer zones.

(a) Prior to the division of environmental protection requiring that a buffer zone be created on private real property, the division shall prepare a report which shall identify the public purpose or policy which is to be served by the creation of the buffer zone and how the creation and maintenance of the buffer zone promotes or fulfills that public purpose or policy. This report is in addition to any other assessment required pursuant to the provisions of this article.

(b) Any report made pursuant to this section is public information.

(c) In the case of an immediate threat to human health and safety that constitutes an emergency and requires an immediate response, the report required by this section may be delayed until after the emergency response is completed.

§22-1A-5. Remedies.

When a court of competent jurisdiction determines that action of the division of environmental protection, within its statutory authority, requires that compensation be paid to a private real property owner pursuant to section nine, article three of the constitution of West Virginia, or the fifth or fourteenth amendments of the constitution of the United States or the principles of nuisance law, the private real property owner is also entitled to his or her reasonable attorney fees and costs:

(1) If the court determines that the division failed to perform the assessment required in section three of this article; or

(2) If the court determines that the division performed the assessment required in section three of this article
but failed to conclude that its action was reasonably likely to require compensation to be paid to the private real property owner.

§22-1A-6. Scope of application.

The provisions of this article only apply to the programs administered by the division of environmental protection on the effective date of this article.

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-1. Short title.

This article shall be known and cited as the “Abandoned Mine Lands and Reclamation Act”.

§22-2-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

The Legislature finds that there are a substantial number of acres of land throughout the state that were disturbed by surface-mining operations prior to the time of present day effective control and regulation. There was little or no reclamation conducted and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continue to impair environmental quality, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public.
Further, the Legislature finds and declares that, due to the passage of the federal Surface Mining Control and Reclamation Act of 1977, certain areas within the boundaries of this state do not meet present day standards for reclamation.

Further, the Legislature finds that Title IV of the federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, provides for the collection of thirty-five cents per ton of coal produced from surface-mine operations and fifteen cents per ton of coal produced from underground mine operations in West Virginia to be collected by the secretary of the United States department of the interior until the thirtieth day of September, two thousand four. At least fifty percent of the funds collected are to be allocated directly to the state of West Virginia to accomplish reclamation of abandoned coal mining operations, as of the date the state of West Virginia obtained an approved abandoned mine reclamation plan in accordance with Sections 405 and 503 of the federal Surface Mining Control and Reclamation Act of 1977, as amended.

Therefore, it is the intent of the Legislature by this article to vest jurisdiction and authority in the director of the division of environmental protection to maintain program approval by, and receipt of funds from, the United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.


(a) All definitions set forth in article three of this chapter apply to those defined terms which also appear in this article, if applicable.

(b) For the purposes of this article the following words have the meanings ascribed to them in this subsection:

(1) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(2) "Division" means the division of environmental
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11 protection; and

12 (3) “Secretary” means the secretary of the United States Department of Interior.

§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

1 (a) All abandoned land reclamation funds available under Title IV of the federal Surface Mining Control and Reclamation Act of 1977, as amended, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the director, under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.

2 (b) Moneys in the fund may be used by the director for the following:

3 (1) Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all other necessary expenses incurred to accomplish the purpose of this article: Provided, That all expenditures from this fund shall reflect the following priorities in the order stated:

4 (A) The protection of public health, safety, general welfare and property from extreme danger of adverse
effects of past surface-mining practices;

(B) The protection of public health, safety and general welfare from adverse effects of past coal surface-mining practices;

(C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;

(D) Research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques;

(E) The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal surface-mining practices; and

(F) The development of publicly owned land adversely affected by past coal surface-mining practices, including land acquired as provided in this article for recreation and historic purposes, conservation and reclamation purposes and open space benefits.

(2) (A) The director may expend up to thirty percent of the funds allocated to the state in any year through the grants made available under paragraphs (1) and (5), subsection (g) of Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, for the purpose of protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal surface-mining practices.

(B) If the adverse effects on water supplies referred to in this subdivision occurred both prior to and after the third day of August, one thousand nine hundred seventy-seven, subsection (c) of this section does not prohibit the state from using funds for the purposes of this subdivision if the director determines that the adverse effects occurred predominantly prior to the
third day of August, one thousand nine hundred seventy-seven.

(3) The director may receive and retain up to ten percent of the total of the grants made annually to the state under paragraphs (1) and (5), subsection (g) of Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, if the amounts are deposited to the credit of either:

(A) The special account in the state treasury designated the "Reclamation and Restoration Fund" is hereby continued. Moneys in the fund may be expended by the director to achieve the priorities stated in subdivision (1) of this subsection after the thirtieth day of September, one thousand nine hundred ninety-five and for associated administrative and personnel expenses; or

(B) The special account in the state treasury designated the "Acid Mine Drainage Abatement and Treatment Fund" is hereby continued. Moneys in the fund may be expended by the director to implement, in consultation with the United States soil conservation service, acid mine drainage abatement and treatment plans approved by the secretary of the United States department of interior and for associated administrative and personnel expenses. The plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal surface-mining practices.

(c) Except as provided for in this subsection, lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by the mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the third day of August, one thousand nine hundred seventy-seven, and for which there is no continuing reclamation responsibility: Provided, That moneys from the funds made available by the secretary of the United States department of interior pursuant to paragraphs (1) and (5),
subsection (g), Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, may be expended for the reclamation or drainage abatement of a site that: (1) The surface-mining operation occurred during the period beginning on the fourth day of August, one thousand nine hundred seventy-seven, and ending on or before the twenty-first day of January, one thousand nine hundred eighty-one, and that any funds for reclamation or abatement which are available pursuant to a bond or other financial guarantee or from any other source, and not sufficient to provide for adequate reclamation or abatement of the site; or (2) the surface-mining operation occurred during the period beginning on the fourth day of August, one thousand nine hundred seventy-seven, and ending on or before the fifth day of November, one thousand nine hundred ninety, and that the surety of the surface-mining operation became insolvent during that period, and as of the fifth day of November, one thousand nine hundred ninety, funds immediately available from proceeding relating to the insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation of the site: Provided, however, That the director, with the concurrence of the secretary, makes either of the above-stated findings, and that the site is eligible, or more urgent than the reclamation priorities set forth in paragraphs (A) and (B), subdivision (1), subsection (b) of this section.

(d) One purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article or any act done by virtue of this article estop the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.

(e) Where the governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in
§22-2-5. **Powers and duties of director; program plans and reclamation projects.**

(a) The director shall submit to the secretary a state reclamation plan and annual projects to carry out the purposes of this article.

(b) That reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded and the legal authority and programmatic capability to perform the work in conformance with the provisions of this article.

(c) On an annual basis, the director shall submit to the secretary an application for the support of the state program and implementation of specific reclamation projects. The annual requests shall include information as may be requested by the secretary including:

(1) A general description of each proposed project;

(2) A priority evaluation of each proposed project;

(3) A statement of the estimated benefits in such terms as number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution and hazards of mine and coal refuse disposal area fires;

(4) An estimate of the cost for each proposed project;

(5) In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

(6) An identification of lands or interest therein to be acquired and the estimated cost; and

(7) In each year after the first in which a plan is filed
under this article, an inventory of each project funded under the previous year’s grant, which inventory shall include details of financial expenditures on the project together with a brief description of the project, including the project’s location, the landowner’s name, acreage and the type of reclamation performed.

(d) The costs for each proposed project under this section include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs and other necessary administrative expenses.

§22-2-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

(a) If the director makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal surface-mining practices;

(2) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control or prevent should be taken;

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices are not known or readily available; or

(4) The owners will not give permission for the director, his or her agents, employees or contractors to enter upon the property to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices, then, upon giving notice by mail to the owners, if known, or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director, his or her agents, employees or contractors have the right to enter upon the property adversely affected by past coal surface-mining practices and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. The entry shall be construed as an exercise of the police
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power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for the work and the benefits accruing to any premises so entered upon is chargeable against the land and mitigates or offsets any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry: Provided, That this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The director, his or her agents, employees or contractors have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal surface-mining practices and to determine the feasibility of restoration, reclamation, abatement, control or prevention of the adverse effects. The entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

(c) The director may acquire any land by purchase, donation or condemnation, which is adversely affected by past coal surface-mining practices, if the director determines that acquisition of the land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices will serve recreation, historic, conservation or reclamation purposes or provide open space benefits;

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency
situations and prevent recurrences of the adverse effects
of past coal surface-mining practices.

(d) Title to all lands acquired pursuant to this section
shall be in the name of the state of West Virginia, by
the West Virginia division of environmental protection.
The price paid for land acquired under this section shall
reflect the fair market value of the land as adversely
affected by past coal surface-mining practices.

(e) The director is hereby authorized to transfer land
obtained under subsection (c) of this section to the
secretary. The director may purchase the land from the
secretary after reclamation at the fair market value less
the state’s original acquisition price.

(f) The director may accept and local political
subdivisions may transfer to the director land belonging
to them to carry out the purposes set out in this article
and in that event they have a preferential right to
purchase the land after reclamation at the fair market
value less the political subdivision’s cost of acquisition,
but at no time shall the director sell the land to a
political subdivision at a price less than the cost of the
acquisition and reclamation of the land: Provided, That
if any land sold to a political subdivision under this
subsection is not used for a valid public purpose as
specified by the director in the terms and conditions of
the sales agreement, then all rights, title and interest
in the land revert to the West Virginia division of
environmental protection. Any moneys received from
the sale shall be deposited in the abandoned land
reclamation fund.

(g) Where land acquired pursuant to this section is
considered to be suitable for industrial, commercial,
residential or recreational development, the director
may sell the land by public sale under a system of
competitive bidding at not less than fair market value
and pursuant to rules promulgated to ensure that the
lands are put to proper use consistent with state and
local land use plans.

(h) The director, if requested and after appropriate
public notice, shall hold a public hearing in the county
in which land acquired pursuant to this section is located. The hearing shall be held at a time which affords local citizens and government the maximum opportunity to participate in the decision concerning the use and disposition of the land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the director is authorized to use money in the fund to acquire land from any federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal surface-mining practices which constitute an emergency as provided in section 410 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. The activities shall be accomplished under such terms and conditions as the director requires, which may include transfers of land with or without monetary consideration: Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association or corporation. No part of the funds provided under this article may be used to pay the actual construction costs of housing. The director may carry out the purposes of this subsection directly or he or she may make grants and commitments for grants, and may advance money under such terms and conditions as he or she may require to any department, agency or political subdivision of this state, or any public body or nonprofit organization designated by the director.
§22-2-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

(a) Within six months after the completion of a project to restore, reclaim, abate, control or prevent adverse effects of past coal surface-mining practices on a privately owned land, the director shall itemize the moneys so expended and may file a statement thereof in the office of the clerk of the county commission in the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past coal surface-mining practices, if the moneys so expended result in a significant increase in property value. The statement constitutes a lien upon the land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices. No lien may be filed against the property of any person in accordance with this subsection, who owned the surface prior to the second day of May, one thousand nine hundred seventy-seven, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

(b) The landowner may petition the director within sixty days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices. The amount reported to be the increase in value of the premises is the amount of lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal to the circuit court of the county in which the land is located.

(c) The statement filed pursuant to subsection (a) of this section is a lien upon the land as of the date of the expenditure of the moneys and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(a) The Legislature declares that voids, open and abandoned tunnels, shafts and entryways and subsidence resulting from any previous coal surface-mining operation are a hazard to the public welfare and safety and that surface impacts of any underground or surface-mining operation may degrade the environment. The director is authorized to fill the voids, seal the abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mines and remove water and other matter from mines which the director determines could endanger life and property, are a hazard to the public welfare and safety or degrade the environment.

(b) In those instances where coal mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding, if the disposal of those wastes meets the purposes of this article.

(c) The director may acquire by purchase, donation, easement or otherwise such interest in land as he or she determines necessary to carry out the provisions of this section.

§22-2-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

(a) The director is authorized to engage in any work and to do all things necessary and proper, including promulgation of rules, to implement and administer the provisions of this article.

(b) The director is authorized to engage in cooperative projects under this article with any other agency of the United States of America, any state, county or municipal agency or subdivision thereof.

(c) The director may request the attorney general, who is hereby authorized to initiate, in addition to any
other remedies provided for in this article, in any court
of competent jurisdiction, an action in equity for an
injunction to restrain any interference with the exercise
of the right to enter or to conduct any work provided
in this article.

(d) The director has the authority to construct and
operate a plant or any facilities for the control and
treatment of water pollution resulting from mine
drainage. The extent of this control and treatment may
be dependent upon the ultimate use of the water:  
Provided, That this subsection does not repeal or
supersede any portion of the applicable federal or state
water pollution control laws and no control or treatment
under this section may be less than that required under
any applicable federal or state water pollution control
law. The construction of any facilities may include
major interceptors and other facilities appurtenant to
the plant.

(e) All departments, boards, commissions and agen-
cies of the state shall cooperate with the director by
providing technical expertise, personnel, equipment,
materials and supplies to implement and administer the
provisions of this article.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-1. Short title.
§22-3-2. Legislative findings and purpose; jurisdiction vested in division of
environmental protection; authority of director; inter-depart-
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§22-3-3. Definitions.

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§22-3-29. Experimental practices.

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§22-3-31. Conflict of interest prohibited; criminal penalties therefor; employee protection.

§22-3-32. Special tax on coal production; mines and minerals operations fund.

§22-3-1. Short title.

1 This article shall be known and cited as the "Surface Coal Mining and Reclamation Act."

§22-3-2. Legislative findings and purpose; jurisdiction vested in division of environmental protection; authority of director; inter-departmental cooperation.

1 (a) The Legislature finds that it is essential to the
Further, the Legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the state of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and by reason of the above it may be necessary for the director to promulgate rules which vary from federal regulations as is provided for in sections 101 (f) and 201 (c)(9) of the federal Surface Mining Control and Reclamation Act of 1977, as amended, “Public Law 95-87.”

Further, the Legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and river and stream beds; by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the property of citizens; by creating hazards dangerous to life and property; and by degrading the quality of life in local communities, all where proper mining and reclamation is not practiced.

(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide program to protect the public and the environment from the adverse effects of surface-mining operations;

(2) Assure that the rights of surface and mineral owners and other persons with legal interest in the land or appurtenances to land are adequately protected from such operations;

(3) Assure that surface-mining operations are not conducted where reclamation as required by this article is not feasible;
(4) Assure that surface-mining operations are conducted in a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface-mining operations;

(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and constitutional powers for the protection of the public interest through effective control of surface-mining operations; and

(8) Assure that the coal production essential to the nation's energy requirements and to the state's economic and social well-being is provided.

(c) In recognition of these findings and purposes, the Legislature hereby vests authority in the director of the division of environmental protection to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;

(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce rules pursuant to this article;

(4) Enter into a cooperative agreement with the secretary of the United States department of the interior to provide for state regulation of surface-mining operations on federal lands within West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation Act of 1977, as amended; and

(5) Administer and enforce rules promulgated pursuant to this chapter to accomplish the requirements of programs under the federal Surface Mining Control and Reclamation Act of 1977, as amended.
(d) The director of the division of environmental protection and the director of the office of miners' health, safety and training shall cooperate with respect to each agency's programs and records to effect an orderly and harmonious administration of the provisions of this article. The director of the division of environmental protection may avail himself or herself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. Also, he or she may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

§22-3-3. Definitions.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a manner so that the treated water does not violate the effluent limitations or cause a violation of the water quality standards established for the river, stream or drainway into which such water is released.

(b) "Affected area" means, when used in the context of surface-mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface-mining and reclamation activities. "Affected area" means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit: (1) By surface operations or facilities incident to underground mining activities; or (2) by underground operations.

(c) "Adjacent areas" means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact. "Adjacent areas" means, for the purpose of conducting
surface-mining and reclamation operations, those land
and water resources contiguous to or near the affected
area upon which surface-mining and reclamation
operations conducted within a permit area during the
life of such operations may have an impact.

(d) "Applicant" means any person who has or should
have applied for any permit pursuant to this article.

(e) "Approximate original contour" means that
surface configuration achieved by the backfilling and
grading of the disturbed areas so that the reclaimed
area, including any terracing or access roads, closely
resembles the general surface configuration of the land
prior to mining and blends into and complements the
drainage pattern of the surrounding terrain, with all
highwalls and spoil piles eliminated: Provided, That
water impoundments may be permitted pursuant to
subdivision (8), subsection (b), section thirteen of this
article: Provided, however, That minor deviations may
be permitted in order to minimize erosion and sedimen­
tation, retain moisture to assist revegetation, or to direct
surface runoff.

(f) "Assessment officer" means an employee of the
division, other than a surface-mining reclamation
supervisor, inspector or inspector-in-training, appointed
by the director to issue proposed penalty assessments
and to conduct informal conferences to review notices,
orders and proposed penalty assessments.

(g) "Breakthrough" means the release of water which
has been trapped or impounded, or the release of air into
any underground cavity, pocket or area as a result of
surface-mining operations.

(h) "Coal processing wastes" means earth materials
which are or have been combustible, physically unstable
or acid-forming or toxic-forming, which are wasted or
otherwise separated from product coal, and slurried or
otherwise transported from coal processing plants after
physical or chemical processing, cleaning or concentrat­
ing of coal.

(i) "Director" means the director of the division of
environmental protection or such other person to whom
the director has delegated authority or duties pursuant
to sections six or eight, article one of this chapter.

(j) "Disturbed area" means an area where vegetation,
topsoil or overburden has been removed or placed by
surface-mining operations, and reclamation is
incomplete.

(k) "Division" means the division of environmental
protection.

(l) "Imminent danger to the health or safety of the
public" means the existence of such condition or
practice, or any violation of a permit or other require-
ment of this article, which condition, practice or
violation could reasonably be expected to cause substan-
tial physical harm or death to any person outside the
permit area before such condition, practice or violation
can be abated. A reasonable expectation of death or
serious injury before abatement exists if a rational
person, subjected to the same conditions or practices
giving rise to the peril, would not expose the person to
the danger during the time necessary for the abatement.

(m) "Minerals" means clay, coal, flagstone, gravel,
limestone, manganese, sand, sandstone, shale, iron ore
and any other metal or metallurgical ore.

(n) "Operation" means those activities conducted by an
operator who is subject to the jurisdiction of this article.

(o) "Operator" means any person who is granted or
who should obtain a permit to engage in any activity
covered by this article and any rule promulgated
hereunder and includes any person who engages in
surface mining or surface mining and reclamation
operations, or both. The term shall also be construed in
a manner consistent with the federal program pursuant
to the federal Surface Mining Control and Reclamation
Act of 1977, as amended.

(p) "Permit" means a permit to conduct surface-
mining operations pursuant to this article.

(q) "Permit area" means the area of land indicated on
the approved proposal map submitted by the operator as part of the operator's application showing the location of perimeter markers and monuments and shall be readily identifiable by appropriate markers on the site.

(r) "Permittee" means a person holding a permit issued under this article.

(s) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(t) "Prime farmland" has the same meaning as that prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes and as published in the federal register.

(u) "Surface mine", "surface mining" or "surface-mining operations" means:

(1) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of section fourteen of this article, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge therefrom. Such activities include: Excavation for the purpose of obtaining coal, including, but not limited to, such common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(2) The areas upon which the above activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities; all lands affected by the construction of new roads or the
improvement or use of existing roads to gain access to
the site of such activities and for haulage; and excava-
tions, workings, impoundments, dams, ventilation
shafts, entryways, refuse banks, dumps, stockpiles,
overburden piles, spoil banks, culm banks, tailings,
holes or depressions, repair areas, storage areas,
processing areas, shipping areas and other areas upon
which are sited structures, facilities, or other property
or materials on the surface, resulting from or incident
to such activities: Provided, That such activities do not
include the extraction of coal incidental to the extraction
of other minerals where coal does not exceed sixteen and
two-thirds percent of the tonnage of minerals removed
for purposes of commercial use or sale, or coal prospect-
ing subject to section seven of this article.

(v) "Underground mine" means the surface effects
associated with the shaft, slopes, drifts or inclines
connected with excavations penetrating coal seams or
strata and the equipment connected therewith which
contribute directly or indirectly to the mining, prepa-
ration or handling of coal.

(w) "Significant, imminent environmental harm to
land, air or water resources" means the existence of any
condition or practice, or any violation of a permit or
other requirement of this article, which condition,
practice or violation could reasonably be expected to
cause significant and imminent environmental harm to
land, air or water resources. The term "environmental
harm" means any adverse impact on land, air or water
resources, including, but not limited to, plant, wildlife
and fish, and the environmental harm is imminent if a
condition or practice exists which is causing such harm
or may reasonably be expected to cause such harm at
any time before the end of the abatement time set by
the director. An environmental harm is significant if
that harm is appreciable and not immediately repair-
able.

§22-3-4. Reclamation; duties and functions of director.

(a) The director shall administer the provisions of this
article relating to surface-mining operations. The
director has within his or her jurisdiction and supervi-
sion all lands and areas of the state, mined or susceptible
of being mined, for the removal of coal and all other
lands and areas of the state deforested, burned over,
barren or otherwise denuded, unproductive and subject
to soil erosion and waste. Included within such lands and
areas are lands seared and denuded by chemical
operations and processes, abandoned coal mining areas,
swamplands, lands and areas subject to flowage ease-
ments and backwaters from river locks and dams, and
river, stream, lake and pond shore areas subject to soil
erosion and waste. The jurisdiction and supervision
exercised by the director shall be consistent with other
provisions of this chapter.

(b) The director has the authority to:

(1) Promulgate rules, in accordance with the provi-
sions of chapter twenty-nine-a of this code, to implement
the provisions of this article: Provided, That the director
shall give notice by publication of the public hearing
required in article three, chapter twenty-nine-a of this
code: Provided, however, That any forms, handbooks or
similar materials having the effect of a rule as defined
in article three, chapter twenty-nine-a of this code were
issued, developed or distributed by the director pursuant
to or as a result of a rule are subject to the provisions
of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to
ensure complete compliance with the provisions of this
code;

(3) Conduct hearings or appoint persons to conduct
hearings under provisions of this article or rules adopted
by the director; and for the purpose of any investigation
or hearing hereunder, the director or his or her
designated representative, may administer oaths or
affirmations, subpoena witnesses, compel their attend-
ance, take evidence and require production of any books,
papers, correspondence, memoranda, agreements, or
other documents or records relevant or material to the
inquiry;

(4) Enforce the provisions of this article as provided
herein; and

(5) Appoint such advisory committees as may be of assistance to the director in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public.

(c) (1) After the director has adopted the rules required by this article, any person may petition the director to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the director and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The director may hold a public hearing or may conduct such investigation or proceeding as he or she considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the director shall either grant or deny the petition. If the director grants the petition, he or she shall promptly commence an appropriate proceeding in accordance with the provisions of chapter twenty-nine-a of this code. If the director denies the petition, he or she shall notify the petitioner in writing setting forth the reasons for the denial.

§22-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The director shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person is eligible for such appointment until he or she has served in a probationary status for a period of six months to the satisfaction of the director.

Every surface-mining reclamation supervisor shall be
§22-3-6. Duties of surface-mining reclamation inspectors and inspectors in training.

Except as otherwise provided in this article, surface-mining reclamation inspectors and inspectors in training shall make all necessary surveys and inspections of surface-mining operations required by the provisions of this article, shall administer and enforce all surface-mining laws and rules and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. Such inspectors shall note and describe all violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.

§22-3-7. Notice of intention to prospect, requirements therefor; bonding; director's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.

(a) Any person intending to prospect for coal in an area not covered by a surface-mining permit, in order to determine the location, quantity or quality of a natural coal deposit, making feasibility studies or for any other purpose, shall file with the director, at least fifteen days prior to commencement of any disturbance associated with prospecting, a notice of intention to prospect, which notice shall include a description of the prospecting area, the period of supposed prospecting and such other information as required by rules promulgated pursuant to this section: Provided, That prior to the commencement of such prospecting, the director may issue an order denying or limiting permission to prospect where the director finds that prospecting operations will damage or destroy a unique natural area, or will cause serious harm to water quality, or that the operator has failed to satisfactorily
reclaim other prospecting sites, or that there has been
an abuse of prospecting by previous prospecting
operations in the area.

(b) Notice of intention to prospect shall be made in
writing on forms prescribed by the director and shall
be signed and verified by the applicant. The notice shall
be accompanied by (1) a United States geological survey
topographic map showing by proper marking the crop
line and the name, where known, of the seam or seams
to be prospected, and (2) a bond, or cash, or collateral
securities or certificates of the same type and form and
in the same manner as provided in section eleven of this
article, in the amount of five hundred dollars per acre
or fraction thereof for the total estimated disturbed
area. If such bond is used, it shall be payable to the state
of West Virginia and conditioned that the operator
faithfully perform the requirements of this article as
they relate to backfilling and revegetation of the
disturbed area.

(c) Any person prospecting under the provisions of
this section shall ensure that such prospecting operation
is conducted in accordance with the performance
standards in section thirteen of this article for all lands
disturbed in explorations, including excavations, roads,
drill holes, and the removal of necessary facilities and
equipment.

(d) Information submitted to the director pursuant to
this section as confidential, concerning trade secrets or
privileged commercial or financial information, which
relates to the competitive rights of the person or entity
intended to prospect the described area, is not available
for public examination.

(e) Any person who conducts any prospecting activ-
ities which substantially disturb the natural land
surface in violation of this section or rules issued
pursuant thereto is subject to the provisions of sections
sixteen and seventeen of this article.

(f) No operator shall remove more than two hundred
fifty tons of coal without the specific written approval
of the director. Such approval shall be requested by the
operator on forms prescribed by the director. The
director shall promulgate rules governing such opera-
tions and setting forth information required in the
application for approval. Each such application shall be
accompanied by a two thousand dollar filing fee.

(g) The bond accompanying said notice of intention to
prospect shall be released by the director when the
operator demonstrates that a permanent species of
vegetative cover is established.

(h) In the event an operator desires to mine the area
currently being prospected, and has requested and
received an appropriate surface mine application
(S.M.A.) number, the director may permit the postpone-
ment of the reclamation of the area prospected. Any
part of a prospecting operation, where reclamation has
not been postponed as provided above, shall be re-
claimed within a period of three months from
disturbance.

(i) For the purpose of this section, the word “prospect”
or “prospecting” does not include core drilling related
solely to taxation or highway construction.

§22-3-8. Prohibition of surface mining without a permit;
permit requirements; successor in interest;
duration of permits; proof of insurance;
termination of permits; permit fees.

No person may engage in surface-mining operations
unless such person has first obtained a permit from the
director in accordance with the following:

(1) All permits issued pursuant to the requirements
of this article shall be issued for a term not to exceed
five years: Provided, That if the applicant demonstrates
that a specified longer term is reasonably needed to
allow the applicant to obtain necessary financing for
equipment and the opening of the operation, and if the
application is full and complete for such specified longer
term, the director may extend a permit for such longer
term: Provided, however, That subject to the prior
approval of the director, with such approval being
subject to the provisions of subsection (c), section
eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's permit application or application for transfer is granted or denied.

(2) Proof of insurance is required on an annual basis.

(3) A permit terminates if the permittee has not commenced the surface-mining operations covered by such permit within three years of the date the permit was issued: Provided, That the director may grant reasonable extensions of time upon a timely showing that such extensions are necessary by reason of litigation precluding such commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface-mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(4) Each application for a new surface-mining permit filed pursuant to this article shall be accompanied by a fee of one thousand dollars. All permit fees and renewal fees provided for in this section or elsewhere in this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the director, for the administration of this article.

(5) Prior to the issuance of any permit, the director shall ascertain from the commissioner of the division of labor whether the applicant is in compliance with section fourteen, article five, chapter twenty-one of this code. Upon issuance of the permit, the director shall
forward a copy to the commissioner of the division of labor, who shall assure continued compliance under such permit.

(6) Prior to the issuance of any permit, the director shall ascertain from the commissioner of the bureau of employment programs whether the applicant is in compliance with the provisions of section five, article two, chapter twenty-three of this code. If the applicant is not in compliance, then the permit shall not be issued until the applicant returns to compliance: Provided, That in all such inquiries the commissioner of the bureau of employment programs shall make response to the division of environmental protection within fifteen calendar days, otherwise failure to respond timely shall be considered to indicate the applicant is in compliance and such failure will not be used to preclude issuance of the permit.

§22-3-9. Permit application requirements and contents.

(a) The surface-mining permit application shall contain:

(1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the property, surface and mineral, to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator, if different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: Provided, That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in subdivision (6) of this subsection;

(3) A statement of any current surface-mining permits held by the applicant in the state and the permit
number and each pending application;

(4) If the applicant is a partnership, corporation, association or other business entity, the following where applicable: The names and addresses of every officer, partner, resident agent, director or person performing a function similar to a director, together with the names and addresses of any person owning of record ten percent or more of any class of voting stock of the applicant; and a list of all names under which the applicant, officer, director, partner or principal shareholder previously operated a surface-mining operation in the United States within the five-year period preceding the date of submission of the application;

(5) A statement of whether the applicant, or any officer, partner, director, principal shareholder of the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, has ever been an officer, partner, director or principal shareholder in a company which has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been permanently suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) A copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed permit area at least once a week for four successive weeks. The advertisement shall contain in abbreviated form the information required by this section including the ownership and map of the tract location and boundaries of the proposed site so that the proposed operation is readily locatable by local residents, the location of the office of the division where the application is available for public inspection and stating that written protests will be accepted by the director until a certain date which is at least thirty days after the last publication of the applicant's advertisement;

(7) A description of the type and method of surface-
(8) The anticipated starting and termination dates of each phase of the surface-mining operation and the number of acres of land to be affected;

(9) A description of the legal documents upon which the applicant's legal right to enter and conduct surface-mining operations on the proposed permit area is based and whether that right is the subject of pending court litigation: Provided, That nothing in this article may be construed as vesting in the director the jurisdiction to adjudicate property-rights disputes;

(10) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the director of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: Provided, That this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: Provided, however, That the permit application shall not be approved until the information is available and is incorporated into the application;

(12) Accurate maps to an appropriate scale clearly showing: (A) The land to be affected as of the date of application; (B) the area of land within the permit area upon which the applicant has the legal right to enter and conduct surface-mining operations; and (C) all types
of information set forth on enlarged topographical maps of the United States geological survey of a scale of 1:24,000 or larger, including all man-made features and significant known archaeological sites existing on the date of application. In addition to other things specified by the director, the map shall show the boundary lines and names of present owners of record of all surface areas abutting the proposed permit area and the location of all structures within one thousand feet of the proposed permit area;

(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the director, showing pertinent elevation and location of test borings or core samplings, where required by the director, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface-mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) the location of any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil, waste or refuse areas and topsoil preservation areas; (K) the location of all impoundments for waste or erosion control; (L) any settling or water treatment facility or drainage system; (M) constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(14) A statement of the result of test borings or core samples from the permit area, including: (A) Logs of the
drill holes; (B) the thickness of the coal seam to be mined and analysis of the chemical and physical properties of the coal; (C) the sulfur content of any coal seam; (D) chemical analysis of potentially acid or toxic forming sections of the overburden; and (E) chemical analysis of the stratum lying immediately underneath the coal to be mined: Provided, That the provisions of this subdivision may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the secretary of agriculture in order to confirm the exact location of such prime farmlands;

(16) A reclamation plan as presented in section ten of this article;

(17) Information pertaining to coal seams, test borings, core samplings or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;

(18) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and

(19) Other information that may be required by rules reasonably necessary to effectuate the purposes of this article.

(b) If the director finds that the probable total annual production at all locations of any coal surface-mining operator will not exceed three hundred thousand tons,
the determination of probable hydrologic consequences
including the engineering analyses and designs necessary as required by this article or rules promulgated thereunder; the development of cross-section maps and plans as required by this article or rules promulgated thereunder; the geologic drilling and statement of results of test borings and core samplings as required by this article or rules promulgated thereunder; the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by this article or rules promulgated thereunder; the collection of archaeological and historical information required by this article and rules promulgated thereunder and any other archaeological and historical information required by the federal department of the interior and the preparation of plans that may be necessitated thereby shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the director and a reasonable cost of the preparation of such determination and statement shall be assumed by the division from funds provided by the United States department of the interior pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(c) Before the first publication of the applicant's advertisement, each applicant for a surface-mining permit shall file, except for that information pertaining to the coal seam itself, a copy of the application for public inspection in the nearest office of the division as specified in the applicant's advertisement.

(d) Each applicant for a permit shall be required to submit to the director as a part of the permit application a certificate issued by an insurance company authorized to do business in this state covering the surface-mining operation for which the permit is sought, or evidence that the applicant has satisfied state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount
adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(e) Each applicant for a surface-mining permit shall submit to the director as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards.

(f) The applicant shall file as part of the permit application a schedule listing all notices of violation, bond forfeitures, permit revocations, cessation orders or permanent suspension orders resulting from a violation of the federal Surface Mining Control and Reclamation Act of 1977, as amended, this article or any law or regulation of the United States or any department or agency of any state pertaining to air or environmental protection received by the applicant in connection with any surface-mining operation during the three-year period prior to the date of application, and indicating the final resolution of any notice of violation, forfeiture, revocation, cessation or permanent suspension.

(g) Within five working days of receipt of an application for a permit, the director shall notify the operator in writing, stating whether the application is administratively complete and whether the operator’s advertisement may be published. If the application is not administratively complete, the director shall state in writing why the application is not administratively complete.

§22-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface-mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:
6 (1) The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if such land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section nine of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farmlands, and the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management;

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, other state agencies and local governments, which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate, for backfilling, soil stabilization and compacting; grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant
to the performance standards in subdivision (7), subsection (b), section thirteen of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section thirteen or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface-mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface-mining and reclamation process to assure the protection of: (A) The quality of surface and groundwater systems, both on and off-site, from adverse effects of the surface-mining operation; (B) the rights of present users to such water; and (C) the quantity of surface and groundwater systems, both on and off-site, from adverse effects of the surface-mining operation or to provide alternative sources of water where such protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water, and an analysis of the chemical properties, including acid forming properties of the
mineral and overburden: Provided, That information
which pertains only to the analysis of the chemical and
physical properties of the coal, except information
regarding such mineral or elemental contents which are
potentially toxic in the environment, shall be kept
confidential and not made a matter of public record;

(13) The consideration which has been given to
maximize the utilization and conservation of the solid
fuel resource being recovered so that reaffecting the
land in the future can be minimized; and

(14) Such other requirements as the director may
prescribe by rule.

(b) The reclamation plan shall be available to the
public for review except for those portions thereof
specifically exempted in subsection (a) of this section.

§22-3-11. Bonds; amount and method of bonding; bond-
ing requirements; special reclamation tax
and fund; prohibited acts; period of bond
liability.

(a) After a surface-mining permit application has
been approved pursuant to this article, but before a
permit has been issued, each operator shall furnish a
penal bond, on a form to be prescribed and furnished
by the director, payable to the state of West Virginia
and conditioned upon the operator faithfully performing
all of the requirements of this article and of the permit.
The penal amount of the bond shall be one thousand
dollars for each acre or fraction thereof. The bond shall
cover (1) the entire permit area, or (2) that increment
of land within the permit area upon which the operator
will initiate and conduct surface-mining and reclama-
tion operations within the initial term of the permit. If
the operator chooses to use incremental bonding, as
succeeding increments of surface mining and reclama-
tion operations are to be initiated and conducted within
the permit area, the operator shall file with the director
an additional bond or bonds to cover such increments
in accordance with this section: Provided, That once the
operator has chosen to proceed with bonding either the
entire permit area or with incremental bonding, the
operator shall continue bonding in that manner for the
term of the permit: Provided, however, That the
minimum amount of bond furnished shall be ten
thousand dollars.

(b) The period of liability for bond coverage begins
with issuance of a permit and continues for the full term
of the permit plus any additional period necessary to
achieve compliance with the requirements in the
reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the
director and may include, at the option of the operator,
surety bonding, collateral bonding (including cash and
securities), establishment of an escrow account, self-
bonding or a combination of these methods. If collateral
bonding is used, the operator may elect to deposit cash,
or collateral securities or certificates as follows: Bonds
of the United States or its possessions, of the federal
land bank, or of the homeowners' loan corporation; full
faith and credit general obligation bonds of the state of
West Virginia, or other states, and of any county,
district or municipality of the state of West Virginia or
other states; or certificates of deposit in a bank in this
state, which certificates shall be in favor of the division.
The cash deposit or market value of such securities or
certificates shall be equal to or greater than the penal
sum of the bond. The director shall, upon receipt of any
such deposit of cash, securities or certificates, promptly
place the same with the treasurer of the state of West
Virginia whose duty it is to receive and hold the same
in the name of the state in trust for the purpose for
which the deposit is made when the permit is issued.
The operator making the deposit is entitled from time
to time to receive from the state treasurer, upon the
written approval of the director, the whole or any
portion of any cash, securities or certificates so depos-
ted, upon depositing with him or her in lieu thereof,
cash or other securities or certificates of the classes
herein specified having value equal to or greater than
the sum of the bond.

(2) The director may approve an alternative bonding
system if it will (A) reasonably assure that sufficient
funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time, and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The director may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) The special reclamation fund previously created is continued. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this subsection. The fund shall be administered by the director, and he or she is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface-mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on such land is less than the actual cost of reclamation. The director shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The director may use an amount, not to exceed twenty-five percent of the annual amount of the fees collected, for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The director may also expend an
amount not to exceed ten percent of the total annual assets in the fund to implement and administer the provisions of this article, articles two and four of this chapter and, as they apply to the surface mine board, articles one and four, chapter twenty-two-b of this code.

Every person conducting coal surface-mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined. This fee shall be collected by the state tax commissioner 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 a quarterly listing of all persons known to be delinquent in payment of the special tax. The director may take such delinquencies into account in making determinations on the issuance, renewal or revision of any permit. Such tax shall be collected whenever the liabilities of the state established in this subsection exceed the accrued amount in the fund. The tax commissioner shall deposit the fees collected with the treasurer of the state of West Virginia to the credit of the special reclamation fund. The moneys in the fund shall be placed by the treasurer in interest bearing account with the interest being returned to the fund on an annual basis. At the beginning of each quarter, the director shall advise the state tax commissioner and the governor of the assets, excluding payments, expenditures and liabilities, in the fund.

§22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent; expiration of rule; reporting.

(a) Notwithstanding the provisions of section eleven of this article, the director 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 established 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 promulgation 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 amendments 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 legislative rule.
(c) A legislative rule proposed or promulgated pursuant to this section must provide, at a minimum, for the following:

(1) The penal amount of a 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 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.

§22-3-13. General environmental protection performance
standards for surface mining; variances.

(a) Any permit issued by the director pursuant to this
article to conduct surface-mining operations shall
require that such surface-mining operations will meet
all applicable performance standards of this article and
other requirements as the director promulgates.

(b) The following general performance standards are
applicable to all surface mines and require the opera-
tion, at a minimum to:

(1) Maximize the utilization and conservation of the
solid fuel resource being recovered to minimize reaffect-
(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than
sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion and water pollution and is revegetated in accordance with the requirements of this article: Provided further, That the director shall promulgate rules governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface-mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to the third day of August, one thousand nine hundred seventy-seven, or (B) for areas upon which surface mining prior to the first day of July, one thousand nine hundred seventy-seven, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface-mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner such other strata which is best able to support vegetation;
(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States secretary of agriculture and the soil conservation service pertaining thereto. The operator, at a minimum, shall be required to: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in subparagraph (B) above with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A) above;

(8) Create, if authorized in the approved surface-mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the director determines that the resulting impoundment of
water in such auger holes may create a hazard to the
environment or the public welfare and safety: Provided,
That the director may prohibit augering if necessary to
maximize the utilization, recoverability or conservation
of the mineral resources or to protect against adverse
water quality impacts;

(10) Minimize the disturbances to the prevailing
hydrologic balance at the mine site and in associated off-
site areas and to the quality and quantity of water in
surface and groundwater systems both during and after
surface-mining operations and during reclamation by:
(A) Avoiding acid or other toxic mine drainage by such
measures as, but not limited to: (i) Preventing or
removing water from contact with toxic producing
deposits; (ii) treating drainage to reduce toxic content
which adversely affects downstream water upon being
released to water courses; and (iii) casing, sealing or
otherwise managing boreholes, shafts and wells and
keep acid or other toxic drainage from entering ground
and surface waters; (B) conducting surface-mining
operations so as to prevent to the extent possible, using
the best technology currently available, additional
contributions of suspended solids to streamflow or
runoff outside the permit area, but in no event shall
contributions be in excess of requirements set by
applicable state or federal law; (C) constructing an
approved drainage system pursuant to subparagraph
(B) of this subdivision prior to commencement of
surface-mining operations, such system to be certified
by a person approved by the director to be constructed
as designed and as approved in the reclamation plan; (D)
avoiding channel deepening or enlargement in opera-
tions requiring the discharge of water from mines; (E)
unless otherwise authorized by the director, cleaning out
and removing temporary or large settling ponds or other
siltation structures after disturbed areas are revege-
tated and stabilized, and depositing the silt and debris
at a site and in a manner approved by the director; (F)
restoring recharge capacity of the mined area to
approximate premining conditions; and (G) such other
actions as the director may prescribe;
(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface-mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director; and (B) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, however, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting
from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the director, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site: Provided, That this notice shall suffice as daily notice to residents or occupants of the areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent: (i) Injury to persons; (ii) damage to public and private property outside the permit area; (iii) adverse impacts on any underground mine; and (iv) change in the course, channel or availability of ground or surface water outside the permit area; (D) require that all blasting operations be conducted by persons certified by the director; and (E) provide that upon written request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permit area, the applicant or permittee shall conduct a preblasting survey or other appropriate investigation of the structures and submit the results to the director and a copy to the resident or owner making the request. The area of the survey shall be determined by the director in accordance with rules promulgated by him or her;

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface-mining operations. Time limits shall be established by the director requiring backfilling, grading and planting to be kept current:
Provided, That where surface-mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the director has promulgated specific rules to govern the granting of such variances in accordance with the provisions of this subparagraph and has imposed such additional requirements as the director deems necessary;

(C) If variances granted under the provisions of this
paragraph are reviewed by the director not more than
three years from the date of issuance of the permit:
Provided, That the underground mining permit shall
terminate if the underground operations have not
commenced within three years of the date the permit
was issued, unless extended as set forth in subdivision
(3), section eight of this article; and

(D) If liability under the bond filed by the applicant
with the director pursuant to subsection (b), section
eleven of this article is for the duration of the under-
ground mining operations and until the requirements of
subsection (g), section eleven and section twenty-three of
this article have been fully complied with.

(17) Ensure that the construction, maintenance and
postmining conditions of access and haulroads into and
across the site of operations will control or prevent
erosion and siltation, pollution of water, damage to fish
or wildlife or their habitat, or public or private
property: Provided, That access roads constructed for
and used to provide infrequent service to surface
facilities, such as ventilators or monitoring devices, are
exempt from specific construction criteria provided
adequate stabilization to control erosion is achieved
through alternative measures;

(18) Refrain from the construction of roads or other
access ways up a stream bed or drainage channel or in
proximity to the channel so as to significantly alter the
normal flow of water;

(19) Establish on the regraded areas, and all other
lands affected, a diverse, effective and permanent
vegetative cover of the same seasonal variety native to
the area of land to be affected or of a fruit, grape or
berry producing variety suitable for human consump-
tion and capable of self-regeneration and plant succes-
sion at least equal in extent of cover to the natural
vegetation of the area, except that introduced species
may be used in the revegetation process where desirable
or when necessary to achieve the approved postmining
land use plan;

(20) Assume the responsibility for successful revege-
tation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection:

Provided, That when the director issues a written finding approving a long-term agricultural postmining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection:

Provided, however, That when the director approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for such agricultural postmining land use;

(21) Protect off-site areas from slides or damage occurring during surface-mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area:

Provided, That spoil material may be placed outside the permit area, if approved by the director after a finding that environmental benefits will result from such;

(22) Place all excess spoil material resulting from surface-mining activities in such a manner that: (A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural
terrace, bench or berm, if placement provides additional
stability and prevents mass movement; (F) where the toe
of the spoil rests on a downslope, a rock toe buttress, of
sufficient size to prevent mass movement, is constructed;
(G) the final configuration is compatible with the
natural drainage pattern and surroundings and suitable
for intended uses; (H) design of the spoil disposal area
is certified by a qualified registered professional
engineer in conformance with professional standards;
and (I) all other provisions of this article are met:

Provided, That where the excess spoil material consists
of at least eighty percent, by volume, sandstone,
limestone or other rocks that do not slake in water and
will not degrade to soil material, the director may
approve alternate methods for disposal of excess spoil
material, including fill placement by dumping in a
single lift, on a site specific basis: Provided, however,
That the services of a qualified registered professional
ingineer experienced in the design and construction of
earth and rockfill embankment are utilized: Provided
further, That such approval shall not be unreasonably
withheld if the site is suitable;

(23) Meet such other criteria as are necessary to
achieve reclamation in accordance with the purposes of
this article, taking into consideration the physical,
climatological and other characteristics of the site;

(24) To the extent possible, using the best technology
currently available, minimize disturbances and adverse
impacts of the operation on fish, wildlife and related
environmental values, and achieve enhancement of these
resources where practicable; and

(25) Retain a natural barrier to inhibit slides and
erosion on permit areas where outcrop barriers are
required: Provided, That constructed barriers may be
allowed where: (A) Natural barriers do not provide
adequate stability; (B) natural barriers would result in
potential future water quality deterioration; and (C)
natural barriers would conflict with the goal of maxi-
mum utilization of the mineral resource: Provided,
however, That at a minimum, the constructed barrier
must be of sufficient width and height to provide
adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points.

(c) (1) The director may prescribe procedures pursuant to which he or she may permit surface-mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, woodland, agricultural, residential or public use is proposed for the postmining use of the affected land, the director may grant a permit for a surface-mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed postmining land use is deemed to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) supported by commitments from public agencies where appropriate; (iv) practicable with respect to private financial capability for completion of the proposed use; (v) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and (vi) designed by a person approved by the director in
conformance with standards established to assure the
stability, drainage and configuration necessary for the
intended use of the site; (C) the proposed use would be
compatible with adjacent land uses, and existing state
and local land use plans and programs; (D) the director
provides the county commission of the county in which
the land is located and any state or federal agency which
the director, in his or her discretion, determines to have
an interest in the proposed use, an opportunity of not
more than sixty days to review and comment on the
proposed use; and (E) all other requirements of this
article will be met.

(4) In granting any permit pursuant to this subsection,
the director shall require that: (A) A natural
barrier be retained to inhibit slides and erosion on
permit areas where outcrop barriers are required:
Provided, That constructed barriers may be allowed
where: (i) Natural barriers do not provide adequate
stability; (ii) natural barriers would result in potential
future water quality deterioration; and (iii) natural
barriers would conflict with the goal of maximum
utilization of the mineral resource: Provided, however,
That, at a minimum, the constructed barrier must be
sufficient width and height to provide adequate stability
and the stability factor must equal or exceed that of the
natural outcrop barrier: Provided further, That where
water quality is paramount, the constructed barrier
must be composed of impervious material with con-
trolled discharge points; (B) the reclaimed area is stable;
(C) the resulting plateau or rolling contour drains
inward from the outslopes except at specific points; (D)
no damage will be done to natural watercourses; (E)
spoil will be placed on the mountaintop bench as is
necessary to achieve the planned postmining land use:
And provided further, That all excess spoil material not
retained on the mountaintop shall be placed in accord-
ance with the provisions of subdivision (22), subsection
(b) of this section; and (F) ensure stability of the spoil
retained on the mountaintop and meet the other
requirements of this article.

(5) All permits granted under the provisions of this
subsection shall be reviewed not more than three years
from the date of issuance of the permit; unless the
applicant affirmatively demonstrates that the proposed
development is proceeding in accordance with the terms
of the approved schedule and reclamation plan.

(d) In addition to those general performance stand-
ards required by this section, when surface mining
occurs on slopes of twenty degrees or greater, or on such
lesser slopes as may be defined by rule after consider-
ation of soil and climate, no debris, abandoned or
disabled equipment, spoil material or waste mineral
matter will be placed on the natural downslope below
the initial bench or mining cut: Provided, That soil or
spoil material from the initial cut of earth in a new
surface-mining operation may be placed on a limited
specified area of the downslope below the initial cut if
the permittee can establish to the satisfaction of the
director that the soil or spoil will not slide and that the
other requirements of this section can still be met.

(e) The director may promulgate rules that permit
variances from the approximate original contour
requirements of this section: Provided, That the wa-
tershed control of the area is improved: Provided,
however, That complete backfilling with spoil material
is required to completely cover the highwall, which
material will maintain stability following mining and
reclamation.

(f) The director shall promulgate rules for the design,
location, construction, maintenance, operation, enlarge-
ment, modification, removal and abandonment of new
and existing coal mine waste piles. In addition to
engineering and other technical specifications, the
standards and criteria developed pursuant to this
subsection must include provisions for review and
approval of plans and specifications prior to construc-
tion, enlargement, modification, removal or abandon-
ment; performance of periodic inspections during
construction; issuance of certificates of approval upon
completion of construction; performance of periodic
safety inspections; and issuance of notices and orders for
required remedial or maintenance work or affirmative
Provided, That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any such coal processing waste pile exists and may take or order to be taken such remedial action as may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life:

Provided, however, That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the division for these purposes, and the sums so expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the director. For purposes of this subsection “operates” or “operated” means to enter upon a coal processing waste pile, or part thereof, for the purpose of disposing, depositing, dumping coal processing wastes thereon or removing coal processing waste therefrom, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

§22-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

(a) The director shall promulgate separate rules directed toward the surface effects of underground coal mining operations, embodying the requirements in subsection (b) of this section: Provided, That in adopting such rules, the director shall consider the distinct difference between surface coal mines and underground coal mines in West Virginia. Such rules may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any rule issued pursuant thereto.

(b) Each permit issued by the director pursuant to
this article and relating to underground coal mining shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: Provided, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and rules promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance
with the standards and criteria developed pursuant to subsection (f), section thirteen of this article, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in subdivision (20), subsection (b), section thirteen of this article;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and groundwater systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines: Provided, That in recognition of the distinct
differences between surface and underground mining
the monitoring of water from underground coal mine
workings shall be in accordance with the provisions of
the Clean Water Act of 1977;

(10) With respect to other surface impacts of under-
ground mining not specified in this subsection, includ-
ing the construction of new roads or the improvement
or use of existing roads to gain access to the site of such
activities and for haulage, repair areas, storage areas,
processing areas, shipping areas, and other areas upon
which are sited structures, facilities or other property
or materials on the surface, resulting from or incident
to such activities, operate in accordance with the
standards established under section thirteen of this
article for such effects which result from surface-mining
operations: Provided, That the director shall make such
modifications in the requirements imposed by this
subdivision as are necessary to accommodate the distinct
difference between surface and underground mining in
West Virginia;

(11) To the extent possible using the best technology
currently available, minimize disturbances and adverse
impacts of the operation on fish, aquatic life, wildlife
and related environmental values, and achieve enhance-
ment of such resources where practicable; and

(12) Unless otherwise permitted by the director and
in consideration of the relevant safety and environmen-
tal factors, locate openings for all new drift mines
working in acid producing or iron producing coal seams
in a manner as to prevent a gravity discharge of water
from the mine.

(c) In order to protect the stability of the land, the
director shall suspend underground mining under
urbanized areas, cities, towns and communities and
adjacent to industrial or commercial buildings, major
impoundments or permanent streams if he or she finds
imminent danger to inhabitants of the urbanized areas,
cities, towns or communities.

(d) The provisions of this article relating to permits,
bonds, insurance, inspections, reclamation and enforce-
ment, public review and administrative and judicial
review are also applicable to surface operations and
surface impacts incident to an underground mine with
such modifications by rule to the permit application
requirements, permit approval or denial procedures and
bond requirements as are necessary to accommodate the
distinct difference between surface mines and under-
ground mines in West Virginia.

§22-3-15. Inspections; monitoring; right of entry; inspec-
tion of records; identification signs; progress
maps.

(a) The director shall cause to be made such inspec-
tions of surface-mining operations as are necessary to
effectively enforce the requirements of this article and
for such purposes the director or his or her authorized
representative shall without advance notice and upon
presentation of appropriate credentials: (A) Have the
right of entry to, upon or through surface-mining
operations or any premises in which any records
required to be maintained under subdivision (1),
subsection (b) of this section are located; and (B) at
reasonable times and without delay, have access to and
copy any records and inspect any monitoring equipment
or method of operation required under this article.

(b) For the purpose of enforcement under this article,
in the administration and enforcement of any permit
under this article, or for determining whether any
person is in violation of any requirement of this article:

(1) The director shall, at a minimum, require any
operator to: (A) Establish and maintain appropriate
records; (B) make monthly reports to the division; (C)
install, use and maintain any necessary monitoring
equipment or methods consistent with subdivision (11),
subsection (a), section nine of this article; (D) evaluate
results in accordance with such methods, at such
locations, intervals and in such manner as the director
prescribes; and (E) provide such other information
relative to surface-mining operations as the director
finds reasonable and necessary; and

(2) For those surface-mining operations which remove
or disturb strata that serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mining site, the director shall require that:
(A) Monitoring sites be established to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence; (B) monitoring sites be established to record level, amount and samples of groundwater and aquifers potentially affected by the surface mining and also below the lowermost mineral seam to be mined; (C) records or well logs and borehole data be maintained; and (D) monitoring sites be established to record precipitation. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the director in order to assure their reliability and validity.

(c) All surface-mining operations shall be inspected at least once every thirty days. Such inspections shall be made on an irregular basis without prior notice to the operator or the operator’s agents or employees, except for necessary on-site meetings with the operator. The inspections shall include the filing of inspection reports adequate to enforce the requirements, terms and purposes of this article.

(d) Each permittee shall maintain at the entrances to the surface-mining operations a clearly visible monument which sets forth the name, business address and telephone number of the permittee and the permit number of the surface-mining operations.

(e) Copies of any records, reports, inspection materials or information obtained under this article by the director shall be made immediately available to the public at central and sufficient locations in the county, multicounty or state area of mining so that they are conveniently available to residents in the areas of mining unless specifically exempted by this article.

(f) Within thirty days after service of a copy of an order of the director upon an operator by registered or certified mail, the operator shall furnish to the director five copies of a progress map prepared by or under the
supervision of a person approved by the director showing the disturbed area to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps required by this article, and shall show in detail completed reclamation work as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations during the preceding year, the operator shall notify the director of that fact.

(g) Whenever on the basis of available information, including reliable information from any person, the director has cause to believe that any person is in violation of this article, any permit condition or any rule promulgated under this article, the director shall immediately order state inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior state inspection. The director shall notify any person who supplied such reliable information when the state inspection will be carried out. Such person may accompany the inspector during the inspection.

§22-3-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal.

(a) Notwithstanding any other provisions of this article, a surface-mining reclamation inspector has the authority to issue a cessation order for any portion of a surface-mining operation when an inspector determines that any condition or practice exists, or that any permittee is in violation of any requirements of this article or any permit condition required by this article, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. The cessation order takes effect immediately. Unless waived in writing, an informal
conference shall be held at or near the site relevant to
the violation set forth in the cessation order within
twenty-four hours after the order becomes effective or
such order shall expire. The conference shall be held
before a surface-mining reclamation supervisor who
shall, immediately upon conclusion of said hearing,
determine when and if the operation or portion thereof
may resume. Operators who believe they are aggrieved
by the decision of the surface-mining reclamation
supervisor may immediately appeal to the director,
setting forth reasons why the operation should not be
halted. The director forthwith shall determine when the
operation or portion thereof may be resumed.

(b) The cessation order remains in effect until the
director determines that the condition, practice or
violation has been abated, or until modified, vacated or
released by the director. Where the director finds that
the ordered cessation of any portion of a surface coal
mining operation will not completely abate the imme-
nent danger to health or safety of the public or the
significant imminent environmental harm to land, air or
water resources, the director shall, in addition to the
cessation order, impose affirmative obligations on the
operator requiring the operator to take whatever steps
the director determines necessary to abate the imminent
danger or the significant environmental harm.

(c) Any cessation order issued pursuant to this section
or any other provision of this article may be released by
any inspector. An inspector shall be readily available to
terminate a cessation order upon abatement of the
violations.

§22-3-17. Notice of violation; procedure and actions;
enforcement; permit revocation and bond
forfeiture; civil and criminal penalties;
appeals to the board; prosecution; injunctive
relief.

(a) If any of the requirements of this article, rules
promulgated pursuant thereto or permit conditions have
not been complied with, the director shall cause a notice
of violation to be served upon the operator or the
operator’s duly authorized agent. A copy of the notice shall be handed to the operator or the operator’s duly authorized agent in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this article, rules or permit conditions and shall specify a reasonable time for abatement of the violation not to exceed thirty days. If the operator has not abated the violation within the time specified in the notice, or any reasonable extension thereof, not to exceed sixty days, the director shall order the cessation of the operation or the portion thereof causing the violation, unless the operator affirmatively demonstrates that compliance is unattainable due to conditions totally beyond the control of the operator. If a violation is not abated within the time specified or any extension thereof, or any cessation order is issued, a mandatory civil penalty of not less than seven hundred fifty dollars per day per violation shall be assessed. A cessation order remains in effect until the director determines that the violation has been abated or until modified, vacated or terminated by the director or by a court. In any cessation order issued under this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(b) If the director determines that a pattern of violations of any requirement of this article or any permit condition exists or has existed, as a result of the operator’s lack of reasonable care and diligence, or that the violations are willfully caused by the operator, the director shall immediately issue an order directing the operator to show cause why the permit should not be suspended or revoked and giving the operator thirty days in which to request a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Any hearing under this section shall be recorded and is subject to the provisions of chapter twenty-nine-a of this code. Within sixty days following the public hearing, the
director shall issue and furnish to the permittee and all
other parties to the hearing a written decision, and the
reasons therefor, concerning suspension or revocation of
the permit. Upon the operator's failure to show cause
why the permit should not be suspended or revoked, the
director shall immediately suspend or revoke the
operator's permit. If the permit is revoked, the director
shall initiate procedures in accordance with rules
promulgated by the director to forfeit the entire amount
of the operator's bond, or other security posted pursuant
to sections eleven or twelve of this article, and give
notice to the attorney general, who shall collect the
forfeiture without delay: Provided, That the entire
proceeds of such forfeiture shall be deposited with the
treasurer of the state of West Virginia to the credit of
the special reclamation fund. All forfeitures collected
shall be deposited in the special reclamation fund and
shall be expended back upon the areas for which the
bond was posted: Provided, however, That any excess
therefrom shall remain in the special reclamation fund.

(c) Any person engaged in surface-mining operations
who violates any permit condition or who violates any
other provision of this article or rules promulgated
pursuant thereto may also be assessed a civil penalty.
The penalty shall not exceed five thousand dollars. Each
day of continuing violation may be deemed a separate
violation for purposes of penalty assessments. In
determining the amount of the penalty, consideration
shall be given to the operator's history of previous
violations at the particular surface-mining operation,
the seriousness of the violation, including any irrepar-
able harm to the environment and any hazard to the
health or safety of the public, whether the operator was
negligent, and the demonstrated good faith of the
operator charged in attempting to achieve rapid
compliance after notification of the violation.

(d) (1) Upon the issuance of a notice or order pursuant
to this section, the assessment officer shall, within thirty
days, set a proposed penalty assessment and notify the
operator in writing of such proposed penalty assessment.
The proposed penalty assessment must be paid in full within thirty days of receipt or, if the operator wishes to contest either the amount of the penalty or the fact of violation, an informal conference with the assessment officer may be requested within fifteen days or a formal hearing before the surface mine board may be requested within thirty days. The notice of proposed penalty assessment shall advise the operator of the right to an informal conference and a formal hearing pursuant to this section. When an informal conference is requested, the operator has fifteen days from receipt of the assessment officer's decision to request a formal hearing before the board.

(A) When an informal conference is held, the assessment officer has authority to affirm, modify or vacate the notice, order or proposed penalty assessment.

(B) When a formal hearing is requested, the amount of the proposed penalty assessment shall be forwarded to the director for placement in an escrow account. Formal hearings shall be of record and subject to the provisions of article five, chapter twenty-nine-a of this code. Following the hearing the board shall affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment be paid.

(2) Civil penalties owed under this section may be recovered by the director in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund established in section eleven of this article. If, through the administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the director shall within thirty days remit the appropriate amount to the person, with interest at the rate of six percent or at the prevailing United States department of the treasury rate, whichever is greater. Failure to forward the money to the director within thirty days is a waiver of all legal rights to contest the
violation or the amount of the penalty.

(e) Any person having an interest which is or may be adversely affected by any order of the director or the surface mine board may file an appeal only in accordance with the provisions of article one, chapter twenty-two-b of this code, within thirty days after receipt of the order.

(f) The filing of an appeal or a request for an informal conference or formal hearing provided for in this section does not stay execution of the order appealed from. Pending completion of the investigation and conference or hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant requests relief from an order for cessation of surface-mining and reclamation operations, the decision on the request shall be issued within five days of its receipt. The director may grant such relief, under such conditions as he or she may prescribe if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting the relief shows that there is a substantial likelihood that they will prevail on the merits in the final determination of the proceedings;

(3) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources; and

(4) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

(g) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this article
or rules promulgated pursuant thereto, or fails or
refuses to comply with any order issued under said
article and rules or any order incorporated in a final
decision issued by the director, is guilty of a misdemea-
nor, and, upon conviction thereof, shall be fined not less
than one hundred dollars nor more than ten thousand
dollars, or imprisoned in the county jail not more than
one year, or both fined and imprisoned.

(h) Whenever a corporate operator violates a condition
of a permit issued pursuant to this article, rules
promulgated pursuant thereto, or any order incorpo-
rated in a final decision issued by the director, any
director, officer or agent of the corporation who willfully
and knowingly authorized, ordered or carried out the
failure or refusal, is subject to the same civil penalties,
fines and imprisonment that may be imposed upon a
person under subsections (c) and (g) of this section.

(i) Any person who knowingly makes any false
statement, representation or certification, or knowingly
fails to make any statement, representation or certifica-
tion in any application, petition, record, report, plan or
other document filed or required to be maintained
pursuant to this article or rules promulgated pursuant
thereto, is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred dollars
nor more than ten thousand dollars, or imprisoned in the
county jail not more than one year, or both fined and
imprisoned.

(j) Whenever any person: (A) Violates or fails or
refuses to comply with any order or decision issued by
the director under this article; or (B) interferes with,
hinders or delays the director in carrying out the
provisions of this article; or (C) refuses to admit the
director to the mine; or (D) refuses to permit inspection
of the mine by the director; or (E) refuses to furnish any
reasonable information or report requested by the
director in furtherance of the provisions of this article;
or (F) refuses to permit access to, and copying of, such
records as the director determines necessary in carrying
out the provisions of this article; or (G) violates any other
provisions of this article, the rules promulgated pursuant thereto, or the terms and conditions of any permit, the director, the attorney general or the prosecuting attorney of the county in which the major portion of the permit area is located may institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other appropriate order, in the circuit court of Kanawha County or any court of competent jurisdiction to compel compliance with and enjoin such violations, failures or refusals. The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.

(k) Any person who shall, except as permitted by law, willfully resists, prevents, impedes or interferes with the director or any of his or her agents in the performance of duties pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

§22-3-18. Approval, denial, revision and prohibition of permit.

(a) Upon the receipt of a complete surface-mining application or significant revision or renewal thereof, including public notification and an opportunity for a public hearing, the director shall grant, require revision of, or deny the application for a permit within sixty days and notify the applicant in writing of the decision. The applicant for a permit, or revision of a permit, has the burden of establishing that the application is in compliance with all the requirements of this article and the rules promulgated hereunder.

(b) No permit or significant revision of a permit may be approved unless the applicant affirmatively demonstrates and the director finds in writing on the basis of the information set forth in the application or from information otherwise available which shall be documented in the approval and made available to the applicant that:
(1) The permit application is accurate and complete and that all the requirements of this article and rules thereunder have been complied with;

(2) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance, as specified in section nine of this article, has been made by the director and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) The area proposed to be mined is not included within an area designated unsuitable for surface mining pursuant to section twenty-two of this article or is not within an area under administrative study by the director for such designation; and

(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted: (A) The written consent of the surface owner to the extraction of coal by surface mining; or (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining; or (C) if the conveyance does not expressly grant the right to extract coal by surface mining, the surface-subsurface legal relationship shall be determined in accordance with applicable law: Provided, That nothing in this article shall be construed to authorize the director to adjudicate property rights disputes.

(c) Where information available to the division indicates that any surface-mining operation owned or controlled by the applicant is currently in violation of this article or other environmental laws or rules, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the director or the department or agency which has jurisdiction over the violation, and no permit may be
issued to any applicant after a finding by the director, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article or of other state or federal programs implementing the federal Surface Mining Control and Reclamation Act of 1977, as amended, of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article or the federal Surface Mining Control and Reclamation Act of 1977, as amended: Provided, That if the director finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he or she shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the director and based upon a petition for reinstatement, permits may be issued to any applicant if: (1) After the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited has paid into the special reclamation fund any additional sum of money determined by the director to be adequate to reclaim the disturbed area; (2) the violations which resulted in the revocation or forfeiture have not caused irreparable damage to the environment; and (3) the director is satisfied that the petitioner will comply with this article.

(d) (1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland, the director may, pursuant to rules promulgated hereunder, grant a permit to mine on prime farmland if the operator affirmatively demonstrates that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management, and can meet the soil reconstruction standards in subdivision (7), subsection (b), section thirteen of this
article. Except for compliance with subsection (b) of this section, the requirements of subdivision (1) of this subsection apply to all permits issued after the third day of August, one thousand nine hundred seventy-seven.

(2) Nothing in this subsection applies to any permit issued prior to the third day of August, one thousand nine hundred seventy-seven, or to any revisions or renewals thereof, or to any existing surface-mining operations for which a permit was issued prior to said date.

(e) If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds; (2) landslides; or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

§22-3-19. Permit revision and renewal requirements; incidental boundary revisions; requirements for transfer; assignment and sale of permit rights; and operator reassignment.

(a) (1) Any valid permit issued pursuant to this article carries with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and the renewal shall be issued: Provided, That on application for renewal, the burden is on the opponents of renewal, unless it is established that and written findings by the director are made that: (A) The terms and conditions of the existing permit are not being satisfactorily met: Provided, however, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with
16 such revised requirements; (B) the present surface-
17 mining operation is not in compliance with the applica-
18 ble environmental protection standards of this article;
19 (C) the renewal requested substantially jeopardizes the
20 operator's continuing responsibility on existing permit
21 areas; (D) the operator has not provided evidence that
22 the bond in effect for said operation will continue in
23 effect for any renewal requested as required pursuant
24 to sections eleven or twelve of this article; or (E) any
25 additional revised or updated information as required
26 pursuant to rules promulgated by the director has not
27 been provided.

28 (2) If an application for renewal of a valid permit
29 includes a proposal to extend the surface-mining
30 operation beyond the boundaries authorized in the
31 existing permit, that portion of the application for
32 renewal which addresses any new land area is subject
33 to the full standards of this article, which includes, but
34 is not limited to: (A) Adequate bond; (B) a map showing
35 the disturbed area and facilities; and (C) a reclamation
36 plan.

37 (3) Any permit renewal shall be for a term not to
38 exceed the period of time for which the original permit
39 was issued. Application for permit renewal shall be
40 made at least one hundred twenty days prior to the
41 expiration of the valid permit.

42 (4) Any renewal application for an active permit shall
43 be on forms prescribed by the director and shall be
44 accompanied by a filing fee of two thousand dollars. The
45 application shall contain such information as the
46 director requires pursuant to rule.

47 (b)(1) During the term of the permit, the permittee
48 may submit to the director an application for a revision
49 of the permit, together with a revised reclamation plan.

50 (2) An application for a significant revision of a
51 permit is subject to all requirements of this article and
52 rules promulgated pursuant thereto.

53 (3) Any extension to an area already covered by the
54 permit, except incidental boundary revisions, shall be
made by application for another permit. If the permittee desires to add the new area to his or her existing permit in order to have existing areas and new areas under one permit, the director may so amend the original permit: Provided, That the application for the new area is subject to all procedures and requirements applicable to applications for original permits under this article.

(c) The director shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed within the time established by rules. The director may require reasonable revision or modification of the permit following review: Provided, That such revision or modification shall be based upon written findings and shall be preceded by notice to the permittee of an opportunity for hearing.

(d) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this article shall be made without the prior written approval of the director.

§22-3-20. Public notice; written objections; public hearings; informal conferences.

(a) At the time of submission of an application for a surface-mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the division a copy of the required advertisement. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The director shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies and sewage and water treatment authorities or water companies in the locality in which the proposed surface-mining operation will take place, notifying them of the operator's intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies,
authorities or companies may submit written comments within a reasonable period established by the director on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted by the director to the applicant and to the appropriate office of the division. The director shall provide the name and address of each applicant to the commissioner of the division of labor who shall within fifteen days from receipt notify the director as to the applicant’s compliance, if necessary, with section fourteen, article five, chapter twenty-one of this code.

(b) Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state or local governmental agency, has the right to file written objections to the proposed initial or revised permit application for a surface-mining operation with the director within thirty days after the last publication of the advertisement required in subsection (a) of this section. Such objections shall be immediately transmitted to the applicant by the director and shall be made available to the public. If written objections are filed and an informal conference requested within thirty days of the last publication of the above notice, the director shall then hold a conference in the locality of the proposed mining within three weeks after the close of the public comment period. Those requesting the conference shall be notified and the date, time and location of the informal conference shall also be advertised by the director in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The director may arrange with the applicant, upon request by any party to the conference proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. Such record shall be maintained and shall be accessible to the parties at their respective expense until final release of the applicant’s bond or other security posted in lieu thereof. The director’s
authorized agent will preside over the conference. In the
event all parties requesting the informal conference
stipulate agreement prior to the conference and with-
draw their request, a conference need not be held.

§22-3-21. Decision of director on permit application;
hearing thereon.

(a) If an informal conference has been held, the
director shall issue and furnish the applicant for a
permit and persons who were parties to the informal
conference with the written finding granting or denying
the permit, in whole or in part, and stating the reasons
therefor within thirty days of the informal conference,
notwithstanding the requirements of subsection (a),
section eighteen of this article.

(b) If the application is approved, the permit shall be
issued. If the application is disapproved, specific reasons
therefor must be set forth in the notification. Within
thirty days after the applicant is notified of the
director's decision, the applicant or any person with an
interest which is or may be adversely affected may
request a hearing before the surface mine board as
provided in article one, chapter twenty-two-b of this
code to review the director's decision.

§22-3-22. Designation of areas unsuitable for surface
mining; petition for removal of designation;
prohibition of surface mining on certain
areas; exceptions; taxation of minerals un-
derlying land designated unsuitable.

(a) The director shall establish a planning process to
enable objective decisions based upon competent and
scientifically sound data and information as to which, if
any, land areas of this state are unsuitable for all or
certain types of surface-mining operations pursuant to
the standards set forth in subdivisions (1) and (2) of this
subsection: Provided, That such designation shall not
prevent prospecting pursuant to section seven of this
article on any area so designated.

(1) Upon petition pursuant to subsection (b) of this
section, the director shall designate an area as unsuit-
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12 able for all or certain types of surface-mining opera-
13 tions, if it determines that reclamation pursuant to the
14 requirements of this article is not technologically and
15 economically feasible.

16 (2) Upon petition pursuant to subsection (b) of this
17 section, a surface area may be designated unsuitable for
18 certain types of surface-mining operations, if the
19 operations: (A) Conflict with existing state or local land
20 use plans or programs; (B) affect fragile or historic
21 lands in which the operations could result in significant
22 damage to important historic, cultural, scientific and
23 aesthetic values and natural systems; (C) affect renew-
24 able resource lands, including significant aquifers and
25 aquifer recharge areas, in which the operations could
26 result in a substantial loss or reduction of long-range
27 productivity of water supply, food or fiber products; or
28 (D) affect natural hazard lands in which the operations
29 could substantially endanger life and property. Such
30 lands shall include lands subject to frequent flooding
31 and areas of unstable geology.

32 (3) The director shall develop a process which
33 includes: (A) The review of surface-mining lands; (B) a
34 data base and an inventory system which will permit
35 proper evaluation of the capacity of different land areas
36 of the state to support and permit reclamation of
37 surface-mining operations; (C) a method for implement-
38 ing land use planning decisions concerning surface-
39 mining operations; and (D) proper notice and opportuni-
40 ties for public participation, including a public hearing
41 prior to making any designation or redesignation
42 pursuant to this section.

43 (4) Determinations of the unsuitability of land for
44 surface mining, as provided for in this section, shall be
45 integrated as closely as possible with present and future
46 land use planning and regulation processes at federal,
47 state and local levels.

48 (5) The requirements of this section do not apply to
49 lands on which surface-mining operations were being
50 conducted on the third day of August, one thousand nine
51 hundred seventy-seven, or under a permit issued
pursuant to this article, or where substantial legal and financial commitments in the operations were in existence prior to the fourth day of January, one thousand nine hundred seventy-seven.

(b) Any person having an interest which is or may be adversely affected has the right to petition the director to have an area designated as unsuitable for surface-mining operations or to have such a designation terminated. The petition shall contain allegations of fact with supporting evidence which would tend to establish the allegations. After receipt of the petition, the director shall immediately begin an administrative study of the area specified in the petition. Within ten months after receipt of the petition, the director shall hold a public hearing in the locality of the affected area after appropriate notice and publication of the date, time and location of the hearing. After the director or any person having an interest which is or may be adversely affected has filed a petition and before the hearing required by this subsection, any person may intervene by filing allegations of fact with supporting evidence which would tend to establish the allegations. Within sixty days after the hearing, the director shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface-mining operations, the director shall prepare a detailed statement on: (1) The potential coal resources of the area; (2) the demand for the coal resources; and (3) the impact of the designation on the environment, the economy and the supply of coal.

(d) After the third day of August, one thousand nine hundred seventy-seven, and subject to valid existing rights, no surface-mining operations, except those which existed on that date, shall be permitted:

(1) On any lands in this state within the boundaries of units of the national park system, the national wildlife
refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section five-a of the Wild and Scenic Rivers Act, and national recreation areas designated by act of Congress;

(2) Which will adversely affect any publicly owned park or places included in the national register of historic sites, or national register of natural landmarks unless approved jointly by the director and the federal, state or local agency with jurisdiction over the park, the historic site or natural landmark;

(3) Within one hundred feet of the outside right-of-way line on any public road, except where mine access roads or haulage roads join such right-of-way line, and except that the director may permit the roads to be relocated or the area affected to lie within one hundred feet of the road if, after public notice and an opportunity for a public hearing in the locality, the director makes a written finding that the interests of the public and the landowners affected thereby will be protected;

(4) Within three hundred feet from any occupied dwelling, unless waived by the owner thereof, or within three hundred feet of any public building, school, church, community or institutional building, public park, or within one hundred feet of a cemetery; or

(5) On any federal lands within the boundaries of any national forest: Provided, That surface coal mining operations may be permitted on the lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface-mining operations: Provided, however, That the surface operations and impacts are incident to an underground coal mine.

(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface-mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be
assessed for taxation purposes according to their value and the Legislature hereby finds that the coal has no value for the duration of the designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of the coal shall forthwith notify the proper assessing authorities if the designation or prohibition is removed so that the coal may be reassessed.

§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

(a) The permittee may file a request with the director for the release of a bond or deposit. The permittee shall publish an advertisement regarding such request for release in the same manner as is required of advertisements for permit applications. A copy of such advertisement shall be submitted to the director as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters which the permittee has sent to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface-mining operation is located, notifying them of the permittee's intention to seek release from the bond. Any request for grade release shall also be accompanied by final maps.

(b) Upon receipt of the application for bond release, the director, within thirty days, taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of
continuance or future occurrence of such pollution and
the estimated cost of abating such pollution. The
director shall notify the permittee in writing of his or
her decision to release or not to release all or part of
the bond or deposit within sixty days from the date of
the initial publication of the advertisement if no public
hearing is requested. If a public hearing is held, the
director's decision shall be issued within thirty days
thereafter.

(c) If the director is satisfied that reclamation covered
by the bond or deposit or portion thereof has been
accomplished as required by this article, he or she may
release said bond or deposit, in whole or in part,
according to the following schedule:

(1) When the operator completes the backfilling,
regrading and drainage control of a bonded area in
accordance with the operator's approved reclamation
plan, the release of sixty percent of the bond or
collateral for the applicable bonded area: Provided, That
a minimum bond of ten thousand dollars shall be
retained after grade release;

(2) Two years after the last augmented seeding,
fertilizing, irrigation or other work to ensure com-
pliance with subdivision (19), subsection (b), section
thirteen of this article, the release of an additional
twenty-five percent of the bond or collateral for the
applicable bonded area: Provided, That a minimum
bond of ten thousand dollars shall be retained after the
release provided for in this subdivision; and

(3) When the operator has completed successfully all
surface mining and reclamation activities, the release of
the remaining portion of the bond, but not before the
expiration of the period specified in subdivision (20),
subsection (b), section thirteen of this article: Provided,
That the revegetation has been established on the
regraded mined lands in accordance with the approved
reclamation plan: Provided, however, That such a release
may be made where the quality of the untreated post-
mining water discharged is better than or equal to the
premining water quality discharged from the mining
site.

No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and notifying the operator of the right to a hearing.

(e) When any application for total or partial bond release is filed with the director, he or she shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, has the right to file written objections to the proposed bond release and request a hearing with the director within thirty
days after the last publication of the permittee’s advertisement. If written objections are filed and a hearing requested, the director shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of such public hearing shall also be advertised by the director in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the director pursuant to this section, the director may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of such hearing, the director has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the director at the cost of the person requesting the transcript.

§22-3-24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person’s interest in water resources affected by a surface-mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner’s supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately caused by such surface-mining operation,
§22-3-25. Citizen suits; order of court; damages.

(a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action in the circuit court of the county to which the surface-mining operation is located on the person's own behalf to compel compliance with this article:

(1) Against the state of West Virginia or any other governmental instrumentality or agency thereof, to the extent permitted by the West Virginia constitution and by law, which is alleged to be in violation of the provisions of this article or any rule, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, order or permit issued pursuant to this article; or

(2) Against the director, division, surface mine board or appropriate division employees, to the extent permitted by the West Virginia constitution and by law, where there is alleged a failure of the above to perform any act or duty under this article which is not discretionary.

(b) No action may be commenced:

(1) Under subdivision (1), subsection (a) of this section:
   (A) Prior to sixty days after the plaintiff has given notice in writing of the violation to the director or to any alleged violator, or (B) if the director has commenced and is diligently prosecuting a civil action in a circuit court to require compliance with the provisions of this article or any rule, order or permit issued pursuant to this article; or

(2) Under subdivision (2), subsection (a) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the director, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.
(c) Any action respecting a violation of this article or the rules thereunder may be brought in any appropriate circuit court. In such action under this section, the director, if not a party, may intervene as a matter of right.

(d) The court in issuing any final order in any action brought pursuant to subsection (a) of this section may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(e) Nothing in this section restricts any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this article and the rules thereunder or to seek any other relief.

(f) Any person or property who is injured through the violation by any operator of any rule, order or permit issued pursuant to this article may bring an action for damages, including reasonable attorney and expert witness fees, in any court of competent jurisdiction. Nothing in this subsection affects the rights established by or limits imposed under state workers’ compensation laws.

(g) This section applies to violations of this article and the rules promulgated thereto, or orders or permits issued pursuant to said article insofar as said violations, rules, orders and permits relate to surface-mining operations.

§22-3-26. Surface-mining operations not subject to article.

The provisions of this article do not apply to any of the following activities:

(a) The extraction of coal by a landowner for the landowner’s own noncommercial use from land owned or leased by the landowner.
(b) The extraction of coal as an incidental part of federal, state, county, municipal or other local government-financed highway or other construction: Provided, that the provisions of the construction contract require the furnishing of a suitable bond which provides for reclamation, wherever practicable, of the area affected by such extraction.

§22-3-27. Leasing of lands owned by state for surface mining of coal.

No land or interest in land owned by the state may be leased, and no present lease may be renewed by the state, nor any agency of the state, for the purpose of conducting surface-mining operations thereon unless said lease or renewal has been first authorized by an act of the Legislature: Provided, That the provisions of this section do not apply to underground mining on such land.

§22-3-28. Special permits for reclamation of existing abandoned coal processing waste piles.

(a) Except where exempted by section twenty-six of this article, it is unlawful for any person to engage in surface mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the director a permit therefor as provided in section eight of this article, unless a special permit therefor has been first obtained from the director as provided in this section.

Application for a special permit to engage in surface mining as an incident to the development of land for commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A site preparation plan, prepared and certified by or under the supervision of a person approved by the director, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of
the coal deposit to be mined and removed from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof; and such other information as prescribed by the director;

(2) A development plan for the proposed commercial, residential, industrial or civic use of said land;

(3) The name of owner of the surface of the land to be developed;

(4) The name of owner of the coal to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of coal that would be mined as a result of the proposed development of said land: Provided, That in no event may such number of acres to be mined, excluding roadways, exceed five acres; and

(6) Such other information as the director may require to satisfy and assure the director that the surface mining under special permit is incidental or secondary to the proposed commercial, residential, industrial or civic use of said land.

(b) There shall be attached to the application for the special permit a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section nine of this article.

The application for the special permit shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of two thousand dollars per acre, for a maximum disturbance of five acres.

The bond shall be payable to the state of West Virginia and conditioned that the applicant complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with
the site preparation plan submitted with the application, the bond conditions are satisfied and the bond and any cash, securities or certificates furnished with said bond may be released and returned to the applicant. The filing fee for the special permit is five hundred dollars. The special permit is valid until work permitted is completed.

(c) The purpose of this section is to vest jurisdiction in the director, where the surface mining is incidental or secondary to the preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, minerals must be removed, including, but not limited to, the building and construction of railroads, shopping malls, factory and industrial sites, residential and building sites and recreational areas. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that such permit is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article are not applicable to the operator holding a special permit: Provided, That the director shall promulgate rules establishing applicable performance standards for operations permitted under this section.

(d) The director may, in the exercise of his or her sound discretion, when not in conflict with the purposes and findings of this article and to bring about a more desirable land use or to protect the public and the environment, issue a special permit solely for the removal of existing abandoned coal processing waste piles. The director shall promulgate specific rules for such operations: Provided, That a bond and a reclamation plan is required for such operations.

§22-3-29. Experimental practices.

In order to encourage advances in surface mining and reclamation practices or to allow postmining land use for industrial, commercial, residential, agricultural or public use, including recreational facilities, the director
may authorize departures, in individual cases and on an experimental basis, from the environmental protection performance standards promulgated under this article. Such departures may be authorized if the experimental practices are potentially more or at least as environmentally protective during and after surface-mining operations as those required by promulgated standards; the surface-mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and the experimental practices do not reduce the protection afforded health or safety of the public below that provided by promulgated standards.

§22-3-30. Certification and training of blasters.

The director is responsible for the training, examination and certification of persons engaging in or directly responsible for blasting or use of explosives in surface-mining operations.

§22-3-31. Conflict of interest prohibited; criminal penalties therefor; employee protection.

(a) No employee of the division engaged in the enforcement or administration of this article or employee of the surface mine board performing any function or duty under this article shall have a direct or indirect financial interest in any surface-mining operation. Whoever knowingly violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned. The director shall establish methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing and the review of statements and supplements thereto concerning any financial interest which may be affected by this subsection.

(b) No person shall discharge or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized represen-
tative of employees by reason of the fact that the employee or representative has filed, instituted, or caused to be filed or instituted, any proceeding under this article, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this article.

(c) Any employee or a representative of employees who has reason to believe that he or she has been fired or otherwise discriminated against by any person in violation of subsection (b) of this section may, within thirty days after the alleged violation occurs, petition to the surface mine board for a review of the firing or discrimination. The employee or representative is the petitioner and shall serve a copy of the petition upon the person or operator who will be the respondent. The participants shall be given ten days' written notice of the hearing before the board and the hearing shall be held within thirty days of the filing of the petition. The board shall have the same powers and shall hear the petition in the same manner as provided in article one, chapter twenty-two-b of this code.

(d) If the board finds that the alleged violation did occur, it shall issue an order incorporating therein findings of fact and conclusions requiring the participant committing the violation to take such affirmative action to abate the violation by appropriate action, including, but not limited to, the hiring or reinstatement of the employee or representative to his former position with compensation. If the board finds no violation, it shall issue a finding to that effect. Orders issued by the board under this section shall be subject to judicial review in the same manner as other orders of the board issued under this article or article one, chapter twenty-two-b of this code.

(e) Whenever an order is issued under this section to abate any violation, at the request of the petitioner a sum equal to the aggregate costs and expenses, including attorneys' fees to have been reasonably incurred by the petitioner for, or in connection with, the institution and prosecution of the proceedings, shall be assessed against the person committing the violation.
§22-3-32. Special tax on coal production; mines and minerals operations fund.

(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.

(b) Payment and collection of tax. — The tax imposed by this section shall be collected by the tax commissioner 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 a quarterly listing of all persons known to be delinquent in payment of the special tax. The director may take such delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(c) Mining and Reclamation Operations Fund. — The special fund previously created in the state treasury known as the "Mines and Minerals Operations Fund" is renamed the "Mining and Reclamation Operations Fund". The tax commissioner shall, at least quarterly, deposit into the fund the net amount of tax collected 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 environmental regulatory programs for the coal industry as imposed by this chapter and the federal Surface Mining Control and Reclamation Act of 1977 and any amendments thereto. Expenditures from the 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 Procedure and Administration Act" set forth in article ten, chapter eleven of the code applies 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 applies 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 applies to all coal produced in this state after the thirtieth day of September, one thousand nine hundred ninety-one.

ARTICLE 4. SURFACE MINING AND RECLAMATION OF MINERALS OTHER THAN COAL.

§22-4-1. Jurisdiction vested in division of environmental protection; legislative purpose; apportionment of responsibility.

§22-4-2. Definitions.

§22-4-3. Director of the division of environmental protection; duties and functions.

§22-4-4. Surface-mining reclamation supervisors and inspectors; appoint-
§22-4-5. Duties of surface-mining reclamation inspectors.
§22-4-6. Permit required; applications; issuance and renewals; fees and use of proceeds.
§22-4-7. Preplans.
§22-4-8. Installation of drainage system.
§22-4-9. Alternative plans; time.
§22-4-10. Limitations; mandamus.
§22-4-11. Blasting restriction; formula; filing preplan; penalties; notice.
§22-4-12. Time in which reclamation shall be done.
§22-4-13. Obligations of the operator.
§22-4-14. Cessation of operation by inspector.
§22-4-15. Completion of planting; inspection and evaluation.
§22-4-16. Performance bonds.
§22-4-17. Exception as to highway construction projects for reclamation requirements.
§22-4-18. Rules.
§22-4-20. Adjudications, findings, etc., to be by written order; contents; notice.
§22-4-21. Appeals to board.
§22-4-22. Offenses; penalties; prosecutions; treble damages; injunctive relief.
§22-4-23. Validity and construction of existing surface-mining permits.

§22-4-1. Jurisdiction vested in division of environmental protection; legislative purpose; apportionment of responsibility.

Except as otherwise provided in section thirty-eight, article one, chapter twenty-two-a of this code the division of environmental protection is hereby vested with jurisdiction over all aspects of surface mining and with jurisdiction and control over land, water and soil aspects pertaining to surface-mining operations, and the restoration and reclamation of lands surface mined and areas affected thereby.

The Legislature finds that, although surface mining provides much needed employment and has produced good safety records, unregulated surface mining causes soil erosion, pyritic shales and materials, landslides, noxious materials, stream pollution and accumulation of stagnant water, increases the likelihood of floods and slides, destroys the value of some lands for agricultural purposes and some lands for recreational purposes, destroys aesthetic values, counteracts efforts for the conservation of soil, water and other natural resources, and destroys or impairs the health, safety, welfare and
property rights of the citizens of West Virginia, where proper mining and reclamation is not practiced.

The Legislature also finds that there are wide variations regarding location and terrain conditions surrounding and arising out of the surface mining primarily in topographical and geological conditions, and by reason thereof, it is necessary to provide the most effective, beneficial and equitable solution to the problems involved.

The Legislature further finds that authority should be vested in the director of the division of environmental protection to administer and enforce the provisions of this article.

The director of the division of environmental protection and the director of the office of miners' health, safety and training shall cooperate with respect to each agency's programs and records so as to effect an orderly and harmonious administration of the provisions of this article. The director of the division of environmental protection may avail himself or herself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. He or she may also receive any federal funds, state funds or any other funds for the reclamation of land affected by surface mining.

No public officer or employee in the division of environmental protection, the office of miners' health, safety and training, or in the office of attorney general, having any responsibility or duty either directly or of a supervisory nature with respect to the administration or enforcement of this article shall (1) engage in surface mining as a sole proprietor or as a partner, or (2) be an officer, director, stockholder, owner or part owner of any corporation or other business entity engaged in surface mining, or (3) be employed as an attorney, agent or in any other capacity by any person, partnership, firm, association, trust or corporation engaged in surface mining. Any violation of this paragraph by any such public officer or employee shall constitute grounds
60 for his or her removal from office or dismissal from his
61 or her employment, as the case may be.

§22-4-2. Definitions.
1 Unless the context in which used clearly requires a
different meaning, as used in this article:

3 (a) "Adequate treatment" means treatment of water
4 by physical, chemical or other approved methods in a
5 manner that will cause the analyzed pH level of the
6 treated water to be 6.0 - 9.0 and analyzed content of iron
7 of the treated water to be seven milligrams per liter or
8 less, or approved treatment which will not lower the
9 water quality standards established for the river,
10 stream or drainway into which such water is released.

11 (b) "Breakthrough" means the release of water which
12 has been trapped or impounded underground, or the
13 release of air into any underground cavity, pocket or
14 area.

15 (c) "Director" means the director of the division of
16 environmental protection or such other person to whom
17 the director has delegated authority or duties pursuant
18 to section six or eight, article one of this chapter.

19 (d) "Disturbed land" or "land disturbed" means (1) the
20 area from which overburden has been removed in
21 surface-mining operations, (2) the area covered by the
22 spoil, and (3) any areas used in surface-mining opera-
23 tions which by virtue of their use are susceptible to
24 excessive erosion including all lands disturbed by the
25 construction or improvement of haulageways, roads or
26 trails.

27 (e) "Minerals" means clay, flagstone, gravel, lime-
28 stone, manganese, sand, sandstone, shale, iron ore and
29 any other metal or metallurgical ore: Provided, That the
30 term "minerals" does not include coal.

31 (f) "Mulch" means any natural or plant residue,
32 organic or inorganic material, applied to the surface of
33 the earth to retain moisture and curtail or limit soil
34 erosion.

35 (g) "Operator" means any individual, partnership,
firm, association, trust or corporation who or which is
granted or should obtain a permit to engage in any
activity covered by this article.

(h) "Permit area" means the area of land indicated on
the approved map submitted by the operator with the
reclamation plan as specified in section seven of this
article showing the exact location of end strip markers,
permit markers and monument.

(i) "Person" means any individual, partnership, firm,
association, trust or corporation.

(j) "Surface mine" means all areas surface mined or
being surface mined, as well as adjacent areas ancillary
to the operation, together with preparation and process-
ing plants, storage areas and haulageways, roads or
trails.

(k) "Surface mining" means all activity for the
recovery of minerals, and all plants and equipment used
in processing said minerals: Provided, That the bonding
and reclamation provisions of this article do not apply
to surface mining of limestone, sandstone and sand:
Provided, however, That the surface mining of limestone,
sandstone and sand is subject to separate rules to be
promulgated by the director.

(l) "Surface of a regraded bench" means the top
portion or part of any regraded area.

§22-4-3. Director of the division of environmental protec-
tion; duties and functions.

1 Except as otherwise provided in this article, the
director shall administer all of the laws of this state
relating to surface mining and shall exercise all of the
powers and perform all of the duties by law vested in
and imposed upon him or her in relation to said
operations.

§22-4-4. Surface-mining reclamation supervisors and
inspectors; appointment and qualifications; salary.

1 The director shall determine the number of surface-
mining reclamation supervisors and inspectors needed
to carry out the purposes of this article and appoint them as such. All such appointees shall be eligible civil service employees, but no person is qualified for such appointment until he or she has served in a probationary status for a period of one year to the satisfaction of the director.

Every surface-mining reclamation supervisor or inspector shall be paid not less than sixteen thousand dollars per year.

§22-4-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws and rules, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. The director shall cause inspections to be made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days. Said inspector shall note and describe violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.

§22-4-6. Permit required; applications; issuance and renewals; fees and use of proceeds.

It is unlawful for any person to engage in surface mining without having first obtained from the division of environmental protection a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the director, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the director, shall contain the following information:

(1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section seven hereof; (3) the owner or owners of the surface of the land to be
mined; (4) the owner or owners of the mineral to be
mined; (5) the source of the operator's legal right to
enter and conduct operations on the land to be covered
by the permit; (6) a reasonable estimate of the number
of acres of land that will be disturbed by mining on the
area to be covered by the permit; (7) the permanent and
temporary post-office addresses of the applicant and of
the owners of the surface and the mineral; (8) whether
any surface-mining permits are now held and the
numbers thereof; (9) the names and post-office addresses
of every officer, partner, director (or person performing
a similar function), of the applicant, together with all
persons, if any, owning of record or beneficially (alone
or with associates), if known, ten percent or more of any
class of stock of the applicant: Provided, That if such list
be so large as to cause undue inconvenience, the director
may waive the requirements that such list be made a
part of such application, except the names and current
addresses of every officer, partner, director and
applicant must accompany such application; (10) if
known, whether applicant, any subsidiary or affiliate or
any person controlled by or under common control with
applicant, or any person required to be identified by
item (9) above, has ever had a surface-mining permit
issued under the laws of this state revoked or has ever
had a surface-mining bond, or security deposited in lieu
of bond, forfeited; and (11) names and addresses of the
reputed owner or owners of all surface area within five
hundred feet of any part of proposed disturbed land,
which such owners shall be notified by registered or
certified mail of such application and such owners shall
be given ten days within which to file written objections
thereo, if any, with the director. There shall be attached
to the application a true copy of an original policy of
insurance issued by an insurance company authorized to
do business in this state covering all surface-mining
operations of the applicant in this state and affording
personal injury protection in an amount not less than
one hundred thousand dollars and property damage
including blasting damage, protection in an amount of
not less than three hundred thousand dollars.

The director shall upon receipt of the application for
a permit cause to be published, as a Class III legal
advertisement in accordance with the provisions of
article three, chapter fifty-nine of this code, a notice of
the application for the permit. Such notice shall contain
in abbreviated form the information required by this
section, together with the director's statement that
written protests to such application will be received by
him or her until a specified date, which date is at least
thirty days after the first publication of the notice.

The publication area of the notices required by this
section is the county or counties in which the proposed
permit area is located. The cost of all publications
required by this section shall be borne by the applicant.

Upon the filing of an application in proper form,
accompanied by the fees and bond required by this
article and said true copy of the policy of insurance, and
after consideration of the merits of the application and
written protests, if any, the director may issue the
permit applied for if the applicant has complied with
all of the provisions of this article. If the director finds
that the applicant is or has been affiliated with or
managed or controlled by, or is or has been under the
common control of, other than as an employee, a person
who or which has had a surface-mining permit revoked
or bond or other security forfeited for failure to reclaim
lands as required by the laws of this state, he or she
shall not issue a permit to the applicant: Provided, That
no surface-mining permit shall be refused because of
any past revocation of a permit and forfeiture of a bond
or other security if such revocation and forfeiture
occurred before the first day of July, one thousand nine
hundred seventy-one, and if, after such revocation and
forfeiture, the operator whose permit has been revoked
and bond forfeited has paid into the surface-mining
reclamation fund the full amount of the bond so
forfeited, and any additional sum of money determined
by the director to be adequate to reclaim the land
covered by such forfeited bond: Provided, however, That
in no event shall such additional sum be less than sixty
dollars per acre.

The permit is valid for one year from its date of issue.
Upon verified application, containing such information as the director may reasonably require, accompanied by such fees and bond as are required by this article, and a true copy of the policy of insurance as aforesaid, the director shall from year to year renew the permit, if the operation is in compliance with the provisions of this article.

The registration fee for all permits for surface mining is five hundred dollars. The annual renewal fee for permits for surface mining is one hundred dollars payable on the anniversary date of said permit upon renewal.

The permit of any operator who fails to pay any fees provided for in this article shall be revoked.

All registration and renewal fees for surface mining shall be collected by the director and shall be deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the director, for the administration of this article.

§22-4-7. Preplans.

Under the provisions of this article, and rules adopted by the director, the operator shall prepare a complete reclamation and mining plan for the area of land to be disturbed. Said reclamation and mining plan shall include a proposed method of operation, prepared by a registered professional engineer or a person approved by the director, for grading, backfilling, soil preparation, mining and planting and such other proposals as may be necessary to develop the complete reclamation and mining plan contemplated by this article. In developing this complete reclamation and mining plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan.
and complete application if it is or is not acceptable. If
the plan is not acceptable, the director shall set forth
the reasons why the plan is not acceptable, and he or
she may propose modifications, delete areas or reject the
entire plan. Should the applicant disagree with the
decision of the director, the applicant may, by written
notice, request a hearing before the director. The
director shall hold such hearing within thirty days after
receipt of this notice. When a hearing is held by the
director, he or she shall notify the applicant of his or
her decision by certified mail within twenty days after
the hearing. Any person aggrieved by a final order of
the director made after the hearing or without a hearing
may appeal to the surface mine board.

The application for a permit shall be accompanied by
copies of an enlarged United States geological survey
topographic map meeting the requirements of the
subdivisions below. Aerial photographs of the area are
acceptable if the plan for reclamation can be shown to
the satisfaction of the director. The maps shall:

(a) Be prepared and certified by or under the
supervision of a registered professional civil engineer, or
a registered professional mining engineer, or a regis-
tered land surveyor, who shall submit to the director a
certificate of registration as a qualified engineer or land
surveyor;

(b) Identify the area to correspond with application;

(c) Show probable limits of adjacent deep-mining
operations, probable limits of adjacent inactive or
mined-out deep-mined areas and the boundaries of
surface properties and names of surface and mineral
owners of the surface area within five hundred feet of
any part of the proposed disturbed area;

(d) Be of such scale as may be prescribed by the
director;

(e) Show the names and locations of all streams,
creeks or other bodies of public water, roads, buildings,
cemeteries, active, abandoned or plugged oil and gas
wells, and utility lines on the area of land to be
disturbed and within five hundred feet of such area;

(f) Show by appropriate markings the boundaries of
the area of land to be disturbed, the crop line of the
seam to be mined, if any, and the total number of acres
involved in the area of land to be disturbed;

(g) Show the date on which the map was prepared,
the north point and the quadrangle sketch and exact
location of the operation;

(h) Show the drainage plan on and away from the area
of land to be disturbed. Such plan shall indicate the
directional flow of water, constructed drainways,
natural waterways used for drainage, and the streams
or tributaries receiving or to receive this discharge.
Upon receipt of such drainage plan, the director may
furnish the office of water resources of the division a
copy of all information required by this subdivision, as
well as the names and locations of all streams, creeks
or other bodies of public water within five hundred feet
of the area to be disturbed;

(i) Show the presence of any acid-producing materials
which when present in the overburden, may cause spoil
with a pH factor below 3.5, preventing effective
revegetation. The presence of such materials, wherever
occurring in significant quantity, shall be indicated on
the map, filed with the application for permit. The
operator shall also indicate the manner in which acid-
bearing spoil will be suitably prepared for revegetation
and stabilization, whether by application of mulch or
suitable soil material to the surface or by some other
type of treatment, subject to approval of the director.

The operator shall also indicate the manner in which
all permanent overburden disposal sites will be
stabilized.

The certification of the maps shall read as follows: “I,
the undersigned, hereby certify that this map is correct,
and shows to the best of my knowledge and belief all
the information required by the surface-mining laws of
this state.” The certification shall be signed and
notarized. The director may reject any map as incom-
In addition to the information and maps required above, each application for a permit shall be accompanied by a detailed reclamation plan as required by this article.

A monument as prescribed by the director shall be placed in an approved location near the operation. If the operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional maps before mining other areas.

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the director four copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show in detail completed reclamation work, as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations during the preceding year, the operator shall notify the director of this fact. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended.

§22-4-8. Installation of drainage system.

Prior to the beginning of surface-mining operations, the operator shall complete and shall thereafter maintain a drainage system including any necessary settling ponds in accordance with the rules as established by the director.
§22-4-9. Alternative plans; time.

An operator may propose alternative plans not calling for backfilling where a water impoundment is desired, if such restoration will be consistent with the purpose of this article. Such plans shall be submitted to the director, and if such plans are approved by the director and complied with within such time limits as may be determined by him or her as being reasonable for carrying out such plans, the backfilling requirements of this article may be modified.

By rule of the director, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such backfilling and grading is moved from the operation.

If the operator or other person desires to conduct deep mining upon the premises or use a deep-mine opening for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such deep mining or other use is completed, during which time the bond on file for that portion of that operation shall not be released. Such locations shall be described and designated on the map required by the provisions of section seven of this article.

Where applicable, suitable soil material shall be used to cover the surface of the regraded and backfilled area of operation in an amount sufficient to support vegetation.

When the backfilling and grading have been completed and approved by the director, the director shall release that portion of the bond which was filed and designated to cover the backfilling and grading requirements of this article, the remaining portion of the bond in an amount equal to two hundred fifty dollars per acre, but not less than a total amount of five thousand dollars being retained by the treasurer until such time as the planting and revegetation is done according to law and is approved by the director, at which time the director shall release the remainder of the bond.
All fill and cut slopes shall be seeded during the first planting or seeding season after the construction of a haulageway to the area. Upon abandonment of any haulageway, the haulageway shall be seeded and every effort made to prevent its erosion by means of culverts, waterbars or other devices required by the director. In proper season, all fill and cut slopes of the operation and haulageways shall be seeded and planted in a manner as prescribed by the director, as soil tests indicate soil suitability and in accordance with accepted agricultural and reforestation practices.

In any such area where surface mining is being conducted, mulch is required on all disturbed areas where the remaining slope exceeds twenty degrees from horizontal as shown on the preplan map filed with the director as required by the provisions of section seven of this article.

After the operation has been backfilled, graded and approved by the director, the operator shall prepare or cause to be prepared a final planting plan for the planting of trees, shrubs, vines, grasses or legumes upon the area of the land affected in order to provide a suitable vegetative cover. The seed or plant mixtures, quantities, method of planting, type and amount of lime, fertilizer, mulch, and any other measures necessary to provide a suitable vegetative cover shall be defined by the rules of the director.

The planting called for by the final planting plan shall be carried out in a manner so as to establish a satisfactory cover of trees, shrubs, grasses, legumes or vines upon the disturbed area covered by the planting plan within a reasonable period of time. Such planting shall be done by the operator or such operator may contract in writing with the soil conservation district for the district in which the operation covered by such permit is located or with a private contractor approved by the director to have such planting done by such district or private contractor. The director shall not release the operator’s bond until all haulageways, roads and trails within the permit area have been abandoned according to the provisions of this article and the rules
promulgated thereunder or such operator or any other
person has secured a permit to deep mine such area as
required by article three of this chapter.

The purpose of this section is to require restoration
of land disturbed by surface mining to a desirable
purpose and use. The director may, in the exercise of
his or her sound discretion when not in conflict with
such purpose, modify such requirements to bring about
a more desirable land use, including, but not limited to,
industrial sites, sanitary landfills, recreational areas,
building sites: Provided, That the person or agency
making such modifications will execute contracts, post
bond or otherwise ensure full compliance with the
provisions of this section in the event such modified
program is not carried to completion within a reasona-
bles length of time.

§22-4-10. Limitations; mandamus.

The Legislature finds that there are certain areas in
the state of West Virginia which are impossible to
reclaim either by natural growth or by technological
activity and that if surface mining is conducted in these
certain areas such operations may naturally cause
stream pollution, landslides, the accumulation of
stagnant water, flooding, the destruction of land for
agricultural purposes, the destruction of aesthetic
values, the destruction of recreational areas and future
use of the area and surrounding areas, thereby destroy-
or impairing the health and property rights of
others, and in general creating hazards dangerous to life
and property so as to constitute an imminent and
inordinate peril to the welfare of the state, and that such
areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the director
to delete certain areas from all surface-mining
operations.

No application for a permit shall be approved by the
director if there is found on the basis of the information
set forth in the application or from information avail-
able to the director and made available to the applicant
that the requirements of this article or rules hereafter
adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this article.

If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of West Virginia with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds, (2) landslides, or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

If the director finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property, then he or she shall delete such areas from the permit application before it can be approved.

The director shall not give approval to surface mine any area which is within one hundred feet of any public road, stream, lake or other public property, and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, That the one-hundred-foot restriction afore-said does not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor does it apply to the dredging and removal of minerals from the streams or watercourses of this state.

Whenever the director finds that ongoing surface-mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he or she may order immediate cessation of such operations and he or she shall take such other action or
make such changes in the permit as he or she may deem necessary to avoid said described conditions.

The failure of the director to discharge the mandatory duty imposed by this section is subject to a writ of mandamus, in any court of competent jurisdiction by any private citizen affected thereby.

§22-4-11. Blasting restriction; formula; filing preplan; penalties; notice.

Where blasting of overburden or mineral is necessary, such blasting shall be done in accordance with established principles for preventing vibration damage to residences, buildings and communities. Such blasting is in compliance with provisions of this article if the following measures are followed:

(1) The weight in pounds of explosive charge detonated at any one time shall conform with the following scaled distance formula: \( W = \left(\frac{D}{50}\right)^2 \). Where \( W \) equals weight in pounds of explosives detonated at any one instant time, then \( D \) equals distance in feet from nearest point of blast to nearest residence, building, or structure, other than operation facilities of the mine: Provided, That explosive charges are detonated at one time if their detonation occurs within eight milliseconds or less of each other.

(2) Where blast sizes would exceed the limits under subdivision (1) of this section, blasts shall be detonated by the use of delay detonators (either electric or nonelectric) to provide detonation times separated by nine milliseconds or more for each section of the blast complying with the scaled distance of the formula.

(3) A plan of each operation's methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the director with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(4) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for
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32 each blast other than secondary (boulder-breaking)  
33 blasts the following information:  
34 (a) Date and time of blast,  
35 (b) Number of holes,  
36 (c) Typical explosive weight per delay period,  
37 (d) Total explosives in blast at any one time,  
38 (e) Number of delays used,  
39 (f) Weather conditions, and  
40 (g) Signature of operator employee in charge of the  
41 blast.  
42 (5) Where inspection by the director establishes that  
43 the scaled distance formula and the approved preplan  
44 are not being adhered to, the following penalties shall  
45 be imposed:  
46 (a) For the first offense in any one permit year under  
47 this section, the permit holder shall be assessed not less  
48 than five hundred dollars nor more than one thousand  
49 dollars;  
50 (b) For the second offense in any one permit year  
51 under this section, the permit holder shall be assessed  
52 not less than one thousand dollars nor more than five  
53 thousand dollars;  
54 (c) For the third offense in any one permit year under  
55 this section or for the failure to pay any assessment  
56 hereinabove set forth within a reasonable time estab-  
57 lished by the director, the permit shall be revoked.  
58 All such assessments as set forth in this section shall  
59 be assessed by the director, collected by him or her and  
60 deposited with the treasurer of the state of West  
61 Virginia, to the credit of the operating permit fees fund.  
62 The director shall promulgate rules which shall  
63 provide for a warning of impending blasting to the  
64 owners, residents or other persons who may be present  
65 on property adjacent to the blasting area.  

§22-4-12.  Time in which reclamation shall be done.
It is the duty of an operator to commence the reclamation of the area of land disturbed by the operator's operation after the beginning of surface mining of that area in accordance with plans previously approved by the director and to complete such reclamation within twelve months after the permit has expired, except that such grading, backfilling and water-management practices as are approved in the plans shall be kept current with the operations as defined by rules of the director and no permit or supplement to a permit shall be issued or renewed, if in the discretion of the director, these practices are not current.

§22-4-13. Obligations of the operator.

In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules adopted pursuant thereto, the operator is required to perform the following:

1. Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the director, or with a permanent water impoundment.

2. Bury under adequate fill, all materials determined by the director to be acid-producing materials, toxic material or materials constituting a fire hazard.

3. Seal off any breakthrough of acid water caused by the operator. Provided, That any breakthrough caused by the operator during the course of the operator's operations shall be sealed immediately and reported immediately to the director. If the breakthrough is one that allows air to enter a mine, the seal shall either prevent any air from entering the mine by way of the breakthrough, or prevent any air from entering the breakthrough while allowing the water to flow from the breakthrough. If the breakthrough is one that allows acid water to escape, the seal shall prevent the acid water from flowing. Seals shall be constructed of stone, brick, block, earth or similar impervious materials which are acid resistant. Any cement or concrete employed in the construction of these seals shall also be of an acid resistant, impervious type.
(4) Impound, drain or treat all runoff water so as to reduce soil erosion, damage to agricultural lands and pollution of streams and other waters.

In the case of storm water accumulations or any breakthrough of water, adequate treatment shall be undertaken by the operator so as to prevent pollution occurring from the release of such water into the natural drainway or stream. Treatment may include check-dams, settling ponds and chemical or physical treatment. In the case of a breakthrough of water, where it is possible, the water released shall be impounded immediately. All water so impounded shall receive adequate treatment by the operator before it is released into the natural drainway or stream.

Storm water or water which escapes, including that which escapes after construction of the seals, and is polluted as defined in this code, or as defined in the rules promulgated under this code, is subject to the requirements of article eleven of this chapter.

(5) Remove or bury all metal, lumber, equipment and other refuse resulting from the operation. No operator shall throw, dump or pile; or permit the throwing, dumping, piling or otherwise placing of any overburden, stones, rocks, coal, mineral, earth, soil, dirt, debris, trees, wood, logs or other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing listed materials in such a way that normal erosion or slides brought about by natural physical causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.

The operator shall show on the map, filed with the application for a permit, the percent of slope of original surface within each two-hundred-foot interval along the contour of the operation, the first measurement to be taken at the starting point of the operation. The flagged field measurement shall be made from the estimated crop line or proposed mineral seam down slope to the estimated toe of the outer spoil. All reasonable measures
shall be taken so as not to overload the fill bench during the first cut. No overburden material in excess of the first cut shall be placed over the fill bench. With the exception of haulageways and auger-mining operations, trees and brush shall be removed from the upper one half of all fill sections prior to excavation, and no trees or brush removed from the cut section shall be placed therein or thereon.

No fill bench shall be produced on slopes of more than sixty-five percent, except for construction of haulageways, and such haulageways shall not exceed thirty-five feet in width, with very scattered forty-five-foot passing areas permitted.

Lateral drainage ditches connecting to natural or constructed waterways shall be constructed to control water runoff and prevent erosion whenever required by the director. There shall be no depressions that will accumulate water except those the director may specify and approve. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

With the exception of limestone, sandstone and sand, complete backfilling is required, not to exceed the approximate original contour of the land. Such backfilling shall eliminate highwalls and spoil peaks. Whenever directed by the director, the operator shall construct, in the final grading, such diversion ditches or terraces as will control the water runoff. Additional restoration work may be required by the director, according to rules adopted by the director.

§22-4-14. Cessation of operation by inspector.

Notwithstanding any other provisions of this article, a surface-mining reclamation inspector has authority to order the immediate cessation of any operation where (1) any of the requirements of this article or the rules promulgated pursuant thereto or the orders of the director have not been complied with, or (2) the public welfare or safety calls for the immediate cessation of the operation. Such cessation of operation shall continue until corrective steps have been started by the operator.
to the satisfaction of the surface-mining reclamation
inspector. Operators who believe they are aggrieved by
the actions of the surface-mining reclamation inspector
may immediately appeal to the director, setting forth
reasons why their operations should not be halted. The
director shall determine immediately when and if an
operation may continue.

§22-4-15. Completion of planting; inspection and
evaluation.

When the planting of an area has been completed, the
operator shall file or cause to be filed a planting report
with the director on a form to be prescribed and
furnished by the director providing the following
information: (1) Identification of the operation; (2) the
type of planting or seeding, including mixtures and
amounts; (3) the date of planting or seeding; (4) the area
of land planted; and (5) such other relevant information
as the director may require. All planting reports shall
be certified by the operator, or by the party with whom
the operator contracted for such planting, as aforesaid.

§22-4-16. Performance bonds.

Each operator who makes application for a permit
under section six of this article shall, at the time such
permit is requested, furnish bond, on a form to be
prescribed and furnished by the director, payable to the
state of West Virginia and conditioned that the operator
shall faithfully perform all of the requirements of this
article. The amount of the bond shall be not less than
six hundred dollars for each acre or fraction thereof of
the land to be disturbed: Provided, That the director has
the discretion to determine the amount per acre of the
bond that is required before a permit is issued, such
amount to be based upon the estimated reclamation
costs per acre, not to exceed a maximum of one thousand
dollars per acre or fraction thereof. The minimum
amount of bond furnished shall be ten thousand dollars.
Such bond shall be executed by the operator and a
corporate surety licensed to do business in the state of
West Virginia: Provided, however, That in lieu of
corporate surety, the operator may elect to deposit with
the director cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land banks, or of the homeowners’ loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the director. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, immediately place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The operator making the deposit is entitled from time to time to receive from the state treasurer, upon the written order of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

It is unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of the operator’s obligation to the state for the reclamation of lands disturbed by the operator. If the owner or owners of the surface rights or the owner or owners of the mineral rights desire another operator or other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it is the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The director may then release an equivalent amount of the bond of the operator originally furnishing bond on the disturbed area.

The director shall not release that portion of any bond filed by any operator which is designated to assure
61 faithful performance of, and compliance with, the
62 backfilling and regrading requirements of the reclama-
63 tion plan until all acid-bearing or acid-producing spoil
64 within the permit area has received adequate treatment
65 as specified in section nine of this article.

§22-4-17. Exception as to highway construction projects
for reclamation requirements.

1 Any provision of this article to the contrary notwith-
2 standing, a person or operator is not subject to any duty
3 or requirement whatever with respect to reclamation
4 requirements when engaged in the removal of borrow
5 and fill material for grading in federal and state
6 highway construction projects: Provided, That the
7 provisions of the highway construction contract require
8 the furnishing of a suitable bond which provides for
9 reclamation wherever practicable of the area affected
10 by such recovery activity.

§22-4-18. Rules.

1 The director shall promulgate rules, in accordance
2 with the provisions of chapter twenty-nine-a of said
3 code, for the effective administration of this article.


1 If any of the requirements of this article or rules
2 promulgated pursuant thereto or the orders of the
3 director have not been complied with within the time
4 limits set by the director or by this article, the director
5 shall cause a notice of noncompliance to be served upon
6 the operator, which notice shall order the operation to
7 cease, or where found necessary, the director shall order
8 the suspension of a permit. A copy of such notice or
9 order shall be handed to the operator in person or served
10 by certified mail addressed to the operator at the
11 permanent address shown on the application for a
12 permit. The notice of noncompliance or order of
13 suspension shall specify in what respects the operator
14 has failed to comply with this article or the rules or
15 orders of the director. If the operator has not reached
16 an agreement with the director or has not complied with
17 the requirements set forth in the notice of noncom-
pliance or order of suspension within the time limits set
therein, the permit may be revoked by order of the
director and the performance bond shall then be
forfeited. If an agreement satisfactory to the director
has not been reached within thirty days after suspension
of any permit, any and all suspended permits shall then
be declared revoked and the performance bonds with
respect thereto forfeited.

When any bond is forfeited pursuant to the provisions
of this article, the director shall give notice to the
attorney general who shall collect the forfeiture without
delay.

§22-4-20. Adjudications, findings, etc., to be by written
order; contents; notice.

Every adjudication, determination or finding by the
director affecting the rights, duties or privileges of any
person subject to this article shall be made by written
order and shall contain a written finding by the director
of the facts upon which the adjudication, determination
or finding is based. Notice of the making of such order
shall be given to the person whose rights, duties or
privileges are affected thereby by mailing a true copy
thereof to such person by certified mail.

§22-4-21. Appeals to board.

Any person claiming to be aggrieved or adversely
affected by any rule or order of the director or his or
her failure to enter an order may appeal to the surface
mine board, pursuant to the provisions of article one,
chapter twenty-two-b of this code, for an order vacating
or modifying such rule or order, or for such order as
the director should have entered.

§22-4-22. Offenses; penalties; prosecutions; treble dam-
ages; injunctive relief.

(a) Any person who conducts any surface-mining
operation, or any part thereof, without a permit or
without having furnished the required bond, or who
carries on such operation or be a party thereto on land
not covered by a permit, or who falsely represents any
material fact in an application for a permit or in an
application for the renewal of a permit, or who willfully violates any provision of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both. Any person who deliberately violates any provision of this article or conducts surface-mining operations without a permit is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months, or by both. Each day of violation is a separate offense. It is the duty of the director to institute prosecutions for violations of the provisions hereof. Any person convicted under the provisions of this section shall, in addition to any fine imposed, pay to the director for deposit in the surface-mining reclamation fund an amount sufficient to reclaim the area with respect to which such conviction relates. The director shall institute any suit or other legal action necessary for the effective administration of the provisions of this article.

(b) In addition to and notwithstanding any other penalties provided by law, any operator who directly causes damage to the property of others as a result of surface mining is liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one year after such operator has completed all reclamation work with respect to the land on which such surface mining was carried out and all bonds of such operator with respect to such reclamation work are released. Such damages are recoverable in an action at law in any court of competent jurisdiction. The director shall require, in addition to any other bonds and insurance required by other provisions of this article, that any person engaged in the business of surface mining shall file with the director a certificate of insurance, or other security in an amount of not less than ten thousand dollars, to cover possible damage to property for which a recovery may be sought under the provisions of this subsection.
(c) Upon application by the director, the attorney general, or the prosecuting attorney of the county in which the major portion of the permit area is located, any court of competent jurisdiction may by injunction compel compliance with and enjoin violations of the provisions of this article. The court or the judge thereof in vacation may issue a preliminary injunction in any case pending a decision on the merits of any application filed.

An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed under the provisions of this article is final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that 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.

§22-4-23. Validity and construction of existing surface-mining permits.

Any valid surface-mining permit existing on the effective date of this article shall remain in full force and effect until such permit expires under its terms or is otherwise terminated under the provisions of this article. The provisions of this section do not require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of this article.

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-1. Declaration of policy and purpose.
§22-5-2. Definitions.
Chapter 61

Environmental Protection

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§22-5-1. Declaration of policy and purpose.

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the "Federal Clean Air Act," as amended.

§22-5-2. Definitions.
The terms used in this article are defined as follows:

1. “Air pollutants” means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

2. “Board” means the air quality board continued pursuant to the provisions of article two, chapter twenty-two-b of this code.

3. “Director” means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code.

4. “Discharge” means any release, escape or emission of air pollutants into the air.

5. “Person” means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

6. “Statutory air pollution” means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

§22-5-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.

It is unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules promulgated pursuant to this article to operate any facility subject to the permit requirements of the director without a valid permit, or to knowingly misrepresent to any person in the state of West Virginia that the sale of air pollution control
equipment will meet the standards of this article or any rules promulgated pursuant to this article. Nothing contained in this article provides any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

§22-5-4. Powers and duties of director; and legal services; rules.

(a) The director is authorized:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the “Federal Clean Air Act,” as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the
provisions of this article and the rules lawfully promul-
gated hereunder;

(6) To consider complaints, subpoena witnesses, 
administer oaths, make investigations and hold hearings 
relevant to the promulgation of rules and the entry of 
compliance orders hereunder;

(7) To encourage voluntary cooperation by municipal-
ities, counties, industries and others in preserving the 
purity of the air within the state;

(8) To employ personnel, including specialists and 
consultants, purchase materials and supplies, and enter 
into contracts necessary, incident or convenient to the 
accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or 
place on or at which a source of air pollutants is located 
or is being constructed, installed or established at any 
reasonable time for the purpose of ascertaining the state 
of compliance with this article and rules promulgated 
under the provisions of this article. No person shall 
refuse entry or access to any authorized representative 
of the director who requests entry for purposes of 
inspection, and who presents appropriate credentials; 
or shall any person obstruct, hamper or interfere with 
any such inspection: Provided, That nothing contained 
in this article eliminates any obligation to follow any 
process that may be required by law;

(10) Upon reasonable evidence of a violation of this 
article, which presents an imminent and serious hazard 
to public health, to give notice to the public or to that 
portion of the public which is in danger by any and all 
appropriate means;

(11) To cooperate with, receive and expend money 
from the federal government and other sources; and the 
director may cooperate with any public or private 
agency or person and receive therefrom and on behalf 
of the state gifts, donations, and contributions, which 
shall be deposited to the credit of the "Air Pollution 
Education and Environment Fund" which is hereby 
continued in the state treasury. The moneys collected
pursuant to this article which are directed to be deposited in the air pollution education and environment fund must be deposited in a separate account in the state treasury and expenditures for purposes set forth in this article are not authorized from collection but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as he or she may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the director about all matters pertaining to the regulation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director;
(16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended: Provided, That in preparing and submitting each such plan the director shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: Provided, however, That nothing herein contained affects plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(17) To promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, providing for the following:

(A) Procedures and requirements for permit applications, transfers and modifications and the review thereof;

(B) Imposition of permit application and transfer fees;

(C) Establishment of criteria for construction, modification, relocation and operating permits;

(D) Imposition of permit fees and of certificate fees: Provided, That any person subject to operating permit fees pursuant to section twelve of this article is exempt from imposition of the certificate fee; and

(E) Imposition of penalties and interest for the nonpayment of fees.

The fees, penalties and interest shall be deposited in a special account in the state treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the board, the office of air quality and their employees to carry out the provisions of this article: Provided, That the fees, penalties and interest collected for operating permits
150 required by section twelve of this article shall be
151 expended solely to cover all reasonable direct and
152 indirect costs required to administer the operating
153 permit program. The fees collected pursuant to this
154 subdivision must be deposited in a separate account in
155 the state treasury and expenditures for purposes set
156 forth in this article are not authorized from collections
157 but are to be made only in accordance with appropri-
158 ation and in accordance with the provisions of article
159 three, chapter twelve of this code and upon fulfillment
160 of the provisions set forth in article two, chapter five-
161 a of this code. Amounts collected which are found from
162 time to time to exceed the funds needed for the purposes
163 set forth in this article may be transferred to other
164 accounts or funds and redesignated for other purposes
165 by appropriation of the Legislature: Provided, however,
166 That for fiscal year one thousand nine hundred ninety-
167 three, expenditures are permitted from collections
168 without appropriation by the Legislature; and

169 (18) Receipt of any money by the director as a result
170 of the entry of any consent order shall be deposited in
171 the state treasury to the credit of the air pollution
172 education and environment fund.

173 (b) The attorney general and his or her assistants and
174 the prosecuting attorneys of the several counties shall
175 render to the director without additional compensation
176 such legal services as the director may require of them
177 to enforce the provisions of this article.

§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.

1 If, from any investigation made by the director or
2 from any complaint filed with him or her, the director
3 is of the opinion that a person is violating the provisions
4 of this article, or any rules promulgated pursuant
5 thereto, he or she shall make and enter an order
6 directing such person to cease and desist such activity.
7 The director shall fix a reasonable time in such order
8 by which such activity must stop or be prevented. The
9 order shall contain the findings of fact upon which the
director determined to make and enter such order.

If, after any investigation made by the director, or from any complaint filed with him or her, the director is of the opinion that a permit holder is violating the provisions of this article, or any rules promulgated pursuant thereto, or any order of the director, or any provision of a permit, the director may issue notice of intent to suspend, modify or revoke and reissue such permit. Upon notice of the director's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order is a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter such order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the board.

The director shall cause a copy of any such order to be served upon such person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of such final order has been served may appeal such order to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed ten thousand dollars for each day of such violation, which penalty shall be recovered in a civil action brought by
the director in the name of the state of West Virginia in the circuit court of any county wherein such person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury: Provided, That any such person is not subject to such civil penalties unless such person has been given written notice thereof by the director: Provided, however, That for the first such minor violation, if such person corrects the violation within such time as was specified in the notice of violation issued by the director, no such civil penalty may be recovered: Provided further, That if such person fails to correct such minor violation or for any serious or subsequent serious or minor violation, such person is subject to civil penalties imposed pursuant to this section from the first day of such violation notwithstanding the date of the issuance or receipt of the notice of violation. The director shall, by rule subject to the provisions of chapter twenty-nine-a of this code, determine the definitions of serious and minor violations. The amount of any such penalty collected by the director shall be deposited in the general revenue of the state treasury according to law.

(b) (1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated under this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or imprisoned in the county jail not more than six months or both fined and imprisoned.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars for each day of such violation or imprisoned in the county jail not more than one year or both fined and imprisoned.

(c) Upon a request in writing from the director it is the duty of the attorney general and the prosecuting
attorney of the county in which any such action for penalties accruing under this section or section seven of this article may be brought to institute and prosecute all such actions on behalf of the director.

(d) For the purpose of this section, violations on separate days are separate offenses.

§22-5-7. Applications for injunctive relief.

1 The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage 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 brought under this section or for civil penalty brought under section six of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

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


1 Whenever air pollution conditions in any area of the state become such as, in the opinion of the director, to create an emergency and to require immediate action for the protection of the public health, the director may, with the written approval of the governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the director shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or contributing to such condi-
A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the director shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the director may thereafter apply by petition to the circuit court of the county for a review of the director's action. The circuit court shall forthwith fix a time for hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside, in whole or in part, the order and action of the director. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the supreme court of appeals in the manner prescribed by law.

§22-5-9. Powers reserved to secretary of the department of health and human resources, commissioner of bureau of public health, local health boards and political subdivisions; conflicting statutes repealed.

Nothing in this article affects or limits the powers or duties heretofore conferred by the provisions of chapter sixteen of this code upon the secretary of the department of health and human resources, the commissioner of the bureau of public health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this
article and to the extent that they might otherwise apply to the control, reduction or abatement of air pollution, hereby repealed: Provided, That no ordinance previously adopted by any municipality relating to the control, reduction or abatement of air pollution is repealed by this article.

§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall consider such records, reports, data or information or such particular portion thereof confidential: Provided, That such confidentiality does not apply to the types and amounts of air pollutants discharged and that such records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: Provided, however, That such officers, employees or authorized representatives of the state or federal environmental protection agency protect such records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

All requests to inspect or copy documents must state
with reasonable specificity the documents or type of
documents sought to be inspected or copied. Within five
business days of the receipt of such a request, the
director or his or her designate shall: (a) Advise the
person making such request of the time and place at
which the person may inspect and copy the documents;
or (b) deny the request, stating in writing the reasons
for such denial. For purposes of judicial appeal, a
written denial by the director shall be deemed an
exhaustion of administrative remedies. Any person
whose request for information is denied, in whole or in
part, may appeal from such denial by filing with the
director a notice of appeal. Such notice shall be filed
within thirty days from the date the request for
information was denied, and shall be signed by the
person whose request was denied or the person’s
attorney. The appeal shall be taken to the circuit court
of Kanawha County, where it shall be heard without a
jury. The scope of review is limited to the question of
whether the records, reports, data or other information,
or any particular part thereof (other than emission
data), sought to be inspected or copied, would, if made
public, divulge methods or processes entitled to protec-
tion as trade secrets. The said court shall make findings
of fact and conclusions of law based upon the evidence
and testimony. The director, the person whose request
was denied, or any other person whose interest has been
substantially affected by the final order of the circuit
court may appeal to the supreme court of appeals in the
manner prescribed by law.

§22-5-11. Construction, modification or relocation per-
mits required for stationary sources of air pollutants.

No person shall construct, modify or relocate any
stationary source of air pollutants without first obtain-
ing a construction, modification or relocation permit as
provided in this section.

The director shall by rule specify the class or
categories of stationary sources to which this section
applies. Application for permits shall be made upon
such form, in such manner, and within such time as the
rule prescribes and shall include such information, as
in the judgment of the director, will enable him or her
to determine whether such source will be so designed
as to operate in conformance with the provisions of this
article or any rules of the director.

The director shall, within a reasonable time not to
exceed twelve months for major sources, as defined by
the director, and six months for all other sources after
the receipt of a complete application, issue such permit
unless he or she determines that the proposed construc-
tion, modification or relocation will not be in accordance
with this article or rules promulgated thereunder, in
which case the director shall issue an order for the
prevention of such construction, modification or reloca-
tion. For the purposes of this section, a modification is
deemed to be any physical change in, or change in the
method of operation of, a stationary source which
increases the amount of any air pollutant discharged by
such source above a de minimis level set by the director.

§22-5-12. Operating permits required for stationary
sources of air pollution.

No person may operate a stationary source of air
pollutants without first obtaining an operating permit
as provided in this section. The director shall promul-
gate legislative rules, in accordance with chapter
twenty-nine-a of this code, which specify classes or
categories of stationary sources which are required to
obtain an operating permit. The legislative rule shall
provide for the form and content of the application
procedure including time limitations for obtaining the
required permits. Any person who has filed a timely and
complete application for a permit or renewal thereof
required by this section, and who is abiding by the
requirements of this article and the rules promulgated
pursuant thereto is in compliance with the requirements
of this article and any rule promulgated thereunder
until a permit is issued or denied. Any legislative rule
promulgated pursuant to the authority granted by this
section shall be equivalent to and consistent with rules
and regulations adopted by the administrator of United
States environmental protection agency pursuant to
Title IV and Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7651 et seq. and 42 U.S.C. §7661 et seq., respectively: Provided, That such legislative rule may deviate from the federal rules and regulations where a deviation is appropriate to implement the policy and purpose of this article taking into account such factors unique to West Virginia.


For permits required by sections eleven and twelve of this article, the director may incorporate the required permits with an existing permit or consolidate the required permits into a single permit.


Any person whose interest may be affected, including, but not necessarily limited to, the applicant and any person who participated in the public comment process, by a permit issued, modified or denied by the director may appeal such action of the director to the air quality board pursuant to article one, chapter twenty-two-b of this code.


(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this article, the director may provide by legislative rule for the control of emissions from motor vehicles. Such legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The director shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been
certified, approved, or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law or legislative rule, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules of the director to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability subjects the owner or operator to suspension or cancellation of the registration for the vehicle by the department of transportation, division of motor vehicles. The vehicle is not thereafter eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The department of transportation, division of motor vehicles, department of administration, information and communication services division, and the department of public safety shall make available technical information and records to the director to implement the legislative rule regarding motor vehicle pollution, inspection and maintenance. The director shall promulgate a legislative rule establishing motor vehicle pollution, inspection and maintenance standards and imposing an inspection fee at a rate sufficient to implement the motor vehicle inspection program.

(d) The director shall promulgate a legislative rule requiring maintenance of features of equipment in or on motor vehicles for the purpose of controlling emissions therefrom, and no motor vehicle may be issued a division of motor vehicles registration certificate, or the existing registration certificate shall be revoked, unless the motor vehicle has been found to be in compliance with the director's legislative rule.

(e) The remedies and penalties provided in this section and section one, article three, chapter seventeen-a of this code, apply to violations hereof, and the provisions of
§22-5-16. Small business environmental compliance assistance program, compliance advisory panel.

The secretary of the department of commerce, labor, and environmental resources shall establish a small business stationary source technical and environmental compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

(a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the governor to represent the general public;

(b) One member selected by the speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(d) One member selected by the president of the Senate who is an owner or who represents owners of small business stationary sources;

(e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources; and

(f) One member selected by the director to represent the director.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-1. Definitions.
§22-6-2. Director — Powers and duties generally; division records open to public; inspectors.
§22-6-3. Findings and orders of inspectors concerning violations; determi-
nation of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

§22-6-4. Review of findings and orders by director; special inspection; annulment, revision, etc., of order; notice.

§22-6-5. Requirements for findings, orders and notices; posting of findings and orders; judicial review of final orders of director.

§22-6-6. Permit required for well work; permit fee; application; soil erosion control plan.

§22-6-7. Water pollution control permits; powers and duties of the director; penalties.

§22-6-8. Permits not to be on flat well royalty leases; legislative findings and declarations; permit requirements.

§22-6-9. Notice to property owners.

§22-6-10. Procedure for filing comments; certification of notice.

§22-6-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

§22-6-13. Notice to coal operators, owners or lessees and director of intention to fracture certain other wells; contents of such notice; bond; permit required.

§22-6-14. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and director; issuance of permits; performance bonds or security in lieu thereof.

§22-6-15. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed locations or conditions; indication of changes on plats, etc.; issuance of permits.

§22-6-16. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

§22-6-17. Objections to proposed drilling of shallow gas wells; notice to chair of review board; indication of changes on plats; issuance of permits.

§22-6-18. Protective devices — When well penetrates workable coal bed; when gas is found beneath or between workable coal beds.

§22-6-19. Same — Continuance during life of well; dry or abandoned wells.

§22-6-20. Same — When well is drilled through horizon of coal bed from which coal has been removed.

§22-6-21. Same — Installation of fresh water casings.

§22-6-22. Well log to be filed; contents; authority to promulgate rules.

§22-6-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.

§22-6-24. Methods of plugging well.

§22-6-25. Introducing liquid pressure into producing strata to recover oil contained therein.

§22-6-26. Performance bonds; corporate surety or other security.
§22-6-27. Cause of action for damages caused by explosions.
§22-6-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.
§22-6-29. Operating permit and processing fund; special reclamation fund; fees.
§22-6-30. Reclamation requirements.
§22-6-31. Preventing waste of gas; plan of operation required for wasting gas in process of producing oil; rejection thereof.
§22-6-32. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.
§22-6-33. Restraining waste.
§22-6-34. Offenses; penalties.
§22-6-35. Civil action for contamination or deprivation of fresh water source or supply; presumption.
§22-6-36. Declaration of oil and gas notice by owners and lessees of coal seams.
§22-6-37. Rules, orders and permits remain in effect.
§22-6-38. Application of article; exclusions.
§22-6-39. Injunctive relief.
§22-6-40. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.
§22-6-41. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

§22-6-1. Definitions.

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

(a) “Casing” means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

(b) “Cement” means hydraulic cement properly mixed with water;

(c) “Chair” means the chair of the West Virginia shallow gas well review board as provided for in section four, article eight, chapter twenty-two-c of this code;

(d) “Coal operator” means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(e) “Coal seam” and “workable coal bed” are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commer-
cially worked and will require protection if wells are
drilled through it;

(f) "Director" means the director of the division of
environmental protection as established in article one of
this chapter or such other person to whom the director
has delegated authority or duties pursuant to sections
six or eight, article one of this chapter.

(g) "Deep well" means any well other than a shallow
well, drilled and completed in a formation at or below
the top of the uppermost member of the "Onondaga
Group";

(h) "Expanding cement" means any cement approved
by the office of oil and gas which expands during the
hardening process, including, but not limited to, regular
oil field cements with the proper additives;

(i) "Facility" means any facility utilized in the oil and
gas industry in this state and specifically named or
referred to in this article or in article eight or nine of
this chapter, other than a well or well site;

(j) "Gas" means all natural gas and all other fluid
hydrocarbons not defined as oil in this section;

(k) "Oil" means natural crude oil or petroleum and
other hydrocarbons, regardless of gravity, which are
produced at the well in liquid form by ordinary
production methods and which are not the result of
condensation of gas after it leaves the underground
reservoirs;

(l) "Owner" when used with reference to any well,
shall include any person or persons, firm, partnership,
partnership association or corporation that owns,
manages, operates, controls or possesses such well as
principal, or as lessee or contractor, employee or agent
of such principal;

(m) "Owner" when used with reference to any coal
seam, shall include any person or persons who own, lease
or operate such coal seam;

(n) "Person" means any natural person, corporation,
firm, partnership, partnership association, venture,
receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(o) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;

(p) "Review board" means the West Virginia shallow gas well review board as provided for in section four, article eight, chapter twenty-two-c of this code;

(q) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(r) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": Provided, That in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;

(s) "Stimulate" means any action taken by a well operator to increase the inherent productivity of an oil or gas well, including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(t) "Waste" means (i) physical waste, as the term is generally understood in the oil and gas industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from
a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter shall be construed to authorize any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article nine, chapter twenty-two-c of this code and the provisions of article eight, chapter twenty-two-c of this code; (v) inefficient storing of oil or gas: Provided, That storage in accordance with a certificate of public convenience issued by the federal energy regulatory commission shall be conclusively presumed to be efficient and (vi) other underground or surface waste in the production or storage of oil, gas or condensate, however caused. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, however, That nothing in this exclusion is intended to address ownership of the gas;

(u) “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term “well” does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;

(v) “Well work” means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well;

(w) “Well operator” or “operator” means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined;
(x) "Pollutant" shall have the same meaning as provided in subsection (17), section three, article eleven, chapter twenty-two of this code; and

(y) "Waters of this state" shall have the same meaning as the term "waters" as provided in subsection (23), section three, article eleven, chapter twenty-two of this code.

§22-6-2. Director — Powers and duties generally; division records open to public; inspectors.

(a) The director shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles eight and nine of this chapter.

(b) The director is authorized to enact rules necessary to effectuate the above stated purposes.

(c) The director shall have full charge of the oil and gas matters set out in this article and in articles eight and nine of this chapter. In addition to all other powers and duties conferred upon him, the director shall have the power and duty to:

(1) Supervise and direct the activities of the office of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and oil and gas inspectors.

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this article and articles seven, eight, nine and ten of this chapter;

(6) Employ a hearing officer and such clerks, steno-
graphers and other employees, as may be necessary to
carry out his duties and the purposes of the office of oil
and gas and fix their compensation;

(7) Hear and determine applications made by owners,
well operators and coal operators for the annulment or
revision of orders made by oil and gas inspectors or the
supervising inspector, and to make inspections, in
accordance with the provisions of this article and
articles eight and nine of this chapter;

(8) Cause a properly indexed permanent and public
record to be kept of all inspections made by the director
or by oil and gas inspectors or the supervising inspector;

(9) Conduct such research and studies as the director
shall deem necessary to aid in protecting the health and
safety of persons employed within or at potential or
existing oil or gas production fields within this state, to
improve drilling and production methods and to provide
for the more efficient protection and preservation of oil
and gas-bearing rock strata and property used in
connection therewith;

(10) Collect a permit fee of two hundred fifty dollars
for each permit application filed: Provided, That no
permit application fee shall be required when an
application is submitted solely for the plugging or
replugging of a well. All application fees required
hereunder shall be in addition to any other fees required
by the provisions of this article;

(11) Perform all other duties which are expressly
imposed upon the director by the provisions of this
chapter.

(12) Perform all duties as the permit issuing authority
for the state in all matters pertaining to the exploration,
development, production, storage and recovery of this
state's oil and gas;

(13) Adopt rules with respect to the issuance, denial,
retention, suspension or revocation of permits, authori-
izations and requirements of this chapter, which rules
shall assure that the rules, permits and authorizations
issued by the director are adequate to satisfy the
purposes of this article and articles seven, eight, nine
and ten of this chapter particularly with respect to the
consolidation of the various state and federal programs
which place permitting requirements on the explora-
tion, development, production, storage and recovery of
this state's oil and gas: Provided, That notwithstanding
any provisions of this article and articles seven, eight,
nine and ten of this chapter to the contrary, the
environmental quality board shall have the sole author-
ity pursuant to section three, article three, chapter
twenty-two-b to promulgate rules setting standards of
water quality applicable to waters of the state; and

(14) Perform such acts as may be necessary or
appropriate to secure to this state the benefits of federal
legislation establishing programs relating to the
exploration, development, production, storage and
recovery of this state's oil and gas, which programs are
assumable by the state.

(d) The director shall have authority to visit and
inspect any well or well site and any other oil or gas
facility in this state and may call for the assistance of
any oil and gas inspector or inspectors or supervising
inspector whenever such assistance is necessary in the
inspection of any such well or well site or any other oil
or gas facility. Similarly, all oil and gas inspectors and
the supervising inspector shall have authority to visit
and inspect any well or well site and any other oil or
gas facility in this state. Any well operator, coal
operator operating coal seams beneath the tract of land,
or the coal seam owner or lessee, if any, if said owner
or lessee is not yet operating said coal seams beneath
said tract of land may request the director to have an
immediate inspection made. The operator or owner of
every well or well site or any other oil or gas facility
shall cooperate with the director, all oil and gas
inspectors and the supervising inspector in making
inspections or obtaining information.

(e) Oil and gas inspectors shall devote their full time
and undivided attention to the performance of their
duties, and they shall be responsible for the inspection
of all wells or well sites or other oil or gas facilities in
their respective districts as often as may be required in
the performance of their duties.

(f) All records of the office shall be open to the public.

§22-6-3. Findings and orders of inspectors concerning
violations; determination of reasonable time
for abatement; extensions of time for abate­
ment; special inspections; notice of findings
and orders.

(a) If an oil and gas inspector, upon making an
inspection of a well or well site or any other oil or gas
facility, finds that any provision of this article is being
violated, the inspector shall also find whether or not an
imminent danger to persons exists, or whether or not
there exists an imminent danger that a fresh water
source or supply will be contaminated or lost. If the
inspector finds that such imminent danger exists, an
order requiring the operator of such well or well site or
other oil or gas facility to cease further operations until
such imminent danger has been abated shall be issued
by the inspector. If the inspector finds that no such
imminent danger exists, the inspector shall determine
what would be a reasonable period of time within which
such violation should be totally abated. Such findings
shall contain reference to the provisions of this article
which the inspector finds are being violated, and a
detailed description of the conditions which cause and
constitute such violation.

(b) The period of time so found by such oil and gas
inspector to be a reasonable period of time shall not
exceed seven days. Such period may be extended by
such inspector, or by any other oil and gas inspector
duly authorized by the director, from time to time, for
good cause, but not to exceed a total of thirty days, upon
the making of a special inspection to ascertain whether
or not such violation has been totally abated: Provided,
That such thirty-day period may be extended beyond
thirty days by such inspectors where abatement is
shown to be incapable of accomplishment because of
circumstances or conditions beyond the control of the
well operator. The director shall cause a special
inspection to be made: (A) Whenever an operator of a
well or well site or any other oil or gas facility, prior
to the expiration of any such period of time, requests the
director to cause a special inspection to be made at such
well or well site or any other oil or gas facility; and (B)
upon expiration of such period of time as originally
fixed or as extended, unless the director is satisfied that
the violation has been abated. Upon making such special
inspection, such oil and gas inspector shall determine
whether or not such violation has been totally abated.
If the inspector determines that such violation has not
been totally abated, the inspector shall determine
whether or not such period of time as originally fixed,
or as so fixed and extended, should be extended. If the
inspector determines that such period of time should be
extended, the inspector shall determine what a reasona-
ble extension would be. If the inspector determines that
such violation has not been totally abated, and if such
period of time as originally fixed, or as so fixed and
extended, has then expired, and if the inspector also
determines that such period of time should not be
further extended, the inspector shall thereupon make an
order requiring the operator of such well or well site or
other oil or gas facility to cease further operations of
such well, well site or facility, as the case may be. Such
findings and order shall contain reference to the specific
provisions of this article which are being violated.

(c) Notice of each finding and order made under this
section shall promptly be given to the operator of the
well or well site or other oil or gas facility to which it
pertains by the person making such finding or order.

(d) No order shall be issued under the authority of this
section which is not expressly authorized herein.

§22-6-4. Review of findings and orders by director;
special inspection; annulment, revision, etc.,
of order; notice.

(a) Any well operator, complaining coal operator,
owner or lessee, if any, aggrieved by findings or an
order made by an oil or gas inspector pursuant to section
three of this article, may within fifteen days apply to
the director for annulment or revision of such order. Upon receipt of such application the director shall make a special inspection of the well, well site or other oil and gas facility affected by such order, or cause two duly authorized oil and gas inspectors, other than the oil and gas inspector who made such order, to make such inspection of such well, or well site or other oil or gas facility and to report thereon to them. Upon making such special inspection, or upon receiving the report of such special inspection, as the case may be, the director shall make an order which shall include the director's findings and shall annul, revise or affirm the order of the oil and gas inspector.

(b) The director shall cause notice of each finding and order made under this section to be given promptly to the operator of the well, well site or other oil or gas facility to which such findings and order pertain, and the complainant under section three, if any.

(c) At any time while an order made pursuant to section three of this article is in effect, the operator of the well, well site or other oil or gas facility affected by such order may apply to the director for annulment or revision of such order. The director shall thereupon proceed to act upon such application in the manner provided in this section.

(d) In view of the urgent need for prompt decision of matters submitted to the director under this article, all actions which the director, or oil and gas inspectors or the supervising inspector are required to take under this article, shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

§22-6-5. Requirements for findings, orders and notices; posting of findings and orders; judicial review of final orders of director.

(a) All findings and orders made pursuant to section three or four of this article, and all notices required to be given of the making of such findings and orders, shall
be in writing. All such findings and orders shall be
signed by the person making them, and all such notices
shall be signed by the person charged with the duty of
giving the notice. All such notices shall contain a copy
of the findings and orders referred to therein.

(b) Notice of any finding or order required by section
three or four of this article to be given to an operator
shall be given by causing such notice, addressed to the
operator of the well, well site or other oil and/or gas
facility to which such finding or order pertains, to be
delivered to such operator by causing a copy thereof to
be sent by registered mail to the permanent address of
such operator as filed with the division and by causing
a copy thereof to be posted upon the drilling rig or other
equipment at the well, well site or other oil and/or gas
facility, as the case may be. The requirement of this
article that a notice shall be “addressed to the operator
of the well, well site or other oil and/or gas facility to
which such finding or order pertains,” shall not require
that the name of the operator for whom it is intended
shall be specifically set out in such address. Addressing
such notice to “Operator of ,” specifying the well, well
site or other oil and/or gas facility sufficiently to identify
it, shall satisfy such requirement.

(c) Any well operator, complaining coal operator,
owner or lessee, if any, adversely affected by a final
order issued by the director under section four of this
article shall be entitled to judicial review thereof. All
of the pertinent provisions of section four, article five,
chapter twenty-nine-a of this code shall apply to and
govern such judicial review with like effect as if the
provisions of said section four were set forth in extenso
in this section.

(d) 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-
ine-a of this code.

(e) Legal counsel and services for the director in all
appeal proceedings in any circuit court and the supreme
court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The director, with written approval of the attorney general, may employ special counsel to represent the director at any such appeal proceedings.

§22-6-6. Permit required for well work; permit fee; application; soil erosion control plan.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, without first securing from the director a well work permit. An application may propose and a permit may approve two or more activities defined as well work.

(b) The application for a well work permit shall be accompanied by applicable bond as prescribed by section twelve, fourteen or twenty-three of this article, and the applicable plat required by section twelve or fourteen of this article.

(c) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person whom the applicant must notify under any section of this article together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The name and address of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by section twelve, if any, if said owner or lessee is not yet operating said coal seams;

(3) The number of the well or such other identification as the director may require;

(4) The type of well;
30 (5) The well work for which a permit is requested;

31 (6) The approximate depth to which the well is to be
32 drilled or deepened, or the actual depth if the well has
33 been drilled;

34 (7) Any permit application fee required by law;

35 (8) If the proposed well work will require casing or
36 tubing to be set, the entire casing program for the well,
37 including the size of each string of pipe, the starting
38 point and depth to which each string is to be set, and
39 the extent to which each such string is to be cemented;

40 (9) If the proposed well work is to convert an oil well
41 or a combination well or to drill a new well for the
42 purpose of introducing pressure for the recovery of oil
43 as provided in section twenty-five of this article,
44 specifications in accordance with the data requirements
45 of section fourteen of this article;

46 (10) If the proposed well work is to plug or replug the
47 well, (i) specifications in accordance with the data
48 requirements of section twenty-three of this article, (ii)
49 a copy of all logs in the operator's possession as the
50 director may require, and (iii) a work order showing in
51 detail the proposed manner of plugging or unplugging
52 the well, in order that a representative of the director
53 and any interested persons may be present when the
54 work is done. In the event of an application to drill,
55 redrill or deepen a well, if the well work is unsuccessful
56 so that the well must be plugged and abandoned, and
57 if the well is one on which the well work has been
58 continuously progressing pursuant to a permit, the
59 operator may proceed to plug the well as soon as the
60 operator has obtained the verbal permission of the
61 director or the director's designated representative to
62 plug and abandon the well, except that the operator
63 shall make reasonable effort to notify as soon as
64 practicable the surface owner and the coal owner, if any,
65 of the land at the well location, and shall also timely file
66 the plugging affidavit required by section twenty-three
67 of this article;

68 (11) If the proposed well work is to stimulate an oil
or gas well, specifications in accordance with the data
requirements of section thirteen of this article;

(12) The erosion and sediment control plan required
under subsection (d) of this section for applications for
permits to drill; and

(13) Any other relevant information which the
director may require by rule.

(d) An erosion and sediment control plan shall
accompany each application for a well work permit
except for a well work permit to plug or replug any
well. Such plan shall contain methods of stabilization
and drainage, including a map of the project area
indicating the amount of acreage disturbed. The erosion
and sediment control plan shall meet the minimum
requirements of the West Virginia erosion and sediment
control manual as adopted and from time to time
amended by the division, in consultation with the several
soil conservation districts pursuant to the control
program established in this state through section 208 of
the federal Water Pollution Control Act Amendments of
1972 (33 U.S.C. 1288). The erosion and sediment control
plan shall become part of the terms and conditions of
a well work permit, except for a well work permit to
plug or replug any well, which is issued and the
provisions of the plan shall be carried out where
applicable in the operation. The erosion and sediment
control plan shall set out the proposed method of
reclamation which shall comply with the requirements
of section thirty of this article.

(e) The well operator named in such application shall
designate the name and address of an agent for such
operator who shall be the attorney-in-fact for the
operator and who shall be a resident of the state of West
Virginia upon whom notices, orders or other commun-
ications issued pursuant to this article or article eleven,
chapter twenty-two, may be served, and upon whom
process may be served. Every well operator required to
designate an agent under this section shall within five
days after the termination of such designation notify the
director of such termination and designate a new agent.
(f) The well owner or operator shall install the permit number as issued by the director in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the director.

(g) The director may waive the requirements of this section and sections nine, ten and eleven of this article in any emergency situation, if the director deems such action necessary. In such case the director may issue an emergency permit which would be effective for not more than thirty days, but which would be subject to reissuance by the director.

(h) The director shall deny the issuance of a permit if the director determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation within the time prescribed by the director pursuant to the provisions of sections three and four of this article and the rules promulgated hereunder, which time may not be unreasonable: Provided, That in the event that the director does find that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the director may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit: Provided, however, That the director may reinstate the permit without further notice, at which time the well work may be continued. The director shall make written findings of any such determination and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section forty of this article. The director shall make a written finding of any such determination.

(i) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five
thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§ 22-6-7. Water pollution control permits; powers and duties of the director; penalties.

(a) In addition to a permit for well work, the director, after public notice and an opportunity for public hearings, may either issue a separate permit, general permit or a permit consolidated with the well work permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of the director.

(b) It shall be unlawful for any person conducting activities which are subject to the requirements of this article, unless that person holds a water pollution control permit therefor from the director, which is in full force and effect to:

1. Allow pollutants or the effluent therefrom, produced by or emanating from any point source, to flow into the water of this state;

2. Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of pollutants or the effluent therefrom, into the waters of this state;

3. Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated pollutants or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;

4. Increase in volume or concentration any pollutants in excess of the discharges or disposition specified or permitted under any existing permit;

5. Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any pollutants discharging or flowing into the waters of the state;
(6) Operate any disposal well for the injection or reinjection underground of any pollutant, including, but not limited to, liquids or gasses, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Notwithstanding any provision of this article or articles seven, eight, nine or ten of this chapter to the contrary, the director shall have the same powers and duties relating to inspection and enforcement as those granted under article eleven, chapter twenty-two of this code in connection with the issuance of any water pollution control permit or any person required to have such permit.

(d) Any person who violates any provision of this section, any order issued under this section or any permit issued pursuant to this section or any rule of the director relating to water pollution or who willfully or negligently violates any provision of this section or any permit issued pursuant to this section or any rule or order of the director relating to water pollution or who fails or refuses to apply for and obtain a permit or who intentionally misrepresents any material fact in an application, record, report, plan or other document files or required to be maintained under this section shall be subject to the same penalties for such violations as are provided for in sections twenty-two and twenty-four, article eleven, chapter twenty-two of this code: Provided, that the provisions of section twenty-six, article eleven, chapter twenty-two of this code relating to exceptions to criminal liability shall also apply.

All applications for injunction filed pursuant to section twenty-two, article eleven, chapter twenty-two of the code shall take priority on the docket of the circuit court in which pending, and shall take precedence over all other civil cases.

(e) Any water pollution control permit issued pursuant to this section or any order issued in connection with such permit for the purpose of implementing the "national pollutant discharge elimination system" established under the federal Clean Water Act shall be
issued by the chief of the office of water resources of the division in consultation with the chief of the office of oil and gas of the division and shall be appealable to the environmental quality board pursuant to the provisions of section twenty-five, article eleven, chapter twenty-two and section seven, article one, chapter twenty-two-b of this code.

§22-6-8. Permits not to be on flat well royalty leases; legislative findings and declarations; permit requirements.

(a) The Legislature hereby finds and declares:

(1) That a significant portion of the oil and gas underlying this state is subject to development pursuant to leases or other continuing contractual agreements wherein the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well, and thus is not inherently related to the volume of the oil and gas produced or marketed;

(2) That continued exploitation of the natural resources of this state in exchange for such wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil and gas in place, and unreasonably deprives the economy of the state of West Virginia of the just benefit of the natural wealth of this state;

(3) That a great portion, if not all, of such leases or other continuing contracts based upon or calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently extracted, produced or marketed, were not known or contemplated by the parties, nor was it contemplated by the parties that oil and gas would be recovered or extracted or produced or marketed from the depths and horizons currently being developed by the well operators;

(4) That while being fully cognizant that the provi-
sions of section 10, article I of the United States
Constitution and of section 4, article III of the Consti-
tution of West Virginia, proscribe the enactment of any
law impairing the obligation of a contract, the Legisla-
ture further finds that it is a valid exercise of the police
powers of this state and in the interest of the state of
West Virginia and in furtherance of the welfare of its
citizens, to discourage as far as constitutionally possible
the production and marketing of oil and gas located in
this state under the type of leases or other continuing
contracts described above.

(b) In the light of the foregoing findings, the Legis-
lature hereby declares that it is the policy of this state,
to the extent possible, to prevent the extraction,
production or marketing of oil or gas under a lease or
leases or other continuing contract or contracts provid-
ing a flat well royalty or any similar provisions for
compensation to the owner of the oil and gas in place,
which is not inherently related to the volume of oil or
gas produced or marketed, and toward these ends, the
Legislature further declares that it is the obligation of
this state to prohibit the issuance of any permit required
by it for the development of oil or gas where the right
to develop, extract, produce or market the same is based
upon such leases or other continuing contractual
agreements.

(c) In addition to any requirements contained in this
article with respect to the issuance of any permit
required for the drilling, redrilling, deepening, fractur-
ing, stimulating, pressuring, converting, combining or
physically changing to allow the migration of fluid from
one formation to another, no such permit shall be
hereafter issued unless the lease or leases or other
continuing contract or contracts by which the right to
extract, produce or market the oil or gas is filed with
the application for such permit. In lieu of filing the lease
or leases or other continuing contract or contracts, the
applicant for a permit described herein may file the
following:

(1) A brief description of the tract of land including
the district and county wherein the tract is located;
(2) The identification of all parties to all leases or other continuing contractual agreements by which the right to extract, produce or market the oil or gas is claimed;

(3) The book and page number wherein each such lease or contract by which the right to extract, produce or market the oil or gas is recorded; and

(4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of subsection (e) are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced and marketed.

(e) To avoid the permit prohibition of subsection (d), the applicant may file with such application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth of the total amount paid to or received by or allowed to the owner of the working interest at the wellhead for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be extracted, produced or marketed from the well. If such affidavit be filed with such application, then such application for permit shall be treated as if such lease or leases or other continuing contract or contracts comply with the provisions of this section.

(f) The owner of the oil or gas in place shall have a cause of action to enforce the owner's rights established
by this section.

(g) The provisions of this section shall not affect or apply to any lease or leases or other continuing contract or contracts for the underground storage of gas or any well utilized in connection therewith or otherwise subject to the provisions of article nine of this chapter.

(h) The director shall enforce this requirement irrespective of when the lease or other continuing contract was executed.

(i) The provisions of this section shall not adversely affect any rights to free gas.

§22-6-9. Notice to property owners.

(a) No later than the filing date of the application, the applicant for a permit for any well work shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan required by section six of this article to each of the following persons:

(1) The owners of record of the surface of the tract on which the well is, or is to be located; and

(2) The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if such surface tract is to be utilized for roads or other land disturbance as described in the erosion and sediment control plan submitted pursuant to section six of this article.

(b) If more than three tenants in common or other co-owners of interests described in subsection (a) of this section hold interests in such lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code, or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the director shall prescribe by rule, with the first publication date being at least ten days prior to the
filing of the permit application: Provided, That all
owners occupying the tracts where the well work is, or
is proposed to be located at the filing date of the permit
application shall receive actual service of the documents
required by subsection (a) of this section.

(c) Materials served upon persons described in
subsections (a) and (b) of this section shall contain a
statement of the methods and time limits for filing
comments, who may file comments and the name and
address of the director for the purpose of filing
comments and obtaining additional information and a
statement that such persons may request, at the time of
submitting comments, notice of the permit decision and
a list of persons qualified to test water as provided in
this section.

(d) Any person entitled to submit comments shall also
be entitled to receive a copy of the permit as issued or
a copy of the order denying the permit if such person
requests the receipt thereof as a part of the comments
concerning said permit application.

(e) Persons entitled to notice may contact the district
office of the division to ascertain the names and location
of water testing laboratories in the area capable and
qualified to test water supplies in accordance with
standard accepted methods. In compiling such list of
names the division shall consult with the state bureau
of public health and local health departments.

§22-6-10. Procedure for filing comments; certification of
notice.

(a) All persons described in subsections (a) and (b),
section nine of this article may file comments with the
director as to the location or construction of the
applicant's proposed well work within fifteen days after
the application is filed with the director.

(b) Prior to the issuance of any permit for well work,
the applicant shall certify to the director that the
requirements of section nine of this article have been
completed by the applicant. Such certification may be
by affidavit of personal service or the return receipt
§22-6-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

The director shall review each application for a well work permit and shall determine whether or not a permit shall be issued.

No permit shall be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the well work application, including the erosion and sediment control plan, if required, and the plat required by section six of this article, and further files written statements of no objection by all such persons, the director may issue the well work permit at any time.

The director may cause such inspections to be made of the proposed well work location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned including conditions with respect to the location of the well and access roads prior to issuance if the director determines that:

(1) The proposed well work will constitute a hazard to the safety of persons; or

(2) The plan for soil erosion and sediment control is not adequate or effective; or

(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies.

The director shall promptly review all comments filed. If after review of the application and all comments
The application for a well work permit is approved, and no timely objection or comment has been filed with the director or made by the director under the provisions of section fifteen, sixteen or seventeen of this article, the permit shall be issued, with conditions, if any. Nothing in this section shall be construed to supersede the provisions of sections six, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

The director shall mail a copy of the permit as issued or a copy of the order denying a permit to any person who submitted comments to the director concerning said permit and requested such copy.

Upon the issuance of any permit pursuant to the provisions of this article, the director shall transmit a copy of such permit to the office of the assessor for the county in which the well is located.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

(a) Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the director. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating
19. said coal seams beneath said tract of land, who has
20. mapped the same and filed such maps with the office
21. of miners' health, safety and training in accordance with
22. chapter twenty-two-a of this code and the coal seam
23. owner of record and lessee of record, if any, if said
24. owner or lessee has recorded the declaration provided
25. in section thirty-six of this article, and if said owner or
26. lessee is not yet operating said coal seams beneath said
27. tract of land. With each of such plats there shall be
28. enclosed a notice (form for which shall be furnished on
29. request by the director) addressed to the director and
30. to each such coal operator, owner and lessee, if any, at
31. their respective addresses, informing them that such
32. plat and notice are being mailed to them respectively
33. by registered or certified mail, pursuant to the require-
34. ments of this article.

(b) If no objections are made, or are found by the
35. director, to such proposed location or proposed fractur-
36. ing within fifteen days from receipt of such plat and
37. notice by the director, the same shall be filed and
38. become a permanent record of such location or fractur-
39. ing subject to inspection at any time by any interested
40. person, and the director may forthwith issue to the well
41. operator a permit reciting the filing of such plat, that
42. no objections have been made by the coal operators,
43. owners and lessees, if any, or found thereto by the
44. director, and authorizing the well operator to drill at
45. such location, or to fracture the well. Unless the director
46. has objections to such proposed location or proposed
47. fracturing or stimulating, such permit may be issued
48. prior to the expiration of such fifteen-day period upon
49. the obtaining by the well operator of the consent in
50. writing of the coal operator or operators, owners and
51. lessees, if any, to whom copies of the plat and notice
52. shall have been mailed as herein required, and upon
53. presentation of such written consent to the director. The
54. notice above provided for may be given to the coal
55. operator by delivering or mailing it by registered or
56. certified mail as above to any agent or superintendent
57. in actual charge of mines.

(c) A permit to drill, or to fracture or stimulate an
oil or gas well, shall not be issued unless the application
therefor is accompanied by a bond as provided in section
twenty-six of this article.

§22-6-13. Notice to coal operators, owners or lessees and
director of intention to fracture certain
other wells; contents of such notice; bond;
permit required.

Before fracturing any well the well operator shall, by
registered or certified mail, forward a notice of
intention to fracture such well to the director and to
each and every coal operator operating coal seams
beneath said tract of land, who has mapped the same
and filed such maps with the office of miners' health,
safety and training in accordance with chapter twenty-
two-a of this code, and the coal seam owner and lessee,
if any, if said owner of record or lessee of record has
recorded the declaration provided in section thirty-six
of this article, and if said owner or lessee is not yet
operating said coal seams beneath said tract of land.

The notice shall be addressed to the director and to
each such coal operator at their respective addresses,
shall contain the number of the drilling permit for such
well and such other information as may be required by
the director to enable the division and the coal operators
to locate and identify such well and shall inform them
that such notice is being mailed to them, respectively,
by registered or certified mail, pursuant to the require-
ments of this article. The form for such notice of
intention shall be furnished on request by the director.

If no objections are made, or are found by the director
to such proposed fracturing within fifteen days from
receipt of such notice by the director, the same shall be
filed and become a permanent record of such fracturing,
subject to inspection at any time by any interested
person, and the director shall forthwith issue to the well
operator a permit reciting the filing of such notice, that
no objections have been made by the coal operators, or
found thereto by the director, and authorizing the well
operator to fracture such well. Unless the director has
objections to such proposed fracturing, such permit shall
be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators, owners or lessees, if any, to whom notice of intention to fracture shall have been mailed as herein required, and upon presentation of such written consent to the director. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines.

§22-6-14. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and director; issuance of permits; performance bonds or security in lieu thereof.

(a) Before drilling a well for the introduction of liquids for the purposes provided for in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom on any tract of land, or before converting an existing well for such purposes, the well operator shall have a plat prepared by a registered engineer or licensed land surveyor showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of all adjacent tracts, the proposed or actual location of the well or wells determined by a survey, the courses and distances of such location from two permanent points of land marked on said tract and the number to be given to the well, and shall forward by registered or certified mail the original and one copy of the plat to the director. In addition, the well operator shall provide the following information on the plat or by way of attachment thereto to the director in the manner and form prescribed by the director's rules: (1) The location of all wells, abandoned or otherwise located within the area to be affected; (2) where available, the casing records of all such wells; (3) where available, the drilling log of all such wells; (4) the maximum pressure to be introduced; (5) the geological formation into which such liquid or pressure is to be
introduced; (6) a general description of the liquids to be introduced; (7) the location of all water-bearing horizons above and below the geological formation into which such pressure, liquid or waste is to be introduced; and (8) such other information as the director by rule may require.

(b) In the event the tract of land on which said well proposed to be drilled or converted for the purposes provided for in this section is located is known to be underlaid with coal seams, copies of the plat and all information required by this section shall be forwarded by the operator by registered or certified mail to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed such maps with the office of miners' health, safety and training in accordance with chapter twenty-two-a of this code, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said seams beneath said tract of land. With each of such plats, there shall be enclosed a notice (form for which shall be furnished on request by the director) addressed to the director and to each such coal operator, owner or lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this section.

(c) If no objections are made by any such coal operator, owner or lessee, or the director, such proposed drilling or converting of the well or wells for the purposes provided for in this section within thirty days from the receipt of such plat and notice by the director, the same shall be filed and become a permanent record of such location or well, subject to inspection at any time by any interested person, and the director may after public notice and opportunity to comment, issue such permit authorizing the well operator to drill at such location or convert such existing well or wells for the purposes provided for in this section. The notice above provided for may be given to the coal operator by
delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of the mines.

(d) A permit to drill a well or wells or convert an existing well or wells for the purposes provided for in this section shall not be issued until all of the bonding provisions required by the provisions of section twelve of this article have been fully complied with and all such bonding provisions shall apply to all wells drilled or converted for the purposes provided for in this section as if such wells had been drilled for the purposes provided for in section twelve of this article, except that such bonds shall be conditioned upon full compliance with all laws and rules relating to the drilling of a well or the converting of an existing well for the purposes provided for in said section twenty-five, or introducing of liquids for the disposal of pollutants including the redrilling, deepening, casing, plugging or abandonment of all such wells.

§22-6-15. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed locations or conditions; indication of changes on plats, etc.; issuance of permits.

(a) When a proposed deep well drilling site or oil well drilling site or any site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, or within fifteen days from the receipt by the director of notice required by section thirteen of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling or fracturing with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the director, the director shall notify the well
operator of the character of the objections and by whom
made and fix a time and place, not less than fifteen days
from the end of said fifteen-day period, at which such
objections will be considered of which time and place the
well operator and all objecting coal operators, owners or
lessees, if any, shall be given at least ten days' written
notice by the director, by registered or certified mail,
and summoned to appear. At the time and place so fixed
the well operator and the objecting coal operators,
owners or lessees, if any, or such of them as are present
or represented, shall proceed to consider the objections.
In the case of proposed drilling, such parties present or
represented may agree upon either the location as made
or so moved as to satisfy all objections and meet the
approval of the director, and any change in the original
location so agreed upon and approved by the director
shall be indicated on said plat on file with the director,
and the distance and direction of the new location from
the original location shall be shown, and as so altered,
the plat shall be filed and become a permanent record,
and in the case of proposed fracturing, such parties
present or represented may agree upon conditions under
which the well is to be fractured which will protect life
and property and which will satisfy all objections and
meet the approval of the director, at which time the plat
and notice required by section twelve or the notice
required by section thirteen, as the case may be, shall
be filed and become a permanent record. Whereupon the
director shall forthwith issue to the well operator a
drilling or fracturing permit, as the case may be,
reciting the filing of the plat and notice required by said
section twelve, or the notice required by said section
thirteen, as the case may be, that at a hearing duly held
a location as shown on the plat or the conditions under
which the fracturing is to take place for the protection
of life and property were agreed upon and approved,
and that the well operator is authorized to drill at such
location or to fracture at the site shown on such plat,
or to fracture the well identified in the notice required
by section thirteen, as the case may be.

(b) In the event the well operator and the objecting
coal operators, owners or lessees, if any, or such as are
present or represented at such hearing are unable to
agree upon a drilling location, or upon a drilling location
that meets the approval of the director, then the director
shall proceed to hear the evidence and testimony in
accordance with sections one and two, article five,
chapter twenty-nine-a of this code, except where such
provisions are inconsistent with the article. The director
shall take into consideration in arriving at his decision:

(1) Whether the drilling location is above or in close
proximity to any mine opening or shaft, entry, travel-
way, airway, haulageway, drainageway or passageway,
or to any proposed extension thereof in any operated or
abandoned or operating coal mine or coal mines already
surveyed and platted, but not yet being operated;

(2) Whether the proposed drilling can reasonably be
done through an existing or planned pillar of coal, or
in close proximity to an existing well or such pillar of
coal, taking into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into
consideration the dangers from creeps, squeezes or other
disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location
unreasonably interferes with the safe recovery of coal,
oil and gas.

At the close of the hearing or within ten days
thereafter the director shall issue an order:

(1) Refusing to issue a permit;

(2) Issuing a permit for the proposed drilling location;
or

(3) Issuing a permit for a drilling location different
from that requested by the well operator.

The order shall state with particularity the reasons
for the director's order and shall be mailed by registered
or certified mail to the parties present or represented
at such hearing. If the director has ruled that a permit
will be issued, the director shall issue a permit effective
ten days after such order is mailed, except that for good
cause shown, the director may stay the issuance of a
permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice received by mail as provided in section twelve of this article, and each notice mailed as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

(c) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

The director shall take into consideration whether the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances.

At the close of the hearing, or within ten days thereafter, the director shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances. If such fracturing cannot be done safely, the director shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered
or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, the director shall issue a permit effective ten days after such order is mailed, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the well to be fractured on the plat on file and shall number and keep an index of and docket each plat and notice received by mail as provided in section twelve of this article, and each notice received by mail as provided in section thirteen of this article, entering in such docket the name of the well operator, the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

§22-6-16. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

(a) When a well is proposed to be drilled or converted for the purposes provided for in section fourteen of this article, and is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the director of the plat and notice required by section fourteen of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling or conversion.

(b) In any case wherein a well proposed to be drilled or converted for the purposes provided for in section
14 fourteen of this article shall, in the opinion of the chief
15 of the office of water resources, affect detrimentally the
16 reasonable standards of purity and quality of the waters
17 of the state, such chief shall, within the time period
18 established by the director for the receipt of public
19 comment on such proposed drilling conversion, file with
20 the director such objections in writing to such proposed
21 drilling or conversion, setting out therein as definitely
22 as is reasonably possible the ground or grounds upon
23 which such objections are based and indicating the
24 conditions, consistent with the provisions of this article
25 and the rules promulgated thereunder, as may be
26 necessary for the protection of the reasonable standards
27 of the purity and quality of such waters under which
28 such proposed drilling or conversion may be completed
29 to overcome such objections, if any.
30 (c) If any objection or objections are so filed, or are
31 made by the director, the director shall notify the well
32 operator of the character of the objections and by whom
33 made and fix a time and place, not less than thirty days
34 from the end of said thirty-day period, at which such
35 objections will be considered, of which time and place
36 the well operator and all objecting coal operators, the
37 owners or lessees, if any, or such chief, shall be given
38 at least ten days' written notice by the director by
39 registered or certified mail, and summoned to appear.
40 At the time and place so fixed the well operator and the
41 objecting coal operators, owners or lessees, if any, or
42 such of them as are present or represented, or such
43 chief, shall proceed to consider the objections. In the
44 case of proposed drilling or converting of a well for the
45 purposes provided for in section fourteen of this article,
46 such parties present or represented may agree upon
47 either the location as made or so moved as to satisfy all
48 objections and meet the approval of the director, and
49 any change in the original location so agreed upon and
50 approved by the director shall be indicated on said plat
51 on file with the director, and the distance and direction
52 of the new location from the original location shall be
53 shown, and, as so altered, the plat shall be filed and
54 become a permanent record. In the case of proposed
55 conversion, such parties present or represented may
agree upon conditions under which the conversion is to take place for the protection of life and property or for protection of reasonable standards of purity and quality of the waters of the state. At which time the plat and notice required by section fourteen shall be filed and become a permanent record. Whereupon the director may issue to the well operator a permit to drill or convert, as the case may be, reciting the filing of the plat and notice required by said section fourteen that at a hearing duly held a location as shown on the plat or the conditions under which the conversion is to take place for the protection of life and property and reasonable standards of purity and quality of the waters of the state where agreed upon and approved, and that the well operator is authorized to drill at such location or to convert at the site shown on such plat, as the case may be.

(d) (1) In the case the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The director shall take into consideration upon decision:

(A) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, traveling, air haulage, drainage or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mine already surveyed and platted, but not yet being operated;

(B) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(C) Whether a well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances, due to the extraction of coal; and
(D) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

(2) At the close of the hearing or within ten days thereafter the director shall issue an order:

(A) Refusing to issue a permit;

(B) Issuing a permit for the proposed drilling location;

or

(C) Issuing a permit for a drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, the director shall issue a permit effective ten days after such order is mailed: Except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

(3) If a permit is issued, the director shall indicate the new drilling location on the plat on file with the director and shall number and keep an index of and docket each plat and notice mailed to the director as provided in section twelve of this article, and each notice mailed to the director as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director, permits issued or refused, the papers filed and a transcript of the hearing. This shall constitute a record of the proceedings before the director and shall be open to inspection by the public.

(e)(1) In the case, the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be converted as to protect life and property, and the reasonable standards of purity and quality of the waters of the state, or upon conditions of converting that meet with the approval of the director, then the
director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The director shall take into consideration upon decision:

(A) Whether the well can be converted safely, taking into consideration the dangers from creeps, squeezes or other disturbances;

(B) Whether the well can be converted, taking into consideration the reasonable standards of the purity and quality of the waters of the state.

(2) At the close of the hearing, or within ten days thereafter, the director shall issue an order stating the conditions under which the conversion is to take place, providing the well can be converted safely, taking into consideration the dangers from creeps, squeezes or other disturbances and the reasonable standards of purity and quality of the waters of this state. If such converting cannot be done safely, or if the reasonable standards of purity and quality of such waters will be endangered, the director shall issue an order stating with particularity the reasons for refusing to issue a permit.

(3) The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, such permit shall become effective ten days after the division has mailed such order: Except for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

(4) If a permit is issued, the director shall indicate the well to be converted on the plat on file with the director, and shall number and keep an index of and docket each plat and notice mailed to the director as provided in section fourteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director, permits issued or refused, the papers filed and a transcript of the hearings. This shall constitute a record of the proceed-
ings before the director and shall be open to inspection by the public.

§22-6-17. Objections to proposed drilling of shallow gas wells; notice to chair of review board; indication of changes on plats; issuance of permits.

When a proposed shallow well drilling site is above a seam or seams of coal, then the owner of any such coal seam may, within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling with the director. Setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any such objection is filed, or if any objection is made by the director, the director shall forthwith mail, by registered or certified mail, to the chair of the review board, a notice that an objection to the proposed drilling or deepening of a shallow well has been filed with or made by the director, and shall enclose in such notice a copy of all objections and of the application and plat filed with the director in accordance with the provisions of section twelve of this article.

Thereafter, no further action shall be taken on such application by the director until an order is received from the review board directing the director to:

(a) Refuse a drilling permit; or

(b) Issue a drilling permit for the proposed drilling location; or

(c) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or

(d) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.
Upon receipt of such board order, the director shall promptly undertake the action directed by the review board, except that the director shall not issue a drilling permit unless all other provisions of this article (except section fifteen) pertaining to the application for and approval of a drilling permit have been complied with. All permits issued by the director pursuant to this section shall be effective ten days after issuance unless the review board orders the director to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the director shall indicate the approved drilling location on the plat filed with the director in accordance with the provisions of section twelve of this article and shall number and keep an index of and docket each plat and notice mailed to the director as provided in section twelve of this article, and each notice mailed to the director as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of conferences, hearings and all other actions taken by the director and the review board. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

§22-6-18. Protective devices — When well penetrates workable coal bed; when gas is found beneath or between workable coal beds.

(a) When a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coal bed or beds in such a manner as will exclude all oil, gas or gas pressure from the coal bed or beds, except such oil, gas or gas pressure as may be found in such coal bed or beds. Such string of casing shall be run to a point at least thirty feet below the lowest workable coal bed which the well penetrates and shall be circulated and
cemented from such point to the surface in such a manner as provided for in reasonable rules promulgated by the director in accordance with the provisions of chapter twenty-nine-a. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth.

(b) In the event that gas is found beneath a workable coal bed before the hole has been reduced from the size it had at the coal bed, a packer shall be placed below the coal bed, and above the gas horizon, and the gas by this means diverted to the inside of the adjacent string of casing through perforations made in such casing, and through it passed to the surface without contact with the coal bed. Should gas be found between two workable beds of coal, in a hole, of the same diameter from bed to bed, two packers shall be placed, with perforations in the casing between them, permitting the gas to pass to the surface inside the adjacent casing. In either of the cases here specified, the strings of casing shall extend from their seats to the top of the well.

§22-6-19. Same — Continuance during life of well; dry or abandoned wells.

In the event that a well becomes productive of natural gas or petroleum, or is drilled for or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section twenty-five of this article or for the disposal of pollutants or the effluent therefrom, all coal-protecting strings of casing and all water-protecting strings of casing shall remain in place until the well is plugged or abandoned. During the life of the well the annular spaces between the various strings of casing adjacent to workable beds of coal shall be kept open, and the top ends of all such strings shall be provided with casing heads, or such other suitable devices as will permit the free passage of gas and prevent filling of such annular spaces with dirt or debris.

Any well which is completed as a dry hole or which is not in use for a period of twelve consecutive months shall be presumed to have been abandoned and shall
promptly be plugged by the operator in accordance with
the provisions of this article, unless the operator
furnishes satisfactory proof to the director that there is
a bona fide future use for such well.

§22-6-20. Same — When well is drilled through horizon
of coal bed from which coal has been
removed.

When a well is drilled through the horizon of a coal
bed from which the coal has been removed, the hole
shall be drilled at least thirty feet below the coal bed,
of a size sufficient to permit the placing of a liner which
shall start not less than twenty feet beneath the horizon
of the coal bed and extend not less than twenty feet
above it. Within this liner, which may be welded to the
casing to be used, shall be centrally placed the largest
sized casing to be used in the well, and the space
between the liner and casing shall be filled with cement
as they are lowered into the hole. Cement shall be placed
in the bottom of the hole to a depth of twenty feet to
form a sealed seat for both liner and casing. Following
the setting of the liner, drilling shall proceed in the
manner provided above. Should it be found necessary to
drill through the horizon of two or more workable coal
beds from which the coal has been removed, such liner
shall be started not less than twenty feet below the
lowest such horizon penetrated and shall extend to a
point not less than twenty feet above the highest such
horizon.

§22-6-21. Same — Installation of fresh water casings.

When a permit has been issued for the drilling of an
oil or gas well or both, each well operator shall run and
permanently cement a string of casing in the hole
through the fresh water bearing strata in such a manner
and to the extent provided for in rules promulgated by
the director in accordance with the provisions of this
chapter.

No oil or gas well shall be drilled nearer than two
hundred feet from an existing water well or dwelling
without first obtaining the written consent of the owner
of such water well or dwelling.
§22-6-22. Well log to be filed; contents; authority to promulgate rules.

1 Within a reasonable time after the completion of the drilling of a well, the well operator shall file with the director an accurate log. Such log shall contain the character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine and oil and gas bearing formations and such other information as the director may require to effectuate the purposes of this chapter.

2 The director may promulgate such reasonable rules in accordance with article three, chapter twenty-nine-a of this code, as he may deem necessary to ensure that the character, depth and thickness of geological formations encountered are accurately logged: Provided, That the director shall not require logging by the use of an electrical logging device.

§22-6-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.

1 All dry or abandoned wells or wells presumed to be abandoned under the provisions of section nineteen of this article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules promulgated by the director.

2 Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the director and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section twelve of this article, and the coal operators to whom notices are required to be given by section thirteen of this article, of its intention to plug and abandon any such well (using such form of notice as the director may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so
mailed is received or in due course should be received by the director, in order that a representative or representatives of the director and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well: Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described, or (b) first obtain the written approval of the director and such coal operator, owner or lessee, if any, or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the director, first obtain the verbal permission of the director or the director's designated representative to plug and abandon such well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of such plugging operations, give the written notices required by subdivision (a) above.

No well may be plugged or abandoned unless prior to the commencement of plugging operations and the abandonment of any well the director is furnished a bond as provided in section twenty-six of this article.

When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the director) by two experienced persons who participated in the work, the director or the director's designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the director.

§22-6-24. Methods of plugging well.

Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid
for the purposes provided for in section twenty-five of this article or for the disposal of pollutants or the effluent therefrom the well operator, at the time of such abandonment or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall be filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a final cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable
material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot; or

(2) When such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately one hundred feet below the bottom of the coal protection string of casing. A one hundred foot plug of expanding cement shall then be placed in the well so that the top of such plug is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the director shall then be installed on the top of the coal protection string of casing in such a manner that will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The coal protection string of casing and the vent or other device approved by the director shall
extend, when finally in place, a distance of not less than
thirty inches above ground level and shall be perman-
ently marked with the well number assigned by the
director;

(c) Where the well penetrates one or more workable
c coal beds and a coal protection string of casing has not
been circulated and cemented in to the surface, the well
shall be filled and securely plugged in the manner
provided in subsection (a) of this section to a point fifty
feet below the lowest workable coal bed. Thereafter, a
plug of cement shall be placed in the well at a point not
less than forty feet below the lowest workable coal bed.
After the cement plug has been securely placed in the
well, the well shall be filled with cement to a point
twenty feet above the lowest workable coal bed. From
this point the well shall be filled with mud, clay or other
nonporous material to a point forty feet beneath the next
overlying workable coal bed, if such there be, and the
well shall then be filled with cement from this point to
a point twenty feet above such workable coal bed, and
similarly, in case there are more overlying workable
coal beds. After the filling and plugging of the well to
a point above the highest workable coal bed, filling and
plugging of the well shall continue in the manner
provided in subsection (a) of this section to a point fifty
feet below the surface, and a plug of cement shall be
installed from the point fifty feet below the surface to
the surface with a monument installed therein extend-
ing thirty inches above ground level;

(d) (1) Where the well penetrates one or more
workable coal beds and a coal protection string of casing
has not been circulated and cemented in to the surface,
a coal operator or coal seam owner may request that the
well be plugged in the manner provided in subdivision
(3) of this subsection rather than by the method provided
in subsection (c) of this section. Such request (forms for
which shall be provided by the director) must be filed
in writing with the director prior to the scheduled
plugging of the well, and must include the number of
the well to be plugged and the name and address of the
well operator. At the time such request is filed with the
director, a copy of such request must also be mailed by
registered or certified mail to the well operator named
in the request.

(2) Upon receipt of such request, the director shall
issue an order staying the plugging of the well and shall
promptly determine the cost of plugging the well in the
manner provided in subdivision (3) of this subsection
and the cost of plugging the well in the manner provided
in subsection (c) of this section. In making such
determination, the director shall take into consideration
any agreement previously made between the well
operator and the coal operator or coal seam owner
making the request. If the director determines that the
cost of plugging the well in the manner provided in
subsection (c) of this section exceeds the cost of plugging
the well in the manner provided in subdivision (3) of this
subsection, the director shall grant the request of the
coal operator or owner and shall issue an order
requiring the well operator to plug the well in the
manner provided in subdivision (3) of this subsection. If
the director determines that the cost of plugging the
well in the manner provided in subsection (c) of this
section is less than the cost of plugging the well in the
manner provided in subdivision (3) of this subsection,
the director shall request payment into escrow of the
difference between the determined costs by the coal
operator or coal seam owner making the request. Upon
receipt of satisfactory notice of such payment, or upon
receipt of notice that the well operator has waived such
payment, the director shall grant the request of the coal
operator or coal seam owner and shall issue an order
requiring the well operator to plug the well in the
manner provided in subdivision (3) of this subsection. If
satisfactory notice of payment into escrow, or notice that
the well operator has waived such payment, is not
received by the director within fifteen days after the
request for payment into escrow, the director shall issue
an order permitting the plugging of the well in the
manner provided in subsection (c) of this section. Copies
of all orders issued by the director shall be sent by
registered or certified mail to the coal operator or coal
seam owner making the request and to the well
operator. When the escrow agent has received certification from the director of the satisfactory completion of the plugging work and the reimbursable extra cost thereof (that is, the difference between the director's determination of plugging cost in the manner provided in subsection (c) of this section and the well operator's actual plugging cost in the manner provided in subdivision (3) of this subsection), the escrow agent shall pay the reimbursable sum to the well operator or the well operator's nominee from the payment into escrow to the extent available. The amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent's fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or the well operator's nominee is less than the actual reimbursable sum, the escrow agent shall inform the coal owner, who shall pay the deficiency to the well operator or the well operator's nominee within thirty days. If the coal operator breaches this duty to pay the deficiency, the well operator shall have a right of action and be entitled to recover damages as if for wrongful conversion of personality, and reasonable attorney fees.

(3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision (1) of this subsection has been granted by the director, the well shall be plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately two hundred feet below the lowest workable coal bed. A one hundred foot plug of expanding cement shall then be placed in the well beginning at the point approximately two hundred feet below the lowest workable coal bed and extending to a point approximately one hundred feet below the lowest workable coal bed. A string of casing with an outside diameter no less than four and one-half inches shall then be run into the well to a point approximately one hundred feet below the lowest workable coal bed and such string of casing shall be circulated and cemented into the surface. The casing shall then be emptied of liquid from a point approximately one hundred feet below the lowest workable coal bed to the surface, and a vent or other
device approved by the director shall be installed on the top of the string of casing in such a manner that it will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The string of casing and the vent or other device approved by the director shall extend, when finally in place, a distance of no less than thirty inches above ground level and shall be permanently marked with the well number assigned by the director. Notwithstanding the foregoing provisions of this subdivision, if under particular circumstances a different method of plugging is required to obtain the approval of another governmental agency for the safe mining through of said well, the director may approve such different method of plugging if the director finds the same to be as safe for mining through and otherwise adequate to prevent gas or other fluid migration from the oil and gas reservoirs as the method above specified.

(e) Any person may apply to the director for an order to clean out and replug a previously plugged well in a manner which will permit the safe mining through of such well. Such application shall be filed with the director and shall contain the well number, a general description of the well location, the name and address of the owner of the surface land upon which the well is located, a copy of or record reference to a deed, lease or other document which entitles the applicant to enter upon the surface land, a description of the methods by which the well was previously plugged, and a description of the method by which such applicant proposes to clean out and replug the well. At the time an application is filed with the director, a copy shall be mailed by registered or certified mail to the owner or owners of the land, and the oil and gas lessee of record, if any, of the site upon which the well is located. If no objection to the replugging of the well is filed by any such landowner or oil and gas lessee within thirty days after the filing of the application, and if the director determines that the method proposed for replugging the well will permit the safe mining through of such well, the director shall grant the application by an order
authorizing the replugging of the well. Such order shall specify the method by which the well shall be replugged, and copies thereof shall be mailed by certified or registered mail to the applicant and to the owner or owners of the land, and the oil and gas lessee, if any, of the site upon which such well is located. If any such landowner or oil and gas lessee objects to the replugging of the well, the director shall notify the applicant of such objection. Thereafter, the director shall schedule a hearing to consider the objection, which hearing shall be held after notice by registered or certified mail to the objectors and the applicant. After consideration of the evidence presented at the hearing, the director shall issue an order authorizing the replugging of the well if the director determines that replugging of the well will permit the safe mining through of such well. Such order shall specify the manner in which the well shall be replugged and copies thereof shall be sent by registered or certified mail to the applicant and objectors. The director shall issue an order rejecting the application if the director determines that the proposed method for replugging the well will not permit the safe mining through of such well;

(f) All persons adversely affected, by a determination or order of the director issued pursuant to the provisions of this section shall be entitled to judicial review in accordance with the provisions of articles five and six, chapter twenty-nine-a of this code.

§22-6-25. Introducing liquid pressure into producing strata to recover oil contained therein.

The owner or operator of any well or wells which produce oil or gas may allow such well or wells to remain open for the purpose of introducing water or other liquid pressure into and upon the producing strata for the purpose of recovering the oil contained therein, and may drill additional wells for like purposes, provided that the introduction of such water or other liquid pressure shall be controlled as to volume and pressure and shall be through casing or tubing which shall be so anchored and packed that no water-bearing strata or other oil, or gas-bearing sand or producing
12 stratum, above or below the producing strata into and
13 upon which such pressure is introduced, shall be
14 affected thereby, fulfilling requirements as set forth
15 under section fourteen.

§22-6-26. Performance bonds; corporate surety or other
security.

1 (a) No permit shall be issued pursuant to this article
2 unless a bond as described in subsection (d) of this
3 section which is required for a particular activity by this
4 article is or has been furnished as provided in this
5 section.

(b) A separate bond as described in subsection (d) of
this section may be furnished for a particular oil or gas
well, or for a particular well for the introduction of
liquids for the purposes provided in section twenty-five
of this article. A separate bond as described in subsec-
tion (d) of this section shall be furnished for each well
drilled or converted for the introduction of liquids for
the disposal of pollutants or the effluent therefrom.
Every such bond shall be in the sum of ten thousand
dollars, payable to the state of West Virginia, condi-
tioned on full compliance with all laws, rules relating to
the drilling, redrilling, deepening, casing and stimulat-
ing of oil and gas wells (or, if applicable, with all laws, rules relating to drilling or converting wells for the
introduction of liquids for the purposes provided for in
section twenty-five of this article or for the introduction
of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and
reclamation of wells and for furnishing such reports and
information as may be required by the director.

(c) When an operator makes or has made application
for permits to drill or stimulate a number of oil and gas
wells or to drill or convert a number of wells for the
introduction of liquids for the purposes provided in
section twenty-five of this article, the operator may in
lieu of furnishing a separate bond furnish a blanket
bond in the sum of fifty thousand dollars, payable to the
state of West Virginia, and conditioned as aforesaid in
subsection (b) of this section.
(d) The form of the bond required by this article shall be approved by the director and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities) letters of credit, establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the amount of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose of which the deposit is made when the permit is issued. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the amount of the bond.

(e) When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas or both, its operator may deposit with the director cash from the sale of the oil or gas or both until the total deposited is ten thousand dollars. When the sum of the cash deposited is ten thousand dollars, the separate bond for the well shall be released by the director. Upon receipt of such cash, the director
shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as the operator has furnished all reports and information as may be required by the director. If the cash realized from the sale of oil or gas or both from the well is not sufficient for the operator to deposit with the director the sum of ten thousand dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the director of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities or other forms of security, as provided in the next preceding paragraph of this section with the director. If a new bond or collateral securities or other forms of security are furnished by the operator, the liability of the corporate bonding or surety company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities or other forms of security are accepted by the treasurer of the state of West Virginia. If the operator does not furnish a new bond or collateral securities or other forms of security, as provided in the next preceding paragraph of this section, with the director, the operator shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law and rules applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws and rules. (f) Any separate bond furnished for a particular well prior to the effective date of this chapter shall continue
to be valid for all work on the well permitting prior to the eleventh day of July, one thousand nine hundred eighty-five; but no permit shall hereafter be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to the eleventh day of July, one thousand nine hundred eighty-five shall be replaced with a new blanket bond conforming to the requirements of this section, at which time the prior bond shall be discharged by operation of law; and if the director determines that any operator has not furnished a new blanket bond, the director shall notify the operator by certified mail, return receipt requested, of the requirement for a new blanket bond; and failure to submit a new blanket bond within sixty days after receipt of the notice from the director shall work a forfeiture under subsection (i) of this section of the blanket bond furnished prior to the eleventh day of July, one thousand nine hundred eighty-five.

(g) Any such bond shall remain in force until released by the director and the director shall release the same upon satisfaction that the conditions thereof have been fully performed. Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the director to the operator who deposited same.

(h) Whenever the right to operate a well is assigned or otherwise transferred, the assignor or transferor shall notify the department of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than five days after the date of the assignment or transfer. No assignment or transfer by the owner shall relieve the assignor or transferor of the obligations and liabilities unless and until the assignee or transferee files with the department the well name and the permit number of the subject well, the county and district in which the subject well is located, the names and addresses of the assignor or transferor, and assignee or transferee, a copy of the instrument of assignment or transfer accompanied by the applicable bond, cash, collateral security or other forms of security, described in section twelve, fourteen, twenty-three or
twenty-six of this article, and the name and address of
the assignee's or transferee's designated agent if
assignee or transferee would be required to designate
such an agent under section six of this article, if
assignee or transferee were an applicant for a permit
under said section six. Every well operator required to
designate an agent under this section shall within five
days after the termination of such designation notify the
department of such termination and designate a new
agent.

Upon compliance with the requirements of this
section by assignor or transferor and assignee or
transferee, the director shall release assignor or
transferor from all duties and requirements of this
article, and the deputy director shall give written notice
of release unto assignor or transferor of any bond and
return unto assignor or transferor any cash or collateral
securities deposited pursuant to section twelve, fourteen,
twenty-three or twenty-six of this article.

(i) If any of the requirements of this article or rules
promulgated pursuant thereto or the orders of the
director have not been complied with within the time
limit set by the violation notice as defined in sections
three, four and five of this article, the performance bond
shall then be forfeited.

(j) When any bond is forfeited pursuant to the
provisions of this article or rules promulgated pursuant
thereto, the director shall give notice to the attorney
general who shall collect the forfeiture without delay.

(k) All forfeitures shall be deposited in the treasury
of the state of West Virginia in the special reclamation
fund as defined in section twenty-nine of this article.

§22-6-27. Cause of action for damages caused by
explosions.

Any person suffering personal injury or property
damage due to any explosion caused by any permittee,
shall have a cause of action against such permittee for
three years after the explosion regardless of when the
explosion occurred.
§22-6-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.

(a) The director shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and shall have such access to the plans, maps and other records and to the properties of the well operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the director may enter, or shall permit any aggrieved person to file before the director, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, or reclaiming any well in accordance with the provisions of this article, or to the order of the director. True copies of any such complaints shall be served upon or mailed by registered mail to any person so charged, with notice of the time and place of hearing, of which the operator or operators so charged shall be given at least five days' notice. At the time and place fixed for hearing, full opportunity shall be given any person so charged or complaining to be heard and to offer such evidence as desired, and after a full hearing, at which the director may offer in evidence the results of such investigations as the director may have made, the director shall make findings of fact and enter such order as in the director's judgment is just and right and necessary to secure the proper administration of this article, and if the director deems necessary, restraining the well operator from continuing to drill or case any well or from further plugging, filling or reclaiming the same, except under such conditions as the director may impose in order to ensure a strict compliance with the provisions of this article relating to such matters.

(b) Except as provided in subsection (c) of this section, any well operator or coal operator adversely affected by a final decision or order of the director, may appeal in the manner prescribed in section four, article five, chapter twenty-nine-a of this code.

(c) Any person having an interest which is or may be
adversely affected, or who is aggrieved by an order of
the director, or by the issuance or denial of a permit,
or by the permit's terms and conditions, where the
subject to such order, permits or terms and conditions
is solid waste, may appeal to the environmental quality
board in the same manner as appeals are taken under
the solid waste management act, section sixteen, article
fifteen of this chapter. For the purpose of this subsection
the term solid waste has the same meaning as would be
given that term pursuant to section two, article fifteen
of this chapter but for the exemption related to waste
or material regulated by this chapter, chapter twenty-
two-b or chapter twenty-two-c of this code.

§22-6-29. Operating permit and processing fund; special
reclamation fund; fees.

(a) There is hereby continued within the treasury of
the state of West Virginia the special fund known as the
oil and gas operating permit and processing fund, and
the director shall deposit with the state treasurer to the
credit of such special fund all fees collected under the
provisions of subdivision ten, subsection (c), section two
of this article.

The oil and gas operating permit and processing fund
shall be administered by the director for the purposes
of carrying out the provisions of this chapter.

The director shall make an annual report to the
governor and to the Legislature on the use of the fund,
and shall make a detailed accounting of all expenditures
from the oil and gas operating permit and processing
fund.

(b) In addition to any other fees required by the
provisions of this article, every applicant for a permit
to drill a well shall, before the permit is issued, pay to
the director a special reclamation fee of one hundred
dollars for each well to be drilled. Such special
reclamation fee shall be paid at the time the application
for a drilling permit is filed with the director and the
payment of such reclamation fee shall be a condition
precedent to the issuance of said permit.
There is hereby continued within the treasury of the state of West Virginia the special fund known as the oil and gas reclamation fund, and the director shall deposit with the state treasurer to the credit of such special fund all special reclamation fees collected. The proceeds of any bond forfeited under the provisions of this article shall inure to the benefit of and shall be deposited in such oil and gas reclamation fund.

The oil and gas reclamation fund shall be administered by the director. The director shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have not been reclaimed or plugged or which have been improperly reclaimed or plugged. The director, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug wells in accordance with said plans and specifications and in accordance with the provisions of this article relating to the reclaiming and plugging of wells and all rules promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative and research costs as may be necessary to properly effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

The director may avail the division of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells.

The director shall make an annual report to the governor and to the Legislature setting forth the number of wells reclaimed or plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

All wells shall be reclaimed or plugged by contract entered into by the director on a competitive bid basis.
§22-6-30. Reclamation requirements.

The operator of a well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

(a) Within six months after the completion of the drilling process, the operator shall fill all the pits for containing muds, cuttings, salt water and oil that are not needed for production purposes, or are not required or allowed by state or federal law or rule and remove all concrete bases, drilling supplies and drilling equipment. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed, and properly disposed of, from any pit that is retained so the pit is kept reasonably free of salt water and oil.

(b) Within six months after a well that has produced oil or gas is plugged, or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment, and any oil, salt water and debris, and fill any remaining excavations. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

The director may, upon written application by an operator showing reasonable cause, extend the period within which reclamation shall be completed, but not to exceed a further six-month period.

If the director refuses to approve a request for extension, the refusal shall be by order.

(c) It shall be the duty of an operator to commence
the reclamation of the area of land disturbed in siting, drilling, completing or producing the well in accordance with soil erosion and sediment control plans approved by the director or the director's designate.

(d) The director shall promulgate rules setting forth requirements for the safe and efficient installation and burying of all production and gathering pipelines where practical and reasonable except that such rules shall not apply to those pipelines regulated by the public service commission.

§22-6-31. Preventing waste of gas; plan of operation required for wasting gas in process of producing oil; rejection thereof.

Natural gas shall not be permitted to waste or escape from any well or pipeline, when it is reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or pipeline, has had a reasonable length of time to shut in such gas in the well, or make the necessary repairs to such well or pipeline to prevent such waste: Provided, That (a) if, in the process of drilling a well for oil or gas, or both, gas is found in such well, and the owner or operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search of lower oil or gas-bearing strata, or (b) if it becomes necessary to make repairs to any well producing gas, commonly known as “cleaning out,” and if in either event it is necessary for the gas in such well to escape therefrom during the process of drilling or making repairs, as the case may be, then the owner or operator of such well shall prosecute such drilling or repairs with reasonable diligence, so that the waste of gas from the well shall not continue longer than reasonably necessary, and if, during the progress of such deeper drilling or repairs, any temporary suspension thereof becomes necessary, the owner or operator of such well shall use all reasonable means to shut in the gas and prevent its waste during such temporary suspension: Provided, however, That in all cases where both oil and gas are found and produced from the same oil and gas-bearing stratum, and where it is necessary for the gas therefrom to waste in the process of
producing the oil, the owner or operator shall use all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save, but in no case shall such gas from any well be wasted in the process of producing oil therefrom until the owner or operator of such well shall have filed with the director a plan of operation for said well showing, among other things, the gas-oil production ratio involved in such operation, which plan shall govern the operation of said well unless the director shall, within ten days from the date on which such plan is submitted to the director, make a finding that such plan fails, under all the facts and circumstances, to propose the exercise of all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save, in which event production of oil at such well by the wasting of gas shall cease and desist until a plan of operation is approved by the director. Successive plans of operation may be filed by the owner or operator of any such well with the director.

§22-6-32. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.

If the owner or operator of any such well shall neglect or refuse to drill, case and equip, or plug and abandon, or shut in and conserve from waste the gas produced therefrom, as required to be done and performed by the preceding sections of this article, for a period of twenty days after a written notice so to do, which notice may be served personally upon the owner or operator, or may be posted in a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands or the director to enter upon the premises where such well is situated and properly case and equip such well, or, in case the well is to be abandoned, to properly plug and abandon it, or in case the well is wasting gas, to properly shut it in and make such needed repairs to the well to prevent the waste of gas, in the manner required to be done by the preceding sections of this article; and the reasonable cost and expense incurred by an owner or operator or the director in so doing shall be paid by the owner or
operator of such well and may be recovered as debts of like amount are by law recoverable.

The director may utilize funds and procedures established pursuant to section twenty-nine of this article for the purposes set out in the section. Amounts recovered by the director pursuant to this section shall be deposited in the oil and gas reclamation fund established pursuant to section twenty-nine of this article.

§22-6-33. Restraining waste.

Aside from and in addition to the imposition of any penalties under this article, it shall be the duty of any circuit court in the exercise of its equity jurisdiction to hear and determine any action which may be filed to restrain the waste of natural gas in violation of this article, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The plaintiff in such action shall have sufficient standing to maintain the same if the plaintiff shall aver and prove that the plaintiff is interested in the lands situated within the distance of one mile from such well, either as an owner of such land, or of the oil or gas, or both, thereunder, in fee simple, or as an owner of leases thereof or of rights therein for the production of oil and gas or either of them or as the director.

§22-6-34. Offenses; penalties.

(a) Any person or persons, firm, partnership, partnership association or corporation who willfully violates any provision of this article or any rule or order promulgated hereunder shall be subject to a civil penalty not exceeding two thousand five hundred dollars. Each day a violation continues after notice by the division constitutes a separate offense. The penalty shall be recovered by a civil action brought by the division, in the name of the state, before the circuit court of the county in which the subject well or facility is located. All such civil penalties collected shall be credited to the general fund of the state.

(b) Any person or persons, firm, partnership, partner-
ship association or corporation willfully violating any of
the provisions of this article which prescribe the manner
of drilling and casing or plugging and filling any well,
or which prescribe the methods of conserving gas from
waste, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be punished by a fine not
exceeding five thousand dollars, or imprisonment in jail
for not exceeding twelve months, or both, in the
discretion of the court, and prosecutions under this
section may be brought in the name of the state of West
Virginia in the court exercising criminal jurisdiction in
the county in which the violation of such provisions of
the article or terms of such order was committed, and
at the instance and upon the relation of any citizens of
this state.

§22-6-35. Civil action for contamination or deprivation of
fresh water source or supply; presumption.

In any action for contamination or deprivation of a
fresh water source or supply within one thousand feet
of the site of drilling for an oil or gas well, there shall
be a rebuttable presumption that such drilling, and such
oil or gas well, or either, was the proximate cause of the
contamination or deprivation of such fresh water source
or supply.

§22-6-36. Declaration of oil and gas notice by owners and
lessees of coal seams.

For purposes of notification under this article, any
owner or lessee of coal seams shall file a declaration of
the owner's or lessee's interest in such coal seams with
the clerk of the county commission in the county where
such coal seams are located. Said clerk shall file and
index such declaration in accordance with section two,
article one, chapter thirty-nine of this code, and shall
index the name of the owner or lessee of such coal seams
in the grantor index of the record maintained for the
indexing of leases.

The declaration shall entitle such owner or lessee to
the notices provided in sections twelve, thirteen,
fourteen and twenty-three of this article: Provided, That
the declaring owner shall be the record owner of the coal
seam, and the declaring lessee shall be the record lessee
with the owner's or lessee's source or sources of title
recorded prior to recording such lessee's declaration.

The declaration shall be acknowledged by such owner
or lessee, and in the case of a lessee, may be a part of
the coal lease under which the lessee claims. Such
declaration may be in the following language:

"DECLARATION OF OIL AND GAS NOTICE"

"The undersigned hereby declares:

(1) The undersigned is the ('owner' or 'lessee') of one
    or more coal seams or workable coal beds as those terms
    are defined in section one of this article.

(2) The coal seam(s) or workable coal bed(s) owned or
    leased partly or wholly by the undersigned lie(s) under
    the surface of lands described as follows:
    (Here insert a description legally adequate for a deed,
     whether by metes and bounds or other locational
     description, or by title references such as a book and
     page legally sufficient to stand in lieu of a locational
     description.)

(3) The undersigned desires to be given all notices of
    oil and gas operations provided by sections twelve,
    thirteen, fourteen and twenty-three of this article,
    addressed as follows:
    (Here insert the name and mailing address of the
    undersigned owner or lessee.)

    ______________________
    (Signature)

    (Here insert an acknowledgment legally adequate for
     a deed)."

The benefits of the foregoing declaration shall be
personal to the declaring owner or lessee, and not
transferable or assignable in any way.

§22-6-37. Rules, orders and permits remain in effect.

1 The rules promulgated and all orders and permits in
effect upon the effective date of this article pursuant to
the provisions of former article one, chapter twenty-two-
b of this code, shall remain in full force and effect as
if such rules, orders and permits were adopted by the
director established in this chapter but all such rules,
orders and permits shall be subject to review by the
director to ensure they are consistent with the purposes
and policies set forth in this chapter.

§22-6-38. Application of article; exclusions.

This article shall not apply to or affect any well work
permitted prior to the effective date of this article under
former article one, chapter twenty-two-b of this code,
unless such well is, after completion, whether such
completion is prior to or subsequent to the effective date
of this article, deepened subsequent to the effective date
of this article through another coal seam to another
formation above the top of the uppermost member of the
"Onondaga Group" or to a depth of less than six
thousand feet, whichever is shallower.

§22-6-39. Injunctive relief.

(a) In addition to other remedies, and aside from
various penalties provided by law, whenever it appears
to the director that any person is violating or threaten-
ing to violate any provision of this article, any order or
final decision of the director, or any lawful rule
promulgated hereunder, the director may apply in the
name of the state to the circuit court of the county in
which the violations or any part thereof has occurred,
is occurring or is about to occur, or the judge thereof
in vacation, for an injunction against such persons and
any other persons who have been, are or are about to
be involved in any practices, acts or admissions so in
violation, enjoining such person or persons from any
violation or violations. Such application may be made
and prosecuted to conclusion, whether or not any
violation or violations have resulted or shall result, in
prosecution or conviction under the provisions of this
article.

(b) Upon application by the director, the circuit courts
of this state may, by mandatory or prohibitory injunc-
tion compel compliance with the provisions of this article, and all orders and final decisions of the director. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon application permitted by the provisions of this section, shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The director shall be represented in all such proceedings by the attorney general or the attorney general’s assistants or in such proceedings in the circuit courts by the prosecuting attorney of the several counties as well, all without additional compensation. The director, with the written approval of the attorney general, may employ special counsel to represent the director in any such proceedings.

(e) If the director shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any order or final decision of the director, or any rules promulgated hereunder, within ten days after receipt of a written request to do so by any well operator, coal operator, operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land, adversely affected by such violation or threatened violation, the person making such request may apply on their own behalf for an injunction to enjoin such violation or threatened violation in any court in which the director might have brought suit. The director shall be made party defendant in such application in addition to the person or persons violating or threatening to violate any provisions of this article, any final order or decision of the director, or any rule
promulgated hereunder. The application shall proceed and injunctive relief may be granted in the same manner as if the application had been made by the director: Except that the court may require a bond or other undertaking from the plaintiff.

§22-6-40. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to the proceeding under section fifteen of this article or section seven, article eight, chapter twenty-two-c of this code, adversely affected by the issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the director to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

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.

§22-6-41. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

Any party to the proceedings under section sixteen of this article adversely affected by the order of issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the director to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of section four were set forth in extenso in this section.

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.
ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPENSATION.

§22-7-1. Legislative findings and purpose.

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas reserves in this state must coexist with the use, agricultural or otherwise, of the surface of certain land and that each constitutes a right equal to the other.

(2) Modern methods of extraction of oil and gas require the use of substantially more surface area than the methods commonly in use at the time most mineral estates in this state were severed from the fee tract; and, specifically, the drilling of wells by the rotary drilling method was virtually unknown in this state prior to the year one thousand nine hundred sixty, so that no person severing their oil and gas from their surface land and no person leasing their oil and gas with the right to explore for and develop the same could reasonably have known nor could it have been reasonably contemplated that rotary drilling operations imposed a greater burden on the surface than the cable tool drilling method heretofore employed in this state; and since the year one thousand nine hundred sixty, the use of rotary drilling methods has spread slowly but steadily in this state, with concomitant public awareness of its impact on surface land; and that the public interest requires that the surface owner be entitled to fair compensation for the loss of the use of surface area during the rotary drilling operation, but recognizing the right of the oil and gas operator to conduct rotary drilling operations as allowed by law.
(3) Prior to the first day of January, one thousand nine hundred sixty, the rotary method of drilling oil or gas wells was virtually unknown to the surface owners of this state nor was such method reasonably contemplated during the negotiations which occasioned the severance of either oil or gas from the surface.

(4) The Legislature further finds and creates a rebuttable presumption that even after the thirty-first day of December, one thousand nine hundred fifty-nine, and prior to the ninth day of June, one thousand nine hundred eighty-three, it was unlikely that any surface owner knew or should have known of the rotary method of drilling oil or gas wells, but, that such knowledge was possible and that the rotary method of drilling oil or gas wells could have, in some instances, been reasonably contemplated by the parties during the negotiations of the severance of the oil and gas from the surface. This presumption against knowledge of the rotary drilling method may be rebutted by a clear preponderance of the evidence showing that the surface owner or the surface owner's predecessor of record did in fact know of the rotary drilling method at the time the owner or the owner's predecessor executed a severance deed or lease of oil and gas and that the owner or owner's predecessor fairly contemplated the rotary drilling method and received compensation for the same.

(b) Any surface owner entitled to claim any finding or any presumption which is not rebutted as provided in this section shall be entitled to the compensation and damages of this article.

(c) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract entered into after the ninth day of June, one thousand nine hundred eighty-three.

(d) It is the purpose of this article to provide constitutionally permissible protection and compensation to surface owners of lands on which oil and gas wells are drilled from the burden resulting from drilling operations commenced after the ninth day of
June, one thousand nine hundred eighty-three. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.

§22-7-2. Definitions.

(a) In this article, unless the context or subject matter otherwise requires:

(1) "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially;

(2) "Drilling operations" means the actual drilling or redrilling of an oil or gas well commenced subsequent to the ninth day of June, one thousand nine hundred eighty-three, and the related preparation of the drilling site and access road, which requires entry, upon the surface estate;

(3) "Oil and gas developer" means the person who secures the drilling permit required by article six of this chapter;

(4) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(5) "Surface estate" means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(6) "Surface owner" means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.
§22-7-3. Compensation of surface owners for drilling operations.

(a) The oil and gas developer shall be obligated to pay the surface owner compensation for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained measured from the date the operator enters upon the land until the date reclamation is completed, (2) the market value of crops destroyed, damaged or prevented from reaching market, (3) any damage to a water supply in use prior to the commencement of the permitted activity, (4) the cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality, and (5) the diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-ownership, any claim for compensation under this article shall be for the benefit of all such co-owners. The resolution of a claim for compensation provided in this article shall operate as a bar to the assertion of additional claims under this section arising out of the same drilling operations.
§22-7-4. Common law right of action preserved; offsets.

(a) Nothing in section three or elsewhere in this article shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's mineral interest.

(b) An oil and gas developer shall be entitled to offset compensation agreed to be paid or awarded to a surface owner under section three of this article against any damages sought by or awarded to the surface owner through the assertion of common law remedies respecting the surface land actually occupied by the same drilling operation.

(c) An oil and gas developer shall be entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common-law remedies against compensation sought by or awarded to the surface owner under section three of this article respecting the surface land actually occupied by the same drilling operation.

§22-7-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that reclamation is commencing under section thirty, article six of this chapter. Such notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing. If more than three tenants in common or other co-owners hold interests in such lands, the developer may give such notice to the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three,
chapter fifty-nine of this code, containing such notice and information as the director shall prescribe by rule.

§22-7-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made.

§22-7-7. Rejection; legal action; arbitration; fees and costs.

(a) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within sixty days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) bring an action for compensation in the circuit court of the county in which the well is located, or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section six, article six of this chapter, to have his compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer shall not be admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in such party's notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of
election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators are hereby empowered to and shall forthwith submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and not be appointed as arbitrators: Any person who is personally interested in the land on which rotary drilling is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, such land or the oil and gas development thereof. No person shall be deemed interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation wherein the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the amount of compensation to be paid to the surface owner. However, no award of compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of such party's arbitrator and one half of the compensation of the third arbitrator, or such party's own court costs as the case may be.
§22-7-8. Application of article.

1 The remedies provided by this article shall not
2 preclude any person from seeking other remedies
3 allowed by law.

ARTICLE 8. TRANSPORTATION OF OILS.

§22-8-1. Scope of article.
§22-8-2. Duty of pipeline companies to accept and transport oil.
§22-8-3. Oil of 35 degrees Baume at 60 degrees Fahrenheit; inspection,
grading and measurement; receipt; deduction for waste.
§22-8-4. Oil over 35 degrees Baume at 60 degrees Fahrenheit; inspection
and measurement; loss.
§22-8-5. Lien for charges.
§22-8-6. Accepted orders and certificates for oil — Negotiability.
§22-8-7. Same — Further provisions.
§22-8-8. Dealing in oil without consent of owner.
§22-8-10. Statements of amount of oil.
§22-8-11. Penalty — Wrongful issuance, sale or alteration of receipts, orders,
etc.
§22-8-12. Same — Dealing in oil without consent of owner in interest.
§22-8-13. Same — Failure to make report and statement.

§22-8-1. Scope of article.

1 Every person, corporation or company now engaged,
or which shall hereafter engage, in the business of
transporting or storing petroleum, by means of pipeline
or lines or storage by tanks, shall be subject to the
provisions of this article and shall conduct such business
in conformity herewith: Provided, That the provisions of
this article shall be subject to all federal laws regulating
interstate commerce on the same subject.

§22-8-2. Duty of pipeline companies to accept and transport oil.

1 Any company heretofore or hereafter organized for
the purpose of transporting petroleum or other oils or
liquids by means of pipeline or lines shall be required
to accept all petroleum offered to it in merchantable
order in quantities of not less than two thousand gallons
at the wells where the same is produced, making at its
own expense all necessary connections with the tanks or
receptacles containing such petroleum, and to transport
and deliver the same at any delivery station, within or
§22-8-3. Oil of 35 degrees Baume at 60 degrees Fahrenheit; inspection, grading and measurement; receipt; deduction for waste.

All petroleum of a gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall, before the same is transported, as provided by section two of this article, be inspected, graded and measured at the expense of the pipeline company, and the company accepting the same for transportation shall give to the owner thereof a receipt stating therein the number of barrels or gallons so received, and the grade, gravity and measurement thereof, and within a reasonable time thereafter, upon demand of the owner or the owner's assigns, shall deliver to the owner or the owner's assigns at the point of delivery a like quantity and grade or gravity of petroleum in merchantable condition as specified in such receipt; except that the company may deduct for waste one percent of the amount of petroleum specified in such receipt.

§22-8-4. Oil over 35 degrees Baume at 60 degrees Fahrenheit; inspection and measurement; loss.

All petroleum of a gravity exceeding thirty-five degrees Baume, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported. The company accepting the same for transportation shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents from such tank, and the
number of feet and inches of petroleum which remained
in the tank after such run was completed. All deductions
made for water, sediment or the like shall be made at
the time such petroleum is measured. Within a reason-
able time thereafter the company shall, upon demand,
deliver from the petroleum in its custody to the owner
thereof, or to the owner's assignee, at such delivery
station on the route of its line of pipes as the owner or
the owner's assignee may elect, a quantity of merchan-
table petroleum, equal to the quantity of petroleum run
from such tank, or receptacle, which shall be ascer-
tained by computation; except that the company
transporting such petroleum may deduct for evapora-
tion and waste two percent of the amount of petroleum
so run, as shown by such run ticket, and except that in
case of loss of any petroleum while in the custody of the
company caused by fire, lightning, storm or other like
unavoidable cause, such loss shall be borne pro rata by
all the owners of such petroleum at the time thereof. But
the company shall be liable for all petroleum that is lost
while in its custody by the bursting of pipes or tanks,
or by leakage from pipes or tanks; and it shall also be
liable for all petroleum lost from tanks at the wells
produced before the same has been received for trans-
portation, if such loss be due to faulty connections made
to such tanks; and the company shall be liable for all
petroleum lost by the overflow of any tanks with which
pipeline connections have been made, if such overflow
be due to the negligence of such company, and for all
the petroleum lost by the overflow of any tanks with
which pipeline connections should have been made
under the provisions of this article, but were not so made
by reason of negligence or delay on the part of the
company.

§22-8-5. Lien for charges.

1 Any company engaged in transporting or storing
2 petroleum shall have a lien upon such petroleum until
3 all charges for transporting and storing the same are
4 paid.

§22-8-6. Accepted orders and certificates for oil —
Negotiability.
Accepted orders and certificates for petroleum, issued by any company engaged in the business of transporting and storing petroleum in this state by means of pipeline or lines and tanks, shall be negotiable, and may be transferred by indorsement either in blank or to the order of another, and any person to whom such accepted orders and certificates shall be so transferred shall be deemed and taken to be the owner of the petroleum therein specified.

§22-8-7. Same — Further provisions.

No receipt, certificate, accepted order or other voucher shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of the company issuing or putting in circulation such receipt, certificate, accepted order or voucher, or written evidence of liability. No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher shall be outstanding and uncanceled, except such original papers shall have been lost, in which case a duplicate, plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. No receipt, voucher, accepted order, certificate or written evidence of liability of such company on which petroleum, crude or refined, has been delivered, shall be reissued, used or put in circulation. No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof. No duplicate receipt,
32 certificate, voucher, accepted order or other evidence of
33 liability, shall be made, issued or put in circulation until
34 after notice of the loss of the original, and of the
35 intention to apply for a duplicate thereof, shall have
36 been given by advertisement over the signature of the
37 owner thereof as a Class II legal advertisement in
38 compliance with the provisions of article three, chapter
39 fifty-nine of this code, and the publication area for such
40 publication shall be the county where such duplicate is
41 to be issued. Every receipt, voucher, accepted order,
42 certificate or evidence of liability, when surrendered or
43 the petroleum represented thereby delivered, shall be
44 immediately canceled by stamping and punching the
45 same across the face in large and legible letters with the
46 word “canceled,” and giving the date of such cancella-
47 tion; and it shall then be filed and preserved in the
48 principal office of such company for a period of six
49 years.

§22-8-8. Dealing in oil without consent of owner.

1 No company, its officers or agents, or any person or
2 persons engaged in the transportation or storage of
3 petroleum, crude or refined, shall sell or encumber,
4 ship, transfer, or in any manner remove or procure, or
5 permit to be sold, encumbered, shipped, transferred, or
6 in any manner removed from the tanks or pipes of such
7 company engaged in the business aforesaid, any petro-
8 leum, crude or refined, without the written order of the
9 owner or a majority of the owners in interest thereof.


1 Every company now or hereafter engaged in the
2 business of transporting by pipelines or storing crude or
3 refined petroleum in this state shall, on or before the
4 tenth day of each month, make or cause to be made and
5 posted in its principal business office in this state, in an
6 accessible and convenient place for the examination
7 thereof by any person desiring such examination, and
8 shall keep so posted continuously until the next succeed-
9 ing statement is so posted, a statement plainly written
10 or printed, signed by the officer, agent, person or
11 persons having charge of the pipes and tanks of such
company, and also by the officer or officers, person or
persons, having charge of the books and accounts
thereof, which statement shall show in legible and
intelligible form the following details of the business: (a)
How much petroleum, crude or refined, was in the
actual and immediate custody of such company at the
beginning and close of the previous month, and where
the same was located or held; describing in detail the
location and designation of each tank or place of deposit,
and the name of its owner; (b) how much petroleum,
crude or refined, was received by such company during
the previous month; (c) how much petroleum, crude or
refined, was delivered by such company during the
previous month; (d) for how much petroleum, crude or
refined, such company was liable for the delivery or
custody of to other corporations, companies or persons
at the close of the month; (e) how much of such liability
was represented by outstanding receipts or certificates,
accepted orders or other vouchers, and how much was
represented by credit balances; (f) that all the provisions
of this article have been faithfully observed and obeyed
during the previous month. The statement so required
to be made shall also be sworn to by such officer, agent,
person or persons before some officer authorized by law
to administer oaths, which shall be in writing, and shall
assert the familiarity and acquaintance of the deponent
with the business and condition of such company, and
with the facts sworn to, and that the statements made
in such report are true.

§22-8-10. Statements of amount of oil.

All amounts in the statements required by this article,
when the petroleum is handled in bulk, shall be given
in barrels and hundredths of barrels, reckoning forty-
two gallons to each barrel, and when such petroleum is
handled in barrels or packages, the number of such
barrels or packages shall be given, and such statements
shall distinguish between crude and refined petroleum,
and give the amount of each. Every company engaged
in the business aforesaid shall at all times have in their
pipes and tanks an amount of merchantable oil equal to
the aggregate of outstanding receipts, certificates,
§22-8-11. Penalty — Wrongful issuance, sale or alteration of receipts, orders, etc.

Any company, or its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this article, or shall do or cause to be done any of the acts prohibited by section seven of this article, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars, and, if the offender be a natural person, imprisoned not less than ten days nor exceeding one year.

§22-8-12. Same — Dealing in oil without consent of owner in interest.

Any company, its officers or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or a majority of the owners in interest thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars and, if the offender be a natural person, imprisoned in the county jail not less than ninety days nor more than one year.

§22-8-13. Same — Failure to make report and statement.

Any company engaged in the business of transporting by pipelines or storing petroleum, crude or refined, and each and every officer or agent of such company, who shall neglect or refuse to make the report and statement required by section nine of this article, within the time and the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day
after the tenth day of the month that the report and
statement required by said section nine shall remain
unposted as therein directed.

ARTICLE 9. UNDERGROUND GAS STORAGE RESERVOIRS.

§22-9-1. Definitions.
§22-9-2. Filing of maps and data by persons operating or proposing to
operate gas storage reservoirs.
§22-9-3. Filing of maps and data by persons operating coal mines.
§22-9-5. Obligations to be performed by persons operating storage
reservoirs.
§22-9-6. Inspection of facilities and records; reliance on maps; burden of
proof.
§22-9-10. Conferences, hearings and appeals.

§22-9-1. Definitions.

In this article unless the context otherwise requires:

(1) The term "coal mine" means those operations in
a coal seam which include the excavated and abandoned
portions as well as the places actually being worked; also
all underground workings and shafts, slopes, tunnels,
and other ways and openings and all such shafts, slopes,
tunnels and other openings in the course of being sunk
or driven, together with all roads and facilities con-

(2) The term "operating coal mine" means (a) a coal
mine which is producing coal or has been in production
of coal at any time during the twelve months imme-
diately preceding the date its status is put in question
under this article and any worked out or abandoned coal
mine connected underground with or contiguous to such
operating coal mine as herein defined and (b) any coal
mine to be established or reestablished as an operating
coal mine in the future pursuant to section four of this
article.

(3) The term "outside coal boundaries" when used in
conjunction with the term “operating coal mine” means the boundaries of the coal acreage assigned to such coal mine and which can be practicably and reasonably expected to be mined through such coal mine.

(4) The term “well” means a borehole drilled or proposed to be drilled within the storage reservoir boundary or reservoir protective area for the purpose of or to be used for producing, extracting or injecting any gas, petroleum or other liquid but excluding boreholes drilled to produce potable water to be used as such.

(5) The term “gas” means any gaseous substance.

(6) The term “storage reservoir” means that portion of any subterranean sand or rock stratum or strata into which gas is or may be injected for the purpose of storage or for the purpose of testing whether said stratum is suitable for storage.

(7) The term “bridge” means an obstruction placed in a well at any specified depth.

(8) The term “linear foot” means a unit of measurement in a straight line on a horizontal plane.

(9) The term “person” means any individual, association, partnership or corporation.

(10) The term “reservoir protective area” means all of that area outside of and surrounding the storage reservoir boundary but within two thousand linear feet thereof.

(11) The term “retreat mining” means the removal of such coal, pillars, ribs and stumps as remain after the development mining has been completed in that section of a coal mine.

(12) The term “pillar” means a solid block of coal surrounded by either active mine workings or a mined out area.

(13) The term “inactivate” means to shut off all flow of gas from a well by means of a temporary plug, or other suitable device or by injecting aquagel or other such equally nonporous material into the well.
(14) The term "storage operator" means any person as herein defined who proposes to or does operate a storage reservoir, either as owner or lessee.

(15) The term "workable coal seam" has the same meaning as the term "workable coal bed" as set out in section one, article six of this chapter.

(16) The terms "owner," "coal operator," "well operator," "plat," "casing," "oil" and "cement" shall have the meanings set out in section one, article six of this chapter.

§22-9-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

(a) Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in a storage reservoir which underlies or is within three thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area shall, within sixty days thereafter, file with the division a copy of a map and certain data in the form and manner provided in this subsection.

Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in a storage reservoir which is not at such date under or within three thousand linear feet, but is less than ten thousand linear feet from an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall file such map and data within such time in excess of sixty days as the director may fix.

Any person who, after the eighth day of June, one thousand nine hundred fifty-five, proposes to inject or store gas in a storage reservoir located as above shall file the required map and data with the director not less than six months prior to the starting of actual injection or storage.

The map provided for herein shall be prepared by a competent engineer or geologist. It shall show the stratum or strata in which the existing or proposed
storage reservoir is or is to be located, the geographic
location of the outside boundaries of the said storage
reservoir and the reservoir protective area, the location
of all known oil or gas wells which have been drilled
into or through the storage stratum within the reservoir
or within three thousand linear feet thereof, indicating
which of these wells have been, or are to be cleaned out
and plugged or reconditioned for storage and also
indicating the proposed location of all additional wells
which are to be drilled within the storage reservoir or
within three thousand linear feet thereof.

The following information, if available, shall be
furnished for all known oil or gas wells which have been
drilled into or through the storage stratum within the
storage reservoir or within three thousand linear feet
thereof; name of the operator, date drilled, total depth,
depth of production if the well was productive of oil or
gas, the initial rock pressure and volume, the depths at
which all coal seams were encountered and a copy of the
driller's log or other similar information. At the time of
the filing of the aforesaid maps and data such person
shall file a detailed statement of what efforts have been
made to determine, (1) that the wells shown on said map
are accurately located thereon, and (2) that to the best
of such person's knowledge the wells are all the oil or
gas wells which have ever been drilled into or below the
storage stratum within the proposed storage reservoir
or within the reservoir protective area. This statement
shall also include information as to whether or not the
initial injection is for testing purposes, the maximum
pressures at which injection and storage of gas is
contemplated, and a detailed explanation of the methods
to be used or which theretofore have been used in
drilling, cleaning out, reconditioning or plugging wells
in the storage reservoir or within the reservoir protec-
tive area. The map and data required to be filed
hereunder shall be amended or supplemented semiann-
ually in case any material changes have occurred:
Provided, That the director may require a storage
operator to amend or supplement such map or data at
more frequent intervals if material changes have
occurred justifying such earlier filing.
At the time of the filing of the above maps and data, and the filing of amended or supplemental maps or data, the director shall give written notice of said filing to all persons who may be affected under the provisions of this subsection by the storage reservoir described in such maps or data. Such notices shall contain a description of the boundaries of such storage reservoir. When a person operating a coal mine or owning an interest in coal properties which are or may be affected by the storage reservoir, requests in writing a copy of any map or data filed with the director such copy shall be furnished by the storage operator.

(b) Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in any other storage reservoir in this state not subject to subsection (a) of this section shall, on or before the first day of July, one thousand nine hundred eighty-three, file with the division a map in the same detail as the map required for a storage reservoir subject to subsection (a) of this section; and, if the initial injection of gas into the storage reservoir by such person or any predecessor occurred after the thirty-first day of December, one thousand nine hundred seventy, data in the same detail as the data required for a storage reservoir shall be filed subject to subsection (a) of this section: Provided, That in the case of a storage reservoir the operation of which has been certified by the federal power commission or the federal energy regulatory commission under section seven of the federal Natural Gas Act, the person may, in lieu of the data, submit copies of the application and all amendments and supplements of record in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto.

Any person who, after the eighth day of June, one thousand nine hundred fifty-five, proposes to inject or store gas in any other storage reservoir in this state not subject to subsection (a) of this section shall file with the division a map and data in the same detail as the map and data required for a storage reservoir subject to subsection (a) of this section not less than six months...
prior to the starting of actual injection or storage:

Provided, That in the case of a storage reservoir the
operation of which will be required to be certificated by
the federal energy regulatory commission, the person
may, in lieu of the data, submit copies of the application
and all amendments and supplementals filed in the
federal docket, together with the certificate of public
convenience and necessity and any amendments thereto,
within twenty days after the same have been filed by
such person or issued by the federal energy regulatory
commission.

At the time of the filing of the above maps and data
or documents in lieu of data and filing of amended or
supplemental maps or data or documents in lieu of data,
or upon receipt of an application filed with the federal
energy regulatory commission for a new storage
reservoir, the director shall give notice of said filing by
a Class II legal advertisement in accordance with the
provisions of article three, chapter fifty-nine of this code,
the publication area for which shall be the county or
counties in which the storage reservoir is located. Such
legal advertisements shall contain a description of the
boundaries of such storage reservoir. The storage
operator shall pay for the legal advertisement upon
receipt of the invoice therefor from the division. When
any person owning an interest in land which is or may
be affected by the storage reservoir requests in writing
a copy of any map or data or documents in lieu of data
filed with the division, such copy shall be furnished by
the storage operator.

(c) The director shall also intervene in the federal
docket, and participate in the proceedings for the
purpose of assuring that the certificate of public
convenience and necessity issued by the federal energy
regulatory commission does not authorize operations or
practices in conflict with the provisions of this article.
The director may cooperate with the public service
commission if the commission also intervenes. The
attorney general is hereby directed to provide legal
representation to the director to achieve the purposes of
this subsection.
152 (d) For all purposes of this article, the outside boundaries of a storage reservoir shall be defined by the location of those wells around the periphery of the storage reservoir which had no gas production when drilled in said storage stratum: Provided, That the boundaries as thus defined shall be originally fixed or subsequently changed where, based upon the number and nature of such wells, upon the geological and production knowledge of the storage stratum, its character, permeability, and distribution, and operating experience, it is determined in a conference or hearing under section ten of this article that modification should be made.

§22-9-3. Filing of maps and data by persons operating coal mines.

(a) Any person owning or operating a coal mine, who has not already done so pursuant to the former provisions of article four, chapter twenty-two-b of this code, shall, within thirty days from the effective date of this article, file with the director a map, prepared by a competent engineer, showing the outside coal boundaries of the said operating coal mine, the existing workings and exhausted areas and the relationship of said boundaries to identifiable surface properties and landmarks. Any person who is storing or contemplating the storage of gas in the vicinity of such operating coal mines shall, upon written request, be furnished a copy of the aforesaid map by the coal operator and such person and the director shall thereafter be informed of any boundary changes at the time such changes occur. The director shall keep a record of such information and shall promptly notify both the coal operator and the storage operator if it is found that the coal mine and the storage reservoir are within ten thousand linear feet of each other.

(b) Any person owning or operating any coal mine which, on the tenth day of March, one thousand nine hundred fifty-five, is or which thereafter comes within ten thousand linear feet of a storage reservoir, and where the coal seam being operated extends over the storage reservoir or the reservoir protective area, shall
within forty-five days after such person has notice from the director of such fact, file with the director and furnish to the person operating such storage reservoir, a map in the form hereinabove provided and showing in addition, the existing and projected excavations and workings of such operating coal mine for the ensuing eighteen-month period, and also the location of any oil or gas wells of which said coal operator has knowledge. Such person owning or operating said coal mine shall each six months thereafter file with the director and furnish to the person operating such storage reservoir a revised map showing any additional excavations and workings, together with the projected excavations and workings for the then ensuing eighteen-month period which may be within ten thousand linear feet of said storage reservoir: Provided, That the director may require a coal operator to file such revised map at more frequent intervals if material changes have occurred justifying such earlier filing. Such person owning or operating said coal mine shall also file with the director and furnish the person operating said reservoir prompt notice of any wells which have been cut into, together with all available pertinent information.


(a) Any person owning or operating a coal mine on the eighth day of June, one thousand nine hundred fifty-five, and having knowledge that it overlies or is within two thousand linear feet of a gas storage reservoir, shall within thirty days notify the director and the storage operator of such fact unless such notification has already been provided to the director pursuant to the provisions of former article four, chapter twenty-two-b of this code.

(b) When any person owning or operating a coal mine hereafter expects that within the ensuing nine-month period such coal mine will be extended to a point which will be within two thousand linear feet of any storage reservoir, such person shall notify the director and the storage operator in writing of such fact.

(c) Any person hereafter intending to establish or reestablish an operating coal mine which when estab-
lished or reestablished will be over a storage reservoir or within two thousand linear feet of a storage reservoir, or which upon being established or reestablished may within nine months thereafter be expected to be within two thousand linear feet of a storage reservoir, shall notify the director and the storage operator in writing before doing so and such notice shall include the date on which it is intended the operating coal mine will be established or reestablished.

Any person who serves such notice of an intention to establish or reestablish an operating coal mine under this subsection, without intending in good faith to establish or reestablish such mine, shall be liable for continuing damages to any storage operator injured by the serving of such improper notice and shall be guilty of a misdemeanor under this article and subject to the same penalties as set forth in section twelve of this article.

§22-9-5. Obligations to be performed by persons operating storage reservoirs.

(a) Any person who, on or after June eighth, one thousand nine hundred fifty-five, is operating a storage reservoir which underlies or is within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall:

(1) Use every known method which is reasonable under the circumstances for discovering and locating all wells which have or may have been drilled into or through the storage stratum in that acreage which is within the outside coal boundaries of such operating coal mine and which overlies the storage reservoir or the reservoir protective area;

(2) Plug or recondition, in the manner provided by sections twenty-three and twenty-four, article six of this chapter and subsection (e) of this section, all known wells (except to the extent otherwise provided in subsections (e), (f), (g) and (h) of this section) drilled into or through the storage stratum and which are located within that portion of the acreage of the operating coal
mine overlying the storage reservoir or the reservoir protective area: Provided, That where objection is raised as to the use of any well as a storage well, and after a conference or hearing in accordance with section ten of this article it is determined, taking into account all the circumstances and conditions, that such well should not be used as a storage well, such well shall be plugged: Provided, however, That if, in the opinion of the storage operator, the well to which such objection has been raised may at some future time be used as a storage well, the storage operator may recondition and inactivate such well instead of plugging it, if such alternative is approved by the director after taking into account all of the circumstances and conditions.

The requirements of subdivision (2) of this subsection shall be deemed to have been fully complied with if, as the operating coal mine is extended, all wells which, from time to time, come within the acreage described in said subdivision (2) are reconditioned or plugged as provided in subsection (e) or (f) of this section and in section twenty-four, article six of this chapter so that by the time the coal mine has reached a point within two thousand linear feet of any such wells, they will have been reconditioned or plugged so as to meet the requirements of said subsection (e) or (f) and of said section twenty-four of article six.

(b) Any person operating a storage reservoir referred to in subsection (a) of this section who has not already done so pursuant to the provisions of former article four, chapter twenty-two-b of this code, shall within sixty days after the effective date of this article file with the director and furnish a copy to the person operating the affected operating coal mine, a verified statement setting forth:

(1) That the map and any supplemental maps required by subsection (a), section two of this article have been prepared and filed in accordance with section two;

(2) A detailed explanation of what the storage operator has done to comply with the requirements of subdivisions (1) and (2), subsection (a) of this section and
the results thereof;

(3) Such additional efforts, if any, as the storage 
operator is making and intends to make to locate all oil 
and gas wells; and

(4) Any additional wells that are to be plugged or 
reconditioned to meet the requirements of subdivision 
(2), subsection (a) of this section.

If such statement is not filed by the storage reservoir 
operator within the time specified herein, the director 
shall summarily order such operator to file such 
statement.

(c) Within one hundred twenty days after the receipt 
of any such statement, the director may, and shall, if so 
requested by either the storage operator or the coal 
operator affected, direct that a conference be held in 
accordance with section ten of this article to determine 
whether the information as filed indicates that the 
requirements of section two of this article and of 
subsection (a) of this section have been fully complied 
with. At such conference, if any person shall be of the 
opinion that such requirements have not been fully 
complied with, the parties shall attempt to agree on 
what additional things are to be done and the time 
within which they are to be completed, subject to the 
approval of the director, to meet the said requirements.

If such agreement cannot be reached, the director 
shall direct that a hearing be held in accordance with 
section ten of this article. At such hearing the director 
shall determine whether the requirements of said 
section two of this article and of subsection (a) of this 
section have been met and shall issue an order setting 
forth such determination. If the director shall determine 
that any of the said requirements have not been met, the 
order shall specify, in detail, both the extent to which 
such requirements have not been met, and the things 
which the storage operator must do to meet such 
requirements. The order shall grant to the storage 
operator such time as is reasonably necessary to 
complete each of the things which such operator is 
directed to do. If, in carrying out said order, the storage
operator encounters conditions which were not known to
exist at the time of the hearing and which materially
affect the validity of said order or the ability of the
storage operator to comply with the order, the storage
operator may apply for a rehearing or modification of
said order.

(d) Whenever, in compliance with subsection (a) of
this section, a storage operator, after the filing of the
statement provided for in subsection (b) of this section,
plugs or reconditions a well, such operator shall so notify
the director and the coal operator affected in writing,
setting forth such facts as will indicate the manner in
which the plugging or reconditioning was done. Upon
receipt thereof, the coal operator affected or the director
may request a conference or hearing in accordance with
section ten of this article.

(e) In order to meet the requirements of subsection (a)
of this section, wells which are to be plugged shall be
plugged in the manner specified in section twenty-four,
article six of this chapter. When a well located within
the storage reservoir or the reservoir protective area has
been plugged prior to the tenth day of March, one
thousand nine hundred fifty-five, and on the basis of the
data, information and other evidence submitted to the
director, it is determined that: (1) Such plugging was
done in the manner required in section twenty-four,
article six of this chapter; and (2) said plugging is still
sufficiently effective to meet the requirements of this
article, the obligations imposed by subsection (a) of this
section as to plugging said well shall be considered fully
satisfied.

(f) In order to meet the requirements of subsection (a)
of this section, wells which are to be reconditioned shall
be cleaned out from the surface through the storage
horizon and the following casing strings shall be pulled
and replaced with new casing, using the same procedure
as is applicable to drilling a new well as provided for
in sections eighteen, nineteen and twenty, article six of
this chapter: (1) The producing casing; (2) the largest
diameter casing passing through the lowest workable
coal seam unless such casing extends at least twenty-five
feet below the bottom of such coal seam and is determined to be in good physical condition: Provided, That the storage operator may, instead of replacing the largest diameter casing, replace the next largest casing string if such casing string extends at least twenty-five feet below the lowest workable coal seam; and (3) such other casing strings which are determined not to be in good physical condition. In the case of wells to be used for gas storage, the annular space between each string of casing, and the annular space behind the largest diameter casing to the extent possible, shall be filled to the surface with cement or aquagel or such equally nonporous material as is approved by the director pursuant to section eight of this article. At least fifteen days prior to the time when a well is to be reconditioned the storage operator shall give notice thereof to the coal operator or owner and to the director setting forth in such notice the manner in which it is planned to recondition such well and any pertinent data known to the storage operator which will indicate the then existing condition of such well. In addition the storage operator shall give the coal operator or owner and such representative of the director as the director shall have designated at least seventy-two hours notice of the time when such reconditioning is to begin. The coal operator or owner shall have the right to file, within ten days after the receipt of the first notice required herein, objections to the plan of reconditioning as submitted by the storage operator. If no such objections are filed or if none is raised by the director within such ten-day period, the storage operator may proceed with the reconditioning in accordance with the plan as submitted. If any such objections are filed by the coal operator or owner or are made by the director, the director shall fix a time and place for a conference in accordance with section ten of this article at which conference the well operator and the person who has filed such objections shall endeavor to agree upon a plan of reconditioning which meets the requirements herein and which will satisfy such objections. If no plan is approved at such conference, the director shall direct that a hearing be held in accordance with section ten of this article and,
after such hearing, shall by an appropriate order
determine whether the plan as submitted meets the
requirements set forth herein, or what changes, if any,
should be made to meet such requirements. If, in
reconditioning a well in accordance with said plan,
physical conditions are encountered which justify or
necessitate a change in said plan, the storage operator
or the coal operator may request that the plan be
changed. If the storage operator and the coal operator
cannot agree upon such change, the director shall
arrange for a conference or hearing in accordance with
section ten of this article to determine the matter in the
same manner as set forth herein in connection with
original objections to said plan. Application may be
made to the director in the manner prescribed in section
eight of this article for approval of an alternative
method of reconditioning a well. When a well located
within the storage reservoir or the reservoir protective
area has been reconditioned prior to the tenth day of
March, one thousand nine hundred fifty-five, or was so
drilled and equipped previously and on the basis of the
data, information and other evidence submitted to the
director, it is determined that: (1) Such reconditioning
or previous drilling and equipping was done in the
manner required in this subsection, or in a manner
approved as an alternative method in accordance with
section eight of this article and (2) such reconditioning
or previous drilling and equipping is still sufficiently
effective to meet the requirements of this article, the
obligations imposed by subsection (a) as to recondition-
ing said well shall be considered fully satisfied. Where
a well requires emergency repairs this subsection shall
not be construed to require the storage operator to give
the notices specified herein before making such repairs.

(g) When a well located within the reservoir protec-
tive area is a producing well in a stratum below the
storage stratum the obligations imposed by subsection
(a) of this section shall not begin until such well ceases
to be a producing well.

(h) When a well within a storage reservoir or the
reservoir protective area penetrates the storage stratum
but does not penetrate the coal seam being mined by an operating coal mine the director may, upon application of the operator of such storage reservoir, exempt such well from the requirements of this section. Either party affected may request a conference and hearing with respect to the exemption of any such well in accordance with section ten of this article.

(i) In fulfilling the requirements of subdivision (2), subsection (a) of this section with respect to a well within the reservoir protective area, the storage operator shall not be required to plug or recondition such well until he has received from the coal operator written notice that the mine workings will within the period stated in such notice, be within two thousand linear feet of such well. Upon the receipt of such notice the storage operator shall use due diligence to complete the plugging or reconditioning of such well in accordance with the requirements of this section and of section twenty-four, article six of this chapter. If the said mine workings do not, within a period of three years after said well has been plugged, come within two thousand linear feet of said well, the coal operator shall reimburse the storage operator for the cost of said plugging, provided such well is still within the reservoir protective area as of that time.

(j) When retreat mining approaches a point where within ninety days it is expected that such retreat work will be at the location of the pillar surrounding an active storage well the coal operator shall give written notice of such approach to the storage operator and by agreement said parties shall determine whether it is necessary or advisable to inactivate effectively said well temporarily. The well shall not be reactivated until a reasonable period has elapsed, such reasonable period to be determined by the said parties. In the event that the said parties cannot agree upon either of the foregoing matters, such question shall be submitted to the director for decision in accordance with section ten of this article. The number of wells required to be temporarily inactivated during the retreat period shall not be such as to materially affect the efficient operation of such
storage pool. This provision shall not preclude the temporary inactivation of a particular well where the practical effect of inactivating such well is to render the pool temporarily inoperative.

(k) The requirements of subsections (a), (l) and (m) of this section shall not apply to the injection of gas into any stratum when the sole purpose of such injection (such purpose being herein referred to as testing) is to determine whether the said stratum is suitable for storage purposes: Provided, That such testing shall be conducted only in compliance with the following requirements:

(1) The person testing or proposing to test shall comply with all the provisions and requirements of section two of this article and shall verify the statement required to be filed thereby;

(2) If any part of the proposed storage reservoir is under or within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the proposed storage reservoir or the reservoir protective area, the storage operator shall give at least six months' written notice to the director and to the coal operator of the fact that injection of gas for testing purposes is proposed;

(3) The coal operator affected may at any time file objections with the director in accordance with subsection (d), section nine of this article. If any such objections are filed by the coal operator or if the director shall have any objections, the director shall fix a time and place for a conference in accordance with section ten of this article, not more than ten days from the date of the notice to the storage operator, at which conference the storage operator and the person who has filed such objections shall attempt to agree, subject to the approval of the director, on the questions involved. If such agreement cannot be reached at such conference, the director shall direct that a hearing be held in accordance with section ten of this article. At such hearing the director shall determine and set forth in an appropriate order the conditions and requirements
which the director shall deem necessary or advisable in
order to prevent gas from such storage reservoir from
entering any operating coal mine. The storage operator
shall comply with such conditions and requirements
throughout the period of the testing operations. In
determining such conditions and requirements the
director shall take into account the extent to which the
matters referred to in subsection (a) of this section have
been performed. If, in carrying out said order, either the
storage operator or the coal operator encounters or
discovers conditions which were not known to exist at
the time of the hearing and which materially affect said
order or the ability of the storage operator to comply
with the order, either operator may apply for a
rehearing or modification of said order;

(4) Where, at any time, a proposed storage reservoir
being tested comes under or within two thousand linear
feet of an operating coal mine either because of the
extension of the storage reservoir being tested or
because of the extension or establishment or reestablish-
ment of the operating coal mine, then and at the time
of any such event the requirements of this subsection
shall become applicable to such testing.

(1) Any person who proposes to establish a storage
reservoir under, or within two thousand linear feet of
an operating coal mine which is operating in a coal seam
that extends over the storage reservoir or the reservoir
protective area, shall, prior to establishing such
reservoir, in addition to complying with the require-
ments of section two of this article and subsection (a) of
this section, file the verified statement required by
subsection (b) of this section and fully comply with such
order or orders, if any, as the director may issue in the
manner provided for under subsection (b) or (c) of this
section before beginning the operation of such storage
reservoir. After the person proposing to operate such
storage reservoir shall have complied with such require-
ments and shall have thereafter begun to operate such
reservoir, such person shall continue to be subject to all
of the provisions of this article.

(m) When a gas storage reservoir, (1) was in operation
on the eighth day of June, one thousand nine hundred fifty-five, and at any time thereafter it is under or within two thousand linear feet of an operating coal mine, or (2) when a gas storage reservoir is put in operation after the eighth day of June, one thousand nine hundred fifty-five, and at any time after such storage operations begin it is under or within two thousand linear feet of an operating coal mine, then and in either such event, the storage operator shall comply with all of the provisions of this section except that the time for filing the verified statement under subsection (b) shall be sixty days after the date stated in the notice filed by the coal operator under subsection (b) or (c), section four of this article as to when the operating coal mine will be at a point within two thousand linear feet of such reservoir: Provided, That if the extending of the projected workings or the proposed establishment or reestablishment of the operating coal mine is delayed after the giving of the notice provided in subsections (b) and (c), section four of this article, the coal operator shall give notice of such delay to the director and the director shall, upon the request of the storage operator, extend the time for filing such statement by the additional time which will be required to extend or establish or reestablish such operating coal mine to a point within two thousand linear feet of such reservoir. Such verified statement shall also indicate that the map referred to in subsection (a), section two of this article has been currently amended as of the time of the filing of such statement. The person operating any such storage reservoir shall continue to be subject to all of the provisions of this article.

(n) If, in any proceeding under this article, the director shall determine that any operator of a storage reservoir has failed to carry out any lawful order of the director issued under this article, the director shall have authority to require such storage operator to suspend the operation of such reservoir and to withdraw the gas therefrom until such violation is remedied. In such an event the gas shall be withdrawn under the following conditions. The storage operator shall remove the maximum amount of gas which is required by the
director to be removed from the storage reservoir that can be withdrawn in accordance with recognized engineering and operating procedures and shall proceed with due diligence insofar as existing facilities used to remove gas from the reservoir will permit.

(o) In addition to initial compliance with the other provisions of this article and any lawful orders issued thereunder, it shall be the duty at all times of the person owning or operating any storage reservoir which is subject to the provisions of this article to keep all wells drilled into or through the storage stratum in such condition and to operate the same in such manner as to prevent the escape of gas into any coal mine therefrom, and to operate and maintain such storage reservoir and its facilities in such manner and at such pressures as will prevent gas from escaping from such reservoir or its facilities into any coal mine: Provided, That this duty shall not be construed to include the inability to prevent the escape of gas where such escape results from an act of God or an act of any person not under the control of the storage operator other than in connection with any well which the storage operator has failed to locate and to make known to the director: Provided, however, That if any escape of gas into a coal mine does result from an act of God or an act of any person not under the control of the storage operator, the storage operator shall be under the duty of taking such action thereafter as is reasonably necessary to prevent further escape of gas into the coal mine.

§22-9-6. Inspection of facilities and records; reliance on maps; burden of proof.

(a) In determining whether a particular coal mine or operating coal mine is or will be within any distance material under this article from any storage reservoir, the owner or operator of such coal mine and the storage operator may rely on the most recent map of the storage reservoir or coal mine filed by the other with the director.

(b) In any proceeding under this article where the accuracy of any map or data filed by any person
pursuant to the requirements of this article is in issue, the person filing the same shall at the request of any party to such proceeding be required to disclose the information and method used in compiling such map and data and such information as is available to such person that might affect the current validity of such map or data. If any material question is raised in such proceeding as to the accuracy of such map or data with respect to any particular matter or matters contained therein, the person filing such map or data shall then have the burden of proving the accuracy of the map or data with respect to such matter or matters.

(c) The person operating any storage reservoir affected by the terms of this article shall, at all reasonable times, be permitted to inspect the applicable records and facilities of any coal mine overlying such storage reservoir or the reservoir protective area, and the person operating any such coal mine affected by the terms of this article, shall similarly, at all reasonable times, be permitted to inspect the applicable records and facilities of any such storage reservoir underlying any such coal mine. In the event that either such storage operator or coal operator shall refuse to permit any such inspection of records or facilities, the director shall, on the director's own motion, or on application of the party seeking the inspection after reasonable written notice, and a hearing thereon, if requested by either of the parties affected, make an order providing for such inspection.


(a) The provisions of this article shall not apply to strip mines and auger mines operating from the surface.

(b) Injection of gas for storage purposes in any workable coal seam, whether or not such seam is being or has been mined, shall be prohibited. Nothing in this article shall be construed to prohibit the original extraction of natural gas, crude oil or coal. No storage operator shall have authority to appropriate any coal or coal measure whether or not being mined, or any interest therein.

(a) Whenever provision is made in this article by reference to this section for using an alternative method or material in carrying out any obligation imposed by the article, the person seeking the authority to use such alternative method or material shall file an application with the director describing such proposed alternative method or material in reasonable detail. Notice of filing of any such application shall be given by registered mail to any coal operator or operators affected. Any such coal operator may within ten days following such notice, file objections to such proposed alternative method or material. If no objections are filed within said ten-day period or if none is raised by the director, the director shall forthwith issue a permit approving such proposed alternative method or material.

(b) If any such objections are filed by any coal operator or are raised by the director, the director shall direct that a conference be held in accordance with section ten of this article within the ten days following the filing of such objections. At such conferences the person seeking approval of the alternative method or material and the person who has filed such objections shall attempt to agree on such alternative method or material or any modification thereof, and if such agreement is reached and approved by the director, the director shall forthwith issue a permit approving the alternative method or material. If no such agreement is reached and approved, the director shall direct that a hearing be held in accordance with section ten of this article: Provided, That if the alternative method or material involves a new development in technology or technique the director may, before such a hearing is held, grant such affected parties a period not to exceed ninety days to study and evaluate said proposed alternative method or material. Following such hearing, if the director shall find that such proposed alternative method or material will furnish adequate protection to the workable coal seams, the director shall by order approve such alternative method or material; otherwise the director shall deny the said application.

(a) The director may review the maps and data filed under sections two and three hereof for the purpose of determining the accuracy thereof. Where any material question is raised by any interested storage operator or coal operator or owner as to the accuracy of any such map or data, the director shall hold hearings thereon and shall by an appropriate order require the person filing such map or data to correct the same if they are found to be erroneous.

(b) It shall be the duty of the director to receive and keep in a safe place for public inspection any map, data, report, well log, notice or other writing required to be filed with it pursuant to the provisions of this article. The director shall keep such indices of all such information as will enable any person using the same to readily locate such information either by the identity of the person who filed the same or by the person or persons affected by such filing or by the geographic location of the subject matter by political subdivision. The director shall also keep a docket for public inspection of all proceedings, in which shall be entered the dates of any notices, the names of all persons notified and their addresses, the dates of hearings, conferences and all orders, decrees, decisions, determinations, rulings or other actions issued or taken by the director and such docket shall constitute the record of each and every proceeding before the director.

(c) The director shall have authority to make any inspections and investigations of records and facilities which are deemed necessary or desirable to perform the director's functions under this article.

(d) Where in any section of this article provision is made for the filing of objections, such objections shall be filed in writing with the director, by the person entitled to file the same or by the director, and shall state as definitely as is reasonably possible the reasons for such objections. The person filing such objections shall send a copy thereof by registered mail to the person or persons affected thereby.
§22-9-10. Conferences, hearings and appeals.

(a) The director or any person having a direct interest in the subject matter of this article may at any time request that a conference be held for the purpose of discussing and endeavoring to resolve by mutual agreement any matter arising under the provisions of this article. Prompt notice of any such conference shall be given by the director to all such interested parties. At such conference a representative of the director shall be in attendance, and the director may make such recommendations as are deemed appropriate. Any agreement reached at such conference shall be consistent with the requirements of this article and, if approved by such representative of the director, it shall be reduced to writing and shall be effective unless reviewed and rejected by the director within ten days after the close of the conference. The record of any such agreement approved by the director shall be kept on file by the director with copies furnished to the parties. The conference shall be deemed terminated as of the date any party refuses to confer thereafter. Such a conference shall be held in all cases prior to conducting any hearing under this section.

(b) Within ten days after termination of the conference provided for in this section at which no approved agreement has been reached or within ten days after the rejection by the director of any agreement approved at any such conference, any person who has a direct interest in the subject matter of the conference may submit the matter or matters, or any part thereof, considered at the conference, to the director for determination at a public hearing. The hearing procedure shall be formally commenced by the filing of a petition with the director upon forms prescribed by the director or by specifying in writing the essential elements of the petition, including name and address of the petitioner and of all other persons affected thereby, a clear and concise statement of the facts involved, and a specific statement of the relief sought. The hearing shall thereafter be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this
code and with such rules and such provisions as to
t reasonable notice as the director may prescribe.
Consistent with the requirements for reasonable notice
all hearings under this article shall be held by the
director promptly. All testimony taken at such hearings
shall be under oath and shall be reduced to writing by
a reporter appointed by the director, and the parties
shall be entitled to appear and be heard in person or
by attorney. The director may present at such hearing
any evidence which is material to the matter under
consideration and which has come to the director’s
attention in any investigation or inspection made
pursuant to provisions of this article.

(c) After the conclusion of hearings, the director shall
make and file the director's findings and order with the
director's opinion, if any. A copy of such order shall be
served by registered mail upon the person against whom
it runs, or such person's attorney of record, and notice
thereof shall be given to the other parties to the
proceedings, or their attorney of record.

(d) The director may, at any time after notice and
after opportunity to be heard as provided in this section,
rescind or amend any approved agreement or order
made by the director. Any order rescinding or amend-
ing a prior agreement or order shall, when served upon
the person affected, and after notice thereof is given to
the other parties to the proceedings, have the same
effect as is herein provided for original orders; but no
such order shall affect the legality or validity of any acts
done by such person in accordance with the prior
agreement or order before receipt by such person of the
notice of such change.

(e) The director shall have power, either personally or
by any of the director's authorized representatives, to
subpoena witnesses and take testimony, and administer
oaths to any witness in any hearing, proceeding or
examination instituted before the director or conducted
by the director with reference to any matter within the
jurisdiction of the director. In all hearings or proceed-
ings before the director the evidence of witnesses and
the production of documentary evidence may be re-
quired at any designated place of hearing; and in case of disobedience to a subpoena or other process the director or any party to the proceedings before the director may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of such books, records, maps, plats, papers, documents and other writings as the director may deem necessary or proper in and pertinent to any hearing, proceeding or investigation held or had by the director. Such court, in case of the refusal of any such person to obey the subpoena, shall issue an order requiring such person to appear before the director and produce the required documentary evidence, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to incriminate the person giving the same shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning which the witness compelled hereunder to testify.

(f) With the consent of the director, the testimony of any witness may be taken by deposition at the instance of a party to any hearing before the director at any time after hearing has been formally commenced. The director may, of the director's own motion, order testimony to be taken by deposition at any stage in any hearing, proceeding or investigation pending before the director. Such deposition shall be taken in the manner prescribed by the laws of West Virginia for taking depositions in civil cases in courts of record.

(g) Whether or not it be so expressly stated, an appeal from any final order, decision or action by the director in administering the provisions of this article may be taken by any aggrieved person within ten days of notice of such order, decision or action, to the circuit court of the county in which the subject matter of such order, decision or action is located, and in all cases of appeals to the circuit court, that court shall certify its decisions to the director. The circuit court to which the appeal is taken shall hear the appeal without a jury on the record.
certified by the director. In any such appeal the findings of the director shall, if supported by substantial evidence, be conclusive. If the order of the director is not affirmed, the court may set aside or modify it, in whole or in part, or may remand the proceedings to the director for further disposition in accordance with the order of the court. From all final decisions of the circuit court an appeal shall lie to the supreme court of appeals as is now provided by law in cases in equity, by the director as well as by any other party of record before the circuit court.

Any party feeling aggrieved by the final order of the circuit court affecting him, may present his petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within twenty days after the entry of such order, praying for the suspension or modification of such final order. The applicant shall deliver a copy of such petition to the director and to all other parties of record before presenting the same to the court or judge. The court or judge shall fix a time for the hearing on the application, but such hearing shall not be held sooner than seven days after its presentation unless by agreement of the parties, and notice of the time and place of such hearing shall be forthwith given to the director and to all other parties of record. If the court or judge, after such hearing, be of opinion that such final order should be suspended or modified, the court or the judge may require bond, upon such conditions and upon the petitioner as are just and reasonable. For such hearing the entire record before the circuit court, or a certified copy thereof, shall be filed in the supreme court, and that court, upon such papers, shall promptly decide the matter in controversy as may seem to it to be just and right, and may award costs in each case as to it may seem just and equitable.


(a) The director or any person having a direct interest in the subject matter of this article may complain in writing setting forth that any person is violating or is about to violate, any provisions of this article, or has
done, or is about to do, any act, matter or thing therein
prohibited or declared to be unlawful, or has failed,
 omitted, neglected or refused, or is about to fail, omit,
 neglect or refuse, to perform any duty enjoined upon
him by this article. Upon the filing of a complaint
against any person, the director shall cause a copy
thereof to be served upon such person by registered mail
accompanied by a notice from the director setting such
complaint for hearing at a time and place specified in
such notice. At least five days' notice of such hearing
shall be given to the parties affected and such hearing
shall be held in accordance with the provisions of section
ten of this article. Following such hearing, the director
shall, if the director finds that the matter alleged in the
complaint is not in violation of this article, dismiss the
complaint, but if the director shall find that the
complaint is justified, the director shall by appropriate
order compel compliance with this article.

(b) Whenever the director shall be of the opinion that
any person is violating, or is about to violate, any
provisions of this article, or has done, or is about to do,
any act, matter or thing therein prohibited or declared
to be unlawful, or has failed, omitted, neglected or
refused, or is about to fail, omit, neglect or refuse, to
perform any duty enjoined upon the director by this
article, or has failed, omitted, neglected or refused, or
is about to fail, omit, neglect or refuse to obey any lawful
requirement or order made by the director, or any final
judgment, order or decree made by any court pursuant
to this article, then and in every such case the director
may institute in the circuit court of the county or
counties wherein the operation is situated, injunction,
mandamus or other appropriate legal proceedings to
restrain such violations of the provisions of this article
or of orders of the director to enforce obedience
therewith. No injunction bond shall be required to be
filed in any such proceeding. Such persons or corpora-
tions as the court may deem necessary or proper to be
joined as parties in order to make its judgment, order
or writ effective may be joined as parties. The final
judgment in any such action or proceeding shall either
dismiss the action or proceeding or direct that the writ
of mandamus or injunction or other order, issue or be
made permanent as prayed for in the petition or in such
modified or other form as will afford appropriate relief.
An appeal may be taken as in other civil actions.

(c) In addition to the other remedies herein provided,
any storage operator or coal operator affected by the
provisions of this article may proceed by injunction or
other appropriate remedy to restrain violations or
threatened violations of the provisions of this article or
of orders of the director or the judgments, orders or
decrees of any court or to enforce obedience therewith.

(d) Each remedy prescribed in this section shall be
deemed concurrent or contemporaneous with any other
remedy prescribed herein and the existence or exercise
of any one such remedy shall not prevent the exercise
of any other such remedy.


Any person who shall willfully violate any order of the
director issued pursuant to the provisions of this article
shall be guilty of a misdemeanor, and, on conviction
thereof, shall be punished by a fine not exceeding two
thousand dollars, or imprisoned in jail for not exceeding
twelve months, or both, in the discretion of the court,
and prosecutions under this section may be brought in
the name of the state of West Virginia in the court
exercising criminal jurisdiction in the county in which
the violation of such provisions of the article or terms
of such order was committed, and at the instance and
upon the relation of any citizen of this state.


All orders in effect upon the effective date of this
article pursuant to the provisions of former article four,
chapter twenty-two-b of this code, shall remain in full
force and effect as if such orders were adopted by the
division established in this chapter but all such orders
shall be subject to review by the director to ensure they
are consistent with the purposes and policies set forth
in this chapter.

ARTICLE 10. ABANDONED WELL ACT.
§22-10-1. Short title.
§22-10-2. Legislative findings; legislative statement of policy and purpose.
§22-10-3. Definitions.
§22-10-5. Financial responsibility — Amount.
§22-10-6. Establishment of priorities for plugging expenditures.
§22-10-7. Right of interested person to plug, replug and reclaim abandoned wells.
§22-10-8. Arbitration; fees and costs.
§22-10-9. Civil penalties.
§22-10-10. Rule making; procedure; judicial review.
§22-10-11. Existing rights and remedies preserved.

§22-10-1. Short title.

This article may be cited as "Abandoned Well Act."

§22-10-2. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds and declares that:

(1) Oil and gas have been continuously produced in West Virginia for over one hundred years, during which time operators of wells have been required by the laws of this state to plug wells upon cessation of use;

(2) The plugging requirements for certain older oil and gas and other wells may not have been sufficient to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, nor to allow for enhanced recovery of oil, gas or other mineral resources of this state;

(3) Many wells may exist in West Virginia which are abandoned and either not plugged or not properly plugged in a manner to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, to allow for enhanced recovery of oil, gas and other mineral resources, and generally to protect the environment and mineral resources of this state, as aforesaid;

(4) Requirements for financial responsibility to assure plugging of abandoned wells have not been required in

...
this state for older wells, and adequate financial responsibility should be established with respect to all wells;

(5) Programs and policies should be implemented to foster, encourage and promote through the fullest practical means the proper plugging of abandoned wells to protect the environment and mineral resources of this state;

(6) Criteria should be established with respect to priorities for the expenditure of moneys available for plugging abandoned wells and identifying those abandoned wells which, as a matter of public policy, should be plugged first; and

(7) The plugging of many abandoned wells may be accomplished through the establishment of rights and procedures allowing interested persons to apply for a permit to plug an abandoned well.

(b) The Legislature hereby declares that it is in the public interest and it is the public policy of this state, to foster, encourage and promote the proper plugging of all wells at the time of their abandonment to protect the environment and mineral resources of this state.

§22-10-3. Definitions.

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

(a) “Abandoned well” means any well which is required to be plugged under the provisions of section nineteen, article six of this chapter and rules promulgated pursuant thereto.

(b) “Director” means for the purpose of this article, the director of the division of environmental protection as established in article one of this chapter or such other person to whom the director may delegate authority or duties pursuant to sections six or eight, article one of this chapter.

(c) “Interested party” means, for the purpose of this article, any owner, operator or lessee of the surface, oil, gas, water, coal or other mineral resource under, on,
adjacent or in close proximity to any lands upon which an abandoned well exists, and whose lands, rights or interests are or might be affected by such abandoned well.


(a) Operators of all wells, not otherwise required to demonstrate financial responsibility through bonding or otherwise in accordance with the provisions of article six of this chapter, shall, no later than the first day of July, one thousand nine hundred ninety-three, demonstrate financial responsibility in accordance with the methods and in the amounts prescribed by this article.

(b) If the operator demonstrates to the satisfaction of the director that an unjust hardship to an operator will occur as a result of the financial responsibility requirements of this article:

(1) The director may suspend such financial responsibility requirements to a date no later than the first day of July, one thousand nine hundred ninety-five; or

(2) The director may authorize an operator to demonstrate such financial responsibility by supplying twenty percent of any required amount by no later than the first day of July, one thousand nine hundred ninety-four; forty percent no later than the first day of July, one thousand nine hundred ninety-five; sixty percent no later than the first day of July, one thousand nine hundred ninety-six; eighty percent by the first day of July, one thousand nine hundred ninety-seven; and one hundred percent by the first day of July, one thousand nine hundred ninety-eight.

(c) The operator making a demonstration of financial responsibility pursuant to this section shall provide the director with information sufficient to establish the location and identification of the well, any well completion, recompletion and reworking records which may exist and such other information as the director may reasonably require.

§22-10-5. Financial responsibility — Amount.
1 The financial responsibility requirements applicable
2 to all wells shall be as set forth in section twenty-six,
3 article six of this chapter, except that the amount of
4 financial responsibility through bonding or otherwise, as
5 provided for in said section, for an individual well shall
6 be in the amount of five thousand dollars. In lieu of
7 separate, single well bonds, an operator may either
8 furnish a blanket bond in the sum of fifty thousand
9 dollars in accordance with the provisions of subsection
10 (c) of section twenty-six, article six of this chapter, or
11 if the operator has previously provided a blanket bond
12 in the sum of fifty thousand dollars which remains in
13 effect, the operator may cover wells subject to this
14 article by such existing blanket bond.

§22-10-6. Establishment of priorities for plugging expenditures.

(a) Within one year of the effective date of this article,
the director shall promulgate legislative rules establish-
ing a priority system by which available funds from the
oil and gas reclamation fund, established pursuant to
section twenty-nine, article six of this chapter, will be
expended to plug abandoned wells. The rules shall, at
a minimum, establish three primary classifications to be
as follows:

(1) Wells which are an immediate threat to the
environment or which may hinder or impede the
development of mineral resources of this state so as to
require immediate plugging;

(2) Wells which are not an immediate threat to the
environment or which do not hinder or impede the
development of mineral resources of this state but which
should be plugged consistent with available resources;
and

(3) Wells which are not a threat to the environment
and which do not hinder or impede the development of
mineral resources of this state and for which plugging
may be deferred for an indefinite period.

(b) Such classifications shall, among other things, take
into consideration the following factors, as appropriate:
(1) The age of the well;
(2) The length of time the well has been abandoned;
(3) The casing remaining in the well;
(4) The presence of any leaks either at the surface or underground;
(5) The possibility or existence of groundwater contamination;
(6) Whether the well is located in an area to be developed for enhanced recovery;
(7) Whether the well hinders or impedes mineral development; and
(8) Whether the well is located in close proximity to population.

§22-10-7. Right of interested person to plug, replug and reclaim abandoned wells.

(a) Upon twenty days' advance written notice, it shall be lawful for any interested person, the operator or the director to enter upon the premises where any abandoned well is situated and properly plug or replug such abandoned well, and to reclaim any area disturbed by such plugging or replugging in the manner required by article six of this chapter. Such notice shall be served by certified mail, returned receipt requested, or such other manner as is sufficient for service of process in a civil action, upon any owner of the surface of the land upon which such abandoned well exists, upon any oil and gas lessee of record with the director and upon any owner or operator of such abandoned well of record with the director, or in the event there is no such lessee, owner or operator of record with the director, by posting such notice in a conspicuous place at or near such abandoned well. The notice given the surface owner shall include a statement advising the surface owner of the right to repairs or damages as provided in this section and the potential right to take any casing, equipment or other salvage. Such notice shall be on forms approved by the director.
(b) Any interested person who plugs a well pursuant to the provisions of this section shall, to the extent damage or disturbance results from such plugging, either repair the damage or disturbance or compensate the surface owner for (i) the reasonable cost of repairing or replacing any water well, (ii) the reasonable value of any crops destroyed, damaged or prevented from reaching market, (iii) the reasonable cost of repair to personal property up to the value of the replacement value of personal property of like age, wear and quality, (iv) lost income or expense incurred, and (v) reasonable costs to reclaim or repair real property including roads.

(c) The interested person who is plugging the well pursuant to the provisions of this section, may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by including notice of such election in the written notice mandated by subsection (a) of this section. Should such interested person who is plugging the well not give such notice of election, the surface owner may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by giving written notice of such election to the interested person who is plugging the well at least ten days in advance of such plugging. In the event such notice is given, such interested person who is plugging the well may leave such casing, equipment or salvage at a location which will not adversely affect any reclamation of a disturbed area. In the event the surface owner does not give notice of an election to take such casing, equipment or salvage as provided herein, such interested person who plugs the well shall properly dispose thereof. Nothing in this subsection shall be construed to require or create a duty upon such interested person who plugs the well to protect or pull casing or otherwise take any action or incur any expense to retrieve or protect any casing, equipment or salvageable material: Provided, That nothing contained in this section may be construed to relieve the interested person from the responsibility to perform in accordance with the requirements of this article, article six of this chapter, or any condition of the permit.
(d) Prior to releasing any bond which is obtained in connection with plugging or replugging an abandoned well under the provisions of this section, the director shall obtain from the interested person who has obtained the bond a copy of a letter that such interested person has sent to the surface owner advising that reclamation has been completed.

(e) Where an interested person who intends to plug an abandoned well pursuant to this section is unable to obtain a bond in the full amount required by section twenty-six, article six of this chapter, the director may authorize a bond in a lesser amount; which lesser amount shall be equal or greater than the estimated cost of reclaiming the surface areas disturbed by the plugging operation: Provided, That an owner or operator of a well shall comply with the financial responsibility provisions of section five of this article and section twenty-six, article six of this chapter.

(f) In the event the owner or operator of a well fails or has failed to plug a well in accordance with laws and rules in effect at the time the well is or was first subject to plugging requirements, any interested person who plugs or replugs such well pursuant to the provisions of this section may recover from the owner or operator of such well all reasonable costs incidental to such plugging or replugging, including any compensation provided for in this section. In the event funds from the oil and gas reclamation fund established pursuant to section twenty-nine, article six of this chapter are used to plug or replug such well, the director shall be entitled to recover from the owner or operator of such well any amounts so expended from the fund. Any amounts so recovered by the director shall be deposited in said fund.

§22-10-8. Arbitration; fees and costs.

(a) If the interested person who plugs a well and the surface owner are unable to agree as to the adequacy of the repairs performed or the amount of compensation to which the surface owner may be entitled, either party upon written notice to the other may elect to have such issue finally determined by binding arbitration pursu-
ant to article ten, chapter fifty-five of this code.

(b) The adequacy of the repairs or compensation to which the surface owner may be entitled shall, if such election is made, be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the party electing to arbitrate in such person's notice of election; the second arbitrator shall be chosen by the other party within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators are hereby empowered to and shall forthwith submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and not be appointed as arbitrators: Any person who is personally interested in the land on which the plugging is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, such land or the oil and gas development thereof. No person shall be deemed interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation wherein the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the required repairs or the amount of compensation to be paid to the surface owner.
However, no award requiring repairs or compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of such party's own arbitrator and one half of the compensation of the third arbitrator, and such party's own costs.

§22-10-9. Civil penalties.

(a) Any person who fails to plug an abandoned well within thirty days, or upon a showing of good cause, within a longer period as determined by the director not to exceed one hundred eighty days, from the date such plugging is ordered by the director, shall be liable for a civil penalty of twenty-five thousand dollars which penalty shall be recovered in a civil action in the circuit court wherein the abandoned well is located.

(b) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section shall be deposited into the oil and gas reclamation fund established pursuant to section twenty-nine, article six of this chapter.

§22-10-10. Rule making; procedure; judicial review.

(a) The director shall have the power and authority to promulgate legislative rules, procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code in order to carry out and implement the provisions of this article.

(b) Any hearings or proceedings before the director 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.

(c) Any person having an interest which is or may be adversely affected, who is aggrieved by an order of the director issued pursuant to this article, or by the issuance or denial of a permit pursuant to this article
or by the permit's terms or conditions, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(d) 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.

§22-10-11. Existing rights and remedies preserved.

(a) It is the purpose of this article to provide additional and cumulative remedies to address abandoned wells in this state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers or persons in the exercise of their rights to suppress nuisance or to abate any pollution now or hereafter existing, or to recover damages.

(b) An order of the director, the effect of which is to find that an abandoned well exists, or in ordering an abandoned well to be plugged, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state of West Virginia.

(c) Nothing contained in this article shall be construed to place any duty or responsibility on the landowner, well owner or operator or lessee to plug a well in addition to those set forth in article six of this chapter.


The provisions of this article shall be in addition to and supplement all other provisions of article eight of this chapter and rights with respect to plugging or replugging wells. Nothing in this article shall be construed to eliminate the permit requirement for
6 plugging and replugging wells.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-1. Short title.
§22-11-2. Declaration of policy.
§22-11-3. Definitions.
§22-11-4. General powers and duties of director with respect to pollution.
§22-11-5. Water areas beautification; investigations; law enforcement.
§22-11-6. Requirement to comply with standards of water quality and effluent limitations.
§22-11-7. Cooperation with other governments and agencies.
§22-11-8. Prohibitions; permits required.
§22-11-9. Form of application for permit; information required.
§22-11-10. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules.
§22-11-11. Procedure concerning permits required under article; transfer of permits; prior permits.
§22-11-12. Inspections; orders to compel compliance with permits; service of orders.
§22-11-13. Voluntary water quality monitors; appointment; duties; compensation.
§22-11-14. Information to be filed by certain persons with division; tests.
§22-11-15. Orders of director to stop or prevent discharges or deposits or take remedial action; service of orders.
§22-11-16. Compliance with orders of director.
§22-11-17. Power of eminent domain; procedures; legislative finding.
§22-11-18. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.
§22-11-20. Control by state as to pollution; continuing jurisdiction.
§22-11-21. Appeal to environmental quality board.
§22-11-22. Civil penalties and injunctive relief.
§22-11-23. Priority of actions.
§22-11-24. Violations; criminal penalties.
§22-11-25. Civil liability; natural resources game fish and aquatic life fund; use of funds.
§22-11-26. Exceptions as to criminal liabilities.
§22-11-27. Existing rights and remedies preserved; article for benefit of state only.
§22-11-28. Functions, services and reports of director of the division; obtaining information from others.

§22-11-1. Short title.

This article may be known and cited as the “Water Pollution Control Act.”

§22-11-2. Declaration of policy.

(a) It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of
purity and quality of the water of the state consistent
with (1) public health and public enjoyment thereof; (2)
the propagation and protection of animal, bird, fish,
aquatic and plant life; and (3) the expansion of employ-
ment opportunities, maintenance and expansion of
agriculture and the provision of a permanent foundation
for healthy industrial development.

(b) It is also the public policy of the state of West
Virginia that the water resources of this state with
respect to the quantity thereof be available for reasona-
ble use by all of the citizens of this state.

§22-11-3. Definitions.

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

(1) "Activity" or "activities" means any activity or
activities for which a permit is required by the
provisions of section seven of this article;

(2) "Board" means the environmental quality board,
provided for in article three, chapter twenty-two-b of
this code;

(3) "Chief" means the chief of the office of water
resources of the division of environmental protection;

(4) "Code" means the code of West Virginia, one
thousand nine hundred thirty-one, as amended;

(5) "Director" means the director of the division of
environmental protection or such other person to whom
the director has delegated authority or duties pursuant
to sections six or eight, article one of this chapter;

(6) "Disposal system" means a system for treating or
disposing of sewage, industrial wastes or other wastes,
or the effluent therefrom, either by surface or under-
ground methods, and includes sewer systems, the use of
subterranean spaces, treatment works, disposal wells
and other systems;

(7) "Disposal well" means any well drilled or used for
the injection or disposal of treated or untreated sewage,
industrial wastes or other wastes into underground
strata;
(8) "Division" means the division of environmental protection;

(9) "Effluent limitation" means any restriction established on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters of this state;

(10) "Establishment" means an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;

(11) "Industrial user" means those industries identified in the standard industrial classification manual, United States Bureau of the Budget, 1967, as amended and supplemented, under the category "division d—manufacturing" and other classes of significant waste producers identified under regulations issued by the director or the administrator of the United States environmental protection agency;

(12) "Industrial wastes" means any liquid, gaseous, solid or other waste substance, or a combination thereof, 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 resources; and the admixture with such industrial wastes of sewage or other wastes, as hereinafter defined, is also "industrial waste" within the meaning of this article;

(13) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues resulting from secondary processing; sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, heat or all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state;

(14) "Outlet" means the terminus of a sewer system
or the point of emergence of any water-carried sewage, industrial wastes or other wastes, or the effluent therefrom, into any of the waters of this state, and includes a point source;

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

(16) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or vessel or other floating craft, from which pollutants are or may be discharged;

(17) "Pollutant" means industrial wastes, sewage or other wastes as defined in this section;

(18) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the waters of the state;

(19) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants;

(20) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present;

(21) "Sewer system" means pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage,
105 industrial wastes or other wastes to a point of disposal or treatment;

107 (22) "Treatment works" means any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the purpose of regulating or controlling the quality and rate of flow thereof;

118 (23) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands; and

129 (24) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

§22-11-4. General powers and duties of director with respect to pollution.

1 (a) In addition to all other powers and duties the director has and may exercise, subject to specific grants of authority to the chief or the board in this article or elsewhere in this code, the following powers and
authority and shall perform the following duties:

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System" established under that act;

(2) To encourage voluntary cooperation by all persons in the conservation, improvement and development of water resources and in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the division may receive moneys from such agencies, officers and persons on behalf of the state. The division shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the director solely for the purpose or purposes for which the grant, gift or contribution was made;

(3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the water resources of the state and water pollution and its causes, control and reduction, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution and the control and reduc-
tion of pollution of the waters of the state, and to make
reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to
water pollution and the control and reduction thereof;

(7) To develop a public education and promotion
program to aid and assist in publicizing the need for,
and securing support for, pollution control and
abatement;

(8) To sample ground and surface water with suffi-
cient frequency to ascertain the standards of purity or
quality from time to time of the waters of the state;

(9) To develop programs for the control and reduction
of the pollution of the waters of the state;

(10) To exercise general supervision over the admin-
istration and enforcement of the provisions of this
article, and all rules, permits and orders issued
pursuant to the provisions of this article and articles one
and three, chapter twenty-two-b of this code;

(11) In cooperation with the college of engineering at
West Virginia University and the schools and depart-
ments of engineering at other institutions of higher
education operated by this state, to conduct studies, scien-
tific or other investigations, research, experiments
and demonstrations in an effort to discover economical
and practical methods for the elimination, disposal, con-
trol and treatment of sewage, industrial wastes, and
other wastes, and the control and reduction of water
pollution, and to this end, the director may cooperate
with any public or private agency and receive there-
from, on behalf of the state, and for deposit in the state
treasury, any moneys which such agency may contribute
as its part of the expenses thereof, and all gifts,
donations or contributions received as aforesaid shall be
expended by the director according to the requirements
or directions of the donor or contributor without the
necessity of an appropriation therefor, except that an
accounting thereof shall be made in the fiscal reports
of the division;

(12) To require the prior submission of plans, speci-
fications, and other data relative to, and to inspect the
construction and operation of, any activity or activities
in connection with the issuance and revocation of such
permits as are required by this article or the rules
promulgated hereunder or pursuant to article three,
chapter twenty-two-b of this code;

(13) To require any and all persons directly or
indirectly discharging, depositing or disposing of
treated or untreated sewage, industrial wastes or other
wastes, or the effluent therefrom, into or near any
waters of the state or into any underground strata, and
any and all persons operating an establishment which
produces or which may produce or from which escapes,
releases or emanates or may escape, release or emanate
treated or untreated sewage, industrial wastes or other
wastes, or the effluent therefrom, into or near any
waters of the state or into any underground strata, to
file with the division such information as the director
may require in a form or manner prescribed for such
purpose, including, but not limited to, data as to the
kind, characteristics, amount and rate of flow of any
such discharge, deposit, escape, release or disposition;

(14) To adopt, modify, or repeal procedural rules and
interpretive rules in accordance with the provisions of
chapter twenty-nine-a of this code administering and
implementing the powers, duties and responsibilities
vested in the director by the provisions of this article;

(15) To cooperate with interstate agencies for the
purpose of formulating, for submission to the Legisla-
ture, interstate compacts and agreements relating to:
(A) The control and reduction of water pollution; and (B)
the state's share of waters in watercourses bordering the
state;

(16) To adopt, modify, repeal and enforce rules, in
accordance with the provisions of chapter twenty-nine-
a of this code: (A) Implementing and making effective
the declaration of policy contained in section one of this
article and the powers, duties and responsibilities vested
in the director and the chief by the provisions of this
article and otherwise by law; (B) preventing, controlling
and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(17) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development and conservation.

(b) Whenever required to carry out the objectives of this article the director shall require the owner or operator of any point source or establishment to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods, (iv) sample such effluents in accordance with such methods, at such locations, at such intervals and in such manner as the director shall prescribe, and (v) provide such other information as the director may reasonably require.

(c) The director upon presentation of credentials (i) has a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained under subsection (b) of this section are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under subsection (b) of this section and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under subsection (b) of this section. Nothing in this subsection eliminates any obligation to follow any process that may be required by law.

(d) The director is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state,
investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code. In the event a county commission fails to act to establish a county-wide public service district or districts, the director shall act jointly with the commissioner of the bureau of public health to further investigate and ascertain the financial feasibility and projected financial capability and, subject to the approval of the public service commission, order the county commission to take action to establish such public service district or districts as may be necessary to control, reduce or abate the pollution, and when so ordered the county commission members must act to establish such a county-wide public service district or districts.

(e) The director has the authority to enter at all reasonable times upon any private or public property for the purpose of making surveys, examinations, investigations and studies needed in the gathering of facts concerning the water resources of the state and their use, subject to responsibility for any damage to the property entered. Upon entering, and before making any survey, examination, investigation and study, such person shall immediately present himself or herself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or subdivision, and before making any survey, examination, investigation and study, such person shall immediately present himself or herself to the person in charge of the operation, and if he or she is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the
making of such surveys, examinations, investigations
and studies, the director may apply to the circuit court
of the county in which such property is located, or to
the judge thereof in vacation, for an order permitting
such entrance or the making of such surveys, examina-
tions, investigations and studies; and jurisdiction is
hereby conferred upon such court to enter such order
upon a showing that the relief asked is necessary for the
proper enforcement of this article: Provided, That
nothing in this subsection eliminates any obligation to
follow any process that may be required by law.

§22-11-5. Water areas beautification; investigations; law
enforcement.

The division shall maintain a program and practices
in the husbandry of waters of the state and the lands
immediately adjacent thereto. The director shall make
such investigations and surveys, conduct such schools
and public meetings and take such other steps as may
be expedient in the conservation, beautification, im-
provement and use of all such water areas of the state.
The director shall cooperate with the division of natural
resources' chief law enforcement officer in enforcing the
provisions of law prohibiting the disposal of litter in,
along and near such water areas.

§22-11-6. Requirement to comply with standards of
water quality and effluent limitations.

All persons affected by rules establishing water
quality standards and effluent limitations shall
promptly comply therewith: Provided, That where
necessary and proper, the chief may specify a reasonable
time for persons not complying with such standards and
limitations to comply therewith, and upon the expiration
of any such period of time, the chief shall revoke or
modify any permit previously issued which authorized
the discharge of treated or untreated sewage, industrial
wastes or other wastes into the waters of this state which
result in reduction of the quality of such waters below
the standards and limitations established therefor by
rules of the board or director.
§22-11-7. Cooperation with other governments and agencies.

The office of water resources is hereby designated as the water pollution control agency for this state for all purposes of federal legislation and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this section, the chief is hereby authorized to cooperate with the United States environmental protection agency and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for controlling and reducing water pollution and improving the sanitary conditions of the waters of the state; to apply for and receive, on behalf of this state, funds made available under the aforesaid federal legislation on condition that all moneys received from any federal agency as herein provided shall be paid into the state treasury and shall be expended, under the direction of the director, solely for purposes for which the grants are made; to approve projects for which applications for loans or grants under the federal legislation are made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this state and having jurisdiction over the disposal of sewage, industrial wastes or other wastes) or agency of this state or by any interstate agency; and to participate through authorized representatives in proceedings under the federal legislation to recommend measures for the abatement of water pollution originating in this state. The governor may give consent on behalf of this state to requests by the administrator of the United States environmental protection agency to the attorney general of the United States for the bringing of actions for the abatement of such pollution. Whenever a federal law requires the approval or recommendation of a state agency or any political subdivision of the state in any matter relating to the water resources of the state, the director, subject to approval of the Legislature, is hereby designated as the sole person to give the approval or recommendation required by the federal law, unless
the federal law specifically requires the approval or recommendation of some other state agency or political subdivision of the state.

§22-11-8. Prohibitions; permits required.

(a) The chief may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article and article three, chapter twenty-two-b of this code.

(b) It is unlawful for any person, unless the person holds a permit therefor from the division, which is in full force and effect, to:

(1) Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state;

(2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state;

(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;

(4) Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any sewage, industrial
wastes or other wastes discharging or flowing into the waters of the state;

(6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant: Provided, That the division's permit is only required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state, except that a permit is required for any preparation plant: Provided, however, That unless waived in writing by the chief, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant shall contain a plan for abandonment of such facility or operation, which plan shall comply in all respects to the requirements of this article. Such plan of abandonment is subject to modification or amendment upon application by the permit holder to the chief and approval of such modification or amendment by the chief;

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all such outlets.

(d) For water pollution control and national pollutant discharge elimination system permits issued for activities regulated by the office of mining and reclamation and the office of oil and gas, the chief of the office of water resources may delegate functions, procedures and activities to the respective chiefs of those offices. Permits for such activities shall be issued under the
supervision of and with the signature and approval of
the chief of the office of water resources who shall
review and approve all procedures, effluent limits and
other conditions of such permits.

§22-11-9. Form of application for permit; information
required.

The chief shall prescribe a form of application for all
permits for any activity specified in section eight of this
article and, notwithstanding any other provision of law
to the contrary, no other discharge permit or discharge
authorization from any other state department, agency,
commission, board or officer is required for such
activity except that which is required from the office of
miners' health, safety and training pursuant to section
seventy-six, article two, chapter twenty-two-a of this
code. All applications must be submitted on a form as
prescribed above. An applicant shall furnish all infor-
mation reasonably required by any such form, including
without limiting the generality of the foregoing, a plan
of maintenance and proposed method of operation of the
activity or activities. Until all such required information
is furnished, an application is not a complete applica-
tion. The division shall protect any information (other
than effluent data) contained in such permit application
form, or other records, reports or plans as confidential
upon a showing by any person that such information, if
made public, would divulge methods or processes
entitled to protection as trade secrets of such person. If,
however, the information being considered for confiden-
tial treatment is contained in a national pollutant
discharge elimination form, the chief or board shall
forward such information to the regional administrator
of the United States environmental protection agency
for concurrence in any determination of confidentiality.

§22-11-10. Water quality management fund established;
permit application fees; annual permit
fees; dedication of proceeds; rules.

(a) A special revenue fund designated the "Water
Quality Management Fund" shall be established in the
state treasury on the first day of July, one thousand nine
4 hundred eighty-nine.

5 (b) The permit application fees and annual permit
6 fees established and collected pursuant to this section
7 shall be deposited into the water quality management
8 fund. The director shall expend the proceeds of the
9 water quality management fund for the review of initial
10 permit applications, renewal permit applications and
11 permit issuance activities.

12 (c) The director shall promulgate rules in accordance
13 with the provisions of chapter twenty-nine-a of this code,
14 to establish a schedule of application fees for which the
15 appropriate fee shall be submitted by the applicant to
16 the division with the application filed pursuant to this
17 article for any state water pollution control permit or
18 national pollutant discharge elimination system permit.
19 Such schedule of application fees shall be designed to
20 establish reasonable categories of permit application
21 fees based upon the complexity of the permit application
22 review process required by the division pursuant to the
23 provisions of this article and the rules promulgated
24 thereunder: Provided, That no initial application fee
25 shall exceed seven thousand five hundred dollars for any
26 facility nor shall any permit renewal application fee
27 exceed two thousand five hundred dollars. The division
28 shall not process any permit application pursuant to this
29 article until said permit application fee has been
30 received.

31 (d) The director shall promulgate rules in accordance
32 with the provisions of chapter twenty-nine-a of this code,
33 to establish a schedule of permit fees which shall be
34 assessed annually upon each person holding a state
35 water pollution control permit or national pollutant
36 discharge elimination system permit issued pursuant to
37 this article. Each person holding such a permit shall pay
38 the prescribed annual permit fee to the division
39 pursuant to the rules promulgated hereunder. Such
40 schedule of annual permit fees shall be designed to
41 establish reasonable categories of annual permit fees
42 based upon the relative potential of such categories or
43 permits to degrade the waters of the state: Provided,
44 That no annual permit fee may exceed two thousand five
hundred dollars. Any such permit issued pursuant to this article is void when the annual permit fee is more than one hundred eighty days past due pursuant to the rules promulgated hereunder.

(e) The provisions of this section are not applicable to fees required for permits issued under article three of this chapter.

§22-11-11. Procedure concerning permits required under article; transfer of permits; prior permits.

(a) The chief or his or her duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the office of environmental health services of the state bureau of public health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section eight of this article, the chief shall consult with the director of the state geological and economic survey and the chief of the office of oil and gas of the division, and all such persons shall cooperate with the chief and assist him or her in carrying out the duties and responsibilities imposed upon him or her under the provisions of this article and the rules of the director and board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules of the director.

(b) The division's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits
and disposition of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any effluent limitations or any rules of the board or director: Provided, That the chief may issue a permit whenever in his or her judgment the water quality standards of the state may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the state; and (2) in cases wherein it is required, such applicant shall include the name and address of the responsible agent as set forth in subsection (e), section six, article six of this chapter.

(c) Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That when the applicant, in accordance with agency rules, has made a timely and complete application for permit reissuance, the permit term may be extended by the chief, at his or her discretion. An extension may be granted for a period not to exceed twelve months beyond its expiration date. Successive extensions may be granted for periods not to exceed twelve months if the chief determines additional time is necessary in order to process the application for permit reissuance. Upon expiration of a permit, a new permit may be issued by the chief upon condition that the discharges or releases, escapes, deposits and disposition thereunder meet or will meet all applicable state and federal water quality standards, effluent limitations and all other requirements of this article.

(d) An application for a permit incident to remedial action in accordance with the provisions of section sixteen of this article shall be processed and decided as any other application for a permit required under the provisions of section eight of this article.

(e) A complete application for any permit shall be acted upon by the chief, and the division's permit delivered or mailed, or a copy of any order of the chief
denying any such application delivered or mailed to the applicant by the chief, within a reasonable time period as prescribed by rules of the director.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with a copy of such order, which notice shall advise the applicant of the right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of, and within the time specified in, section seven, article one, chapter twenty-two-b of this code. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) A permit is transferable to another person upon proper notification to the chief and in accordance with applicable rules. Such transfer does not become effective until it is reflected in the records of the office of water resources.

(h) All permits for the discharge of sewage, industrial wastes or other wastes into any waters of the state issued by the water resources board prior to July one, one thousand nine hundred sixty-four, and all permits heretofore issued under the provisions of former article five-a, chapter twenty of this code, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a copy of a notice of the right to appeal to the board as provided
for in section twelve of this article, to be served upon
the permit holder as specified in said section twelve.

§22-11-12. Inspections; orders to compel compliance with
permits; service of orders.

After issuance of the division's permit for any activity
the director may make field inspections of the work on
the activity, and, after completion thereof, may inspect
the completed activity, and, from time to time, may
inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions
of the division's permit for any activity, the director is
hereby authorized, after at least twenty days' notice, to
make and enter an order revoking, suspending or
modifying, in whole or in part, such permit for cause
including, but not limited to, the following:
(1) Violation of any term or condition of the permit;
(2) Obtaining a permit by misrepresentation, or
failure to disclose fully all relevant facts; or
(3) Change in any condition that requires either a
temporary or permanent reduction or elimination of the
permitted discharge, release, escape, deposit or
disposition.

The director shall cause a copy of any such order to
be served by registered or certified mail or by a law-
enforcement officer upon the person to whom any such
permit was issued. The director shall also cause a notice
to be served with a copy of such order, which notice shall
advise such person of the right to appeal to the board
by filing a notice of appeal on the form prescribed by
the board for such purpose, with the board, in accor-
dance with the provisions of, and within the time
specified in, section seven, article one, chapter twenty-
two-b of this code.

§22-11-13. Voluntary water quality monitors; appoint-
ment; duties; compensation.

The director is hereby authorized to appoint voluntary
water quality monitors to serve at the will and pleasure
of the director. All such monitors appointed pursuant
hereto shall be eighteen years of age or over and shall be bona fide residents of this state.

Such monitors are authorized to take water samples of the waters of this state at such times and at such places as the director shall direct and to forward such water samples to the director for analysis.

The director is authorized to provide such monitors with such sampling materials and equipment as he or she deems necessary: Provided, That such equipment and materials shall at all times remain the property of the state and shall be immediately returned to the director upon his or her direction.

Such monitors shall not be construed to be employees of this state for any purpose except that the director is hereby authorized to pay such monitors a fee not to exceed fifty cents for each sample properly taken and forwarded to the director as hereinabove provided.

The director shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training.

Upon a showing that any water sample as herein provided was taken and analyzed in conformity with standard and recognized procedures, such sample and analysis is admissible in any court of this state for the purpose of enforcing the provisions of this article.

§22-11-14. Information to be filed by certain persons with division; tests.

Any and all persons directly or indirectly discharging or depositing treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state shall file with the director such information as the director may reasonably require on forms prescribed for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of such discharge or deposit. If the director has reasonable cause to believe that any establishment is, or may be, polluting the waters of the state, the director may
require any person owning, operating or maintaining such establishment to furnish such information as may reasonably be required to ascertain whether such establishment is, or may be causing such pollution, and the director may conduct any test or tests that he or she may deem necessary or useful in making his or her investigation and determination.

§22-11-15. Orders of director to stop or prevent discharges or deposits or take remedial action; service of orders.

If the director, on the basis of investigations, inspections and inquiries, determines that any person who does not have a valid permit issued pursuant to the provisions of this article is causing the pollution of any of the waters of the state, or does on occasions cause pollution or is violating any rule or effluent limitation of the board or the director, he or she shall either make and enter an order directing such person to stop such pollution or the violation of the rule or effluent limitation of the board or director, or make and enter an order directing such person to take corrective or remedial action. Such order shall contain findings of fact upon which the director based the determination to make and enter such order. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections eight, nine and eleven of this article. The director shall fix a time limit for the completion of such action. Whether the director shall make and enter an order to stop such pollution or shall make and enter an order to take remedial action, in either case the person so ordered may elect to cease operations of the establishment deemed to be the source of such discharge or deposits causing pollution, if the pollution referred to in the director's order shall be stopped thereby.

The director shall cause a copy of any such order to be served by registered or certified mail or by a law-enforcement officer upon such person. The director shall also cause a notice to be served with the copy of such order, which notice shall advise such person of the right to appeal to the board by filing a notice of appeal, on
the form prescribed by the board for such purpose, with
the board, in accordance with the provisions of article
one, chapter twenty-two-b of this code.

§22-11-16. Compliance with orders of director.

Any person upon whom any order of the director or
any order of the board in accordance with the provisions
of section fifteen of this article, or article one, chapter
twenty-two-b of this code has been served shall fully
comply therewith.

When such person is ordered to take remedial action
and does not elect to cease operation of the establishment
deemed to be the source of such pollution, or when such
ceasing does not stop the pollution, he or she shall
forthwith apply for a permit under and in accordance
with the provisions of sections eight, nine and eleven of
this article. No such remedial action shall be taken until
a permit therefor has been issued; however, receipt of
a permit does not in and of itself constitute remedial
action.

§22-11-17. Power of eminent domain; procedures; legis-
lative finding.

(a) When any person who is owner of an establish-
ment is ordered by the director to stop or prevent
pollution or the violation of the rules of the board or
director or to take corrective or remedial action,
compliance with which order will require the acquisi-
tion, construction or installation of a new treatment
works or the extension or modification of or an addition
to an existing treatment works, (which acquisition,
construction, installation, extension, modification or
addition of or to a treatment works pursuant to such
order is referred to in this section as "such compliance")
such person may exercise the power of eminent domain
in the manner provided in chapter fifty-four of this code,
to acquire such real property or interests in real
property as may be determined by the director to be
reasonably necessary for such compliance.

(b) Upon application by such person and after twenty
days' written notice to all persons whose property may
be affected, the director shall make and enter an order
determining the specific real property or interests in
real property, if any, which are reasonably necessary for
such compliance. In any proceeding under this section,
the person seeking to exercise the right of eminent
domain herein conferred shall establish the need for the
amount of land sought to be condemned and that such
land is reasonably necessary for the most practical
method for such compliance.

(c) The right of eminent domain herein conferred does
not apply to the taking of any dwelling house or for the
taking of any land within five hundred feet of any such
dwelling house.

(d) The Legislature hereby declares and finds that the
taking and use of real property and interests in real
property determined to be reasonably necessary for such
compliance promotes the health, safety and general
welfare of the citizens of this state by reducing and
abating pollution in the waters of this state in which the
public at large has an interest and otherwise; that such
taking and use are necessary to provide and protect a
safe, pure and adequate water supply to the municipal-
ities and citizens of the state; that because of topo-
graphy, patterns of land development and ownership
and other factors it is impossible in many cases to effect
such compliance without the exercise of the power of
eminent domain and that the use of real property or
interests in real property to effect such compliance is a
public use for which private property may be taken or
destroyed.

§22-11-18. Duty to proceed with remedial action
promptly upon receipt of permit; progress
reports required; finances and funds.

When any person is ordered to take remedial action
and does not elect to cease operation of the establishment
deemed to be the source of such pollution or when
ceasing does not stop the pollution, such person shall
immediately upon issuance of the permit required under
section sixteen of this article take or begin appropriate
steps or proceedings to carry out such remedial action.
In any such case it is the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately. The director may require progress reports, at such time intervals as he or she deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligently prosecuted to completion.

Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association or other legal entity whatever, to provide immediately for the financing and carrying out of such remedial action, as may be necessary to comply with said order, constitutes failure to take or begin appropriate steps or proceedings to comply with such order. If such person is a municipal corporation, the cost of all such remedial action as is necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal corporation, not otherwise appropriated, and if there is not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds. Any direct general obligation bond issue is subject to the approval of the municipal bond commission and the attorney general of the state of West Virginia.

If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit
of such municipal corporation listed and assessed for

taxation. If the amount of such bonds necessary to be

issued would raise the total outstanding bonded in-

debtedness of such municipal corporation above said

constitutional limitation on such indebtedness, or if such

municipal corporation by its governing body shall

decide against the issuance of direct obligation bonds,

then such municipal corporation shall issue revenue

bonds and provide for the retirement thereof in the same

manner and subject to the same conditions as provided

for the issuance and retirement of bonds in article

thirteen, chapter sixteen of this code: Provided, That the

provisions of section six of said article, allowing

objections to be filed with the governing body, and

providing that a written protest of thirty percent or

more of the owners of real estate requires a four-fifths

vote of the governing body for the issuance of said

revenue bonds, does not apply to bond issues proposed

by any municipal corporation to comply with an order

made and entered under the authority of this article,

and such objections and submission of written protest is

not authorized, nor does the same, if made or had,

operate to justify or excuse failure to comply with such

order.

The funds made available by the issuance of either
direct obligation bonds or revenue bonds, as herein
provided, does constitute a “sanitary fund,” and shall be
used for no other purpose than for carrying out such
order; no public money so raised shall be expended by
any municipal corporation for any purpose enumerated
in this article, unless such expenditure and the amount
thereof have been approved by the director. The
acquisition, construction or installation, use and opera-
tion, repair, modification, alteration, extension, equip-
ment, custody and maintenance of any disposal system
by any municipal corporation, as herein provided, and
the rights, powers and duties with respect thereto, of
such municipal corporation and the respective officers
and departments thereof, whether the same is financed
by the issuance of revenue or direct obligation bonds,
shall be governed by the provisions of article thirteen,
chapter sixteen of this code.

Whenever the director finds that any discharge, release, escape, deposit or disposition of treated or untreated sewage, industrial wastes or other wastes into any waters within this state, when considered alone or in conjunction with other discharges, releases, escapes, deposits or dispositions, constitutes a clear, present and immediate danger to the health of the public, or to the fitness of a private or public water supply for drinking purposes, the director may, with the concurrence in writing of the commissioner of the bureau of public health, without notice or hearing, issue an order or orders requiring the immediate cessation or abatement of any such discharge, release, escape, deposit or disposition, and the cessation of any drilling, redrilling, deepening, casing, fracturing, pressuring, operating, plugging, abandoning, converting or combining of any well, or requiring such other action to be taken as the director, with the concurrence aforesaid, deems necessary to abate such danger.

Notwithstanding the provisions of any other section of this article, any order issued under the provisions of this section is effective immediately and may be served in the same manner as a notice may be served under the provisions of section two, article seven, chapter twenty-nine-a of the code. Any person to whom such order is directed shall comply therewith immediately, but on notice of appeal to the board shall be afforded a hearing as promptly as possible, and not later than ten days after the board receives such notice of appeal. On the basis of such hearing, and within five days thereafter, the board shall make and enter an order continuing the order of the director in effect, revoking it, or modifying it. For the purpose of such appeal and judicial review of the order entered following an appeal hearing, all pertinent provisions of article one, chapter twenty-two-b of this code shall govern.

§22-11-20. Control by state as to pollution; continuing jurisdiction.

No right to violate the rules of the board or director
or to continue existing pollution of any of the waters of the state exists nor may such right be acquired by virtue of past or future pollution by any person. The right and control of the state in and over the quality of all waters of the state are hereby expressly reserved and reaffirmed. It is recognized that with the passage of time, additional efforts may have to be made by all persons toward control and reduction of the pollution of the waters of the state, irrespective of the fact that such persons may have previously complied with all orders of the director or board. It is also recognized that there should be continuity and stability respecting pollution control measures taken in cooperation with, and with the approval of, the director, or pursuant to orders of the director or board. When a person is complying with the terms and conditions of a permit granted pursuant to the provisions of section eleven of this article or when a person has completed remedial action pursuant to an order of the director or board, additional efforts may be required wherever and whenever the rules of the board or director or effluent limitations are violated or the waters of the state are polluted by such person.

§22-11-21. Appeal to environmental quality board.

Any person adversely affected by an order made and entered by the director in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the specified time as provided in subsection (e) of section eleven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the environmental quality board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-11-22. Civil penalties and injunctive relief.

Any person who violates any provision of any permit issued under or subject to the provisions of this article is subject to a civil penalty not to exceed ten thousand dollars per day of such violation, and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or
made and entered under the provisions of this article or articles one or three, chapter twenty-two-b of this code is subject to a civil penalty not to exceed ten thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

Upon application by the director, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules of the board or director, effluent limitations, the terms and conditions of any permit granted under the provisions of this article, or any order of the director or board, and the venue of any such action shall be the county in which the violation or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunctive application filed. Any other section of this code to the contrary notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article. An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section is final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil
cases, except that the petition seeking review in any
injunctive proceeding must be filed with said supreme
court of appeals within ninety days from the date of
entry of the judgment of the circuit court.

Legal counsel and services for the chief, director or
the board in all civil penalty and injunction proceedings
in the circuit court and in the supreme court of appeals
of this state shall be provided by the attorney general
or his or her assistants and by the prosecuting attorneys
of the several counties as well, all without additional
compensation, or the chief, director or the board, with
the written approval of the attorney general, may
employ counsel to represent him or her or it in a
particular proceeding.

§22-11-23. Priority of actions.

All applications under section twenty-two of this
article and all proceedings for judicial review under
article one, chapter twenty-two-b of this code shall take
priority on the docket of the circuit court in which
pending, and shall take precedence over all other civil
cases. Where such applications and proceedings for
judicial review are pending in the same court at the
same time, such applications shall take priority on the
docket and shall take precedence over proceedings for
judicial review.

§22-11-24. Violations; criminal penalties.

Any person who causes pollution or who fails or
refuses to discharge any duty imposed upon such person
by this article or by any rule of the board or director,
promulgated pursuant to the provisions and intent of
this article or article three, chapter twenty-two-b of this
code, or by an order of the director or board, or who
fails or refuses to apply for and obtain a permit as
required by the provisions of this article, or who fails
or refuses to comply with any term or condition of such
permit, is guilty of a misdemeanor, and, upon conviction
thereof, shall be punished by a fine of not less than one
hundred dollars nor more than one thousand dollars, or
by imprisonment in the county jail for a period not
exceeding six months, or by both such fine and
imprisonment.
Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the director thereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or by imprisonment in the county jail not exceeding six months or by both such fine and imprisonment.

Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any provision of this article or any rule of the board or director or any effluent limitation or any order of the director or board is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment.

Any such person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided for in this article have been pursued or invoked against said person and notwithstanding that a civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person.

Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of such permit, the person is not subject to criminal prosecution for pollution recognized and authorized by such permit.

§22-11-25. Civil liability; natural resources game fish and aquatic life fund; use of funds.

If any loss of game fish or aquatic life results from a person's or persons' failure or refusal to discharge any duty imposed upon such person by this article or section
seven, article six of this chapter, either the West Virginia division of natural resources or the division of environmental protection, or both jointly may initiate a civil action on behalf of the state of West Virginia to recover from such person or persons causing such loss a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected shall be deposited in a special revenue fund entitled “natural resources game fish and aquatic life fund” and shall be expended as hereinafter provided. The fund shall be expended to stock waters of this state with game fish and aquatic life. Where feasible, the director of the division of natural resources shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in said fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever located in this state, with game fish and aquatic life.

§22-11-26. Exceptions as to criminal liabilities.

The criminal liabilities may not be imposed pursuant to section twenty-four of this article for violations resulting from accident or caused by an act of God, war, strike, riot or other catastrophe as to which negligence or willful misconduct on the part of such person was not the proximate cause.

§22-11-27. Existing rights and remedies preserved; article for benefit of state only.

It is the purpose of this article to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers, or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.
The provisions of this article inure solely to and are for the benefit of the people generally of the state of West Virginia, and this article is not intended to in any way create new, or enlarge existing rights of riparian owners or others. An order of the director or of the board, the effect of which is to find that pollution exists, or that any person is causing pollution, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state of West Virginia.

§22-11-28. Functions, services and reports of director of the division; obtaining information from others.

The director shall make surveys and investigations of the water resources of the state and shall maintain an inventory of the water resources of the state and to the extent practicable shall divide the state into watershed drainage areas in making this inventory. The director shall investigate and study the problems of agriculture, industry, conservation, health, water pollution, domestic and commercial uses and allied matters as they relate to the water resources of the state, and shall make and formulate comprehensive plans and recommendations for the further development, improvement, protection, preservation, regulation and use of such water resources, giving proper consideration to the hydrologic cycle in which water moves. The director shall provide to the Legislature a biennial report on the quality of the state's waters, including an evaluation of the information which has been obtained in accordance with the requirements of this section and shall include in this report the plans and recommendations which have been formulated pursuant to the requirements of this section. Where possible the timing and content of this report shall be structured so that it may also be used to fulfill any federal program reporting requirements. The report shall include reasons for such plans and recommendations, as well as any changes in the law which are deemed desirable to effectuate such plans and recommendations. Such report shall be made available to the
28 public at a reasonable price to be determined by the
director.

30 The director may request, and, upon request, is
31 entitled to receive from any agency of the state or any
32 political subdivision thereof, or from any other person
33 who engages in a commercial use or controls any of the
34 water resources of the state, such necessary information
35 and data as will assist in obtaining a complete picture
36 of the water resources of the state and the existing
37 control and commercial use thereof. The director shall
38 reimburse such agencies, political subdivisions and
39 other persons for any expenses, which would not
40 otherwise have been incurred, in making such informa-
41 tion and data available.

ARTICLE 12. GROUNDWATER PROTECTION ACT.

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§22-12-1. Short title.

1 This article may be known and cited as the “Ground-
2 water Protection Act.”

§22-12-2. Legislative findings, public policy and pur-
poses.

1 (a) The Legislature finds that:

2 (1) West Virginia has relatively pure groundwater
resources which are abundant and readily available;

(2) Over fifty percent of West Virginia’s overall population, and over ninety percent of the state’s rural population, depend on groundwater for drinking water;

(3) A rural lifestyle has created a quality of life in many parts of West Virginia which is highly valued. Maintaining this lifestyle depends upon protecting groundwater to avoid increased expenses associated with providing treated drinking water supplies to rural households;

(4) West Virginia’s groundwater resources are geologically complex, with the nature and vulnerability of groundwater aquifers and recharge areas not fully known;

(5) Contamination of groundwater is generally much more difficult and expensive to clean up than is the case with surface water;

(6) Groundwaters and surface waters can be highly interconnected. The quality of any given groundwater can have a significant impact on the quality of groundwaters and surface waters to which it is hydrologically connected;

(7) A diverse array of human activities can adversely impact groundwater, making it necessary to develop regulatory programs that utilize a variety of approaches;

(8) Various agencies of state government currently exercise regulatory control over activities which may impact on groundwater. Coordination and streamlining of the regulatory activities of these agencies is necessary to assure that the state’s groundwater is maintained and protected through an appropriate groundwater protection program;

(9) Disruption of existing state regulatory programs should be avoided to the maximum extent practical;

(10) The maintenance and protection of the state’s groundwater resources can be achieved consistent with the maintenance and expansion of employment oppor-
tunities, agriculture, and industrial development; and

(11) A state groundwater management program will provide economic, social, and environmental benefits for the citizens of West Virginia now and in the future.

(b) Therefore, the Legislature establishes that it is the public policy of the state of West Virginia to maintain and protect the state's groundwater so as to support the present and future beneficial uses and further to maintain and protect groundwater at existing quality where the existing quality is better than that required to maintain and protect the present and future beneficial uses. Such existing quality shall be maintained and protected unless it is established that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives. Such a change shall maintain and protect groundwater quality so as to support the present and future beneficial uses of such groundwater.

(c) The purposes of this article are to:

(1) Maintain and protect the state's groundwater resources consistent with this article to protect the present and future beneficial uses of the groundwater;

(2) Provide for the establishment of a state groundwater management program which will:

(i) Define the roles of agencies of the state and political subdivisions with respect to the maintenance and protection of groundwater, and designate a lead agency for groundwater management;

(ii) Designate a state agency responsible for establishment of groundwater quality standards;

(iii) Provide for the establishment of standards of purity and quality for all groundwater;

(iv) Provide for the establishment of groundwater protection programs consistent with this article;

(v) Establish groundwater protection and groundwater remediation funds;
(vi) Provide for the mapping and analysis of the state's groundwater resources and coordination of the agencies involved; and

(vii) Provide for public education on groundwater resources and methods for preventing contamination;

(3) Provide such enforcement and compliance mechanisms as will assure the implementation of the state's groundwater management program; and

(4) Assure that actions taken to implement this article are consistent with the policies set forth in section two, article eleven of this chapter.

§22-12-3. Definitions.

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

(a) "Agency action" means the issuance, renewal or denial of any permit, license or other required agency approval, or any terms or conditions thereof, or any order or other directive issued by the division of environmental protection, bureau of public health, department of agriculture or any other agency of the state or a political subdivision to the extent that such action relates directly to the implementation, administration or enforcement of this article.

(b) "Beneficial uses" means those uses which are protective of human health and welfare and the environment. Pollution of groundwater is not considered a beneficial use.

(c) "Board" means the state water resources environmental quality board.

(d) "Constituent" means any chemical or biological substance found in groundwater due to either natural or man-made conditions.

(e) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(f) "Groundwater" means the water occurring in the
zone of saturation beneath the seasonal high water table, or any perched water zones.

(g) “Groundwater certification” means an assurance issued by the director of the division of environmental protection that a permit or other approval issued by a state, county or local government body regarding an activity that affects or is reasonably anticipated to affect groundwater complies with all requirements of this chapter, the legislative rules promulgated pursuant to this chapter in accordance with chapter twenty-nine-a of this code and any other requirements of state law, rules or agreements regarding groundwater.

(h) “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; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service 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.

(i) “Pollution” means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of the groundwater.

(j) “Preventative action limit” means a numerical value expressing the concentration of a substance in groundwater that, if exceeded, causes action to be taken to assure that standards of purity and quality of groundwater are not violated.

(k) “Water” means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells,
watercourses and wetlands.

§22-12-4. Authority of environmental quality board to promulgate standards of purity and quality.

(a) The environmental quality board has the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state and shall promulgate such standards following a public hearing within one year from the effective date of this article, by legislative rules in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Such standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall such standards allow contaminant levels in groundwater to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. The board may set standards more restrictive than the maximum contaminant levels where it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the federal Safe Drinking Water Act, standards for such contaminants shall be established by the board to be no less stringent than may be reasonable and prudent to protect drinking water or any other beneficial use. Where the concentration of a certain constituent exceeds such standards due to natural conditions, the natural concentration is the standard for that constituent. Where the concentration of a certain constituent exceeds such standard due to human-induced contamination, no further contamination by that constituent is allowed, and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination, and to strive where practical to reduce the level of contamination over time to support drinking water use.

(c) The standards of purity and quality for groundwater promulgated by the board shall recognize the degree to which groundwater is hydrologically connected with surface water and other groundwater and such standards shall provide protection for such surface water and other groundwater.
(d) In the promulgation of such standards the board shall consult with the division of environmental protection, department of agriculture and the bureau of public health, as appropriate.

(e) Any groundwater standard of the board that is in effect on the effective date of this article shall remain in effect until modified by the board. Notwithstanding any other provisions of this code to the contrary, the authority of the board to adopt standards of purity and quality for groundwater granted by the provisions of this article is exclusive, and to the extent that any other provisions of this code grant such authority to any person, body, agency or entity other than the board, those other provisions are void.

§22-12-5. Authority of other agencies; applicability.

(a) Notwithstanding any other provision of this code to the contrary, no agency of state government or any political subdivision may regulate any facility or activities for the purpose of maintaining and protecting the groundwater except as expressly authorized pursuant to this article.

(b) To the extent that such agencies have the authority pursuant to any provision of this code, other than this article, to regulate facilities or activities, the division of environmental protection, the department of agriculture, the bureau of public health, and such agencies of the state or any political subdivision as may be specifically designated by the director with the concurrence of such designated agencies or political subdivisions, as appropriate, are hereby authorized to be groundwater regulatory agencies for purposes of regulating such facilities or activities to satisfy the requirements of this article. In addition, the department of agriculture is hereby authorized to be the groundwater regulatory agency for purposes of regulating the use or application of pesticides and fertilizers. Where the authority to regulate facilities or activities which may adversely impact groundwater is not otherwise assigned to the division of environmental protection, the department of agriculture, the bureau of public health or such other
specifically designated agency pursuant to any other provision of this code, the division of environmental protection is hereby authorized to be the groundwater regulatory agency with respect to such unassigned facilities or activities. The division of environmental protection shall cooperate with the department of agriculture and the bureau of public health, as appropriate, in the regulation of such unassigned facilities or activities.

(c) Within one year of the effective date of this article, the department of agriculture, bureau of public health and division of environmental protection shall promulgate in accordance with the provisions of chapter twenty-nine-a of this code such legislative rules as may be necessary to implement the authority granted them by this article.

(d) Groundwater regulatory agencies shall develop groundwater protection practices to prevent groundwater contamination from facilities and activities within their respective jurisdictions consistent with this article. Such practices shall include, but not be limited to, criteria related to facility design, operational management, closure, remediation and monitoring. Such agencies shall issue such rules, permits, policies, directives or any other appropriate regulatory devices, as necessary, to implement the requirements of this article.

(e) Groundwater regulatory agencies shall take such action as may be necessary to assure that facilities or activities within their respective jurisdictions maintain and protect groundwater at existing quality, where the existing quality is better than that required to maintain and protect the standards of purity and quality promulgated by the board to support the present and future beneficial uses of the state's groundwater.

(f) Where a person establishes to the director that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives, the director may allow
for a deviation from such existing quality. Upon the
director's finding of (1) and (2) above, the director may
grant or deny such a deviation for a specific site, activity
or facility or for a class of activities or facilities which
have impacts which are substantially similar and exist
in a defined geographic area. The director's reasons for
granting or denying such a deviation shall be set forth
in writing and the director has the exclusive authority
to determine the terms and conditions of such a
deviation. To insure that groundwater standards
promulgated by the board are not violated and that the
present and future beneficial uses of groundwater are
maintained and protected, the director shall evaluate
the cumulative impacts of all facilities and activities on
the groundwater resources in question prior to any
granting of such deviation from existing quality. The
director shall consult with the department of agricul-
ture and the bureau of public health as appropriate in
the implementation of this subsection. The director
shall, upon a written request for such information,
provide notice of any deviations from existing quality
granted pursuant to this subsection.

(g) Should the approval required in subsection (f) of
this section be granted allowing for a deviation from
existing quality, the groundwater regulatory agencies
shall take such alternative action as may be necessary
to assure that facilities and activities within their
respective jurisdictions maintain and protect the
standards of purity and quality promulgated by the
board to support the present and future beneficial uses
for that groundwater. In maintaining and protecting
such standards of the board, such agencies shall
establish preventative action limits which, once reached,
shall require action to control a source of contamination
to assure that such standards are not violated. The
director shall provide guidelines to the groundwater
regulatory agencies with respect to the establishment of
such preventative action limits.

(h) Subsections (e), (f) and (g) of this section do not
apply to coal extraction and earth disturbing activities
directly involved in coal extraction that are subject to
either or both article three or eleven of this chapter. Such activities are subject to all other provisions of this article.

(i) This article is not applicable to groundwater within areas of geologic formations which are site specific to:

(1) The production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to articles six, seven, eight, nine or ten of this chapter; and

(2) The injection zones of Class II or III wells permitted pursuant to the statutes and rules governing the underground injection control program.

All groundwater outside such areas remain subject to the provisions of this article. Groundwater regulatory agencies have the right to require the submission of data with respect to the nature of the activities subject to this subsection.

(j) Those agencies regulating the activities specified in subsections (h) and (i), of this section retain their groundwater regulatory authority as provided for in the relevant statutes and rules governing such activities, other than this article.

(k) The director has authority to modify the requirements of subsection (g) of this section with respect to noncoal mining activities subject to article four of this chapter. Such modification shall assure protection of human health and the environment. Those agencies regulating such noncoal mining activities shall retain their groundwater regulatory authority as provided for in the relevant statutes and rules governing such activities other than this article.

(l) If the director proposes a need for a variance for classes of activities which by their nature cannot be conducted in compliance with the requirements of subsection (g) of this section, then the director shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code, following public hearing on the record. The rules so promulgated shall set forth the
director's findings to substantiate such need and the
criteria by which such variances shall be granted or
denied. Should any person petition or request the
director to undertake such a determination, that person
will give contemporaneous notice of such petition or
request by Class I advertisement in a newspaper of
general circulation in the area to be affected by the
request.

(m) All rules, permits, policies, directives and orders
of the department of agriculture, the bureau of public
health and division of environmental protection, in effect
on the effective date of this article and which are
consistent with this article shall remain in full force and
effect as if they were issued pursuant to this article
unless and until modified pursuant to this article.

§22-12-6. Lead agency designation; additional powers
and duties.

(a) The division of environmental protection is hereby
designated to be the lead agency for groundwater and
is authorized and shall perform the following additional
powers and duties:

(1) To maintain the state groundwater management
strategy;

(2) To develop, as soon as practical, a central ground-
water data management system for the purpose of
providing information needed to manage the state's
groundwater program;

(3) To provide a biennial report to the Legislature on
the status of the state's groundwater and groundwater
management program, including detailed reports from
each groundwater regulatory agency;

(4) To coordinate with other agencies to develop a
uniform groundwater program;

(5) To perform any and all acts necessary to obtain
the benefits to the state of any federal program related
to groundwater;

(6) To receive grants, gifts or contributions for
purposes of implementing this article from federal
22 agencies, state agencies or any other persons interested
23 in the management of groundwater resources; and

24 (7) To promulgate legislative rules implementing this
25 subsection in accordance with the provisions of chapter
26 twenty-nine-a of this code, including rules relating to
27 monitoring and analysis of groundwater.

28 (b) The division of environmental protection, bureau
29 of public health, and department of agriculture shall
30 participate in the data management system developed
31 by the division of environmental protection pursuant to
32 subsection (a) of this section and shall provide the
33 director with such information as the director shall
34 reasonably request in support of his or her promulgation
35 of rules pursuant to this article.

36 (c) The division of environmental protection, bureau
37 of public health, and department of agriculture are
38 hereby authorized:

39 (1) To engage the voluntary cooperation of all persons
40 in the maintenance and protection of groundwater, and
41 to advise, consult and cooperate with all persons, all
42 agencies of this state, universities and colleges, the
43 federal government or other states, and with interstate
44 agencies in the furtherance of the purposes of this
45 article, and to this end and for the purposes of studies,
46 scientific or other investigations, research, experiments
47 and demonstrations pertaining thereto, receive and
48 spend funds as appropriated by the Legislature, and
49 from such agencies and other officers and persons on
50 behalf of the state;

51 (2) To encourage the formulation and execution of
52 plans to maintain and protect groundwater by cooper-
53 active groups or associations of municipal corporations,
54 industries, industrial users and other users of ground-
55 waters of the state, who, jointly or severally, are or may
56 be impacting on the maintenance and protection of
57 groundwater;

58 (3) To encourage, participate in, or conduct or cause
59 to be conducted studies, scientific or other investiga-
60 tions, research, experiments and demonstrations relat-
ing to the maintenance and protection of groundwater, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article, and to make reports and recommendations with respect thereto;

(4) To conduct groundwater sampling, data collection, analyses and evaluation with sufficient frequency so as to ascertain the characteristics and quality of groundwater, and the sufficiency of the groundwater protection programs established pursuant to this article;

(5) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for the maintenance and protection of groundwater.

§22-12-7. Groundwater coordinating committee; creation.

(a) The state groundwater coordinating committee is continued. It consists of the commissioner of the bureau of public health, the commissioner of agriculture, the chair of the environmental quality board, the chief of the office of water resources of the division of environmental protection and the director of the division of environmental protection who shall serve as its chair.

(b) The groundwater coordinating committee shall consult, review and make recommendations on the implementation of this article by each of the groundwater regulatory agencies. Such committee shall require the periodic submittal to it of the groundwater protection programs of each groundwater regulatory agency including all rules, permits, policies, directives and any other regulatory devices employed to implement this article.

(c) Upon a review of such programs, the groundwater coordinating committee shall recommend to the director approval of such programs, in whole or in part, and identify in writing any aspect of such programs that are not sufficient to satisfy the requirements of this article and specify a reasonable time period for correcting those portions of the program that are found not to be sufficient.
(d) The director may accept the recommendation of the committee, in whole or in part, and identify in writing any additional aspects of such programs that are not sufficient to satisfy the requirements of this article and specify a time period for correcting those portions of the program that are found not to be sufficient.

(e) In the biennial report to the Legislature required by this article, the director shall identify all portions of groundwater protection programs which have been determined not to be sufficient to satisfy the requirements of this article and which have not been adequately addressed within the time period specified by the director.

(f) No agency shall modify any aspect of its groundwater protection program as approved by the director without the prior written approval of the director of such modification. This requirement does not relieve such agency of any other requirements of law that may be applicable to such a modification.

(g) The groundwater coordinating committee is authorized and empowered to promulgate such legislative rules as may be necessary to implement this section in accordance with the provisions of chapter twenty-nine-a of this code.

§22-12-8. Groundwater certification.

(a) To ensure a comprehensive, consistent and unfragmented approach to the management and protection of groundwater, including evaluation of the cumulative effects of all activities that have the potential to impact on groundwater, the director shall oversee and coordinate the implementation of this article by each of the groundwater regulatory agencies through a groundwater certification program as hereby established.

(b) Every state, county or local government body which reviews or issues permits, licenses, registrations, certificates of other forms of approval, or renewal thereof, for activities or practices which may affect groundwater quality shall first submit to the director
for review and approval an application for certification. Such application shall include a copy of the approval proposed by such body, including any terms and conditions which have been imposed by it. Upon receipt of this application, the director shall act within thirty days to determine whether to waive or exercise his or her certification powers. If no decision is made or communicated by the director within said thirty day period, groundwater certification is approved. If the director decides to exercise his or her certification powers, he or she may utilize additional time, not to exceed an additional sixty days, to further review the materials submitted or to conduct such investigations as he or she deems necessary.

(c) The director may waive, grant, grant with conditions, or deny groundwater certification. Groundwater certification, and all conditions required under such certification, shall become a condition on any permit, approval or renewal thereof, issued by any state, county or local government body. Where appropriate, the director may provide general groundwater certification for or may waive certification for classes or categories of activities or approvals.

§22-12-9. Groundwater protection fees authorized; director to promulgate rules; dedication of fee proceeds; groundwater protection fund established; groundwater remediation fund established.

(a) The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater protection fees applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article. The schedule of fees shall be calculated by the director to recover the reasonable and necessary costs of implementing the provisions of this article as it relates to a particular facility or activity. In addition, the fee may include an appropriate assessment of other program costs not otherwise attributable to any particular facility or activity. Such fees in the aggregate shall
not exceed one million dollars per year and shall be deposited into the groundwater protection fund established pursuant to this article: Provided, That any unexpended balance in the groundwater protection fund at the end of each fiscal year may, by an act of the Legislature, be transferred to the groundwater remediation fund created by this article: Provided, however, that if no action is taken to transfer the unexpended balance to the remediation fund, such moneys shall not be transferred to the general revenue fund, but shall remain in the groundwater protection fund. Such fees imposed by this section are in addition to all other fees and taxes levied by law. The director shall require such fees to be paid at the time of certification pursuant to section eight of this article, or at such more frequent time as the director may deem to be appropriate. The director may withhold certification pursuant to section eight of this article where such fees have not been timely paid.

(b) The director of the division of environmental protection shall also promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater remediation fees which in the aggregate shall not exceed two hundred fifty thousand dollars. Such groundwater remediation fees shall be assessed over a time period not to exceed two years from effective date of such rules and shall be deposited into the groundwater remediation fund established pursuant to this article. Such fees shall be assessed against persons who own or operate facilities or conduct activities subject to the provisions of this article in proportion to the groundwater protection fees assessed pursuant to subsection (a) of this section for the year in which such groundwater remediation fees, or any portion thereof, are assessed.

(c) The following two special revenue accounts are continued in the state treasury:

(1) The “Groundwater Protection Fund”, the moneys of which shall be expended by the director in the administration, certification, enforcement, inspection, monitoring, planning, research and other activities of
the environmental quality board, division of environmental protection, bureau of public health and department of agriculture in accordance with legislative rules promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The moneys, including the interest thereon, in said fund shall be kept and maintained by the director and expended without appropriation by the Legislature for the purpose of implementing the provisions of this article. The director may withhold the payment of any such moneys to any agency whose groundwater protection program has been determined by the director, in consultation with the groundwater coordinating committee, not to be sufficient to satisfy the requirements of this article and where such agency has failed to adequately address such determination within the time period specified by the director. At the end of each fiscal year, any unexpended balance of said fund may not be transferred to the general revenue fund, but shall remain in the groundwater protection fund.

(2) The “Groundwater Remediation Fund”, the moneys of which, to the extent that moneys are available, shall be expended by the director for the purposes of investigation, clean-up and remedial action intended to identify, minimize or mitigate damage to the environment, natural resources, public and private water supplies, surface waters and groundwaters and the public health, safety and general welfare which may result from contamination of groundwater or the related environment. The director or other authorized agency officials are authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any and all groundwater remediation fund moneys expended pursuant to this article. All moneys expended from such fund which are so recovered shall be deposited in such fund. The director may expend moneys from said fund and the interest thereon without necessity of appropriation by the Legislature. All civil penalties and assessments of civil administrative penalties collected pursuant to this article shall be deposited into the said fund. In addition, said fund may receive proceeds from any gifts, grants, contributions or
other moneys accruing to the state which are specifically
designated for inclusion in the fund.

§22-12-10. Civil and criminal penalties; civil administr­
tive penalties; dedication of penalty pro­ceeds; injunctive relief; enforcement orders; hear­ings.

(a) Any person who violates any provision of this
article, or any permit or agency approval, rule or order
issued to implement this article, is subject to civil
penalties in accordance with the provisions of section
twenty-two, article eleven of this chapter: Provided,
That such penalties are in lieu of civil penalties which
may be imposed under other provisions of this code for
the same violation.

(b) Any person who willfully or negligently violates
any provision of this article, or any provision of a permit
or agency approval, rule or order issued to implement
this article, is subject to criminal penalties in accor­
dance with the provisions of section twenty-four, article
eleven of this chapter: Provided, That such penalties are
in lieu of other criminal penalties which may be imposed
under other provisions of this code for the same
violation.

(c) Any person who violates any provision of this
article, or any permit or rule or order issued to
implement this article, is subject to a civil administra­
tive penalty to be levied by the director, the commis­
sioner of agriculture or the commissioner of the bureau
of public health, as appropriate, of not more than five
thousand dollars for each day of such violation, not to
exceed a maximum of twenty thousand dollars. In
assessing any such penalty, any such official shall take
into account the seriousness of the violation and any
good faith efforts to comply with applicable require­
ments as well as any other appropriate factors as may
be established by such official by legislative rules
promulgated pursuant to this article and the provisions
of chapter twenty-nine-a of this code. No assessment
may be levied pursuant to this subsection until after the
alleged violator has been notified by such official by
certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to such official a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, such official shall inform the alleged violator of the time and place of the hearing. Such official may appoint an assessment officer to conduct the informal hearing who shall make a written recommendation to such official concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, such official shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of such official's decision, the alleged violator may request a formal hearing before the board in accordance with the provisions of section eleven of this article. Any administrative civil penalty assessed pursuant to this section is in lieu of any other civil penalty which may be assessed under any provision of this code for the same violation. No combination of assessments against any violator under this section may exceed twenty-five thousand dollars per day of each such violation. All administrative penalties shall be levied in accordance with legislative rules promulgated by such official in accordance with the provisions of chapter twenty-nine-a of this code.

(d) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section and all assessments of any civil administrative penalties collected pursuant to subsection (c) of this section shall be deposited into the groundwater remediation fund established pursuant to this article.
(e) Any such official may seek an injunction, or may institute a civil action against any person in violation of any provision of this article or any permit, agency approval, rule or order issued to implement this article. In seeking an injunction, it is not necessary for such official to post bond nor to allege or prove at any point in 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) If any such official upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, or any permit, order or rules issued to implement the provisions of this article, he or she may issue an order stating with reasonable specificity the nature of the 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 implementing this article which (1) suspend, revoke or modify permits; (2) require a person to take remedial action; or (3) are cease and desist orders.

(g) Any person issued a cease and desist order under subsection (f) of this section may file a notice of request for reconsideration with such official not more than seven days from the issuance of such order and shall have a hearing before such official to contest the terms and conditions of such order within ten days after filing such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order.

§22-12-11. Appeal procedures.

Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director or any public official authorized to take or
implement an agency action, or by the issuance or denial of a permit issued to implement this article or by such permit's term or conditions, or by the failure or refusal to act within a reasonable time, may appeal to the environmental quality board as provided in article one, chapter twenty-two-b of this code.

§22-12-12. Rule-making petition.

Any person may petition the appropriate rule-making agency for rule making on an issue arising under this article. The appropriate rule-making agency, if it believes such issue to merit rule making, may initiate rule making in accordance with the provisions of chapter twenty-nine-a of this code. A decision by the appropriate rule-making agency not to pursue rule making must set forth in writing reasons for refusing to do so. Any person may petition an agency to issue a declaratory ruling pursuant to section one, article four, chapter twenty-nine-a of this code with respect to the applicability to any person, property or state of facts of any rules promulgated by that agency pursuant to this article.

§22-12-13. Existing rights and remedies preserved; effect of compliance.

(a) It is the purpose of this article to provide additional and cumulative remedies to address the quality of the groundwater of the state. This article does not alter the authority of any agency with respect to water other than groundwater. Except as expressly stated in this article, it is not the intention of the Legislature in enacting this article to repeal any other provision of this code.

(b) Nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article, or any act done by virtue of this article, estop the state, municipalities, public health officers or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.
(c) Where a person is operating a source or conducting an activity in compliance with the terms and conditions of a permit, rule, order, directive or other authorization issued by a groundwater regulatory agency pursuant to this article, such person is not subject to criminal prosecution for pollution recognized and authorized by such permit, rule, order, directive or other authorization.

§22-12-14. Effective dates of provisions subject to federal approval.

To the extent that this article modifies any powers, duties, functions and responsibilities of any state agency that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of federal regulatory programs by the state, any such modifications become effective upon a proclamation by the governor stating either that final approval of such modifications has been given by the appropriate federal agency or official or that final approval of such modification is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

ARTICLE 13. NATURAL STREAMS PRESERVATION ACT.

§22-13-1. Short title.
§22-13-4. Establishment of natural stream preservation system.
§22-13-5. Designation of protected streams.
§22-13-6. General powers and duties of director with respect to protected streams.
§22-13-7. When permits required; when permits not to be issued.
§22-13-8. Application for permit; form of application; information required; fees.
§22-13-9. Procedure for issuance or denial of permit; transfer of permits.
§22-13-10. Inspections; orders to compel compliance with permits; service of order.
§22-13-11. Appeal to environmental quality board.
§22-13-12. Actions to abate nuisances; injunctive relief.
§22-13-14. Violations; criminal penalties.

§22-13-1. Short title.
This article may be known and cited as the "Natural Streams Preservation Act."


In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not impound, flood or divert all streams within the state of West Virginia, leaving no streams designated for preservation and protection in their natural condition, it is hereby declared to be the public policy of this state to secure for the citizens of West Virginia of present and future generations the benefits of an enduring resource of free-flowing streams possessing outstanding scenic, recreational, geological, fish and wildlife, botanical, historical, archeological or other scientific or cultural values.


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

(1) "Board" means the environmental quality board;

(2) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(3) "Free-flowing" means existing or flowing in natural condition without impoundment, by diversion, or flooding of the waterway;

(4) "Modification" means the impounding, diverting or flooding of a stream within the natural stream preservation system;

(5) "Modify" means to impound, divert or flood a stream within the natural stream preservation system;

(6) "Permit" means a permit required by section seven of this article;

(7) "Person," "persons" or "applicants" means any public or private corporation, institution, association, firm or company organized or existing under the laws

*Clerk's Note: The provisions of former §22-13-3 as they existed prior to the passage of this act have been recodified and now appear in §22C-7-3.*
of this or any other state or country; state of West Virginia; governmental agencies; political subdivision; county commission; municipal corporations; industries; 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 other legal entity whatever;

(8) "Protected stream" means any stream designated as such in section five of this article, but does not include tributaries or branches unless specifically designated or described in section five of this article;

(9) "Stream" means a flowing body of water or a section or portion thereof, including rivers, streams, creeks, branches or small lakes.

§22-13-4. Establishment of natural stream preservation system.

For the purpose of implementing the public policy declared in section two of this article, there is hereby established a natural stream preservation system to be composed of streams designated by the Legislature as "protected streams," and these shall be administered for the use and enjoyment of the citizens of West Virginia in such manner as will leave them unimpaired for future use and enjoyment as free-flowing streams, and so as to provide for the protection and the preservation of these streams in their natural character.

§22-13-5. Designation of protected streams.

The following streams are hereby designated as protected streams within the natural streams preservation system, namely:

(a) Greenbrier River from its confluence with Knapps Creek to its confluence with the New River.

(b) Anthony Creek from its headwaters to its confluence with the Greenbrier River.

(c) Cranberry River from its headwaters to its confluence with the Gauley River.
(d) Birch River from the Cora Brown bridge in Nicholas county to the confluence of the river with the Elk River.

e) New River from its confluence with the Gauley River to its confluence with the Greenbrier River.

§22-13-6. General powers and duties of director with respect to protected streams.

(a) In addition to all other powers and duties of the director, as prescribed in this article or elsewhere by law, the director shall exercise supervision over the administration and enforcement of the provisions of this article, and all orders and permits issued pursuant to the provisions of this article.

(b) In addition to all other powers and duties of the director, as prescribed in this article or elsewhere by law, the director has authority to promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities vested in the director by the provisions of this article and otherwise by law: Provided, That all such rules shall be consistent with the declaration of public policy set forth in section two of this article.

(c) The director and duly authorized representatives, have the power and authority to make investigations, inspections and inquiries concerning compliance with the provisions of this article, any order made and entered in accordance with the provisions of this article, any rules promulgated by the director, and with the terms and conditions of any permit issued in accordance with the provisions of section nine of this article. In order to make such investigations, inspections and inquiries, the director and duly authorized representatives, have the power and authority to enter at all reasonable times upon any private or public property, subject to responsibility for any damage to the property entered. Upon entering, and before making any investigation, inspection and inquiry, such person shall immediately present himself or herself to the occupant of the property. Upon entering property used in any
manufacturing, mining or other commercial enterprise, 
or by any municipality or governmental agency or a 
subdivision, and before making any investigation, 
inspection and inquiry, such person shall immediately 
present himself or herself to the person in charge of the 
operation, and if he or she is not available, to a 
managerial employee. All persons shall cooperate fully 
with the person entering such property for such 
purposes. Upon a refusal of the person owning or 
controlling such property to permit such entrance or the 
making of such inspections, investigations and inquiries, 
the director may apply to the circuit court of the county 
in which such property is located, or to the judge thereof 
in vacation, for an order permitting such entrance and 
the making of such inspections, investigations, and 
inquiries; and jurisdiction is hereby conferred upon such 
court to enter such order upon a showing that the relief 
asked is necessary for the proper enforcement of this 
article. Nothing contained in this section eliminates any 
obligation to follow any process that may be required 
by law.

§22-13-7. When permits required; when permits not to be 
issued.

1 It is unlawful for any person, until the division's 
permit therefor has been granted, to modify any 
protected stream or any part thereof. No permit shall 
be issued unless the work proposed to be done under 
such permit: (a) Will not materially alter or affect the 
free-flowing characteristics of a substantial part of a 
protected stream or streams; (b) is necessary to prevent 
an undue hardship; and (c) meets with the approval of 
the director.

§22-13-8. Application for permit; form of application; 
information required; fees.

1 The director shall prescribe a form of application for 
all permits. All applications for permits shall be 
submitted to the division and shall be on the prescribed 
form.

5 A permit fee of ten dollars shall accompany the 
application when filed with the division. The permit fee
shall be deposited in the state treasury to the credit of
the state general fund.

§22-13-9. Procedure for issuance or denial of permit; transfer of permits.

(a) Before issuing a permit, a public hearing shall be held. The director shall consider the application and shall fix a time and place for hearing on such application. The hearing shall be held in a county in which the proposed modification is to be made and, if the proposed modification is to be made in more than one county, then a separate hearing shall be held in each county in which the proposed modification is to be made. The applicant shall cause a notice of the time and place of such hearing and the purpose thereof to be published as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the county or counties in which the proposed modification is to be made. Publication of the notice shall be completed at least fifteen days before such hearing. The applicant shall also cause to be served, at least fifteen days before such hearings, in the manner provided by law for the service of notice and process, a notice showing the time, place and purpose of such hearing, upon every owner of property, and every person holding a lien thereon, abutting on that portion of the stream on which the modification is to be made, or abutting on any portion of such stream within two miles above or below the proposed modification. The affidavit of publication of such notice shall be filed with the director or his or her duly designated hearing examiner at or before the hearing as a part of the record in the proceedings.

(b) At the time and place fixed for the hearings, the director or his or her duly designated hearing examiner shall hear any evidence relating to the proposed modification, the necessity therefor, the effect of such modification on the stream and any and all other matters relevant to the application and the proposed modification. If the director concludes and finds upon the record and evidence in the proceedings that the proposed modification should be permitted, he or she
shall proceed to issue the permit: Provided, That the director may attach such conditions, qualifications or limitations to such permit as he or she finds appropriate.

(c) An application for any such permit shall be acted upon by the director and the division's permit delivered or mailed, or a copy of any order of the director denying any such application mailed as hereinafter specified, as the case may be, to the applicant by the director within forty-five days after the hearings have been completed.

(d) When it is established that an application for a permit should be denied, the director shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The director shall also cause a notice to be served with the copy of such order, which notice shall advise the applicant of his or her right to appeal to the board by filing a notice of appeal, on a form prescribed by the board for such purpose, with the board, within the time specified in and in accordance with the provisions of section seven, article one, chapter twenty-two-b of this code. However, an applicant may offer the plans and specifications for the proposed modification and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(e) Upon the sale of property which includes an activity for which the division's permit was granted, the permit is transferable to the new owner, but the transfer does not become effective until it is made in the records of the division.

§22-13-10. Inspections; orders to compel compliance with permits; service of order.

After issuance of the division's permit for any such modification, the director and duly authorized representatives may make field inspections of the work on the modification, and, after completion thereof, may inspect the completed modification, and, from time to time, may inspect the maintenance and operation of such modification.
To compel compliance with the terms and conditions of the division’s permit for any such modification and with the plans and specifications therefor and the plan of maintenance and method of operation thereof, the director is hereby authorized after reasonable notice to make and enter an order revoking or suspending such permit and directing the person to whom such permit was issued to stop or suspend any and all work on such activity or, to take affirmative action to correct the deficiencies specified in such order so there will be full compliance with the terms and conditions of such permit and with the plans and specifications therefor, and the plan of maintenance and method of operation thereof.

The director shall cause a copy of any such order to be served by registered or certified mail or by a law-enforcement officer upon the person to whom any such permit was issued. The director shall also cause a notice to be served with the copy of such order, which notice shall advise such person of his or her right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, within the time specified in and in accordance with the provisions of section seven, article one, chapter twenty-two-b of this code.

§22-13-11. Appeal to environmental quality board.

(a) Any person adversely affected by an order made and entered by the director in accordance with the provisions of this article, or aggrieved by failure or refusal of the director to act within the time required by section nine of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the environmental quality board for an order vacating or modifying such order, or for such order, action or terms and conditions as the director should have entered, taken or imposed.

(b) Notwithstanding the provisions of section nine, article one, chapter twenty-two-b of this code:

(1) Appeals from orders of the board in cases involving an order denying an application for a permit,
or approving or modifying the terms and conditions of
a permit, shall be filed, within the time specified in said
section, in the circuit court of any county in which such
modification is proposed to be made.

(2) Appeals from orders of the board in cases
involving an order revoking or suspending a permit and
directing any and all work on such modification to stop,
or directing that affirmative action be taken to correct
alleged and specified deficiencies concerning any such
modification, shall be filed, within the time specified in
said section, in the circuit court of any county in which
any part of such modification is proposed to be made.

§22-13-12. Actions to abate nuisances; injunctive relief.

Whether any violation of the provisions of this article
or any final order of the director or the board results
in prosecution or conviction or not, any such violation
is a nuisance which may be abated upon application by
the chief to the circuit court of the county in which such
nuisance or any part thereof exists, or to the judge
thereof in vacation. Upon application by the director,
the circuit courts of this state may by mandatory or
prohibitive injunction compel compliance with all final
orders of the director or board. Any application for an
injunction to compel compliance with any final order of
the director or board shall be made to the circuit court
of any county in which the modification to which the
order relates is proposed to be made, or in which the
modification to which the order relates is situate or
would be situate upon completion thereof. Upon appli-
cation by the director to the circuit court of the county
in which a municipal corporation is located, or in which
any person resides or does business, or to the judge
thereof in vacation, such court may by injunction
require the performance of any duty imposed upon such
municipal corporation or person by the provisions of this
article. The court may issue a temporary injunction in
any case pending a decision on the merits of any
application filed. In cases of modifications where
irreparable damage will result from any delay incident
to the administrative procedures set forth in this article,
the director may forthwith apply to the circuit court of
any county in which the modification is taking place for
a temporary injunction. Such court may issue a tempor-
ary injunction pending final disposition of the case by
the director or the board, in the event an appeal is taken
to the board.

The judgment of the circuit court upon any applica-
tion permitted by the provisions of this section is final
unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be
sought in a manner provided by law for appeals for
circuit courts in other civil cases, except that the
petition seeking such review must be filed with said
supreme court of appeals within ninety days from the
date of entry of the judgment of the circuit court.

The director shall be represented in all such proceed-
ings by the attorney general or his or her assistant and
in such proceedings in the circuit court by the prosecut-
ing attorneys of the several counties as well, all without
additional compensation.


All applications under section twelve of this article
and all proceedings for judicial review under article one,
chapter twenty-two-b of this code shall take priority on
the docket of the circuit court in which pending, and
shall take precedence over all other civil cases. Where
such applications and proceedings for judicial review
are pending at the same time, such applications shall
take priority on the docket and shall take precedence
over proceedings for judicial review.

§22-13-14. Violations; criminal penalties.

Any person who fails or refuses to discharge any duty
imposed upon him or her by this article or by any final
order of the director or board, or who fails or refuses
to apply for and obtain a permit as required by the
provisions of this article, is guilty of a misdemeanor,
and, upon conviction thereof, shall be punished for a
first offense by a fine of not less than twenty-five dollars
nor more than one hundred dollars, and for a second
offense by a fine of not less than two hundred dollars
nor more than five hundred dollars, and for a third
offense and each subsequent offense by a fine of not less
dollars or by imprisonment for a period not to exceed
six months, or in the discretion of the court by both such
fine and imprisonment.


1 The criminal liabilities provided for in section
2 fourteen of this article may not be imposed for any
3 violation resulting from accident or caused by an act of
4 God, war, strike, riot or other catastrophe as to which
5 negligence or willful conduct on the part of such person
6 was not the proximate cause.

ARTICLE 14. DAM CONTROL ACT.

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§22-14-11. Requirements for dams completed prior to effective date of this
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§22-14-12. Dam owner not relieved of legal responsibilities by any provision
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§22-14-13. Offenses and penalties.
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§22-14-15. Civil penalties and injunctive relief.
§22-14-16. Schedule of application fees established.
§22-14-17. Schedule of annual registration fees established.
§22-14-18. Continuation of dam safety fund; components of fund.
§22-14-1. Short title.

This article shall be known and cited as the "Dam Control and Safety Act".

§22-14-2. Legislative findings; intent and purpose of article.

The Legislature finds that dams may constitute a potential hazard to people and property; therefore, dams in this state must be properly regulated and controlled to protect the health, safety and welfare of people and property in this state. It is the intent of the Legislature by this article to provide for the regulation and supervision of dams in this state to the extent necessary to protect the public health, safety and welfare. The Legislature has ordained this article to fulfill its responsibilities to the people of this state and to protect their lives and private and public property from the danger of a potential or actual dam failure. The Legislature finds and declares that in light of the limited state resources available for the purposes of this article, and in view of the high standards to which the United States soil conservation service designs dams, independent state review of the plans and specifications for dams designed by the soil conservation service and construction oversight should not be required. The Legislature further finds and declares that dams designed and constructed by the soil conservation service but not owned or operated by it should be subject to the same provisions of inspection, after construction and certification by the soil conservation service, as other dams covered by this article, so long as any dam under the soil conservation service program is designed with standards equal to or exceeding state requirements under this article.

§22-14-3. Definition of terms used in article.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) "Alterations" or "repairs" means only those changes in the structure or integrity of a dam which
may affect its safety, which determination shall be made by the director.

(b) “Application for a certificate of approval” means the request in writing by a person to the director requesting that person be issued a certificate of approval.

c) “Appurtenant works” means any structure or facility which is an adjunct of, or connected, appended or annexed to a dam, including, but not limited to, spillways, a reservoir and its rim, low level outlet works or water conduits such as tunnels, pipelines and penstocks either through the dam or its abutments.

d) “Certificate of approval” means the approval in writing issued by the director to a person who has applied to the director for a certificate of approval which authorizes the person to place, construct, enlarge, alter, repair or remove a dam and specifies the conditions or limitations under which the work is to be performed by that person.

e) “Director” means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(f) “Division” means the division of environmental protection.

g) “Dam” means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and: (1) Is or will be twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water; or (2) is or will be six feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water: Provided, That the term “dam” does not include: (A) Any dam owned by the federal govern-
ence; (B) any dam for which the operation and main-
tenance thereof is the responsibility of the federal
government; (C) farm ponds constructed and used
primarily for agricultural purposes, including, but not
limited to, livestock watering, irrigation, retention of
animal wastes and fish culture, and which have no
potential to cause loss of human life in the event of
embankment failure; or (D) structures which do not or
will not impound water under normal conditions and
which have a designed culvert or similar conveyance or
such capacity as would be used under a highway at the
same location: Provided, however, That the director may
apply the provisions of section ten of this article for
hazardous, nonimpounding structures which are
brought to his or her attention.

(h) “Enlargement” means any change in or addition
to an existing dam which: (1) Raises the height of the
dam; (2) raises or may raise the water storage elevation
of the water impounded by the dam; (3) increases or may
increase the amount of water impounded by the dam;
or (4) increases or may increase the watershed area from
which water is impounded by the dam.

(i) “Person” means any public or private corporation,
institution, association, society, firm, organization or
company organized or existing under the laws of this or
any other state or country; the state of West Virginia;
any state governmental agency; any political subdivision
of the state or of its counties or municipalities; 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 other legal entity whatever. The term “person”,
when used in this article, includes and refers to any
authorized agent, lessee or trustee of any of the
foregoing or receiver or trustee appointed by any court
for any of the foregoing.

(j) “Reservoir” means any basin which contains or will
contain impounded water.

(k) “Soil conservation service” means the soil conser-
§22-14-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.

The director has the following powers and duties:

(a) To control and exercise regulatory jurisdiction over dams as provided for in this article;

(b) To review all applications for a certificate of approval for the placement, construction, enlargement, alteration, repair or removal of any dam;

(c) To grant, modify, amend, revoke, restrict or refuse to grant any certificate of approval if proper or necessary to protect life and property as provided in this article;

(d) To adopt, modify, repeal and enforce rules and issue orders, in such manner as the director may otherwise do, to implement and make effective the powers and duties vested in it by the provisions of this article;

(e) To take any lawful action considered necessary for the effective enforcement of the provisions of this article;

(f) To establish and charge reasonable fees not to exceed three hundred dollars for the review of applications for certificates of approval and the issuance thereof and for assessment of an annual registration fee not to exceed one hundred dollars for persons holding a certificate of approval for existing dams. The director shall promulgate rules to establish a schedule of application fees and to establish annual registration fees.
fees: *Provided*, That no fee shall be assessed for dams designed and constructed by the soil conservation service for soil conservation districts;

(g) To employ qualified consultants or additional persons as necessary to review applications for certificates of approval and to recommend whether they should be approved, to inspect dams and to enforce the provisions of this article;

(h) To cooperate and coordinate with agencies of the federal government, this state and counties and municipalities of this state to improve, secure, study and enforce dam safety and dam technology within this state;

(i) To investigate and inspect dams as is necessary to implement or enforce the provisions of this article and when necessary to enter the public or private property of any dam owner. The director may investigate, inspect or enter private or public property after notifying the dam owner or other person in charge of the dam of an intent to investigate, inspect or enter: *Provided*, That where the owner or person in charge of the dam is not available, the director may investigate, inspect and enter without notice; and

(j) To prepare and publish within a reasonable time, criteria to govern the design, construction, repair, inspection and maintenance of proposed dams herein defined, and to review these criteria annually in order to consider improved technology for inclusion in such criteria.

§22-14-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.

It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any dam under the jurisdiction of the director until he or she has first: (a) Filed an application for a certificate of approval with the division; and (b) obtained from the division a certificate of approval: *Provided*, That routine
repairs which do not affect the safety of a dam are not subject to the application and approval requirements. A separate application for a certificate of approval must be submitted by a person for each dam he or she desires to place, construct, enlarge, alter, repair, remove or abandon. One application may be valid for more than one dam involved in a single project or in the formation of a reservoir.

Each application for a certificate of approval shall be made in writing on a form prescribed by the director and shall be signed and verified by the applicant. The application shall contain and provide information which may be reasonably required by the director to administer the provisions of this article.

In the case of dams designed by the soil conservation service for transfer to any political subdivision, the director shall, within sixty days after receipt of a completed application therefor, issue a certificate of approval without review of the plans and specifications.

§22-14-6. Plans and specifications for dams to be in charge of registered professional engineer.

Plans and specifications for the placement, construction, enlargement, alteration, repair or removal of dams shall be in the charge of a registered professional engineer licensed to practice in West Virginia. Any plans or specifications submitted to the division shall bear the seal of a registered professional engineer.

§22-14-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.

Upon receipt of an application for a certificate of approval and the fee required under the provisions of this article, the director shall proceed to consider the application for sufficiency. The director shall approve or disapprove the application within sixty days after receipt.

If an application is defective, it shall be returned to the applicant by certified or registered mail, return
receipt requested, in order that the applicant may correct any defect; Provided, That a defective application must be returned to the division by the applicant within thirty days after it has been returned to the applicant or it shall be treated as a new application: Provided, however, That for good cause shown, the director may extend the thirty-day period.

Upon approval by the director of the sufficiency of the application, the applicant shall immediately publish the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication is the county in which the proposed dam is to be located or in which the existing dam is located. The notice shall include, but not be limited to, the name and address of the owner of the dam and the location of the dam for which the application was filed.

Any person who may be adversely affected by the issuance of a certificate of approval has a right to a hearing before the director if the person demands the hearing in writing within fifteen days of publication of the certificate of approval. The written request for hearing shall include specific objections to the certificate of approval.

Upon receipt by the director of the written request for hearing, the director shall immediately set a date for the hearing and shall notify the person or persons demanding a hearing. The hearing shall be held within ten days after receipt of the written request. The director shall hear evidence from all interested parties and shall either: (1) Refuse to issue a certificate of approval; or (2) issue a certificate of approval which shall be subject to terms, conditions and limitations as the director may consider necessary to protect life and property.

Unless otherwise extended by the director, a certificate of approval is valid for a period of not more than one year.

§22-14-8. Content of certificates of approval for dams; revocation or suspension of certificates.
Each certificate of approval issued by the director under the provisions of this article may contain other terms and conditions as the director may prescribe.

The director may revoke or suspend any certificate of approval whenever it is determined that the dam for which the certificate was issued constitutes a danger to life and property. If necessary to safeguard life and property, the director may also amend the terms and conditions of any certificate by issuing a new certificate containing the revised terms and conditions.

Before any certificate of approval is amended or revoked by the director, the director shall hold a hearing in accordance with the provisions of article five, chapter twenty-nine-a of this code.

Any person adversely affected by an order entered following the hearing has the right to appeal to the environmental quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-14-9. Inspections during progress of work on dam.

During the placement, construction, enlargement, repair, alteration or removal of any dam, the director shall, either with the division's own engineers or by consulting engineers or engineering organizations, make periodic inspections for the purpose of ascertaining compliance with the certificate of approval. The director shall require the owner at his or her expense to perform work or tests as necessary and to provide adequate supervision during the placement, construction, enlargement, repair, alteration or removal of a dam: *Provided,* that with respect to dams designed by and constructed under the supervision of the soil conservation service, as to such dams no state inspections are required.

If at any time during placement, construction, enlargement, repair, alteration or removal of any dam, the director finds that the work is not being done in accordance with the provisions of the original or revised certificate of approval, the director shall notify the owner by certified or registered mail, return receipt requested, to correct the deficiency, cease and desist
work or to show cause as to why the certificate of
approval should not be revoked.

The notice shall state the reason or reasons why the
work is not in accordance with the certificate of
approval. The director may order that work on the dam
cease until the owner has complied with the notice.

If the director finds that amendments, modifications
or changes are necessary to ensure the safety of the dam,
the director may order the owner to revise his or her
plans and specifications. If conditions are revealed
which will not permit the placement, construction,
enlargement, repair, alteration or removal of the dam
in a safe manner, the certificate of approval may be
revoked.

Immediately upon completion of a new dam or
enlargement, repair or alteration of a dam, the owner
shall notify the director: Provided, That immediately
upon completion of a dam constructed under the
supervision of the soil conservation service, a certifica-
tion of completion shall be sent to the director by the
soil conservation service, and a complete set of design
documents “as built” plans, and specifications and safety
plan of evacuation shall be provided to the director
within ninety days after completion of the dam.

§22-14-10. Procedures for handling emergencies involv­
ing dams; remedial actions to alleviate
emergency; payment of costs of remedial
actions to be paid by dam owner.

The owner of a dam has the primary responsibility
for determining when an emergency involving a dam
exists. When the owner of a dam determines an
emergency does exist, the owner shall take necessary
remedial action and shall notify the director and the
owner shall also notify any persons who may be
endangered if the dam should fail.

The director shall notify any persons, not otherwise
notified, who may be endangered if the dam should fail.
The director may take any remedial action necessary to
protect life and property if: (a) The condition of the dam
so endangers life and property that time is not sufficient
to permit the issuance and enforcement of an order for
the owner to correct the condition; or (b) passing or
imminent floods or other conditions threaten the safety
of the dam. Remedial actions may include, but are not
limited to:

(1) Taking full charge and control of the dam;
(2) Lowering the level of water impounded by the dam
by releasing such impounded water;
(3) Completely releasing all water impounded by the
dam;
(4) Performing any necessary remedial or protective
work at the site of the dam;
(5) Taking any other steps necessary to safeguard life
and property.

Once the director has taken full charge of the dam,
the director shall remain in charge and control until in
the director’s opinion it has been rendered safe or the
emergency occasioning the action has ceased and the
director concludes that the owner is competent to
reassume control of the dam and its operation. The
assumption of control of the dam will not relieve the
owner of a dam of liability for any negligent act or acts
of the owner or the owner's agent or employee.

When the director declares that making repairs to the
dam or breaching the dam is necessary to safeguard life
and property, repairs or breaching shall be started
immediately by the owner, or by the director at the
owner's expense, if the owner fails to do so. The owner
shall notify the director at once of any emergency
repairs or breaching the owner proposes to undertake
and of work he or she has under way to alleviate the
emergency. The proposed repairs, breaching and work
shall be made to conform with orders of the director.
The director may obtain equipment and personnel for
emergency work from any person as is necessary and
expedient to accomplish the required work. Any person
undertaking work at the request of the division shall be
paid by the division and is immune from civil liability
under the provisions of section fifteen, article seven,
chapter fifty-five of this code.

The costs reasonably incurred in any remedial action
taken by the director shall be paid out of funds
appropriated to the division. All costs incurred by the
division shall be promptly repaid by the owner upon
request or, if not repaid, the division may recover costs
and damages from the owner by appropriate civil
action.

§22-14-11. Requirements for dams completed prior to
effective date of this section.

The director shall give notice to file an application for
a certificate of approval to every owner of a dam which
was completed prior to the effective date of this section:
Provided, That no such notice need be given to a person
who has applied for and obtained a certificate of
approval on or after the first day of July, one thousand
nine hundred seventy-three, in accordance with the
provisions of the prior enactment of section five of this
article. Such notice shall be given by certified or
registered mail, return receipt requested, to the owner
at his or her last address of record in the office of the
county assessor of the county in which the dam is located
and such mailing shall constitute service. A separate
application for each dam a person owns shall be filed
with the director in writing upon forms supplied by him
or her and shall include or be accompanied by appro-
priate information concerning the dam as the director
requires.

The director shall make inspections of such dams or
reservoirs at state expense. The director shall require
owners of such dams to perform at their expense such
work or tests as may reasonably be required to disclose
information sufficient to enable the director to deter-
mine whether to issue a certificate of approval or to
issue an order directing further work at the owner's
expense necessary to safeguard life and property. For
this purpose, the director may require an owner to lower
the water level of, or to empty, water impounded by the
dam adjudged by the director to be unsafe. If, upon
§22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.

Nothing in this article relieves the owner of a dam of the legal duties, obligations or liabilities incident to the ownership or operation of a dam.

§22-14-13. Offenses and penalties.

(a) Any person who violates any of the provisions of this article or any certificate of approval, order, rule or requirement of the director or division is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(b) Any person who willfully obstructs, hinders or prevents the director or division or its agents or employees from performing the duties imposed on them by the provisions of this article or who willfully resists the exercise of the control and supervision conferred by the provisions of this article upon the director or division or its agents or employees or any owner or any person acting as a director, officer, agent or employee of an owner, or any contractor or agent or employee of a contractor who engages in the placement, construction, enlargement, repair, alteration, maintenance or removal of any dam who knowingly does work or permits work to be executed on the dam without a certificate of approval or in violation of or contrary to any approval as provided for by the provisions of this article; and any inspector, agent or employee of the division who has knowledge of and who fails to notify the director of unapproved modifications to a dam is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.
§22-14-14. Enforcement orders; hearings.

(a) If the director, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any certificate of approval, notice, order or rules issued or promulgated hereunder, he or she may:

(1) Issue an order stating with reasonable specificity the nature of the 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 amending certificates of approval, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (c), section fifteen of this article;

(3) Institute a civil action in accordance with subsection (c), section fifteen of this article; or

(4) Request the attorney general, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section twelve of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the director not more than seven days from the issuance of the order and shall have a hearing before the director contesting the terms and conditions of the order within ten days of the filing of the notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of the cease and desist order.

§22-14-15. Civil penalties and injunctive relief.

(a) Any person who violates any provision of this article, any certificate of approval or any rule, notice or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than two hundred dollars for each day of the violation, not to exceed a maximum of four hundred dollars. In assessing any penalty, the director shall take
into account the seriousness of the violation and any
good faith efforts to comply with applicable require-
ments as well as any other appropriate factors as may
be established by rules promulgated by the director. No
assessment shall be levied pursuant to this subsection
until after the alleged violator has been notified by
certified mail or personal service. The notice shall
include a reference to the section of the statute, rule,
notice, order or statement of the certificate of approval's
terms that was allegedly violated, a concise statement
of the facts alleged to constitute the violation, a
statement of the amount of the administrative penalty
to be imposed and a statement of the alleged violator's
right to an informal hearing. The alleged violator has
twenty calendar days from receipt of the notice within
which to deliver to the director a written request for an
informal hearing. If no hearing is requested, the notice
becomes a final order after the expiration date 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. Within thirty days following the
informal hearing, the director shall issue and furnish to
the violator a written decision, and the reasons therefor,
concerning the assessment of a civil administrative
penalty. The authority to levy an administrative penalty
is in addition to all other enforcement provisions of this
article and the payment of any assessment does not
affect the availability of any other enforcement provi-
sion in connection with the violation for which the
assessment is levied: Provided, That no combination of
assessments against a violator shall exceed four hundred
dollars per day of each violation: Provided, however,
That any violation for which the violator has paid a civil
administrative penalty assessed under this subsection is
not subject to a separate civil penalty action under this
article to the extent of the amount of the civil adminis-
trative penalty paid. Civil administrative penalties shall
be levied in accordance with the rules promulgated
under the authority of section four of this article. The
net proceeds of assessments collected pursuant to this
subsection shall be deposited in the dam safety fund
established pursuant to section seventeen of this article.
Any person adversely affected by the assessment of a civil administrative penalty has the right to appeal to the environmental quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

(b) No assessment levied pursuant to subsection (a) of this section is due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(c) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any certificate of approval, rule, notice or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond or to allege or prove at any stage 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 the relief is sought.

(d) Upon request of the director, 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.

(e) In any 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.

§22-14-16. Schedule of application fees established.

The director shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of application fees for which the appropriate fee shall be submitted by the applicant to the division together with the application for a certificate of approval filed pursuant to this article. The schedule of application fees shall be designed to
establish reasonable categories of certificate application
fees based upon the complexity of the permit application
review process required by the director pursuant to the
provisions of this article and the rules promulgated
under this article. The director shall not process any
certificate application pursuant to this article until the
certificate application fee has been received.

§22-14-17. Schedule of annual registration fees established.

The director shall promulgate rules in accordance
with the provisions of section four of this article, to
establish a schedule of annual registration fees which
shall be assessed annually upon each person holding a
certificate of approval issued pursuant to this article.
Each person holding a certificate of approval shall pay
the prescribed annual registration fee to the division
pursuant to the rules promulgated under this article.
The schedule of annual registration fees shall be
designed to establish reasonable categories of annual
registration fees, including, but not limited to, the size
of the dam and its classification. Any certificate of
approval issued pursuant to this article becomes void
without notification to the person holding a certificate
of approval when the annual registration fee is more
than one hundred eighty days past due pursuant to the
rules promulgated under this section.

§22-14-18. Continuation of dam safety fund; components of fund.

(a) The special fund designated "The Dam Safety
Fund" hereinafter referred to as "the fund" shall be
continued.

(b) All certificate application fees and annual regis-
tration fee assessments, any interest or surcharge
assessed and collected by the division, interest accruing
on investments and deposits of the fund, and any other
moneys designated by the division shall be paid into the
fund. Accrual of funds shall not exceed three hundred
thousand dollars per year, exclusive of application fees.
The division shall expend the proceeds of the fund for
the review of applications, inspection of dams, payment
costs of remedial emergency actions and enforcement of the provisions of this article.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-1. Purpose and legislative findings.
§22-15-6. Fee for filing a certificate of site approval.
§22-15-7. Special provision for residential solid waste disposal.
§22-15-10. Prohibitions; permits required; priority of disposal.
§22-15-14. Limitations on permits; encouragement of recycling.

§22-15-1. Purpose and legislative findings.

(a) The purpose of this article is to establish a comprehensive program of controlling all phases of solid waste management.

(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 harborages 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 resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource 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 from unknown origins 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 by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes.

(e) The Legislature further finds that Class A landfills 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.

(f) The Legislature further finds that incineration technologies present potentially significant health and environmental problems.

(g) The Legislature further finds that there is a need for efforts to continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible.


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

*Clerk's Note: §22-15-2 should be read as amended by §20-5F-2, S. B. 1021, p. 2636.*
(1) "Agronomic rate" means the whole sewage sludge application rate, by dry weight, designed:

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

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

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

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

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

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

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

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

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

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

(10) "Composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

(11) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(12) "Division" means the division of environmental protection.

(13) "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.

(14) "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 process-
(15) "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.

(16) "Landfill" means any solid waste facility for the disposal of solid waste on land. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

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

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

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

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

(21) "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.

(22) "Person" or "persons" mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conserva-
tion 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.

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

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

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

(26) “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.

(27) “Solid waste” means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or
158 contained liquid or gaseous material resulting from
159 industrial, commercial, mining or community activities
160 but does not include solid or dissolved material in
161 sewage or solid or dissolved materials in irrigation
162 return flows or industrial discharges which are point
163 sources and have permits under article eleven of this
164 chapter, or source, special nuclear or by-product
165 material as defined by the Atomic Energy Act of 1954,
166 as amended, including any nuclear or by-product
167 material considered by federal standards to be below
168 regulatory concern, or a hazardous waste either identi-
169 fied or listed under article eighteen of this chapter or
170 refuse, slurry, overburden or other wastes or material
171 resulting from coal-fired electric power or steam
172 generation, the exploration, development, production,
173 storage and recovery of coal, oil and gas and other
174 mineral resources placed or disposed of at a facility
175 which is regulated under articles two, three, four, six,
176 seven, eight, nine or ten of this chapter, chapter twenty-
177 two-a or articles two, seven, eight, or nine, chapter
178 twenty-two-c of this code, so long as such placement or
179 disposal is in conformance with a permit issued
180 pursuant to such provisions of the code.
181
182 (28) “Solid waste disposal” means the practice of
183 disposing of solid waste including placing, depositing,
184 dumping or throwing or causing any solid waste to be
185 placed, deposited, dumped or thrown.
186
187 (29) “Solid waste disposal shed” means the geographi-
188 cal area which the solid waste management board
189 designates and files in the state register pursuant to
190 section nine, article three, chapter twenty-two-c of this
191 code.
192
193 (30) “Solid waste facility” means any system, facility,
194 land, contiguous land, improvements on the land,
195 structures or other appurtenances or methods used for
196 processing, recycling or disposing of solid waste,
197 including landfills, transfer stations, materials recovery
198 facilities, mixed waste processing facilities, sewage
199 sludge processing facilities, composting facilities and
200 other such facilities not herein specified, but not
201 including land upon which sewage sludge is applied in
accordance with subsection (b), section twenty of this article. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: Provided, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility.

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


(a) The purpose of this section is to allow for the combustion of wood waste without a solid waste facility permit and to allow facilities to use wood waste as an alternative fuel.

(b) “Wood waste” means wood residues from logging operations, sawmills, wood product manufacturing, furniture making operations, recycling of wood products and other industrial processes, but does not include wood waste which contains hazardous constituents, including copper chromium arsenate, which would cause such wood waste to be regulated pursuant to article eighteen of this chapter.

(c) For purposes of section two of this article and section two, article four, chapter twenty-two-c of this code:

(1) Wood waste is not “solid waste” unless disposed of at a solid waste facility or an open dump;

(2) Wood waste is a material which may be used as an effective substitute for commercial products or raw material feedstock.

(d) The use of incineration technologies in an energy recovery incinerator for the purposes of combusting wood waste is not prohibited and no solid waste facility permit is required. The provisions of this section do not allow the combustion of wood waste without a source permit from the director if such permit is required by article five of this chapter or the rules promulgated
28 under the provisions of said article five.
29 (e) The division may promulgate legislative rules, in
30 accordance with the provisions of chapter twenty-nine-
31 a of this code, to effectuate the purposes of this section.

§22-15-4. Authority of commissioner of bureau of public
3 health.
1 Although the director is primarily responsible for the
2 permitting and regulating of solid wastes, the commis-
3 sioner of the bureau of public health may enforce the
4 public health laws over solid waste management which
5 presents an imminent and substantial endangerment to
6 the public health.

1 In addition to all other powers, duties, responsibilities
2 and authority granted and assigned to the director in
3 this code and elsewhere described by law, the director
4 is empowered as follows:
5 (a) The director shall promulgate rules in compliance
6 with the West Virginia administrative procedures act to
7 carry out the provisions of this article including
8 modifying any existing rules and establishing permit
9 application fees up to an amount sufficient to defray the
10 costs of permit review. In promulgating rules the
11 director shall consider and establish requirements based
12 on the quantity of solid waste to be handled, including
13 different requirements for solid waste facilities or
14 approved solid waste facilities which handle more than
15 one hundred tons of solid waste per day, the environ-
16 mental impact of solid waste disposal, the nature, origin
17 or characteristics of the solid waste, potential for
18 contamination of public water supply, requirements for
19 public roadway standards and design for access to the
20 facilities with approval by the commissioner of the
21 division of highways, public sentiment, the financial
22 capability of the applicant, soil and geological consider-
23 ations and other natural resource considerations.
24 (b) The director, after public notice and opportunity
25 for public hearing near the affected community, may
26 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 establish-
ment 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
or she 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 or her police
record or by his or her record as a permittee under
articles eleven through nineteen of this chapter or
chapter twenty of this code, 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 environ-
mental laws of any state or the United States.

(d) The director 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 or any authorized representative, employee or agent of the division may, at reasonable 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 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 director or his or her authorized representative, employee 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 may, in coordination with the commissioner of the division of highways, conduct at weigh stations or any other adequate site or facility inspections of solid waste in transit.

(h) The director 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 twelve 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) 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, marriage 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 partnership, 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 identification 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 dispo-
sal, 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 subdi-
vision 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.

(k) 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, rule,
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, rule, 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 rule 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 rule that was not described under paragraph (3) of this subdivision 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 rule 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 administrative 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 of any environmental law or rule. 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 appli-
cant 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.

(I) All of the information provided by the applicant
pursuant to this section is not confidential and is
disclosable pursuant to the provisions of chapter twenty-
nine-b of this code.
§22-15-6. 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.

§22-15-7. 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.


1 (a) On and after the first day of October, one thousand nine hundred ninety-one, it is 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 nine of this article and sections twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code.

(b) Except as provided in section nine of this article, the maximum quantity of solid waste which may lawfully be handled at any commercial solid waste facility is thirty thousand tons per month.


1 (a) Notwithstanding any provision in this article, article four, chapter twenty-two-c, 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 twenty-five, article four, chapter twenty-two-c of this code;

(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 environmental protection, or is operating under a permit or compliance order, is permitted to handle in excess of the limitation established in section eight 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 eight 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 eight 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, 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 substan-
tially 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
is against the facility handling an amount of solid waste
of up to fifty thousand tons per month then the division
shall not proceed any further with the application. If a
majority of the legal votes cast upon the question is 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 is not binding on or
require the division 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 this article or article four,
chapter twenty-two-c, or previously enacted sections of
articles five-f and nine, chapter twenty of this code are
valid, complete and in full compliance with all the
requirements of law and any defects contained in such
approvals, certificates, permits or actions are 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 provided in section ten of this article, shall not be required to comply with the requirements of sections twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code: Providing, That such person is 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 is the only approval, permit or action required at the county or regional level to establish and site the proposed facility.

§22-15-10. Prohibitions; permits required; priority of disposal.

(a) Open dumps are prohibited and it is 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 the landowner's property unless that open dump is under a compliance schedule approved by the director. 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 are not 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 do not consti-
(a) 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 unauthorized dumps have been or are being made are not liable for such unauthorized dumping unless such landowners refuse to cooperate with the division in stopping such unauthorized dumping.

(b) It is unlawful for any person, unless the person 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 eleven of this chapter and the rules promulgated thereunder, so that only a single permit is 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 director 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 eleven of this chapter and the rules promulgated thereunder: Provided, however, That such administrative extension may not be for more than one year. Upon expiration of a permit, renewal permits may be issued in compliance with rules promulgated by the director.

(d) For existing solid waste facilities which formerly held division of health permits which expired by law and for which complete permit applications for new permits pursuant to this article were submitted as required by law, the division may enter an administrative order to govern solid waste activities at such facilities, which may include a compliance schedule, consistent with the requirements of the division's solid waste management rules, to be effective until final action is taken to issue or deny a permit for such facility.
pursuant to this article, or until further order of the  
division.

(e) No person may dispose in the state of any solid  
state, in a manner which endangers the environment or  
the public health, safety or welfare as determined by the  
director: 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, the commissioner of the bureau of public  
health shall provide technical advice concerning the  
disposal of solid waste or carcasses of dead animals  
within the state.

(f) A commercial solid waste facility shall first ensure  
that the disposal needs of the wasteshed in which it is  
located are met. If one or more local solid waste  
authorities in the wasteshed in which the facility is  
determined that the present or future disposal  
needs of the wasteshed are not being, or will not be, met  
by the commercial solid waste facility, such authorities  
may apply to the director or to modify the applicable  
permit. The director, in consultation with the solid  
management board, may then modify the applicable  
permit in order to reduce the total monthly  
acceptance of out of wasteshed waste the facility is  
permitted to accept by an amount that shall not exceed  
the total monthly tonnage necessary to ensure the  
disposal needs of the wasteshed 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 in accordance with the provisions of this article.

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


(a) Imposition. — A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of one dollar and seventy-five cents per ton or part thereof of solid waste. 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 is 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 is 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 remains 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 is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and 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 are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them 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 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 is 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 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;

(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 is
exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal
facility by a commercial recycler which disposes of
thirty percent or less of the total waste it processes for
recycling. In order to qualify for this exemption each
commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request.

(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. 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 “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 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 develop-
ment authority determines that the solid waste manage-
ment board reserve fund is inadequate to defer any
contingent liability of the fund, the water development
authority shall so certify to the director and the director
shall then cause not less than two hundred fifty
thousand dollars nor more than five hundred thousand
doors 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 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 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 three, chapter twenty-two-c of this code;

(3) The “Solid Waste Reclamation and Environmental Response Fund” which may be expended by the director
for the purposes of reclamation, cleanup 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.


(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, rules promulgated hereunder and the permit: Provided, That the director has the discretion to waive the requirement of a bond from the operator of a commercial solid waste facility, other than a Class A facility, which is operating under a compliance order. The amount of the bond required is one thousand dollars per acre and may include an additional amount determined by the director based
upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include, but are not limited to, satisfactory monitoring, post-closure care and remedial measures: Provided, however, That the amount of the bond shall not exceed eight thousand dollars per acre. All permits shall be bonded for at least ten thousand dollars. The bond shall cover either (1) the entire area to be used for the disposal of solid waste, or (2) that increment of land within the permit area upon which the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant to chapter twenty-nine-a of this code. If the operator chooses to use incremental bonding, as succeeding increments of commercial solid waste facility operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided further, That once the operator has chosen to proceed with bonding either the entire area to be used for the disposal of solid waste or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit and for a period of up to thirty full years after final closure of the permit site: Provided, That any further time period necessary to achieve compliance with the requirements in the closure plan of the permit is considered an additional liability period.

(c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods.
If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the thirty-year period following final closure, the division will conduct a final inspection of the facility. The purpose of the inspection is to determine compliance with this article, the division's rules, the terms and conditions of the permit, orders of the division and the terms and conditions of the bond. Based upon this determination, the division will either forfeit the bond prior to the expiration of the thirty-year period following final closure, or release the bond at the expiration of the thirty-year period following final closure. Bond release requirements shall be provided in rules promulgated by the director.

(e) If the operator of a commercial solid waste facility abandons the operation of a solid waste disposal facility for which a permit is required by this article or if the permittee fails or refuses to comply with the require-
ments of this article in any respect for which liability has been charged on the bond, the director shall declare the bond forfeited and shall certify the same to the attorney general who shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operation has deposited cash or securities as collateral in lieu of corporate surety, the director shall declare said collateral forfeited and shall direct the state treasurer to pay said funds into a waste management fund to be used by the director to effect proper closure and to defray the cost of administering this article. Should any corporate surety fail to promptly pay, in full, forfeited bond, it is disqualified from writing any further surety bonds under this article.


Any person investigating an area for the purpose of siting a commercial solid waste facility where no current solid waste permit exists, in order to determine a feasible, approximate location, shall prior to filing an application for a solid waste permit publish a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is to be located. Such notice shall inform the public of the location, nature and other details of the proposed activity as prescribed in rules promulgated by the director. Within five days of such publication such person shall file with the director a pre-siting notice, which shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. Such notice shall contain a certification of publication from a qualified newspaper, description of the area, the period of investigative review, a United States geological survey topographic map and a map showing the location of property boundaries of the area proposed for siting and other such information as required by rules promulgated pursuant to this section. The director shall hold a public hearing on the pre-siting notice in the area potentially affected. The director shall define pre-siting activities by promulgating legislative rules pursuant to chapter twenty-nine-a of this code. The pre-siting notice, as prescribed by the director, shall also be filed with the county or regional solid waste authority, established
pursuant to article four, chapter twenty-two-c of this code, according to the county or region in which the proposed site is located within five days of the publication of the notice.

§22-15-14. Limitations on permits; encouragement of recycling.

(a) The director shall by rules promulgated in accordance with chapter twenty-nine-a of this code establish standards and criteria applicable to commercial solid waste facilities for the visual screening of such facilities from any interstate highway, turnpike, federal and state primary highway or scenic parkway. The director shall not issue a permit under this article to install, establish, construct or operate any commercial solid waste facility without proper visual screening from any interstate highway, turnpike, federal or state primary highway or scenic parkway.

(b) The director shall give substantial deference and consideration to the county or regional litter and solid waste control plan approved pursuant to article four, chapter twenty-two-c of this code and to the comprehensive county plan adopted by the county commission pursuant to article twenty-four, chapter eight of this code in the issuance or the renewal of any permit under this article: Provided, That the authority and discretion of the director under this article is not diminished or modified by this subsection.

(c) The director is authorized and directed to promulgate legislative rules pursuant to chapter twenty-nine-a of this code encouraging each commercial solid waste facility and each person, partnership, corporation and governmental agency engaged in the commercial collection, transportation, processing and disposal of solid waste to recycle paper, glass, plastic and aluminum materials and such other solid wastes as the director may specify.

(d) The director is authorized and directed to promulgate legislative rules pursuant to chapter twenty-nine-a of this code encouraging each person, partnership, corporation and governmental agency subscribing to
solid waste collection services to segregate paper, glass, plastic and aluminum material, and such other solid waste material as the director may specify, prior to collection of such wastes at their source for purposes of recycling.

(e) Under no condition shall transloading solid waste materials be permitted within a municipality except those facilities owned or operated on behalf of the municipality in which the facility is located.


(a) If the director, 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 eleven of this chapter or its rules, or any permit or order issued under this article, he or she shall:

(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 (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the attorney general, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this section.

(b) Any person who willfully or negligently violates the provisions of this article, any permit or any rule or order issued pursuant to this article is subject to the same criminal penalties as set forth in section twenty-four, article eleven of this chapter.
(c) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars.

(1) In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the director by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes 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 environmental quality board in accordance with the provisions of section sixteen of this article. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the
payment of any assessment does not 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 issued pursuant to subsection (a), section five of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the solid waste reclamation and environmental response fund established in subdivision (3), subsection (h), section eleven of this article.

(2) No assessment levied pursuant to subdivision (1), subsection (c) above becomes 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 or order issued pursuant to this article is 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 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 or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage 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, 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 shall 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 adopted pursuant
thereto;

(3) Coercing a customer by violence or economic
reprisal or the threat thereof to utilize the services of
any permittee; or

(4) Preventing, without authorization of the division,
any permittee from disposing of solid waste at a licensed
treatment, storage or disposal facility.


Any person having an interest which is or may be
adversely affected, or who is aggrieved by an order of
the director, or by the issuance or denial of a permit or
by the permit's terms or conditions, may appeal to the
environmental quality board as provided in article one.

*§22-15-17. Limited extension of solid waste facility
closure deadline.

(a) The director may grant an extension of the closure

* Clerk's Note: §22-15-17 should be read as amended by §20-5F-8. S. B. 1021, p. 2641.
deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to a solid waste facility required under the terms of an extension granted pursuant to this subsection to close by the thirtieth day of June, one thousand nine hundred ninety-three, or required by solid waste management rules to close by the thirtieth day of September, one thousand nine hundred ninety-three, provided that the solid waste facility:

(1) Has a solid waste facility permit, or by the first day of March, one thousand nine hundred ninety-three, had an application to obtain a permit pending before the division for the construction of a landfill in accordance with title forty-seven, series thirty-eight, solid waste management rules; and

(2) Has a certificate of need or had an application pending therefor, from the public service commission; and

(3) Has been determined by the director to pose no significant hazard to public health, safety or the environment; and

(4) Has entered into a compliance schedule with the division to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with title forty-seven, series thirty-eight, solid waste management rules or to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with preclosure provisions of title forty-seven, series thirty-eight, solid waste management rules: Provided, That no such extension of closure deadline shall extend beyond the thirty-first day of March, one thousand nine hundred ninety-four, for any landfill in a county in which there is also located a commercial solid waste landfill which has installed a composite liner system in accordance with the requirements of the solid waste management rules.

(b) Any solid waste facility seeking to extend its closure deadline until the thirtieth day of September, one thousand nine hundred ninety-four, shall submit to
the director, no later than the thirtieth day of April, one
thousand nine hundred ninety-three, an application
sufficient to demonstrate compliance with the require-
ments of subsection (a) of this section. The director shall
grant or deny any application within thirty days of
receipt thereof: Provided, That as a condition precedent
for granting such closure extension, a solid waste
facility must enter into an agreement with the director
that the solid waste facility shall, no later than the
thirtieth day of September, one thousand nine hundred
ninety-three, complete and submit to the director an
analysis of the facility's specific requirements and cost
to comply with the applicable design criteria, ground-
water monitoring provisions of title forty-seven, series
thirty-eight, solid waste management rules and the
corrective action, financial assurance and closure and
post-closure care provisions of Subtitle (d) of the federal
Resource Conservation and Recovery Act, 42 U.S.C.
6941-6949.

(c) 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 section four, article
five, chapter twenty-nine-a of this code, in the circuit
court of the county where such facility exists: 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 of the
division.

(d) 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.

(e) Notwithstanding any other provision of this article, the director, upon receipt of a request for an extension, shall grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to any solid waste facility required to close on the thirty-first day of March, one thousand nine hundred ninety-three, or the thirtieth day of September, one thousand nine hundred ninety-three, which is owned by a solid waste authority or owned by a municipality and which accepts at least thirty percent of its waste from within the county in which it is located and which has not been determined by the director to pose a significant risk to human health and safety or cause substantial harm to the environment and which could not be granted an extension up to the thirtieth day of September, one thousand nine hundred ninety-four, pursuant to the terms of subsections (a) and (b) of this section if:

(1) The cost of transporting the waste is prohibitive; or

(2) The cost of disposing of waste in other solid waste facilities within the wasteshed would increase.

(f) Notwithstanding any other provision of this article, the director shall grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to any solid waste landfill which, on or before the first day of March, one thousand nine hundred ninety-three, has entered into a compliance schedule with the director for the construction of a transfer station or to any solid waste landfill which on the first day of March, one thousand nine hundred ninety-three, is already in the process of constructing a solid waste transfer station and applies by the first day of April, one thousand nine hundred ninety-three, to enter into with the director, a compliance schedule for the completion of the transfer station: Provided, That upon the completion of the

(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 sixteen 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.


(a) Notwithstanding any other provision of this code to the contrary, it is unlawful to install, establish or construct a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration: Provided, That such prohibition does not include the development of pilot projects which may include tire or tire material incineration, designed to analyze the efficiency and environmental impacts of incineration technologies: Provided, however, that any pilot project proposing to incinerate solid waste must comply with regulatory requirements for solid waste facilities established in this chapter and shall demonstrate with particularity to the division that it has the financial and technical ability to comply with
all rules applicable to solid waste facilities utilizing incineration technologies. The division shall require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of potential future environmental harm at the site.

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


(a) The division shall develop and implement a comprehensive program for the regulation and management of sewage sludge. The division is authorized to require permits for all facilities and activities which generate, process or dispose of sewage sludge by whatever means, including, but not limited to, land application, composting, mixed waste composting, incineration or any other method of handling sewage sludge within the state.

(b) The director shall promulgate rules necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. The Legislature finds and declares that conditions warranting a rule to be promulgated as an emergency rule do exist and that the promulgation of the initial rule required by this section should be accorded emergency status. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:

(1) That entities either producing sewage sludge within the state or importing sewage sludge into the state are required to report to the division the following:

(i) The specific source of the sewage sludge;

(ii) The amount of sewage sludge actually generated or imported;

(iii) The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge; and

(iv) Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so
stored, land applied or otherwise disposed of; and the
capacity of that location to accept sewage sludge;

(2) That the division engage in reasonable and
periodic monitoring of all sewage sludge related
activities and to monitor data supplied by sewage sludge
producers or importers to ensure compliance with state
and federal regulations;

(3) That representatives of the division have the
ability to enter onto any land application site for the
purposes of inspecting and analyzing the effects of
sewage sludge application on that site;

(4) That no permit for the processing or disposal of
sewage sludge will be issued until there is an accurate
finding that it has been adequately tested and shown not
to contain heavy metals, pathogens, toxins or vectors in
excess of regulatory standards;

(5) That the director may require a surety bond,
deposit or similar instrument in an amount sufficient to
cover the costs of future environmental remediation
from producers and importers of sewage sludge;

(6) That no person or entity be allowed to apply
sewage sludge to land in a manner that will result in
exceeding the maximum soil concentration for all
pollutants, including, but not limited to, arsenic,
cadmium, chromium, copper, lead, mercury, molybde-
num, nickel, selenium and zinc;

(7) That no land, except a solid waste facility, be
allowed to accept or store so much sewage sludge as to
exceed the agronomic rate or a rate of fifteen dry tons
per acre per year, whichever is less: Provided, That up
to twenty-five dry tons per acre per year may be applied
in the reclamation of surface mine land;

(8) That information relating to the disposal of sewage
sludge is available to affected communities;

(9) That all sewage sludge processing facilities contain
sufficient design specifications to protect ground and
surface waters;

(10) That regulation of composting facilities varies
according to types and quantities of materials handled;

(11) That only living or dead plant tissues are used as bulking agents in sewage sludge processing facilities; and

(12) That a fee, to be paid by the producer or importer, be levied and imposed on the land application of sewage sludge, to be collected at a per ton rate, sufficient to cover the costs of the sewage sludge management program. Fees collected pursuant to the terms of this subsection shall be deposited in the special revenue fund designated the “water quality management fund” established under the provisions of section ten, article eleven of this chapter. The fee schedule shall vary according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.

(c) For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the division pursuant to an NPDES permit required under article eleven of this chapter, a sewage sludge processing permit shall be a part of the existing water pollution control permit and shall include a sewage sludge management plan approved by the director.

(d) On and after the tenth day of April, one thousand nine hundred ninety-three, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the rule provided for in subsection (b) of this section is effective.

(e) All sewage sludge placed in, or upon, or used by a solid waste facility or processed or handled, pursuant to a permit issued by the division, shall be subject to the same tipping and other fees levied by this chapter on the disposal of solid waste and shall be included in said facility’s total tonnage, subject to the limitations established in this article and the provisions of article four, chapter twenty-two-c: Provided, That no land within a solid waste facility, but outside a landfill disposal cell, be allowed to accept the permanent
application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less: Provided, however, That no such fees, excepting assessment fees provided for in subdivision (12), subsection (b) of this section shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with this section.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-1. Legislative findings and purpose.
§22-16-2. Definitions.
§22-16-3. Commercial solid waste landfill closure assistance program.
§22-16-4. Solid waste assessment fee; penalties.
§22-16-5. Solid waste management board empowered to issue solid waste closure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
§22-16-6. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.
§22-16-7. Legal remedies of bondholders.
§22-16-8. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
§22-16-10. Limitation on assistance.
§22-16-12. Closure cost assistance fund.
§22-16-14. Liability of owner or operator.
§22-16-15. Procedures for handling remedial actions; payment of costs of remedial actions to be paid by owner or operator.
§22-16-16. Right of entry.
§22-16-17. Authority of director to accept grants and gifts.
§22-16-18. Management and control of project.

§22-16-1. Legislative findings and purpose.

1 The Legislature finds that:
2 There are numerous landfills throughout the state that must be closed 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;

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

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.

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.

§22-16-2. Definitions.

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

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

(2) "Cost of project" includes the cost of the services authorized in sections three and fifteen 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;

(3) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated duties or authority pursuant to sections six or eight, article one of this chapter;

(4) "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 is situated, for purposes of this
article, in the county where the majority of the spatial
area of such facility is located;

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

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

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

§22-16-3. Commercial solid waste landfill closure assist-
ance program.

(a) There is established within the division of envir-
onmental protection 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 ten 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, ground-
water monitoring and final cover and cap, all to meet
the closure-related requirements of article fifteen of this
chapter and rules promulgated pursuant thereto; and
(3) All surface water and groundwater monitoring activities required pursuant to articles eleven and fifteen of this chapter and applicable rules promulgated thereunder.

(c) To the extent that there are funds available in the fund established in section twelve of this article or subdivision (3), subsection (h), section eleven, article fifteen 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.

§22-16-4. 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 three dollars and fifty cents per ton or like ratio on any part thereof of solid waste, except as provided in subsection (e) 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 to close by article fifteen 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 is 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 is primarily liable for collection and remittance
of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by
this section. However, if the operator fails, in whole or
in part, to discharge his or her obligations under this
section, the owner and the operator of the solid waste
facility are jointly and 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 are liable, jointly and
severally, for any default on the part of the association
or corporation, and payment of the fee and any additions
to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them 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 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;

(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 as exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request.

(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 nine, article fifteen 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 twelve of this article.

§22-16-5. Solid waste management board empowered to issue solid waste closure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The solid waste management board is hereby empowered 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 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 pledged for the payment of bonds and notes issued pursuant to this section, 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 are 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 is valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board is immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is 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 chair and vice chair 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 chair 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 or she 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 cost of projects as provided in
this article, related to closure activities, 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 are less than the
minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chair 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 is not required to make any appropriation so requested, and the amount of such deficiencies does not constitute a debt or liability of the state.

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

§22-16-6. 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 and 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 author-
ity 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 fifteen, article one, chapter twenty-
two-c 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 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 are in the same year 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.

§22-16-7. 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 perfor-
mance 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.
§22-16-8. 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 are not a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes are 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 are 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 are 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.


The provisions of sections nine and ten, article six, chapter twelve of this code notwithstanding, all solid waste closure revenue bonds issued pursuant to this article are lawful investments for the West Virginia state board of investments and are also lawful invest-
ments for financial institutions as defined in section two, 
article one, chapter thirty-one-a of this code, and for 
insurance companies.

§22-16-10. 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 allowed to accept 
solid waste pursuant to the provisions of section 
seventeen, article fifteen 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 September, 
one thousand nine hundred ninety-three;

(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 fifteen of this 
chapter and any rules promulgated pursuant thereto;

and

(3) The permittee must maintain a permit for the 
landfill pursuant to the provisions of section ten, article 
fifteen of this chapter and maintain the full amount of 
the bond required to be submitted pursuant to section 
twelve, article fifteen of this chapter.


(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

*Clerk’s Note: §22-16-10 should be read as amended by §20-5N-5, S. B. 1021, p. 2846.
that has been allowed to accept solid waste pursuant to the provisions of section seventeen, article fifteen 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 eleven months following the date of closure of the landfill.

(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.

*§22-16-12. Closure cost assistance fund.

(a) The “Closure Cost Assistance Fund” is continued as a special revenue account in the state treasury. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the general revenue fund, but remain in such account and be available for expenditure in the succeeding fiscal year. Separate subaccounts 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, including moneys collected and deposited into the fund pursuant to section four of this article;

(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 eighteen, article fifteen of this chapter; and

*Clerk's Note: §22-16-12 should be read as amended by §20-5N-7, S. B. 1021, p. 2647.
(4) All interest earned on investments made by the state from moneys deposited in this fund.

(d) The solid waste management board, upon written approval of the director, has the authority to pledge all or such part of the revenues paid into the closure cost assistance fund as may be needed to meet the requirements of any revenue bond issue or issues of the solid waste management board authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on such revenue bond issue or issues when other moneys pledged may be insufficient therefor. Any pledge of moneys in the closure cost assistance fund for revenue bonds shall be a prior and superior charge on such fund over the use of any of the moneys in such fund to pay for the cost of any project on a cash basis. Expenditures from the fund, other than for the retirement of revenue bonds, may only be made in accordance with the provisions of this article.

(e) The amounts deposited in the fund may be expended only on the cost of projects as provided for in sections three and fifteen of this article and the amounts may be expended for payment of bonds and notes issued pursuant to section five 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.

§22-16-14. 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
§22-16-15. 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 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 eleven, article fifteen of this chapter or, to the extent funds are available, from the fund created in section twelve 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.

§22-16-16. 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 fifteen 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. Nothing contained in this
section eliminates any obligation to follow any process
that may be required by law.

§22-16-17. Authority of director to accept grants and
gifts.

The director has the authority, on behalf of the
division of environmental protection, to accept for
deposit in the closure cost assistance fund established in
section twelve 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, and to carry out the terms or provisions of,
or make agreements with respect to, or pledge, any gifts
or grants, and to do any and all things necessary, useful,
desirable or convenient in connection with the procur-
ing, acceptance or disposition of gifts or grants.

§22-16-18. Management and control of project.

(a) The director shall manage and control all projects,
and may make and enter into all contracts or agree-
ments 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 imple-
mentation 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 17. UNDERGROUND STORAGE TANK ACT.

§22-17-1. Short title.
§22-17-2. Declaration of policy and purpose.
§22-17-3. Definitions.
§22-17-4. Designation of division of environmental protection as the state underground storage tank program lead agency.
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§22-17-12. Confidentiality.
§22-17-13. Inspections, monitoring and testing.
§22-17-14. Corrective action for underground petroleum storage tanks.
§22-17-15. Administrative orders; injunctive relief; requests for reconsideration.
§22-17-16. Civil penalties.
§22-17-17. Public participation.
§22-17-18. Appeal to environmental quality board.
§22-17-19. Disclosures required in deeds and leases.
§22-17-20. Appropriation of funds; underground storage tank administrative fund.
§22-17-21. Leaking underground storage tank response fund.
§22-17-22. Underground storage tank insurance fund.
§22-17-23. Duplicative enforcement prohibited.

§22-17-1. Short title.

This article may be known and cited as the "Underground Storage Tank Act."

§22-17-2. Declaration of policy and purpose.

The Legislature recognizes that large quantities of petroleum and hazardous substances are stored in underground storage tanks within the state of West Virginia and that emergency situations involving these substances can and will arise which may present a hazard to human health, safety or the environment. The Legislature also recognizes that some of these substances have been stored in underground storage tanks in the state in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enacted Subtitle I of the federal Resource Conservation and Recovery Act of 1976, as amended, which provides for a federal program to remove the threat and remedy the effects of releases from leaking underground storage tanks and authorizes federal assistance to respond to releases of petroleum from underground storage tanks. The Legislature declares that the state of West Virginia desires to produce revenue for matching the federal assistance provided under the federal act; to create a program to control the installation, operation and abandonment of underground storage tanks and to provide for corrective action to remedy releases of regulated substances from these tanks. Therefore, the Legislature hereby enacts the West Virginia underground storage tank act to create an underground storage tank program and to assume regulatory primacy for such federal programs in this state.

§22-17-3. Definitions.

(a) "Change in status" means causing an underground storage tank to be no longer in use or a change in the reported uses, contents or ownership of an underground storage tank.

(b) "Director" means the director of the West Virginia
(c) "Nonoperational storage tank" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after the eighth day of November, one thousand nine hundred eighty-four.

(d) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank.

(e) "Owner" means:

(1) In the case of an underground storage tank in use on the eighth day of November, one thousand nine hundred eighty-four, or brought into use after that date, a person who owns an underground storage tank used for the storage, use or dispensing of a regulated substance.

(2) In the case of an underground storage tank in use before the eighth day of November, one thousand nine hundred eighty-four, but no longer in use on that date, a person who owned such a tank immediately before the discontinuation of its use.

(f) "Person" means any individual, trust, firm, joint stock company, corporation (including government corporations), partnership, association, state, municipality, commission, political subdivision of a state, inter-state body, consortium, joint venture, commercial entity and the United States government.

(g) "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute.

(h) "Regulated substance" means:

(1) Any substance defined in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any
substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; or

(2) Petroleum.

(i) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.


(k) “Underground storage tank” means one tank or a combination of tanks, and the underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground, but does not include:

(1) Farm or residential tanks with a capacity of eleven hundred gallons or less and used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1968, or an intrastate pipeline facility regulated under state laws comparable to the provisions of either of those acts;

(5) Surface impoundments, pits, ponds or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or
(9) Storage tanks situated in an underground area such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subparagraphs (1) through (9).

§22-17-4. Designation of division of environmental protection as the state underground storage tank program lead agency.

The division of environmental protection is hereby designated as the state underground storage tank program lead agency for purposes of Subtitle I and is hereby authorized to take all actions necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the United States environmental protection agency, other agencies of the federal government, agencies of this state or other states, and other interested persons in all matters relating to underground storage tank regulation.

§22-17-5. Powers and duties of director; integration with other acts.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle I.

(b) The director shall cooperate with and may receive and expend money from the federal government or other source.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts and cooperative arrangements under such terms and conditions as he or she deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.
§22-17-6. Promulgation of rules and standards by director.

(a) The director has overall responsibility for the promulgation of rules under this article. In promulgating and revising such rules the director shall comply with the provisions of chapter twenty-nine-a of this code. Such rules shall be no more stringent than the rules and regulations promulgated by the United States environmental protection agency pursuant to Subtitle I.

(b) The director shall promulgate rules applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, as follows:

1. A requirement for a yearly registration fee for underground storage tanks;

2. A requirement that an owner or operator register with the director each underground storage tank after the effective date of the rules and that an owner or operator report annually on changes in status of any underground storage tank;

3. Such release detection, prevention and correction rules applicable to underground storage tanks as may be necessary to protect human health and the environment;

4. Requirements for maintaining a leak detection system, inventory control systems together with tank testing, or a comparable system or method designed to identify releases from underground storage tanks in a manner consistent with the protection of human health and the environment;

5. Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

6. Rules for procedures and amount of fees to be assessed for the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund established pursuant to this article, which shall include a capitalization fee to be assessed
against all owners or operators of underground tanks to be used for initial establishment of the underground storage tank insurance fund;

(7) Procedures for making expenditures from the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund;

(8) Acceptable methods by which an owner or operator may demonstrate financial responsibility;

(9) Requirements for reporting of releases and corrective action taken in response to a release;

(10) Requirements for taking corrective action in response to a release from an underground storage tank;

(11) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(12) Requirements for certification of installation, removal, retrofit, testing and inspection of underground storage tanks and leak detection systems by a registered professional engineer or other qualified person;

(13) Requirements for public participation in the enforcement of the state underground storage tank program;

(14) Procedures establishing when and how the director determines if information obtained by any agency under this article is confidential;

(15) Standards of performance for new underground storage tanks; or

(16) Any other rules or standards necessary and appropriate for the effective implementation and administration of this article.

§22-17-7. Underground storage tank advisory committee; purpose.

The underground storage tank advisory committee is continued. The committee is composed of seven members, which shall include a member of the West
Virginia petroleum council, a member of the West Virginia service station dealers association, a member of the West Virginia petroleum marketers association, the director, a member of the West Virginia manufacturers association, the West Virginia insurance commissioner, and a representative from the citizenry-at-large who is appointed by the governor.

The committee is advisory to the director and the division of environmental protection regarding the expenditure of funds from the leaking underground storage tank response fund and the underground storage tank insurance fund created by this article. The director shall deliver to the committee annually a report on expenditures made from each fund. The committee shall consider any matter brought before it by the director or any member of the committee and may consider any matter referred to it by a person not a member of the committee. At the conclusion of its consideration of any proposal, the committee shall make its recommendation to the director. The director is not bound by any recommendations of the committee. The committee may also formulate general or long-range plans for improvements in the administration of the funds for the consideration of the director.

By the second Wednesday of January of each year the committee shall prepare and deliver to the director and to the Legislature a report of all matters it considered, recommendations it made and plans it formulated during the preceding calendar year. The report shall include any recommendation it may have for changes in the law which would be necessary to implement any of its administrative recommendations.

§22-17-8. Notification requirements.

(a) Underground storage tank owners shall notify the director of any underground storage tank brought into use on or after the tenth day of June, one thousand nine hundred eighty-eight, within thirty days of such use, on a form prescribed by the director. The notice shall specify the date of tank installation, tank location, type of construction, size and age of such tank and the type
of regulated substance to be stored therein. If, at the
time this information is required to be submitted, the
director has not prepared the form required by this
section, the owner shall nevertheless submit the infor-
mation in writing to the director.

(b) A person who sells a tank intended to be used as
an underground storage tank shall reasonably notify the
owner or operator of such tank of the owner's notifica-
tion requirements of this section.

(c) A new owner of any underground storage tank
shall notify the director in writing of the transfer of
ownership of any underground storage tank. The new
owner upon the effective date of such transfer becomes
subject to all provisions of this article. The director may
prescribe by rule the appropriate form and timing for
such notification.

§22-17-9. Registration requirements; undertaking activi-
ties without registration.

(a) No person may operate any underground storage
tank for the purpose of storing any regulated substance
identified or listed under this article without registering
with the director and paying a registration fee for such
underground storage tank.

(b) No person may install any underground storage
tank after the effective date of this article without first
registering said tank in a form and manner prescribed
by the director.

§22-17-10. Financial responsibility.

The director shall promulgate rules, as provided in
section six of this article, containing requirements for
maintaining evidence of financial responsibility as
deemed necessary and desirable for taking reasonable
corrective action and for compensating third parties for
bodily injury and property damage caused by sudden
and nonsudden accidental releases arising from operat-
ing an underground storage tank. Such means of
financial responsibility may include, but not be limited
to, insurance, guarantee, surety bond, letter of credit.
proof of assets or qualification as a self-insurer.
promulgating rules under this section, the director is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.


(a) The director shall promulgate performance standards for new underground storage tanks as provided in section six of this article. The performance standards for new underground storage tanks shall include, but not be limited to, design, construction, installation, release detection and compatibility standards.

(b) New underground storage tank construction standards must include at least the following requirements:

(1) That an underground storage tank will prevent releases of regulated substances stored therein, which may occur as a result of corrosion or structural failure, for the operational life of the tank;

(2) That an underground storage tank will be cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release or threatened release of stored regulated substances; and

(3) That materials used in the construction or lining of an underground storage tank are compatible with the regulated substances to be stored therein.

§22-17-12. Confidentiality.

(a) Any records, reports or information obtained from any persons under this article shall be available to the public, except that upon a showing satisfactory to the director by any person that records, reports or information, or a particular part thereof, to which the director or any officer, employee, or representative thereof has
access under this section, if made public, would divulge
information entitled to protection under section 1905 of
title 18 of the United States Code, such information or
particular portion thereof is confidential in accordance
with the purposes of this section, except that such
record, report, document or information may be dis-
closed to other officers, employees, or authorized
representatives of this state implementing the provisions
of this article.

(b) Any person who knowingly and willfully divulges
or discloses any information entitled to protection under
this section is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than five
thousand dollars, or imprisoned in the county jail for not
more than one year, or both fined and imprisoned.

(c) In submitting data under this article, a person
required to provide such data may designate the data
which he or she believes is entitled to protection under
this section and submit such designated data separately
from other data submitted under this article. A
designation under this subsection shall be made in
writing and in such manner as the director may
prescribe.

§22-17-13. Inspections, monitoring and testing.

(a) For the purposes of developing or assisting in the
development of any rule, conducting any study, taking
any corrective action or enforcing the provisions of this
article, any owner or operator of an underground
storage tank shall, upon request of the director, furnish
information relating to such tanks, their associated
equipment and contents, conduct reasonable monitoring
or testing, permit the director or his or her authorized
representative at all reasonable times to have access to,
and to copy all records relating to such tanks and permit
the director or his or her authorized representative to
have access to the underground storage tank for
corrective action.

(b) For the purposes of developing or assisting in the
development of any rule, conducting any study, taking
corrective action or enforcing the provisions of t
article, the director or his or her authorized representa-
tive may:

19 (1) Enter at reasonable times any establishment or
other place where an underground storage tank is
located;

22 (2) Inspect and obtain samples from any person of any
regulated substances contained in such tank;

24 (3) Conduct monitoring or testing of the tanks,
associated equipment, contents or surrounding soils, air,
surface, water or groundwater; and

27 (4) Take corrective action as specified in this article.

Each such inspection shall be commenced and
completed with reasonable promptness.

§22-17-14. Corrective action for underground petroleum
storage tanks.

1 (a) Prior to the effective date of rules promulgated
pursuant to subdivision (9) or (10), subsection (b), section
six of this article, the director is authorized to:

4 (1) Require the owner or operator of an underground
storage tank to undertake corrective action with respect
to any release of petroleum from said tank when the
director determines that such corrective action shall be
done properly and promptly by the owner or operator
if, in the judgment of the director, such action is
necessary to protect human health and the environment;
or

12 (2) Undertake corrective action with respect to any
release of petroleum into the environment from an
underground storage tank if, in the judgment of the
director, such action is necessary to protect human
health and the environment.

The corrective action undertaken or required under
this subsection shall be such as may be necessary to
protect human health and the environment. The director
shall use funds in the leaking underground storage tank
response fund established pursuant to this article for
payment of costs incurred for corrective action taken
under subparagraph (2) of this subsection in the manner set forth in subsection (e), section twenty-one of this article. The director shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment and where the director cannot identify a solvent owner or operator of the tank who will undertake action properly.

(b) Following the effective date of rules promulgated under subdivision (9) or (10), subsection (b), section six of this article, all actions or orders of the director described in subsection (a) of this section shall be in conformity with such rules. Following such effective date the director may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if, in the judgment of the director, such action is necessary to protect human health and environment and one or more of the following situations exists:

(1) If no person can be found within ninety days, or such shorter period as may be necessary to protect human health and the environment, who is an owner or operator of the tank concerned, subject to such corrective action rules and capable of carrying out such corrective action properly.

(2) A situation exists which requires prompt action by the director under this subsection to protect human health and the environment.

(3) Corrective action costs at a facility exceed the amount of coverage required pursuant to the provisions of section ten of this article and, considering the class or category of underground storage tank from which the release occurred, expenditures from the leaking underground storage tank response fund are necessary to assure an effective corrective action.

(4) The owner or operator of the tank has failed or refused to comply with an order of the director under this section or of the environmental quality board...
article one, chapter twenty-two-b of this code to comply
with the corrective action rules.

(c) The director is authorized to draw upon the
leaking underground storage tank response fund in
order to take action under subdivision (1) or (2),
subsection (b) of this section if the director has made
diligent good faith efforts to determine the identity of
the party or parties responsible for the release or
threatened release and:

(1) He or she is unable to determine the identity of
the responsible party or parties in a manner consistent
with the need to take timely corrective action; or

(2) The party or parties determined by the director
to be responsible for the release or threatened release
have been informed in writing of the director's deter-
mination and have been requested by the director to
take appropriate corrective action but are unable or
unwilling to take such action in a timely manner.

(d) The written notice to a responsible party must
inform the responsible party that if that party is
subsequently found liable for releases pursuant to
subsection (a) or (b) of this section, he or she will be
required to reimburse the leaking underground storage
tank response fund for the costs of the investigation,
information gathering and corrective action taken by
the director.

(e) If the director determines that immediate response
to an imminent threat to public health and welfare or
the environment is necessary to avoid substantial injury
or damage to persons, property or resources, corrective
action may be taken pursuant to subsections (a) and (b)
of this section without the prior written notice required
by subdivision (2), subsection (c) of this section. In such
a case the director must give subsequent written notice
to the responsible party within fifteen days after the
action is taken describing the circumstances which
required the action to be taken without prior notice.

(f) As used in this section, the term "owner" does not
include any person who, without participating in the
management of an underground storage tank and
otherwise not engaged in petroleum production, refining
or marketing, holds indicia of ownership primarily to
protect the person's security interest in the tank.

§22-17-15. Administrative orders; injunctive relief; requests for reconsideration.

(a) Whenever on the basis of any information, the
director determines that any person is in violation of any
requirement of this article, he or she may issue an order
stating with reasonable specificity the nature of the
violation and requiring compliance within a reasonable
specified time period or the director may commence a
civil action in the circuit court of the county in which
the violation occurred or in the circuit court of Kanawha
County for appropriate relief, including a temporary or
permanent injunction. The director may, except as
provided in subsection (b) of this section, stay any order
he or she issues upon application, until the order is
reviewed by the environmental quality board.

(b) Any person issued an order may file a notice of
request for reconsideration with the director not more
than seven days from the issuance of such order. The
notice of request for reconsideration shall identify the
order to be reconsidered and shall set forth in detail the
reasons for which reconsideration is requested. The
director shall grant or deny the request for reconsider-
ation within twenty days of the filing of the notice of
request of reconsideration.

§22-17-16. Civil penalties.

(a) Any violator who fails to comply with an order of
the director issued under subsection (a), section fifteen
of this article within the time specified in the order is
liable for a civil penalty of not more than twenty-five
thousand dollars for each day of continued
noncompliance.

(b) Any owner who knowingly fails to register or
knowingly submits false information pursuant to this
article is liable for a civil penalty not to exceed ten
thousand dollars for each tank which is not registered
or for which false information is submitted.

(c) Any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by the director under section six of this article is subject to a civil penalty not to exceed ten thousand dollars for each tank for each day of violation.

§22-17-17. Public participation.

Any adversely affected person may intervene in any civil or administrative proceeding under this article when such person claims an interest relating to the property or transaction which is the subject of the action and such person is so situated that the disposition of the action may as a practical matter impair or impede his or her ability to protect that interest.

§22-17-18. Appeal to environmental quality board.

Any person aggrieved or adversely affected by an order of the director made and entered in accordance with the provisions of this article may appeal to the environmental quality board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-17-19. Disclosures required in deeds and leases.

(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property, or the substrata of such property whether or not the grantor or lessor is at time of such conveyance or lease the owner of such substrata, contains an underground storage tank. The provisions of this subsection only apply to those grantors or lessors who owned or had an interest in the real property when the same or the substrata thereof contained an underground storage tank which was being actively used for storing any regulated substance or who have actual knowledge or reason to believe that such real property or the substrata thereof contains an underground storage tank.
§22-17-20. Appropriation of funds; underground storage tank administrative fund.

(a) The director shall collect annual registration fees from owners of underground storage tanks. The registration fee collected under this section shall not exceed twenty-five dollars per tank per year. All such registration fees and the net proceeds of all fines, penalties and forfeitures collected under this article including accrued interest shall be paid into the state treasury into a special fund designated "the underground storage tank administrative fund" to be used to defray the cost of administering this article in accordance with rules promulgated pursuant to section six of this article.

(b) The total fee assessed shall be sufficient to assure a balance in the fund of not to exceed four hundred thousand dollars at the beginning of each year.

(c) Any amount received pursuant to subsection (a) of this section which exceeds the annual balance required in subsection (b) of this section shall be deposited into the leaking underground storage tank response fund established pursuant to this article to be used for the purposes set forth therein.

(d) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by article XII, section 5 of the constitution of West Virginia. For the purposes of this section, the net proceeds of such fines, penalties and forfeitures are the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. In
making the appropriation for defraying the cost of
administering this article, the Legislature shall first
take into account the sums included in such special fund
prior to deducting such additional sums as may be
needed from the fines, penalties and forfeitures collected
pursuant to this article. At the end of each fiscal year
any unexpended balance of such collected fines, penal-
ties, forfeitures and registration fees shall not be
transferred to the general revenue fund but shall
remain in the fund.

§22-17-21. Leaking underground storage tank response
fund.

(a) Each underground petroleum storage tank owner
within this state shall pay an annual fee, if assessed by
the director, to establish a fund to assure adequate
response to leaking underground petroleum storage
tanks. The fees assessed pursuant to this section shall
not exceed twenty-five dollars per tank per year. The
proceeds of such assessment shall be paid into the state
treasury into a special fund designated “the leaking
underground storage tank response fund,” which is
hereby continued.

(b) Each owner of an underground petroleum storage
tank subject to a fee assessment under subsection (a) of
this section shall pay a fee based on the number of
underground petroleum storage tanks he or she owns.
The director shall vary the fees annually to a level
necessary to produce a fund of at least seven hundred
fifty thousand dollars at the beginning of each calendar
year taking into account those amounts deposited in the
fund pursuant to subsection (c), section twenty of this
article. In no event shall the fees assessed in this section
be set to produce revenues exceeding two hundred fifty
thousand dollars in any year.

(c) When the unobligated balance of the leaking
underground storage tank response fund exceeds one
million dollars at the end of a calendar year, fee
assessment under this section shall cease until such time
as the unobligated balance at the end of any year is less
than seven hundred fifty thousand dollars.
(d) At the end of each fiscal year, any unexpended balance including accrued interest of such collected fees shall not be transferred to the general revenue fund but shall remain in the fund.

(e) The director is authorized to enter into agreements and contracts and to expend the moneys in the fund for the following purposes:

1. Responding to underground petroleum storage tank releases when, based on readily available information, the director determines that immediate action may prevent or mitigate significant risk of harm to human health, safety or the environment from regulated substances in situations for which no federal funds are immediately available for such response, cleanup or containment: Provided, That the director shall apply for and diligently pursue available federal funds for such releases at the earliest possible time.

2. Reimbursing any person for reasonable cleanup costs incurred with the authorization of the director in responding to an underground petroleum storage tank release.

3. Reimbursing any person for reasonable costs incurred with the authorization of the director responding to perceived, potential or threatened releases from underground petroleum storage tanks where response activities do not indicate that any release has occurred.

4. Financing the nonfederal share of the cleanup and site reclamation activities pursuant to Subtitle I of the federal Resource Conservation and Recovery Act, as amended, as well as future operation and maintenance costs for these sites: Provided, That no portion of the moneys in the leaking underground storage tank response fund shall be used for defraying the costs of administering this article.

5. Financing the nonfederal share of costs incurred in compensating third parties, including payment of judgments, for bodily injury and property damage, caused by release of petroleum into the environment from an underground storage tank.
§22-17-22. Underground storage tank insurance fund.

(a) The director may establish an underground storage tank insurance fund for the purpose of satisfying the financial responsibility requirements established pursuant to section ten of this article. In addition to the capitalization fee to be assessed against all owners or operators of underground storage tanks provided by subdivision (6), subsection (b), section six of this article, the director shall promulgate rules establishing an annual financial responsibility assessment to be assessed on and paid by owners or operators of underground storage tanks who are unable to obtain insurance or otherwise meet the financial responsibility requirements established pursuant to section ten of this article. Such assessments shall be paid into the state treasury into a special fund designated "the underground storage tank insurance fund".

(b) At the end of each fiscal year, any unexpended balance of such assessment shall not be transferred to the general revenue fund but shall remain in the underground storage tank insurance fund.

§22-17-23. Duplicative enforcement prohibited.

No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event unless such subsequent proceeding involves the violation of a permit or permitting requirement of such other article.

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-4. Designation of division of environmental protection as the state hazardous waste management lead agency.
§22-18-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.
§22-18-7. Authority and jurisdiction of other state agencies.
§22-18-8. Permit process; undertaking activities without a permit.
§22-18-11. Transition program for existing facilities.
§22-18-13. Inspections; right of entry; sampling; reports and analyses; subpoenas.
§22-18-17. Civil penalties and injunctive relief.
§22-18-18. Imminent and substantial hazards; orders; penalties; hearings.
§22-18-20. Appeal to environmental quality board.
§22-18-23. State program to be consistent with and equivalent to federal program.


1 This article may be known and cited as the “Hazardous Waste Management Act.”


1 (a) The Legislature finds that:

2 (1) Continuing technological progress and increases in
3 the amount of manufacture and the abatement of air
4 and water pollution have resulted in ever increasing
5 quantities of hazardous wastes;

6 (2) The public health and safety and the environment
7 are threatened where hazardous wastes are not man-
8 aged in an environmentally sound manner;

9 (3) The knowledge and technology necessary for
10 alleviating adverse health, environmental and aesthetic
11 impacts resulting from current hazardous waste man-
12 agement and disposal practices are generally available;

13 (4) The manufacture, refinement, processing, treat-
14 ment and use of coal, raw chemicals, ores, petroleum,
15 gas and other natural and synthetic products are
16 activities that make a significant contribution to the
17 economy of this state; and

18 (5) The problem of managing hazardous wastes has
19 become a matter of statewide concern.
(b) Therefore, it is hereby declared that the purposes of this article are:

(1) To protect the public health and safety and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes;

(3) To assure the safe and adequate management of hazardous wastes within this state; and

(4) To assume regulatory primacy through Subtitle C of the Resource Conservation and Recovery Act.


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

(1) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(2) "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;

(3) "Division" means the division of environmental protection;

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


(6) "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;

(7) "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;

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

(9) "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;

(10) "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;

(11) "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;


(13) "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;
(14) "Subtitle C" means Subtitle C of the Resource Conservation and Recovery Act;

(15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition 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;

(16) "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 community 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.

§22-18-4. Designation of division of environmental protection as the state hazardous waste management lead agency.

The division of environmental protection is hereby designated as the hazardous waste management lead agency for this state for purposes of Subtitle C of the Resource Conservation and Recovery Act, and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the federal environmental protection agency and other agencies of the federal government, this state and other states and other interested persons in all matters relating to hazardous
§22-18-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the Resource Conservation and Recovery Act.

(b) The director shall integrate all provisions of this article for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with the appropriate provisions of: The public health laws in chapter sixteen of this code; article sixteen-a, chapter nineteen of this code; this chapter; and chapters twenty-two-b and twenty-two-c of this code.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts or cooperative arrangements, under such terms and conditions as he or she deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

(d) The director shall cooperate with and may receive and expend money from the federal government and other sources.

(e) The director shall (1) encourage, participate in and conduct an ongoing investigation and analysis of methods, incentives, technologies of source reduction, reuse, recycling or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste, and (2) investigate the feasibility of operating an information clearinghouse for hazardous wastes.

(f) The director shall provide for the continuing education and training of appropriate division personnel in matters of hazardous waste management.

(a) The director has overall responsibility for the promulgation of rules under this article. The director shall promulgate the following rules, in consultation with the department of health and human resources, 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, and the environmental quality board. In promulgating and revising such rules, 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 establishing a plan for the safe and effective management of hazardous wastes within the state;

(2) Rules 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 subparagraph (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 production 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 through rule prescribed under authority 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 recordation 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 information, to be placed on the public record;

(3) Rules 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 su
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 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 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 shall include, but need not be limited to, requirements respecting: (A) Maintaining 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, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however, 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 specifying the terms and conditions under which the director shall issue, modify, suspend, revoke or deny such permits as may be required by this article;

(6) Rules 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 the providing of any other information as may be necessary to achieve the purposes of this article;

(7) Rules establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites;

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

(9) Rules establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;
(10) Rules 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 establishing a schedule of fees to recover the costs of processing permit applications and permit renewals;

(12) Rules, 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; and (D) 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 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;

(13) Rules: (A) Establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article and in accordance with the provisions of article five of this chapter. Such permits shall be in addition to those permits required by section eight of this article;

(B) For the monitoring and control of air emissions at hazardous waste treatment storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be neces-
sary to protect human health and the environment; and

(C) Establishing standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section or which is produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section and any other material, as may be necessary to protect human health and the environment: Provided, That such legislative rules shall be consistent with Subtitle C.

Any person aggrieved or adversely affected by an order of the director made and entered to implement or enforce the rules required by this subdivision or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of the rules required by this subdivision, may appeal to the air quality board in accordance with the procedure set forth in article one, chapter twenty-two-b of this code, and orders made and entered by said board are subject to judicial review in accordance with the procedures set forth in article one, chapter twenty-two-b of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

(14) Rules developing performance standards and other requirements under this section as may be necessary to protect public health and the environment from any hazard associated with the management of used oil and recycled oil. The director shall ensure that such rules do not discourage the recovery or recycling of used oil. For these purposes, "used oil" shall mean any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
(15) Such other rules as are necessary to effectuate the purposes of this article.

(b) The rules required by this article to be promulgated shall be reviewed and, where necessary, revised not less frequently than every three years. Additionally, the rules required to be promulgated by this article shall be revised, as necessary, within two years 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 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 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.

§22-18-7. Authority and jurisdiction of other state agencies.

(a) The commissioner of the division of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such legislative rules shall be consistent with applicable rules issued by the federal department of transportation and consistent with this article: Provided, That such legislative rules apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

In lieu of those enforcement and inspection powers conferred upon the commissioner of the division of highways elsewhere by law with respect to the transportation of hazardous waste, the commissioner of the division of highways has the same enforcement and
inspection powers as those granted to the director, or
authorized representative or agent, or any authorized
employee or agent of the division, as the case may be,
under sections twelve, thirteen, fourteen, fifteen,
sixteen, seventeen and eighteen of this article. The
limitations of this subsection do not affect in any way
the powers of the division of highways with respect to
weight enforcement.

(b) The public service commission, in consultation
with the director, and avoiding inconsistencies with and
avoiding duplication to the maximum extent practicable
with rules required to be promulgated pursuant to this
article by the director or any other rule-making
authority, and in accordance with the provisions of
chapter twenty-nine-a of this code, shall promulgate, as
necessary, rules governing the transportation of hazardous
wastes by railroad in this state. Such rules shall be
consistent with applicable rules and regulations issued
by the federal department of transportation and
consistent with this article: Provided, That such rules
apply to the interstate transportation of hazardous waste
within the boundaries of this state, as well as the
intrastate transportation of such waste.

In lieu of those enforcement and inspection powers
conferred upon the public service commission elsewhere
by law with respect to the transportation of hazardous
waste, the public service commission has the same
enforcement and inspection powers as those granted to
the director or authorized representative or agent or any
authorized employee or agent of the division, as the case
may be, under sections twelve, thirteen, fourteen,
fifteen, sixteen, seventeen and eighteen of this article.

(c) The rules required to be promulgated pursuant to
subsections (a) and (b) of this section apply equally to
those persons transporting hazardous wastes generated
by others and to those transporting hazardous wastes
they have generated themselves or combinations thereof.
Such rules shall establish such standards, applicable to
transporters of hazardous waste identified or listed
under this article, as may be necessary to protect public
health, safety and the environment. Such stand
shall include, but need not be limited to, requirements respecting (A) record keeping concerning such hazardous waste transported, and its source and destination; (B) transportation of such waste only if properly labeled; (C) compliance with the manifest system referred to in subdivision (3), subsection (a), section six of this article; and (D) transportation of all such hazardous waste only to the hazardous waste treatment, storage or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under: (1) This article or any rule required by this article to be promulgated; (2) Subtitle C; (3) 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 (4) Title I of the Federal Marine Protection, Research and Sanctuaries Act.

(d) The secretary of the department of health and human resources, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, shall promulgate rules pursuant to article five-j, chapter twenty of this code. The secretary of the department of health and human resources shall have the same enforcement and inspection powers as those granted to the director or agent or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article, and in addition thereto, the department of health and human resources shall have those inspection and enforcement powers with respect to hazardous waste with infectious characteristics as provided for in article five-j, chapter twenty of this code.

(e) The environmental quality board, in consultation with the director, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate water quality standards governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of
hazardous waste as may be required by this article. The
standards shall be consistent with this article.

(f) All legislative rules promulgated pursuant to this
section shall be consistent with rules and regulations
promulgated by the federal environmental protection
agency pursuant to the resource conservation and
recovery act.

(g) The director shall submit written comments to the
legislative rule-making review committee regarding all
legislative rules promulgated pursuant to this article.

§22-18-8. Permit process; undertaking activities without
a permit.

(a) No person may own, construct, modify, operate or
close any facility or site for the treatment, storage or
disposal of hazardous waste identified or listed under
this article, nor shall any person store, treat or dispose
of any such hazardous waste without first obtaining a
permit from the director for such facility, site or activity
and all other permits as required by law. Such permit
shall be issued, after public notice and opportunity for
public hearing, upon such reasonable terms and condi-
tions as the director may direct if the application,
together with all supporting information and data and
other evidence establishes that the construction, modi-
fication, operation or closure, as the case may be, of the
hazardous waste facility, site or activity will not violate
any provisions of this article or any of the rules
promulgated by the director as required by this article:
Provided, That in issuing the permits required by this
subsection, the director shall not regulate those aspects
of a hazardous waste treatment, storage or disposal
facility which are the subject of the permitting or
licensing requirements of: (1) Section seven of this
article, and which need not be regulated in order for the
director to perform his or her duties under this article;
or (2) subdivision (13), subsection (a), section six of this
article, which need not be regulated under any other
provision of this article.

(b) The director shall prescribe a form of application
for all permits issued by the director.
(c) The director may require a plan for the closure of such facility or site to be submitted along with an application for a permit which plan for closure shall comply in all respects with the requirements of this article and any rules promulgated hereunder. Such plan of closure is subject to modification upon application by the permit holder to the director and approval of such modification by the director.

(d) An environmental analysis shall be submitted with the permit application for all hazardous waste treatment, storage or disposal facilities which are major facilities as that term may be defined by rules promulgated by the director: Provided, That facilities in existence on the nineteenth day of November, one thousand nine hundred eighty, need not comply with this subsection. Such environmental analysis shall contain information of the type, quality and detail that will permit adequate consideration of the environmental, technical and economic factors involved in the establishment and operation of such facilities:

(1) The portion of the applicant's environmental analysis dealing with environmental assessments shall contain, but not be limited to:

(A) The potential impact of the method and route of transportation of hazardous waste to the site and the potential impact of the establishment and operation of such facilities on air and water quality, existing land use, transportation and natural resources in the area affected by such facilities;

(B) A description of the expected effect of such facilities; and

(C) Recommendations for minimizing any adverse impact.

(2) The portion of the applicant's environmental analysis dealing with technical and economic assessments shall contain, but not be limited to:

(A) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity and location on the
site and estimates of the cost and charges to be made
for material accepted, if any;

(B) Provisions for managing the site following
cessation of operation of the facility; and

(C) Qualifications of owner and operation, including
a description of the applicant's prior experience in
hazardous waste management operations.

(e) Any person undertaking, without a permit, any of
the activities for which a permit is required under this
section or under section seven of this article, or any
person violating any term or condition under which a
permit has been issued pursuant to this section or
pursuant to section seven of this article, is subject to the
enforcement procedures of this article.

(f) Notwithstanding any provision to the contrary in
subsections (a) through (e) of this section or section seven
of this article, any surface coal mining and reclamation
operation that has a permit covering any coal mining
wastes or overburden which has been issued or approved
under article three of this chapter, shall be considered
to have all necessary permits issued pursuant to this
article with respect to the treatment, storage or disposal
of such wastes or overburden. Rules promulgated under
this article are not applicable to treatment, storage or
disposal of coal mining wastes and overburden which
are covered by such a permit.


(a) All permits issued after the date the state is
delegated authority by the federal environmental
protection agency to administer the portion of the
federal hazardous waste program covered under the
Hazardous and Solid Waste Amendments of 1984 shall
contain conditions requiring corrective action for all
releases of hazardous waste or constituents from any
solid waste management unit at a treatment, storage or
disposal facility seeking a permit under this article
regardless of the time at which waste was placed in such
unit. Permits issued under this article shall contain
schedules of compliance for such corrective action
(where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(b) The director shall amend the standards under subdivision (4), subsection (a), section six of this article, regarding corrective action required at facilities for the treatment, storage or disposal of hazardous waste listed or identified in rules promulgated pursuant to subdivision (2), subsection (a), section six of this article, to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the director that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such rules shall take effect immediately upon promulgation, and shall apply to:

(1) All facilities operating under permits issued under subdivision (4), subsection (a), section six of this article; and

(2) All landfills, surface impoundments and waste pile units (including any new units, replacement of existing units or lateral expansions of existing units) which receive hazardous waste after the twenty-sixth day of July, one thousand nine hundred eighty-two. Pending promulgation of such rules the director shall issue corrective action orders for facilities referred to in subdivisions (1) and (2) above on a case-by-case basis consistent with the purposes of this subsection.


Before the issuing of a permit to any person with respect to any facility for the treatment, storage or disposal of hazardous waste under sections seven or eight of this article, the director or other permit issuing authority shall:

(a) Cause to be published as a Class I-O legal advertisement in a newspaper of general circulation, and the publication area is the county wherein the real
§22-18-11. Transition program for existing facilities.

Any person who owns or operates a facility required to have any permit under this article, which facility was in existence on the ninth day of July, one thousand nine hundred eighty-one, shall be treated as having been issued such permit until such time as final administrative disposition is made with respect to an application for such permit: Provided. That on said date such facility is operating and continues to operate in compliance with the interim status requirement of the federal environmental protection agency established pursuant to section 3005 of the federal Solid Waste Disposal Act, as amended, if applicable, and in such a manner as will not cause or create a substantial risk of
a health hazard or public nuisance or a significant adverse effect upon the environment: Provided, however, that the owner or operator of such facility shall make a timely and complete application for such permit in accordance with rules promulgated pursuant to this article specifying procedures and requirements for obtaining such permit.


Information obtained by any agency under this article shall be available to the public unless the director certifies such information to be confidential. The director may make such certification where any person shows, to the satisfaction of the director, that the information or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this section may be construed as limiting the disclosure of information by the division to any officer, employee or authorized representative of the state or federal government concerned with effecting the purposes of this article.

Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

§22-18-13. Inspections; right of entry; sampling; reports and analyses; subpoenas.

(a) The director or any authorized representative, employee or agent of the division, upon the presentation of proper credentials and at reasonable times, may enter any building, property, premises, place, vehicle or permitted facility where hazardous wastes are or have been generated, treated, stored, transported or disposed of for the purpose of making an investigation with reasonable promptness to ascertain the compliance by any person with the provisions of this article or the rules promulgated by the director or permits issued by the director hereunder. Nothing contained in this section eliminates any obligation to follow any process that may
(b) The director or his or her authorized representative, employee or agent shall make periodic inspections at every permitted facility as necessary to effectively implement and enforce the requirements of this article or the rules promulgated by the director or permits issued by the director hereunder. After an inspection is made, a report shall be prepared and filed with the director and a copy of such inspection report shall be promptly furnished to the person in charge of such building, property, premises, place, vehicle or facility. Such inspection reports shall be available to the public in accordance with the provisions of article one, chapter twenty-nine-b of this code.

(c) Whenever the director has cause to believe that any person is in violation of any provision of this article, any condition of a permit issued by the director, any order or any rule promulgated by the director under this article, he or she shall immediately order an inspection of the building, property, premises, place, vehicle or permitted facility at which the alleged violation is occurring.

(d) The director or any authorized representative, employee or agent of the division may, upon presentation of proper credentials and at reasonable times, enter any establishment, building, property, premises, vehicle or other place maintained by any person where hazardous wastes are being or have been generated, transported, stored, treated or disposed of to inspect and take samples of wastes, soils, air, surface water and groundwater and samples of any containers or labelings for such wastes. In taking such samples, the division may utilize such sampling methods as it determines to be necessary, including, but not limited to, soil borings and monitoring wells. If the representative, employee or agent obtains any such samples, prior to leaving the premises, he or she shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. The division shall promptly provide a copy of any analysis
(e) Upon presentation of proper credentials and at reasonable times, the director or any authorized representative, employee or agent of the division shall be given access to all records relating to the generation, transportation, storage, treatment or disposal of hazardous wastes in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the director or an authorized representative, employee or agent shall be furnished with copies of all such records or given the records for the purpose of making copies. If the director, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of this article, he or she is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.


(a) If the director determines, upon receipt of any information, that (1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated or disposed of, or (2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he or she may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the director deems reasonable to ascertain the nature and extent of such hazard.

(b) In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the director finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he or she may issue an order requiring the most recent previous
owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

(c) An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the director within thirty days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis and reporting. The director may, after providing such person with an opportunity to confer with the director respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal, and such modifications in such proposal as the director deems reasonable to ascertain the nature and extent of the hazard.

(d) The following duties shall be carried out by the director:

(1) If the director determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the director, if the director deems any such action carried out by an owner or operator to be unsatisfactory or if the director cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis or reporting, he or she may conduct monitoring, testing or analysis (or any combination thereof) which he or she deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or authorize a state or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the director or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the director which confirms the results of the order issued under subsection (a) or (b) section.
(e) If the monitoring, testing, analysis and reporting conducted pursuant to this section indicates that a potential hazard to human health or the environment may or does exist, the director may issue an appropriate order requiring that the hazard or risk of hazard be eliminated.

(f) The director may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the circuit court in which the defendant is located, resides or is doing business. Such court has jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed five thousand dollars for each day during which such failure or refusal occurs.


(a) If the director, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or rules issued or promulgated hereunder, he or she may:

(1) Issue an order stating with reasonable specificity the nature of the 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 (c) of section seventeen of this article;

(3) Institute a civil action in accordance with subsection (c) of section seventeen of this article; or

(4) Request the attorney general, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section sixteen of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the director not more than seven days from the issuance of such order and shall have a hearing before the director
contesting the terms and conditions of such order within
ten days of the filing of such notice of a request for
reconsideration. The filing of a notice of request for
reconsideration does not stay or suspend the execution
or enforcement of such cease and desist order.


(a) Any person who knowingly (1) transports any
hazardous waste identified or listed under this article
to a facility which does not have a permit required by
this article, Section 3005 of the Federal Solid Waste
Disposal Act, as amended, the laws of any other state
which has an authorized hazardous waste program
pursuant to Section 3006 of the federal Solid Waste
Disposal Act, as amended, or Title I of the federal
Marine Protection, Research and Sanctuaries Act; (2)
treats, stores or disposes of any such hazardous waste
either (A) without having obtained a permit required by
this article, or by Title I of the federal Marine Protec-
tion, Research and Sanctuaries Act, or by Section 3005
or 3006 of the federal Solid Waste Disposal Act, as
amended, or (B) in knowing violation of a material
condition or requirement of such permit, is guilty of a
felony, and, upon conviction thereof, shall be fined not
to exceed fifty thousand dollars for each day of violation
or confined in the penitentiary not less than one nor
more than two years, or both such fine and imprison-
ment or, in the discretion of the court, be confined in
jail not more than one year in addition to the above fine.

(b) Any person who knowingly (1) makes any false
material statement or representation in any application,
label, manifest, record, report, permit or other docu-
ment filed, maintained or used for purposes of com-
pliance with this article; or (2) generates, stores, treats,
transports, disposes of or otherwise handles any hazard-
ous waste identified or listed under this article (whether
such activity took place before or takes place after the
effective date of this article) and who knowingly
destroys, alters or conceals any record required to be
maintained under rules promulgated by the director
pursuant to this article, is guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not to exceed
twenty-five thousand dollars, or sentenced to imprison-
ment for a period not to exceed one year, or both fined
and sentenced to imprisonment for each violation.

(c) Any person convicted of a second or subsequent
violation of subsections (a) and (b) of this section, is
guilty of a felony, and, upon such conviction, shall be
confined in the penitentiary not less than one nor more
than three years, or fined not more than fifty thousand
dollars for each day of violation, or both such fine and
imprisonment.

(d) Any person who knowingly transports, treats,
stores or disposes of any hazardous waste identified or
listed pursuant to this article in violation of subsection
(a) of this section, or having applied for a permit
pursuant to subdivision (13), subsection (a), section six
or sections seven and eight of this article, and knowingly
either (1) fails to include in a permit application any
material information required pursuant to this article,
or rules promulgated hereunder, or (2) fails to comply
with applicable interim status requirements as provided
in section eleven of this article and who thereby exhibits
an unjustified and inexcusable disregard for human life
or the safety of others and he or she thereby places
another person in imminent danger of death or serious
bodily injury, is guilty of a felony, and, upon conviction
thereof, shall be fined not more than two hundred fifty
dollars or imprisoned not less than one year
nor more than four years or both such fine and
imprisonment.

(e) As used in subsection (d) of this section, the term
"serious bodily injury" means:

(1) Bodily injury which involves a substantial risk of
death;

(2) Unconsciousness;

(3) Extreme physical pain;

(4) Protracted and obvious disfigurement; or

(5) Protracted loss or impairment of the function of
a bodily member, organ or mental faculty.
§22-18-17. Civil penalties and injunctive relief.

(a) (1) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than seventy-five hundred dollars for each day of such violation, not to exceed a maximum of twenty-two thousand five hundred dollars. In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by the director by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes 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 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 environmental quality board in accordance with the provisions of article one, chapter twenty-two-b of this code. The authority to levy an administrative penalty is in addition
to all other enforcement provisions of this article and the
payment of any assessment does not affect the availa-
bility 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 per day of each 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 issued pursuant to subsection (a) of section
six of this article. The net proceeds of assessments
collected pursuant to this subsection shall be deposited
in the hazardous waste emergency response fund
established pursuant to section three, article nineteen of
this chapter.

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

(b) Any person who violates any provision of this
article, any permit or any rule or order issued pursuant
to this article is 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.

(c) The director 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 or order
issued pursuant to this article. In seeking an injunction,
it is not necessary for the director to post bond nor to
allege or prove at any stage 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 reme-
(d) Upon request of the director, 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.

(e) In any 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.

§22-18-18. Imminent and substantial hazards; orders; penalties; hearings.

(a) Notwithstanding any provision of this article to the contrary, the director, upon receipt of information, or upon observation or discovery that the handling, storage, transportation, treatment or disposal of any hazardous waste may present an imminent and substantial endangerment to public health, safety or the environment, may:

(1) Request the attorney general or the appropriate prosecuting attorney to commence an action in the circuit court of the county in which the hazardous condition exists to immediately restrain any person contributing to such handling, storage, transportation, treatment or disposal to stop such handling, storage, transportation, treatment or disposal or to take such other action as may be necessary; or

(2) Take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Any person who willfully violates, or fails or refuses to comply with, any order of the director under subsection (a) of this section may, in an action brought in the appropriate circuit court to enforce such orders, be fined not more than five thousand dollars for each day in which such violation occurs or such failure to comply continues.

(a) Any person may commence a civil action on his or her own behalf against any person who is alleged to be in violation of any provision of this article or any condition of a permit issued or rules promulgated hereunder, except that no action may be commenced under this section prior to sixty days after the plaintiff has given notice to the appropriate enforcement, permit issuing or rule-making authority and to the person against whom the action will be commenced, or if the state has commenced and is diligently prosecuting a civil or criminal action pursuant to this article: Provided, That such person may commence a civil action immediately upon notification in the case of an action under subsection (b) of this section. Such actions may be brought in the circuit court in the county in which the alleged violation occurs or in the circuit court of Kanawha County.

(b) Any person may commence a civil action against the appropriate enforcement, permit issuing or rule-making authority where there is alleged a failure of such authority to perform any nondiscretionary duty or act under this article. Such actions may be brought only in the circuit court of Kanawha County.

(c) Any person may petition the appropriate rule-making authority for rule-making on an issue arising under this article. The appropriate rule-making authority, if it believes such issue to merit rule making, may commence any studies and investigations necessary to issue rules. A decision by the appropriate rule-making authority not to pursue rule making must be set forth in writing with substantial reasons for refusing to do so.

(d) Nothing in this article restricts any rights of any person or class of persons under statute or common law.

(e) In issuing any final order in any action brought pursuant to this section any court with jurisdiction may award costs of litigation, including reasonable attorney's fees and expert witnesses fees, to any party whenever the court determines such award to be appropriate.
(f) Any enforcement, permit issuing or rule-making authority may intervene as a matter of right in any suit brought under this section.

(g) Any person may intervene as a matter of right in any civil action or administrative action instituted under this article.

(h) Notwithstanding any provision of this article to the contrary, any person may maintain an action to enjoin a nuisance against any permit holder or other person subject to the provisions of this article and may seek damages in said action, all to the same extent and for all intents and purposes as if this article were not enacted, if such person maintaining such action and seeking such damages would otherwise have standing to maintain such action and be entitled to damages by any other rule of law.

§22-18-20. Appeal to environmental quality board.

Any person aggrieved or adversely affected by an order of the director made and entered in accordance with the provisions of this article, or by the failure or refusal of the director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the director under the provisions of this article, may appeal to the environmental quality board, in accordance with the provisions of article one, chapter twenty-two-b of this code.


(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property or the subsurface of such property, (whether or not the grantor or lessor is at the time of such conveyance or lease the owner of such subsurface) was used for the storage, treatment or disposal of hazardous waste. The provisions of this subsection only apply to those grantors or lessors who owned or had an interest in the real property when
same or the subsurface thereof was used for the purpose of storage, treatment or disposal of hazardous waste or who have actual knowledge that such real property or the subsurface thereof was used for such purpose or purposes at any time prior thereto.

(b) Any grantee of real estate or of any substrata underlying said real estate or any lessee for a term who intends to use the real estate conveyed or let or any substrata underlying the same for the purpose of storing, treating or disposing of hazardous waste shall disclose in writing at the time of such conveyance or lease or within thirty days prior thereto such fact to the grantor or lessor of such real estate or substrata. Such disclosure shall describe the proposed location upon said property of the site to be used for the storage, treatment or disposal of hazardous waste, the identity of such waste, the proposed method of storage, treatment or disposal to be used with respect to such waste and any and all other information required by rules of the director.


The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by article XII, section 5 of the constitution of West Virginia. For the purposes of this section, the net proceeds of such fines, penalties and forfeitures shall be deemed the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the state treasury into a special fund designated "The Hazardous Waste Management Fund." In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in such special fund prior to deducting such additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.
§22-18-23. State program to be consistent with and equivalent to federal program.

The program for the management of hazardous waste pursuant to this article shall be equivalent to and consistent with the federal program established pursuant to Subtitle C of the federal Solid Waste Disposal Act, as amended.


No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event unless such subsequent proceeding involves the violation of a permit or permitting requirement of such other article.


(1) Financial responsibility required by subdivision (4), subsection (a), section six of this article may be established in accordance with rules promulgated by the director by any one, or any combination, of the following: Insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In promulgating requirements under this section, the director is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.

(2) In any case where the owner or operator is in bankruptcy reorganization, or arrangement pursuant to the federal bankruptcy code or where (with reasonable diligence) jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor
is entitled to invoke all rights and defenses which would
have been available to the owner or operator if any
action had been brought against the owner or operator
by the claimant and which would have been available
to the guarantor if an action had been brought against
the guarantor by the owner or operator.

(3) The total liability of any guarantor is limited to
the aggregate amount which the guarantor has provided
as evidence of financial responsibility to the owner or
operator under this article. Nothing in this subsection
limits any other state or federal statutory contractual or
common law liability of a guarantor to its owner or
operator including, but not limited to, the liability of
such guarantor for bad faith either in negotiating or in
failing to negotiate the settlement of any claim. Nothing
in this subsection diminishes the liability of any person
under section 107 or 111 of the Comprehensive Environ-
mental Response Compensation and Liability Act of
1980 or other applicable law.

(4) For the purposes of this section, the term "guaran-
tor" means any person other than the owner or operator
who provides evidence of financial responsibility for an
owner or operator under this section.

ARTICLE 19. HAZARDOUS WASTE EMERGENCY RESPONSE
FUND.

§22-19-1. Findings; purpose.
§22-19-4. Fee assessments; tonnage fees; due dates of payments; interest on
unpaid fees.
§22-19-5. Director's responsibilities; fee schedules; authorized expenditures;
other powers of director; authorizing civil actions; assistance
of attorney general or prosecuting attorney.

§22-19-1. Findings; purpose.

The Legislature recognizes that large quantities of
hazardous waste are generated within the state, and
that emergency situations involving hazardous waste
can and will arise which may present a hazard to human
health, safety or the environment. The Legislature also
recognizes that some hazardous waste has been stored.
treated or disposed of at sites in the state in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980, which provides for federal assistance to respond to hazardous substance emergencies and to remove and remedy the threat of damage to the public health or welfare or to the environment, and declares that West Virginia desires to produce revenue for matching the federal assistance provided under the federal act. Therefore, the Legislature hereby creates a hazardous waste emergency fund to provide state funds for responding to hazardous waste emergencies, matching federal financial assistance for restoring hazardous waste sites and other costs or expenses incurred in the administration of this article.


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

(1) “Cleanup” means such actions as may be necessary to monitor, assess and evaluate the threat of release of hazardous waste, the containment, collection, control, identification, treatment, dispersal, removal or disposal of hazardous waste or other such actions as may be necessary to respond to hazardous waste emergencies or to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, and includes, where necessary, replacement of existing, or provision of alternative, drinking water supplies that have been contaminated with hazardous waste as a result of an emergency;

(2) “Cleanup costs” means all costs incurred by the director, or with the approval of the director, by any state agency or person participating in the cleanup of a hazardous waste emergency or remedial action;

(3) “Generator” means any person, corporation, partnership, association or other legal entity, by site location, whose act or process produces hazardous waste as identified or listed by the director in rules promul-
23 gated pursuant to section six, article eighteen of this
24 chapter, in an amount greater than twelve thousand
25 kilograms per year;
26
27 All other terms have the meaning as prescribed in the
28 rules promulgated by the director pursuant to the
29 provisions of section six, article eighteen of this chapter.
30
31 §22-19-3. Hazardous waste emergency response fund;
32 components of fund.
33
34 (a) The special fund designated "The Hazardous
35 Waste Emergency Response Fund," hereinafter referred
36 to as "the fund," shall be continued in the state treasury.
37
38 (b) All generator fee assessments, any interest or
39 surcharge assessed and collected by the director,
40 interest accruing on investments and deposits of the
41 fund, and any other moneys designated shall be paid
42 into the fund.

43 §22-19-4. Fee assessments; tonnage fees; due dates of
44 payments; interest on unpaid fees.
45
46 (a) Each generator of hazardous waste within this
47 state shall pay an annual fee based upon the amount of
48 hazardous waste generated as reported to the director
49 by the generator on a fee assessment form prescribed
50 by the director submitted pursuant to article eighteen
51 of this chapter. The director shall establish a fee
52 schedule according to the following: Full assessment for
53 generated hazardous waste disposed or treated off-site;
54 ninety percent of the full assessment for generated
55 hazardous waste either treated or disposed on-site;
56 seventy-five percent of the full assessment for generated
57 hazardous waste treated off-site so that such waste is
58 rendered nonhazardous; and twenty-five percent of the
59 full assessment for generated hazardous waste treated
60 on-site so that such waste is rendered nonhazardous:  
61 Provided, That the generator fee assessment does not
62 apply to the following: (1) Those wastes listed in
63 paragraph (A), subdivision two, subsection (a), section
64 six, article eighteen of this chapter; (2) sludge from any
65 publicly owned treatment works in the state; (3) any
66 discharge to waters of the state of hazardous waste
pursuant to a valid water pollution control permit issued
under federal or state law; (4) any hazardous wastes
beneficially used or reused or legitimately recycled or
reclaimed; (5) hazardous wastes which are created or
retrieved pursuant to an emergency or remedial action
plan; (6) hazardous wastes whose sole characteristic as
a hazardous waste is based on corrosivity and which are
subjected to on-site elementary neutralization in con-
tainers or tanks.

(b) Each generator of hazardous waste within the
state subject to a fee assessment under subsection (a) of
this section shall pay a fee based on its annual tonnage
of generated hazardous waste. Any unexpended balance
of such collected fees shall not be transferred to the
general revenue fund, but shall remain in the fund. The
director shall vary the fees annually to a level necessary
to produce a fund of at least one million dollars at the
beginning of each calendar year, but in no event shall
the fees established be set to produce revenue exceeding
five hundred thousand dollars in any year. When the
fund's unobligated balance exceeds one million five
hundred thousand dollars at the end of the calendar
year, generator assessments under this article shall
cease until such time as the fund's unobligated balance
at the end of any year is less than one million dollars.

(c) Generator fee assessments are due and payable to
the division of environmental protection on the fifteenth
day of January of each year. Such payments shall be
accompanied by information in such form as the
director may prescribe.

(d) If the fees or any portion thereof are not paid by
the date prescribed, interest accrues upon the unpaid
amount at the rate of ten percent per annum from the
date due until payment is actually made. Such interest
payments shall be deposited in the fund. If any gener-
ator fails to pay the fees imposed before April one of the
year in which they are due, there is imposed in addition
to the fee and interest determined to be owed a
surcharge equivalent to the total amount of the fee
which shall also be collected and deposited in the fund.
§22-19-5. **Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.**

(a) The director shall collect all fees assessed pursuant to this article and administer the fund. The fee schedule shall be published in the state register by the first day of August of each year. Each generator who filed the fee assessment form prescribed by the director shall be notified and provided with a copy of the fee schedule by certified mail. In the event the fee schedule is not published by the first day of August, the date prescribed for payment in section four of this article shall be advanced by the same number of days that the publication of the fee schedule is delayed. The interest and surcharge provisions of section four of this article shall be similarly advanced.

(b) The director is authorized to enter into agreements and contracts and to expend the moneys in the fund for the following purposes:

(1) Responding to hazardous waste emergencies when, based on readily available information, the director determines that immediate action may prevent or mitigate significant risk of harm to human health, safety or the environment from hazardous wastes in situations for which no federal funds are immediately available for such response cleanup or containment: *

Provided, That the director shall apply for and diligently pursue available federal funds for such emergencies at the earliest possible time: *

Provided, however, That funds shall not be expended under this subsection to cleanup or contain off-site releases of hazardous waste which are classified as such only as a result of such releases;

(2) Reimbursing any person for reasonable cleanup costs incurred with the authorization of the director in responding to a hazardous waste emergency pursuant to authorization of the director;

(3) Financing the nonfederal share of the cleanup and site reclamation activities pursuant to the federal
(4) Financing any and all preparations necessary for responding to hazardous waste activities and emergencies within the state, including, but not limited to, the purchase or lease of hazardous waste emergency response equipment: Provided, That after the fifteenth of January, one thousand nine hundred eighty-seven, no funds shall be expended under this subdivision unless the fund is greater than one million dollars and any expenditure will not reduce the fund below one million dollars.

(c) Prior to making expenditures from the fund pursuant to subdivision (1), (2) or (3), subsection (b) of this section, the director will make reasonable efforts to secure agreements to pay the costs of cleanup and remedial actions from owners or operators of sites or other responsible persons.

(d) The director is authorized to promulgate and revise rules in compliance with chapter twenty-nine-a of this code to implement and effectuate the powers, duties and responsibilities vested in him or her under this article. Prior to the assessment of any fees under this article, the director shall promulgate rules which account for the mixture of hazardous and nonhazardous constituents in the hazardous waste which is generated. The director shall not assess a fee on the nonhazardous portion, including, but not limited to, the weight of water.

(e) The director is authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any funds expended for purposes enumerated in subdivision (1), (2) or (3), subsection (b) of this section. All moneys expended from the fund which are so recovered shall be deposited in the fund. Any civil action instituted pursuant to this subsection may be brought in either Kanawha County or the county in which the hazardous waste emergency occurs or the county in which remedial action is taken.
(f) The director is authorized to institute a civil action against any generator for failure to pay any fee assessed pursuant to this article. Any action instituted against a generator pursuant to this subsection may be brought in either Kanawha County or the county in which the generator does business. The generator shall pay all attorney fees and costs of such action if the director prevails.

(g) Upon request by the director, the attorney general or prosecuting attorney for the county in which an action was brought shall assist the director in any civil action instituted pursuant to this section and any proceedings relating thereto.

(h) The director is authorized to enter into contracts or cooperative agreements with the federal government to secure to the state the benefits of funding for action taken pursuant to the requirements of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(i) The director is authorized to accept gifts, donations, contributions, bequests or devises of money, security or property for deposit in the fund.

(j) The director is authorized to invest the fund to earn a reasonable rate of return on the unexpended balance.


The director shall promulgate rules in compliance with chapter twenty-nine-a of this code, establishing a state hazardous waste contingency plan which shall set forth procedures and standards for responding to hazardous waste emergencies, for conducting remedial cleanup and maintenance of hazardous waste sites and for making expenditures from the fund after the date of promulgation of the plan. The plan shall include:

(a) Methods for discovering, reporting and investigating sites at which hazardous waste may present significant risk of harm to the public health and safety or to the environment;

(b) Methods and criteria for establishing priority
responses and for determining the appropriate extent of
cleanup, containment and other measures authorized by
this article;

(c) Appropriate roles for governmental, interstate and
nongovernmental entities in effectuating the plan;

(d) Methods for identifying, procuring, maintaining,
and storing hazardous waste response equipment and
supplies; and

(e) Methods to identify the most appropriate and cost-
effective emergency and remedial actions in view of the
relative risk or danger presented by each case or event.

ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; pow­
ers and duties; salary; continuation of position.

The director of the division of environmental protec­
tion shall appoint a person to serve as the environ­
mental advocate within the division of environmental protec­
tion, and shall adopt and promulgate rules in accor­
dance with the provisions of article three, chapter
twenty-nine-a of this code governing and controlling the
qualifications, powers and duties of the person to be
appointed to the position of environmental advocate. The
environmental advocate shall serve at the will and
pleasure of the director, who shall also set the salary of
the environmental advocate. All funding for the office
of environmental advocate shall be from existing funds
of the division of environmental protection. The director
shall provide an office and secretarial and support staff
as needed. The position of environmental advocate shall
continue to exist until the first day of July, one thousand
nine hundred ninety-seven, to allow for the completion
of a preliminary performance review pursuant to article
ten, chapter four of this code.

CHAPTER 22A. MINERS' HEALTH, SAFETY
AND TRAINING.

Article
1. Office of Miners' Health, Safety and Training; Administration:
   Enforcement.
5. Board of Appeals.
6. Board of Coal Mine Health and Safety.
7. Board of Miner Training, Education and Certification.
8. Certification of Underground and Surface Coal Miners.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-1. Continuation of the office of miners' health, safety and training; purpose.
§22A-1-3. Director of the office of miners' health, safety and training.
§22A-1-4. Powers and duties of the director of the office of miners' health, safety and training.
§22A-1-5. Offices continued in the office of miners' health, safety and training.
§22A-1-6. Director's authority to promulgate rules.
§22A-1-8. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
§22A-1-9. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.
§22A-1-10. Mine inspectors may be appointed to fill vacancy in division.
§22A-1-11. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.
§22A-1-12. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.
§22A-1-13. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.
§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.
§22A-1-16. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.
§22A-1-17. Review of orders and notices by the director.
§22A-1-18. Posting of notices, orders and decisions; delivery to agent of operator; names and addresses to be filed by operators.
§22A-1-23. Records and reports.


§22A-1-26. Place and time for examinations.

§22A-1-27. Preparation of examinations; notice of intention to take examination; investigation of applicants.


§22A-1-29. Mine foreman examiner to certify successful applicants to director.

§22A-1-30. Record of examination.


§22A-1-32. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.

§22A-1-33. Mine rescue stations; equipment.

§22A-1-34. Mine rescue crews.

§22A-1-35. Mine rescue teams.

§22A-1-36. Mandatory safety programs; penalties.


§22A-1-38. Applicability and enforcement of laws safeguarding life and property; rules; authority of director regarding enforcing safety laws.

§22A-1-1. Continuation of the office of miners' health, safety and training; purpose.

(a) The office of miners' health, safety and training is continued and is a separate office within the department of commerce, labor and environmental resources. The office shall be administered, 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.

(b) The division of health, safety and training shall have as its purpose the supervision of the execution and enforcement of the provisions of this chapter and, in carrying out the aforesaid purposes, it shall give prime consideration to the protection of the safety and health of persons employed within or at the mines of this state. In addition, the division shall, consistent with the aforesaid prime consideration, protect and preserve mining property and property used in connection therewith.


Unless the context in which used clearly requires a
different meaning, the following definitions apply to this chapter:

(a) General.

(1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

(2) Agent: The term "agent" means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

(3) Approved: The term "approved" means in strict compliance with mining law, or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

(4) Face equipment: The term "face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in an entry or room.

(5) Imminent danger: The term "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(6) Mine: The term "mine" includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

(7) Miner: The term "miner" means any individual working in a coal mine.
(8) Operator: The term “operator” means any firm, corporation, partnership or individual operating any coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

(9) Permissible: The term “permissible” means any equipment, device or explosive that has been approved as permissible by the federal mine safety and health administration and/or the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations and conditions attached to such classification by that agency or the bureau.

(10) Person: The term “person” means any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

(11) Work of preparing the coal: The term “work of preparing the coal” means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or lignite, and such other work of preparing such coal as is usually done by the operator of the coal mine.

(b) Office of miners’ health, safety and training.

(1) Board of appeals: The term “board of appeals” means as provided for in article five of this chapter.

(2) Director: The term “director” means the director of the office of miners’ health, safety and training provided for in section three of this article.

(3) Mine inspector: The term “mine inspector” means a state mine inspector provided for in section eight of this article.

(4) Mine inspectors’ examining board: The term “mine inspectors’ examining board” shall mean the mine inspectors’ examining board provided for in article nine of this chapter.

(5) Office: The term “office” means, when referring to a specific office, the office of miners’ health, safety and training provided for in this article. The term “office.”
when used generically, includes any office, board, agency, unit, organizational entity or component thereof.

(c) Mine areas.

(1) Abandoned workings: The term “abandoned workings” means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term “active workings” means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term “drift” means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term “excavations and workings” means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(5) Inactive workings: The term “inactive workings” includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term “mechanical working section” means an area of a mine (A) in which coal is loaded mechanically, (B) which is comprised of a number of working places that are generally contiguous, and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term “panel” means workings that are or have been developed off of submain entries which do not exceed three thousand feet in length.

(8) Return air: The term “return air” means a volume of air that has passed through and ventilated all the
working places in a mine section.

(9) Shaft: The term “shaft” means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and material, in connection with the mining of coal.

(10) Slope: The term “slope” means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term “working face” means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term “working place” means the area of a coal mine inby the last open crosscut.

(13) Working section: The term “working section” means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term “working unit” means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) Mine personnel.

(1) Assistant mine foreman: The term “assistant mine foreman” means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(2) Certified electrician: The term “certified electrician” means any person who is qualified as a mine electrician and who has passed an examination given by the office, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine
equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the office.

(3) Certified person: The term "certified person," when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the provisions of this law to perform such duty.

(4) Interested persons: The term "interested persons" includes the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers and the office.

(5) Mine foreman: The term "mine foreman" means the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

(6) Qualified person: The term "qualified person" means a person who has completed an examination and is considered qualified on record by the office.

(7) Shot firer: The term "shot firer" means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp, and other approved detecting devices by examination and certification given him or her by the office.

(8) Superintendent: The term "superintendent" means the person who has, on behalf of the operator, immediate supervision of one or more mines.

(9) Supervisor: The term "supervisor" means a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.
(e) Electrical.

1. Armored cable: The term “armored cable” means a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

2. Borehole cable: The term “borehole cable” means a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.

3. Branch circuit: The term “branch circuit” means any circuit, alternating current or direct current, connected to and leading from the main power lines.

4. Cable: The term “cable” means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

5. Circuit breaker: The term “circuit breaker” means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

6. Delta connected: The term “delta connected” means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

7. Effectively grounded: The term “effectively grounded” is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

8. Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a portable flame-resistant cable that has passed the flame tests of the Federal Mine Safety and Health Administration.

9. Ground or grounding conductor (mining): The term “ground or grounding conductor (mining),” also
referred to as a safety ground conductor, safety ground and frame ground, means a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.

(10) Grounded (earthed): The term “grounded (earthed)” means that the system, circuit or apparatus referred to is provided with a ground.

(11) High voltage: The term “high voltage” means voltages of more than one thousand volts.

(12) Lightning arrester: The term “lightning arrester” means a protective device for limiting surge voltage on equipment by discharging or by passing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(13) Low voltage: The term “low voltage” means up to and including six hundred sixty volts.

(14) Medium voltage: The term “medium voltage” means voltages from six hundred sixty-one to one thousand volts.

(15) Mine power center or distribution center: The term “mine power center or distribution center” means a combined transformer or distribution unit, complete within a metal enclosure from which one or more low-voltage power circuits are taken.

(16) Neutral (derived): The term “neutral (derived)” means a neutral point or connection established by the addition of a “zig-zag” or grounding transformer to a normally underground power system.

(17) Neutral point: The term “neutral point” means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.

(18) Portable (trailing) cable: The term “portable (trailing) cable” means a flexible cable or cord used for
connecting mobile, portable or stationary equipment in
mines to a trolley system or other external source of
electric energy where permanent mine wiring is
prohibited or is impracticable.

(19) Wye-connected: The term “wye-connected” means
a power system connection in which one end of each
phase windings or transformers or a.c. generators are
connected together to form a neutral point, and a
neutral conductor may or may not be connected to the
neutral point, and the neutral point may or may not be
grounded.

(20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer (grounding trans-
former)” means a transformer intended primarily to
provide a neutral point for grounding purposes.

§22A-1-3. Director of the office of miners’ health, safety
and training.

(a) The director of the office of miners’ health, safety
and training is 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 department of com-
merce, labor and environmental resources.

(b) The director is 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
economical administration of the office. The director
may appoint such other employees needed for the
operation of the office and may prescribe their powers
and duties and fix their compensation within amounts
appropriated therefor.

(c) 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 direct
(d) 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.

(e) 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 5, article IV 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
§22A-1-4. Powers and duties of the director of the office of miners' health, safety and training.

(a) The director of the office of miners' health, safety and training is hereby empowered and it is his or her duty to administer and enforce such provisions of this chapter 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.

(b) The director of the office of miners' health, safety and training has full charge of the division. The director has the power and duty to:

(1) Supervise and direct the execution and enforcement of the provisions of this article.

(2) Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out his or her responsibilities and fix their compensation, except as otherwise provided in this article.

(3) Assign mine inspectors to divisions or districts in accordance with the provisions of section eight of this article as may be necessary to fully and effectively carry out the provisions of this law, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct such mine inspectors in the performance of their duties.

(4) Suspend, for good cause, any such mine inspector without compensation for a period not exceeding thirty days in any calendar year.

(5) Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with this article.

(6) Hear and determine applications made by mine operators for the annulment or revision of orders made
by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

(7) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(8) Make annually a full and complete written report of the administration of the office to the governor and the Legislature of the state for the year ending the thirtieth day of June. The report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of such funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector: Provided, That no inspector is identified by name in this report. Such reports shall be filed with the governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(9) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records or other documents relevant or material to any hearing, investigation or examination of any mine permitted by this chapter. Any witness so called or subpoenaed shall receive forty dollars per diem and shall receive mileage.
at the rate of fifteen cents for each mile actually
traveled, which shall be paid out of the state treasury
upon a requisition upon the state auditor, properly
certified by such witness.

(10) Institute civil actions for relief, including
permanent or temporary injunctions, restraining orders,
or any other appropriate action in the appropriate
federal or state court whenever any operator or the
operator's agent violates or fails or refuses to comply
with any lawful order, notice or decision issued by the
director or his or her representative.

(11) Perform all other duties which are expressly
imposed upon him or her by the provisions of this
chapter.

(12) Make all records of the office open for inspection
of interested persons and the public.

§22A-1-5. Offices continued in the office of miners' health, safety and training.

(a) There are hereby continued in 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 of this chapter;

(2) The coal mine safety and technical review committee established pursuant to article six of this chapter;

(3) The board of miner training, education and certification established pursuant to article seven of this chapter;

(4) The mine inspectors' examining board established pursuant to article nine of this chapter; and

(5) The board of appeals provided for pursuant to the provisions of article five of this chapter.

(b) Nothing in this article may authorize the director or the secretary of the department of commerce, labor and environmental resources to alter, discontinue or abolish any office, board or commission or the functions thereof, which are established by statute.
§22A-1-6. Director's authority to promulgate rules.

The director has the power and authority to propose or promulgate rules to organize the office and to carry out and implement the provisions of this chapter relating to health and safety inspections and enforcement. All rules in effect on the effective date of this article which pertain to the provisions of this chapter as they relate to health and safety inspection and enforcement shall remain in effect until changed or superseded by the director, or as appropriate. Except when specifically exempted by the provisions of this chapter, 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.


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 were transferred from the division of energy to the secretary of the department of commerce, labor and environmental resources, to the director, or to the office, and which were in effect on the date such transfer occurred, 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.

§22A-1-8. Mine inspectors; districts and divisions; employment; tenure; oath; bond.

Notwithstanding any other provisions of law, mine inspectors shall be selected, serve and be removed as in this article provided.

The director shall divide the state into not more than forty-five mining districts and not more than five mining divisions, so as to equalize, as far as practical, the work of each inspector. The director may assign
inspectors to districts, designate and assign not more than one inspector-at-large to each division and one assistant inspector-at-large. The director shall designate the places of abode of inspectors at points convenient to the mines of their respective districts, and, in the case of inspectors and assistant inspectors-at-large, their respective divisions.

Except as in the next preceding paragraph provided, all mine inspectors appointed after the mine inspectors' examining board has certified to the director an adequate register of qualified eligible candidates in accordance with section eleven of this article, so long as such register contains the names of at least three qualified eligible candidates, shall be appointed from the names on such register. Each original appointment shall be made by the director for a probationary period of not more than one year.

The director shall make each appointment from among the three qualified eligible candidates on the register having the highest grades: Provided, That the director may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the director shall immediately notify in writing each member of the mine inspectors' examining board of the action, together with a detailed statement of the reasons therefor. Thereafter, the mine inspectors' examining board, after hearing, if it finds that the action of the director was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement is effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the director, a mine inspector has permanent tenure, subject only to dismissal for cause in accordance with the provisions of section twelve of this article. No mine inspector, while in office, shall be directly or indirectly interested as owner, lessor,
operator, stockholder, superintendent or engineer of any coal mine. Before entering upon the discharge of the duties as a mine inspector, he or she shall take the oath of office prescribed by section 5, article IV 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 director, conditioned upon the faithful discharge of his or her duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The district inspectors, inspectors-at-large and assistant inspectors-at-large, together with the director, shall make all inspections authorized by this article and article two of this chapter and shall perform such other duties as are imposed upon mine inspectors by this article and articles two, four and eight of this chapter.

§22A-1-9. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

The office shall employ eleven or more mine safety instructors. To be eligible for employment as a mine safety instructor, the applicant shall be (1) a citizen of West Virginia, in good health, not less than twenty-five years of age, and of good character, reputation and temperate habits, and (2) a person who has had at least five years' experience in first aid and mine rescue work and who has had practical experience with dangerous gases found in coal mines, and who has a practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

In order to qualify for appointment as a mine safety instructor, an eligible applicant shall submit to a written and oral examination, given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a safety instructor and may, subject to the approval of the mine inspectors' examining board, be prepared by the director.

If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a
grade of at least eighty percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director.

The director may then appoint one of the candidates from the three having the highest grades.

The salary for a mine safety instructor shall be not less than twenty-one thousand six hundred seventy-two dollars per year, and shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. Such instructor shall devote all of his or her time to the duties of the office. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expenses submitted by the instructor, who shall verify upon oath that such expenses were actually incurred in the discharge of his or her official duties.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure and removal of mine inspectors are applicable to mine safety instructors.

§22A-1-10. Mine inspectors may be appointed to fill vacancy in division.

Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the office, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position by the director.

§22A-1-11. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

The office shall employ five or more electrical inspectors. To be eligible for employment as an electrical inspector, the applicant shall be: (1) A citizen and resident of West Virginia, in good health, not less than twenty-five years of age, and of good character, reputation and of temperate habits; and (2) a person who has had seven years' practical electrical experience in coal mines, or a degree in electrical engineering from
an accredited electrical engineering school and one year's practical experience in underground coal mining.

In order to qualify for appointment as a mine electrical inspector, an eligible applicant shall submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by an electrical inspector. If the board finds after investigation and examination that the applicant (1) is eligible for appointment and (2) has passed all oral and written examinations with a grade of at least ninety percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director. The director may then appoint one of the candidates from the three having the highest grade.

The salary of a mine electrical inspector shall be not less than thirty thousand four hundred eighty dollars per year, and shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expense submitted by the electrical inspector, who shall verify upon oath that such expenses were actually incurred in the discharge of his or her official duties.

Mine electrical inspectors, before entering upon the discharge of their duties, shall take and subscribe to the oath and shall execute a bond in the same penal sum, with surety approved by the director, all as is required by this article in the case of mine inspectors.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualifications, appointment, tenure and removal of mine inspectors are applicable to mine electrical inspectors.

§22A-1-12. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

(a) No person is eligible for appointment as a mine...
inspector unless, at the time of his or her probationary appointment, he or she (1) is a citizen of West Virginia, in good health, not less than twenty-four years of age, and of good character, reputation and temperate habits; (2) has had at least six years' practical experience in coal mines, at least three years of which, immediately preceding his or her original appointment, shall have been in mines of this state: Provided, That graduation from any accredited college of mining engineering shall be considered the equivalent of two years' practical experience; (3) has had practical experience with dangerous gases found in coal mines; and (4) has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as a mine inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least eighty percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director. No candidate's name shall remain in the register for more than three years without requalifying.

(c) Salaries of district inspectors shall not be less than twenty-eight thousand fifty-six dollars per year; assistant inspector-at-large, not less than thirty thousand one hundred eight dollars per year; inspectors-at-large, not less than thirty-one thousand five hundred seventy-two dollars per year, and they shall receive mileage at the rate of not less than twenty cents for each mile actually traveled in the discharge of their official duties in a privately owned vehicle. Within the limits provided by law, the salary of each inspector shall be fixed by the director, subject to the approval of the mine inspectors' examining board. In fixing salaries of mine inspectors,
the director shall consider ability, performance of duty
and experience. No reimbursement for traveling
expenses shall be made except on an itemized account
of such expenses submitted by the inspector, who shall
verify upon oath, that such expenses were actually
incurred in the discharge of his or her official duties.
Every inspector shall be afforded compensatory time or
compensation of at least his or her regular rate for all
time in excess of forty-two hours per week.

(d) Any mine inspector who has fulfilled the require-
ments of this section with respect to employment and
who has served satisfactorily as a mine inspector for a
minimum period of one year and who has terminated
his or her employment as a mine inspector, upon
successfully passing a physical examination, may be
reinstated as a mine inspector within two years after
terminating his or her employment with the approval
of the examining board and the director.

(e) A mine inspector, after having received a perman-
ent appointment, shall be removed from office only for
physical or mental impairment, incompetency, neglect
of duty, drunkenness, malfeasance in office or other
good cause.

Proceedings for the removal of a mine inspector may
be initiated by the director whenever there is reasonable
cause to believe that adequate cause exists, warranting
removal. Such a proceeding shall be initiated by a
verified petition, filed with the board by the director,
setting forth with particularity the facts alleged. Not
less than twenty reputable citizens, who are operators
or employees in mines in the state, may petition the
director for the removal of a mine inspector. If such
petition is verified by at least one of the petitioners,
based on actual knowledge of the affiant and alleged
facts, which, if true, warrant the removal of the
inspector, the director shall cause an investigation of the
facts to be made. If, after such investigation, the
director finds that there is substantial evidence, which,
if true, warrants removal of the inspector, the director
shall file a petition with the board requesting removal
of the inspector.
On receipt of a petition by the director seeking removal of a mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in said notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown. The chair of the board and the director have power to administer oaths and subpoena witnesses.

Any mine inspector who willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the ground that the testimony or answer might incriminate him or her or refuses to waive immunity from prosecution on account of any relevant matter about which the inspector may be asked to testify at any such hearing before the board, shall forfeit his or her position.

If, after hearing, the board finds that the inspector should be removed, it shall enter an order to that effect. The decision of the board is final and is not subject to judicial review.

§22A-1-13. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.

In order to qualify for an appointment as a surface mine inspector, under the provisions of this article, an eligible applicant shall have had at least five years' practical experience in surface mines, at least one year of which, immediately preceding his or her original appointment, shall have been in surface mines in this state, and submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed...
by a surface mine inspector and may, subject to the
approval of the mine inspectors’ examining board, be
prepared by the director.

If the board finds after investigation and examination
that the applicant (1) is eligible for appointment, and (2)
has passed all oral and written examinations with a
grade of at least eighty percent, the board shall add such
applicant’s name and grade to a register of qualified
eligible candidates and certify its action to the director.
The director may then appoint one of the candidates
from the three having the highest grades.

All such appointees shall be citizens of West Virginia,
in good health, not less than twenty-five years of age,
of good character and reputation and temperate in
habits. No person is eligible for permanent appointment
as a surface mine inspector until he or she has served
in a probationary status for a period of one year to the
satisfaction of the director.

In the performance of duties devolving upon surface
mine inspectors, they shall be responsible to the
director.

The salary of the surface mine inspector supervisor
shall be not less than twenty-four thousand four hundred
eighty dollars per year. Salaries of surface mine
inspectors shall be not less than twenty-one thousand
seven hundred eighty dollars per year. In the discharge
of their official duties in privately owned vehicles,
surface mine inspectors and the surface mine inspector
supervisor shall receive mileage at the rate of not less
than twenty cents per mile.

A surface mine inspector, after having received a
permanent appointment, shall be removed from office
only for physical or mental impairment, incompetency,
neglect of duty, drunkenness, malfeasance in office, or
other good cause.

§22A-1-14. Director and inspectors authorized to enter
mines; duties of inspectors to examine
mines; no advance notice; reports after
fatal accidents.
The director, or his or her authorized representative, has authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director or his or her authorized representative proper facilities for entering such mine and making examination or obtaining information.

If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in any such mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in any such mine.

In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.
The mine inspector shall visit the scene of each fatal accident occurring in any mine within his or her district and shall make an examination into the particular facts of such accident; make a report to the director, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.

At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the director on such inspection.


(a) If, upon any inspection of a coal mine, an authorized representative of the director finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from and to be prohibited from entering such area until an authorized representative of the director determines that such imminent danger no longer exists.

All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.

(b) If, upon any inspection of a coal mine, an authorized representative of the director finds that there
has been a violation of the law, but the violation has not created an imminent danger, he or she shall issue a notice to the operator or the operator's agent, fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director finds that the violation has not been totally abated, and if the director also finds that the period of time should not be further extended, the director shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from, and to be prohibited from entering such area until an authorized representative of the director determines that the violation has been abated.

(c) The following persons are not required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the director, to eliminate the condition described in the order;

(2) Any public official whose official duties require him or her to enter such area;

(3) Any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

(4) Any consultant to any of the foregoing.

(d) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent
danger or a violation of any mandatory health or safety
standard and, where appropriate, a description of the
area of the coal mine from which persons must be
withdrawn and prohibited from entering.

(e) Each notice or order issued under this section shall
be given promptly to the operator of the coal mine or
the operator's agent by an authorized representative of
the director issuing such notice or order, and all such
notices and orders shall be in writing and shall be
signed by such representative and posted on the bulletin
board at the mine.

(f) A notice or order issued pursuant to this section
may be modified or terminated by an authorized
representative of the director.

(g) Each finding, order and notice made under this
section shall promptly be given to the operator of the
mine to which it pertains by the person making such
finding, order or notice.

§22A-1-16. Powers and duties of electrical inspectors as
to inspections, findings and orders; reports
of electrical inspectors.

In order that the electrical inspector may properly
perform the duties required of him or her, he or she
shall devote his or her whole time and attention to the
duties of the office, and the inspector has the right to
enter any coal mine for the purpose of inspecting
electrical equipment, and if he or she finds during an
inspection any defects in the electrical equipment which
are covered by law and may be detrimental to the lives
or health of the workmen, the inspector has the
authority to order the operator, in writing, to remedy
such defects within a prescribed time, and to prohibit
the continued operation of such electrical equipment
after such time, unless such defects have been corrected.

The electrical inspector shall examine each mine in
his or her division at least once each year or as often
as the director may deem necessary.

It is the duty of the electrical inspector, after
completing the examination of a mine, to prepare a
report describing his or her findings in said mine in a
manner and form designated by the director. The
original report shall be forwarded to the operator or the
operator's representative whose duty it is to post it in
some conspicuous place open to examination by any
interested person or persons. The report shall show the
date of inspection, a list of equipment, and any other
information that the director may deem necessary.

§22A-1-17. Review of orders and notices by the director.

(a) (1) An operator, issued an order pursuant to the
provisions of section fifteen of this article, or any
representative of miners in any mine affected by such
order or by any modification or termination of such
order, may apply to the director for review of the order
within thirty days of receipt thereof or within thirty
days of its modification or termination. An operator,
issued a notice pursuant to subsection (b), section fifteen
of this article, or any representative of miners in any
mine affected by such notice, may, if the operator
believes that the period of the time fixed in such notice
for the abatement of the violation is unreasonable, apply
to the director for review of the notice within thirty days
of the receipt thereof. The applicant shall send a copy
of such application to the representative of miners in the
affected mine, or the operator, as appropriate. Upon
receipt of such application, the director shall cause such
investigation to be made as the director deems approp-
riate. Such investigation shall provide an opportunity
for a public hearing, at the request of the operator or
the representative of miners in such mine, to enable the
operator and the representative of miners in such mine
to present information relating to the issuance and
continuance of such order or the modification or
termination thereof or to the time fixed in such notice.
The filing of an application for review under this law
does not operate as a stay of any order or notice.

(2) The operator and the representative of the miners
shall be given written notice of the time and place of
the hearing at least five days prior to the hearing.

(b) Upon receiving the report of such investi-
the director shall make findings of fact, and issue a
written decision, incorporating therein an order vacat-
ing, affirming, modifying or terminating the order, or
the modification or termination of such order, or the
notice complained of and incorporate findings therein.

(c) In view of the urgent need for prompt decision of
matters submitted to the director under this law, all
actions which the director takes under this section shall
be taken as promptly as practicable, consistent with
adequate consideration of the issues involved.

(d) Pending completion of the investigation required
by this section, the applicant may file with the director
a written request that the director grant temporary
relief from any modification or termination of any order,
or from any order issued under section fifteen of this
article, except an order issued under section sixteen of
this article, together with a detailed statement giving
reasons for granting such relief. The director may grant
such relief, under such conditions as he or she may
prescribe, if:

(1) A hearing has been held in which all parties were
given an opportunity to be heard;

(2) The applicant shows that there is substantial
likelihood that the findings of the director will be
favorable to the applicant; and

(3) Such relief will not adversely affect the health and
safety of miners in the coal mine.

No temporary relief shall be granted in the case of
a notice issued under section fifteen of this article.

§22A-1-18. Posting of notices, orders and decisions;
delivery to agent of operator; names and
addresses to be filed by operators.

(a) At each coal mine there shall be maintained an
office with a conspicuous sign designating it as the office
of the mine, and a bulletin board at such office or at
some conspicuous place near an entrance of the mine,
in such manner that notices, orders and decisions
required by this law or rule to be posted on the mine
bulletin board may be posted thereon, be easily visible
to all persons desiring to read them, and be protected
against damage by weather and against unauthorized
removal. A copy of any notice, order or decision required
by this law to be given to an operator shall be delivered
to the office of the affected mine, and a copy shall be
immediately posted on the bulletin board of such mine
by the operator or the operator's agent.

(b) The director shall cause a copy of any notice, order
or decision required by this law to be given to an
operator to be mailed immediately to a representative
of the miners. Such notice, order or decision shall be
available for public inspection.

(c) In order to ensure prompt compliance with any
notice, order or decision issued under this law, the
authorized representative of the director may deliver
such notice, order or decision to an agent of the operator
and such agent shall immediately take appropriate
measures to ensure compliance with such notice, order
or decision.

(d) Each operator of a coal mine shall file with the
director the name and address of such mine and the
name and address of the person who controls or operates
the mine. Any revisions in such names or addresses shall
be promptly filed with the director. Each operator of a
coal mine shall designate a responsible official at such
mine as the principal officer in charge of health and
safety at such mine, and such official shall receive a
copy of any notice, order or decision issued under this
law affecting such mine. In any case, where the coal
mine is subject to the control of any person not directly
involved in the daily operations of the coal mine, there
shall be filed with the director the name and address
of such person and the name and address of a principal
official of such person who has overall responsibility for
the conduct of an effective health and safety program
at any coal mine subject to the control of such person
and such official shall receive a copy of any notice, order
or decision issued affecting any such mine. The mere
designation of a health and safety official under this
subsection does not make such official subject to

(a) Any order or decision issued by the director under this law, except an order or decision under section fifteen of this article is subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha County upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside, in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the director under this law, except an order or decision pertaining to an order issued under subsection (a), section fifteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fifteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
(B) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court is subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the director.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.

(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any proceeding instituted under this section.


The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located or the circuit court of Kanawha County, whenever the operator or the operator's agent (a) violates or fails or refuses to comply with any order or decision issued under this law, or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law, or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. Each court shall have jurisdiction
to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.


(a) (1) Any operator of a coal mine in which a violation occurs of any health or safety rule or who violates any other provisions of this law shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars, for each such violation. Each such violation shall constitute a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. Not later than the thirtieth day of June, one thousand nine hundred ninety-three, the director shall promulgate as a rule the procedure for assessing such civil penalties in effect as of the fifteenth day of January, one thousand nine hundred ninety-three, without regard to the provisions of chapter twenty-nine-a of this code: Provided, That any revisions to such rules after this date shall be promulgated as in the case of legislative rules in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two
(3) A civil penalty shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the director may file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the director shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section twenty of this article, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this
subdivision.

(b) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section fifteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-two of this article, shall be assessed a civil penalty by the director under subdivision (3), subsection (a) of this section, of not more than five thousand dollars, and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of such corporation who knowingly authorized, ordered or carried out such violation, failure or refusal, is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars the person from being issued any such license under this chapter,
except a miner's certification, for a period of not less than one year or for such longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of such equipment, who willfully misrepresents such equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to such equipment, and which does not so comply, is guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.

(f) There is hereby created under the treasury of the state of West Virginia a special health, safety and training fund. All civil penalty assessments collected under section twenty-one of this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the special health, safety and training fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.


(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that the person believes or knows that such miner or representative (1) has notified the director, his or her authorized representative, or an operator, directly or indirectly, of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted any proceeding under this law, (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this law. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done (2) or (3) above.
(b) Any miner or a representative of miners who believes that he or she has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Mailing of the notice of hearing to the charged party at the party's last address of record as reflected in the records of the office is adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his or her former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's finding therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the
59 final determination. If such proceedings are not com-
60 pleted within forty-five days of the date of discharge due
61 to delay caused by the miner the board shall not
62 reinstate the miner until the final determination.

63 (c) Whenever an order is issued under this section, at
64 the request of the applicant, a sum equal to the
65 aggregate amount of all costs and expenses including
66 the attorney's fees as determined by the board to have
67 been reasonably incurred by the applicant for, or in
68 connection with, the institution and prosecution of such
69 proceedings, shall be assessed against the person
70 committing such violation.

§22A-1-23. Records and reports.

1 In addition to such records as are specifically
2 required by this law, every operator of a coal mine shall
3 establish and maintain such records, make such reports,
4 and provide such information, as the director may
5 reasonably require from time to time to enable the
6 director to perform his or her functions under this law.
7 The director is authorized to compile, analyze, and
8 publish, either in summary or detailed form, such
9 reports or information so obtained. Except to the extent
10 otherwise specifically provided by this law, all records,
11 information, reports, findings, notices, orders, or
12 decisions required or issued pursuant to or under this
13 law may be published from time to time, may be
14 released to any interested person and shall be made
15 available for public inspection.

§22A-1-24. Mine foreman examiner for mine foremen-
fire bosses and assistant mine foremen-fire
bosses; salary.

1 The director shall appoint a mine foreman examiner
2 to examine and certify mine foremen-fire bosses,
3 assistant mine foremen-fire bosses and mine examiners
4 or fire bosses. Such mine foremen examiners shall be
5 paid a minimum salary of thirty-one thousand thirty-
6 two dollars per year.


1 The duties of the mine foreman examiner are
(a) Prepare and conduct examinations of mine foremen, assistant mine foremen and fire bosses;

(b) Prepare and certify to the director a register of all persons who successfully completed the examination with a passing grade of eighty percent.

§22A-1-26. Place and time for examinations.

The director shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two weeks' notice of the time and place where the examinations are to be held shall be given.

The examinations shall be given at any location where there are at least five men to be tested, and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the capitol complex in Charleston. All records pertaining to the examinations shall be kept at such office.

§22A-1-27. Preparation of examinations; notice of intention to take examination; investigation of applicants.

The mine foreman examiner shall, with the approval of the director, prepare, and from time to time, modify examinations to be administered applicants for certification as mine foremen and fire bosses.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.


Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under this law.
§22A-1-29. Mine foreman examiner to certify successful applicants to director.

The mine foreman examiner shall certify to the director, on a form furnished by the director, every person whose examination shall disclose the person’s fitness for the duties of mine foreman, assistant mine foreman, and fire boss, as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

§22A-1-30. Record of examination.

The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the office as public documents.


(a) Charge of breach of duty. — A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) Evaluation of charge by board of appeals. — Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all
submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director’s receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing. — The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.
At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) Failure to cooperate. — Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) Penalties. — The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) Integrity of penalties imposed. — No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under this chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

§22A-1-32. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.
Any person whose license, certificate or similar authority to perform any supervisory or fire boss duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

§22A-1-33. Mine rescue stations; equipment.

The director is hereby authorized to purchase, equip and operate for the use of said office such mine rescue stations and equipment as he or she may deem necessary.

§22A-1-34. Mine rescue crews.

The director is hereby authorized to have trained and employed at the rescue stations, operated by the office within the state, such rescue crews as he or she may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

§22A-1-35. Mine rescue teams.

(a) It is the responsibility of the operator to provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of
presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than seventy mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training must not have reached his or her fiftieth birthday, and shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to
perform mine rescue work. A record that such exam-
ination was taken, together with pertinent data relating
thereto, shall be kept on file by the operator and a copy
shall be furnished to the director.

(i) Upon completion of the initial training, all mine
rescue team members shall receive at least forty hours
of refresher training annually. This training shall be
given at least four hours each month, or for a period of
eight hours every two months, and shall include:

(1) Sessions underground at least once every six
months;

(2) The wearing and use of a breathing apparatus by
team members for a period of at least two hours, while
under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities and
limitations of auxiliary mine rescue equipment, or a
different breathing apparatus;

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an
explosion, fire or other emergency at a mine, all
members of mine rescue teams assigned to rescue
operations shall, during the period of their rescue work,
be employees of the operator of the mine where the
emergency exists, and shall be compensated by the
operator at the rate established in the area for such
work. In no case shall this rate be less than the
prevailing wage rate in the industry for the most skilled
class of inside mine labor. During the period of their
emergency employment, members of mine rescue teams
shall be protected by the workers' compensation
subscription of such emergency employer.

(k) During the recovery work and prior to entering
any mine at the start of each shift, all rescue or recovery
teams shall be properly informed of existing conditions
and work to be performed by the designated company
official in charge.

(1) For every two teams performing rescue or
recovery work underground, one six-member team shall
be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) Two-way communication and a lifeline or its equivalent shall be provided at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than one thousand feet in by the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That a lifeline or its equivalent shall be provided in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to sixty atmospheres, or its equivalent.

(1) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each
self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators or two flame safety lamps;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least one thousand feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with section fifteen of this article.
(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have twenty-four hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within thirty days of the effective date of this statute: Provided, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator’s mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

§22A-1-36. Mandatory safety programs; penalties.

(a) The director, in consultation with the state board of coal mine health and safety, shall promulgate rules in accordance with chapter twenty-nine-a of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in subsection (b) of this section. The rules may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine or any other factor deemed relevant by the director.

(b) Within six months of the date when the rules required in subsection (a), above, become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in
accordance with such rules. Each employee of the mine
shall be afforded an opportunity to review and submit
comments to the director regarding the modification or
revision of such program, prior to submission of such
program to the director. Upon submission of such
program the director has ninety days to approve, reject
or modify such program. If the program is rejected, the
director shall give the operator a reasonable time to
correct and resubmit such program. Each program
which is approved shall be reviewed, at least annually,
by the director. An up-to-date copy of each program
shall be placed on file in the office and further copies
shall be made available to the miners of each mine and
their representatives. Each operator shall undertake all
efforts necessary to assure total compliance with the
appropriate safety program at each mine and shall fully
implement all portions of such program.

(c) Any person violating any provision of this section
is guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than one hundred nor more than
one thousand dollars, or imprisoned in the county jail
for not more than six months, or both fined and
imprisoned.


(a) In every surface mine, regulated under the
provisions of article three or four, chapter twenty-two
of this code, where five or more persons are employed
in a period of twenty-four hours, the operator shall
employ at least one person certified in accordance with
the provisions of article seven of this chapter as a mine
foreman. Each applicant for certification as a mine
foreman shall, at the time of issuance of a certificate of
competency: (1) Be a resident or employed in a mine in
this state; (2) have had at least three years' experience
in surface mining, which shall include at least eighteen
months' experience on or at a working section of a
surface mine, or be a graduate of the school of mines
at West Virginia University or of another accredited
mining engineering school and have had at least two
years' practical experience in a surface mine, which
shall include at least eighteen months' experience on or
at a working section of a surface mine; and (3) have demonstrated knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects, by completing such training, education and examinations as may be required under article seven of this chapter.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one person, one or more assistant mine foreman may be designated. Such persons shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article seven of this chapter. Each applicant for certification as assistant mine foreman shall, at the time of issuance of a certificate of competency, possess all of the qualifications required of a mine foreman: Provided, That at the time of certification the person is required to have at least two years' experience in surface mining, which shall include eighteen months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The director shall promulgate such rules as may be necessary to carry out the provisions of this section.

§22A-1-38. Applicability and enforcement of laws safeguarding life and property; rules; authority of director regarding enforcing safety laws.

All provisions of this chapter intended to safeguard life and property shall extend to all surface-mining operations, regulated under articles three and four, chapter twenty-two of this code, insofar as such laws are applicable thereto. The director shall promulgate reasonable rules in accordance with the provisions of chapter twenty-nine-a of this code to protect the safety
of those employed in and around surface mines. The enforcement of all laws and rules relating to the safety of those employed in and around surface mines is hereby vested in the director and shall be enforced according to the provisions of this chapter.

**ARTICLE 2. UNDERGROUND MINES.**

§22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.

§22A-2-2. Plan of ventilation; approval by director of the office of miners' health, safety and training.


§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.

§22A-2-23. Authority of fire boss to perform other duties.

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

§22A-2-33. Preparation of shots; blasting practices.

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

§22A-2-53c. Ramps; tipples; cleaning plants; other surface areas.

§22A-2-54. Duties of persons subject to article; rules and regulations of operators.

§22A-2-66. Explosion or accident; notice; investigation by office of miners' health, safety and training.

§22A-2-68. Preservation of evidence following accident or disaster.

§22A-2-70. Shafts and slopes.

§22A-2-72. Long wall and short wall mining.

§22A-2-73. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of board of coal mine health and safety to promulgate rules; time limits therefor.

§22A-2-74. Control of respirable dust.

§22A-2-75. Coal operators — Procedure before operating near oil and gas wells.

§22A-2-76. Reopening old or abandoned mines.

§22A-2-77. Monthly report by operator of mine; exception as to certain inactive mines.

§22A-2-78. Examinations to determine compliance with permits.

§22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.
The mapping of all coal mines shall be supervised by a competent engineer or land surveyor. The work of such engineer or land surveyor shall be supervised by either a civil engineer or a mining engineer certified by the board of registration for professional engineers, which exists by authority of section four, article thirteen, chapter thirty of this code, or a licensed land surveyor approved by the board of examiners of land surveyors as provided by section three, article thirteen-a of said chapter thirty. To each map supervised by the engineer or land surveyor there shall be affixed thereto the seal of a certified or professional engineer or licensed land surveyor, which shall be identical to the design authorized by the board of registration for professional engineers, as provided in section sixteen, article thirteen of said chapter thirty or board of examiners of land surveyors as provided by section eleven, article thirteen-a of said chapter thirty. Every map certified shall have the professional engineer's or land surveyor's signature and certificate, in addition to his or her seal, in the following form:

"I, the undersigned, hereby certify that this map is correct and shows all the information, to the best of my knowledge and belief, required by the laws of this State, and covers the period ending .................................................................

.................................................................P. E.

(Either Civil or Mining Engineer or Land Surveyor)."

The operator of every underground coal mine shall make, or cause to be made, an accurate map of such mine, on a scale of not less than one hundred, and not more than five hundred feet to the inch. The map of such mine shall show:

(1) Name and address of the mine;
(2) The scale and orientation of the map;
(3) The property or boundary lines of the mine;
(4) The shafts, slopes, drifts, tunnels, entries, rooms, crosscuts and all other excavations and auger and strip mined areas of the coalbed being mined;
(5) All drill holes that penetrate the coalbed being mined;

(6) Dip of the coalbed;

(7) The outcrop of the coalbed within the bounds of the property assigned to the mine;

(8) The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;

(9) The elevation of the floor at intervals of not more than two hundred feet in:
   (a) At least one entry of each working section, and main and cross entries;
   (b) The last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries are abandoned; and
   (c) Rooms advancing toward or adjacent to property or boundary lines or adjacent mines;

(10) Contour lines passing through whole number elevations of the coalbed being mined, the spacing of such lines not to exceed ten-foot elevation levels, except that a broader spacing of contour lines may be approved for steeply pitching coalbeds by the person authorized so to do under the federal act; and contour lines may be placed on overlays or tracings attached to mine maps;

(11) As far as practicable the outline of existing and extracted pillars;

(12) Entries and air courses with the direction of airflow indicated by arrows;

(13) The location of all surface mine ventilation fans, which location may be designated on the mine map by symbols;

(14) Escapeways;

(15) The known underground workings in the same coalbed on the adjoining properties within one thousand feet of such mine workings and projections;
(16) The location of any body of water dammed in the mine or held back in any portion of the mine, but such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines, as provided under subdivision (10) of this section;

(17) The elevation of any body of water dammed in the mine or held back in any portion of the mine;

(18) The abandoned portion or portions of the mine;

(19) The location and description of at least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

(20) Mines above or below;

(21) Water pools above;

(22) The location of the principal streams and bodies of water on the surface;

(23) Either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine;

(24) The location of all high pressure pipelines, high voltage power lines and principal roads;

(25) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

(26) Where the overburden is less than one hundred feet, occupied dwellings; and

(27) Such other information as may be required under the federal act or by the office of miners' health, safety and training.

The operator of every underground coal mine shall extend, or cause to be extended, on or before the first day of March and on or before the first day of September of each year, such mine map thereof to accurately show the progress of the workings as of the first
day of July and the first day of January of each year. Such map shall be kept up to date by temporary notations, which shall include:

(1) The location of each working face of each working place;

(2) Pillars mined or other such second mining;

(3) Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators and permanent stoppings, and the direction of air currents indicated; and

(4) Escapeways designated by means of symbols.

Such map shall be revised and supplemented at intervals prescribed under the federal act on the basis of a survey made or certified by such engineer or surveyor, and shall be kept by the operator in a fireproof repository located in an area on the surface chosen by the operator to minimize the danger of destruction by fire or other hazard.

Such map and any revision and supplement thereof shall be available for inspection by a federal mine inspector, by mine health and safety instructors, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing or residing on surface areas of such mines or areas adjacent to such mines, and a copy of such map and any revision and supplement thereof shall be promptly filed with the office of miners' health, safety and training. The operator shall also furnish to persons expressly entitled thereto under the federal act, upon request, one or more copies of such maps and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of the federal act and this chapter and in connection with the functions and responsibilities of the secretary of housing and urban development.

Surveying calculations and mapping of underground coal mines which were or are opened or reopened after
the first of July, one thousand nine hundred sixty-nine, shall be done by the rectangular coordinate traversing method and meridians carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

Underground coal mines operating on the first of July, one thousand nine hundred sixty-nine, and not using the rectangular coordinate traversing method shall, within two years of such date, convert to this procedure for surveying calculations and mapping. Meridians shall be carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the coal mine operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

The operator of such underground coal mine shall, by reasonable proof, demonstrate to the director or to any federal mine inspector concerned, at any time, that a diligent search was made for all existing and available maps and survey data for the workings on the adjoining properties. The operator shall further be able to show proof to the director or to any federal mine inspector concerned, that a suitable method was used to insure accuracy in the methods used in transposing other workings to the map of such mine.

There shall be an archive of underground coal mine maps maintained at the office of the director. The
archive shall:
(1) Be secured in a fireproof and burglarproof vault;
(2) Have an appropriate map identification system;
and
(3) Have adequate map microfilming facilities.

Whenever an operator permanently closes or aban-
dons an underground coal mine, or temporarily closes an underground coal mine for a period of more than ninety days, he or she shall promptly notify the office of miners' health, safety and training and the federal mine inspector of the district in which such mine is located of such closure. Within sixty days of the permanent closure or abandonment of an underground coal mine, or, when an underground coal mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the office of miners' health, safety and training and such federal mine inspector a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by a certified or professional engineer or licensed surveyor as aforesaid and shall be available for public inspection.

Any person having a map or surveying data of any worked out or abandoned underground coal mine shall make such map or data available to the office of miners' health, safety and training to copy or reproduce such material.

Any person who fails or refuses to discharge any duty imposed upon him or her by this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

VENTILATION

§22A-2-2. Plan of ventilation; approval by director of the office of miners' health, safety and training.

Every operator of a coal mine, before making any new or additional openings, shall submit to the director, for his or her information and approval, a general plan
showing the proposed system of ventilation and ventilating equipment of the openings, with their location and relative positions to adjacent developments; no such new or additional openings shall be made until approved by the director. The operator shall deliver to the miners' representative employed by the operator at the mine a copy of the operator's proposed annual ventilation plan at least ten days prior to the date of submission. The miners' representative shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition the miners' representative may submit written comments to the director. The director shall promptly approve any such plans submitted, if the proposed system of ventilation and ventilating equipment meet the requirements of this article.


(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners or other persons holding a certificate.
(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: Provided, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: Provided, however, That there is another opening having a weak-wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: Provided, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be by means of the primary air current conducted into the place in a manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous
mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the office of miners' health, safety and training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

MINE FOREMAN

§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.

(a) In every underground mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article seven of this chapter as a mine foreman-fire boss. Each applicant for certification as a mine foreman-fire boss shall, at the time he or she is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least five years' experience in the underground working, ventilation and drainage of a coal mine, which shall include at least eighteen months' experience on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology.
mechanical engineering or civil engineering and have had at least four years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; and (3) have demonstrated his or her knowledge of dangerous mine gases and their detection, mine safety, first aid, safety appliances, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him or her under article seven of this chapter.

(b) In mines in which the operations are so extensive that the duties devolving upon the mine foreman-fire boss cannot be discharged by one man, one or more assistant mine foremen-fire bosses may be designated. Such persons shall act under the instruction of the mine foreman-fire boss, who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article seven of this chapter. Each applicant for certification as assistant mine foreman-fire boss shall, at the time he or she is issued a certificate of competency, possess all of the qualifications required of a mine foreman-fire boss: Provided, That he or she shall at the time he or she is certified be required to have at least three years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen months on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had twelve months' practical experience in an underground mine, all of which shall have been on or at a working section or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical or civil engineering and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section
of an underground mine.

(c) Until the first day of January, one thousand nine hundred seventy-seven, in mines in which the operations are so extensive that all the duties devolving upon the mine foreman-fire boss cannot be discharged by one person, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine foreman-fire boss' instructions and the mine foreman-fire boss is responsible for their conduct in the discharge of their duties under such designation.

(d) Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman-fire boss in any mine in this state until the next regular mine foreman-fire boss' examination held by the office of miners' health, safety and training, but not to exceed a maximum of ninety days.

(e) After the first day of July, one thousand nine hundred seventy-four, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman-fire boss or an assistant underground mine foreman-fire boss.

After the first day of July, one thousand nine hundred seventy-four, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be of equal value to a certificate issued hereafter to an assistant mine foreman-fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be of equal value to a certificate issued hereafter to a mine foreman-fire boss.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.

1 The office of miners' health, safety and training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to such
employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within twelve weeks after any person is first employed as a miner. It is further the duty and responsibility of the office of miners' health, safety and training to see that such course is given to all persons as above provided after their first being employed in any mine in this state.

It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine is, before beginning work therein, instructed in the particular danger incident to his or her work in such mine, and furnished a copy of the mining laws and rules of such mine. It is the duty of every mine operator who employs apprentices, as that term is used in sections three and four, article eight of this chapter to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first ninety days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in such a location that the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for help of the apprentice. Such location shall be on the same side of any belt, conveyor or mining equipment.

Persons whose duties require them to use a flame safety lamp or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the office of miners' health, safety and training and a record of such examination shall be kept by the operator and the office. Flame safety lamps and other approved methane detectors
shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to ensure that such lamp or other device is in a permissible condition.

§22A-2-23. Authority of fire boss to perform other duties.

Notwithstanding any other provision in this article contained, any person who holds a certificate issued by the office of miners' health, safety and training certifying his or her competency to act as fire boss may perform the duties of a fire boss and any other duties, statutory or otherwise, for which he or she is qualified, in the same mine or section and on the same day or shift.

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan...
shall be furnished to the director or his or her autho-
rized representative and shall be available to the miners
and their representatives.

(b) The operator, in accordance with the approved
plan, shall provide at or near each working face and at
such other locations in the coal mine, as the director may
prescribe, an ample supply of suitable materials of
proper size with which to secure the roof thereof of all
working places in a safe manner. Safety posts, jacks, or
other approved devices shall be used to protect the
workmen when roof material is being taken down,
crossbars are being installed, roof bolt holes are being
drilled, roof bolts are being installed and in such other
circumstances as may be appropriate. Loose roof and
overhanging or loose faces and ribs shall be taken down
or supported. When overhangs or brows occur along rib
lines they shall be promptly removed. All sections shall
be maintained as near as possible on center. Except in
the case of recovery work, supports knocked out shall
be replaced promptly. Apprentice miners shall not be
permitted to set temporary supports on a working
section without the direct immediate supervision of a
certified miner.

(c) The operator of a mine has primary responsibility
to prevent injuries and deaths resulting from working
under unsupported roof. Every operator shall require
that no person may proceed beyond the last permanent
support unless adequate temporary support is provided
or temporary support is not required under an approved
roof control plan and absence of such support will not
pose a hazard to the miners.

(d) The immediate supervisor of any area in which
unsupported roof is located shall not direct or knowingly
permit any person to proceed beyond the last permanent
support unless adequate temporary support is provided
or temporary support is not required under an approved
roof control plan and absence of such support will not
pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent
support in violation of a direct or standing order of an
operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner. The time and parts of the plan reviewed shall be recorded in a log book kept for such purpose. Each log book entry so recorded shall be signed by such immediate supervisor making such entry.

(g) Any action taken against a miner due, in whole or in part, to his or her refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to section twenty-two, article one of this chapter. Upon a finding of discrimination by the appeals board pursuant to subsection (b), section twenty-two, article one of this chapter, the miner shall be awarded by the appeals board all reliefs available pursuant to subsections (b) and (c), section twenty-two, article one of this chapter.

§22A-2-33. Preparation of shots; blasting practices.

(a) Only a certified “shot firer” designated by mine management shall be permitted to handle explosives and do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drillholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth, unless other permissible stemming devices or methods are used. Drillholes shall not be drilled beyond the limits of the cut, and as far as practicable, cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half
pounds, but not exceeding three pounds, shall be used only if drillholes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Miners shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas, until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with a permissible flame safety lamp until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to the working face until the smoke has been cleared away and then he shall make a careful examination of the working face before leaving the place or before performing any other work in the place.

(b) Multiple shooting in coal or rock or both is authorized only under permit issued by the director. Permission to shoot more than ten shots simultaneously may be granted by the director only after consultation with interested persons, and such shooting will be performed by special methods and under precautions prescribed by the director. All multiple shooting in bottom or roof rock shall be performed in intake air, except by special permit from the director, after consultation with interested persons, as heretofore provided. Multiple blasting of more than ten shots performed under any permit granted by the director under this section shall be done only on noncoal-producing shifts or idle days, except as may be provided as a condition of the permit granted.

(c) Regular or short-interval delay detonators may be used for blasting purposes with written permission from the director. Regular delay detonators shall not be used for blasting coal, but may be used for grading above or below coal seams and during shaft, slope, tunnel work and in faults or wants. Where short-interval delay detonators are permitted by said director to be used, the shot firing circuit must be tested with a blasting
galvanometer before firing, and the leg wires connected in series. No instantaneous, regular, or zero-delay detonators are to be fired in conjunction with short-interval delay detonators. The delay interval between dependent rows must not be less than twenty-five milliseconds or more than one hundred milliseconds, and the entire series of any one round shall not provide a delay of more than five hundred milliseconds between the first and last shot. The total number of charged holes to be fired during any one round must not exceed the limit permitted by the director. Misfires must be tested with a blasting galvanometer before removing.

(d) Electrical equipment shall not be operated in the face areas, and only work in connection with timbering and general safety shall be performed while boreholes are being charged. Shots shall be fired promptly after charging. Mudcaps (adobes) or any other unconfined shots shall not be permitted in any coal mine. No solid shooting shall be permitted without written permission of the office.

(e) Blasting cables shall be well insulated and shall be as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire. The cable, when new, shall be at least one hundred twenty-five feet in length and never less than one hundred feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the
top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, and after the hoist has been idle for one hour or more before hoisting or lowering men; there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man cages, and the miners shall remain in such station until the man trip or man cage is available.

(b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any part of the machinery; and no person shall interfere with or
intimidate the engineer or drum runner in the discharge
of his or her duties. Where the mine is operated or
worked by shaft or slope, a minimum space of two and
one-half square feet per person shall be available for
each person on any cage or car where men are trans-
ported. In no instance shall more than twenty miners be
transported on a cage or car without the approval of the
director. No person shall ride on a loaded cage or car
in any shaft, slope, or incline: Provided, That this does
not prevent any trip rider from riding in the perfor-
ance of his or her authorized duties. No engineer is
required for automatically operated cages, elevators, or
platforms. Cages and elevators shall have an emergency
power source unless provided with other escapeway
facilities.

(c) Each automatic elevator shall be provided with a
telephone or other effective communication system by
which aid or assistance can be obtained promptly.

(d) A “stop” switch shall be provided in the automatic
elevator compartment that will permit the elevator to
be stopped at any location in the shaft.

§22A-2-53c. Ramps; tipples; cleaning plants; other sur-
face areas.

1 (1) Surface installations generally — Surface instal-
lations, all general mine structures, enclosures and other
facilities, including custom coal preparation facilities
shall be maintained in good condition. In unusually
dusty locations, electric motors, switches and controls
shall be of dust-tight construction, or enclosed with
reasonable dust-tight housings or enclosures. Openings
in surface installations through which men or material
may fall shall be protected by railings, barriers, covers
or other protective devices. Illumination sufficient to
provide safe working conditions shall be provided in and
on all surface structures, paths, walkways, switch
panels, loading and dumping sites, working areas and
parking areas. Materials shall be stored and/or stacked
in a manner to prevent stumbling or falling. Com-
pressed and liquid gas cylinders shall be secured in a
safe manner. Adequate ventilation shall be provided in
tipples and preparation plants. Coal dust in or around
tipples or cleaning plants shall not be permitted to exist
or accumulate in dangerous amounts.

(2) Machinery guards — Gears, sprockets, chains,
drive head, tail and takeup pulleys, flywheels, couplings,
shafts, sawblades, fan inlets and similar exposed moving
machine parts with which persons may come in contact
shall be guarded adequately. Except when testing is
necessary, machinery guards shall be secured in place
while being operated. Belt rollers shall not be cleaned
while belts are in motion.

(3) Fire protection — Where cutting or welding is
performed at any location, a means of prompt extin-
guishment of any fire accidentally started shall be
provided. Adequate fire-fighting facilities, required by
the office of miners' health, safety and training, shall be
provided on all floors. At least two exits shall be
provided for every floor of tipples and cleaning plants
constructed after the effective date of this section. Signs
warning against smoking and open flames shall be
posted so they can be readily seen in areas or places
where fire or explosion hazards exist. Smoking or an
open flame in or about surface structures shall be
restricted to locations where it will not cause fire or an
explosion.

(4) Repairs of machinery — Machinery shall not be
lubricated or repaired while in motion, except where
safe remote lubricating devices are used. Machinery
shall not be started until the person lubricating or
repairing it has given a clear signal. Means and methods
shall be provided to assure that structures and the
immediate area surrounding the same shall be reason-
ably free of coal dust accumulations. Where repairs are
made to tipples, or cleaning plants, proper scaffolding
and proper overhead protection shall be provided for
workmen when necessary. Where overhead repair work
is being performed at surface installations, adequate
protection shall be provided for all persons working or
passing below.

(5) Stairs, platforms, etc. — Stairways, elevated
platforms and runways shall be equipped with hand-rails. Railroad car trimmer platforms are exempted from such requirements. Where required, elevated platforms and stairways shall be provided with toe-boards. They shall be kept clear of refuse and ice and maintained in good condition.

(6) Belts, etc. — Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters. Belt dressing shall not be applied while in motion. Belts, chains and ropes shall not be guided into power-driven moving pulleys, sprockets or drums with the hand except with equipment especially designed for hand feeding.

(7) Conveyors and crossovers — When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started. Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction, with rails, and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points. A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tipple equipment is to be started. Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation. Guards, nets or other suitable protection shall be provided where tramways pass over roadways, walkways or buildings. Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

(8) Ladders — All ladders shall be securely fastened. Permanent ladders more than ten feet in height shall be provided with backguards. Ladders shall be of substantial construction and maintained in good condition. Wooden ladders shall not be painted. Fixed ladders shall not incline backward at any point unless equipped
with backguards. Fixed ladders shall be anchored securely and installed with at least three inches of toe clearance. Side rails of fixed ladders shall project at least three feet above landings, or substantial handholds shall be provided above the landing. No person shall be permitted to work off of the top step of any ladder. Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor. The maximum length of a step ladder shall be twenty feet and an extension ladder sixty feet.

(9) Hoisting — Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted. Persons shall stay clear of hoisted loads. Tag lines shall be attached to hoisted materials that require steadying or guidance. A hoist shall not lift loads greater than the rated capacity of the hoist being used.

(10) Railroad track construction and maintenance—

(a) All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained. Rails shall be secured at all points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

(b) All points shall be installed and maintained so as to prevent bad connections. Varying weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the tracks of the track-mounted equipment.
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(d) Severely worn or damaged rails and ties shall be replaced immediately.

(e) When mining operations are performed within any twenty-four hour period, operations shall be inspected at least every twenty-four hours to assure safe operation and compliance with the law and rules. The results of which inspection shall be recorded.

(f) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the walkway shall be adequately guarded. Employees required to work over thickeners shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

§22A-2-54. Duties of persons subject to article; rules and regulations of operators.

(a) It shall be the duty of the operator, mine foreman, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provisions of this article.

(b) It shall be the duty of all employees and check weighmen to comply with this article and to cooperate with management and the office of miners' health, safety and training in carrying out the provisions hereof.

(c) Reasonable rules of an operator for the protection of employees and preservation of property that are in harmony with the provisions of this article and other applicable laws shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous place about the mine or mines, and given to each employee upon request.

§22A-2-66. Explosion or accident; notice; investigation by office of miners’ health, safety and training.
Whenever, by reason of any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury occurs, it is the duty of the superintendent of the mine, and in his or her absence, the mine foreman in charge of the mine, to give immediate notice to the director and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go to the scene of such accident and make such recommendations and render such assistance as he or she may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he or she shall preserve with the other records in his or her office, the cost of such records to be paid by the office of miners' health, safety and training, and a copy shall be furnished to the operator and other interested parties. To enable him or her to make such investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

§22A-2-68. Preservation of evidence following accident or disaster.

Following a mine accident resulting in the death of one or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by the office of miners' health, safety and training has been completed.

§22A-2-70. Shafts and slopes.

(a) When mine examiner to be employed; qualifications. — During the sinking of a shaft or the driving of a slope to a coal bed or while engaged in underground construction work, or relating thereto, the operator shall assign a mine examiner to such project areas. Such mine examiner shall have a certificate of competency valid only for the type of work stipulated thereon and issued to him or her by the office of miners' health, safety and
training after he or she has passed an examination given
by the office of miners’ health, safety and training. He
or she shall, at the time he or she takes the examination,
have a minimum of five years’ experience in shaft
sinking, slope driving and underground construction;
moreover, he or she shall be able to detect methane with
a flame safety lamp and have a thorough knowledge of
the ventilation of shafts, slopes, and mines, and the
machinery connected therewith, and finally, he or she
shall be a person of good moral character with temper-
ate habits.

(b) Mine examiner or certified person acting as such;
duties generally; records open for inspection. — In all
shafts and slopes within three hours immediately
preceding the beginning of a work shift and before any
workmen in such shift, other than those who may be
designated to make the examinations, enter the under-
ground areas of such shafts or slopes, a certified
foreman or mine examiner, designated by the operator
of such shaft or slope to do so, shall make an examina-
tion of such areas. Each person designated to make such
examinations shall make tests with a permissible flame
safety lamp for accumulations of methane and oxygen
deficiency, and examine sides of shafts and ribs and roof
of all slopes. Should he or she find a condition which he
or she considers dangerous to persons, he or she shall
place a conspicuous danger sign at all entrances to such
places. He or she shall record the results of his or her
examination with ink or indelible pencil in a book
prescribed by the director, kept at a place on the surface
designated by mine management. All records as
prescribed herein shall be open for inspection by
interested persons.

(c) Approvals and permits. — An approval shall be
obtained from the office before work is started. A
permit shall be obtained from the office (1) to stop fan
when miners are in shafts or slopes; (2) to use electrical
machinery in shafts or slopes; (3) to use electric lights
in shafts or slopes; (4) to use welders, torches and like
equipment in shafts or slopes; (5) to hoist more than four
miners at one time in buckets or cars; (6) to shoot more
than fifteen shots in one series.

(d) Records. — The foreman in charge on each shift shall keep a daily report of conditions and practices. The foreman in charge on each shift shall read and counter-sign the reports of the previous shift. Unsatisfactory conditions and practices reported shall be repeated on daily reports until corrected. Hoists, buckets, cars, ropes and appliances thereto shall be examined by a qualified person before the start of each shift and a written record kept. Deaths from accidents or previous injuries shall be reported immediately by wire to the office of the director and to the district mine inspector or the inspector-at-large. A written report of all injuries and deaths shall be mailed to the office of miners' health, safety and training and district mine inspector promptly. Immediate notice shall be given the office of the director, the district mine inspector and the inspector-at-large in the event of an ignition of gas, or serious accident to miners or equipment. All permits and approvals must be available for inspection by all interested persons.

(e) General. — The foreman on shift shall have at least five years' experience in shafts or slopes. New employees shall be instructed in the dangers and rules incident to their work. Conspicuous bulletin boards and warning signs shall be maintained. Unauthorized persons shall not be permitted around shafts or slopes. First-aid material shall be maintained at the operation as required by section fifty-nine of this article. The scene of a fatal accident shall be left unchanged until an investigation is made by all interested persons. All employees and others around the operation shall wear hard-toe shoes and hard-top hats. Goggles or other eye protection shall be worn when cutting, welding or striking where particles may fly. Gears, belts and revolving parts of machinery shall be properly guarded. Hand tools shall be in good condition. Sides of shafts, ribs and roof of all slopes shall be closely observed for loose and dangerous conditions. Loose brows, ribs and top in slopes shall be taken down or supported; loose ribs in shafts shall be scaled. Miners shall be hoisted and
lowered under power in shafts and slopes. All hoists must have two positive breaking devices. At least three wraps of rope shall remain on the hoist drum at all times. Wire ropes shall not be less than three-fourths inches in diameter, and of a design to prevent excessive spinning or turning when hoisting.

When heavy materials are hoisted, a large rope shall be used if necessary. A hoisting engineer shall be in constant attendance while men are in shaft. Head frames shall be constructed substantially. Noise from machinery shall not interfere with signals. The standard signal code, whistle or bell shall be used for hoisting:

One signal ..................................... Hoist

One signal ..................................... Stop

Two signals ................................... Lower

Three signals ................................. Man cage

One signal from hoisting engineer Miners board cage

Hoist signals shall be posted in front of the hoisting engineer. The shaft opening shall be enclosed by a fence five feet high. Buckets shall not be loaded within six inches of the top rim. Buckets shall have a positive lock on the handle or bale to prevent bucket from crumpling while being hoisted. Positive coupling devices shall be used on buckets or cars (hooks with safety catches or threaded clevis). Emergency devices for escape shall be provided while shafts are under construction. Miners shall not ride on or work from rims of buckets. Buckets or cars shall not be lowered without a signal from working area. Only sober and competent engineers shall be permitted to operate hoists. No intoxicating liquors or intoxicated persons shall be permitted in or around any shaft, slope or machinery. Lattice type platforms shall be used.

(f) Explosives. — Explosives and blasting caps being taken into or removed from the operation shall be transported and kept in approved nonconducting receptacles (unopened cartons or cases are permissible). Explosives shall not be primed until ready to be inserted.
into holes. Handling of explosives and loading of holes
shall be under the strict supervision of a qualified
person or shotfirer. No more explosives or caps than are
required to shoot one round shall be taken into shafts.
Adobe, mudcapped or unconfined shots shall not be
fired. Holes shall be stemmed tightly and full into the
mouth. Blasting caps shall be inserted in line with the
explosive. Leg wires of blasting caps and buss wires
shall be kept shunted until connected. Shooting cables
shall be shunted at firing devices and before connecting
to leg wires. Only approved shooting devices shall be
used. Shots shall be fired promptly after the round of
holes are charged. Warnings shall be given before shots
are fired by shouting “Fire” three times slowly after
those notified have withdrawn. The blasting circuit shall
be wired in series or parallel series. All shooting circuits
shall be tested with a galvanometer by a qualified
person before shooting. A careful examination for
misfires shall be made after each shot. Persons shall not
return to the face until smoke and dust have cleared
away. The shooting cable shall be adequately insulated
and have a substantial covering; be connected by the
person firing the shot; and be kept away from power
circuits. Misfires shall be removed by firing separate
holes or by washing; shall not be drilled out; and shall
be removed under supervision of a foreman or qualified
person. Separate magazines for the storage of explosives
and detonators shall be located not less than three
hundred feet from openings or other structures. Mag-
azines for the storage of explosives and detonators shall
be separated at least fifty feet. Magazines shall be
located behind barricades. The outside of magazines
shall be constructed of incombustible material. Rubbish
and combustible material shall not be permitted to
accumulate around or in magazine. Warning signs, to
be seen in all directions, shall be posted near magazines.

(g) Electrical. — Power cables installed in slopes shall
be placed in conduit away from the belt as far as
possible. Surface transformers shall be elevated at least
eight feet from the ground or enclosed by a fence six
feet high, grounded if metal; shall be properly
grounded; shall be installed so that they will not present
a fire hazard; and shall be guarded by sufficient danger
signs.

Electric equipment shall be in good condition, clean
and orderly; shall be equipped with guards around
moving parts; and shall be grounded with effective
frame grounds on motors and control boxes.

All electric wires shall be installed and supported on
insulators. All electric equipment shall be protected by
dual element fuse or circuit breakers.

(h) Ventilation. — Ventilating fans shall be offset
from portal at least fifteen feet; shall be installed so that
the ventilating current is not contaminated by dust,
smoke or gases; shall be effectively frame grounded; and
shall be provided with fire extinguishers.

All shafts and slopes shall be ventilated adequately
and continuously with fresh air. Air tubing shall deliver
not less than nine thousand feet per minute at the
working area or as much more as the inspector may
require.

(i) Gases. — A foreman shall be in attendance at all
times in shafts and slopes who has passed an examina-
tion given by the office as to his or her competency in
the use of flame safety lamps.

An examination shall be made before and after
shooting by the foreman on shift. The foreman shall
have no superior in the performance of his or her duties.
A lighted flame safety lamp or other approved detector
shall be carried at all times by the foreman when in the
working area and weekly gas analysis made. In all
shafts and slopes within three hours immediately
preceding the beginning of a work shift and before any
workmen in such shift, other than those who may be
designated to make the examinations, enter the under-
ground areas of such shafts or slopes, a certified mine
foreman or mine examiner designated by the operator
of such shaft or slope to do so, shall make an examina-
tion of such area. Evidence of official examination shall
be left at the face by marking date and initials.

Gases should be removed under the supervisi
foreman in charge. Smoking shall not be permitted inside of shafts or slopes.

(j) Drilling. — Dust allaying or dust collecting devices shall be used while drilling.

(k) Lights to be used in shafts. — Only approved electric cap lights shall be used in shafts. Other lights shall be of explosive-proof type. Lights shall be suspended in shafts by cable or chain other than the power conductor. In slopes, lights must be substantially installed. Power cables shall be of an approved type. Power cables shall not be taut from shaft collar to light. Power cables shall be in good condition and free of improper splices. Lights shall be suspended not less than twenty feet above where miners are working. Lights shall be removed from shaft and power cut off when shooting. In slopes, lights must be removed a safe distance when shots are fired. Lights shall not be replaced in shafts or slopes until examination has been made for gas by the mine examiner and found clear. Front of light shall be protected by a substantial metal type guard. Lights shall be protected from falling objects from above by a metal hood. The lighting circuit shall be properly fused. Electric lights shall not be used in gaseous atmospheres. A lighted flame safety lamp or approved detector shall be kept for use at the face while miners are at work.

§22A-2-72. Long wall and short wall mining.

(a) The Legislature finds that new methods of extracting coal known as long wall or short wall mining are being used in this state. The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in such mining methods and shall promulgate by the first day of January, one thousand nine hundred eighty-one, and continuously update the same, rules governing long wall and short wall mining, which rules shall have as their paramount objective, the health and safety of the persons involved in such operations, and which said rules shall include, but not be limited to, the certification of personnel involved in such operation.
(b) The director may modify the application of any provision of this section to a mine if the director determines that an alternative method of achieving the result of such provision exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such provision, or that the application of such provision to such mine will result in a diminution of the health of, or safety to, the miners in such mine. The director shall give notice to the operator and the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he or she deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners in such mine or other interested party to present information relating to the modification of such provision. The director shall issue a decision incorporating his or her findings of fact therein, and send a copy thereof to the operator and the representative of the miners, as appropriate. Any such hearing shall be of record.

§22A-2-73. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of board of coal mine health and safety to promulgate rules; time limits therefor.

The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in the construction of shafts, slopes, surface facilities, and the safety hazards, attendant therewith, and shall promulgate rules governing the construction of shafts and slopes; and shall promulgate by the first day of January, one thousand nine hundred eighty-one, rules governing the construction of surface facilities.

The board of coal mine health and safety shall continuously update such rules governing the construction of shafts, slopes and surface facilities, which rules shall have as their paramount concern, the health and safety of the persons involved in such operations.
such rules shall include, but not be limited to, the
certification of all supervisors, the certification and
training of hoist operators and shaft workers, the
certification of blasters and approval of plans. The
provisions of such rules may be enforced against
operators and construction companies in accord with the
provisions of article one of this chapter. For purposes
of this chapter, a construction company is an operator.

§22A-2-74. Control of respirable dust.

Each operator shall maintain the concentration of
respirable dust in the mine atmosphere during each
shift to which miners in active workings of such mine
are exposed below such level as the board may establish.
The board may promulgate rules governing respirable
dust, including, but not limited to, dust standards,
sampling procedures, sampling devices, equipment and
tests analysis by using the data gathered by the
federal mine safety and health administration and, or
the federal bureau of mines.

Any operator found to be in violation of such stand-
ards shall bring itself into compliance with such
standards and rules of the board or the director may
thereafter order such operator to discontinue such
operation.

§22A-2-75. Coal operators — Procedure before operating
near oil and gas wells.

(a) Before a coal operator conducts underground
mining operations within five hundred feet of any well,
including the driving of an entry or passageway, or the
removal of coal or other material, the coal operator shall
file with the office of miners' health, safety and training
and forward to the well operator by certified mail,
return receipt requested, its mining maps and plans
(which it is required to prepare, file and update to and
with the regulatory authority) for the area within five
hundred feet of the well, together with a notice, on a
form furnished by the director, informing them that the
mining maps and plans are being filed or mailed
pursuant to the requirements of this section.
Once these mining maps and plans are filed with the office, the coal operator may proceed with its underground mining operations in the manner and as projected on such plans or maps, but shall not remove, without the consent of the director, any coal or other material or cut any passageway nearer than two hundred feet of any completed well or well that is being drilled. The coal operator shall, at least every six months while mining within the five hundred foot area, update its mining maps and plans and file the same with the director and the well operator.

(b) Application may be made at any time to the director by a coal operator for leave to conduct underground mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified, showing the location of the well, the workings adjacent to the well and the mining operations contemplated within two hundred feet of the well or through such well, and praying the approval of the same by the director and naming the well operator as a respondent. The coal operator shall file such petition with the director and mail a true copy to the well operator by certified mail, return receipt requested.

The petition shall notify the well operator that it may answer the petition within five days after receipt, and that in default of an answer the director may approve the proposed operations as requested if it be shown by the petitioner or otherwise to the satisfaction of the director that such operations are in accordance with the law and with the provisions of this article. If the well operator files an answer which requests a hearing, one shall be held within ten days of such answer and the director shall fix a time and date and give both the coal operator and well operator five days' written notice of the same by certified mail, return receipt requested. At the hearing, the well operator and coal operator, as well as the director, shall be permitted to offer any competent and relevant evidence. Upon conclusion of the hearing, the director shall grant the request of the coal operator or refuse to grant the same, or make decision with respect to such proposed
operation as in its judgment is just and reasonable under
all circumstances and in accordance with law and the
provisions of this article: Provided, That a grant by the
director of a request to mine through a well shall
require an acceptable test to be conducted by the coal
operator establishing that such mining through can be
done safely.

If a hearing is not requested by the well operator or
if the well operator gives, in writing, its consent to the
coal operator to mine within closer than two hundred
feet of the specified well, the director shall grant the
request of the coal operator within five days after the
petition's original five day answer period if the director
determines that such operations are just, reasonable and
in accordance with law and the provisions of this article.

The director shall docket and keep a record of all such
proceedings. From any such final decision or order of
the director, either the well operator or coal operator,
or both, may, within ten days, appeal to the circuit court
of the county in which the well subject to said petition
is located. The procedure in the circuit court shall be
substantially as provided in section four, article five,
chapter twenty-nine-a of this code, with the director
being named as a respondent. From any final order or
decree of the circuit court, an appeal may be taken to
the supreme court of appeals as heretofore provided.

A copy of the document or documents evidencing the
action of the director with respect to such petition shall
promptly be filed with the chief of the office of oil and
gas of the division of environmental protection.

(c) Before a coal operator conducts surface or strip
mining operations as defined in this chapter, within two
hundred feet of any well, including the removal of coal
and other material, the operator shall file with the
director and furnish to the well operator by certified
mail, return receipt requested, its mining maps and
plans (which it is required to prepare, file and update
to and with the regulatory authority) for the area within
two hundred feet of the well, together with a notice, on
a form furnished by the director, informing them that
the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum coverage required by article three, chapter twenty-two of this code, and the rules promulgated thereto and thereunder.

Once these mining maps and plans are filed with the director, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.

(d) The filing of petitions and notices with the director as herein provided may be complied with by mailing such petition or notice to the director by certified mail, return receipt requested.

§22A-2-76. Reopening old or abandoned mines.

No person, without first giving to the director ten days' written notice thereof, shall reopen for any purposes any old or abandoned mine wherein water or mine seepage has collected or become impounded or exists in such manner or quantity that upon the opening of such mine, such water or seepage may drain into any stream or watercourse.

Such notice shall state clearly the name or names of the owner or owners of the mine proposed to be opened, its exact location, and the time of the proposed opening thereof.

Upon receipt of such notice, the director shall have his or her representative present at the mine at the time designated in the notice for such opening, who has full supervision of the work of opening such mine with full authority to direct the work in such manner as to prevent the...
§22A-2-77. Monthly report by operator of mine; exception as to certain inactive mines.

On or before the end of each calendar month, the operator of each mine, regulated under the provisions of this chapter or article three or four, chapter twenty-two of this code, shall file with the director a report with respect thereto covering the next preceding calendar month which shall reflect the number of accidents which have occurred at each such mine, the number of persons employed, the days worked and the actual raw tonnage mined. Such report shall be made upon forms furnished by the director. Other provisions of this section to the contrary notwithstanding, no such report shall be required with respect to any mine on approved inactive status if no employees were present at such mine at any time during the next preceding calendar month.

§22A-2-78. Examinations to determine compliance with permits.

Whenever permits are issued by the office of miners' health, safety and training, frequent examinations shall be made by the mine inspector during the tenure of the permit to determine that the requirements and limitations of the permit are complied with.

ARTICLE 3. UNDERGROUND CLAY MINE.

§22A-3-1. Definition.

§22A-3-2. Clay mine foreman; when to be employed; qualifications; assistants.

§22A-3-3. Rules for protection of health and safety of employees.

§22A-3-1. Definition.

In this article the term "mine" includes the shafts, slopes, drifts or inclines connected with excavations penetrating clay seams or strata, which excavations are ventilated by one general air current or division thereof, and the surface structures or equipment connected
§22A-3-2. Clay mine foreman; when to be employed; qualifications; assistants.

1 In every underground clay mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ a mine foreman who shall be a competent and practical person holding a certificate of competence for said position issued to him or her by the office of miners' health, safety and training after an examination by such office. In order to receive a certificate of competence qualifying a foreman in an underground clay mine, the applicant shall take an examination prescribed by the director of the office of miners' health, safety and training, be a citizen of this state, of good moral character and temperate habits, having had at least three years' experience in the underground working of clay mines.

§22A-3-3. Rules for protection of health and safety of employees.

1 The director of the office of miners' health, safety and training may from time to time promulgate reasonable rules for the protection of the health and safety of the persons working in or about underground clay mines, to the extent the same are not more onerous or restrictive than the laws of this state intended to safeguard the life and health of persons working in underground coal mines contained in article two of this chapter.

ARTICLE 4. OPEN-PIT MINES, CEMENT MANUFACTURING PLANTS AND UNDERGROUND LIMESTONE AND SANDSTONE MINES.

§22A-4-1. Definitions.
§22A-4-2. Applicability of mining laws.
§22A-4-3. Rules.
§22A-4-4. Monthly report by operator.
§22A-4-5. Inspectors.
§22A-4-6. Penalties.

§22A-4-1. Definitions.

1 Unless the context in which used clearly requires a different meaning as used in this article:
(a) “Open-pit mine” means an excavation worked from the surface and open to daylight.

(b) “Underground mine” means subterranean workings for the purpose of obtaining a desired material or materials.

(c) “Sand” means waterworn sandstone fragments transported and deposited by water.

(d) “Gravel” means an occurrence of waterworn pebbles.

(e) “Sandstone” means a compacted or cemented sediment composed chiefly of quartz grains.

(f) “Limestone” means a sedimentary rock composed mostly of calcium carbonate.

(g) “Clay” means a natural material of mostly small fragments of hydrous aluminum silicates and possessing plastic properties.

(h) “Shale” means a laminated sedimentary rock composed chiefly of small particles of a clay grade.

(i) “Iron ore” means a mineral or minerals, and gangue which when treated will yield iron at a profit.

(j) “Manganese ore” means a metalliferous mineral which when treated will yield manganese at a profit.

§22A-4-2. Applicability of mining laws.

All provisions of the mining laws of this state intended for the protection of the health and safety of persons employed within or at any coal mine and for the protection of any coal mining property extend to all open-pit mines and any property used in connection therewith for the mining of underground limestone and sandstone mines, insofar as such laws are applicable thereto.

§22A-4-3. Rules.

The director of the office of miners’ health, safety and training shall promulgate reasonable rules, in accordance with and confined to the provisions of chapter twenty-nine-a of this code, for the effective administra-
§22A-4-4. Monthly report by operator.

The operator of such mine shall, on or before the end of each calendar month, file with the director of the office of miners' health, safety and training a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

§22A-4-5. Inspectors.

The director of the office of miners' health, safety and training shall divide the state into not more than two mining districts and assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, of good character and reputation, temperate in habits, having a minimum of five years of practical experience in such mining operations and who at the time of appointment is not more than fifty-five years of age. To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least ninety percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the office of miners' health, safety and training. No candidate's name shall remain in the register for more than three years without requalifying.

Such inspector shall have the same tenure accorded a mine inspector, as provided in subsection (e), section twelve, article one of this chapter and shall be paid not less than fifteen thousand dollars per year. Such inspector shall also receive reimbursement for traveling expenses at the rate of not less than fifteen cents for
ENVIRONMENTAL PROTECTION

§22A-4-6. Penalties.

1 Any person who fails or refuses to discharge any
2 provision of this article, rule promulgated or order
3 issued pursuant to the provisions of this article, is guilty
4 of a misdemeanor, and, upon conviction thereof, shall be
5 punished by a fine of not less than one hundred nor more
6 than one thousand dollars or by imprisonment not
7 exceeding six months, or by both.

ARTICLE 5. BOARD OF APPEALS.

§22A-5-1. Board of appeals.


§22A-5-1. Board of appeals.

1 There is hereby continued a board of appeals,
2 consisting of three members. Two members of the board
3 shall be appointed by the governor, one person who by
4 reason of previous training and experience may reason-
5 ably be said to represent the viewpoint of miners, and
6 one person who by reason of previous training and
7 experience may reasonably be said to represent the
8 viewpoint of the operators. The third person, who is
9 chair of the board and who must not have had any
10 connection at any time with the coal industry or an
11 organization representing miners, is selected by the two
12 members appointed by the governor. The term of office
13 of members of the board is five years.

14 The function and duties of the board is to hear
15 appeals, make determinations on questions of miners’
16 entitlements due to withdrawal orders and appeals from
17 discharge or discrimination, and suspension of certifica-
18 tion certificates.

19 The chair of the board has the power to administer
20 oaths and subpoena witnesses and require production of
any books, papers, records or other documents relevant or material to the appeal inquiry.

The chair shall subpoena any witness requested by a party to a hearing to testify or produce books, records or documents. Any witness responding to a subpoena so issued shall receive a daily witness fee to be paid out of the state treasury upon a requisition of the state auditor equivalent to the rate of pay under the wage agreement currently in effect plus all reasonable expenses for meals, lodging and travel at the rate applicable to state employees. Any full payments as hereinbefore specified shall be in full and exclusive payment for meals, lodging, actual travel and similar expenses and shall be made in lieu of any lost wages occasioned by such appearance in connection with any hearing conducted by the board.

Each member of the board shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. No reimbursement for expenses shall be made except upon an itemized account, properly certified by such members of the board. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor.

Board members, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.


(a) There are hereby transferred to the board of appeals all functions of the director of the office of miners' health, safety and training relating to the review of orders and notices as set forth in section seventeen, article one of this chapter.

(b) There are hereby transferred to the board of appeals all functions of the director of the office of miners' health, safety and training relating to the
review of penalty assessments as set forth in subdivision (3), subsection (a), section twenty-one, article one of this chapter.

(c) Judicial review of decisions by the board of appeals shall be available and conducted in the same fashion as set forth in section nineteen, article one of this chapter.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-1. Declaration of legislative findings and purpose.

§22A-6-2. Definitions.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

§22A-6-4. Board powers and duties.

§22A-6-5. Preliminary procedures for promulgation of rules.

§22A-6-6. Health and safety administrator; qualifications; duties; employees; compensation.

§22A-6-7. Coal mine safety and technical review committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the board of coal mine health and safety.


§22A-6-9. Reports.

§22A-6-10. Compensation and expenses of board members.

§22A-6-1. Declaration of legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) The Legislature concurs with the congressional declaration made in the "Federal Coal Mine Health and Safety Act of 1969" that "the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource — the miner";

(2) Coal mining is highly specialized, technical and complex and it requires frequent review, refinement and improvement of standards to protect the health and safety of miners;

(3) During each session of the Legislature, coal mine health and safety standards are proposed which require knowledge and comprehension of scientific and technical data related to coal mining;

(4) The formulation of appropriate rules and practices to improve health and safety and provide increased
protection of miners can be accomplished more effect-
ively by persons who have experience and competence
in coal mining and coal mine health and safety.

(b) In view of the foregoing findings, it is the purpose
of this article to:

(1) Continue the board of coal mine health and safety;

(2) Require such board to continue as standard rules
the coal mine health and safety provisions of this code;

(3) Compel the board to review such standard rules
and, when deemed appropriate to improve or enhance
coal mine health and safety, to revise the same or
develop and promulgate new rules dealing with coal
mine health and safety; and

(4) Authorize such board to conduct such other
activities as it deems necessary to implement the
provisions of this chapter.

§22A-6-2. Definitions.

Unless the context in which a word or phrase appears
clearly requires a different meaning, the words and
phrases defined in section two, article one of this chapter
have, when used in this article, the meaning therein
assigned to them. For the purpose of this article “board”
means the board of coal mine health and safety
continued by section three of this article.

§22A-6-3. Board continued; membership; method of
nomination and appointment; meetings;
vacancies; quorum.

(a) The board of coal mine health and safety, hereto-
fore established, is continued as provided by this article.
The board consists of seven members who are residents
of this state, and who are appointed as hereinafter
specified in this section:

(1) The governor shall appoint one member to
represent the viewpoint of those operators in this state
whose individual aggregate production exceeds one
million tons annually and one member to represent the
viewpoint of those operators in this state whose individ-
ual aggregate production is less than one million tons annually, which tonnage includes tonnage produced by affiliated, parent and subsidiary companies and tonnage produced by companies which have a common director or directors, shareholder or shareholders, owner or owners. When such members are to be appointed, the governor may request from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make the appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this state is that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The governor shall appoint two members who can reasonably be expected to represent the viewpoint of the working miners of this state. If the major employee organization representing coal miners in this state is divided into administrative districts, such members shall not be from the same administrative district. The highest ranking official within the major employee organization representing coal miners within this state shall, upon request by the governor, submit a list of three nominees for each such position on the board: Provided, That if the major employee organization representing coal miners in this state is divided into administrative districts, and if there are two vacancies to be filled in accordance with the provisions of this subdivision, not more than two persons on each list of three nominees shall be from the same administrative district and at least three districts shall be represented on the two lists submitted, and if there is one vacancy to be filled, no names shall be submitted of persons from the same administrative district already represented on the board. Said nominees shall have a background in
coal mine health and safety, and shall at the time of
their appointment be employed in a position which
involves the protection of health and safety of miners.
There shall be submitted with such list a summary of
the qualifications of each nominee. If the full lists of
nominees are submitted in accordance with the provi-
sions of this subdivision, the governor shall make
appointments from the persons so nominated.

(3) The governor shall appoint one public member
who is professionally qualified in the field of occupa-
tional health and safety and who is (A) an employee of
the institute of labor studies at West Virginia University
or (B) a person who is engaged in or who has broad
experience in occupational health and safety from the
perspective of the worker. Such nominee shall have
technical experience in occupational health and safety
or education and experience in such field: Provided,
That the nominee shall not have been, prior to appoint-
ment to the board, employed by a mining or industrial
business entity in a managerial or supervisory position,
or shall not have been employed by the major employee
organization representing coal miners in this state, or
shall not have been a miner.

(4) The governor shall appoint one public member
who is professionally qualified in the field of occupa-
tional health and safety and who has a degree in
engineering or industrial safety and a minimum of five
years' experience in the field of industrial safety
engaged in constructing, designing, developing or
administering safety programs: Provided, That the
nominee has not been, prior to appointment to the board,
employed by a mining business entity in a managerial
or supervisory position or has not been employed by the
major employee organization representing coal miners
in this state, or has not been a miner.

(5) All appointments made by the governor under the
provisions of subdivisions (1), (2), (3) and (4) of this
subsection shall be with the advice and consent of the
Senate.

(6) The seventh member of the board is the secretary
of the department of commerce, labor and environmental resources, or his or her designee, who serves as chair of the board. The director shall furnish to the board such secretarial, clerical, technical, research and other services as are necessary to the conduct of the business of the board, not otherwise furnished by the board.

(b) Members serving on the board on the effective date of this article may continue to serve until the expiration of their terms. Thereafter, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members are eligible for reappointment.

(c) The governor shall appoint a health and safety administrator in accordance with the provisions of section six of this article, who shall certify all official records of the board. The health and safety administrator shall be a full-time officer of the board of coal mine health and safety with the duties provided for in section six of this article. The health and safety administrator shall have such education and experience as the governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The governor shall appoint as health and safety administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The health and safety administrator shall be a person who has not been, during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder or employee of any coal operator, or an employee or officer of an employee organization, or a spouse of any such person. The health and safety administrator shall have the expertise to draft proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the health and safety administra-
tor shall prepare an agenda for each board meeting giving priority to the promulgation of rules as may be required from time to time by this code, and as may be required to improve coal mine health and safety. The health and safety administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the chair, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the chair: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules are to be finally adopted by the board, copies of such proposed rules shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules. When a member fails to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the health and safety administrator shall notify the member and the governor of such fact. Such member shall be removed by the governor unless good cause for absences is shown.

(e) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the governor within thirty days after the vacancy occurs by the major trade association or major
employee organization, if any, which nominated the
person whose seat on the board is vacant. The vacancy
shall be filled by the governor within thirty days of his
receipt of the list of nominations.

(f) A quorum of the board is five members which shall
include the secretary of the department of commerce,
labor and environmental resources, at least one member
representing the viewpoint of operators and at least one
member representing the viewpoint of the working
miners, and the board may act officially by a majority
of those members who are present.

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the "coal
mine health and safety provisions of this chapter." Such
standard rules and any other rules shall be adopted by
the board without regard to the provisions of chapter
twenty-nine-a of this code. The board of coal mine health
and safety shall devote its time toward promulgating
rules in those areas specifically directed by this chapter
and those necessary to prevent fatal accidents and
injuries.

(b) The board shall review such standard rules and,
when deemed appropriate to improve or enhance coal
mine health and safety, revise the same or develop and
promulgate new rules dealing with coal mine health and
safety.

(c) The board shall develop, promulgate and revise, as
may be appropriate, rules as are necessary and proper
to effectuate the purposes of article two of this chapter
and to prevent the circumvention and evasion thereof,
all without regard to the provisions of chapter twenty-
ine-a of this code:

(1) Upon consideration of the latest available scientific
data in the field, the technical feasibility of standards,
and experience gained under this and other safety
statutes, such rules may expand protections afforded by
this chapter notwithstanding specific language therein,
and such rules may deal with subject areas not covered
by this chapter to the end of affording the maximum
possible protection to the health and safety of miners.

(2) No rules promulgated by the board shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator has the power to petition the circuit court of Kanawha County for a determination as to whether any rule promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: Provided, That any rule properly promulgated by the board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the protection afforded miners below that provided by this chapter.

(4) The director shall cause proposed rules and a notice thereof to be posted as provided in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed rules and accompanying notice to each operator affected. A copy of such proposed rules shall be provided to any individual by the director's request. The notice of proposed rules shall contain a summary in plain language explaining the effect of the proposed rules.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules to submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules with such modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the board shall release a notice specifying the proposed
rules to which objections have been filed and a hearing requested.

(7) Promptly after any such notice is released by the board under subdivision (6) of this section, the board shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the board shall make findings of fact which shall be public, and may promulgate such rules with such modifications as it deems appropriate. In the event the board determines that a proposed rule should not be promulgated or should be modified, it shall within a reasonable time publish the reasons for its determination.

(8) All rules promulgated by the board shall be published in the state register and continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants, as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and is entitled to the use of the services, facilities and personnel of any agency, institution, school, college or university of this state.

(e) The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities.

The board shall review all such reports, receive any additional information, and may, on its own initiative, ascertain the cause or causes of such coal mining fatality or fatalities. Within one hundred twenty days of such review of each such fatality, the board shall promulgate such rules as are necessary to prevent the recurrence of such fatality, unless a majority of the quorum present determines that no rules can assist in the prevention of the specific type of fatality. Likewise, the board shall annually, not later than the first day of July, review the major causes of coal mining injuries during the previous
calendar year, reviewing the causes in detail, and shall
promulgate such rules as may be necessary to prevent
the recurrence of such injuries.

Further, the board shall, on or before the tenth day
of January of each year, submit a report to the governor,
president of the Senate and speaker of the House, which
report shall include, but is not limited to:

(1) The number of fatalities during the previous
calendar year, the apparent reason for each fatality as
determined by the office of miners' health, safety and
training and the action, if any, taken by the board to
prevent such fatality;

(2) Any rules promulgated by the board during the
last year;

(3) What rules the board intends to promulgate
during the current calendar year;

(4) Any problem the board is having in its effort to
promulgate rules to enhance health and safety in the
mining industry;

(5) Recommendations, if any, for the enactment,
repeal or amendment of any statute which would cause
the enhancement of health and safety in the mining
industry;

(6) Any other information the board deems
appropriate;

(7) In addition to the report by the board, as herein
contained, each individual member of said board has
right to submit a separate report, setting forth any
views contrary to the report of the board, and the
separate report, if any, shall be appended to the report
of the board and be considered a part thereof.

§22A-6-5. Preliminary procedures for promulgation of
rules.

(a) Prior to the posting of proposed rules as provided
for in subsection (c), section four of this article, the
board shall observe the preliminary procedure for
development of rules set forth in this section:
(1) During a board meeting or at any time when the board is not meeting, any board member may suggest to the health and safety administrator, or such administrator on his or her own initiative may develop, subjects for investigation and possible regulation;

(2) Upon receipt of a suggestion for investigation, the health and safety administrator shall prepare a report, to be given at the next scheduled board meeting, of the technical evidence available which relates to such suggestion, the staff time required to develop the subject matter, the legal authority of the board to act on the subject matter, including a description of findings of fact and conclusions of law which will be necessary to support any proposed rules;

(3) The board shall by majority vote of those members who are present determine whether the health and safety administrator shall prepare a draft rule concerning the suggested subject matter;

(4) After reviewing the draft rule, the board shall determine whether the proposed rules should be posted and made available for comment as provided for in section four of this article;

(5) The board shall receive and consider those comments to the proposed rules as provided for in section four of this article;

(6) The board shall direct the health and safety administrator to prepare for the next scheduled board meeting findings of fact and conclusions of law for the proposed rules, which may incorporate comments received and technical evidence developed, and which are consistent with section four of this article;

(7) The board shall adopt or reject or modify the proposed findings of fact and conclusions of law; and

(8) The board shall make a final adoption or rejection of the rules.

(b) By the concurrence of at least four members of the board, the board may dispense with the procedure set out in (a) above or any other procedural rule established,
except that the board shall in all instances when adopting rules prepare findings of fact and conclusions of law consistent with this section and section four of this article.

(c) Without undue delay, the board shall adopt an order of business for the conduct of meetings which will promote the orderly and efficient consideration of proposed rules in accordance with the provisions of this section.

§22A-6-6. Health and safety administrator; qualifications; duties; employees; compensation.

(a) The governor shall appoint the health and safety administrator of the board for a term of employment of one year. The health and safety administrator shall be entitled to have his or her contract of employment renewed on an annual basis except where such renewal is denied for cause: Provided, That the governor has the power at any time to remove the health and safety administrator for misfeasance, malfeasance or nonfeasance: Provided, however, That the board has the power to remove the health and safety administrator without cause upon the concurrence of five members of the board.

(b) The health and safety administrator shall work at the direction of the board, independently of the director of the office of miners' health, safety and training and has such authority and shall perform such duties as may be required or necessary to effectuate this article.

(c) In addition to the health and safety administrator, there shall be such other research employees hired by the health and safety administrator as the board determines to be necessary. The health and safety administrator shall provide supervision and direction to the other research employees of the board in the performance of their duties.

(d) The employees of the board shall be compensated at rates determined by the board. The salary of the health and safety administrator shall be fixed by the governor: Provided, That the salary of the health and
safety administrator shall not be reduced during his or her annual term of employment or upon the renewal of his or her contract for an additional term. Such salary shall be fixed for any renewed term at least ninety days before the commencement thereof.

(e) Appropriations for the salaries of the health and safety administrator and any other employees of the board and for necessary office and operating expenses shall be made to a budget account hereby established for those purposes in the general revenue fund. Such account shall be separate from any accounts or appropriations for the office of miners' health, safety and training.

(f) The health and safety administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident.

(g) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals to address the issues raised in such study. The administrator is responsible for preparing the annual reports required by subsection (e), section four of this article and section nine of this article.

§22A-6-7. Coal mine safety and technical review committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the board of coal mine health and safety.

(a) There is hereby continued the state coal mine safety and technical review committee. The purposes of this committee are to:

(1) Assist the board of coal mine health and safety in the development of technical data relating to mine safety issues, including related mining technology;
(2) Provide suggestions and technical data to the board and propose rules with general mining industry application;

(3) Accept and consider petitions submitted by individual mine operators or miners seeking site-specific rule making pertaining to individual mines and make recommendations to the board concerning such rule-making; and

(4) Provide a forum for the resolution of technical issues encountered by the board.

(b) The committee shall consist of two members who shall be residents of this state, and who shall be appointed as hereinafter specified in this section:

(1) The governor shall appoint one member to represent the viewpoint of the coal operators in this state from a list containing one or more nominees submitted by the major trade association representing coal operators in this state within thirty days of submission of such nominee or nominees.

(2) The governor shall appoint one member to represent the viewpoint of the working miners of this state from a list containing one or more nominees submitted by the highest ranking official within the major employee organization representing coal mines within this state within thirty days of submission of the nominee or the nominees.

(3) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection shall be initially appointed to serve a term of three years. The members serving on the effective date of this article may continue to serve until their terms expire.

(4) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection may be, but are not required to be, members of the board of coal mine health and safety, and shall be compensated on a per diem basis in the same amount as provided in section ten of this article, plus all reasonable expenses.
(c) The committee shall meet at least once during each calendar month, or more often as may be necessary.

(d) A quorum of the committee shall require both members, and the committee may only act officially by a quorum.

(e) The committee may review any matter relative to mine safety and mining technology, and may pursue development and resolution of issues related thereto. The committee may make recommendations to the board for the promulgation of rules with general mining industry application. Upon receipt of a unanimous recommendation for rule making from the committee and only thereon, the board may adopt or reject such rule, without modification except as approved by the committee: Provided, That any adopted rule shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and rules. When so promulgated, such rules shall be effective, notwithstanding the provisions of applicable statutes.

(f) (1) Upon application of a coal mine operator, or on its own motion, the committee has the authority to accept requests for site-specific rule making on a mine-by-mine basis, and make unanimous recommendations to the board for site-specific rules thereon. The committee has authority to approve a request if it concludes that the request does not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by any applicable statutes or rules. Upon receipt of a request for site-specific rule making, the committee may conduct an investigation of the conditions in the specific mine in question, which investigation shall include consultation with the mine operator and authorized representatives of the miners. Such authorized representatives of the miners shall include any person designated by the employees at the mine, persons employed by an employee organization representing one or more miners at the mine, or a person designated as a representative by one or more persons at the mine.
(2) If the committee determines to recommend a request made pursuant to subdivision (1) of this subsection, the committee shall provide the results of its investigation to the board of coal mine health and safety along with recommendations for the development of the site-specific rules applicable to the individual mine, which recommendations may include a written proposal containing draft rules.

(3) Within thirty days of receipt of the committee's recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee's recommendation to promulgate site-specific rules applicable to an individual mine adopting such site-specific rules only if it determines that the application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes. When so promulgated, such rules shall be effective notwithstanding the provisions of applicable statutes.

(g) The board shall consider all rules proposed by the coal mine safety and technical review committee and adopt or reject, without modification, except as approved by the committee, such rules, dispensing with the preliminary procedures set forth in subdivisions (1) through (7), subsection (a), section five; and, in addition, with respect to site-specific rules also dispensing with the procedures set forth in subdivisions (4) through (8), subsection (c), section four of this article.

(h) In performing its functions, the committee has access to the services of the coal mine health and safety administrator appointed under section six of this article. The director shall make clerical support and assistance available in order that the committee can carry out its duties. Upon the request of both members of the committee, the health and safety administrator shall draft proposed rules and reports or make investigations.

(i) The powers and duties provided for in this section for the committee are not intended to replace or precondition the authority of the board of coal mine
health and safety to act in accordance with sections one through six and eight through ten of this article.

(j) Appropriations for the funding of the committee and to effectuate this section shall be made to a budget account hereby established for that purpose in the general revenue fund. Such account shall be separate from any accounts or appropriations for the office of miners' health, safety and training.


The standard rules and any rules promulgated by the board have the same force and effect of law as if enacted by the Legislature as a part of article two of this chapter and any violation of any such rule is a violation of law or of a health or safety standard within the meaning of this chapter.

§22A-6-9. Reports.

Prior to each regular session of the Legislature, the board shall submit to the Legislature an annual report upon the subject matter of this article, the progress concerning the achievement of its purpose and any other relevant information, including any recommendations it deems appropriate.

§22A-6-10. Compensation and expenses of board members.

Each member of the board not otherwise employed by the state shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. In the event the expenses are paid by a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the office of miners' health, safety and training. No employer shall prohibit a member of the board from exercising leave of absence from his or her place of employment in order
to attend a meeting of the board or a meeting of a
subcommittee of the board, or to prepare for a meeting
of the board, any contract of employment to the contrary
notwithstanding.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND
CERTIFICATION.

§22A-7-1. Short title.
§22A-7-2. Declaration of legislative findings and policy.
§22A-7-3. Definitions.
§22A-7-4. Board of miner training, education and certification continued;
       membership; method of appointment; terms.
§22A-7-5. Board powers and duties.
§22A-7-6. Duties of the director and office.

§22A-7-1. Short title.

1 This article shall be cited as "The West Virginia
2 Miner Training, Education and Certification Act."

§22A-7-2. Declaration of legislative findings and policy.

1 The Legislature hereby finds and declares that:
  (a) The continued prosperity of the coal industry is of
  primary importance to the state of West Virginia;
  (b) The highest priority and concern of this Legisla-
  ture and all in the coal mining industry must be the
  health and safety of the industry's most valuable
  resource — the miner;
  (c) A high priority must also be given to increasing
  the productivity and competitiveness of the mines in this
  state;
  (d) An inordinate number of miners, working on both
  the surface in surface mining and in and at under-
  ground mines, are injured during the first few months
  of their experience in a mine;
  (e) These injuries result in the loss of life and serious
  injury to miners and are an impediment to the future
  growth of West Virginia's coal industry;
  (f) Injuries can be avoided through proper miner
  training, education and certification;
  (g) Mining is a technical occupation with various
specialties requiring individualized training and education; and

(h) It is the general purpose of this article to:

(1) Require adequate training, education and meaningful certification of all persons employed in coal mines;

(2) Establish a board of miner training, education and certification and empower it to require certain training and education of all prospective miners and miners certified by the state;

(3) Authorize a stipend for prospective miners enrolled in this state’s miner training, education and certification program;

(4) Direct the director of the office of miners’ health, safety and training to apply and implement the standards set by the board of miner training, education and certification by establishing programs for miner and prospective miner education and training; and

(5) Provide for a program of continuing miner education for all categories of certified miners.

§22A-7-3. Definitions.

Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section two, article one of this chapter have when used in this article the meaning therein assigned to them. These words include, but are not limited to, the following: Office, director, mine inspector, operator, miner, shotfirer and certified electrician.

“Board” means the board of miner training, education and certification established by section four of this article.

“Mine” means any mine, including a “surface mine,” as that term is defined in section three, article three, chapter twenty-two of this code, and in section two, article four of said chapter; and a “mine” as that term is defined in section two, article one of this chapter.
§22A-7-4. Board of miner training, education and certification continued; membership; method of appointment; terms.

(a) There is hereby continued a board of miner training, education and certification, which consists of seven members, who are selected in the following manner:

(1) One member shall be appointed by the governor to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state is that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to that year in which the appointment is made.

(2) Two members shall be appointed by the governor to represent the interests of the underground operators of this state. When said members are to be appointed, the governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state is that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the governor who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall,
request by the governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the governor, submit a list of twelve nominees for membership on the board. The governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) The seventh member of the board, who serves as chair, shall be the director of the office of miners' health, safety and training.

(5) All appointments made by the governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is not in session are permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the governor. Members serving on the effective date of this article may continue on the board until their terms expire. Appointed members serve for a term of three years. The board shall meet at the call of the chair, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy nominations shall be submitted to the governor within thirty days after the vacancy occurs. The vacancy shall be filled by the governor within thirty days of receipt of the list of nominations.
(d) Each appointed member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any such amounts shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

(e) A quorum of the board is four members. The board may act officially by a majority of those members who are present.

(f) The chair of the board shall be a nonvoting member: Provided, That in cases of a tie, the chair shall cast the deciding vote on the issue or issues under consideration.

(g) The director of the office of miners' health, safety and training shall select a member of the office's staff to serve as the secretary to the board and the secretary shall be present or send an authorized representative to all meetings of the board.

§22A-7-5. Board powers and duties.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification, under this article or any other provision of this code. Such specialties include, but are not limited to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section the director may by rule further subdivide the classification for certification.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty may be created by the board unless certification in a new specialty is made desirable by action of the
government requiring certification in a specialty not 
enumerated in this code.

(c) The board may establish criteria and standards for 
a program of preemployment education and training to 
be required of miners working on the surface at 
underground mines who are not certified under the 
provisions of this article or any other provision of this 

code.

(d) The board shall set minimum standards for a 
program of continuing education and training of 
certified persons and other miners on an annual basis. 
Prior to issuing said standards, the board shall conduct 
public hearings at which the parties who may be 
affected by its actions may be heard. Such education and 
training shall be provided in a manner determined by 
the director to be sufficient to meet the standards 
established by the board.

(e) The board may, in conjunction with any state, local 
or federal agency or any other person or institution, 
provide for the payment of a stipend to prospective 
miners enrolled in one or more of the programs of miner 
education, training and certification provided for in this 
article or any other provision of this code.

(f) The board may also, from time to time, conduct 
such hearings and other oversight activities as may be 
required to ensure full implementation of programs 
established by it.

(g) Nothing in this article empowers the board to 
revoke or suspend any certificate issued by the director 
of the office of miners' health, safety and training.

(h) The board may, upon its own motion or whenever 
requested to do so by the director, deem two certificates 
issued by this state to be of equal value or deem training 
provided or required by federal agencies to be sufficient 
to meet training and education requirements set by it, 
the director, or by the provisions of this code.

§22A-7-6. Duties of the director and office.

The director shall be empowered to promulgate,
pursuant to chapter twenty-nine-a of this code, such
reasonable rules as are necessary to establish a program
to implement the provisions of this article. Such
program shall include, but not be limited to, implemen-
tation of a program of instruction in each of the miner
occupational specialties and the conduct of examinations
to test each applicant's knowledge and understanding of
the training and instruction which he or she is required
to have prior to the receipt of a certificate.

The director is authorized and directed to utilize state
mine inspectors, mine safety instructors, the state mine
foreman examiner, private and public institutions of
education and such other persons as may be available
in implementing the program of instruction and
examinations.

The director may, at any time, make such recommen-
dations or supply such information to the board as he
or she may deem appropriate.

The director is authorized and directed to utilize such
state and federal moneys and personnel as may be
available to the office for educational and training
purposes in the implementation of the provisions of this
article.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SUR-
FACE COAL MINERS.

§22A-8-1. Certificate of competency and qualification or permit of
apprenticeship required of all surface and underground
miners.

§22A-8-2. Definitions.

§22A-8-3. Permit of apprenticeship-underground miner.

§22A-8-4. Permit of apprenticeship-surface miner.

§22A-8-5. Supervision of apprentices.

§22A-8-6. Certificate of competency and qualification — Underground or
surface miner.

§22A-8-7. Refusal to issue certificate; appeal.

§22A-8-8. Limitations of article.

§22A-8-9. Violations; penalties.

§22A-8-1. Certificate of competency and qualification or permit of
apprenticeship required of all surface and underground miners.

Except as hereinafter provided, no person shall
or be employed for the purpose of performing normal
duties as a surface or underground miner in any mine
in this state unless the person holds at the time he or
she performs such duties a certificate of competency and
qualification or a permit of apprenticeship issued under
the provisions of this article.

§22A-8-2. Definitions.

For purposes of this article the term “surface miner”
means a person employed at a “surface mine,” as that
term is defined in section three, article three, chapter
twenty-two of this code, and in section two, article four
of said chapter.

For purposes of this article, the term “underground
miner” means an underground worker in a bituminous
coal mine, except as hereinafter provided.

For purposes of this article, the term “board of miner
training, education and certification” means that board
established in article seven of this chapter.

§22A-8-3. Permit of apprenticeship-underground miner.

A permit of apprenticeship-underground miner shall
be issued by the director to any person who has
demonstrated by examination a knowledge of the
subjects and skills pertaining to employment in under-
ground mines, including, but not limited to, general
safety, first aid, miner and operator rights and respon-
sibilities, general principles of electricity, general
mining hazards, roof control, ventilation, mine health
and sanitation, mine mapping, state and federal mining
laws and regulations and such other subjects as may be
required by the board of miner training, education and
certification: Provided, That each applicant for said
permit shall complete a program of education and
training of at least eighty hours, which shall be
determined by the board of miner training, education
and certification and provided for and implemented by
the director: Provided, however, That if a sufficient
number of qualified applicants having successfully
completed the state training program provided by the
office of miners’ health, safety and training are not
available, the operator may request approval from the
director to conduct the operator’s own preemployment
training program so long as such training adequately
covers the minimum criteria determined by the board
and such trainees shall be eligible for the same
certification as provided for trainees undergoing
training provided by the state.

§22A-8-4. Permit of apprenticeship-surface miner.

A permit of apprenticeship-surface miner shall be
issued by the director to any person who has demon-
strated by examination a knowledge of the subjects and
skills pertaining to employment in the surface mining
industry, including, but not limited to, general safety,
first aid, miner and operator rights and responsibilities,
general principles of electricity, health and sanitation,
heavy equipment safety, high walls and spoil banks,
haulage, welding safety, tipple safety, state and federal
mining laws and regulations and such other subjects as
may be required by the board of miner training,
education and certification: Provided, That each appli-
cant for said permit shall complete a program of
education and training of at least forty hours, which
program shall be determined by the board of miner
training, education and certification and provided for
and implemented by the director: Provided, however,
That if a sufficient number of qualified applicants
having successfully completed the state training pro-
vided by the office of miners’ health, safety and training
are not available, the operator may request approval
from the director to conduct the operator’s own preem-
ployment training program so long as such training
adequately covers the minimum criteria determined by
the board and such trainees shall be eligible for the
same certification as provided for trainees undergoing
training provided by the state.

§22A-8-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be
known as an apprentice. Any miner holding a certificate
of competency and qualification may have one person
working with him or her, and under his or her super-
vision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss or assistant mine foreman or fire boss may have three persons working with him or her under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: Provided, That a mine foreman, assistant mine foreman or fire boss supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five apprentices under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the board of miner training, education and certification.

Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it is the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the director of the office of miners' health, safety and training.

§22A-8-6. Certificate of competency and qualification — Underground or surface miner.

A certificate of competency and qualification as an underground miner or as surface miner shall be issued by the director to any person who has at least six months' total experience as an apprentice and demonstrated his or her competence as a miner by successful completion of an examination given by the director or
his or her representative in a manner and place to be
determined by the board of miner training, education
and certification: Provided, That all examinations shall
be conducted in the English language and shall be of
a practical nature, so as to determine the competency
and qualifications of the applicant to engage in the
mining of coal with reasonable safety to the applicant
and fellow employees: Provided, however, That notice of
the time and place of such examination shall be given
to management at the mine, to the local union thereat
if there is a local union, and notice shall also be posted
at the place or places in the vicinity of the mine where
notices to employees are ordinarily posted. Examinations
shall also be held at such times and places, and
after such notice, as the board finds necessary to enable
all applicants for certificates to have an opportunity to
qualify for certification.

§22A-8-7. Refusal to issue certificate; appeal.

If the director or the director's representative finds
that an applicant is not qualified and competent, the
director shall so notify the applicant not more than ten
days after the date of examination.

Any applicant aggrieved by an action of the director
in failing or refusing to issue a certificate of qualifica-
tion and competency may, within ten days' notice of the
action complained of, appeal to the director who shall
promptly give the applicant a hearing and either affirm
the action or take such action as should have been taken.

§22A-8-8. Limitations of article.

All persons possessing certificates of qualification
heretofore issued by the department of mines of this
state, or by the division of mines and minerals, or
hereafter by the office of miners' health, safety and
training entitling them to act as mine foreman-fire
bosses, or assistant mine foreman-fire bosses, are
eligible to engage at any time as miners in the mines
of this state. Supervisory and technically trained
employees of the operator, whose work contributes only
indirectly to mine operations, are not required to possess
a miners' certificate.
Notwithstanding the provisions of this article, every person working as a surface miner in this state on or before the first day of July, one thousand nine hundred seventy-four, shall, upon application to the director, be issued a certificate of competency and qualification.

§22A-8-9. Violations; penalties.

Any person who knowingly works in or at a mine without a certificate issued under the provision of this article, any person who knowingly employs an uncertified miner to work in or at a coal mine in this state, or, any operator who fails to insure the supervision of miners holding a certificate of apprenticeship as provided for in section five of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

§22A-9-1. Mine inspectors' examining board.

The mine inspectors' examining board is continued. It consists of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same causes and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.

The director of the office of miners' health, safety and training is an ex officio member of the board and shall serve as secretary of the board, without additional compensation; but the director has no right to vote with respect to any matter before the board.

The members of the board, except the public repre-
sentative, shall be appointed for overlapping terms of
eight years, except that the original appointments shall
be for terms of two, four, six and eight years, respec-
tively. Any member whose term expires may be
reappointed by the governor. Members serving on the
effective date of this article may continue to serve until
their terms expire.

Each member of the board shall be paid the same
compensation, and each member of the board shall be
paid the expense reimbursement, as is paid to members
of the Legislature for their interim duties as recom-
mended by the citizens legislative compensation com-
mission and authorized by law for each day or portion
thereof engaged in the discharge of official duties. Any
such amounts shall be paid out of the state treasury
upon a requisition upon the state auditor, properly
certified by such members of the board.

The public member is chair of the board. Members
of the board, before performing any duty, shall take and
subscribe to the oath required by section 5, article IV
of the constitution of West Virginia.

The mine inspectors' examining board shall meet at
such times and places as shall be designated by the
chair. It is the duty of the chair to call a meeting of the
board on the written request of three members or the
director of the office of miners' health, safety and
training. Notice of each meeting shall be given in
writing to each member by the secretary at least five
days in advance of the meeting. Three members is a
quorum for the transaction of business.

In addition to other duties expressly set forth
elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as mine inspectors and
forms for written examinations to test the qualifications
of candidates for that position;

(2) Adopt and promulgate reasonable rules relating to
the examination, qualification and certification of
candidates for appointment as mine inspectors.
hearing for removal of inspectors, required to be held
by section twelve, article one of this chapter. All of such
rules shall be printed and a copy thereof furnished by
the secretary of the board to any person upon request;

(3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment as
mine inspector. By unanimous agreement of all
members of the board, one or more members of the
board or an employee of the office of miners’ health,
safety and training may be designated to give a
candidate the written portion of the examination;

(4) Prepare and certify to the director of the office of
miners’ health, safety and training a register of
qualified eligible candidates for appointment as mine
inspectors. The register shall list all qualified eligible
candidates in the order of their grades, the candidate
with the highest grade appearing at the top of the list.
After each meeting of the board held to examine such
candidates, and at least annually, the board shall
prepare and submit to the director of the office of
miners’ health, safety and training a revised and
corrected register of qualified eligible candidates for
appointment as mine inspector, deleting from such
revised register all persons (a) who are no longer
residents of West Virginia, (b) who have allowed a
calendar year to expire without, in writing, indicating
their continued availability for such appointment, (c)
who have been passed over for appointment for three
years, (d) who have become ineligible for appointment
since the board originally certified that such person was
qualified and eligible for appointment as mine inspec-
tor, or (e) who, in the judgment of at least four members
of the board, should be removed from the register for
good cause;

(5) Cause the secretary of the board to keep and
preserve the written examination papers, manuscripts,
grading sheets, and other papers of all applicants for
appointment as mine inspector for such period of time
as may be established by the board. Specimens of the
examinations given, together with the correct solution
of each question, shall be preserved permanently by the
secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of this article;

(8) Hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of section four, article one of this chapter: Provided, That an aggrieved inspector, in order to appeal from any order of suspension, shall file such appeal in writing with the mine inspectors' examining board not later than ten days after receipt of notice of suspension. On such appeal the board shall affirm the act of the director unless it be satisfied from a clear preponderance of the evidence that the director has acted arbitrarily;

(9) Make an annual report to the governor and the director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

ARTICLE 10. EMERGENCY MEDICAL PERSONNEL.

§22A-10-1. Emergency personnel in coal mines.

§22A-10-2. First-aid training of coal mine employees.

§22A-10-1. Emergency personnel in coal mines.

(a) Emergency medical services personnel shall be employed on each shift at every mine that: (1) Employ more than ten employees and (2) more than eight persons are present on the shift. Said emergency medical services personnel shall be employed at their regular duties at a central location, or when more than one such person is required pursuant to subsection (b) or (c) at locations, convenient from quick response to emergencies; and further shall have available to them at all times such equipment as shall be prescribed by the director of the office of miners' health, safety training, in consultation with the commissioner of bureau of public health.
(b) After the first day of July, one thousand nine hundred eighty-five, emergency medical services personnel shall be defined as a person who is certified as an emergency medical technician-mining, emergency medical technician, emergency medical technician-ambulance, emergency medical technician-intermediate, mobile intensive care paramedic, emergency medical technician-paramedic as defined in section three, article four-c, chapter sixteen of this code, or physician assistant as defined in section sixteen, article three, chapter thirty of this code. At least one emergency medical services personnel shall be employed at a mine for every fifty employees or any part thereof who are engaged at any time, in the extraction, production or preparation of coal.

(c) A training course designed specifically for certification of emergency medical technician-mining, shall be developed at the earliest practicable time by the commissioner of the bureau of public health in consultation with the board of miner training, education and certification. The training course for initial certification as an emergency medical technician-mining shall not be less than sixty hours, which shall include, but is not limited to, mast trouser application, basic life support skills and emergency room observation or other equivalent practical exposure to emergencies as prescribed by the commissioner of the bureau of public health.

(d) The maintenance of a valid emergency medical technician-mining certificate may be accomplished without taking a three year recertification examination: Provided, That such emergency medical technician-mining personnel completes an eight hour annual retraining and testing program prescribed by the commissioner of the bureau of public health in consultation with the board of miner training, education and certification.

(e) All emergency medical services personnel currently certified as emergency medical service attendants or emergency medical technicians shall receive certification as emergency medical technicians without further training and examination for the remainder of
their three-year certification period; such emergency medical service attendant or emergency medical technician may upon expiration of such certification become certified as an emergency medical technician-mining upon completion of the eight hour retraining program referred to in subsection (d) above.

§22A-10-2. First-aid training of coal mine employees.
1 Each coal mine operator shall provide every new employee within six months of the date of employment with the opportunity for first-aid training as prescribed by the director of the office of miners' health, safety and training unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first-aid training of not less than five hours within each twenty-four months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first-aid training.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

Article
1. General Policy and Purpose.
2. Air Quality Board.
3. Environmental Quality Board.
4. Surface Mine Board.

ARTICLE 1. GENERAL POLICY AND PURPOSE.

§22B-1-1. Declaration of policy and purpose.
§22B-1-2. Definitions.
§22B-1-3. General administration.
§22B-1-4. General provisions applicable to all boards and board members.
§22B-1-5. General powers and duties of boards.
§22B-1-6. General procedural provisions applicable to all boards.
§22B-1-7. Appeals to boards.
§22B-1-10. Confidentiality.
§22B-1-11. Conflict of interest.
§22B-1-12. Savings provisions.

§22B-1-1. Declaration of policy and purpose.
1 It is hereby declared to be the policy of this state and the purpose of this chapter to provide fair, efficient and equitable treatment of appeals of environmental en-
Enforcement and permit actions to the boards set forth herein.

It is also the intent of the Legislature to consolidate and combine the legal, technical and support personnel of the three boards, to provide for consistent appellate processes and to maintain continuity of the boards' functions and membership. The boards shall share physical facilities, hearing rooms, technical and support staff and general overhead. In addition, it is the policy of this state to retain and maintain adequate funding and sufficient support personnel to ensure knowledgeable and informed decisions.

It is the policy of this state that administrative hearings and appeals be conducted in a quasi-judicial manner providing for discovery and case management. The appellate functions of the several environmental boards should be accomplished with similar procedural rules designed to assure expeditious and equitable hearings and decisions. Further, there shall be a central depository for appellate information and the filing of appeals. It is also the policy of this state that the rule-making authority set forth in this chapter be implemented in an efficient manner consistent with the public policy of this state.

Furthermore, it is the intent of the Legislature that all actions taken pursuant to this chapter assure implementation of the policies set forth in this chapter and chapter twenty-two of this code.

§22B-1-2. Definitions.

Unless the context clearly requires a different meaning, as used in this chapter the following terms have the meanings ascribed to them:

(1) "Board" or "boards" means the applicable board continued pursuant to the provisions of this chapter, including the air quality board, the environmental quality board and the surface mine board;

(2) "Chief" means the chief of the office of water resources or the chief of the office of waste management or the chief of...
(3) "Director" means the director of the division of environmental protection or the director's designated representative;

(4) "Division" means the division of environmental protection of the department of commerce, labor and environmental resources;

(5) "Member" means an individual appointed to one of the boards or the ex officio members of the air quality board; and

(6) "Person" or "persons" 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 state of West Virginia; governmental agency; 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 other legal entity whatever.

§22B-1-3. General administration.

(a) The chairs of the boards shall exercise the following powers, authorities and duties:

(1) To provide for the management of facilities and personnel of the boards;

(2) To employ, terminate and compensate support staff for the boards and to fix the compensation of that staff, which shall be paid out of the state treasury, upon the requisition of moneys appropriated for such purposes, or from joint funds as the chairs may expend;

(3) To the extent permitted by and consistent with federal or state law, to consolidate, combine or contribute funds of the boards to maintain the central physical facilities and technical and support personnel;
(4) To the extent permitted by and consistent with federal or state law, to consolidate or combine any functions of the boards;

(5) To secure funding with the assistance of the chairs from whatever source permissible by law;

(6) To secure office space, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purposes of this chapter;

(7) To expend funds in the name of any of the boards;

(8) To consult with the secretary of the department of commerce, labor and environmental resources, or the successor agency or office, or the director of the division of environmental protection who shall cooperate with the chairs in order to effectuate the powers, authorities and duties set forth in this section;

(9) To hire individuals, as may be necessary, to serve as hearing examiners for the boards; and

(10) To provide for an individual to serve as the clerk to the boards.

(b) The clerk to the boards has the following duties, to be exercised in consultation with the chairs:

(1) To schedule meetings and hearings and enter all orders properly acted upon;

(2) To receive and send all papers, proceedings, notices, motions and filings;

(3) To the maximum extent practicable, and with the cooperation of the staff and hearing examiners, to assist the boards in the case management of appeals and proceedings;

(4) To maintain records of all proceedings of the boards which shall be entered in a permanent record, properly indexed, and the same shall be carefully preserved for each board. Copies of orders entered by the boards, as well as copies of papers or documents filed with it, shall be maintained in a central location;
(5) To direct and fulfill information requests subject to chapter twenty-nine-b of this code and subject to applicable confidentiality rules set forth in the statutes and rules; and

(6) To perform such other duty or function as may be directed by the chairs to carry out the purpose of this chapter.

(c) The boards shall establish procedural rules in accordance with the provisions of chapter twenty-nine-a of this code for the regulation of the conduct of all proceedings before the boards. To the maximum extent practicable, the procedural rules will be identical for each board. The procedural rules of the boards shall be contained in a single set of rules for filing with the secretary of state.

§22B-1-4. General provisions applicable to all boards and board members.

(a) Each member of a board, other than an ex officio member, shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(b) At its first meeting in each fiscal year each board shall elect from its membership a chair and vice chair to act during such fiscal year. The chair shall preside over the meetings and hearings of the board. The vice chair shall assume the chair's duties in the absence of the chair. All of the meetings shall be general meetings for the consideration of any and all matters which may properly come before the board.

(c) For the environmental quality board and the air quality board, a majority of each board is a quorum for the transaction of business and an affirmative vote of a majority of the board members present is required for any motion to carry or decision of the board to be effective. For the surface mine board four members is a quorum and no action of the board is valid unless it
has the concurrence of at least four members. For all boards, in the event of a tie vote on the ultimate decision which is the subject of an appeal before the board, the decision of the chief or the director, as the case may be, shall be affirmed. Each board shall meet at such times and places as it may determine and shall meet on call of its chair. It is the duty of the chair to call a meeting of the board within thirty days on the written request of three members thereof.

(d) In all cases where the filing of documents, papers, motions and notices with the board is required or a condition precedent to board action, filing with the clerk constitutes filing with the board.

§22B-1-5. General powers and duties of boards.

In addition to all other powers and duties of the air quality board, environmental quality board and surface mine board as prescribed in this chapter or elsewhere by law, the boards created or continued pursuant to the provisions of this chapter have and may exercise the following powers and authority and shall perform the following duties:

(1) To consider appeals, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to matters properly pending before a board;

(2) On any matter properly pending before it whenever the parties achieve agreement that a person will cease and desist in any act resulting in the discharge or emission of pollutants or do any act to reduce or eliminate such discharge or emission, or do any act to achieve compliance with this chapter or chapter twenty-two or rules promulgated thereunder or do any act to resolve an issue pending before a board, such agreement, upon approval of the board, shall be embodied in an order and entered as, and has the same effect as, an order entered after a hearing as provided in section seven of this article;

(3) To enter and inspect any property, premise or place on or at which a source or activity is located or is being constructed, installed or established at any
reasonable time for the purpose of ascertaining the state of compliance with this chapter or chapter twenty-two and the rules promulgated thereunder: *Provided, That* nothing contained in this section eliminates any obligation to follow any process that may be required by law; and

(4) To perform any and all acts within the appropriate jurisdiction of each board to secure for the benefit of the state participation in appropriate federally delegated programs.

§22B-1-6. General procedural provisions applicable to all boards.

(a) Any appeal hearing brought pursuant to this chapter shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before any one or more members of the board or a hearing examiner employed by the board. For the purpose of conducting such appeal hearing, any member of a board and the clerk has the power and authority to issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the provisions of said section one dealing with subpoenas and subpoenas duces tecum apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(b) In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the disobedience, neglect or refusal occurs, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the court of a refusal
(c) In accordance with the provisions of section one, article five of said chapter twenty-nine-a, all of the testimony at any hearing held by a board shall be recorded by stenographic notes and characters or by mechanical or electronic means. If requested by any party to an appeal, the hearing and any testimony offered shall be transcribed in which event the cost of transcribing shall be paid by the party requesting the transcript. The record shall include all of the testimony and other evidence and the rulings on the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the board thereon, and if the board refuses to admit evidence the party offering the same may make a proffer thereof, and the proffer shall be made a part of the record of the hearing.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code, apply to and govern the hearing on appeal authorized by the provisions of this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, except as specifically provided herein.

§22B-1-7. Appeals to boards.

(a) The provisions of this section are applicable to all appeals to the boards, with the modifications or exceptions set forth in this section.

(b) Any person authorized by statute to seek review of an order, permit or official action of the chief of air quality, the chief of water resources, the chief of waste management, the chief of mining and reclamation, the chief of oil and gas, or the director may appeal to the air quality board, the environmental quality board or the surface mine board, as appropriate, in accordance with this section. The person so appealing shall be known as the appellant and the appropriate chief or the director shall be known as the appellee.
(c) An appeal filed with a board by a person subject to an order, permit or official action shall be perfected by filing a notice of appeal with the board within thirty days after the date upon which such order, permit or official action was received by such person as demonstrated by the date of receipt of registered or certified mail or of personal service. For parties entitled to appeal other than the person subject to such order, permit or official action, an appeal shall be perfected by filing a notice of appeal with the board within thirty days after the date upon which service was complete. For purposes of this subsection, service is complete upon tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge of the facility or activity involved, or to the permittee; or by tendering a copy by registered or certified mail, return receipt requested to the last known address of the person on record with the agency. Service is not incomplete by refusal to accept. Notice of appeal must be filed in a form prescribed by the rule of the board for such purpose. Persons entitled to appeal may also file a notice of appeal related to the failure or refusal of the appropriate chief or the director to act within a specified time on an application for a permit; such notice of appeal shall be filed within a reasonable time.

(d) The filing of the notice of appeal does not stay or suspend the effectiveness or execution of the order, permit or official action appealed from, except that the filing of a notice of appeal regarding a notice of intent to suspend, modify or revoke and reissue a permit, issued pursuant to the provisions of section five, article five, chapter twenty-two of this code, does stay the notice of intent from the date of issuance pending a final decision of the board. If it appears to the appropriate chief, the director or the board that an unjust hardship to the appellant will result from the execution or implementation of a chief's or director's order, permit or official action pending determination of the appeal, the appropriate chief, the director or the board, as the case may be, may grant a stay or suspension of such order, permit or official action and fix its terms. A
decision shall be made on any request for a stay within
five days of the date of receipt of the request for stay.
The notice of appeal shall set forth the terms and
conditions of the order, permit or official action
complained of and the grounds upon which the appeal
is based. A copy of the notice of appeal shall be filed
by the board with the appropriate chief or director
within seven days after the notice of appeal is filed with
the board.

(e) Within fourteen days after receipt of a copy of the
notice of appeal, the appropriate chief or the director as
the case may be, shall prepare and certify to the board
a complete record of the proceedings out of which the
appeal arises including all documents and correspon-
dence in the applicable files relating to the matter in
question. With the consent of the board and upon such
terms and conditions as the board may prescribe, any
person affected by the matter pending before the board
may by petition intervene as a party appellant or
appellee. In any appeal brought by a third party, the
permittee or regulated entity shall be granted interven-
or status as a matter of right where issuance of a
permit or permit status is the subject of the appeal. The
board shall hear the appeal de novo, and evidence may
be offered on behalf of the appellant, appellee and by
any intervenors. The board may visit the site of the
activity or proposed activity which is the subject of the
hearing and take such additional evidence as it consid-
ers necessary: Provided, That all parties and intervenors
are given notice of the visit and are given an opportunity
to accompany the board. The appeal hearing shall be
held at such location as may be approved by the board
including Kanawha County, the county wherein the
source, activity or facility involved is located or such
other location as may be agreed to among the parties.

(f) Any such hearing shall be held within thirty days
after the date upon which the board received the timely
notice of appeal, unless there is a postponement or
continuance. The board may postpone or continue any
hearing upon its own motion, or upon application of the
appellant, the appellee or any intervenors for good cause
shown. The chief or the director, as appropriate, may be represented by counsel. If so represented they shall be represented by the attorney general or with the prior written approval of the attorney general may employ counsel who shall be a special assistant attorney general. At any such hearing the appellant and any intervenor may represent themselves or be represented by an attorney-at-law admitted to practice before the supreme court of appeals.

(g) After such hearing and consideration of all the testimony, evidence and record in the case:

(1) The environmental quality board or the air quality board, as the case may be, shall make and enter a written order affirming, modifying or vacating the order, permit or official action of the chief or director, or shall make and enter such order as the chief or director should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued; and

(2) The surface mine board shall make and enter a written order affirming the decision appealed from if the board finds that the decision was lawful and reasonable, or if the board finds that the decision was not supported by substantial evidence in the record considered as a whole, it shall make and enter a written order reversing or modifying the decision of the director.

(h) In appeals of an order, permit or official action taken pursuant to articles three, six, eleven, twelve, thirteen, fifteen, chapter twenty-two of this code, the environmental quality board established in article three of this chapter, shall take into consideration, in determining its course of action in accordance with subsection (g) of this section, not only the factors which the appropriate chief or the director was authorized to consider in issuing an order, in granting or denying a permit, in fixing the terms and conditions of any permit, or in taking other official action, but also the economic feasibility of treating or controlling, or both, the discharge of solid waste, sewage, industrial wastes or...
other wastes involved.

(i) An order of a board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(j) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of this chapter. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of this chapter.


(a) Parties to a hearing may petition a board to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending hearing, subject to the procedural rules of the boards and the limitations contained herein.

(b) The following limited discovery may be commenced and obtained by any party to the hearing without leave of a board:

(1) Requests for disclosure of the identity of each person expected to be called as a witness at the hearing and, at a minimum, a statement setting forth with specificity the facts alleged, the anticipated testimony and the identity of any documents relied upon in support of the anticipated testimony of each witness and whether that witness will be called as an expert; and

(2) Requests to identify with reasonable particularity the issues which are the subject of the hearing.

(c) Any party may object to a request or manner of discovery authorized by this section provided the objection sets forth with particularity the grounds for the objection. A party may move the board to rule on
the propriety of the discovery or objection and request
the board to enter an order as the board deems
appropriate.

(d) Any party may seek, by motion, a protective order
from the discovery sought by another party and, if
required, the board may protect a party from unwar-
ranted discovery. Upon motion of a party or upon a
board's own motion, the board may enter such protective
order limiting discovery, which order shall not be
inconsistent with the standards for protective orders set
forth in the West Virginia rules of civil procedure.

(e) Upon motion of a party or upon a board's own
motion, the board may authorize or order any additional
discovery as may be appropriate or necessary to identify
or refine the issues which are the subject of the hearing.
Upon agreement of the parties, or upon order of a board,
the board may authorize or order the taking of the
deposition of any witness with information or knowledge
relevant to the subject matter of the hearing which
deposition may be noticed by subpoena or subpoena
duces tecum.

(f) Upon motion of a party or upon a board's own
motion, a board may hold a prehearing conference, as
soon as practicable after the commencement of an
appeal, which conference shall be for purposes of
promoting a fair, efficient and expeditious hearing
process. Following the conference, the board may enter
an order or take such other action as may be appropriate
with respect to discovery issues.

(g) For purposes of this section, in all cases where the
board is authorized or empowered to issue orders, a
member of the board, with the concurrence of a majority
of the board, may act on behalf of the board, the board
can act itself or through its clerk or hearing examiner,
as such person is authorized to do so by the board.

(h) Every request for discovery or response or
objection thereto made by a party shall be signed in the
same manner as is provided for in Rule 26 of the West
Virginia rules of civil procedure.

(a) Any person or a chief or the director, as the case may be, adversely affected by an order made and entered by a board after an appeal hearing, held in accordance with the provisions of this chapter, is entitled to judicial review thereof. All of the provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern the review with like effect as if the provisions of said section four were set forth in extenso in this section, with the modifications or exceptions set forth in this chapter.

(b) The judgment of the circuit court is 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 one the petition seeking such review shall be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for a chief or the director in all appeal proceedings in the circuit court and in the supreme court of appeals of this state shall be provided by the attorney general or his or her assistants or by the prosecuting attorney of the county in which the appeal is taken, all without additional compensation, or with the prior written approval of the attorney general, a chief or the director may employ legal counsel.

§22B-1-10. Confidentiality.

With respect to any information obtained in the course of an appeal, all members of boards and all personnel employed thereby shall maintain confidentiality to the same extent required of the chief or director.

§22B-1-11. Conflict of interest.

In addition to the specific conflict of interest provisions set forth in this chapter, any member who has any financial interest in the outcome of a decision of the board shall not vote or act on any matter which shall
directly affect the member's personal interests.

§22B-1-12. Savings 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 a board in the performance of functions which are affected by the enactment of this chapter, and which are in effect on the date this chapter becomes effective, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked in accordance with the law.

(b) The provisions of this chapter do not affect any appeals, proceedings, including notices of proposed rule making, or any application for any license, permit, certificate or financial assistance pending on the effective date of this chapter, before any of the boards. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded or revoked by the board within which jurisdiction to do so is vested, by a court of competent jurisdiction or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that the proceeding could have been discontinued or modified if this chapter had not been enacted.

(c) Orders and actions of a board in the exercise of functions amended by under this chapter are subject to judicial review to the same extent and in the same manner as if such orders and actions had been by a board exercising such functions immediately preceding the enactment of this chapter.

ARTICLE 2. AIR QUALITY BOARD.

§22B-2-1. Air quality board: composition; appointment and terms of members; vacancies.

§22B-2-2. Authority to receive money.

§22B-2-1. Air quality board; composition; appointment and terms of members; vacancies.

(a) On and after the effective date of this article, the "air pollution control commission," heretofore created, shall continue in existence and hereafter shall be known as the "air quality board."

(b) The board shall be composed of seven members, including the commissioner of the bureau of public health and the commissioner of agriculture, or their designees, both of whom are members ex officio, and five other members, who shall be appointed by the governor with the advice and consent of the Senate. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each such member's term ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. Two of the members shall be representative of industries engaged in business in this state, and three of the members shall be representative of the public at large.

(c) The appointed members of the board shall be appointed for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively. Any member whose term expires may be reappointed by the governor. In the event a board member is unable to complete the term, the governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs.

§22B-2-2. Authority to receive money.

In addition to all other powers and duties of the air
quality board, as prescribed in this chapter or elsewhere by law, the board has and may exercise the power and authority to receive any money as a result of the resolution of any case on appeal which shall be deposited in the state treasury to the credit of the office of air pollution education and environment fund provided for in section four, article five, chapter twenty-two of this code.


1 All of the provisions of section nine, article one of this chapter apply to and govern such review with like effect as if the provisions of said section nine were set forth in extenso in this section, with the following modifications or exceptions:

6 (1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition for review shall be filed in the circuit court of Kanawha County; and

(2) As to all other cases, the petition shall be filed, in the circuit court of the county wherein the alleged statutory air pollution complained of originated or in Kanawha County upon agreement between the parties.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-1. Environmental quality board; composition and organization; appointment, qualifications, terms, vacancies.

(a) On and after the effective date of this article, the "water resources board," heretofore created, shall continue in existence and hereafter shall be known as the "environmental quality board."

(b) The board shall be composed of five members who shall be appointed by the governor with the advice and consent of the Senate. Not more than three members of
the board shall be of the same political party. Each
appointed member of the board who is serving in such
capacity on the effective date of this article shall
continue to serve on the board until his or her term ends
or he or she resigns or is otherwise unable to serve. As
each member's term ends, or that member is unable to
serve, a qualified successor shall be appointed by the
governor with the advice and consent of the Senate.
Individuals appointed to the board shall be persons who
by reason of previous training and experience are
knowledgeable in the husbandry of the state's water
resources and with at least one member with experience
in industrial pollution control.

(c) No member of the board shall receive or, during
the two years next preceding the member of the board's
appointment, shall have received a significant portion of
the member of the board's income directly or indirectly
from a national pollutant discharge elimination system
permit holder or an applicant for a permit issued under
any of the provisions of article eleven, chapter twenty-
two of this code. For the purposes of this subsection: (1)
The term "significant portion of the member of the
board's income" means ten percent of gross personal
income for a calendar year, except that it means fifty
percent of gross personal income for a calendar year if
the recipient is over sixty years of age and is receiving
such portion pursuant to retirement, a pension or
similar arrangement; (2) the term "income" includes
retirement benefits, consultant fees and stock dividends;
(3) income is not received "directly or indirectly" from
"permit holders" or "applicants for a permit" where it
is derived from mutual-fund payments or from other
diversified investments with respect to which the
recipient does not know the identity of the primary
sources of income; and (4) the terms "permit holders"
and "applicants for a permit" do not include any
university or college operated by this state or political
subdivision of this state.

(d) The members of the board shall be appointed for
overlapping terms of five years, except that the original
appointments shall be for terms of one, two, three, four
and five years, respectively. Any member whose term expires may be reappointed by the governor. In the event a board member is unable to complete the term, the governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs.

§22B-3-2. Authority of board; additional definitions.

(a) In addition to all other powers and duties of the environmental quality board, as prescribed in this chapter or elsewhere by law, the board has and may exercise the powers and authorities:

(1) To receive any money as a result of the resolution of any case on appeal which shall be deposited in the state treasury to the credit of the water quality management fund created pursuant to section ten, article eleven, chapter twenty-two of this code;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries and with affected groups and take such other action as may be appropriate in regard to its rule-making authority; and

(3) To encourage and conduct such studies and research relating to pollution control and abatement as a board may deem advisable and necessary in regard to its rule-making authority.

(b) All the terms defined in section two, article eleven, chapter twenty-two of this code, are applicable to this article and have the meanings ascribed to them therein.

§22B-3-3. Judicial review.

All of the provisions of section nine, article one of this chapter apply to and govern such review with like effect as if the provisions of said section nine were set forth in extenso in this section, with the following modifica-
tions or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed in the circuit court of Kanawha County;

(2) As to cases involving an order revoking or suspending a permit, the petition shall be filed in the circuit court of Kanawha County; and

(3) As to cases involving an order directing that any and all discharges or deposits of solid waste, sewage, industrial wastes or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall be filed in the circuit court of the county in which the establishment is located or in which the pollution occurs.

§22B-3-4. Environmental quality board rule-making authority.

(a) In order to carry out the purposes of this chapter and chapter twenty-two of this code, the board shall promulgate legislative rules setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such waters for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.

(b) No rule of the board may specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant.

(c) The board shall promulgate such legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code and the declaration of policy set forth in section two, article eleven, chapter twenty-two of this code.
ARTICLE 4. SURFACE MINE BOARD.

§22B-4-1. Appointment and organization of surface mine board.

(a) On and after the effective date of this article, the “reclamation board of review,” heretofore created, shall continue in existence and hereafter shall be known as the "surface mine board."

(b) The board shall be composed of seven members who shall be appointed by the governor with the advice and consent of the Senate. Not more than four members of the board shall be of the same political party. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each member's term ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. One of the appointees to such board shall be a person who, by reason of previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who by reason of training and experience, can be classed as one capable and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in engineering. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. One of the appointees to such board shall be a person with significant experience in the advocacy of environmental protection. One of the appointees to such board shall be a person who repre-
ent the general public interest.

(c) During his or her tenure on the board, no member shall receive significant direct or indirect financial compensation from or exercise any control over any person or entity which holds or has held, within the two years next preceding the member's appointment, a permit to conduct activity regulated by the division, under the provisions of article three or four, chapter twenty-two of this code, or any similar agency of any other state or of the federal government: Provided, That the member classed as experienced in coal mining, the member classed as experienced in engineering, and the member classed as experienced in water pollution control or water conservation problems may receive significant financial compensation from regulated entities for professional services or regular employment so long as the professional or employment relationship is disclosed to the board. No member shall participate in any matter before the board related to a regulated entity from which the member receives or has received, within the preceding two years direct or indirect financial compensation. For purposes of this section, "significant direct or indirect financial compensation" means twenty percent of gross income for a calendar year received by the member, any member of his or her immediate family or the member's primary employer.

(d) The members of the board shall be appointed for terms of the same duration as their predecessor under the original appointment of two members appointed to serve a term of two years; two members appointed to serve a term of three years; two members to serve a term of four years; and one member to serve a term of five years. Any member whose term expires may be reappointed by the governor. In the event a board member is unable to complete the term, the governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such
§22B-4-2. Authority to receive money.

1 In addition to all other powers and duties of the surface mine board, as prescribed in this chapter or elsewhere by law, the board shall have and may exercise the power and authority to receive any money as a result of the resolution of any case on appeal which shall be deposited to the credit of the special reclamation fund created pursuant to section eleven, article three, chapter twenty-two of this code.

§22B-4-3. Judicial review.

1 All of the provisions of section nine, article one of this chapter apply to and govern such review with like effect as if the provisions of said section nine were set forth in extenso in this section, except the petition shall be filed in the circuit court of Kanawha County or the county in which the surface-mining operation is located.

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

Article 1. Water Development Authority.

§22C-1-1. Short title.

§22C-1-2. Declaration of policy and responsibility; purpose and intent of article; findings.

§22C-1-3. Definitions.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and director of authority.
§22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.

§22C-1-6. Powers, duties and responsibilities of authority generally.

§22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

§22C-1-8. Expenditure of funds for study and engineering of proposed projects.

§22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

§22C-1-10. Trustee for bondholders; contents of trust agreement.

§22C-1-11. Trust agreements for related responsibilities; reimbursements.

§22C-1-12. Legal remedies of bondholders and trustees.

§22C-1-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

§22C-1-14. Use of funds by authority; restrictions thereon.

§22C-1-15. Investment of funds by authority.

§22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.

§22C-1-17. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.

§22C-1-18. Water development bonds lawful investments.

§22C-1-19. Purchase and cancellation of notes or bonds.

§22C-1-20. Refunding bonds.

§22C-1-21. Exemption from taxation.

§22C-1-22. Acquisition of property by authority — Acquisition by purchase; governmental agencies authorized to convey, etc., property.

§22C-1-23. Same — Acquisition under subdivision (10), section six of this article; property of public utilities and common carriers; relocation, restoration, etc., of highways and public utility facilities.

§22C-1-24. Financial interest in contracts prohibited; penalty.

§22C-1-25. Meetings and records of authority to be kept public.

§22C-1-26. Liberal construction of article.

§22C-1-27. Authorized limit on borrowing.

§22C-1-1. Short title.

1 This article shall be known and cited as the “Water Development Authority Act.”

§22C-1-2. Declaration of policy and responsibility; purpose and intent of article; findings.

1 It is hereby declared to be the public policy of the state of West Virginia and a responsibility of the state of West Virginia, through the establishment, funding,
operation and maintenance of water development projects, to maintain, preserve, protect, conserve and in all instances possible to improve the purity and quality of water within the state in order to: (1) Protect and improve public health; (2) assure the fullest use and enjoyment of such water by the public; (3) provide suitable environment for the propagation and protection of animal, bird, fish, aquatic and plant life, all of which are essential to the health and well-being of the public; and (4) provide water of the necessary quality and in the amount needed for the development, maintenance and expansion of, and to attract service industries and businesses, agriculture, mining, manufacturing and other types of businesses and industries.

To assist in the preservation, protection, improvement and management of the purity and quality of the waters of this state, to prevent or abate pollution of water resources and to promote the health and welfare of citizens of this state, it is the purpose and intent of the Legislature in enacting this article to provide for the necessary, dependable, effective and efficient purification of water; the disposal of liquid and solid wastes harmful to the public health and safety removed from such water; to improve water and stream quality; and to assist and cooperate with governmental agencies in achieving all of the purposes set forth in this section.

The Legislature finds and hereby declares that the responsibility of the state as outlined above cannot be effectively met without the establishment, funding, operation and maintenance of water development projects as provided for in this article.

§22C-1-3. Definitions.

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

(1) “Authority” means the water development authority provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

(2) “Beneficial use” means a use of water by a person
or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

(3) "Board" means the water development authority board provided for in section four of this article, which shall manage and control the water development authority.

(4) "Bond" or "water development revenue bond" means a revenue bond or note issued by the water development authority to effect the intents and purposes of this article.

(5) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment.

(6) "Cost" means, as applied to water development 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 authority 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 lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways; 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 public water or wastewater 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 authority
providing for the issuance of water development 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 by any governmental agency, with
the approval of the authority, for surveys, borings,
preparation of plans and specifications and other
engineering services in connection with the acquisition
or construction of a project are a part of the cost of such
project and shall be reimbursed out of the proceeds of
loans or water development revenue bonds as authorized
by the provisions of this article.

(7) “Establishment” means an industrial establish-
ment, mill, factory, tannery, paper or pulp mill, mine,
colliery, breaker or mineral processing operation,
quarry, refinery, well and each and every industry or
plant or works or activity in the operation or process of
which industrial wastes or other wastes are produced.

(8) “Governmental agency” means the state govern-
ment or any agency, department, division or unit
thereof; counties; municipalities; watershed improve-
dment 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 public water or waste-
water 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.

(9) “Industrial wastes” means any liquid, gaseous,
solid or other waste substance, or any combination
thereof, 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 resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, are also industrial wastes.

(10) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

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

(12) "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; any federal or state governmental agency; political subdivision; county commission; municipality; 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 other legal entity whatever.

(13) "Pollution" means (a) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or altera-
tion where a person only contributes thereto, is to such extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will, or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) “Project” or “water development project” means any public water or wastewater facility, the acquisition or construction of which is authorized, in whole or in part, by the water development authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the water development authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) “Public roads” mean all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.
(16) "Public utility facilities" means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) "Revenue" means any money or thing of value collected by, or paid to, the water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal or of interest, charges or other fees on loans, or any other collections on loans made by the water development authority to governmental agencies to finance, in whole or in part, the acquisition or construction of any water 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.

(18) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present.

(19) "Water resources," "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(20) "Wastewater" means any water containing sewage, industrial wastes, or other wastes or contaminants derived from the prior use of such water, and includes, without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

(21) "Wastewater facilities" means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, includ-
ing, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes, or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

(22) "Water facility" means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.

The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority is controlled, managed and operated by the seven-member board known as the water development board. The director of the division of environmental protection, and the commissioner of the bureau of public health and the state officer or employee who in the judgment of the governor is most responsible for economic or community development are members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board are
appointed by the governor, by and with the advice and consent of the Senate, for terms of two, three, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her successor. No more than two of the appointed board members shall at any one time belong to the same political party. 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 or her 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 in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

Annually the board shall elect one of its appointed members as chair and another as vice-chair, and shall appoint a secretary-treasurer, who need not be a member of the board. Four members of the board is a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if he or she is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

The director of the division of environmental protection, the commissioner of the bureau of public health and the state officer or employee most responsible for economic or community development shall not receive any compensation for serving as board members. Each
of the four appointed members of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. All such expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority appointed by the board.

§22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may initiate, acquire, construct, maintain, repair and operate water development 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 governmental agencies for the acquisition or construction of water development projects by such governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when such refinancing is in conjunction with a loan for a new water development project: Provided, That the amount of the refinancing may not exceed fifty percent of the loan to the governmental agency; and may issue water development 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 water development project shall not be undertaken unless it has been determined by the
authority to be consistent with any applicable comprehensive plan of water management approved by the director of the division of environmental protection or in the process of preparation by such director and to be consistent with the standards set by the state environmental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development 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 deed of trust or other appropriate security instrument creating a lien on such project;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, 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; and

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations
§22C-1-6. Powers, duties and responsibilities of authority generally.

The water development authority, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority has the power and capacity to:

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 to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

2. Adopt an official seal.

3. Maintain a principal office and, if necessary, regional suboffices 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 nine, ten and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

5. Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter twenty-nine-a of this code, 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, water development projects, and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules for the use of such projects.
34 (7) Make available the use or services of any water
development project to one or more persons, one or more
governmental agencies, or any combination thereof.

37 (8) Issue water development revenue bonds and notes
and water development revenue refunding bonds of the
state, payable solely from revenues as provided in
section nine of this article unless the bonds are refunded
by refunding bonds, for the purpose of paying all or any
part of the cost of, or financing by loans to governmental
agencies, one or more water development projects or
parts thereof.

45 (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.

49 (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 public water or wastewater facilities
operated under permits issued pursuant to the provi-
sions of article eleven, chapter twenty-two of this code
and owned by any person or governmental agency, and
compensation shall be paid for public or private lands
so taken.

64 (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 authority 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,
but a contract or lease for the operation of a water
development project constructed and owned by the
authority or an agreement for cooperation in the
acquisition or construction of a water development
project pursuant to section sixteen of this article is not
subject to the foregoing requirements and the authority
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 reason-
able and proper under the circumstances and in the
best interests of proper operation or of efficient
acquisition or construction of such project. The authority
may reject any and all bids. A bond with good and
sufficient surety, approved by the authority, is 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 and other
employees, who are covered by the state civil service
system, and retain or contract with consulting engi-
neers, financial consultants, accounting experts, archi-
tects, attorneys and such other consultants and inde-
dependent 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 are
payable solely from the proceeds of water development
revenue bonds or notes issued by the authority, 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 water development project
or for research and development with respect to public
water or wastewater facilities and receive and accept
aid or contributions from any source 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 public water or wastewater facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

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

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

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

§22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

In order to ensure that the public purposes to be served by the authority may be properly carried out and in order to assure the timely payment to the authority of all sums due and owing under loan agreements with governmental agencies, as referred to in section five of
this article, notwithstanding any provision to the contrary elsewhere contained in this code, in event of any default by a governmental agency under such a loan agreement, the authority has, and may, at its option, exercise the following rights and remedies in addition to the rights and remedies conferred by law or pursuant to said loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit service charges determined by it to be necessary under the circumstances upon all users of the water development project to be acquired or constructed pursuant to such loan agreement, and proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(2) The authority may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, authority, powers and remedies of the governmental agency with respect to the water development project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including, without limitation, all rights and remedies with respect to users of such water development project.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including, without limitation, the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.

§22C-1-8. Expenditure of funds for study and engineering of proposed projects.

With the approval and the consent of the board, either the director of the division of environmental protection or the commissioner of the bureau of public health, or
both of them, shall expend, out of any funds available for the purpose, such moneys as are necessary for the study of any proposed water development project and may use its engineering and other forces, including consulting engineers and sanitary engineers, for the purpose of effecting such study. All such expenses incurred by the director or commissioner prior to the issuance of water development revenue bonds or notes under this article shall be paid by the director or commissioner and charged to the appropriate water development project and the director and commissioner shall keep proper records and accounts, showing the amounts so charged. Upon the sale of water development revenue bonds or notes for a water development project, the funds so expended by the director or commissioner, with the approval of the authority, in connection with such project, shall be repaid to the division of environmental protection or bureau of public health from the proceeds of such bonds or notes.

§22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The authority is hereby empowered to issue from time to time water development revenue bonds and notes of the state in such principal amounts as the authority deems necessary to pay the cost of or finance, in whole or in part, by loans to governmental agencies, one or more water 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.

The authority 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 water development revenue refunding bonds by the state pursuant to the provisions of section twenty of this article. Except as may otherwise be expressly provided in this article or by the authority, every issue of its bonds or notes are obligations of the authority
payable out of the revenues and reserves created for such purposes by the authority, 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 is valid and binding from the time the pledge is made and the revenues so pledged and thereafter received by the authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof.

All such bonds and notes shall have and are hereby declared to have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the authority, bear such date and mature at such time, 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 authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the price the authority determines. The bonds and notes shall be executed by the chair and vice-chair of the authority, both of whom may use facsimile signatures. The official seal of the authority or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chair of the authority. 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 or she had remained in office until such delivery and in case the seal of the authority 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 authority to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the authority; a covenant to fix, alter and collect rentals 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 or trust agreement; 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 water development project or any other assets of the authority; 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; notes issued in anticipation of the issuance of bonds, the agreement of the authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; 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 amount of bonds or notes 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 authority for operating, administrative or other expenses of the authority; securing any bonds or notes by a trust agreement; 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 are less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chair of the authority 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 authority to be pledged for payment of such bonds or notes: Provided, That the Legislature is not required to make any appropriation so requested, and the amount of such deficiencies is not a debt or liability of the state.

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

§22C-1-10. Trustee for bondholders; contents of trust agreement.

In the discretion of the authority, any water development revenue bonds or notes or water development revenue refunding bonds issued by the authority under this article may be secured by a trust agreement between the authority and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without this state.

Any such trust agreement may pledge or assign revenues of the authority to be received, but shall not
convey or mortgage any water development project or any part thereof. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section nine of this article and covenants setting forth the duties of the authority in relation to the acquisition of property, the construction, improvement, maintenance, repair, operation and insurance of the water development project the cost of which is paid, in whole or in part, from the proceeds of such bonds or notes, the rentals or other charges to be imposed for the use or services of any water development project, provisions with regard to the payment of the principal of and interest, charges and fees on loans made to governmental agencies from the proceeds of such bonds or notes, the custody, safeguarding, and application of all moneys and provisions for the employment of consulting engineers in connection with the construction or operation of such water development project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the water development project. Any such trust agreement or resolution authorizing the issuance of water development revenue bonds may provide the method whereby the general administrative overhead expenses of the authority will be allocated among the
53 several projects acquired or constructed by it as a factor
54 of the operating expenses of each such project.

§22C-1-11. Trust agreements for related responsibilities; reimbursement.

1 Notwithstanding any other provision of this code to
2 the contrary, when the authority acts in the capacity of
3 fiscal agent, authorizing authority or some other
4 capacity for any agency, department, instrumentality or
5 public corporation of the state which is issuing or
6 purchasing bonds or notes, the authority may, in the
7 exercise of its responsibilities, enter into trust agree- 
8 ments with one or more trust companies or banking
9 institutions having trust powers, located within or
10 without the state, with respect to the receipt, invest-
11 ment, handling, payment and delivery of funds of such
12 agency, department, instrumentality or public corpora-
13 tion. The authority is entitled to reimbursement for the
14 expenses of the authority incident to performing such
15 services, including the fees and expenses of third parties
16 providing services to the authority with respect thereto,
17 from the proceeds of bonds or notes or of the revenues
18 derived by such agency, department, instrumentality or
19 public corporation.

§22C-1-12. Legal remedies of bondholders and trustees.

1 Any holder of water development revenue bonds
2 issued under the authority of this article or any of the
3 coupons appertaining thereto and the trustee under any
4 trust agreement, except to the extent the rights given
5 by this article may be restricted by the applicable
6 resolution or such trust agreement, may by civil action,
7 mandamus or other proceedings, protect and enforce
8 any rights granted under the laws of this state or
9 granted under this article, by the trust agreement or by
10 the resolution authorizing the issuance of such bonds,
11 and may enforce and compel the performance of all
12 duties required by this article, or by the trust agreement
13 or resolution, to be performed by the authority or any
14 officer thereof, including the fixing, charging and
15 collecting of sufficient rentals or other charges.
§22C-1-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

Water development revenue bonds and notes and water development revenue refunding bonds issued under authority of this article and any coupons in connection therewith are not a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes are 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 are 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 are payable solely from funds provided under authority of this article. This article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

§22C-1-14. Use of funds by authority; restrictions thereon.

All moneys, properties and assets acquired by the authority, whether as proceeds from the sale of water development revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused
in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same, 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 or the trust agreement securing such bonds shall provide that any officer to whom, or any banking institution or trust company to which, 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 or trust agreement provide.

§22C-1-15. Investment of funds by authority.

The authority is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities:

(1) Direct obligations of or obligations guaranteed by the United States of America;

(2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association;

(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;
(4) Certificates of deposit secured by obligations of the United States of America;

(5) Direct obligations of or obligations guaranteed by the state of West Virginia;

(6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency; and

(7) Any fixed interest bond, note or debenture of any corporations organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation’s securities are listed on one or more of the national stock exchanges: Provided, however, That (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (ii) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (iii) the bonds, notes or debentures of such corporation to be purchased are rated “AA” or the equivalent thereof or better than “AA” or the equivalent thereof at least two or more nationally recognized rating services such as Standard and Poor’s, Dun & Bradstreet or Moody’s.

§22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.

This section applies to any water development project or projects which are owned, in whole or in part, by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development 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 or other charges for such use
or services. Such rentals or other charges are not 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 water development project for such considera-
tion payable over the period of the contract or otherwise
as the authority in its sole discretion determines to be
appropriate, but subject to the provisions of any
resolution authorizing the issuance of water develop-
ment revenue bonds or notes or water development
revenue refunding bonds of the authority or any trust
agreement securing the same. Any governmental
agency which has power to construct, operate and
maintain public water or wastewater facilities may
enter into a contract or lease with the authority whereby
the use or services of any water development project of
the authority will be made available to such governmen-
tal agency and pay for such use or services such rentals
or other charges as may be agreed to by such govern-
mental agency and the authority.

Any governmental agency or agencies or combination
thereof may cooperate with the authority in the acquisi-
tion or construction of a water development project
and shall enter into such agreements with the authority
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 authority to the extent necessary or
appropriate for purposes of the issuance of water
development revenue bonds by the authority. 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 authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held 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 public water or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority: Provided, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

§22C-1-17. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.

Each water development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the authority or if owned by a governmental agency, by such governmental agency, or the authority or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the authority shall be operated by such operating employees as the authority employs or pursuant to a contract or
lease with a governmental agency or person. All public
or private property damaged or destroyed in carrying
out the provisions of this article and in the exercise of
the powers granted hereunder with regard to any
project shall be restored or repaired and placed in its
original condition, as nearly as practicable, or adequate
compensation made therefor out of funds provided in
accordance with the provisions of this article.

As soon as possible after the close of each fiscal year,
the authority shall make an annual report of its
activities for the preceding fiscal year to the governor
and the Legislature. Each such report shall set forth a
complete operating and financial statement covering the
authority's operations during the preceding fiscal year.
The authority shall cause an audit of its books and
accounts to be made at least once each fiscal year by
certified public accountants and the cost thereof may be
treated as a part of the cost of construction or of
operations of its projects.

§22C-1-18. Water development bonds lawful investments.

The provisions of sections nine and ten, article six,
chapter twelve of this code to the contrary notwithstanding,
all water development revenue bonds issued
pursuant to this article are lawful investments for the
West Virginia state board of investments and are also
lawful investments for banking institutions, societies for
savings, building and loan associations, savings and loan
associations, deposit guarantee associations, trust
companies, insurance companies, including domestic for
life and domestic not for life insurance companies.

§22C-1-19. Purchase and cancellation of notes or bonds.

The authority, subject to such agreements with
noteholders or bondholders as may then exist, has the
power, out of any funds available therefor, to purchase
notes or bonds of the authority.

If the notes or bonds are then redeemable, the price
of such purchase shall not exceed the redemption price
then applicable plus accrued interest to the next interest
payment date thereon. If the notes or bonds are not then
redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date. Upon such purchase such notes or bonds shall be canceled.

§22C-1-20. Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes of the authority; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded have matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article are payable from the revenues out of which the bonds to be refunded thereby were payable, or from other moneys or the principal of and interest on or other investment yield from, investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and are subject to the provisions contained in section nine of this article and shall be secured in accordance with the provisions of sections nine and ten of this article.

§22C-1-21. Exemption from taxation.

The exercise of the powers granted to the authority
by this article will be in all respects for the benefit of
the people of the state, for the improvement of their
health, safety, convenience and welfare and for the
enhancement of their residential, agricultural, recrea-
tional, economic, commercial and industrial opportuni-
ties and is a public purpose. As the operation and
maintenance of water development projects are essential
governmental functions, the authority is not required to
pay any taxes or assessments upon any water development
project or upon any property acquired or used by the
authority or upon the income therefrom. Such bonds and
notes and all interest and income thereon are exempt
from all taxation by this state, or any county, munici-
pality, political subdivision or agency thereof, except
inheritance taxes.

§22C-1-22. Acquisition of property by authority —
Acquisition by purchase; governmental
agencies authorized to convey, etc.,
property.

The authority may acquire by purchase, whenever it
deems such purchase expedient, any land, property,
rights, rights-of-way, franchises, easements and other
interests in lands it deems necessary or convenient for
the construction and operation of any water develop-
ment project upon such terms and at such prices it
cconsiders reasonable and can be agreed upon between
the authority and the owner thereof, and take title
therein in the name of the state.

All governmental agencies, notwithstanding any
contrary provision of law, may lease, lend, grant or
convey to the authority, at its request, upon such terms
as the proper authorities of such governmental agencies
deem reasonable and fair and without the necessity for
an advertisement, auction, order of court or other action
or formality, other than the regular and formal action
of the governmental agency concerned, any real prop-
erty or interests therein, including improvements
thereto or personal property which is necessary or
convenient to the effectuation of the authorized purposes
of the authority, including public roads and other real
§22C-1-23. Same — Acquisition under subdivision (10), section six of this article; property of public utilities and common carriers; relocation, restoration, etc., of highways and public utility facilities.

The authority may acquire, pursuant to subdivision (10), section six of this article, any land, rights, rights-of-way, franchises, easements or other property necessary or proper for the construction or the efficient operation of any water development project.

This section does not authorize the authority 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 authority.

When the authority finds it necessary to change the location of any portion of any public road, state highway, railroad or public utility facility in connection with the construction of a water development project, it shall cause the same to be reconstructed at such location as the unit or division of government having jurisdiction over such road, highway, railroad or public utility facility deems most favorable. Such construction shall be of substantially the same type and in as good condition as the original road, highway, railroad or public utility facility. The cost of such reconstruction, relocation or removal and any damage incurred in changing the location of any such road, highway, railroad or public utility facility shall be paid by the authority as a part of the cost of such water development project.

When the authority finds it necessary that any public highway or portion thereof be vacated by reason of the acquisition or construction of a water development
project, the authority shall request the commissioner of
the division of highways, in writing, to vacate such
highway or portion thereof if the highway or portion
thereof to be vacated is part of the state road system,
or, if the highway or portion thereof to be vacated is
under the jurisdiction of a county or a municipality, the
authority shall request the governing body of such
county or municipality to vacate such public road or
portion thereof. The authority shall pay to the commis-
sioner of the division of highways or to the county or
municipality, as the case may be, as part of the cost of
such water development project, any amounts required
to be deposited with any court in connection with
proceedings for the determination of compensation and
damages and all amounts of compensation and damages
finally determined to be payable as a result of such
vacation.

The authority may make reasonable rules for the
installation, construction, maintenance, repair, renewal,
relocation and removal of railroad or public utility
facilities in, on, over or under any water development
project. Whenever the authority determines that it is
necessary that any such facilities installed or con-
structed in, on, over or under property of the authority
pursuant to such rules be relocated, the railroad or
public utility owning or operating such facilities shall
relocate or remove them in accordance with the order
of the authority. The cost and expenses of such reloca-
tion or removal, including the cost of installing such
facilities in a new location, the cost of any lands or any
rights or interests in lands and the cost of any other
rights acquired to accomplish such relocation or
removal, may be paid by the authority as a part of the
cost of such water development project. In case of any
such relocation or removal of facilities, the railroad or
public utility owning or operating them, and its
successors or assigns, may maintain and operate such
facilities, with the necessary appurtenances in the new
location in, on, over or under the property of the
authority for as long a period and upon the same terms
as it had the right to maintain and operate such
facilities in their former location.
§22C-1-24. Financial interest in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the authority has such financial interest in a contract or sale of property prohibited hereby, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§22C-1-25. Meetings and records of authority to be kept public.

1 All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed.

§22C-1-26. Liberal construction of article.

1 The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§22C-1-27. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes issued by the authority shall not exceed two hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or
to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any such refunding bonds or notes, shall be excluded.

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.
§22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
§22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
§22C-2-4. Annual audit.
§22C-2-5. Collection of money due to the fund.
§22C-2-6. State construction grants program established; special fund.
§22C-2-7. Environmental review of funded projects.

§22C-2-1. Definitions.

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

(a) “Authority” means the water development authority provided for in section four, article one of this chapter.

(b) “Cost” as applied to any project financed under the provisions of this article means the total of all costs incurred by a local government that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

1. Developmental, planning and feasibility studies, surveys, plans and specifications;
2. Architectural, engineering, financial, legal or other special services;
3. Acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements;
4. Site preparation and development, including demolition or removal of existing structures, construc-
tion and reconstruction, labor, materials, machinery and
equipment;

(5) The reasonable costs of financing incurred by the
local government in the course of the development of the
project, carrying charges incurred before placing the
project in service, interest on funds borrowed to finance
the project to a date subsequent to the estimated date
the project is to be placed in service, necessary expenses
incurred in connection with placing the project in
service, and the funding of accounts and reserves which
the authority may require; and

(6) Other items that the division of environmental
protection determines to be reasonable and necessary.

(c) “Fund” means the state water pollution control
revolving fund provided for in this article as it may be
expanded or modified from time to time pursuant to the
clean water act, as amended, the federal safe drinking
water act, as amended or by the executive order of the
governor issued to comply with federal laws relating
thereto.

(d) “Instrumentality” means the division of environ-
mental protection or the agency designated by an order
of the governor as having the primary responsibility for
administering the fund pursuant to the federal clean
water act, as amended, and the federal safe drinking
water act, as amended, or other federal laws.

(e) “Local government” means any county, city, town,
municipal corporation, authority, district, public service
district, commission or political subdivision in West
Virginia.

(f) “Project” means any public water or wastewater
treatment facility located or to be located in or outside
this state by a local government and includes:

(1) Sewage and wastewater collection, treatment and
disposal facilities;

(2) Public water transportation, treatment and
distribution facilities;

(3) Drainage facilities and projects;
(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law.

§22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws.

§22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to said fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local governments, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local governments to finance or refinance the costs of a project: Provided, That...
moneys in the fund shall be utilized to defray the costs
incurred by the authority and the division of environ-
mental protection in administering the provisions of this
article: Provided, however, That moneys in the fund shall
be used to make grants for projects to the extent allowed
or authorized by federal law.

(b) The director of the division of environmental
protection, in consultation with the authority, shall
promulgate rules in accordance with the provisions of
chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund;

and

(2) Establish a state water pollution control revolving
fund program to direct the distribution of grants or
loans from the fund to particular local governments and
establish the interest rates and repayment terms of such
loans.

(c) In order to carry out the administration and
management of the fund, the authority is authorized to
employ officers, employees, agents, advisers and consul-
tants, including attorneys, financial advisers, engineers,
other technical advisers and public accountants and,
notwithstanding any provisions of this code to the
contrary, to determine their duties and compensation
without the approval of any other agency or
instrumentality.

(d) The authority shall promulgate rules in accor-
dance with the provisions of chapter twenty-nine-a of
this code to govern the pledge of loans to secure bonds
of the authority.

(e) All moneys belonging to the fund shall be kept in
appropriate depositories and secured in conformance
with this code. Disbursements from the fund shall be
authorized for payment by the director of the authority
or the director’s designee. Any depository or officer of
such depository to which moneys of the fund are paid
shall act as trustee of such moneys and shall hold and
apply them solely for the purposes for which said
moneys are provided under this article. Moneys in the
fund shall not be commingled with other money of the
authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested
by the authority in obligations or securities which are
considered lawful investments for public funds under
this code.

§22C-2-4. Annual audit.

The authority shall cause an audit of its books and
accounts to be made at least once each fiscal year by
certified public accountants, and the cost thereof may
be defrayed as a part of the cost of construction of a
project or as an administrative expense under the
provisions of subsection (a), section three of this article.

§22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due
and owing to the fund under a revolving fund loan
agreement between the state and a local government,
and notwithstanding any provisions of this code to the
contrary, the authority has and may, at its option,
exercise the following rights and remedies in the event
of any default by a local government under such a loan
agreement:

(a) The authority may directly impose, in its own
name and for its own benefit, service charges upon all
users of a project funded by a loan distributed to a local
government pursuant to this article, and may proceed
directly to enforce and collect such service charges,
together with all necessary costs of such enforcement
and collection.

(b) The authority may exercise, in its own name or
in the name of and as the agent for a particular local
government, all of the rights, powers and remedies of
the local government with respect to the project or
which may be conferred upon the local government by
statute, rule, regulation or judicial decision, including
all rights and remedies with respect to users of the
project funded by the loan distributed to that local
government pursuant to this article.

(c) The authority may, by civil action, mandamus or
other judicial or administrative proceeding, compel
performance by a local government of all of the terms
and conditions of the loan agreement between the state
and that local government including:

(1) The adjustment of service charges as required to
repay the loan or otherwise satisfy the terms of the loan
agreement;

(2) The enforcement and collection of service charges;
and

(3) The enforcement by the local government of all
rights and remedies conferred by statute, rule, regula-
tion or judicial decision.

The rights and remedies enumerated in this section
are in addition to rights and remedies conferred upon
the authority by law or pursuant to the loan agreement.

§22C-2-6. State construction grants program established;
special fund.

(a) The director of the division of environmental
protection shall promulgate rules in accordance with the
provisions of chapter twenty-nine-a of this code to
establish a state construction grants program that is
designed to complement and supplement the state water
pollution control revolving fund program established
pursuant to subsection (b), section three of this article.

(b) The special fund designated "The West Virginia
Construction Grants Fund" established in the state
treasury is continued. The special fund shall be com-
prised of moneys appropriated to said fund by the
Legislature, assessments on existing wastewater treat-
ment facilities, and all other sums designated for deposit
to the special fund from any source, public or private:
Provided, That such assessments shall be made and
collected in accordance with fee schedules to be
established by legislative rules promulgated by the
director of the division of environmental protection, in
accordance with chapter twenty-nine-a of this code.
Moneys in the special fund shall be used solely for the
state construction grants program established under
subsection (a) of this section: Provided, however, That
moneys in the special fund may be utilized to defray the

costs incurred by the division of environmental protec-

tion in administering the provisions of this section.

§22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall

can conduct an environmental review on each project funded

under this article. The director of the division of

environmental protection shall promulgate rules in

accordance with the provisions of chapter twenty-nine-

a of this code to implement the environmental review

of funded projects: Provided, That said rules shall be

consistent with the rules and regulations promulgated

by the United States environmental protection agency

pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental

protection is authorized to direct a local government, or

its agent, to implement all measures that, in the

judgment of the director, are necessary in order to

mitigate or prevent adverse impacts to the public

health, safety or welfare or to the environment that may

result from a project funded under this article. The

director is further authorized to require all projects to

comply with all other appropriate federal laws and

regulations that are required of such projects under the

federal clean water act, as amended.


The provisions of this article shall be liberally

construed to the end that its beneficial purposes may be

effectuated. Insofar as the provisions of this article are

inconsistent with the provisions of any other general,
special or local law, the provisions of this article are

controlling.

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-1. Short title.

§22C-3-2. Legislative findings; declaration of policy and responsibility;

purpose and intent of article.

§22C-3-3. Definitions.

§22C-3-4. Solid waste management board; organization of board; appoint-

ment and qualification of board members; their term of office,

compensation and expenses; director of board.
§22C-3-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

§22C-3-6. Powers, duties and responsibilities of board generally.

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

§22C-3-8. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

§22C-3-9. Development and designation of solid waste disposal sheds by board.

§22C-3-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

§22C-3-11. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.

§22C-3-12. Legal remedies of bondholders.

§22C-3-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

§22C-3-14. Use of funds, properties, etc., by board; restrictions thereon.

§22C-3-15. Audit of funds disbursed by the board and recipients thereof.

§22C-3-16. 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.

§22C-3-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.

§22C-3-18. Solid waste disposal revenue bonds lawful investments.

§22C-3-19. Exemption from taxation.

§22C-3-20. Governmental agencies authorized to convey property.

§22C-3-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

§22C-3-22. Conduct of proceedings of board.

§22C-3-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.

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

§22C-3-25. Liberal construction of article.

§22C-3-1. Short title.

1 This article shall be known and cited as the “Solid Waste Management Board Act.”

§22C-3-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.

1 The Legislature finds that uncontrolled, inadequately controlled and improper collection and disposal of solid
waste (1) is a public nuisance and a clear and present
danger to people; (2) provides harborages 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 deteriora-
tion of the natural beauty and resources of the state and
has adverse economic and social effects on the state and
its citizens; and (5) results in the squandering of
valuable nonrenewable and nonreplenishable resources
contained in solid waste.

Further, the Legislature finds that governmental
agencies in the state and the private sector do not have
the financial and other resources needed to provide for
the proper collection and disposal of solid waste; that
solid waste disposal sheds and projects must be estab-
lished on a relatively large scale to be economically
feasible and stable; and that proper solid waste collec-
tion and disposal at the lowest minimum cost can only
be achieved through comprehensive solid waste
management.

It is declared to be the public policy and a responsi-
bility of this state to assist efforts of governmental
agencies and the private sector to provide for the proper
collection, disposal and recycling of solid waste and to
solve and prevent the problems set forth in this article.
It is the purpose and intent of the Legislature in
enacting this article to provide for the necessary,
dependable, effective and efficient collection, disposal
and recycling of solid waste and to assist and cooperate
with governmental agencies and the private sector in
achieving all the purposes set forth in this article, and
to encourage the recycling or extraction of recoverable
resources from such solid waste.

The Legislature finds that the public policy and
responsibility of the state as set forth in this section
cannot be effectively attained without the funding,
establishment, operation and maintenance of solid waste
disposal projects as provided in this article.
§22C-3-3. Definitions.

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

1. "Board" means the solid waste management board provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

2. "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the solid waste management board, previously known as the West Virginia resource recovery — solid waste disposal authority, to effect the intents and purposes of this article.

3. "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

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 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 are 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 conserva-
tion district; solid waste disposal shed district; partner-
ship; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity.

(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 eleven, chapter twenty-two 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 eighteen, chapter
twenty-two, or refuse, slurry, overburden or other waste
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 articles two, three, four, six,
seven, eight, nine or ten, chapter twenty-two or chapter
twenty-two-a of this code, so long as such placement or
disposal is in conformance with a permit issued
pursuant to said chapters. “Solid waste” does 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 is
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 nine of this
article for solid waste management.
§22C-3-4. Solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.

The solid waste management 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 is composed of seven members. The secretary of the department of health and human resources and the director of the division of environmental protection, or their designees, are members ex officio of the board. The other five members of the board are appointed by the governor, 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 or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her 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 or her duties, shall comply with the require-
ments 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 chair, another as vice chair and appoint a secretary-treasurer, who need not be a member of the board. Four members of the board are a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs 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 or she 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 be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. All such compensation and expenses incurred by board members are 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 chair or upon the request in writing to the chair 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 adminis-
tration or regional planning.

§22C-3-5. 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 desig-
nate 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 governmen-
tal 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 environmental quality board
and the director of the division of environmental
protection for any waters of the state which may be
affected thereby, with the air quality standards set by
the said director and with health standards set by the
bureau of public 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 deed of trust or other appropriate security instrument creating a lien on such project;

(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, maintenance 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 fifteen, chapter twenty-two of this code and any rules promulgated thereunder which pertain to solid waste collection and disposal.

§22C-3-6. Powers, duties and responsibilities of board generally.

1 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, 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, regional suboffices 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 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
(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 fifteen, chapter twenty-two 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 construction of such project. The board may reject any and all bids. A bond with good and sufficient surety, approved by the board, is 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 consultants, 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 are 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 contributions 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 liability insurance for any solid waste disposal project and for
the principal office and suboffices of the board, insurance protecting the board and its officers and employees 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.

§22C-3-7. 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 article four of this chapter, article fifteen of chapter twenty-two and article eleven of chapter twenty of this code: Provided, however, That such plan shall incorporate the county or regional plans developed pursuant to sections eight and twenty-four, article four of this chapter, as amended: Provided further, That such plan shall be updated every two years following its initial preparation.

§22C-3-8. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
In order to ensure that the public purposes to be served by the board may be properly carried out and in order to assure the timely payment to the board of all sums due and owing under loan agreements with governmental agencies, as referred to in section five of this article, notwithstanding any provision to the contrary elsewhere contained in this code, in event of any default by a governmental agency under such a loan agreement, the board has, and may, at its option, exercise the following rights and remedies in addition to the rights and remedies conferred by law or pursuant to said loan agreement:

(1) The board may directly impose, in its own name and for its own benefit, service charges determined by it to be necessary under the circumstances upon all users of the solid waste disposal project to be acquired or constructed pursuant to such loan agreement, and proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(2) The board may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, authority, powers and remedies of the governmental agency with respect to the solid waste disposal project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including, without limitation, all rights and remedies with respect to users of such solid waste disposal project.

(3) The board may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including, without limitation, the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.
§22C-3-9. Development and designation of solid waste disposal sheds by board.

The board shall maintain the division of the state into geographical areas for solid waste management which shall be known as solid waste disposal sheds. The board may, from time to time, modify the boundaries of such sheds in a manner consistent with the provisions of this section. Before it modifies the sheds, the board shall consult with the affected municipalities and county or regional solid waste authorities and obtain and evaluate their opinions as to how many sheds there should be and where their boundaries should be located. The board shall then cause feasibility and cost studies to be made in order for it to designate the solid waste disposal sheds within each of which the most dependable, effective, efficient and economical solid waste disposal projects may be established. The sheds shall not overlap and shall cover the entire state.

The board shall designate the sheds so that:

(1) The goal of providing solid waste collection and disposal service to each household, business and industry in the state can reasonably be achieved.

(2) The total cost of solid waste collection and disposal and the cost of solid waste collection and disposal within each shed and per person can be kept as low as possible.

(3) Solid waste collection and disposal service, facilities and projects can be integrated in the most feasible, dependable, effective, efficient and economical manner.

(4) No county is located in more than one shed: Provided, That the board may divide a county among two or more sheds upon request of the appropriate county or regional solid waste authority.

The board, in modifying the boundaries of solid waste disposal sheds, is exempt from the provisions of c.
§22C-3-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

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 are 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 is valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board is immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is 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, bear such dates and 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 chair and vice chair 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 chair 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 or she 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 is less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chair 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 is not required to make any appropriation so requested, and the amount of such deficiencies is not a debt or liability of the state.

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

§22C-3-11. 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 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, 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 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 fifteen, article one of this chapter.

(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, reconstructing, 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

(3) To pay the costs and expenses incidental to or
necessary for the issuance of such bonds.

(d) If the proceeds of revenue bonds issued for any solid waste disposal project 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 is in the same year 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.

§22C-3-12. 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.

§22C-3-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

Solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds issued under authority of this article and any coupons in connection therewith are not a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any
political subdivision of this state for the payment of the
principal thereof or interest thereon, but such bonds and
notes are 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 are 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 re-
venues and funds pledged for their payment.

All expenses incurred in carrying out the provisions
of this article are 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, munici-
pality or political subdivision thereof.

§22C-3-14. Use of funds, properties, etc., by board;
restrictions thereon.

All moneys, properties and assets acquired by the
board, whether as proceeds from the sale of solid waste
disposal revenue bonds or as revenues or otherwise, shall
be held by it in trust for the purposes of carrying out
its powers and duties, and shall be used and reused in
accordance with the purposes and provisions of this
article. Such moneys shall at no time be commingled
with other public funds. Such moneys, except as
otherwise provided in any resolution authorizing the
issuance of solid waste disposal revenue bonds or except
when invested, 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.
§22C-3-15. 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 thirty, article four of this chapter, the use of such loans or grants by the recipient as well as all other appropriate subject matter.

§22C-3-16. 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 applies 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 are not 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.
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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 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.

§22C-3-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.

Each solid waste development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the board or if owned by a governmental agency, by such governmental agency, or the board or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the board shall be operated by such operating employees as the board employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the board shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the board's
operations during the preceding fiscal year. The board shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of its projects. A report of the audit shall be submitted to the governor and the Legislature.

§22C-3-18. Solid waste disposal revenue bonds lawful investments.

1 The provisions of sections nine and ten, article six, chapter twelve of this code notwithstanding, all solid waste disposal revenue bonds issued pursuant to this article are lawful investments for the West Virginia state board of investments and are also lawful investments for financial institutions as defined in section two, article one, chapter thirty-one-a of this code, and for insurance companies.

§22C-3-19. Exemption from taxation.

1 The board is not required to pay any taxes or assessments upon any solid waste disposal project or upon any property acquired or used by the board or upon the income therefrom. Bonds and notes issued by the board and all interest and income thereon are exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§22C-3-20. Governmental agencies authorized to convey property.

1 All governmental agencies, notwithstanding any provision of law to the contrary, may lease, lend, grant or convey to the board, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes
§22C-3-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

No officer, member or employee of the board may be financially interested, directly or indirectly, in any contract of any person with the board, or in the sale of any property, real or personal, to or by the board. This section does not apply to contracts or purchases of property, real or personal, between the board and any governmental agency.

No officer, member or employee of the board may have or acquire any financial interest, either direct or indirect, in any project or activity of the board or in any services or material to be used or furnished in connection with any project or activity of the board. If an officer, member or employee of the board has any such interest at the time he or she becomes an officer, member or employee of the board, he or she shall disclose and divest himself or herself of it. Failure to do so is cause for dismissal from the position he or she holds with the authority.

This section does not apply in instances where a member of the board who is a contract solid waste hauler either seeks or has a financial interest, direct or indirect, in any project or activity of the board or in any services or material to be used or furnished in connection with any project or activity of the board: Provided, That that member shall fully disclose orally and in writing to the board the nature and extent of any interest, prior to any vote by the board which involves his or her interest, withdraw from any deliberation or discussion by the board of matters involving his or her interest, and refrain from voting on any matter which directly or indirectly affects him or her.

No officer, member or employee of the board may accept a gratuity from any person doing business with the board or from any person for the purpose of
favor with the board.

Any officer, member or employee of the board who has any financial interest prohibited by this section or who fails to comply with its provisions is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§22C-3-22. Conduct of proceedings of board.

The board shall comply with all of the requirements in article nine-a, chapter six of this code.

§22C-3-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.

Solid waste collectors and haulers who are “common carriers by motor vehicle,” as defined in section two, article one, chapter twenty-four-a of this code, shall continue to be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a and rules promulgated thereunder. Nothing in this article gives the board any power or right to regulate such solid waste collectors and haulers in any manner, but the public service commission, when it issues a new certificate of convenience and necessity, or when it alters or adjusts the provisions of any existing certificate of convenience and necessity, or when it approves the assignment or transfer of any certificate of convenience and necessity, shall consult with the board regarding what action it could take which would most likely further the implementation of the board’s solid waste disposal shed plan and solid waste disposal projects and shall take any reasonable action that will lead to or bring about compliance of such waste collectors and haulers with such plan and projects.

At any hearing conducted by the public service commission pertaining to solid waste collectors and
§22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

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

§22C-3-25. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-1. Legislative findings and purposes.
§22C-4-2. Definitions.
§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.
§22C-4-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorities; appointments to board of directors; vacancies.
§22C-4-5. Authorities as successor to county commissions and former county solid waste authorities.
§22C-4-6. Election by county commission to assume powers and duties of the county solid waste authority.
§22C-4-7. Management of authority vested in board of directors; expenses paid by county commissions, procedure.
§22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.
§22C-4-9. Assistance to county or regional solid waste authorities by the solid waste management board, division of natural resources, division of environmental protection, bureau of public health and the attorney general.
§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the public service commission to file report.

§22C-4-11. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.

§22C-4-12. Bonds and notes.

§22C-4-13. Items included in cost of properties.

§22C-4-14. Bonds or notes may be secured by trust indenture.

§22C-4-15. Sinking fund for bonds or notes.

§22C-4-16. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.

§22C-4-17. Operating contracts.

§22C-4-18. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.

§22C-4-19. Refunding bonds or notes.

§22C-4-20. Indebtedness of authority.

§22C-4-21. Property, bonds or notes and obligations of authority exempt from taxation.

§22C-4-22. Use of prisoners for litter pickup; funds provided from litter control fund; county commission, regional jail and correctional facility authority and sheriff to cooperate with solid waste authority.

§22C-4-23. Powers, duties and responsibilities of authority generally.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

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

§22C-4-26. Approval of new Class A facilities by solid waste authorities and county commissions, and referendum.

§22C-4-27. Approval of conversion from Class B facility to Class A facility.

§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

§22C-4-29. Judicial review of certificate of site approval.

§22C-4-30. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

§22C-4-1. Legislative findings and purposes.

1 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 irre-
placeable 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 private sector. 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.

§22C-4-2. Definitions.

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 fifteen, chapter twenty-two of this code.

(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 does 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 does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(c) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.
(d) "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 includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(e) "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.

(f) "Compliance order" means an administrative order issued pursuant to section ten, article fifteen, chapter twenty-two of this code authorizing a solid waste facility to operate without a solid waste permit.

(g) "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.

(h) "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.

(i) "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.

(j) "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 eleven, chapter twenty-two of this code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article eighteen, chapter twenty-two 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 articles two, three, four, six, seven, eight, nine or ten, chapter twenty-two or chapter twenty-two-a of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" does 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.
(k) "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.

(l) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section nine, article three of this chapter.

(m) "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 is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(n) "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.

(o) "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.

(p) "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.

(q) "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.

§22C-4-3. 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 is 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 is comprised of five members who are appointed as follows: One by the director of the division of environmental protection, 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 are appointed for terms of four years for which the initial 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 directly affects the member's personal interests.

§22C-4-4. 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 is a public agency and is 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 are appointed as follows: One by the director of the division of environmental protection, two by the county commission of each county participating therein, one 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 are appointed for terms of four years for which the initial terms 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, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.

§22C-4-5. Authorities as successor to county commissions and former county solid waste authorities.

The county and regional solid waste authorities created herein, as the case may be, are the successors to the county commissions of each county, or the solid waste authority previously created by said commission and abolished as of the first day of January, one thousand nine hundred eighty-nine, by this article, in the ownership, operation and maintenance of such dumps, landfills and other solid waste facilities, solid waste collection services and litter and solid waste control programs. The county commission of each county, or the solid waste authority thereof, shall, on the first day of January, one thousand nine hundred eighty-nine, transfer all ownership, operation, control and other rights, title and interests in such solid waste facilities, services and programs, and the properties, funds, appropriations and contracts related thereto to the county or regional solid waste authority established pursuant to this article.

§22C-4-6. 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 fifteen, chapter twenty-two of this code, 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 ceases to exist and the
county commission assumes all the duties, powers,
obligations, rights, title and interest vested in the
former authority pursuant to this chapter or chapter
twenty-two of this code.

§22C-4-7. Management of authority vested in board of
directors; expenses paid by county commis­
sions, procedure.

(a) The management and control of the authority, its
property, operations and affairs of any nature is vested
in and governed by the board of directors.

(b) The expenses of any county solid waste authority
incurred for necessary secretarial and clerical assist-
ance, office supplies and general administrative ex-
penses, in the development of the litter and solid waste
control plan under section eight of this article and to
provide solid waste collection and disposal services
under this article shall be paid by the county commis-
sion 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 has 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 assist-
ance, office supplies and general administrative ex-
penses, or for the development of the litter and solid
waste control plan under section eight of this article, or
to provide solid waste collection and disposal services
under this article shall be paid by the county commis-
sions 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 chair and vice chair 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 environmental protection. The board shall meet at such times and places as it or the chair may determine. It is the duty of the chair 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 is subject to the provisions of article one, chapter twenty-nine-b of this code, the freedom of information act and article nine-a, chapter six of this code, open governmental proceedings. A majority of the board is a quorum for the transaction of business.

§22C-4-8. 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 is 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 are required, shall oe 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
state or federal governments.

(c) The solid waste management board shall establish
advisory rules to guide and assist the counties in the
development of the plans required by this section.

(d) Each plan prepared under this section is subject
to approval by the solid waste management board. Any
plan rejected by the solid waste management board
shall be returned to the regional or county solid waste
authority with a statement of the insufficiencies in such
plan. The authority shall revise the plan to eliminate the
insufficiencies and submit it to the director within
ninety days.

(e) The solid waste management board shall develop
a litter and solid waste control plan for any county or
regional solid waste authority which fails to submit such
a plan on or before the first day of July, one thousand
nine hundred ninety-two: Provided, That in preparing such plans the director may determine whether to prepare a regional or county based plan for those counties which fail to complete such a plan.

§22C-4-9. Assistance to county or regional solid waste authorities by the solid waste management board, division of natural resources, division of environmental protection, bureau of public health and the attorney general.

(a) The division of natural resources, the division of environmental protection, the solid waste management board, and the bureau of public health shall provide technical assistance to each county and regional solid waste authority as reasonable and practicable for the purposes of this article within the existing resources and appropriations of each agency available for such purposes. The attorney general shall provide legal counsel and representation to each county and regional solid waste authority for the purposes of this article within the existing resources and appropriations available for such purposes, or with the written approval of the attorney general, said authority may employ counsel to represent it.

(b) The solid waste management board shall provide assistance to the county or regional solid waste authorities, municipalities and other interested parties in identifying and securing markets for recyclables.

§22C-4-10. 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 environmental protection 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.

§22C-4-11. 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 environmental protection 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.

§22C-4-12. Bonds and notes.

For constructing or acquiring any solid waste facilities for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extension thereto, and also for reimbursing or paying the costs and expenses of creating the authority, if any, the board of any such authority is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds or notes of such authority, payable from the revenues derived from the operation of the solid waste facilities under control of the authority or from such other funds as are available to the authority for such purpose. Such bonds or notes may be issued in one or more series, may bear such date or dates, may mature at such time or times not to exceed forty years from their respective dates, may bear interest at such rate or rates, payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be
provided by resolution or resolutions of the board.
Notwithstanding the form or tenor thereof, and in the
absence of any express recital on the face thereof, that
the bond or note is nonnegotiable, all such bonds or notes
are, and shall be treated as, negotiable instruments for
all purposes. The bonds or notes shall be executed by
the chair of the board, who may use a facsimile
signature. The official seal of the authority or a
facsimile thereof shall be affixed to or printed on each
bond or note and attested, manually or by facsimile
signature, by the secretary-treasurer of the board, and
any coupons attached to any bond or note shall bear the
signature or facsimile signature of the chair of the
board. Bonds or notes bearing the signatures of officers
in office on the date of the signing thereof are valid and
binding for all purposes notwithstanding that before the
delivery thereof any or all of the persons whose
signatures appear thereon have ceased to be such
officers. Notwithstanding the requirements or provi-
sions of any other law, any such bonds or notes may be
negotiated or sold in such manner and at such time or
times as is found by the board to be most advantageous.
Any resolution or resolutions providing for the issuance
of such bonds or notes may contain such covenants and
restrictions upon the issuance of additional bonds or
notes thereafter as may be deemed necessary or
advisable for the assurance of the payment of the bonds
or notes thereby authorized.

§22C-4-13. Items included in cost of properties.

The cost of any solid waste facilities acquired under
the provisions of this article includes the cost of the
acquisition or construction thereof, costs of closure of
solid waste facilities, the cost of all property rights,
easements and franchises deemed necessary or conve-
nient therefor and for the improvements and extensions
thereto; interest upon bonds or notes prior to and during
construction or acquisition and for twelve months after
completion of construction or of acquisition of the
improvements and extensions; engineering, fiscal agents
and legal expenses; expenses for estimates of cost and
of revenues, expenses for plans, specifications and
13 surveys; other expenses necessary or incident to determin-
14 ing the feasibility or practicability of the enterprise,
15 administrative expense, and such other expenses as may
16 be necessary or incident to the financing herein
17 authorized, and the construction or acquisition of the
18 properties and the placing of same in operation, and the
19 performance of the things herein required or permitted,
20 in connection with any thereof.

§22C-4-14. Bonds or notes may be secured by trust indenture.

1 In the discretion and at the option of the board such
bonds or notes may be secured by a trust indenture by
and between the authority and a corporate trustee,
which may be a trust company or bank having powers
of a trust company within or without the state of West
Virginia. The resolution authorizing the bonds or notes
and fixing the details thereof may provide that such
trust indenture may contain such provisions for protect-
ing and enforcing the rights and remedies of bond-
holders as may be reasonable and proper, not in
violation of law, including covenants setting forth the
duties of the authority and the members of its board and
officers in relation to the construction or acquisition of
solid waste facilities and the improvement, extension,
operation, repair, maintenance and insurance thereof,
and the custody, safeguarding and application of all
moneys, and may provide that all or any part of the
construction work shall be contracted for, constructed
and paid for, under the supervision and approval of
consulting engineers employed or designated by the
board and satisfactory to the original bond purchasers,
their successors, assignees or nominees, who may be
given the right to require the security given by
contractors and by any depository of the proceeds of
bonds or notes or revenues of the solid waste facilities
or other money pertaining thereto be satisfactory to such
purchasers, their successors, assignees or nominees.
Such indenture may set forth the rights and remedies
of the bondholders or noteholders and such trustee.

§22C-4-15. Sinking fund for bonds or notes.
At or before the time of the issuance of any bonds or notes under this article, the board may by resolution or in the trust indenture provide for the creation of a sinking fund and for payments into such fund from the revenues of the solid waste facilities operated by the authority or from other funds available thereto such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds or notes at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and principal and for the retirement of such bonds or notes or at prior to maturity as may be provided or required by such resolution.

§22C-4-16. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.

The board for any such authority has power to insert enforceable provisions in any resolution authorizing the issuance of bonds or notes relating to the collection, custody and application of revenues or of the authority from the operation of the solid waste facilities under its control or other funds available to the authority and to the enforcement of the covenants and undertakings of the authority. In the event there is default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or notes or, in the event the authority or its board or any of its officers, agents or employees, fails or refuses to comply with the provisions of this article, or defaults in any covenant or agreement made with respect to the issuance of such bonds or notes or offered as security therefor, then any holder or holders of such bonds or notes and any such trustee under the trust indenture, if there be one, have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the authority
extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the authority in connection with the issuance of such bonds or notes, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the authority and its properties, which receiver so appointed shall forthwith directly, or by her or his agents and attorneys, enter into and upon and take possession of the affairs of the authority and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the authority exercise all of the rights and powers of such authority as found expedient, and such receiver has power and authority to collect and receive all revenues and apply same in such manner as the court directs. Whenever the default causing the appointment of such receiver has been cleared and fully discharged and all other defaults have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the authority to its board. Such receiver so appointed has no power to sell, assign, mortgage, or otherwise dispose of any assets of the authority except as hereinbefore provided.

§22C-4-17. Operating contracts.

1 The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the solid waste facilities for such period of time and under such terms and conditions as are agreed upon between the board and such persons, firms or corporations. The board has power to provide in the resolution authorizing the issuance of bonds or notes, or in any trust indenture securing such bonds or notes, that such contracts or agreements are valid and binding upon the authority as long as any of said bonds or notes, or interest thereon, are outstanding and unpaid.

§22C-4-18. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.
Unless otherwise provided by resolution of the board, there is a statutory mortgage lien upon such solid waste facilities of the authority, which exists in favor of the holders of bonds or notes hereby authorized to be issued, and each of them, and the coupons attached to said bonds or notes, and such solid waste facilities remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds or notes. Any holder of such bonds or notes, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds or notes, and may foreclose such statutory mortgage lien in the manner now provided by the laws of the state of West Virginia for the foreclosure of mortgages on real property.

§22C-4-19. Refunding bonds or notes.

The board of any authority having issued bonds or notes under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds or notes of such authority for the purpose of retiring or refinancing any or all outstanding bonds or notes, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds or notes are applicable to such refunding bonds or notes, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds or notes to be so refunded.

§22C-4-20. Indebtedness of authority.

No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies applies to the indebtedness of an authority. No indebtedness of any nature of authority is an indebtedness of the state of West Virginia or any municipality or county therein or a charge against any property of said state of West Virginia or any municipalities or counties. No indebtedness or obligation incurred by any authority gives any
right against any member of the governing body of any
municipality or any member of the authority of any
county or any member of the board of any authority. The
rights of creditors of any authority are solely against the
authority as a corporate body and shall be satisfied only
out of property held by it in its corporate capacity.

§22C-4-21. Property, bonds or notes and obligations of
authority exempt from taxation.

The authority is exempt from the payment of any
taxes or fees to the state or any subdivisions thereof or
any municipalities or to any officer or employee of the
state or of any subdivision thereof or of any municipal-
ities. The property of the authority is exempt from all
local and municipal taxes. Bonds, notes, debentures and
other evidence of indebtedness of the authority are
declared to be issued for a public purpose and to be
public instrumentalities, and, together with interest
thereon, are exempt from taxes.

§22C-4-22. Use of prisoners for litter pickup; funds
provided from litter control fund; county
commission, regional jail and correctional
facility authority and sheriff to cooperate
with solid waste authority.

Upon the approval of the litter and solid waste control
plan as provided in section eight hereof, each county and
regional solid waste authority is hereby authorized and
directed to implement a program to utilize those
individuals incarcerated in the county or regional jails
for litter pickup within the limits of available funds.
Such program shall be funded from those moneys
allocated to the authority by the director of the division
of natural resources from the litter control fund
pursuant to section twenty-six, article four, chapter
twenty of this code. The authority may expend such
additional funds for this program as may be available
from other sources. The county commission and the
sheriff of each county and the regional jail and correc-
tional facility authority shall cooperate with the county
or regional solid waste authority in implementing this
program pursuant to section one, article eleven-a, and
§22C-4-23. Powers, duties and responsibilities of authority generally.

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

1. Sue and be sued, plead and be impleaded and have and use a common seal.
2. To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.
3. The authority board of directors shall promulgate rules to implement the provisions of sections nine and ten of this article and is authorized to promulgate rules for purposes of this article and the general operation and administration of authority affairs.
4. Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.
5. To promulgate such rules as may be proper and necessary to implement the purposes and duties of this article.
6. Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent or contract for the operation by any person, partnership, corporation or governmental agency, any solid waste facility or collection, transportation and processing facilities related thereto.
7. Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein.
8. Make available the use or services of any solid
(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 ten of this article by referring violations to the division of environmental protection or the appropriate law-enforcement authorities.

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

All rules promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of this code.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

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

(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 promulgated by the solid waste management board for this purpose. Upon completion of the siting plan, the county or regional solid waste authority shall file said plan with the solid waste management board.

(d) The siting plan takes effect upon approval by the solid waste management board pursuant to the rules promulgated for this purpose. Upon approval of said plan, the solid waste management board shall transmit a copy thereof to the director of the division of environmental protection and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection
(e) Effective upon approval of the siting plan by the solid waste management board, it is unlawful for any person to establish, construct, install or operate a commercial solid waste facility at a site not authorized by the siting plan: Provided, That an existing commercial solid waste facility which, on the eighth day of April, one thousand nine hundred eighty-nine, held a valid solid waste permit or compliance order issued by the division of natural resources pursuant to the former provisions of article five-f, chapter twenty of this code may continue to operate but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order, and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

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

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

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

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

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

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

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section two, article fifteen, chapter twenty-two of this code, that are specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment 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 twenty-six, twenty-seven and twenty-eight of this article.

(b) In considering whether to issue or deny the certificate of site approval as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority 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, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

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

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

§22C-4-26. Approval of new Class A facilities by solid waste authorities and county commissions, and referendum.

(a) Except as provided below with respect to Class B facilities, from and after the tenth day of March, one thousand nine hundred ninety, in order to obtain approval to operate a new Class A 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 of this code and in section thirteen, article fifteen, chapter twenty-two of this code;

(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 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 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 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 is 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, 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 is 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 environmental protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for siting a Class A facility within the county, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on and does not require the division of environmental protection to issue a permit. If the majority of the legal votes cast is 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 tenth day of March, one thousand nine hundred ninety, the public referendum established in this section is 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 has not prior to the tenth day of March, one thousand nine hundred ninety, 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.

§22C-4-27. Approval of conversion from Class B facility to Class A facility.

(a) From and after the eighteenth day of October, one thousand nine hundred ninety-one, 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. (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 thirteen, article fifteen, chapter twenty-two of this code;

2. (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. (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 subdivisions (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 other countywide election.

(1) Such referendum is 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, 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 is against the facility, then the county commission, the county or regional solid waste authority and the division of environmental protection 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 fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the division of environmental protection to modify the permit. If the majority of the legal votes cast is 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.

§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

1. (a) From and after the eighteenth day of October, one thousand nine hundred ninety-one, 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. (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 environmental protection.

(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 is 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, 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 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 is 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 environmental protection 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 is 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 fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the county or regional solid waste authority or the division of environmental protection to approve an application to modify the permit. If the majority of the legal votes cast is 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.

§22C-4-29. 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 is 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.

§22C-4-30. 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 is 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
is 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 is 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 remains 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 is primarily liable for collection and remittance
of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by
this section. However, if the operator fails, in whole or
in part, to discharge his or her obligations under this
section, the owner and the operator of the solid waste
facility are jointly and 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 are liable, jointly and
severally, for any default on the part of the association
or corporation, and payment of the fee and any additions
to tax, penalties and interest imposed by article ten,
chapter eleven of this code may be enforced against
them 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
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 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) 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 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 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;

(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 environmental protection as exempt from
the fee imposed pursuant to section eleven, article
fifteen, chapter twenty-two of this code; and

(4) Disposal of solid waste at a solid waste disposal
facility by a commercial recycler which disposes of
thirty percent or less of the total waste it processes for
recycling. In order to qualify for this exemption each
commercial recycler must keep accurate records of
incoming and outgoing waste by weight. Such records
must be made available to the appropriate inspectors
from the division of environmental protection of solid
waste authority, upon request.

(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 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 continued. 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 three of this chapter.

(i) Effective date. — This section is effective on the first day of July, one thousand nine hundred ninety.

ARTICLE 5. COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD.

§22C-5-1. Short title.
§22C-5-2. Purpose and legislative findings.
§22C-5-3. Definitions.
§22C-5-4. Establishment of commercial hazardous waste management facility siting board: composition; appointment; compensation; powers; rules; and procedures.
§22C-5-5. Effect of certification.
§22C-5-6. Commercial hazardous waste management facility siting fund: fees.
§22C-5-8. Remedies.

§22C-5-1. Short title.

This article may be known and cited as the “Commercial Hazardous Waste Management Facility Siting Act.”

§22C-5-2. Purpose and legislative findings.

(a) The purpose of this article is to establish a state
commercial hazardous waste management facility siting board and to establish the procedure for which approval certificates are granted or denied for commercial hazardous waste management facilities.

(b) The Legislature finds that hazardous waste is generated throughout the state as a by-product of the materials used and consumed by individuals, businesses, enterprise and governmental units in the state, and that the proper management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety. The Legislature further finds that:

(1) The availability of suitable facilities for the treatment, storage and disposal of hazardous waste is necessary to protect the environment resources and preserve the economic strength of this state and to fulfill the diverse needs of its citizens;

(2) Whenever a site is proposed for the treatment, storage or disposal of hazardous waste, the nearby residents and the affected county and municipalities may have a variety of reasonable concerns regarding the location, design, construction, operation, closing and long-term care of facilities to be located at the site, the effect of the facility upon their community's economic development and environmental quality and the incorporation of such concerns into the siting process;

(3) Local authorities have the responsibility for promoting public health, safety, convenience and general welfare, encouraging planned and orderly land use development, recognizing the needs of industry and business, including solid waste disposal and the treatment, storage and disposal of hazardous waste and that reasonable concerns of local authorities should be considered in the siting of commercial hazardous waste management facilities; and

(4) New procedures are needed to resolve many of the conflicts which arise during the process of siting commercial hazardous waste management facilities.

§22C-5-3. Definitions.
Unless the context clearly requires a different meaning, as used in this article the terms:

(a) "Board" means the commercial hazardous waste management facility siting board established pursuant to section four of this article;

(b) "Commercial hazardous waste management facility" means any hazardous waste treatment, storage or disposal facility which accepts hazardous waste, as identified or listed by the director of the division of environmental protection under article eighteen, chapter twenty-two of this code, generated by sources other than the owner or operator of the facility and does not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis;

(c) "Hazardous waste management facility" means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) Facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; or (ii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works. A facility may consist of one or more treatment, storage or disposal operational units.

§22C-5-4. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.

(a) The commercial hazardous waste management facility siting board is continued. It consists of nine members including the director of the division of environmental protection and the chief of the office of air quality of the division of environmental protection
who are nonvoting members ex officio, two ad hoc members appointed by the county commission of the county in which the facility is or is proposed to be located who are residents of said county, and five other permanent members to be appointed by the governor with the advice and consent of the Senate, two of whom are representative of industries engaged in business in this state and three of whom are representative of the public at large. No two or more of the five permanent voting members of the board appointed by the governor shall be from the same county. Upon initial appointment one of said other five members shall be appointed for five years, one for four years, one for three years, one for two years and one for one year. Thereafter, said permanent members shall be appointed for terms of five years each. Vacancies occurring other than by expiration of a term shall be filled by the governor in the same manner as the original appointment for the unexpired portion of the term. The term of the ad hoc members continue until a final determination has been made in the particular proceeding for which they are appointed. Four of the voting members on the board constitute a quorum for the transaction of any business, and the decision of four voting members of the board is action of the board. No person is eligible to be an appointee of the governor to the board who has any direct personal financial interest in any commercial hazardous waste management enterprise. The five permanent voting members of the board shall annually elect from among themselves a chair no later than the thirty-first day of July of each calendar year. The board shall meet upon the call of the chair or upon the written request of at least three of the voting members of the board.

(b) Each member of the board, other than the two members ex officio, shall be paid, out of funds appropriated for such purpose the same compensation, and each member of the board, including members ex officio, shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of
official duties. The division of environmental protection shall make available to the board such professional and support staff and services as may be necessary in order to support the board in carrying out its responsibilities within the limit of funds available for this purpose. The office of the attorney general shall provide legal advice and representation to the board as requested, within the limit of funds available for this purpose, or the board, with the written approval of the attorney general, may employ counsel to represent it.

(c) After the eighth day of April, one thousand nine hundred eighty-nine, no person shall construct or commence construction of a commercial hazardous waste management facility without first obtaining a certificate of site approval issued by the board in the manner prescribed herein. For the purpose of this section, “construct” and “construction” means (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to include accommodation of hazardous waste, or expansion of more than fifty percent the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

(d) Upon receiving a written request from the owner or operator of the facility, the board may allow, without going through the procedures of this article, any changes in the facilities which are designed (1) to prevent a threat to human health or the environment because of an emergency situation; (2) to comply with federal or state laws and regulations; or (3) to result in demonstrably safer or environmentally more acceptable processes.

(e) An application for certificate of site approval
consists of a copy of all hazardous waste permits, if any, and permit applications, if any, issued by or filed with any state permit-issuing authority pursuant to article eighteen, chapter twenty-two of this code and a detailed written analysis with supporting documentation of the following factors:

(1) The nature of the probable environmental and economic impacts, including, but not limited to, specification of the predictable adverse effects on quality of natural environment, public health and safety, scenic, historic, cultural and recreational values, water and air quality, wildlife, property values, transportation networks and an evaluation of measures to mitigate such adverse effects;

(2) The nature of the environmental benefits likely to be derived from such facility, including the resultant decrease in reliance upon existing waste disposal facilities which do not comply with applicable laws and rules, and a reduction in fuel consumption and vehicle emissions related to long-distance transportation of hazardous waste; and

(3) The economic benefits likely to be derived from such facility, including, but not limited to, a reduction in existing costs for the disposal of hazardous waste, improvement to the state's ability to retain and attract business and industry due to predictable and stable waste disposal costs, and any economic benefits which may accrue to the municipality or county in which the facility is to be located.

(f) On or before sixty calendar days after the receipt of such application, the board shall mail written notice to the applicant as to whether or not such application is complete. If, or when, the application is complete, the board shall notify the applicant and the county commission of the county in which the facility is or is proposed to be located. Said county commission shall thereupon, within thirty days of receipt of such notice, appoint the two ad hoc members of the board to act upon the application.

(g) Immediately upon determining that an application
is complete, the board shall, at the applicant’s expense,
cause a notice to be published in the state register,
which shall be no later than thirty calendar days after
the date of such written notice of completeness, and shall
provide notice to the chief executive office of each
municipality in which the proposed facility is to be
located and to the county commission of the county in
which the facility is proposed to be located, and shall
direct the applicant to provide reasonable notice to the
public which shall, at a minimum, include publication
as a Class I-O legal advertisement in at least two
newspapers having general circulation in the vicinity in
which the proposed facility is to be located identifying
the proposed location, type of facility and activities
involved, the name of the permittee, and the date, time
and place at which the board will convene a public
hearing with regard to the application. The date of the
hearing shall be set by the board and shall commence
within sixty days of the date of notice of completeness
of an application.

(h) The board shall conduct a public hearing upon the
application in the county in which the facility is to be
located and shall keep an accurate record of such
proceedings by stenographic notes and characters or by
mechanical or electronic means. Such proceedings shall
be transcribed at the applicant’s expense. The board
may accept both written and oral comments on the
application.

(i) The commercial hazardous waste management
facility siting board may request further information of
the applicant and shall render a decision based upon the
application and the record, either, requesting further
information, granting a certificate of site approval,
denying it, or granting it upon such terms, conditions
and limitations as the board deems appropriate. The
board shall base its decision upon the factors set forth
in subsection (e). The written decision of the board
containing its findings and conclusions shall be mailed
by certified mail to the applicant and to any requesting
person on or before sixty calendar days after receipt by
the board of a complete record of the hearing.
(j) The board may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the power to promulgate rules in compliance with chapter twenty-nine-a of this code.

§22C-5-5. Effect of certification.

A grant of an approval certificate shall supersede any local ordinance or regulation that is inconsistent with the terms of the approval certificate. Nothing in this chapter affects the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the approval certificate. Grant of an approval certificate does not preclude or excuse the applicant from the requirement to obtain approval or permits under this chapter or other state or federal laws.

§22C-5-6. Commercial hazardous waste management facility siting fund; fees.

(a) There is hereby continued in the state treasury a special revenue fund entitled the “commercial hazardous waste management facility siting fund” which may be expended by the director of the division of environmental protection for the following:

(1) The necessary expenses of the board which may include expenses and compensation for each member of the board as authorized by this article.

(2) Administration, professional and support services provided by the division to the board.

(3) Legal counsel and representation provided by the attorney general to the board for the purposes of this article.

(b) The director of the division of environmental protection shall promulgate rules, pursuant to section one, article one, chapter twenty-nine-a of this code, establishing reasonable fees to be charged each applicant for a certificate of site approval. Such fees shall be calculated to recover the reasonable and necessary expenses of the board, division of environmental
protection and attorney general which such agencies incur as pursuant to this article.


(a) Any person having an interest adversely affected by a final decision made and entered by the board is entitled to judicial review thereof in the circuit court of Kanawha County, or the circuit court of the county in which the facility is, or is proposed to be, situated, such appeal to be perfected by the filing of a petition with the court within sixty days of the date of receipt by the applicant of the board’s written decision.

(b) The review shall be conducted by the court without a jury and shall be upon the record made before the board except that in cases of alleged irregularities in procedure before the board not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

The court may affirm the order or decision of the board or remand the case for further proceedings. It may reverse, vacate or modify the order or decision of the board if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the board;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) The judgment of the circuit court is final unless
reversed, vacated or modified on appeal to the supreme
court of appeals. The petition seeking such review must
be filed with said supreme court of appeals within
ninety days from the date of entry of the judgment of
the circuit court.

(d) Legal counsel and services for the board in all
appeal proceedings shall be provided by the attorney
general.

§22C-5-8. Remedies.

(a) Any person who violates this section shall be
compelled by injunction, in a proceeding instituted in
the circuit court or the locality where the facility or
proposed facility is to be located, to cease the violation.

(b) Such an action may be instituted by the board,
director of the division of environmental protection,
political subdivision in which the violation occurs or any
other person aggrieved by such violation. In any such
action, it is not necessary for the plaintiff to plead or
prove irreparable harm or lack of an adequate remedy
at law. No person shall be required to post any
injunction bond or other security under this section.

(c) No action may be brought under this section after
an approval certificate has been issued by the board,
notwithstanding the pendency of any appeals or other
challenges to the board's action.

(d) In any action under this section, the court may
award reasonable costs of litigation, including attorney
and expert witness fees, to any party if the party
substantially prevails on the merits of the case and if
in the determination of the court the party against
whom the costs are requested has acted in bad faith.

ARTICLE 6. HAZARDOUS WASTE FACILITY SITING AP-
PROVAL.

§22C-6-1. Legislative purpose.

The purpose of this article is to provide the opportun-
ENVIRONMENTAL PROTECTION

§22C-6-2. Definitions.

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

(a) "Board" means the commercial hazardous waste management facility siting board established pursuant to section three, article five of this chapter;

(b) "Commercial hazardous waste management facility" means any hazardous waste treatment, storage or disposal facility which accepts hazardous waste, as identified or listed by the director of the division of environmental protection under article eighteen, chapter twenty-two of this code, generated by sources other than the owner or operator of the facility and does not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis;

(c) "Hazardous waste management facility" means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) Facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; or (ii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works. A facility may consist of one or more treatment, storage or disposal operational units.

(d) "On site" means the location for disposal of hazardous waste including the hazardous waste generated at the location of disposal or generated at some
§22C-6-3. Procedure for public participation.

(a) From and after the fifth day of June, one thousand nine hundred ninety-two, in order to obtain approval to locate either a commercial hazardous waste management facility or a hazardous waste management facility which disposes of greater than ten thousand tons per annum on site in this state, an applicant shall:

(1) File a pre-siting notice with the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the commercial hazardous waste management facility siting board;

(2) File a pre-siting notice with the commercial hazardous waste management facility siting board; and

(3) File a pre-siting notice with the division of environmental protection.

(b) If a pre-siting notice is filed in accordance with subsection (a) of this section, the county commission 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 hazardous waste management facility is to be located. Upon an affirmative vote of the majority of the county commissioners or 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: Provided, That such a referendum is not required for a hazardous waste management facility for which at least ninety percent of the capacity is designated for hazardous waste generated at the site of disposal. Any
referendum conducted pursuant to this section shall be held at the next primary, general or other countywide election.

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial hazardous waste management facility be located in the county or that a hazardous waste management facility disposing of greater than ten thousand tons of hazardous waste per annum on site be located in the county. Any election at which such question of locating a hazardous waste management 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, 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 depending upon the type of facility to be located with the county:

"Shall a commercial hazardous waste management facility be located within _________ County, West Virginia?

☐ For the facility

☐ Against the facility

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

"Shall a hazardous waste management facility disposing of greater than ten thousand tons per annum on site 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 is against the facility, then the county commission shall notify the division of environmental protection and the commercial hazardous waste management facility siting board, in the case of a commercial facility, of the result and the commercial hazardous waste management facility siting board or division of environmental protection, as the case may be, shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in article eighteen, chapter twenty-two of this code and article five of this chapter, in the case of a commercial hazardous waste management facility, may proceed: Provided, That such vote is not binding on nor does it require the commercial hazardous waste management facility siting board to grant a certificate of site approval or the division of environmental protection to issue the permit, as the case may be. If the majority of the legal votes cast is 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.

ARTICLE 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22C-7-1. Oil and gas inspector; supervising inspectors; tenure; oath and bond.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.

§22C-7-1. Oil and gas inspector; supervising inspectors; tenure; oath and bond.

Notwithstanding any other provisions of law, oil and gas inspectors shall be selected, serve and be removed as in this article provided.

The director of the division of environmental protection shall divide the state so as to equalize, as far as practical, the work of each oil and gas inspector. The director may designate a supervising inspector and
8 other inspectors as may be necessary, and may designate
9 their places of abode, at points convenient to the
10 accomplishment of their work.

11 The director of the division of environmental protec-
12 tion shall make each appointment from among the three
13 qualified eligible candidates on the register having the
14 highest grades. The director of the division of environ-
15 mental protection or the director's designee may, for
16 good cause, at least thirty days prior to making an
17 appointment, strike any name from the register. Upon
18 striking any name from the register, the director or the
19 director's designee, as the case may be, shall imme-
20 diately notify in writing each member of the oil and gas
21 inspectors' examining board of such action, together
22 with a detailed statement of the reasons therefor.
23 Thereafter, the oil and gas inspectors' examining board,
24 after hearing, if it finds that the action of striking such
25 name was arbitrary or unreasonable, may order the
26 name of any candidate so stricken from the register to
27 be reinstated thereon. Such reinstatement shall be
28 effective from the date of removal from the register.

29 Any candidate passed over for appointment for three
30 years shall be automatically stricken from the register.

31 After having served for a probationary period of one
32 year to the satisfaction of the director for the division
33 of environmental protection, an oil and gas inspector or
34 supervising inspector shall have permanent tenure until
35 such inspector becomes seventy years of age, subject
36 only to dismissal for cause in accordance with the
37 provisions of section two of this article. No oil and gas
38 inspector or supervising inspector while in office shall
39 be directly or indirectly interested as owner, lessor,
40 operator, stockholder, superintendent or engineer of any
41 oil or gas drilling or producing venture or of any coal
42 mine in this state. Before entering upon the discharge
43 of such duties as an oil and gas inspector or supervising
44 inspector, each inspector shall take the oath of office
45 prescribed by section 5, article IV of the constitution of
46 West Virginia, and shall execute a bond in the penalty
47 of two thousand dollars, with security to be approved by
48 the director of the division of environmental protec-
conditioned upon the faithful discharge of the inspector's duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The supervising inspector and oil and gas inspectors shall perform such duties as are imposed upon them by this chapter or chapter twenty-two of this code, and related duties assigned by the director of the division of environmental protection.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his or her probationary appointment, such person (1) is a citizen of West Virginia, in good health, and of good character, reputation and temperate habits; (2) has had at least six years' actual relevant experience in the oil and gas industry: Provided, That not exceeding three years of such experience shall be satisfied by any combination of (i) a bachelor of science degree in science or engineering which shall be considered the equivalent of three years' actual relevant experience in the oil and gas industry, (ii) an associate degree in petroleum technology which shall be considered the equivalent of two years actual relevant experience in the oil and gas industry, and (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or reclamation each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors' examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may
require. If such board finds after investigation and
examination that an applicant (1) is eligible for
appointment and (2) has passed all written and oral
examinations, the board shall add such applicant's name
and grade to the register of qualified eligible candidates
and certify its action to the director of the division of
environmental protection. No candidate's name may
remain on the register for more than three years
without requalifying.

(c) The salary of the supervising inspector shall be not
less than twenty-seven thousand five hundred dollars
per annum. Salaries of inspectors shall be not less than
twenty-two thousand dollars per annum. The supervis­
ing inspector and inspectors are entitled to mileage
expense reimbursement at the rate established for in­
state travel of public employees, in the governor's travel
rules, as administered by the department of administra­
tion. Within the limits provided by law, the salary of
each inspector and of the supervising inspector shall be
fixed by said director and the oil and gas inspectors'
examining board. In fixing salaries of the oil and gas
inspectors and of the supervising inspector, said director
shall consider ability, performance of duty and expe­
rience. No reimbursement for traveling expenses may
be made except upon an itemized account of such
expenses submitted by the inspector or supervising
inspector, as the case may be, who shall verify, upon
oath, that such expenses were actually incurred in the
discharge of official duties.

(d) An inspector or the supervising inspector, after
having received a permanent appointment, shall be
removed from office only for physical or mental
impairment, incompetency, neglect of duty, drunken­
ness, malfeasance in office or other good cause.

Proceedings for the removal of an oil and gas
inspector or the supervising inspector may be initiated
by said director whenever there are reasonable grounds
to believe that adequate cause exists warranting
removal. Such a proceeding shall be initiated by a
verified petition, filed with the oil and gas inspectors'
examining board by said director, setting
particularity the facts alleged. Not less than twenty reputable citizens engaged in oil and gas drilling and production operations in the state may petition said director for the removal of an inspector or the supervising inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, said director shall cause an investigation of the facts to be made. If, after such investigation, said director finds that there is substantial evidence which, if true, warrants removal of the inspector or supervising inspector, the director shall file a petition with the oil and gas inspectors' examining board requesting removal of the inspector or supervising inspector.

On receipt of a petition by said director seeking removal of an inspector or the supervising inspector, the oil and gas inspectors' examining board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days nor more than thirty days thereafter. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the petition filed with such board.

At the time and place designated in said notice, the oil and gas inspectors' examining board shall hear all evidence offered in support of the petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance may be granted except for good cause shown.

The chair of the board, and the director may administer oaths and subpoena witnesses.

An inspector or supervising inspector who willfully refuses or fails to appear before such board, or having appeared, refuses to answer under oath any relevant question on the ground that the inspector's testimony or answer might incriminate such inspector, or refuses to
accept a grant of immunity from prosecution on account
of any relevant matter about which the inspector may
be asked to testify at such hearing before such board,
forfeits the inspector's position.

If, after hearing, the oil and gas inspectors' examining
board finds that the inspector or supervising inspector
should be removed, it shall enter an order to that effect.
The decision of the board shall be final and shall not be
subject to judicial review.

*§22C-7-3. Oil and gas inspectors' examining board
created; composition; appointment, term
and compensation of members; meetings;
powers and duties generally; continuation
following audit.

(a) There is hereby continued an oil and gas inspec-
tors' examining board consisting of five members, two
of whom shall be ex officio members and three of whom
shall be appointed by the governor, by and with the
advice and consent of the Senate. Appointed members
may be removed only for the same causes and like
manner as elective state officers. One member of the
board who shall be the representative of the public at
large and shall be a person who is knowledgeable about
the subject matter of this article and has no direct or
indirect financial interest in oil and gas production
other than the receipt of royalty payments which do not
exceed a five year average of six hundred dollars per
year; one member shall be a person who by reason of
previous training and experience may reasonably be
said to represent the viewpoint of independent oil and
gas operators; and one member shall be a person who
by reason of previous training and experience may
reasonably be said to represent the viewpoint of major
oil and gas producers.

The chief of the office of oil and gas of the division
of environmental protection and the chief of the office
of water resources of the division of environmental
protection shall be ex officio members.

*Clerk's Note: The provisions of this section were also contained in HB 4091 (Chapter 157), and were originally codified as §22-18-3 and
passed prior to this act.
The appointed members of the board shall be appointed for overlapping terms of six years, except that the original appointments shall be for terms of two, four and six years, respectively. Any member whose term expires may be reappointed by the governor.

The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

The chief of the office of oil and gas shall serve as chair of the board. The board shall elect a secretary from its members.

Members of the board, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.

The board shall meet at such times and places as shall be designated by the chair. It is the duty of the chair to call a meeting of the board on the written request of two members. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. A majority of members is a quorum for the transaction of business.

(b) In addition to other powers and duties expressly set forth elsewhere in this article, the board shall:

1. Establish, and from time to time revise, forms of application for employment as an oil and gas inspector and supervising inspector and forms for written examinations to test the qualifications of candidates, with such distinctions, if any, in the forms for oil and gas inspector and supervising inspector as the board may from time to time deem necessary or advisable;

2. Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, required to be held by this article. All of such rules shall
be printed and a copy thereof furnished by the secretary of the board to any person upon request;

(3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By unanimous agreement of all members of the board, one or more members of the board or an employee of the division of environmental protection may be designated to give to a candidate the written portion of the examination;

(4) Prepare and certify to the director of the division of environmental protection a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the director of the division of environmental protection a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment; (c) who have been passed over for appointment for three years; (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment; or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets and other papers of all applicants for appointment for such period of time as may be established by the board. Specimens of the examination given, together with the correct solution.
question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of inspectors or the supervising inspector in accordance with the provisions of this article;

(8) Hear and determine appeals of inspectors or the supervising inspector from suspension orders made by said director pursuant to the provisions of section two, article six, chapter twenty-two of this code: Provided, that in order to appeal from any order of suspension, an aggrieved inspector or supervising inspector shall file such appeal in writing with the oil and gas inspectors' examining board not later than ten days after receipt of the notice of suspension. On such appeal the board shall affirm the action of said director unless it be satisfied from a clear preponderance of the evidence that said director has acted arbitrarily;

(9) Make an annual report to the governor concerning the administration of oil and gas inspection personnel in the state service; making such recommendations as the board considers to be in the public interest; and

(10) Render such advice and assistance to the director of the division of environmental protection as the director shall from time to time determine necessary or desirable in the performance of such duties.

After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the oil and gas inspectors' examining board within the division of environmental protection should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the oil and gas inspectors' examining board within the division of environmental protection shall continue to exist until the first day of July, two thousand.

ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.
§22C-8-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

1. Ensure the safe recovery of coal and gas;

2. Foster, encourage and promote the fullest practical exploration, development, production, recovery and utilization of this state's coal and gas, where both are produced from beneath the same surface lands, by establishing procedures, including procedures for the establishment of drilling units, for the location of shallow gas wells without substantially affecting the right of the gas operator proposing to drill a shallow gas well to explore for and produce gas; and

3. Safeguard, protect and enforce the correlative rights of gas operators and royalty owners in a pool of gas to the end that each such gas operator and royalty owner may obtain a just and equitable share of production from such pool of gas.

(b) The Legislature hereby determines and finds that...
gas found in West Virginia in shallow sands or strata has been produced continuously for more than one hundred years; that the placing of shallow wells has heretofore been regulated by the state for the purpose of ensuring the safe recovery of coal and gas, but that regulation should also be directed toward encouraging the fullest practical recovery of both coal and gas because modern extraction technologies indicate the desirability of such change in existing regulation and because the energy needs of this state and the United States require encouragement of the fullest practical recovery of both coal and gas; that in order to encourage and ensure the fullest practical recovery of coal and gas in this state and to further ensure the safe recovery of such natural resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall have the authority to regulate and determine the appropriate placing of shallow wells when gas well operators and owners of coal seams fail to agree on the placing of such wells, and establishing specific considerations, including minimum distances to be allowed between certain shallow gas wells, to be utilized by the shallow gas well review board in regulating the placing of shallow wells; that in order to encourage and ensure the fullest practical recovery of coal and gas in this state and to protect and enforce the correlative rights of gas operators and royalty owners of gas resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall also have authority to establish drilling units and order the pooling of interests therein to provide all gas operators and royalty owners with an opportunity to recover their just and equitable share of production.

§22C-8-2. Definitions.

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

3 (1) “Board” means the shallow gas well review board provided for in section four of this article;

5 (2) “Chair” means the chair of the shallow gas well
(3) "Coal operator" means any person who proposes to or does operate a coal mine;

(4) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the division foreseeably be commercially worked and will require protection if wells are drilled through it;

(5) "Commission" means the oil and gas conservation commission provided for in section four, article nine of this chapter;

(6) "Commissioner" means the oil and gas conservation commissioner provided for in section four, article nine of this chapter;

(7) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;

(8) "Deep well" means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";

(9) "Division" means the state division of environmental protection provided for in chapter twenty-two of this code;

(10) "Director" means the director of the division of environmental protection as established in article one, chapter twenty-two of this code or such other person to whom the director delegates authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code;

(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten of this article;

(12) "Gas" means all natural gas and all other
hydrocarbons not defined as oil in subdivision (15) of this section;

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for such person or for such person and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein shall be considered a "gas operator" to the extent of seven eighths of the gas in that portion of the pool underlying the tract owned by such person, and a "royalty owner" to the extent of one eighth of such gas;

(14) "Just and equitable share of production" means, as to each person, an amount of gas in the same proportion to the total gas production from a well as that person's acreage bears to the total acreage in the drilling unit;

(15) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(16) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

(17) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(18) "Plat" means a map, drawing or print showing the location of one or more wells or a drilling unit;

(19) "Pool" means an underground accumulation of gas in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production
of gas from one part of the pool tends to or does affect
the reservoir pressure throughout its extent. A pool is
bounded by geologic barriers in all directions, such as
geologic structural conditions, impermeable strata, and
water in the formation, so that it is effectively separated
from any other pools which may be present in the same
district or in the same geologic structure;

(20) "Royalty owner" means any owner of gas in place,
or gas rights, to the extent that such owner is not a gas
operator as defined in subdivision (13) of this section;

(21) "Shallow well" means any gas well drilled and
completed in a formation above the top of the uppermost
member of the "Onondaga Group": Provided, That in
drilling a shallow well the well operator may penetrate
into the "Onondaga Group" to a reasonable depth, not
in excess of twenty feet, in order to allow for logging
and completion operations, but in no event may the
"Onondaga Group" formation be otherwise produced,
perforated or stimulated in any manner;

(22) "Tracts comprising a drilling unit" means that all
separately owned tracts or portions thereof which are
included within the boundary of a drilling unit;

(23) "Well" means any shaft or hole sunk, drilled,
bored or dug into the earth or into underground strata
for the extraction, injection or placement of any liquid
or gas, or any shaft or hole sunk or used in conjunction
with such extraction, injection or placement. The term
"well" does not include any shaft or hole sunk, drilled,
bored or dug into the earth for the sole purpose of core
drilling or pumping or extracting therefrom potable,
fresh or usable water for household, domestic, indus-
trial, agricultural or public use; and

(24) "Well operator" means any person who proposes
to or does locate, drill, operate or abandon any well.

§22C-8-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section,
the provisions of this article shall apply to all coal
seams as located in this state, under which a coal
in section two of this article and section
chapter twenty-two of this code, is located, however
owned, including any lands owned or administered by
any government or any agency or subdivision thereof,
over which the state has jurisdiction under its police
power. The provisions of this article are in addition to
and not in derogation of or substitution for the provi-
sions of this chapter or chapter twenty-two of this code.

(b) This article shall not apply to or affect:

(1) Deep wells;
(2) Oil wells and enhanced oil recovery wells asso-
ciated with oil wells;
(3) Any shallow well as to which no objection is made
under section seventeen, article six, chapter twenty-two
of this code;
(4) Wells as defined in subdivision (4), section one,
article nine, chapter twenty-two of this code; or

§22C-8-4. Shallow gas well review board; membership;
method of appointment; vacancies; compensa-
tion and expenses; staff.

(a) There is hereby continued the “Shallow Gas Well
Review Board” which shall be composed of three
members, two of whom shall be the commissioner and
the chief of the office of oil and gas. The remaining
member of the board shall be a registered professional
who has been successfully tested in mining engineering,
with at least ten years practical experience in the coal
mining industry and shall be appointed by the governor,
by and with the advice and consent of the Senate:
Provided, That any person so appointed while the Senate
of this state is not in session shall be permitted to serve
in an acting capacity for one year from appointment or
until the next session of the Legislature, whichever is
less. As soon as practical after appointment and
qualification of the member appointed by the governor,
the governor shall convene a meeting of the board for
the purpose of organizing and electing a chair, who
serves as such until a successor is elected by the board.
(b) A vacancy in the membership appointed by the governor shall be filled by appointment by the governor within sixty days after the occurrence of such vacancy. Before performing any duty hereunder, each member of the board shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia, and serves thereafter until a successor has been appointed and qualified.

(c) The member of the board appointed by the governor shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Each member of the board shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties as a member of the board.

(d) The division shall furnish office and clerical staff and supplies and services, including reporters for hearings, as required by the board.

§22C-8-5. Same — Meetings; notice; general powers and duties.

(a) The board shall meet and hold conferences and hearings at such times and places as shall be designated by the chair. The chair may call a meeting of the board at any time. The chair shall call a meeting of the board (1) upon receipt of a notice from the director that an objection to the proposed drilling or deepening of a shallow well has been filed by a coal seam owner pursuant to section seventeen, article six of chapter twenty-two of this code or that an objection has been made by the director, (2) upon receipt of an application to establish a drilling unit filed with the board pursuant to section nine of this article, or (3) within twenty days upon the written request by another member of the board. Meetings called pursuant to subdivisions (1) and (2) of this subsection shall be scheduled not less than ten days nor more than twenty days from
chair of the notice of objection or the application to establish a drilling unit. Notice of all meetings shall be given to each member of the board by the chair at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of subdivisions (1) and (2), subsection (a) of this section, the chair shall also notify (1) in the case of a notice of objection, the well operator and all objecting coal seam owners, and (2) in the case of an application to establish a drilling unit, the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of subsection (d), section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of subsection (c), section nine of this article.

(c) A majority of the members of the board shall constitute a quorum for the transaction of any business. A majority of the members of the board shall be required to determine any issue brought before it.

(d) The board is hereby empowered and it shall be its duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the board shall have jurisdiction and authority over all persons and property necessary therefor: Provided, That the provisions of this article shall not be construed to grant to the board authority or power to (1) limit production or output from or prorate production of any gas well, or (2) fix prices of gas.

(e) The board shall have specific authority to:

(1) Take evidence and issue orders concerning applications for drilling permits and drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, and enforce reasonable rules necessary to govern the practice and procedure before the board;
(3) Make such relevant investigations of records and facilities as it deems proper; and
(4) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the board, it is necessary to do so for the effective discharge of its duties under the provisions of this article.

§22C-8-6. Rules; notice requirements.

(a) The board may promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, such reasonable rules as are deemed necessary or desirable to implement and make effective the provisions of this article.

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the chair by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage and certification fee prepaid, to the last known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by the order of the board is situate. The chair shall also mail a copy of such notice to all other persons who have specified to the chair an address to which all such notices may be mailed. All notices shall issue in the name of the state, shall be signed by the chair, shall specify the style and number of the proceeding, the date, time and place of any meeting, conference or hearing, and shall briefly state the purpose of the proceeding.
Proof of service or publication of such notice shall be made to the board promptly and in any event within the time during which the person served must respond to the notice. If service is made by a person other than the sheriff or the chair, such person shall make proof thereof by affidavit. Failure to make proof of service or publication within the time required shall not affect the validity of the service of the notice.

§22C-8-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.

(a) At the time and place fixed by the chair for the meeting of the board and for consideration of the objections to proposed drilling filed by coal seam owners pursuant to section seventeen, article six, chapter twenty-two of this code, the well operator and the objecting coal seam owners present or represented shall hold a conference with the board to consider the objections. Such persons present or represented at the conference may agree upon either the drilling location as proposed by the well operator or an alternate location. Any change in the drilling location from the drilling location proposed by the well operator shall be indicated on the plat enclosed with the notice of objection filed with the chair by the director in accordance with the provisions of section seventeen, article six, chapter twenty-two of this code, and the distance and direction to the new drilling location from the proposed drilling location shall also be shown on such plat. If agreement is reached at the conference by the well operator and such objecting coal seam owners present or represented at the conference, the board shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the director to grant the well operator a drilling permit for the location agreed upon. The original of such order shall be filed with the division within five days after the conference of the board at which the drilling location was agreed upon and copies thereof shall be mailed by registered or certified mail to the well operator and the objecting coal seam owners present or represented at such conference.
(b) If the well operator and the objecting coal seam owners present or represented at the conference with the board are unable to agree upon a drilling location, then, unless they otherwise agree, the board shall, without recess for more than one business day, hold a hearing to consider the application for a drilling permit. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing. Within twenty days after the close of a hearing, the board shall issue and file with the director a written order directing him or her, subject to other matters requiring approval of the director, to:

(1) Refuse a drilling permit;

(2) Issue a drilling permit for the proposed drilling location;

(3) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or

(4) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

(c) The written order of the board shall contain findings of fact and conclusions based thereon concerning the following safety aspects, and no drilling permit shall be issued for any drilling location where the board finds from the evidence that such drilling location will be unsafe:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or any coal mine already surveyed and platted but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography:
(3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal and gas.

The written order of the board shall also contain findings of fact and conclusions based thereon concerning the following:

(5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article three, chapter twenty-two of this code;

(6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

(7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and gas;

(9) The distance limitations established in section eight of this article;

(10) The practicality of locating the well on a uniform pattern with other wells;

(11) The surface topography and use; and

(12) Whether the order of the board will substantially affect the right of the gas operator to explore for and produce gas.

(d) Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22C-8-8. Distance limitations.
(a) If the well operator and the objecting coal seam owners present or represented at the time and place fixed by the chair for consideration of the objections to the proposed drilling location are unable to agree upon a drilling location, then the written order of the board shall direct the director to refuse to issue a drilling permit unless the following distance limitations are observed:

(1) For all shallow wells with a depth less than three thousand feet, there shall be a minimum distance of one thousand feet from the drilling location to the nearest existing well as defined in subsection (b) of this section; and

(2) For all shallow wells with a depth of three thousand feet or more, there shall be a minimum distance of one thousand five hundred feet from the drilling location to the nearest existing well as defined in subsection (b) of this section, except that where the distance from the drilling location to such nearest existing well is less than two thousand feet but more than one thousand five hundred feet and a coal seam owner has objected, the gas operator shall have the burden of establishing the need for the drilling location less than two thousand feet from such nearest existing well. Where the distance from the drilling location proposed by the operator or designated by the board to the nearest existing well as defined in subsection (b) of this section is greater than two thousand feet, distance criterion will not be a ground for objection by a coal seam owner.

(b) The words "existing well" as used in this section means (i) any well not plugged within nine months after being drilled to its total depth and either completed in the same target formation or drilled for the purpose of producing from the same target formation, and (ii) any unexpired, permitted drilling location for a well to the same target formation.

(c) The minimum distance limitations established by this section shall not apply if the proposed well be drilled through an existing or planned pillar of coal
required for protection of a preexisting oil or gas well and the proposed well will neither require enlargement of such pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

(d) Nothing in this article shall be construed to empower the board to order the director to issue a drilling permit to any person other than the well operator filing the application which is the subject of the proceedings.

§22C-8-9. Application to establish a drilling unit; contents; notice.

(a) Whenever the board has issued an order directing the director to refuse a drilling permit, the gas operator may apply to the board for the establishment of a drilling unit encompassing a contiguous tract or tracts if such gas operator believes that such a drilling unit will afford one well location for the production of gas from under the tract on which the drilling permit was sought, and will be agreeable to the coal seam owners.

(b) An application to establish a drilling unit shall be filed with the board and shall contain:

(1) The name and address of the applicant;

(2) A plat prepared by a licensed land surveyor or registered professional engineer showing the boundary of the proposed drilling unit, the district and county in which such unit is located, the acreage of the proposed drilling unit, the boundary of the tracts which comprise the proposed drilling unit, the names of the owners of record of each such tract, the proposed well location on the proposed drilling unit, and the proposed well location for which the division refused to issue a drilling permit;

(3) The names and addresses of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit;

(4) The names and addresses of the gas operators of the tracts which comprise the proposed drilling unit;

(5) The approximate depth and target formation to
which the well for the proposed drilling unit is to be drilled;

(6) A statement indicating whether a voluntary pooling agreement has been reached among any or all of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit and the gas operators of such tracts;

(7) An affidavit of publication of the notice of intent to file an application to establish a drilling unit as required in subsection (c) of this section; and

(8) Such other pertinent and relevant information as the board may prescribe by reasonable rules promulgated in accordance with the provisions of section six of this article.

(c) Prior to the filing of an application to establish a drilling unit, the applicant shall cause to be published, as a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of intent to file an application to establish a drilling unit. Such notice shall contain the information required by subdivisions (1), (4) and (5), subsection (b) of this section, the name of the royalty owner of the gas underlying the proposed well location on the proposed drilling unit, plus an abbreviated description, or, at the applicant's option, a plat of the drilling unit, disclosing the county and district wherein the proposed drilling unit is to be located, the post office closest to the proposed drilling unit, a statement that the applicant will deliver a copy of the plat required by subdivision (2) of subsection (b) to any person desiring the same, the date upon which the applicant intends to file the application to establish a drilling unit, and a statement that written protests and objections to such application may be filed with the board until a specified date, which date shall be at least ten days after the date upon which the applicant intends to file the application to establish a drilling unit. The publication area of the notice required by this subsection shall be the county or counties in which the proposed drilling unit is to be located.
(d) At the time an application to establish a drilling
unit is filed, the applicant shall forward a copy thereof
by registered or certified mail to each and every person
whose name and address were included on the applica-
tion in accordance with the provisions of subdivisions (3)
and (4), subsection (b) of this section. With each such
application there shall be enclosed a notice (the form for
which shall be furnished by the board on request)
addressed to each such person to whom a copy of the
application is required to be sent, informing the person
that the application is being mailed by registered or
certified mail, pursuant to the requirements of this
article: Provided, That the application and notice need
not be forwarded to those royalty owners or gas
operators within the boundary of the proposed drilling
unit who have previously agreed to voluntary pooling by
separately stated document or documents empowering
the gas operator, by assignment or otherwise, unilater-
ally to declare a unit.

§22C-8-10. Establishment of drilling units; hearings;
orders.

(a) At the time and place fixed by the chair for the
meeting of the board and for consideration of an
application to establish a drilling unit, the applicant
shall present proof that the drilling location on the
proposed drilling unit has been agreed to by all of the
owners of the coal seams underlying such drilling
location; and thereafter the applicant, the royalty
owners of the gas underlying the tracts comprising the
unit, and the gas operators of the tracts comprising the
unit or such of them as are present or represented, shall
hold a conference with the board to consider the
application. Such persons present or represented at the
conference may agree upon the boundary of the drilling
unit as proposed by the applicant or as changed to
satisfy all valid objections of those persons present or
represented. Any change in the boundary of the drilling
unit from the boundary proposed by the applicant shall
be shown on the plat filed with the board as part of the
application. If agreement is reached at the conference
upon the boundary of the drilling unit among the
applicants, the royalty owners of the gas underlying the
tracts comprising the drilling unit and the gas operators
of the tracts comprising such unit, or such of them as
are present or represented, and if such agreement is
approved by the board, the board shall issue a written
order establishing and specifying the boundary of the
drilling unit.

(b) If the applicant, the royalty owners of the gas
underlying the tracts comprising the drilling unit and
the gas operators of the tracts comprising such unit, or
such of them as are present or represented at the time
and place fixed by the chair for consideration of the
application, are unable to agree upon the boundary of
the drilling unit, then the board shall hold a hearing
without recess of more than one business day to consider
the application to establish a drilling unit. All of the
pertinent provisions of article five, chapter twenty-nine-
a of this code shall apply to and govern such hearing.
Within twenty days after the close of the hearing, the
board shall issue a written order either establishing a
drilling unit or dismissing the application. If the board
determines to establish a drilling unit, the order shall
specify the boundary of such drilling unit. In determin-
ing whether to grant or deny an application to establish
a drilling unit, the board shall consider:

(1) The surface topography and property lines of the
lands comprising the drilling unit;

(2) The correlative rights of all gas operators and
royalty owners therein;

(3) The just and equitable share of production of each
gas operator and royalty owner therein;

(4) Whether a gas operator or royalty owner objecting
to the drilling unit has proved by clear and convincing
evidence that the drilling unit is substantially smaller
than the area that will be produced by the proposed
well; and

(5) Other evidence relevant to the establishment of the
boundary of a drilling unit.

(c) The board shall not grant an applicant...
establish a drilling unit, nor shall it approve any drilling unit, unless the board finds that:

(1) The applicant has proved that the drilling location on the drilling unit has been agreed to by all of the owners of the coal seams underlying such drilling location;

(2) The director has previously refused to issue a drilling permit on one of the tracts comprising the drilling unit because of an order of the board;

(3) The drilling unit includes all acreage within the minimum distance limitations provided by section eight of this article, unless the gas operators and royalty owners of any excluded acreage have agreed to such exclusion; and

(4) The drilling unit includes a portion of the acreage from under which the well operator intended to produce gas under the drilling permit which was refused.

(d) All orders issued by the board under this section shall contain findings of fact and conclusions based thereon as required by section three, article five, chapter twenty-nine-a of this code and shall be filed with the director within twenty days after the hearing. Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22C-8-11. Pooling of interests in a drilling unit; limitations.

(a) Whenever the board establishes a drilling unit pursuant to the provisions of sections nine and ten of this article, the order establishing such drilling unit shall include an order pooling the separately owned interests in the gas to be produced from such drilling unit.

(b) If a voluntary pooling agreement has been reached between all persons owning separate operating interests in the tracts comprising the drilling unit, the order of the board shall approve such agreement.

(c) If no voluntary pooling agreement is reached prior
to or during the hearing held pursuant to subsection (b),
section ten of this article, then at such hearing the board
shall also determine the pooling of interests in the
drilling unit.

(d) Any order of the board pooling the separately
owned interests in the gas to be produced from the
drilling unit shall be upon terms and conditions which
are just and equitable and shall authorize the production
of gas from the drilling unit; shall designate the
applicant as the operator to drill and operate such gas
well; shall prescribe the procedure by which all owners
of operating interests in the pooled tracts or portions of
tracts may elect to participate therein; shall provide that
all reasonable costs and expenses of drilling, completing,
equipping, operating, plugging, abandoning and re-
claiming such well shall be borne, and all production
therefrom shared, by all owners of operating interests
in proportion to the net gas acreage in the pooled tracts
owned or under lease to each owner; and shall make
provisions for payment of all reasonable costs thereof,
including all reasonable charges for supervision and for
interest on past-due accounts, by all those who elect to
participate therein.

(e) Upon request, any such pooling order shall provide
an owner of an operating interest, an election to be made
within ten days from the date of the pooling order, (i)
to participate in the risks and costs of the drilling of the
well, or (ii) to participate in the drilling of the well on
a limited or carried basis on terms and conditions
which, if not agreed upon, shall be determined by the
board to be just and equitable. If the election is not made
within the ten-day period, such owner shall be conclu-
sively presumed to have elected the limited or carried
basis. Thereafter, if an owner of any operating interest
in any portion of the pooled tract shall drill and operate,
or pay the costs of drilling and operating, a well for the
benefit of such nonparticipating owner as provided in
the order of the board, then such operating owner shall
be entitled to the share of production from the tracts or
portions thereof pooled accruing to the interest of such
nonparticipating owner, exclusive of any ro...
overriding royalty reserved with respect to such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(f) In no event shall drilling be initiated or completed on any tract, where the gas underlying such tract has not been severed from the surface thereof by deed, lease or other title document, without the written consent of the person who owns such tract.

(g) All disputes which may arise as to the costs of drilling and operating a well under a pooling order issued pursuant to this section shall be resolved by the board within ninety days from the date of written notification to the board of the existence of such dispute.

§22C-8-12. Effect of order establishing drilling unit or pooling of interests; recordation.

(a) An order issued by the board establishing a drilling unit and ordering the pooling of interests therein shall not entitle the gas operator designated in such order to drill a well on such drilling unit until such gas operator shall have received a drilling permit in accordance with the provisions applicable to alternative drilling locations set out in section seventeen, article six, chapter twenty-two of this code. All orders issued by the board establishing a drilling unit shall be filed with the director and shall also direct the director to issue a drilling permit for the drilling location agreed to by all of the owners of the coal seams underlying such drilling location.

(b) A certified copy of any order of the board establishing a drilling unit or a pooling of interests shall be mailed by the board to the clerk of the county commission of each county wherein all or any portion of the drilling unit is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recordation from the time
§22C-8-13. Judicial review; appeal to supreme court of appeals; legal representation for board.

(a) Any person adversely affected by an order of the board shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(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.

(c) Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The board, with the written approval of the attorney general, may employ special counsel to represent the board at any such appeal proceedings.

§22C-8-14. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a well drilled thereon.

§22C-8-15. Validity of unit agreements.

No agreement between or among gas operators,
lessees or other owners of gas rights in gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

§22C-8-16. Injunctive relief.

(a) Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any rule promulgated by the board hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or to the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen of this article.

(b) Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the rules promulgated by the board hereunder and all orders of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section
shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The board shall be represented in all such proceedings by the attorney general or the attorney general’s assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The board, with the written approval of the attorney general, may employ special counsel to represent the board in any such proceedings.

(e) If the board shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any rule promulgated by the board hereunder or any order or final decision of the board, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in such person’s own behalf for an injunction to enjoin such violation or threatened violation in any court in which the board might have brought suit. The board shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any rule promulgated by the board hereunder or any order of the board. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the chair.

§22C-8-17. Penalties.

(a) Any person who violates any provision of this article, any of the rules promulgated by the board hereunder or any order of the board other than a violation governed by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars.
(b) Any person who, with the intention of evading any provision of this article, any of the rules promulgated by the board hereunder or any order of the board shall make or cause to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, any of the rules promulgated by the board hereunder or any order of the board, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules promulgated by the board hereunder or any order or final decision of the board, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.

§22C-8-18. Construction.

This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

§22C-8-19. Rules, orders and permits remain in effect.

The rules promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article seven, of former chapter twenty-two of this code shall remain in full force and effect as if such rules, orders and permits were adopted by the board continued in this article but all such rules, orders and permits shall be subject to review by the board to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two of this code.

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-1. Declaration of public policy; legislative findings.

§22C-9-2. Definitions.

§22C-9-3. Application of article; exclusions.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.
§22C-9-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

1. Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;

2. Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

3. Encourage the maximum recovery of oil and gas; and

4. Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.

(b) The Legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than one hundred years; that oil and gas deposits in such shallow sands or strata have geological and other characteristics different than those found in deeper formations; and that in order to encourage the maximum recovery of oil and gas from all productive formations in this state, it is not in the public interest, with the exception of shallow wells utilized in a
secondary recovery program, to enact statutory provisions relating to the exploration for or production from oil and gas from shallow wells, as defined in section two of this article, but that it is in the public interest to enact statutory provisions establishing regulatory procedures and principles to be applied to the exploration for or production of oil and gas from deep wells, as defined in said section two.

§22C-9-2. Definitions.

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

(1) "Commission" means the oil and gas conservation commission and "commissioner" means the oil and gas conservation commissioner as provided for in section four of this article;

(2) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code;

(3) "Person" means any natural person, corporation, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(4) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for such person or for such person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

(5) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such
owner is not an operator as defined in subdivision (4) of this section;

(6) "Independent producer" means a person who is actively engaged in the production of oil and gas in West Virginia, but whose gross revenue from such production in West Virginia does not exceed five hundred thousand dollars per year;

(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (7) of this section;

(9) "Pool" means an underground accumulation of petroleum in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be presented in the same district or on the same geologic structure;

(10) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

(11) "Shallow well" means any well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": Provided, That in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;
(12) "Deep well" means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";

(13) "Drilling unit" means the acreage on which one well may be drilled;

(14) "Waste" means and includes: (A) Physical waste, as that term is generally understood in the oil and gas industry; (B) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or (C) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, That nothing in this exclusion is intended to address ownership of the gas;

(15) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof; and

(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying such person's tract or tracts.

(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" shall be interchangeable, as, for example, "oil and gas" shall mean oil or gas or both.

§22C-9-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any
lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of article six, chapter twenty-two of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than those utilized in secondary recovery programs as set forth in section eight of this article;

(2) Any well commenced or completed prior to the ninth day of March, one thousand nine hundred seventy-two, unless such well is, after completion (whether such completion is prior or subsequent to that date), (i) deepened subsequent to that date to a formation at or below the top of the uppermost member of the "Onondaga Group" or (ii) involved in secondary recovery operations for oil under an order of the commissioner entered pursuant to section eight of this article;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to grant to the commissioner authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in subdivision (6), subsection (a), section seven of this article; or

(2) Fix prices of oil or gas.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.
(a) There is hereby continued as provided for in subsection (h) of this section, the "Oil and Gas Conservation Commission" which shall be composed of five members. The director of the division of environmental protection and the chief of the office of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the Senate. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in full-time employment in an activity under the jurisdiction of the public service commission or the federal energy regulatory commission. As soon as practical after appointment of the members of the commission, the governor shall call a meeting of the commission to be convened at the state capitol for the purpose of organizing and electing a chair.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and
places as shall be designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner. Notification of each meeting shall be given in writing to each member by the chair at least five days in advance of the meeting. Any three members, one of which may be the chair constitute a quorum for the transaction of any business as herein provided for. A majority of the commission is required to determine any issue brought before it.

(d) The board shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses incurred in the discharge of official duties.

(e) The commission shall appoint the oil and gas conservation commissioner and advise the commissioner regarding the duties and authority under this article and consult with the commissioner prior to his or her reaching any final decisions and entering orders hereunder. However, the commissioner has full and final authority under this article with the commission serving in an advisory capacity to the commissioner. The commissioner shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry.

(f) The oil and gas commissioner is hereby empowered and it is the commissioner’s duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the commissioner has jurisdiction and authority over all persons and property necessary therefor. The commissioner is authorized to make such investigation of records and facilities as the
commissioner deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commissioner's duty to prevent waste shall be paramount. The commissioner shall serve as secretary of the oil and gas conservation commission.

(g) Without limiting the commissioner's general authority, the commissioner shall have specific authority to:

1. Regulate the spacing of deep wells;
2. Make and enforce reasonable rules and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commissioner and otherwise administer the provisions of this article;
3. Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commissioner, it is necessary to do so for the effective discharge of the commissioner's duties under the provisions of this article; and
4. Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the chief of office of oil and gas, to the division of environmental protection and to any other agency of state government having responsibility related to the oil and gas industry.

(h) After having conducted a preliminary performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the oil and gas conservation commission should be continued and reestablished. Accordingly, pursuant to the provisions of section five of said article, the oil and gas conservation commission shall continue to exist until the first day of July, one thousand nine hundred ninety-seven.
§22C-9-5. Rules; notice requirements.

1 (a) The commissioner may promulgate such reasonable rules as the commissioner may deem necessary or desirable to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon the commissioner under the provisions of this article and for securing uniformity of procedure in the administration of the provisions of article three, chapter twenty-nine-a of this code.

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the commissioner by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage prepaid, to the last-known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by such order is situate. In addition, the commissioner shall mail a copy of such notice to all other persons who have specified to the commissioner an address to which all such notices may be mailed. The notice shall issue in the name of the state, shall be signed by the commissioner, shall specify the style and number of the proceeding, the time and place of any hearing and shall briefly state the purpose of the proceeding. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commissioner in the same manner as is now provided by the "West Virginia Rules of Civil Procedure for Trial Courts of Record" for service of process in civil actions in the various courts of this state. A certified copy of any pooling order entered under the provisions of this article shall be
presented by the commissioner to the clerk of the county commission of each county wherein all or any portion of the pooled tract is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recording of such order from the time noted thereon by such clerk shall be notice of the order to all persons.

§22C-9-6. Waste of oil or gas prohibited.

Waste of oil or gas is hereby prohibited.

§22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

(a) Drilling units.

(1) After one discovery deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commissioner by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool, and the commissioner shall promptly schedule a hearing on said application. Each application shall contain such information as the commissioner may prescribe by reasonable rules promulgated by the commissioner in accordance with the provisions of section five of this article.

(2) Upon the filing of an application to establish drilling units, notice of the hearing shall be given by the commissioner. Each notice shall specify the date, time and place of hearing, describe the area for which a spacing order is to be entered, and contain such other information as is essential to the giving of proper notice.

(3) On the date specified in such notice, the commissioner shall hold a public hearing to determine the area to be included in such spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. At such hearing the commissioner shall consider:
(i) The surface topography and property lines of the lands underlaid by the pool to be included in such order;

(ii) The plan of deep well spacing then being employed or proposed in such pool for such lands;

(iii) The depth at which production from said pool has been found;

(iv) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil or both;

(v) The maximum area which may be drained efficiently and economically by one deep well; and

(vi) Any other available geological or scientific data pertaining to said pool which may be of probative value to the commissioner in determining the proper deep well drilling units therefor.

To carry out the purposes of this article, the commissioner shall, upon proper application, notice and hearing as herein provided, and if satisfied after such hearing that drilling units should be established, enter an order establishing drilling units of a specified and approximately uniform size and shape for each pool subject to the provisions of this section.

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the commissioner shall include in such order all lands determined or believed to be underlaid by such pool and exclude all other lands.

(5) No drilling unit established by the commissioner shall be smaller than the maximum area which can be drained efficiently and economically by one deep well: Provided, That if at the time of a hearing to establish drilling units, there is not sufficient evidence from which to determine the area which can be drained efficiently and economically by one deep well, the commissioner may enter an order establishing temporary drilling units for the orderly development of the pool pending the obtaining of information necessary to determine the ultimate spacing for such pool.
(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the commissioner finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commissioner is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commissioner may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production from such pool.

(7) An order establishing drilling units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commissioner from time to time, to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. An order establishing drilling units may be modified by the commissioner to permit the drilling of additional deep wells on a reasonably uniform pattern at a uniform minimum distance from the nearest unit boundary as provided above. Any order modifying a prior order shall be made only after application by an interested operator and notice and hearing as prescribed herein for the original order: Provided, That drilling units established by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a gas well.

(8) After the date of the notice of hearing called to
106 establish drilling units, no additional deep well shall be
107 commenced for production from the pool until the order
108 establishing drilling units has been made, unless the
109 commencement of the deep well is authorized by order
110 of the commissioner.

(9) The commissioner shall, within forty-five days
111 after the filing of an application to establish drilling
112 units for a pool subject to the provisions of this section,
113 either enter an order establishing such drilling units or
114 dismiss the application.

(10) As part of the order establishing a drilling unit,
116 the commissioner shall prescribe just and reasonable
117 terms and conditions upon which the royalty interests
118 in the unit shall, in the absence of voluntary agreement,
119 be deemed to be integrated without the necessity of a
120 subsequent order integrating the royalty interests.

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are
123 embraced within a drilling unit, or when there are
124 separately owned interests in all or a part of a drilling
125 unit, the interested persons may pool their tracts or
126 interests for the development and operation of the
127 drilling unit. In the absence of voluntary pooling and
128 upon application of any operator having an interest in
129 the drilling unit, and after notice and hearing, the
130 commissioner shall enter an order pooling all tracts or
131 interests in the drilling unit for the development and
132 operation thereof and for sharing production therefrom.
133 Each such pooling order shall be upon terms and
134 conditions which are just and reasonable, and in no
135 event shall drilling be initiated on the tract of an
136 unleased royalty owner without such owner's written
137 consent.

(2) All operations, including, but not limited to, the
139 commencement, drilling or operation of a deep well,
140 upon any portion of a drilling unit for which a pooling
141 order has been entered, shall be deemed for all purposes
142 the conduct of such operations upon each separately
143 owned tract in the drilling unit by the several owners
144 thereof. That portion of the production allocated to a
separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a deep well drilled thereon.

(3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging and abandoning such deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net oil or gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including a reasonable charge for supervision and for interest on past-due accounts, by all those who elect to participate therein.

(4) No drilling or operation of a deep well for the production of oil or gas shall be permitted upon or within any tract of land unless the operator shall have first obtained the written consent and easement therefor, duly acknowledged and placed of record in the office of the county clerk, for valuable consideration of all owners of the surface of such tract of land, which consent shall describe with reasonable certainty, the location upon such tract, of the location of such proposed deep well, a certified copy of which consent and easement shall be submitted by the operator to the commissioner.

(5) Upon request, any such pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in the risk and cost of the drilling of a deep well may elect:

(i) Option 1. To surrender such interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed
upon, shall be determined by the commissioner; or

(ii) Option 2. To participate in the drilling of the deep well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the commissioner to be just and reasonable.

(6) In the event a nonparticipating owner elects Option 2, and an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a deep well for the benefit of such nonparticipating owner as provided in the pooling order, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling and operating a deep well, the commissioner shall determine and apportion the costs, within ninety days from the date of written notification to the commissioner of the existence of such dispute.

§22C-9-8. Secondary recovery of oil; unit operations.

1 Upon the application of any operator in a pool productive of oil and after notice and hearing, the commissioner may enter an order requiring the unit operation of such pool in connection with a program of secondary recovery of oil, and providing for the unitization of separately owned tracts and interests within such pool, but only after finding that: (1) The order is reasonably necessary for the prevention of waste and the drilling of unnecessary deep wells; (2) the proposed plan of secondary recovery will increase the ultimate recovery of oil from the pool to such an extent
that the proposed secondary recovery operation will be economically feasible; (3) the production of oil from the unitized pool can be allocated in such a manner as to ensure the recovery by all operators of their just and equitable share of such production; and (4) the operators of at least three fourths of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of at least three fourths of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common) in such pool have approved the plan and terms of unit operation to be specified by the commissioner in its order, such approval to be evidenced by a written contract setting forth the terms of the unit operation and executed by said operators and said royalty owners, and filed with the commissioner on or before the day set for hearing. The order requiring such unit operation shall designate one operator in the pool as unit operator and shall also make provision for the proportionate allocation to all operators of the costs and expenses of the unit operation, including reasonable charges for supervision and interest on past-due accounts, which allocation shall be in the same proportion that the separately owned tracts share in the production of oil from the unit. In the absence of an agreement entered into by the operators and filed with the commissioner providing for sharing the costs of capital investment in wells and physical equipment, and intangible drilling costs, the commissioner shall provide by order for the sharing of such costs in the same proportion as the costs and expenses of the unit operation: Provided, That any operator who has not consented to the utilization shall not be required to contribute to the costs or expenses of the unit operation, or to the cost of capital investment in wells and physical equipment, and intangible drilling costs, except out of the proceeds from the sale of the production accruing to the interest of such operator: Provided, however, That no credit to the well costs shall be adjusted on the basis of less than the average well costs within the unitized area; Provided further, That no order entered under the provisions of this section
requiring unit operation shall vary or alter any of the
terms of any contract entered into by operators and
royalty owners under the provisions of this section.


1 No agreement between or among operators, lessees or
2 other owners of oil or gas rights in oil and gas
3 properties, entered into pursuant to the provisions of
4 this article or with a view to or for the purpose of
5 bringing about the unitized development or operation of
6 such properties, shall be held to violate the statutory or
7 common law of this state prohibiting monopolies or acts,
8 arrangements, contracts, combinations or conspiracies
9 in restraint of trade or commerce.


(a) Upon receipt of an application for an order of the
1 commissioner for which a hearing is required by the
2 provisions of this article, the commissioner shall set a
time and place for such hearing not less than ten and
3 not more than thirty days thereafter. Any scheduled
4 hearing may be continued by the commissioner upon the
5 commissioner's own motion or for good cause shown by
6 any party to the hearing. All interested parties shall be
7 entitled to be heard at any hearing conducted under the
8 provisions of this article.

(b) All of the pertinent provisions of article five,
1 chapter twenty-nine-a of this code shall apply to and
2 govern the hearing and the administrative procedures
3 in connection with and following such hearing, with like
4 effect as if the provisions of said article five were set
5 forth in extenso in this subsection.

(c) Any such hearing shall be conducted by the
1 commissioner. For the purpose of conducting any such
2 hearing, the commissioner shall have the power and
3 authority to issue subpoenas and subpoenas duces tecum
4 which shall be issued and served within the time, for
5 the fees and shall be enforced, as specified in section one,
6 article five of said chapter twenty-nine-a, and all of the
7 said section one provisions dealing with subpoenas and
8 subpoenas duces tecum shall apply to subpoenas and
subpoenas duces tecum issued for the purpose of a
hearing hereunder.

(d) At any such hearing any interested person may
represent themselves or be represented by an attorney-
at-law admitted to practice before any circuit court of
this state. Upon request by the commissioner, the
commissioner shall be represented at such hearing by
the attorney general or the attorney general's assistants
without additional compensation. The commissioner,
with the written approval of the attorney general, may
employ special counsel to represent the commissioner at
any such hearing.

(e) After any such hearing and consideration of all of
the testimony, evidence and record in the case, the
commissioner shall render a decision in writing. The
written decision of the commissioner shall be accompan-
ied by findings of fact and conclusions of law as
specified in section three, article five, chapter twenty-
nine-a of this code, and a copy of such decision and
accompanying findings and conclusions shall be served
by certified mail, return receipt requested, upon all
interested persons and their attorney of record, if any.

The decision of the commissioner shall be final unless
reversed, vacated or modified upon judicial review
thereof in accordance with the provisions of section
eleven of this article.

§22C-9-11. Judicial review; appeal to supreme court of
appeals; legal representation for
commissioner.

(a) Any person adversely affected by a decision of the
commissioner rendered after a hearing held in accor-
dance with the provisions of section ten of this article
shall be entitled to judicial review thereof. All of the
pertinent provisions of section four, article five, chapter
twenty-nine-a of this code, shall apply to and govern
such judicial review with like effect as if the provisions
of said section four were set forth in extenso in this
section.

(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-
ine-a of this code, except that notwithstanding the
provisions of said section one 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.

(c) Legal counsel and services for the commissioner in
all appeal proceedings in any circuit court and the
supreme court of appeals shall be provided by the
attorney general or the attorney general's assistants and
in any circuit court by the prosecuting attorney of the
county as well, all without additional compensation. The
commissioner, with the written approval of the attorney
general, may employ special counsel to represent the
commissioner at any such appeal proceedings.

§22C-9-12. Injunctive relief.

(a) Whenever it appears to the commissioner that any
person has been or is violating or is about to violate any
provision of this article, any reasonable rule promul-
gated by the commissioner hereunder or any order or
final decision of the commissioner, the commissioner
may apply in the name of the state to the circuit court
of the county in which the violations or any part thereof
has occurred, is occurring or is about to occur, or the
judge thereof in vacation, for an injunction against such
person and any other persons who have been, are or are
about to be, involved in any practices, acts or omissions,
so in violation, enjoining such person or persons from
any such violation or violations. Such application may
be made and prosecuted to conclusion whether or not
any such violation or violations have resulted or shall
result in prosecution or conviction under the provisions
of section fourteen of this article.

(b) Upon application by the commissioner, the circuit
courts of this state may by mandatory or prohibitory
injunction compel compliance with the provisions of this
article, the reasonable rules promulgated by the
commissioner hereunder and all orders and final
decisions of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The commissioner shall be represented in all such proceedings by the attorney general or the attorney general’s assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner in any such proceedings.

(e) If the commissioner shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any reasonable rule promulgated by the commissioner hereunder or any order or final decision of the commissioner, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the commissioner might have brought suit. The commissioner shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any reasonable rule promulgated by the commissioner hereunder or any order or final decision of the commissioner. The application shall proceed and injunctive relief may be granted without
§22C-9-13. Special oil and gas conservation tax.

Owners of leases on oil and gas for the exploration, development or production of oil or natural gas shall pay to the commission a special oil and gas conservation tax of three cents for each acre under lease, excluding from the tax the first twenty-five thousand acres. The commission shall deposit with the treasurer of the state of West Virginia, to the credit of the special oil and gas conservation fund, all taxes collected hereunder. The special oil and gas conservation fund shall be a special fund and shall be administered by the commission for the sole purpose of carrying out all costs necessary to carry out the provisions of this article. This tax shall be paid as provided herein annually on or before the first day of July, one thousand nine hundred seventy-two, and on or before the first day of July in each succeeding year.

§22C-9-14. Penalties.

(a) Any person who violates any provision of this article, any of the reasonable rules promulgated by the commissioner hereunder or any order or any final decision of the commissioner, other than a violation covered by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and each day that a violation continues shall constitute a new and separate violation.

(b) Any person who, for the purpose of evading any provision of this article, any of the reasonable rules promulgated by the commissioner hereunder or any order or final decision of the commissioner, shall make or cause to be made any false entry or statement in a report required under the provisions of this article, any of the reasonable rules promulgated by the commissioner hereunder or any order or final decision of the commissioner, or shall make or cause to be made any false entry in any record, account or memorandum required under the provisions of this article, any of the
reasonable rules promulgated by the commissioner hereunder or any order or any final decision of the commissioner, or who shall omit, or cause to be omitted, from any such record, account or memorandum, full, true and correct entries, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the reasonable rules promulgated by the commissioner hereunder or any order of final decision of the commissioner, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.


Except as provided in subsection (c), section three of this article, this article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

§22C-9-16. Rules, orders and permits remain in effect.

The rules promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article eight, of former chapter twenty-two of this code shall remain in full force and effect as if such rules, orders and permits were adopted by the director established in this chapter but all such rules, orders and permits are subject to review by the commissioner to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two of this code.

ARTICLE 10. INTERSTATE MINING COMPACT.

§22C-10-1. Enactment of compact.

The "Interstate Mining Compact" is hereby continued
in law and continued in effect with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes.

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes and the public.

(3) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions and the needs of the public make impracticable to all mining areas of a single standard for the conservation, adaption or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The continuing purposes of this compact are to:

(1) Advance the protection and restoration of land, water and other resources affected by mining.

(2) Assist in the reduction or elimination or counter-
acting of pollution or deterioration of land, water and air attributable to mining.

(3) Encourage, with due recognition of relevant regional, physical and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

(5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II. Definitions.

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores and other solid matter from its original location, and the preparation, washing, cleaning or other treatment of minerals, ores or other solid matter so as to make them suitable for commercial, industrial or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or possession of the United States.
Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws or the continuing of the same in force, to accomplish:

(a) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

(b) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

(c) The institution and maintenance of suitable programs for adaption, restoration and rehabilitation of mined lands.

(d) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

Article IV. Powers.

In addition to any other powers conferred upon the interstate mining commission, established by Article V of this compact, such commission shall have power to:

(a) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation and patterns of community or regional development or change.

(b) Study the conservation, adaptation, improvement and restoration of land and related resources affected by mining.

(c) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.
(d) Gather and disseminate information relating to any of the matters within the purview of this compact.

(e) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.

(f) Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact.

(g) Study and make recommendations with respect to any practice, process, technique or course of action that may improve the efficiency of mining or the economic yield from mining operations.

(h) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V. The Commission.

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the commission." The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate from among the members of the advisory body required by this paragraph, who shall represent
him and act in his place and stead. The designation of
an alternate shall be communicated by the governor to
the commission in such manner as its bylaws may
provide.

(b) The commissioners shall be entitled to one vote
each on the commission. No action of the commission
making a recommendation pursuant to Articles IV (c),
IV (g) and IV (h) or requesting, accepting or disposing
of funds, services or other property pursuant to this
paragraph, Article V (g), V (h) or VII shall be valid
unless taken at a meeting at which a majority of the
total number of votes on the commission is cast in favor
thereof. All other action shall be by a majority of those
present and voting: Provided, That action of the
commission shall be only at a meeting at which a
majority of the commissioners, or their alternates, is
present. The commission may establish and maintain
such facilities as may be necessary for the transacting
of its business. The commission may acquire, hold and
convey real and personal property and any interest
therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among
its members, a chairman, a vice chairman, and a
treasurer. The commission shall appoint an executive
director and fix his duties and compensation. Such
executive director shall serve at the pleasure of the
commission. The executive director, the treasurer and
such other personnel as the commission shall designate
shall be bonded. The amount or amounts of such bond
or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other
merit system laws of any of the party states, the
executive director with the approval of the commission,
shall appoint, remove or discharge such personnel as
may be necessary for the performance of the commis-
sion's functions, and shall fix the duties and compensa-
tion of such personnel.

(f) The commission may establish and maintain,
independently or in conjunction with a party state, a
suitable retirement system for its employees. Employees
of the commission shall be eligible for social security
coverage in respect of old age and survivor's insurance:
Provided, That the commission take such steps as may
be necessary pursuant to the laws of the United States
to participate in such program of insurance as a
governmental agency or unit. The commission may
establish and maintain or participate in such additional
programs of employee benefits as it may deem
appropriate.

(g) The commission may borrow, accept or contract
for the services of personnel from any state, the United
States or any other governmental agency, or from any
person, firm, association or corporation.

(h) The commission may accept for any of its purposes
and functions under this compact any and all donations
and grants of money, equipment, supplies, materials and
services, conditional or otherwise, from any state, the
United States or any other governmental agency, or
from any person, firm, association or corporation, and
may receive, utilize and dispose of the same. Any
donation or grant accepted by the commission pursuant
to this paragraph or services borrowed pursuant to
paragraph (g) of this article shall be reported in the
annual report of the commission. Such report shall
include the nature, amount and conditions, if any, of the
donation, grant or services borrowed and the identity of
the donor or lender.

(i) The commission shall adopt bylaws for the conduct
of its business and shall have the power to amend and
rescind these bylaws. The commission shall publish its
bylaws in convenient form and shall file a copy thereof
and a copy of any amendment thereto with the appro-
riate agency or officer in each of the party states.

(j) The commission annually shall make to the
governor, Legislature and advisory body required by
Article V (a) of each party state a report covering the
activities of the commission for the preceding year, and
embodying such recommendations as may have been
made by the commission. The commission may make
such additional reports as it may deem desirable.

Article VI. Advisory, Technical and Regional Committees.

The commission shall establish such advisory, technical and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems relating to reclamation, development or use of mined land or any other matters of concern to the commission.

Article VII. Finance.

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such periods as may be required by the laws of that party state for presentation to the Legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One half in equal shares, and the remainder in proportion to the value of minerals, ores and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its
obligations, in whole or in part, with funds available to it under Article V (h) of this compact: Provided, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met, in whole or in part, in such manner. Except where the commission makes use of funds available to it under Article V (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Entry Into Force and Withdrawal.

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior
Article IX. Effect on Other Laws.

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party state.

Article X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

§22C-10-2. Bylaws of interstate mining commission.

In accordance with Article V (i) of the interstate mining compact, the commission shall file copies of its bylaws and any amendments thereto in the office of the secretary of state of West Virginia.

§22C-10-3. Effective date.

This article is effective as of the first day of July, one thousand nine hundred seventy-two.

ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§22C-11-1. Creation of commission; members; terms; compact with other political units.

§22C-11-2. Appointment of alternates.

§22C-11-3. Expenses of commission; appropriation; officers and employees; meetings.

§22C-11-4. Effective date; findings; termination date.

§22C-11-5. Restrictions.

§22C-11-1. Creation of commission; members; terms; compact with other political units.
There is hereby created a commission consisting of three members, to act jointly with commissioners appointed for like purposes by the commonwealths of Pennsylvania and Virginia, the state of Maryland, and the District of Columbia, and an additional three members to be appointed by the president of the United States, and which, together with the other commissioners appointed as hereinbefore mentioned, shall constitute and be known as the "Interstate Commission on the Potomac River Basin." The said commission of the state of West Virginia shall consist of three members. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner for any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state is the commissioner of the bureau of public health ex officio, and the term of the ex officio commissioner terminates at the time he ceases to hold said office. Said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his division or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The term of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners: Provided, That the compact hereinafter referred to shall then have gone into effect, in accordance with article six thereof, otherwise to begin upon the date said compact shall become effective, in accordance with said article six.

Any commissioner may be removed from office by the governor.
The governor of the state of West Virginia is hereby authorized and directed to execute a compact on behalf of the state of West Virginia, with the other states and the district hereinabove referred to, who may by their legislative bodies so authorize a compact in form substantially as follows:

A COMPACT

Whereas, It is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate streams; and

Whereas, The Congress of the United States has given its consent to the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac River and the main and tributary streams therein, for "the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes"; and

Whereas, The regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of federal, state, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district; now, therefore,

The states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac valley conservancy district, hereinafter designated the conservancy district,
comprising all of the area drained by the Potomac River and its tributaries; and also, do hereby create, as an agency of each signatory body, the interstate commission on the Potomac River basin, hereinafter designated the commission, under the articles of organization as set forth below.

Article I

The interstate commission on the Potomac River basin shall consist of three members from each signatory body and three members appointed by the president of the United States. Said commissioners, other than those appointed by the president, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed, and shall serve without compensation from the commission but shall be paid by the commission their actual expenses incurred and incident to the performance of their duties.

(A) The commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, shall adopt suitable bylaws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The commission shall appoint, and at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The commission may maintain one or more offices for the transaction of its business and may meet at any time within the area of the signatory bodies.

(C) The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The commission, however, shall not
incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the commission.

(D) A quorum of the commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the commission who shall represent at least a majority of the signatory bodies: Provided, however, That no action of the commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the commissioners from such signatory body shall vote in favor thereof.

Article II

The commission shall have the power:

(A) To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the conservancy district.

(B) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and federal, local governmental and nongovernmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said conservancy district.

(C) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the conservancy district and on the aims, views, purposes and recommendations of the commission in relation thereto.
(D) To cooperate with, assist, and provide liaison for and among, public and nonpublic agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

(E) In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

(F) (1) To make, and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the conservancy district, and also, for cleanliness of the various streams in the conservancy district.

(2) To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the district in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the commission with its recommendations thereon.

The commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the commission and resubmit the classification proposal, with or without
amendment, with any additional comments for further
action by the commission.

It is agreed that after acceptance of such classifica-
tion, the signatory body through its appropriate state
water pollution control agencies will work to establish
programs of treatment of sewage and industrial wastes
which will meet or exceed standards established by the
commission for classified waters. The commission may
from time to time make such changes in definitions of
classifications and in standards as may be required by
changed conditions or as may be necessary for unifor-
mity and in a manner similar to that in which these
standards and classifications were originally
established.

It is recognized, owing to such variable factors as
location, size, character and flow and the many varied
uses of the waters subject to the terms of this compact,
that no single standard of sewage and waste treatment
and no single standard of quality of receiving waters is
practical and that the degree of treatment of sewage and
industrial wastes should take into account the classifi-
cation of the receiving waters according to present and
proposed highest use, such as for drinking water supply,
bathing and other recreational purposes, maintenance
and propagation of fish life, industrial and agricultural
uses, navigation and disposal of wastes.

Article III

For the purpose of dealing with the problems of
pollution and of water and associated land resources in
specific areas which directly affect two or more, but not
all, signatory bodies, the commission may establish
sections of the commissions consisting of the commis-
sioners from such affected signatory bodies: Provided,
however, that no signatory body may be excluded from
any section in which it wishes to participate. The
commissioners appointed by the president of the United
States may participate in any section. The commission
shall designate, and from time to time may change, the
geographical area with respect to which each section
shall function. Each section shall, to such extent as the
commission may from time to time authorize, have
authority to exercise and perform with respect to its
designated geographical area any power or function
vested in the commission, and in addition may exercise
such other powers and perform such functions as may
be vested in such section by the laws of any signatory
body or by the laws of the United States. The exercise
or performance by a section of any power or function
vested in the commission may be financed by the
commission, but the exercise or performance of powers
or functions vested solely in a section shall be financed
through funds provided in advance by the bodies,
including the United States, participating in such
section.

Article IV

The moneys necessary to finance the commission in
the administration of its business in the conservancy
district shall be provided through appropriations from
the signatory bodies and the United States, in the
manner prescribed by the laws of the several signatory
bodies and of the United States, and in amounts as
follows:

The pro rata contribution shall be based on such
factors as population; the amount of industrial and
domestic pollution; and a flat service charge; as shall be
determined from time to time by the commission,
subject, however, to the approval, ratification and
appropriation of such contribution by the several
signatory bodies.

Article V

Pursuant to the aims and purposes of this compact,
the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing
pollution and the prevention of future pollution in the
streams of the conservancy district and in planning for
the utilization, conservation and development of the
water and associated land resources thereof.

2. The enactment of adequate and, insofar as is
practicable, uniform legislation for the abatement and
control of pollution and control and use of such streams.

3. The appropriation of biennial sums on the proportionate basis as set forth in article four.

Article VI

This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and by the commissioners of the District of Columbia, and approval by the Congress of the United States: Provided, however, That this compact shall not be effective as to any signatory body until ratified thereby.

Article VII

Any signatory body may, by legislative action, after one year's notice to the commission, withdraw from this compact.

§22C-11-2. Appointment of alternates.

The governor, by and with the consent of the Senate, shall appoint an alternate member for the two members of the commission who are not ex officio, and each alternate shall have power to act in the absence of the person for whom he is alternate. The governor shall appoint the first alternates hereunder on or before July first, one thousand nine hundred forty-nine, the term of each alternate to run concurrently with the term of the member for whom he is alternate.

§22C-11-3. Expenses of commission; appropriation; officers and employees; meetings.

The commissioners shall be reimbursed, out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission.

There shall be appropriated to the commission out of any moneys in the state treasury unexpended and available therefor, and not otherwise appropriated, such sums as may be necessary for the uses and purposes of the commission in carrying out the provisions of this
article and the payment of the proper proportion of the state of West Virginia of the expenses of the "Interstate Commission on the Potomac River Basin," in accordance with article four of said compact.

The commission shall elect from its membership a chairman and may also select a secretary who need not be a member. The commission may employ such assistants as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

§22C-11-4. Effective date; findings; termination date.

This article shall become effective upon the adoption of substantially similar amendments to the interstate compact by each of the signatory states to the compact, and upon the approval of the amendments to the compact by the Congress of the United States.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the interstate compact. Accordingly, pursuant to the provisions of section five, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred ninety-eight.

§22C-11-5. Restrictions.

Neither the governor of the state of West Virginia nor any member of the commission aforesaid, representing the state of West Virginia, shall consent to the construction of any dam, whether in the state of West Virginia, or without this state, which shall flood lands in this state, without the express consent of the Legislature.
ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§22C-12-1. Ohio River Valley Water Sanitation Compact approved.

§22C-12-2. Appointment of members of commission; Director of Division of Environmental Protection member ex officio.

§22C-12-3. Powers of commission; duties of state officers, departments, etc.; jurisdiction of circuit courts; enforcement of article.

§22C-12-4. Powers granted herein supplemental to other powers vested in commission.

§22C-12-5. Expenses of commission; appropriations; officers and employees; meetings.

§22C-12-6. When article effective; findings; continuation.

§22C-12-1. Ohio River Valley Water Sanitation Compact approved.

The following Ohio River Valley Water Sanitation Compact, which has been negotiated by representatives of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia, is hereby approved, ratified, adopted, enacted into law, and entered into by the state of West Virginia as a party thereto and signatory state, namely:

OHIO RIVER VALLEY WATER SANITATION COMPACT

Whereas, A substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio River; and

Whereas, The rapid increase in the population of the various metropolitan areas situate within the Ohio drainage basin, and the growth in industrial activity within that area, have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

Whereas, The control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof, and can best be accomplished through the cooperation of the states situated therein, by and through a joint or common agency;
Now, Therefore, the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia do hereby covenant and agree as follows:

Article I

Each of the signatory states pledges to each of the other signatory states faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams and waters in the Ohio River basin which flow through, into or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such state to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

Article II

The signatory states hereby create a district to be known as the “Ohio River valley water sanitation district,” hereinafter called the district, which shall embrace all territory within the signatory states, the water in which flows ultimately into the Ohio River, or its tributaries.

Article III

The signatory states hereby create the “Ohio River valley water sanitation commission,” hereinafter called the commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states or by act or acts of the Congress of the United States.

Article IV
The commission shall consist of three commissioners from each state, each of whom shall be a citizen of the state from which he is appointed, and three commissioners representing the United States government. The commissioners from each state shall be chosen in the manner and for the terms provided by the laws of the state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the state from which he shall be appointed. The commissioners representing the United States shall be appointed by the president of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any state or of the United States government.

The commission shall elect from its number a chairman and vice chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. It shall adopt a seal and suitable bylaws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the district for the transaction of its business, and may meet at any time or place. One or more commissioners from a majority of the member states shall constitute a quorum for the transaction of business.

The commission shall submit to the governor of each state, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such state for presentation to the legislature thereof.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said
books of account shall be open at any reasonable time
to the inspection of such representatives of the respec-
tive signatory states as may be duly constituted for that
purpose.

On or before the first day of December of each year,
the commission shall submit to the respective governors
of the signatory states a full and complete report of its
activities for the preceding year.

The commission shall not incur any obligations of any
kind prior to the making of appropriations adequate to
meet the same; nor shall the commission pledge the
credit of any of the signatory states, except by and with
the authority of the legislature thereof.

Article VI

It is recognized by the signatory states that no single
standard for the treatment of sewage or industrial
wastes is applicable in all parts of the district due to
such variable factors as size, flow, location, character,
self-purification, and usage of waters within the district.
The guiding principle of this compact shall be that
pollution by sewage or industrial wastes originating
within a signatory state shall not injuriously affect the
various uses of the interstate waters as hereinbefore
defined.

All sewage from municipalities or other political
subdivisions, public or private institutions, or corpora-
tions, discharged or permitted to flow into these portions
of the Ohio River and its tributary waters which form
boundaries between, or are contiguous to, two or more
signatory states, or which flow from one signatory state
into another signatory state, shall be so treated, within
a time reasonable for the construction of the necessary
works, as to provide for substantially complete removal
of settleable solids, and the removal of not less than
forty-five percent of the total suspended solids: Provided,
That in order to protect the public health or to preserve
the waters for other legitimate purposes, including those
specified in article I, in specific instances such higher
degree of treatment shall be used as may be determined
to be necessary by the commission after investigation,
due notice and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in article I, to such degree as may be determined to be necessary by the commission after investigation, due notice and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one state shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately above the confluence.

The commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article.

Article VII

Nothing in this compact shall be construed to limit the powers of any signatory state, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

Article VIII

The commission shall conduct a survey of the territory included within the district, shall study the pollution problems of the district, and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the commission shall confer with any national or regional planning body which may be established, and any department of the federal government authorized to deal with matters relating to the pollution problems of the district. The commission shall draft and recommend to the governors of the various signatory states uniform legislation
dealing with the pollution of rivers, streams and waters and other pollution problems within the district. The commission shall consult with and advise the various states, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly with regard to the construction of plants for the disposal of sewage, industrial and other waste. The commission shall, more than one month prior to any regular meeting of the legislature of any state which is a party thereto, present to the governor of the state its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of this compact.

Article IX

The commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person or other entity discharging sewage or industrial waste into the Ohio River or any other river, stream or water, any part of which constitutes any part of the boundary line between any two or more of the signatory states, or into any stream any part of which flows from any portion of one signatory state through any portion of another signatory state. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of. The commission shall give reasonable notice of the time and place of the hearing to the municipality, corporation or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory states; and no such order upon a municipality, corporation, person or entity in any state shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

It shall be the duty of the municipality, corporation, person or other entity to comply with any such order
issued against it or him by the commission, and any
court of general jurisdiction or any United States
district court in any of the signatory states shall have
the jurisdiction, by mandamus, injunction, specific
performance or other form of remedy, to enforce any
such order against any municipality, corporation or
other entity domiciled or located within such state or
whose discharge of the waste takes place within or
adjoining such state, or against any employee, depart-
ment or subdivision of such municipality, corporation,
person or other entity: Provided, That such court may
review the order and affirm, reverse or modify the same
upon any of the grounds customarily applicable in
proceedings for court review of administrative decisions.
The commission or, at its request, the attorney general
or other law-enforcing official, shall have power to
institute in such court any action for the enforcement
of such order.

Article X

The signatory states agree to appropriate for the
salaries, office and other administrative expenses, their
proper proportion of the annual budget as determined
by the commission and approved by the governors of the
signatory states, one half of such amount to be prorated
among the several states in proportion to their popula-

tion within the district at the last preceding federal
census, the other half to be prorated in proportion to
their land area within the district.

Article XI

This compact shall become effective upon ratification
by the legislatures of a majority of the states located
within the district and upon approval by the Congress
of the United States; and shall become effective as to any
additional states signing thereafter at the time of such
signing.

In Witness Whereof, the various signatory states have
executed this compact through their respective compact
commissioners.
§22C-12-2. Appointment of members of commission; director of division of environmental protection member ex officio.

In pursuance of article four of said compact, there shall be three members of the "Ohio River valley water sanitation commission" from the state of West Virginia. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner from any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state is the director of the division of environmental protection, ex officio, and the term of the ex officio commissioner terminates at the time he ceases to hold the office of director of the division of environmental protection, and his successor as a commissioner shall be his successor as the director of the division of environmental protection. With the exception of the issuance of any order under the provisions of article nine of the compact, the ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his division or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the two appontive commissioners, provided the said compact shall then have gone into effect in accordance with article eleven of the compact; otherwise shall begin

*Clerk's Note: The provisions of this section were also contained in H. B. 4084 (Chapter 162), and were originally codified as §29-1D-2 and passed prior to this act.
upon the date which said compact shall become effective in accordance with said article eleven.

Any commissioner may be removed from office by the governor.

§22C-12-3. Powers of commission; duties of state officers, departments, etc.; jurisdiction of circuit courts; enforcement of article.

There is hereby granted to the commission and commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of this state are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary to or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of this state of West Virginia are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

The circuit courts of this state are hereby granted the jurisdiction specified in article nine of said compact, and the attorney general or any other law-enforcing officer of this state is hereby granted the power to institute any action for the enforcement of the orders of the commission as specified in said article nine of the compact.

§22C-12-4. Powers granted herein supplemental to other powers vested in commission.

Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of this state or by the laws of the states of Illinois, Indiana, Kentucky, New York,
§22C-12-5. Expenses of commission; appropriations; officers and employees; meetings.

The commissioners shall be reimbursed out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission.

There shall be appropriated to the commission out of any moneys in the state treasury unexpended and available therefor, and not otherwise appropriated, such sums as may be necessary for the uses and purposes of the commission in carrying out the provisions of this article and the payment of the proper proportion of the state of West Virginia of the annual budget of the "Ohio River valley water sanitation commission" in accordance with article ten of said compact.

The commission shall elect from its membership a chairman and may also select a secretary who need not be a member. The commission may employ such assistance as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

*§22C-12-6. When article effective; findings; continuation.*

This article shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification, and adoption and entering into thereof by the states of New York, Pennsylvania, Ohio and Virginia.

After having conducted a preliminary performance

* Clerk's Note: The provisions of this section were also contained in H. B. 4084 (Chapter 162), and were originally codified as §29-1D-6 and passed prior to this act.
review through its joint committee on government
operations, pursuant to article ten, chapter four of this
code, the Legislature hereby finds and declares that
West Virginia should remain a member of the compact.
Accordingly, notwithstanding the provisions of article
ten, chapter four of this code, West Virginia shall
continue to be a member of this compact until the first
day of July, two thousand.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or
intentionally caused by employer; legislative
declarations and findings; "deliberate inten-
tion" defined.

(a) Notwithstanding anything hereinbefore or herein-
after contained, no employee or dependent of any
employee is entitled to receive any sum from the
workers' compensation fund, or to direct compensation
from any employer making the election and receiving
the permission mentioned in section nine, article two of
this chapter, or otherwise under the provisions of this
chapter, on account of any personal injury to or death
to any employee caused by a self-inflicted injury or the
intoxication of such employee. For the purpose of this
chapter, the commissioner may cooperate with the office
of miners' health, safety and training and the state
division of labor in promoting general safety programs
and in formulating rules to govern hazardous
employments.

(b) If injury or death result to any employee from the
deliberate intention of his or her employer to produce
such injury or death, the employee, the widow, widower,
child or dependent of the employee has the privilege to
take under this chapter, and has a cause of action
against the employer, as if this chapter had not been
enacted, for any excess of damages over the amount
received or receivable under this chapter.

(c) (1) It is declared that enactment of this chapter
and the establishment of the workers' compensation
system in this chapter was and is intended to remove
from the common law tort system all disputes between
or among employers and employees regarding the
compensation to be received for injury or death to an
employee except as herein expressly provided, and to
establish a system which compensates even though the
injury or death of an employee may be caused by his
or her own fault or the fault of a co-employee; that the
immunity established in sections six and six-a, article
two of this chapter, is an essential aspect of this workers'
compensation system; that the intent of the Legislature
in providing immunity from common law suit was and
is to protect those so immunized from litigation outside
the workers' compensation system except as herein
expressly provided; that, in enacting the immunity
provisions of this chapter, the Legislature intended to
create a legislative standard for loss of that immunity
of more narrow application and containing more specific
mandatory elements than the common law tort system
concept and standard of willful, wanton and reckless
misconduct; and that it was and is the legislative intent
to promote prompt judicial resolution of the question of
whether a suit prosecuted under the asserted authority
of this section is or is not prohibited by the immunity
granted under this chapter.

(2) The immunity from suit provided under this
section and under section six-a, article two of this
chapter, may be lost only if the employer or person
against whom liability is asserted acted with “deliberate
intention”. This requirement may be satisfied only if:

(i) It is proved that such employer or person against
whom liability is asserted acted with a consciously,
subjectively and deliberately formed intention to
produce the specific result of injury or death to an
employee. This standard requires a showing of an
actual, specific intent and may not be satisfied by
allegation or proof of (A) conduct which produces a
result that was not specifically intended; (B) conduct
which constitutes negligence, no matter how gross or
aggravated; or (C) willful, wanton or reckless miscon-
duct; or
(ii) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(B) That the employer had a subjective realization and an appreciation of the existence of such specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by such specific unsafe working condition;

(C) That such specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of such employer, which statute, rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C) hereof, such employer nevertheless thereafter exposed an employee to such specific unsafe working condition intentionally; and

(E) That such employee so exposed suffered serious injury or death as a direct and proximate result of such specific unsafe working condition.

(iii) In cases alleging liability under the provisions of the preceding paragraph (ii):

(A) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

(B) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution
of issues of immunity from litigation under this chapter, the court shall dismiss the action upon motion for summary judgment if it finds, pursuant to Rule 56 of the Rules of Civil Procedure that one or more of the facts required to be proved by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii) do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii); and

(C) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(d) The reenactment of this section in the regular session of the Legislature during the year one thousand nine hundred eighty-three does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of such reenactment.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article
2. Powers and Duties of Public Service Commission.
2B. Weather Modification.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1b. Additional jurisdiction of commission.
§24-2-1c. Certificate of need required for solid waste facilities; priority of disposal.
§24-2-1f. Jurisdiction of commission over solid waste facilities.
§24-2-1h. Additional powers and duties of commission to control flow of solid waste.
§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

§24-2-1b. Additional jurisdiction of commission.

(a) 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 fifteen, chapter twenty-two 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 providing for the safe transportation of solid waste in the state.

(b) 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 fifteen, chapter twenty-two of this code, or any person seeking a major permit modification from the division of environmental protection 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 consists of the following and notwithstanding any other provision of this chapter to the contrary, such information contained in the application provided by the applicant is not confidential and is 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 environmental protection;

(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 is not 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
twenty-four, article four, chapter twenty-two-c of this
code. Upon the decision of the commission to grant or
deny a certificate of need, the commission shall imme-
diately notify the solid waste management board and the
division of environmental protection.
(h) Any party aggrieved by a decision of the commis-
sion 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.
§24-2-1f. Jurisdiction of commission over solid waste
facilities.
Effective the first day of July, one thousand nine
hundred eighty-nine, 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 subsection (b), section two, article four,
chapter twenty-two-c of this code.
§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 pursuant to the provisions of section seven, article fifteen, chapter twenty-two of this code.

(b) In determining whether to issue an order establishing flow control to a solid waste facility, the commission shall consider, but is not 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, who shall be in the classified exempt service, 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.

§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

(a) Notwithstanding any provision of this article, or any provision of article fifteen, chapter twenty-two or article four, chapter twenty-two-c, or any other provision of this code, upon the application of any commercial solid waste facility, the commission may grant to a commercial solid waste facility an emergency certificate of need to increase the maximum monthly solid waste disposal tonnage, for a period not to exceed one year, to the extent deemed necessary to prevent any disruption of solid waste disposal services in any county or wasteshed of the state resulting from the closure of an existing landfill in said county or wasteshed. The authority granted to the commission under this section
shall expire after the thirtieth day of September, one thousand nine hundred ninety-three. No temporary certificate issued pursuant to this section shall extend beyond the thirtieth day of September, one thousand nine hundred ninety-four. The director of the division of environmental protection shall modify any commercial solid waste facility permit, issued under article fifteen, chapter twenty-two of this code, to conform with the maximum monthly solid waste disposal tonnage and any other terms and conditions set forth in a temporary certificate issued under this section.

(b) If the net tonnage increase under a temporary certificate application made pursuant to subsection (a) of this section would cause the gross monthly solid waste disposal tonnage of such facility to exceed ten thousand tons, a temporary certificate shall be issued only if the solid waste facility has: (1) Obtained from the county or regional solid waste authority for the county or counties in which the facility is located a certificate of site approval or approval for conversion from a Class B facility to a Class A facility; and (2) obtained from the county or regional solid waste authority for the county or counties in which the facility is located approval to increase the maximum monthly tonnage disposed at the facility; and (3) obtained from the county commission for the county or counties in which the landfill is located approval to operate as a Class A facility; and (4) has a certificate of need application pending before the public service commission; and (5) has installed a composite liner system in compliance with the requirements set forth in the solid waste management rules promulgated by the division of environmental protection or its predecessor. Such emergency certificate shall not authorize an increase in the maximum monthly solid waste disposal tonnage in an amount greater than that approved by the county or regional solid waste authority for the county or counties in which the landfill is located.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.
(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipally operated public utilities, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. Such rates and charges shall be adopted by the electric, natural gas or telephone cooperative's governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of such utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, such other reasonable notices as will allow filing of timely objections to such rate change. Such rates and charges shall be filed with the commission together with such information showing the basis of such rates and charges and such other information as the commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative, telephone cooperative or municipality has failed to file with the commission such rates and charges with such information showing the basis of rates and charges and such other information as the commission considers necessary, the suspension period limitation of
one hundred twenty days and the one hundred day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify such rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing said rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state, under subdivision (1), subsection (c) of this section, shall suspend the adoption of the rate
change contained in the ordinance or resolution for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect, or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries, or a customer or a group of customers within the municipal boundaries, under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect or until an order is issued as provided herein.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. Said hearing examiner shall conduct a public hearing, and shall within one hundred days from the date the said rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article. The commission may determine the method by which such rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests such a hearing.

(g) The commission may, upon petition by a municipality or electric, natural gas or telephone cooperative, allow an interim or emergency rate to take effect, subject to future modification, if it is determined that such interim or emergency rate is necessary to protect the municipality from financial hardship and if that financial hardship is attributable solely to the purchase
of the utility commodity sold. In such cases, the commission may waive the forty-five-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the state of West Virginia.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 2B. WEATHER MODIFICATION.


In order to enforce the provisions of this article, the West Virginia state police shall, on request of the commission, assign at least one trooper and one investigator to an area where unlawful cloud seeding is suspected. If such police request the same, the commission shall assign an airplane and pilot. Air samples shall be taken by the division of environmental protection if requested by the state police or the commission. For such enforcement purposes, the bureau of public health shall furnish such technical services as the commission or director may request.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5a. Hazardous substance emergency response training programs.

(a) Within one hundred twenty days of the effective date of this section, the state fire commission shall promulgate rules pursuant to chapter twenty-nine-a of this code establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal.

(b) For the purposes of this section, “hazardous substance” means any hazardous substance as defined in
chapter eighty-eight, Acts of the Legislature, regular session, one thousand nine hundred eighty-five any "chemical substances and materials" listed in the rules promulgated by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one of this code, and any "hazardous waste" as defined in section three, article eighteen, chapter twenty-two of this code.

CHAPTER 31. CORPORATIONS.

Article
16. West Virginia Steel Futures Program.
18. West Virginia Housing Development Fund.
19. West Virginia Community Infrastructure Authority.

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

§31-16-4. Steel futures program.

The commission shall develop and recommend a strategy for financial and technical assistance to steel and steel-related industries in the state. The strategy shall include investment policies with regard to these industries. In administering the program, the commission shall consult with appropriate representatives of steel, and steel-related industries, appropriate representatives of any union that represents workers in these industries, and any other persons with expert knowledge of these industries. The commission shall consult with the chairman of the public service commission to foster the development of public and private cooperative efforts that would result in energy savings and reduced energy costs for steel and steel-related industries. The commission shall consult with the division of environmental protection and other agencies with which the steel industry must interact to assist the steel industry in adhering to regulations in a manner conducive to economic viability. Assistance may be made available to steel and steel-related industries undertaking projects the commission determines to have long-term implications for and broad applicability to the economy of this state when the secretary of the department of commerce, labor and environmental resources finds that:

(a) The undertaking of projects by the steel industries will benefit the people of the state by creating or
preserving jobs and employment opportunities; and

(b) The undertaking of projects by the steel industries will allow them to compete more effectively in the marketplace.

Projects eligible to receive assistance under the steel futures program may include, but are not limited to, the following:

(a) Research and development specifically related to steel and steel-related industries and feasibility studies for business development within these industries;

(b) Employee training;

(c) Labor and management relations; and

(d) Technology-driven capital investment.

Financial and technical assistance may be in the form and conditioned upon terms as stipulated by each enterprise assistance program administered by the department of commerce, labor and environmental resources as the secretary considers appropriate. No later than the thirtieth day of June, one thousand nine hundred ninety-four, and no later than the thirtieth day of June of each year thereafter, the commission shall submit a report to the governor and Legislature describing projects of the steel futures program, results obtained from completed projects of the program and program projects for the next fiscal year.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-20a. Land development fund.

(a) The board of directors of the housing development fund may create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan, to be known as the land development fund and to be governed, administered and accounted for by the directors, officers and managerial staff of the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned and managed by the housing development fund.
(b) The purpose of the land development fund is to provide a source from which the housing development fund may finance development costs and land development in this state by making loans or grants therefrom, such loans to be with or without interest and with such security for repayment as the housing development fund deems reasonably necessary and practicable, or by expending moneys therefrom, for development costs and land development in this state.

(c) The housing development fund may invest and reinvest all moneys in the land development fund in any investments authorized under section six of this article, pending the disbursement thereof in connection with the financing of development costs and land development in this state.

(d) No loans shall be made by the housing development fund from the land development fund except in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

1. The proceeds of all such loans shall be used only for development costs and land development;
2. All such loans shall be repaid in full, with or without interest, as provided in the agreement;
3. All repayments shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage, as the case may be, or at such other times as the housing development fund deems reasonably necessary or practicable; and
4. Specification of such security for repayments upon such terms and conditions as the housing development fund deems reasonably necessary or practicable.

(e) No grants shall be made by the housing development fund from the land development fund except in accordance with a written grant agreement which shall require that the proceeds of all such grants shall be used only for development costs or land development and containing such other terms and provisions as the housing development fund may require to ensure that
the public purposes of this article are furthered by such grant.

(f) The housing development fund may expend any income from the financing of development costs and land development with moneys in the land development fund, and from investment of such moneys, in payment, or reimbursement, of all expenses of the housing development fund which, as determined in accordance with procedures approved by the board of directors of the housing development fund, are fairly allocable to such financing or its land-development activities: Provided, That no funds from the land development fund shall be used to carry on propaganda, or otherwise attempt to influence legislation.

(g) The housing development fund shall create and establish a special account within the land development fund to be designated as the "special project account" into which the housing development fund shall, effective the first day of July, one thousand nine hundred ninety-two, deposit the sum of ten million dollars. Such funds shall be governed, administered and accounted for by the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned or managed by the housing development fund. The sole and exclusive purpose of such account is to provide a source of funds for the financing of infrastructure projects including distribution from time to time to the West Virginia water pollution control revolving fund created pursuant to section three, article two, chapter twenty-two-c of this code: Provided, That such distribution shall not exceed five million four hundred fifty thousand dollars; and distribution from time to time to fund soil conservation projects: Provided, however, That such distribution shall not exceed four million five hundred fifty thousand dollars. Until so disbursed, the moneys initially deposited or thereafter from time to time deposited in such special project account, may be invested and reinvested by the housing development fund as permitted under subdivision (8), section six of this article. Any funds remaining in the special project account on the first day
of July, one thousand nine hundred ninety-five, shall automatically revert to the general fund of the housing development fund free of any limitations provided in this section. The provisions of subsections (c), (d), (e) and (f) of this section do not apply to the special project account created in this section.

ARTICLE 19. WEST VIRGINIA COMMUNITY INFRASTRUCTURE AUTHORITY.

§31-19-4. West Virginia community infrastructure authority created; West Virginia community infrastructure board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; duties and responsibilities of director and staff of authority.

(a) There is hereby created the West Virginia community infrastructure authority. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by the five member board known as the West Virginia community infrastructure board, which is hereby created. The director of the West Virginia development office, or her or his designee, the director of the division of environmental protection, or her or his designee, and the commissioner of the division of highways, or her or his designee, are members ex officio of the board. The executive director of the West Virginia development office, or her or his designee, is the ex officio chair. Two members of the board shall be representative of the general public, one of which shall have had experience or a demonstrated interest in local government. The two members who are not ex officio members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for initial terms of three and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in
the same manner as the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which her or 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 her or his successor. The two appointed board members shall not at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms, not to exceed two consecutive full terms. All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon her or his duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

Annually the board shall elect one of its appointed members as chair, and shall appoint a secretary-treasurer, who need not be a member of the board. Three members of the board is a quorum and the affirmative vote of three members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if she or he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

The executive director of the West Virginia development office or her or his designee, the director of the division of environmental protection or her or his designee, and the commissioner of the division of highways or her or his designee, shall not receive any compensation for serving as board members. Each of the two appointed board members of the board shall receive an annual salary of five thousand dollars, payable in monthly installments. Each of the five board
members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of her or his duties as a member of such board. All such expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent for which moneys are available from funds of the authority or from such appropriations.

(b) There shall be a director of the authority appointed by the board who shall supervise and manage the community infrastructure authority, and the West Virginia development office shall serve as the staff for the authority. Except as otherwise provided in this section, the duties and responsibilities of the director and of the staff shall be established by the authority. At the board's discretion, it may provide for the position of general counsel, who shall be an employee of the authority, or for the appointment of special counsel. As the board deems necessary and desirable, it may at any time elect to change its decision on the employment or appointment of a counsel.

(c) The director, or her or his designee, may employ or appoint any staff members in addition to those provided by the West Virginia development office, including general or special counsel if the position is established by the board. The number of employees needed, the positions to be filled and their salaries or wages shall be determined by the director with the approval of the board, unless the board elects to not require its approval. At any time the board may elect to change its decision concerning approval of additional staff hiring and salaries.

(d) The board shall meet at least quarterly, and more often as it deems necessary. The director and any other staff member or members as the director deems expedient shall attend board meetings.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 4. COVENANTS.
§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

Except in the case where operations for the drilling of a well are being conducted thereunder, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration therein provided to be paid for the privilege of postponing actual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and lessee, shall be null and void as to such oil and/or gas unless payment thereof shall be made within sixty days from the date upon which demand for payment in full of such delay rental has been made by the lessor upon the lessee therein, as hereinafter provided, except in such cases where a bona fide dispute shall exist between lessor and lessee as to any amount due or entitlement thereto or any part thereof under such lease.

No person, firm, corporation, partnership or association shall maintain any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any lease herefore executed covering oil and/or gas, as against the owner of such oil and/or gas, or the owner's subsequent lessee, if such person, firm, corporation, partnership or association has failed to pay to the lessor such delay rental in full when due according to the terms thereof, for a period of sixty days after demand for such payment has been made by the lessor upon such lessee, as hereinafter provided.

The demand for payment referred to in the two preceding paragraphs shall be made by notice in writing and shall be sufficient if served upon such person, firm, partnership, association or corporation whether domestic or foreign, whether engaged in
business or dissolved, by United States registered mail, return receipt requested, to the lessee's last known address.

A copy of such notice, together with the return receipt attached thereto, shall be filed with the clerk of the county commission in which such lease is recorded, or in which such oil and/or gas property is located, in whole or in part, and upon payment of a fee of fifty cents for each such lease, said clerk shall permanently file such notice alphabetically under the name of the first lessor appearing in such lease and shall stamp or write upon the margin of the record in the clerk's office of such lease hereafter executed the words "canceled by notice"; and as to any such lease executed before the enactment of this statute said clerk shall file such notice as hereinbefore provided and shall stamp or write upon the margin of the record of such lease in the clerk's office the words "enforcement barred by notice."

The word "lessee" includes the original lessee, as well as the original lessor's successors in title to the oil and/or gas involved. The word "lessor" includes the original lessee, the original lessee's assignee properly of record at the time such demand is made, and the original lessee's successors, heirs, or personal representatives. No assignee of such lease whose assignment is not recorded in the proper county shall be heard in any court of this state to attack the validity or sufficiency of the notice hereinbefore mentioned.

There is a rebuttable legal presumption that the failure of a person, firm, corporation, partnership or association to produce and sell or produce and use for its own purpose for a period of greater than twenty-four months, subsequent to the first day of July, one thousand nine hundred seventy-nine, oil and/or gas produced from such leased premises constitutes an intention to abandon any oil and/or gas well and oil and/or gas well equipment situate on said leased premises, including casing, rods, tubing, pumps, motors, lines, tanks, separators and any other equipment, or both, used in the production of any oil and/or gas from any well or wells on said leasehold estate.
This rebuttable presumption shall not be created in instances (i) of leases for gas storage purposes, or (ii) where any shut-in royalty, flat rate well rental, delay rental or other similar payment designed to keep an oil or gas lease in effect or to extend its term has been paid or tendered, or (iii) where the failure to produce and sell is the direct result of the interference or action of the owner of such oil and/or gas or his subsequent lessee or assignee. Additionally, no such presumption is created when a delay in excess of twenty-four months occurs because of any inability to sell any oil and/or gas produced or because of any inability to deliver or otherwise tender such oil and/or gas produced to any person, firm, corporation, partnership or association.

In all instances when the owner of such oil and/or gas or the owner’s subsequent lessee or assignee desires to terminate the right, interest or title of any person, firm, corporation, partnership or association in such oil and/or gas by utilization of the presumption created in this section, this presumption may not be utilized except in an action or proceeding by the owner of the oil and/or gas or the owner’s lessee or assignee in an action brought in the circuit court for the judicial district in which the oil and/or gas property is partially or wholly located. A certified copy of a final order of the circuit court shall be mailed by the clerk of such court to the chief of the office of oil and gas of the division of environmental protection.

The continuation in force of any such lease after demand for and failure to pay such delay rental or failure to produce and sell, or to produce and use oil and gas for a period of twenty-four months as hereinbefore set forth is deemed by the Legislature to be opposed to public policy against the general welfare. If any part of this section shall be declared unconstitutional such declaration shall not affect any other part thereof.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

Article 7. Actions for Injuries.

12A. Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or Abandoning Owners.
ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-17. Aid by trained hazardous substance response personnel; immunity from civil liability; definitions.

No person trained in a qualified program of hazardous substance emergency response certified by the state fire marshal pursuant to rules promulgated by authority of subsection (a), section five-a, article three, chapter twenty-nine of this code, who in good faith renders advice or assistance at the scene of an actual or threatened discharge of any hazardous substance and receives no remuneration for rendering such advice or assistance, is liable for any civil damages as the result of any act or omission in rendering such advice or assistance: Provided, That the exemption from liability for civil damages of this section shall be extended to any such person who receives reimbursement for out-of-pocket expenses incurred in rendering such advice or assistance or compensation from his or her regular employer for the time period during which he or she was actually engaged in rendering such advice or assistance but is not extended to any such person who by his or her act or omission caused or contributed to the cause of such actual or threatened discharge of any hazardous substance.

For the purposes of this section, "hazardous substance" means any "hazardous substance" as defined in chapter eighty-eight, Acts of the Legislature, regular session, one thousand nine hundred eighty-five; any "chemical substances and materials" listed in the rules promulgated by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one, of this code; and any "hazardous waste" as defined in section three, article eighteen, chapter twenty-two of this code.

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.


As used in this article, the following definitions shall apply:
(1) "Abandoning owner" means any person, vested with title to any interest in minerals, who is proved to have abandoned the interest, that is, to have relinquished any right to possess or enjoy the interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person.

(2) "Development of the minerals" or "mineral development" means (a) mining coal by any method, or (b) drilling for and producing oil or gas by conventional techniques, or by enhanced recovery by injection of fluids of any kind into the producing formation, or (c) utilization of a gas-bearing formation as an underground gas storage reservoir within the meaning of article nine, chapter twenty-two of this code, or (d) production of other minerals by any method.

(3) "Interest in minerals" means any interest, real or personal, in coal, oil, gas or any other mineral, for which interest the property taxes are not delinquent as of the date of the filing of a petition under this article.

(4) "Surface owner" means any person vested with any interest in fee in the surface estate overlying the particular minerals sought to be developed under this article. A surface owner's rights under this article shall be subject to any deed of trust or other security instrument, lien, surface lease, easement or other nonpossessory interest in the surface owned by any other person; but such persons other than the surface owner shall have no right to notice and no standing to appear and be heard hereunder.

(5) "Unknown or missing owner" means any person, vested with title to any interest in minerals, whose present identity or location cannot be determined from the records of the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in the county in which the interest is located or by diligent inquiry in the vicinity of the owner's last known place of residence, and shall include such owner's heirs, successors and assigns not known to be alive.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.
ARTICLE 3. CRIMES AGAINST PROPERTY.
§61-3-47. Dams or obstructions in watercourses; penalty.

No person may fell any timber and permit the same to remain in any navigable or floatable stream of this state when to do so obstructs the passage of boats, rafts, staves, ties or timber of any kind.

Except as may be provided in chapter twenty or twenty-two of this code, no person may construct or maintain any dam or other structure in any stream or watercourse, which in any way prevents or obstructs the free and easy passage of fish up or down such stream or watercourse, without first providing as a part of such dam or other structure a suitable fish ladder, way or flume, so constructed as to allow fish easily to ascend or descend the same; which ladder, way or flume shall be constructed only upon plans, in a manner, and at a place, satisfactory to the division of natural resources: Provided, That if the director of the division of natural resources determines that there is no substantial fish life in such stream or watercourse, or that the installation of a fish ladder, way or flume would not facilitate the free and easy passage of fish up or down a stream or watercourse, or that an industrial development project requires the construction of such dam or other structure and the installation of an operational fish ladder, way or flume is impracticable, the director may, in writing, permit the construction or maintenance of a dam or other structure in a stream or watercourse without providing a suitable fish ladder, way or flume; and in all navigable and floatable streams provisions shall be made in such dam or structure for the passage of boats and other crafts, logs and other materials: Provided, however, That this section does not relieve such person from liability for damage to any riparian owner on account of the construction or maintenance of such dam.

Any person who violates any of the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both fined and imprisoned, and, whether a conviction is had under this section or not, such violation is a nuisance, which may be abated at the suit of any citizen or taxpayer, the county commission of the county,
or, as to fish ladders, at the suit of the director of the
division of natural resources, and, if the same endangers
county roads, the county commission may abate such
nuisance peaceably without such suit.

CHAPTER 62
(H. B. 4101—By Delegate Pethtel)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-six of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article ten, relating to enacting the uniform transfer on
death security registration act; definitions; registration
in beneficiary form, sole or joint tenancy ownership;
applicable law; origination of registration in beneficiary
form; form of registration in beneficiary form; effect of
registration in beneficiary form; ownership on death of
owner; protection of registering entity; nontestamentary
transfer on death; terms, conditions and forms for
registration; short title; rules of construction; and
application of article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. UNIFORM TRANSFER ON DEATH SECURITY REGIS-
TRATION ACT.

§36-10-1. Definitions.
§36-10-2. Registration in beneficiary form; sole or joint tenancy ownership.
§36-10-3. Registration in beneficiary form; applicable law.
§36-10-4. Origination of registration in beneficiary form.
§36-10-5. Form of registration in beneficiary form.
§36-10-6. Effect of registration in beneficiary form.
§36-10-7. Ownership of death of owner.
§36-10-8. Protection of registering entity.
§36-10-10. Terms, conditions and forms for registration.
§36-10-11. Short title; rules of construction.
§36-10-12. Application of article.

§36-10-1. Definitions.

1 In this article, unless the context otherwise requires:

2 (1) "Beneficiary form" means a registration of a
3 security which indicates the present owner of the
4 security and the intention of the owner regarding the
5 person who will become the owner of the security upon
6 the death of the owner.

7 (2) "Devisee" means any person designated in a will
8 to receive a disposition of real or personal property.

9 (3) "Heirs" means those persons, including the
10 surviving spouse, who are entitled under the statutes of
11 intestate succession to the property of a decedent.

12 (4) "Person" means an individual, a corporation, an
13 organization or other legal entity.

14 (5) "Personal representative" includes executor,
15 administrator, successor personal representative, special
16 administrator and persons who perform substantially
17 the same function under the law governing their status.

18 (6) "Property" includes both real and personal
19 property or any interest therein and means anything
20 that may be the subject of ownership.

21 (7) "Register," including its derivatives, means to
22 issue a certificate showing the ownership of a certifi-
23 cated security or, in the case of an uncertificated
24 security, to initiate or transfer an account showing
25 ownership of securities.

26 (8) "Registering entity" means a person who origi-
27 nates or transfers a security title by registration, and
28 includes a broker maintaining security accounts for
29 customers and a transfer agent or other person acting
30 for or as an issuer of securities.

31 (9) "Security" means a share, participation, or other
32 interest in property, in a business, or in an obligation
33 of an enterprise or other issuer, and includes a certif-
34 icated security, an uncertificated security and a security
(10) "Security account" means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

§36-10-2. Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

§36-10-3. Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in
§36-10-4. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

§36-10-5. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD,” or by the words “pay on death” or the abbreviation “POD,” after the name of the registered owner and before the name of a beneficiary.

§36-10-6. Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner’s death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

§36-10-7. Ownership of death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§36-10-8. Protection of registering entity.
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(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if it registers a transfer of the security in accordance with section seven of this article and does so in good faith reliance (i) on the registration, (ii) on this article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this article.

(d) The protection provided by this article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.


(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this article and is not testamentary.

(b) This article does not limit the rights of creditors
of security owners against beneficiaries and other transfeerees under other laws of this state.

§36-10-10. Terms, conditions and forms for registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

§36-10-11. Short title; rules of construction.

(a) This article shall be known as and may be cited as the Uniform TOD Security Registration Act.

(b) This article shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this article among states enacting it.

(c) Unless displaced by the particular provisions of this article the principles of law and equity supplement its provisions.

§36-10-12. Application of article.

This article applies to registrations of securities in beneficiary form made before or after its initial enactment, by decedents dying on or after its initial enactment.

CHAPTER 63

(Com. Sub. for H. B. 4030—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 12, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and fifteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four and five, article one, chapter five-d of said code; to amend and reenact section one, article two, chapter five-f of said code; to further amend said article two by adding thereto two new sections, designated sections five and six; to amend and reenact sections one, two, three, four, four-a, five, seven, nine and twelve, article ten-a, chapter eighteen of said code; to amend article twelve-a, chapter nineteen of said code by adding thereto a new section, designated section one-a; and to amend and reenact sections one and four, article eighteen, chapter twenty-nine of said code, all
relating to the reorganization of certain governmental agencies; abolishing the division of tourism and parks, transferring functions related to parks and recreation to the division of natural resources, transferring functions related to tourism to the West Virginia development office and authorizing the governor to implement the transfer by executive action; imposing certain restrictions on contracts related to park facilities; changing compensation and expense reimbursement of the public energy authority and terminating power and duty of the authority to finance additional projects; abolishing the department of commerce, labor and environmental resources and providing for lines of authority for entities formerly within that department; continuing division of rehabilitation services as a division of the department of education and the arts under the secretary of the department of education and the arts; requiring report on West Virginia rehabilitation hospital; transferring the division of banking, the board of banking and financial institutions, and the lending rate board, to the department of tax and revenue; placing the hospital finance authority, the municipal bond commission and the public energy authority under the board of investments for purposes of administrative support and liaison; authorizing the governor to transfer independent boards from agencies whose decisions they may be called upon to review, and providing for specific legislation to be recommended to the Legislature; requiring director of debt management commission and secretary of the department of administration to report on recommended administrative and legislative actions for boards and commissions issuing bonds or incurring debt; abolishing the farm management commission and transferring institutional farms to the department of agriculture; requiring commissioner of agriculture to report on recommended use or disposition of property transferred; and changing the name of the railroad maintenance authority to the West Virginia state rail authority and changing compensation and expense reimbursement of members.

Be it enacted by the Legislature of West Virginia:
That sections twelve and fifteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections four and five, article one, chapter five-d of said code be amended and reenacted; that section one, article two, chapter five-f of said code be amended and reenacted; that said article two be further amended by adding thereto two new sections, designated sections five and six; that sections one, two, three, four, four-a, five, seven, nine and twelve, article ten-a, chapter eighteen of said code be amended and reenacted; that article twelve-a, chapter nineteen of said code be amended by adding thereto a new section, designated section one-a; and that sections one and four, article eighteen, chapter twenty-nine be amended and reenacted, all to read as follows:

Chapter
5D. Public Energy Authority Act.
5F. Reorganization of the Executive Branch of State Government.
18. Education.
19. Agriculture.
29. Miscellaneous Boards and Officers.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-12. Abolishment of the division of tourism and parks; transfer of functions.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of director; termination of contract by the director; necessity for prior legislative approval before certain lodge, cabin, camping, golf facility, including pro shop operations, ski facility or gift shop facilities are placed under contract.

§5B-1-12. Abolishment of the division of tourism and parks; transfer of functions.

(a) The division of tourism and parks and the office of commissioner of tourism and parks is hereby abolished effective the first day of July, one thousand nine hundred ninety-five. Not later than the first day of January, one thousand nine hundred ninety-five, the
sections and functions of the division of tourism and parks related to state parks, state recreation areas and wildlife recreation areas shall be transferred to the division of natural resources and all sections and functions of the division of tourism and parks related to tourism shall be transferred to the West Virginia development office.

(b) The governor shall, by executive order, implement the transfer of sections and functions provided for in subsection (a) of this section. The governor may provide by said executive order for the transfer, in whole or in part, of any section in the division of tourism and parks and the offices, assets, liabilities, contracts, property, records, personnel, and functions of any section in the division of tourism and parks. The governor may also provide by said executive order for the merger, combination and renaming of any section in the division of tourism and parks. Notwithstanding any provisions in this code to the contrary, no privatization of any park may occur without statutory authority.

(c) The authority to make transfers as provided in subsection (a) of this section shall expire on the first day of January, one thousand nine hundred ninety-five. The authority granted in this section shall not be construed to permit the governor to transfer the duty and authority to manage any particular state park or state recreation area without transferring the duty and authority to manage all state park and recreation areas.

(d) Upon transfers as authorized in subsection (a) of this section, the governor may transfer the funds appropriated to the section transferred or attributable to the function transferred in order to implement the transfer: Provided, That the authority to transfer funds under this section shall expire on the thirtieth day of June, one thousand nine hundred ninety-five: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other dedicated account or fund for any use or purpose other than the purpose for which the account or fund is dedicated: Provided further, That nothing herein shall be construed to prohibit the
expenditure of lottery proceeds for those purposes specifically authorized in subsection (i), section eighteen, article twenty-two, chapter twenty-nine of this code: And provided further, That of any funds transferred which were appropriated to the division of tourism and parks and allocated for purposes of advertising and marketing expenses for the promotion and development of tourism, not less than twenty percent of the funds shall be expended to advertise, promote and market state parks, state forests, state recreation areas or cultural and wildlife recreational resources.

(e) Upon the exercise of the powers granted in subsection (a) of this section, the governor shall submit to the Legislature a report setting forth the reorganization implemented by executive action pursuant to this section, any recommendations for further reorganization requiring legislative action and drafts of specific legislation for consideration by the Legislature during the regular session in the year one thousand ninety-five to conform this code to the reorganization implemented by executive action.

(f) All persons employed on the effective date of this section in the division of tourism and parks, the duties and functions of which are transferred pursuant to this section, shall retain their coverage under the civil service system and all matters relating to job classification, job tenure, salary and conditions of employment are governed by the provisions of article six, chapter twenty-nine of this code. The director of the division of natural resources may employ up to six additional unclassified personnel to carry out the purposes of this section, but such additional persons may not be employed to replace any existing employees of the division of tourism and parks transferred to the division of natural resources pursuant to this section.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of director; termination of contract by the director; necessity for prior legislative approval
before certain lodge, cabin, camping, golf facility, including pro shop operations, ski facility or gift shop facilities are placed under contract.

1 When it is considered necessary by the director to enter into a contract with a person, firm, corporation, foundation or public agency for the operation of a commissary, restaurant, recreational facility or other such establishment within the state parks and public recreation system, the contract shall be for a duration not to exceed ten years, but the contract may provide for an option to renew at the director's discretion for an additional term or terms not to exceed ten years at the time of renewal. Prior to initiating a contract for the operation of a state park lodge, cabin, campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall submit the specific location which would be subject to the contract to the Legislature for its approval and authorization: Provided, That for contracts for gift shops or golf facilities in specific locations operated under contract on the effective date of this section, and contracts for a duration of not more than one year which provide for options to renew for not more than five succeeding years, notice to the joint committee on government and finance, but not specific legislative authorization and approval, is required prior to execution of the contract.

24 Any contract entered into by the director shall provide an obligation upon the part of the operator that he or she maintain a level of performance satisfactory to the director, and shall further provide that any contract may be terminated by the director in the event he or she determines that the performance is unsatisfactory and has given the operator reasonable notice of the termination.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.
§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

The West Virginia public energy authority heretofore created is hereby continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are determined to be essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by a nine member board known as the West Virginia public energy authority board which is hereby continued. The nine members of the board shall be appointed by the governor, by and with the advice and consent of the Senate. Two members shall be appointed to serve a term of two years; two members shall be appointed to serve a term of three years; two members shall be appointed to serve a term of four years; two members shall be appointed to serve a term of five years; and one member shall be appointed to serve a term of six years. The successor of each such appointed member shall be appointed for a term of five years, 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 of his successor. No more than five of the board members shall at any one time belong to the same political party. No more than four members of the board shall be employed by or associated with any industry this authority is empowered to affect. Two members of the board shall be
persons who have significant experience in the advocacy of environmental protection. Board members may be reappointed to serve additional terms.

All members of the board shall be citizens of the state. Before entering upon his or her duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

Annually the board shall elect one of its members as chairman and another as vice chairman, and shall appoint a secretary-treasurer, who need not be a member of the board. Five members of the board shall constitute a quorum and the affirmative vote of the majority of members present at any meeting 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 and the authority. The person appointed as secretary-treasurer, including a board member if he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

Each member of the board shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. All such expenses incurred by the board shall be payable solely from funds of the authority or from funds appropriated to the authority for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority appointed by the governor, with the advice and consent
of the Senate, who shall serve at the governor's will and
pleasure, who shall be responsible for managing and
administering the daily functions of the authority and
for performing any and all other functions necessary or
helpful to the effective functioning of the authority,
together with all other functions and powers as may be
delegated by the board.

§5D-1-5. Powers, duties and responsibilities of authority
generally; termination of certain powers.

The West Virginia public energy authority is hereby
granted, has and may exercise all powers necessary or
appropriate to carry out and effectuate its corporate
purpose. The authority shall have the power and
capacity to:

(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 to
implement and make effective its powers and duties,
such rules to be promulgated in accordance with the
provisions of chapter twenty-nine-a of this code.

(2) Adopt and use an official seal and alter the same
at pleasure.

(3) Maintain a principal office and, if necessary,
regional suboffices 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 this
article. Any actions against the authority shall be
brought in the circuit court of Kanawha County.

(5) Foster, encourage and promote the mineral
development industry.

(6) Represent the state with respect to national
initiatives concerning the mineral development indus-
try, and international marketing activities affecting the
mineral development industry.

(7) Engage in strategic planning to enable the state
to cope with changes affecting or which may affect the
30 mineral development industry.

31 (8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any electric power project or natural gas transmission project. In the event that an electric power project to be constructed pursuant to this article is designed to utilize coal wastes for the generation of electricity or the production of other energy, such project shall also be capable of using coal as its primary energy input: Provided, That it shall be demonstrated to the authority's satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the term of the bonds or notes issued by the authority to finance the project and are accessible to the project.

34 Provided,

39 (9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its electric power projects or natural gas transmission projects for such rentals or amounts and upon such terms and conditions as the public energy authority board may deem advisable.

44 (10) Finance one or more electric power projects or natural gas transmission projects by making secured loans to persons other than governmental agencies to provide funds for the acquisition, by purchase, construction or otherwise, of any such project or projects.

54 Provided,

59 (11) Issue bonds for the purpose of financing the cost of acquisition and construction of one or more electric power projects or natural gas transmission projects or any additions, extensions or improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of this code: Provided,
That the principal and interest on such bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) In the event that the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, That the economic development authority shall not issue any such bonds except by an act of general law: Provided, however, That the authority shall require that in the construction of any such project, prevailing wages shall be paid as part of a project specific agreement which also takes into account terms and conditions contained in the West Virginia-Ohio valley market retention and recovery agreement or a comparable agreement.

(13) 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.

(14) 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 real property 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, and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests acquired hereunder in such manner and upon such terms and conditions as the authority deems proper: Provided, That if the authority determines that land or an interest therein acquired by the
authority through the exercise of the power of eminent domain for the purpose of this article is no longer necessary or useful for such purposes, and if the authority desires to sell such land or interest therein, the authority shall first offer to sell such land or interest to the owner or owners from whom it was acquired, at a price equal to its fair market value: Provided, however, That if the prior owner or owners shall decline to reacquire the land or interest therein, the authority shall be authorized to dispose of such property by direct sale, auction, or competitive bidding. In no case shall such land or an interest therein acquired under this subdivision be sold for less than its fair market value. This article does not authorize the authority 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, except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of such public utility or common carrier, and in the event of the taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

The term “real property” as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section “fair market value” shall be determined by an appraisal made by an independent person or firm chosen by the authority. The

(15) 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: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the construction of such a project.

(16) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accountants, 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 bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(17) Receive and accept from any federal agency, or any other source, grants for or in aid of the construction of any project or for research and development with respect to electric power projects, natural gas transmission projects or other energy projects, and receive and accept aid or contribution from any source of money, property, labor or other things of value to be held, used and applied only for the purpose for which such grants and contributions are made.

(18) Purchase property coverage and liability insu-
ranc for any electric power project or natural gas transmission project or other energy project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance which may be provided for under a resolution authorizing the issuance of bonds or in any trust agreement securing the same.

(19) Charge, alter and collect transportation fees and other charges for the use or services of any natural gas transmission project as provided in this article.

(20) Charge and collect fees or other charges from any energy project undertaken as a result of this article.

(21) When the electric power project is owned and operated by the authority, charge reasonable fees in connection with the making and providing of electric power and the sale thereof to corporations, states, municipalities or other entities in the furtherance of the purposes of this article.

(22) Purchase and sell electricity or other energy produced by an electric power project in and out of the state of West Virginia.

(23) Enter into wheeling contracts for the transmission of electric power over the authority’s or another party’s lines.

(24) Make and enter into contracts for the construction of a project facility and joint ownership with another utility, and the provisions of this article shall not constrain the authority from participating as a joint partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued by the authority.
(27) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the public service commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending, and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

(30) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.
(31) Make or enter into management contracts with a second party or parties to operate any electric power project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

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

(33) Nothing herein shall be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

(34) The authority shall, after consultation with other agencies of state government having environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-a of this code, to establish standards and principles to be applied to all projects in assessing the effects of projects on the environment: Provided, That when a proposed project requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority and be made available prior to any final decision or final approval of any project and prior to the conducting of any public hearings regarding the project, and in any such case, no assessment pursuant to the legislative rule need be made.

(35) The power and authority granted to the public energy authority pursuant to this section and section six of this article to initiate, acquire, construct, finance or issue bonds for electric power projects and transmission facilities, or to exercise the power of eminent domain with respect to any project, shall terminate on the effective date of this section: Provided, That nothing herein shall be construed to affect the validity of any act of the public energy authority prior to the effective date of this section or to impair the rights of bondholders with respect to bonds or other evidence of indebtedness issued prior to the effective date of this section. Following the effective date of this section, the public energy authority may exercise any power expressly granted pursuant to this section or section six of this
article with respect to any project or facility previously
constructed or acquired, any existing contractual
obligations, and any outstanding bonded indebted-
ness.

CHAPTER 5F. REORGANIZATION OF THE
EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.
§5F-2-5. Independent appeal boards.
§5F-2-6. Reorganization of boards issuing or incurring debt.

§5F-2-1. Transfer and incorporation of agencies and
boards; funds.

(a) The following agencies and boards, including all
of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are
hereby transferred to and incorporated in and shall be
administered as a part of the department of
administration:

(1) Building commission provided for in article six,
chapter five of this code;

(2) Public employees insurance agency and public
employees insurance agency advisory board provided for
in article sixteen, chapter five of this code;

(3) Council of finance and administration provided for
in article one, chapter five-a of this code;

(4) Employee suggestion award board provided for in
article one-a, chapter five-a of this code;

(5) Governor's mansion advisory committee provided
for in article five, chapter five-a of this code;

(6) Commission on uniform state laws provided for in
article one-a, chapter twenty-nine of this code;

(7) Education and state employees grievance board
provided for in article twenty-nine, chapter eighteen
and article six-a, chapter twenty-nine of this code;

(8) Board of risk and insurance management provided
for in article twelve, chapter twenty-nine of this code;
(9) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(10) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(11) Division of personnel provided for in article six, chapter twenty-nine of this code;

(12) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(13) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which shall include:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code;

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:

(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;
(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

(iii) Mine inspectors’ examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b, which shall include:

(i) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(ii) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(D) Division of tourism, which shall consist of those functions related to the promotion of the state’s tourism provided for in article one, chapter five-b of this code;

(E) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett Island historical state park provided for in article eight, chapter twenty-nine of this code shall be under the division of natural resources;

(F) Division of forestry provided for in article one-a, chapter nineteen of this code;

(G) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(H) Water development authority and board provided for in article one, chapter twenty-two-c of this code;

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code.

(3) Bureau of environment:

(A) Air quality board provided for in article five, chapter twenty-two of this code;

(B) Solid waste management board provided for in article three, chapter twenty-two of this code;

(C) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-
b of this code;
(D) Division of environmental protection provided for in article one, chapter twenty-two of this code;
(E) Surface mine board of review provided for in article four, chapter twenty-two-b of this code;
(F) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code;
(G) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code;
(H) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;
(2) Educational broadcasting authority provided for in article five, chapter ten of this code;
(3) University of West Virginia board of trustees provided for in article two, chapter eighteen-b of this code;
(4) Board of directors of the state college system provided for in article three, chapter eighteen-b of this code;
(5) Joint commission for vocational-technical-occupa-
tional education provided for in article three-a, chapter eighteen-b of this code;
(6) Division of culture and history provided for in article one, chapter twenty-nine of this code; and
(7) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.

(d) The following agencies and boards, including all
of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are
hereby transferred to and incorporated in and shall be
administered as a part of the department of health and
human resources:

(1) Human rights commission provided for in article
eleven, chapter five of this code;

(2) Division of human services provided for in article
two, chapter nine of this code;

(3) Division of health provided for in article one,
chapter sixteen of this code;

(4) Office of emergency medical services and advisory
council thereto provided for in article four-c, chapter
sixteen of this code;

(5) Health care cost review authority provided for in
article twenty-nine-b, chapter sixteen of this code;

(6) Commission on aging provided for in article
fourteen, chapter twenty-nine of this code;

(7) Commission on mental retardation provided for in
article fifteen, chapter twenty-nine of this code; and

(8) Women’s commission provided for in article
twenty, chapter twenty-nine of this code.

(e) The following agencies and boards, including all
of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are
hereby transferred to and incorporated in and shall be
administered as a part of the department of military
affairs and public safety:

(1) Adjutant general’s department provided for in
article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter
fifteen of this code;

(3) Military awards board provided for in article one-
g, chapter fifteen of this code;

(4) Division of public safety provided for in article
two, chapter fifteen of this code;
(5) Office of emergency services and disaster recovery board provided for in article five and emergency response commission provided for in article five-a, chapter fifteen of this code;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Appraisal control and review commission provided for in article one-a, chapter eleven of this code;

(3) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(4) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(5) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(6) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven and
article two, chapter sixty of this code;

(7) Division of professional and occupational licenses
which may be hereafter created by the Legislature;

(8) Board of banking and financial institutions
provided for in article three, chapter thirty-one-a of this
code;

(9) Lending and credit rate board provided for in chapter forty-seven-a of this code; and

(10) Division of banking provided for in article two,
chapter thirty-one-a of this code.

(g) The following agencies and boards, including all
of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are
hereby transferred to and incorporated in and shall be
administered as a part of the department of
transportation:

(1) Road commission provided for in article two,
chapter seventeen of this code;

(2) Division of highways provided for in article two-
a, chapter seventeen of this code;

(3) Parkways, economic development and tourism
authority provided for in article sixteen-a, chapter
seventeen of this code;

(4) Division of motor vehicles provided for in article
two, chapter seventeen-a of this code;

(5) Driver's licensing advisory board provided for in
article two, chapter seventeen-b of this code;

(6) Aeronautics commission provided for in article
two-a, chapter twenty-nine of this code;

(7) State rail authority provided for in article
eighteen, chapter twenty-nine of this code; and

(8) Port authority provided for in article sixteen-b,
chapter seventeen of this code.

(h) The following agencies and boards, including all
of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the West Virginia Housing Development Fund:

(1) The municipal bond commission.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(j) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter, and all boards which are appellate bodies or were otherwise established to be independent decisionmakers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(k) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall
henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

(l) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer shall be construed to be solely for purposes of administrative support and liaison with the office of the governor, a department secretary, or a bureau. The bureaus created by the Legislature upon the abolish­ment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four shall be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section shall be construed to extend the powers of department secretaries under section two of this article to any person other than a department secretary, and nothing herein shall be construed to limit or abridge the statutory powers and duties of statutory commissioners or officers pursuant to this code. Upon the abolishment of the office of secretary of the department of commerce, labor and environmental resources, the governor may appoint a statutory officer serving functions formerly within that depart­ment to a position which was filled by the secretary ex officio.

§5F-2-5. Independent appeal boards.

(a) The Legislature finds and declares that it may be desirable and appropriate for certain boards and commissions created by the Legislature which may be called upon to review, adjudicate or reverse administra­tive actions and decisions of agencies of the state to be fiscally and functionally independent of the agency or agencies reviewed, to issue rules and manage day-to-day operations independently, and to function as independent and autonomous instrumentalities of the state.

(b) To achieve this purpose, the governor may by executive order provide for the transfer from the departments and agencies of the state of any or all of the following boards or commissions which are appellate
bodies or were otherwise established to be independent
decisionmakers:

(1) Human rights commission provided for in article
eleven, chapter five of this code;

(2) Workers compensation appeals board and office of
judges provided for in article five, chapter twenty-three
of this code;

(3) Air quality board provided for in article two,
chapter twenty-two-b of this code;

(4) Environmental quality board provided for in
article three, chapter twenty-two-b of this code;

(5) Surface mine board provided for in article four,
chapter twenty-two-b of this code;

(6) Board of appeals provided for in article five,
chapter twenty-two-a of this code; and

(7) Shallow gas well review board provided for in
article eight, chapter twenty-two-c of this code.

(c) Upon any transfer by executive action authorized
in subsection (b) of this section, the governor may
provide for administrative support by a department or
agency of the state to the board or commission trans-
ferred in the same manner as is provided by a depart-
ment secretary and for liaison with the office of the
governor with respect to budgetary and administrative
matters through a department or agency of the state:
Provided, That nothing in this section shall be construed
to affect the existence, powers, authority and duties of
independent boards and commissions or the member-
ship, terms and qualifications of members of such
boards and commissions.

(d) The authority to make transfers as provided in
subsection (a) of this section shall expire on the first day
of January, one thousand nine hundred ninety-five.
Upon the exercise of the powers granted in subsection
(b) of this section, the governor shall submit to the
Legislature a report setting forth the reorganization
implemented by executive action pursuant to this
section, any recommendations for further reorganization
requiring legislative action and drafts of any recom-
mended legislation for consideration by the Legislature
during the regular session in the year one thousand nine
hundred ninety-five to conform this code to the reorgan-
ization implemented by executive action.

(e) Upon transfers as authorized in subsection (a) of
this section, the governor may transfer the funds
appropriated to the department or agency of the state
attributable to the functions of the board or commission
transferred in order to implement the transfer: Pro-
vided, That the authority to transfer funds under this
section shall expire on the thirtieth day of June, one
thousand nine hundred ninety-five: Provided, however,
That no funds may be transferred from a special
revenue account, dedicated account, capital expenditure
account or any other dedicated account or fund for any
use or purpose other than the purpose for which the
account or fund is dedicated.

(f) Nothing in this section shall be construed to affect
the consolidation of legal, technical and support person-
nel and of procedures of the air quality board, environ-
mental quality board and surface mining board pro-
vided for in article one, chapter twenty-two-b of this
code.

§5F-2-6. Reorganization of boards issuing or incurring
debt.

(a) The Legislature finds and declares that boards and
commissions empowered to issue bonds, incur indebted-
ness and provide financing or financial services for a
public purpose may in some cases benefit the public
interest or operate more efficiently through consolida-
tion of legal, technical and support staff or services,
sharing of office space, consolidation of procedures, and
cooperation to identify circumstances where one entity
may provide services for another, including, but not
limited to, circumstances where one board or commis-
sion may finance the programs of another.

(b) In furtherance of the goal of increased efficiency
and cooperation, the director of the debt management
division of the board of investments and the secretary
of the department of administration are jointly charged with the responsibility of developing and presenting to the boards and commissions, to the board of investments, to the governor, and to the Legislature recommendations for administrative and statutory change. Not later than the first day of January, one thousand nine hundred ninety-five, the director and the secretary shall present to the governor and the Legislature a report setting forth their findings, any recommendations for administrative or statutory change and drafts of specific legislation for consideration by the Legislature during the regular session in the year one thousand nine hundred ninety-five.

(c) The director and the secretary shall invite representatives of the following boards to participate in an ad hoc working group to develop policies and respond to initiatives recommended by the director and the secretary:

1. Municipal bond commission provided for in article three, chapter thirteen of this code;
2. Hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code;
3. Solid waste management board provided for in article twenty-six, chapter sixteen of this code;
4. Water development authority provided for in article five-c, chapter twenty of this code; and
5. Housing development fund provided for in article eighteen, chapter thirty-one of this code.

The working group shall identify circumstances where one entity may provide services for another, including, but not limited to, circumstances where one spending unit may finance the programs of another, to ensure that the terms of any indebtedness are the terms most beneficial to the state. The director and the secretary shall facilitate cooperation between the boards and commissions in developing specific legislation for consideration by the Legislature during the regular session of the Legislature in the year one thousand nine hundred ninety-five.
(d) On and after the effective date of this section, the board of investments, with the assistance of the director of the West Virginia debt management commission, shall provide administrative support and shall act as liaison with the office of the governor with respect to the following entities:

(1) Municipal bond commission provided for in article three, chapter thirteen of this code: Provided, That nothing in this section shall be construed to limit the independence and autonomy of the municipal bond commission;

(2) Hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code; and

(3) Public energy authority provided for in article one, chapter five-d of this code.

CHAPTER 18. EDUCATION.

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-1. Definitions.
§18-10A-2. Division of rehabilitation services.
§18-10A-3. Director of division of vocational rehabilitation; powers and duties.
§18-10A-4. Vocational rehabilitation services.
§18-10A-4a. Attendant care services.
§18-10A-12. Vocational evaluation and work adjustment program for disadvantaged individuals.

§18-10A-1. Definitions.

1 As used in this article and article ten-b:

2 (1) "State board" means the secretary of the department of education and the arts, or where required by federal law, the board, commission or council designated by the secretary of the department of education and the arts to oversee certain functions of the division of rehabilitation services. All references in this code to the state board of vocational education, except where the context clearly indicates the provision of vocational education to other than disabled individuals, shall mean the state board defined by this subsection.
(2) "Division" means the division of vocational rehabilitation established by this article.

(3) "Director" means the director of the division of vocational rehabilitation.

(4) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in, an obstruction to occupational performance.

(5) "Disabled individual" means any person who has a substantial employment handicap.

(6) "Vocational rehabilitation" and "vocational rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, attendant care services, physical restoration, transportation, occupational licenses, occupational tools and equipment, including motor vehicles, maintenance, and training books and materials.

(7) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(8) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care not to exceed ninety days, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or
transitory conditions.

(9) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(11) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(12) "Regulations" means regulations made by the director with the approval of the secretary of the department of education and the arts or the state board.

(13) "Attendant care evaluation unit" means any agency certified by the division of vocational rehabilitation that employs a qualified evaluator to provide evaluations and attendant referrals such as the centers for independent living, the West Virginia rehabilitation center and any other unit approved by the division.

(14) "Attendant care services" means services which include, but are not limited to:

(a) Routine bodily functions such as bowel and bladder care;

(b) Dressing;

(c) Ambulation;

(d) Meal preparation and consumption;

(e) Assistance in moving in and out of bed;

(f) Bathing and grooming;

(g) Housecleaning and laundry; and

(h) Any other similar activity of daily living.

(15) "Attendant" means a self-employed individual who is trained to perform attendant care services and who works as an independent contractor.
§18-10A-2. Division of rehabilitation services.

The division of rehabilitation services is hereby transferred to the department of education and the arts created in article one, chapter five-f of this code. The secretary shall appoint any such board, commission, or council over the division to the extent required by federal law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and such boards, commissions, or councils as he or she is required by federal law to appoint, are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.

References in this article or article ten-b of this chapter to the state board of vocational education, the state board of rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities shall mean the secretary of education and the arts: Provided, That the designation of the department of education and the arts as the designated state agency for purposes of the state's participation in the state-federal rehabilitation program under the federal Rehabilitation Act of 1973 shall be effective upon a finding by the federal Rehabilitation Services Administration that the designation of the department of education and the arts is in conformity with requirements of federal law. Should the Rehabilitation Services Administration issue a formal finding of nonconformance, the state board of education shall be continued as the state board of rehabilitation, shall appoint such advisory boards as are required by federal law, and shall have such powers and duties as are set forth in this article. All references in the code to the division of vocational rehabilitation shall mean the division of rehabilitation services, and all references to the director of the division of vocational rehabilitation shall mean the director of the division of rehabilitation services.

The director shall review the administrative and fiscal structure of the West Virginia rehabilitation hospital and shall report not later than the thirtieth day
of September, one thousand nine hundred ninety-four, to the joint committee on government and finance. The report shall include a complete analysis of income and expenditures attributable to the operation of the hospital, analysis of alternatives for administrative and fiscal modifications, and recommendations and conclusions as to whether administrative and fiscal modifications should be implemented.

Within thirty days of the effective date of this section the secretary of education and the arts shall hold a public hearing for the purpose of hearing any concerns from employees, persons served by the division or other interested persons related to any impact on programs or services by the continuation of the division of rehabilitation services under the department of education and the arts.

Notwithstanding the provisions of article ten, chapter four of this code, the division of rehabilitation services shall terminate on the first day of July, one thousand nine hundred ninety-five, to allow for the completion of a preliminary performance review by the joint committee on government operations.

§18-10A-3. Director of division of vocational rehabilitation; powers and duties.

The division shall be administered, under the general supervision and direction of the secretary of the department of education and the arts or, if required by federal law his or her designated state board, by a director appointed by said secretary, or if required by federal law his or her designated state board in accordance with established personnel standards and on the basis of his or her education, training, experience and demonstrated ability.

In carrying out his or her duties under this article, the director shall:

(1) Appoint such personnel as he or she deems necessary for the efficient performance of the functions of the division.

(2) Establish a merit system of personnel manage-
ment, or in lieu thereof, avail himself or herself of the
services of the state merit system upon payment of a fair
share of the expenses of the operation of such system.

(3) Make regulations governing the protection of
records and confidential information; the manner and
form of filing applications for vocational rehabilitation
services, eligibility therefor, and investigation and
determination thereof; procedures for fair hearings; and
such other matters as may be necessary or desirable in
accomplishing the purposes of this article.

(4) Have the authority to establish and operate a staff
development program for the employees of the division
and may, in furtherance of such a program, and
utilizing any funds appropriated or made available, for
such purpose, pay to such employees compensation or
expenses, or both, while such employees are pursuing
approved training courses or academic studies for the
purpose of becoming better equipped for their employ-
ment in such division; such staff development program
shall be conducted subject to appropriate rules as
adopted by the director and approved by the state board:
Provided, That such rules shall include reasonable
provisions for the return of any employee, receiving the
benefits of such training, for a reasonable period of duty,
or for reimbursement to the state for expenditures
incurred on behalf of the training of such employee.

(5) Establish appropriate subordinate administrative
units within the division.

(6) Prepare and submit to the secretary of the
department of education and the arts or his or her
designated state board annual reports of activities and
expenditures and, prior to each regular session of the
Legislature, estimates of sums required for carrying out
the provisions of this article and estimates of the
amounts to be made available for this purpose from all
sources.

(7) Make requisition for disbursement, in accordance
with regulations of the funds available for vocational
rehabilitation purposes.
(8) Take such other action as may be deemed necessary or appropriate to carry out the purposes of this article.

§18-10A-4. Vocational rehabilitation services.

1. Except as otherwise provided by law the division shall provide vocational rehabilitation services to disabled individuals determined by the director to be eligible therefor, and for this purpose the division is authorized among other things to:

2. (1) Cooperate with other departments, agencies and institutions, both public and private, in providing for the vocational rehabilitation of disabled individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the provisions of this article, such programs, facilities and services as may be necessary or desirable.

3. (2) Enter into reciprocal agreements with any other state to provide for the vocational rehabilitation of residents of such state.

4. (3) Conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals.

§18-10A-4a. Attendant care services.

1. The purpose of this section is to declare the intent of the state to enable severely physically disabled adults to enter or continue in the workforce, to enhance the opportunities for disabled individuals to participate fully in society through self-fulfillment and economic independence.

2. The division shall administer the provision of attendant care services as a separate and distinct program to any severely physically disabled adult who is present in the state at the time of filing their application. The division may administer the program or may enter into a contract with a private or public organization to administer and operate the program. If the program is administered by the division, the funds shall be used as payments for attendant care services, evaluations, attendant management training and administrative
costs. If the division enters into a contract with a private
or public organization, the private or public organiza-
tion may use the funds as payments for attendant care
services, evaluations, attendant management training
and for reasonable administrative costs. The administra-
tive costs allowed under the contract shall be negotiated
and approved by the director. The division shall
establish a waiting list of eligible disabled individuals
if sufficient funds are not available under the program.
Determination will be made by a certified evaluation
unit that such adult needs fourteen or more hours of
attendant care per week: Provided, That the severely
physically disabled adult is eighteen years of age or
older, is employed or will be ready for employment
within six months of the time application for services
is made and has a total income of no more than thirty
thousand dollars annually. The maximum income
allowable will be recalculated each year based on
changes in the consumer price index. The eligible adult
shall be reevaluated by a certified evaluation unit at the
direction of the division at least once every two years
to determine their continuing need for attendant care
services. The eligible adult is responsible for hiring,
firing and supervising his or her attendant. Any subsidy
received under the provisions of this section for the
purpose of providing attendant care services shall not
be considered income to the severely disabled person for
any purpose to the extent permitted by federal law and
regulations (IRS Act of 1954) but shall supplement any
other aid for which the adult is eligible.

The division is responsible for accepting applications
for attendant care services from severely physically
disabled adults and making determinations of eligibility. The division shall provide for certifying evaluation
units and shall make determination regarding certifica-
tion for each evaluation unit which makes application.

The cost of evaluation fees, training of both attendants
and eligible adults in the management of attendants and
provision of attendant care services shall be borne by the
division from funds allocated for this program.

The division shall acquire from a certified evaluation
unit an evaluation of the attendant care needs for each applicant. Within thirty days of the time that any application for attendant care services is filed, the applicant shall be notified that arrangements have been made for the applicant to be evaluated by a certified evaluation unit. Based upon the evaluator's information, the division shall develop a plan for each eligible applicant that shall include the amount of attendant care time needed per week and an estimate of the length of time the attendant care services will be needed. Notice shall be given to the applicant and the evaluator as soon as a decision has been made regarding the eligibility of each applicant. If the recommendations of the certified evaluation unit are not followed, the division shall include the reasons for reaching its decision in the notice sent to the applicant and evaluator.

The division shall promulgate policies and procedures for the administration of this program. The division shall adopt rules for full fiscal accountability for all appropriated funds and financial assistance shall be given in accordance with a sliding payment scale established by the division. The division shall also establish a consumer advisory committee for the purpose of advising on policies and procedures and related matters involved in administration of the program.

The division shall be responsible for establishing an appeals procedure for those applicants who have been denied attendant care services and for informing all applicants of their right to appeal a decision of the division.


The division, or if required by federal law the board, commission or council appointed by the secretary of the department of education and the arts to oversee certain functions of the division, shall make agreements or plans to cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and to this end may adopt such methods of administration as are found by the federal
government to be necessary for the proper and efficient
operation of such agreements or plans for vocational
rehabilitation and to comply with such conditions as
may be necessary to secure the full benefits of such
federal statutes.


1 The director is hereby authorized and empowered to
2 accept and use gifts made unconditionally by will or
3 otherwise for carrying out the purposes of this article.
4 Gifts made under such conditions as in the judgment of
5 the state board are proper and consistent with the
6 provisions of this article may be so accepted and shall
7 be held, invested, reinvested, and used in accordance
8 with the conditions of the gift.


1 Any individual applying for or receiving vocational
2 rehabilitation who is aggrieved by any action or inaction
3 of the division shall be entitled, in accordance with
4 regulations, to a fair hearing.

§18-10A-12. Vocational evaluation and work adjustment
program for disadvantaged individuals.

1 The division, under the direction of any federally
2 mandated board, commission or council appointed by
3 the secretary of the department of education and the
4 arts, is authorized and directed to cooperate with the
5 federal government in providing vocational evaluation
6 and work adjustment services to disadvantaged
7 individuals.

8 "Vocational evaluation and work adjustment services"
9 include, as appropriate in each case, such services as:

10 (a) A preliminary diagnostic study to determine that
11 the individual is disadvantaged, has an employment
12 handicap, and that services are needed;

13 (b) A thorough diagnostic study consisting of a
14 comprehensive evaluation of pertinent medical, psycho-
15 logical, vocational, educational, cultural, social, and
16 environmental factors which bear on the individual's
17 handicap to employment and rehabilitation potential
including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

(c) Services to appraise the individual's patterns of work behavior and ability to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

(d) Any other goods or services provided to a disadvantaged individual, determined (in accordance with regulations of the federal government) to be necessary for, and which are provided for the purpose of, ascertaining the nature of the handicap to employment and whether it may reasonably be expected the individual can benefit from vocational rehabilitation services or other services available to disadvantaged individuals;

(e) Outreach, referral, and advocacy; and

(f) The administration of these evaluation and work adjustment services.

As used in this section, the term "disadvantaged individuals" means: (1) Disabled individuals as defined in subdivision (5), section one of this article; (2) individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records, or other conditions which constitute a barrier to employment; and (3) other members of their families when the provision of vocational rehabilitation services to family members is necessary for the rehabilitation of the individual described in subdivision (1) or (2) above.

CHAPTER 19. AGRICULTURE

ARTICLE 12A. LAND DIVISION.
§19-12A-1a. Farm management commission abolished; property transferred; powers and duties of commissioner of agriculture.

1 (a) The farm management commission previously established by this article is hereby abolished. The real and personal property held by the commission, including all institutional farms and all easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories and farm facilities, operating revenue funds for those operations, and all employees of the farm management commission, are hereby transferred to the department of agriculture. The commissioner of the department of agriculture shall have all those powers, duties and responsibilities previously vested in the farm management commission and the farm management director pursuant to this article.

(b) Not later than the first day of January, one thousand nine hundred ninety-five, the commissioner of the department of agriculture shall report to the Legislature on the optimum use or disposition of each institutional farm transferred pursuant to this section. The commissioner shall set forth the objectives of the agency with respect to the land, the criteria by which the agency has determined the optimum use or disposition of the property, and determinations as to whether the land shall be used in the production of food products, the production or development of natural resources, held for recreational or other specified uses, or sold, or leased in whole or in part. With respect to each institutional farm, the commissioner shall report on which properties are subject to reversionary clauses or other restrictions in deeds of conveyance which may affect permitted uses, or proposed sales or leases. With respect to each institutional farm, the commissioner shall report on projected revenues and expenses from operations. Planned activities and uses with respect to the land shall be detailed for at least five years specifically and at least ten years generally and shall include a cost benefit analysis of options or alternatives for action. In the case of land managed for production of timber, the commissioner shall report on projections for timber harvesting...
on a sustained-yield basis, income estimates, and the years in which income will be generated. The report shall detail planned actions to protect the land from erosion, fire, plant and animal pests, noxious insects, noxious weeds and plant and animal diseases. In the case of land subject to rights granted by existing contracts, leases, licenses or easements, the report shall include a determination as to whether the interest granted should be continued or withdrawn. In the case of land managed under land management plans adopted prior to the effective date of this section, land management plans shall be reviewed and amended as may be necessary. When appropriate, the commissioner shall consult with the secretaries of the various departments of state government and shall request from the secretaries suggestions for land use and resource development on the land. In the case of land recommended for sale, lease, or transfer, the report shall include the review and approval of the director of the West Virginia development office of the proposed use and alternate suggestions for use of any institutional farm which may be in the public interest. The report shall include a plan to transfer the Weston state hospital institutional farm, located at Weston, Lewis County, which shall include not less than three hundred fifty acres, to the department of health and human resources not later than the first day of July, one thousand nine hundred ninety-five, for use as a behavioral health center or other related purposes. If the report discloses that no reversionary clauses or other restrictions in deeds of conveyance prohibit the proposed use, and that the proposed use is practicable, the transfer of the Weston state hospital farm to the department of health and human resources is specifically authorized.

(c) Nothing in this section shall be construed to limit the duties imposed on the department of health and human resources and the division of corrections to purchase food products pursuant to section five of this article and to make interdepartmental transfers pursuant to section six of this article: Provided, That purchases shall be made from and transfers made to the department of agriculture.
(d) Nothing in this section shall be construed to invalidate any action or contractual obligation of the farm management commission prior to the effective date of this section.

(e) Notwithstanding the provisions of subsection (b) of this section, in any case where the farm management commission has determined by motion adopted prior to the effective date of this article that an institutional farm or part thereof should be transferred or disposed of, or authorized any formal agreement for this purpose, whether or not any documents related to the agreement have been reduced to writing or executed, the commissioner shall execute all documents and take all necessary actions to implement the transfer or disposition of the property.

(f) For any land transferred to the public land corporation for sale, exchange or transfer pursuant to section five of this article, the farm property shall be offered for sale in both small parcels of land and as whole farms and shall be sold in the form which brings the highest price for the total property. For purposes of this subsection, "small parcels" means parcels of no more than five acres.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.


§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority.


1 This article shall be known and cited as the "West Virginia State Rail Authority Act."

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority.

1 The West Virginia railroad maintenance authority, heretofore created, is hereby continued and redesig-
nated the West Virginia state rail authority. References
in this code to the West Virginia railroad maintenance
authority shall be understood and taken to mean the
West Virginia state rail authority. Nothing in this
article is intended to invalidate any action or obligation
of the West Virginia railroad maintenance authority
undertaken prior to the effective date of this article. The
authority is a governmental instrumentality of the state
and a body corporate. The exercise by the authority of
the powers conferred by this article and the carrying out
of its purposes and duties shall be deemed and held to
be, and are hereby determined to be, essential govern-
mental functions and for a public purpose.

The authority shall consist of seven members. The
secretary of the department of transportation shall be
a member ex officio. The other six members shall be
appointed by the governor, by and with the advice and
consent of the Senate, for a term of six years. Of the
members of the authority first appointed, two shall be
appointed for a term ending on the thirtieth day of June,
one thousand nine hundred seventy-seven, two shall be
appointed for a term ending two years thereafter and
two shall be appointed for a term ending four years
thereafter. A person appointed to fill a vacancy occur-
ring prior to the expiration of the term for which his
predecessor was appointed shall be appointed only for
the remainder of such term. Each authority member
shall serve until the appointment and qualification of his
successor. No more than three of the appointed authority
members shall at any one time belong to the same
political party. Appointed authority members may be
reappointed to serve additional terms.

All members of the authority shall be citizens of the
state. Each appointed member of the board, before
entering upon his duties, shall comply with the require-
ments of article one, chapter six of this code and give
bond in the sum of twenty-five thousand dollars in the
manner provided in article two, chapter six of this code.
The governor may remove any authority member for
cause as provided in article six, chapter six of this code.

Annually the authority shall elect one of its members
as chairman and another as vice chairman, and shall
appoint a secretary-treasurer, who need not be a
member of the authority. Four members of the authority
shall constitute a quorum and the affirmative vote of
four members shall be necessary for any action taken
by vote of the authority. No vacancy in the membership
of the authority shall impair the rights of a quorum by
such vote to exercise all the rights and perform all the
duties of the authority. The person appointed as
secretary-treasurer, including an authority member if
he is so appointed, shall give bond in the sum of fifty
thousand dollars in the manner provided in article two,
chapter six of this code.

The secretary of the department of transportation
shall not receive any compensation for serving as an
authority member. Each of the six appointed members
of the authority shall receive the same compensation and
expense reimbursement as is paid to members of the
Legislature for their interim duties as recommended by
the citizens legislative compensation commission and
authorized by law for each day or substantial portion
thereof engaged in the discharge of official duties. All
such compensation and expenses incurred shall be
payable solely from funds of the authority or from funds
appropriated for such purpose by the Legislature and
no liability or obligation shall be incurred by the
authority beyond the extent to which moneys are
available from funds of the authority or from such
appropriations.

There shall also be a director of the authority
appointed by the authority.

CHAPTER 64
(Com. Sub. for H. B. 4508—By Mr. Speaker, Mr. Chambers, and
Delegates Douglas, Gallagher, Trump and Kessel)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article eleven, chapter twenty-seven of the
code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article ten-a, chapter forty-four of said code; and to further amend said code by adding thereto a new chapter, designated chapter forty-four-a, relating to the appointment of guardians and conservators for persons in need of protection.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article ten-a, chapter forty-four of said code be repealed; and that said code be further amended by adding thereto a new chapter, designated chapter forty-four-a, to read as follows:

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

Article
2. Procedure for Appointment of Guardians and Conservators for Protected Persons.
3. Administration of Guardianships and Conservatorships.
4. Termination, Revocation and Modification of Appointments.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-1. Short title and legislative findings.
§44A-1-2. Determinations and appointments under prior law.
§44A-1-3. Advance directives.
§44A-1-5. Rules of civil procedure.
§44A-1-6. Relationship to other laws.
§44A-1-7. Transfer of venue following appointment.
§44A-1-8. Persons and entities qualified to serve as guardian or conservator.
§44A-1-10. Mandatory education.
§44A-1-11. Guardian or conservator who resides out of state to designate resident agent.
§44A-1-12. Appointment of guardian or conservator acting in another state.

§44A-1-1. Short title and legislative findings.

1 This chapter shall be known and may be cited as the
2 “West Virginia Guardianship and Conservatorship Act.”
3 The Legislature finds that section six, article eight of
The Constitution of the state of West Virginia gives it the discretionary authority to pass legislation which "... provides that all matters of probate, the appointment and qualification of personal representatives, guardians, committees and curators, and the settlements of their accounts..." be under the exclusive jurisdiction of circuit courts. The Legislature further finds and declares that the use of the word "all" does not require an interpretation that the Legislature must place every aspect of such matters with circuit courts, but, that because of the discretionary authority given, the Legislature may transfer, from time to time, only those matters which it believes would be better served under the jurisdiction of circuit courts.

The Legislature hereby further finds and declares that legal proceedings requiring a tribunal to determine whether persons should be appointed to manage the personal or financial affairs of individuals deemed mentally incompetent, mentally retarded or mentally handicapped involve considerations of constitutionally protected rights which can best be resolved within the circuit courts of this state.

§44A-1-2. Determinations and appointments under prior law.

(a) Any person determined to be "mentally incompetent," "mentally retarded" or "mentally handicapped" and for such reason deemed to be in need of a guardian or committee pursuant to any order entered and in effect prior to the effective date of this chapter is deemed to be a "protected person" within the meaning of this chapter, from and after its effective date, unless any such determination be revoked or otherwise modified.

(b) Any person heretofore appointed to serve as a committee for an incompetent person and any person appointed to serve as a guardian for a mentally retarded or for a mentally handicapped person, is, as of the effective date of this chapter, deemed to be: (1) A guardian, within the meaning of this chapter, if the order appointing such person provides that the person
so appointed has responsibility only for the personal affairs of a mentally incompetent, mentally retarded or mentally handicapped person; (2) a conservator, within the meaning of this chapter, if the order appointing such person provides that the person so appointed had responsibility only for managing the estate and financial affairs of a mentally incompetent, mentally retarded or mentally handicapped person; or (3) a guardian and a conservator, within the meaning of this chapter, if the order appointing such person does not set forth limitations of responsibility for both the personal affairs and the financial affairs of mentally incompetent, mentally retarded or mentally handicapped person.

(c) From and after the effective date of this chapter, the circuit courts shall have exclusive jurisdiction of all matters involving determinations of mental incompetency, mental retardation or mental handicap, including the jurisdiction of any proceedings pending as of such effective date. All orders entered prior to the effective date of this chapter in such cases shall remain in full force and effect until terminated, revoked or modified as provided herein.

(d) All persons heretofore appointed to serve as a committee or as a guardian shall retain their authority, powers and duties in such capacity, except to the extent that their authority, powers and duties as such guardian or conservator under the provisions of this chapter are more specifically enumerated, in which event such committee or guardian shall have the authority, powers and duties so enumerated.

Wherever in the constitution, the code of West Virginia, acts of the Legislature or elsewhere in law a reference is made to a committee for an incompetent person, such reference shall be read, construed and understood to mean guardian and/or conservator as defined in this chapter.

(e) The provisions of this chapter providing for the presentation of reports by guardians and the presentation of accountings by conservators shall not be retroactively applied, and applicable law in effect prior to the
effective date of this chapter shall control as to any
reports or accountings to be made or filed for any period
prior to the effective date of this chapter.

(f) As used in this section, “prior law” refers to article
eleven, chapter twenty-seven of this code, relating to the
appointment of committees for mentally incompetent
persons, and to article ten-a, chapter forty-four, relating
to the appointment of guardians for mentally retarded
and mentally handicapped persons, as such articles were
in effect prior to the effective date of this chapter.

§44A-l-3. Advance directives.
The existence of an advance directive such as a living
will, medical power of attorney or durable power of
attorney, duly executed by a person alleged to be a
“protected person”, as defined in section four of this
article, or the prior appointment of a surrogate decision-
maker for the protected person may eliminate, limit or
supersede the need for the assistance or protection of a
guardian or conservator, and any person so appointed
shall be the first preferred nominee for guardian or
conservator, as set forth in section eight, article two of
this chapter.

§44A-l-4. Definitions.
As used in this chapter, unless a different meaning
is clearly required by the context:

(1) “Conservator” means a person appointed by the
court who is responsible for managing the estate and
financial affairs of a protected person, and, where the
context plainly indicates, the term “conservator” shall
mean or include a “limited conservator” or a “temporary
conservator.”

(2) “Guardian” means a person appointed by the court
who is responsible for the personal affairs of a protected
person, and, where the context plainly indicates, the
term “guardian” shall mean or include a “limited
guardian” or a “temporary guardian.”

(3) “Protected person” means an adult individual,
eighteen years of age or older, who has been found by
a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, will not be considered sufficient evidence that the individual is a protected person within the meaning of this subsection.

(4) “Interested person” means (A) an individual who is the subject of a guardianship or conservatorship proceeding, (B) a guardian or conservator of a protected person, and (C) any other person with an actual and substantial interest in the proceeding, either generally or as to a particular matter, as distinguished from a person who has only a nominal, formal, or technical interest in or connection with the proceeding.

(5) “Limited conservator” means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment.

(6) “Limited guardian” means one appointed by the court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment.

(7) “Person” means, generally, a natural person, any corporation, association, partnership or other business entity, any political subdivision or other public agency, or any estate, trust or other collection of properties to which the law attributes the capacity of having rights or duties.

(8) “Living will” means a living will existing and duly executed in accordance with the provisions of section three, article thirty, chapter sixteen of this code.
(9) "Medical power of attorney" means a power of attorney existing and duly executed in accordance with the provisions of section six, article thirty-a, chapter sixteen of this code.

(10) "Surrogate decision-maker" means an individual identified as such by an attending physician in accordance with the provisions of section seven, article thirty-b, chapter sixteen of this code.

§44A-1-5. Rules of civil procedure.

The West Virginia "Rules of Civil Procedure for Trial Courts of Record" shall apply to all proceedings instituted under the provisions of this chapter except as is otherwise specifically provided.

§44A-1-6. Relationship to other laws.

Nothing in this section may be construed to supersede the provisions of the Uniform Veterans' Guardianship Act, article fifteen, chapter forty-four of this code, nor any provisions of this code regarding testamentary guardianships or appointments of guardians for minors.

§44A-1-7. Transfer of venue following appointment.

Following the appointment of a full or limited guardian or conservator, the court with jurisdiction over the proceeding may, upon petition, order the transfer of jurisdiction to another circuit court in this state or to an appropriate tribunal in another state if it appears to the court that the interests of the protected person will be best served by such transfer.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

(a) Any adult individual may be appointed to serve as a guardian, a conservator, or both, upon determination by the court that the individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person: Provided, That such individual is not employed by or affiliated with any public agency, entity or facility which is providing substantial services or financial assistance to the protected person.
(b) Any nonprofit corporation chartered in this state and licensed as set forth in subsection (c) of this section or a public agency that is not a provider of health care services to the protected person may be appointed to serve as a guardian, a conservator, or both: Provided, That such entity is capable of providing an active and suitable program of guardianship or conservatorship for the protected person and is not otherwise providing substantial services or financial assistance to the protected person.

(c) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the secretary of health and human resources. The secretary shall propose legislative rules, for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of such nonprofit corporations and shall provide for the review of such licenses. The rules shall, at a minimum, establish standards to assure that any corporation licensed for such guardianship or conservatorship:

(1) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

(2) Will respect and maintain the dignity and privacy of the protected person;

(3) Will protect and advocate the legal human rights of the protected person;

(4) Will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual’s personal liberty;

(5) Will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;

(6) Does not provide educational vocational, residen-
(7) Has written provisions in effect for the distribution of assets and for the appointment of temporary guardians and conservators for any protected persons it serves in the event the corporation ceases to be licensed by the department of health and human resources or otherwise becomes unable to serve as guardian.

(d) A duly licensed nonprofit corporation that has been appointed to serve as a guardian or as a conservator pursuant to the provisions of this article is entitled to compensation in accordance with the provisions of section thirteen of this article.

(e) Except as provided in section thirteen of this article, no guardian or conservator nor any officer, agent, director, servant or employee of any such guardian or conservator shall do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom services are being performed by such guardian or conservator.

(f) Any bank or trust company authorized to exercise trust powers or to engage in trust business in this state may be appointed as a conservator if the court determines it is capable of providing suitable conservatorship for the protected person.

(g) The department of adult protective services or a department designated by the secretary of health and human resources may be appointed to serve as a guardian, a conservator, or both, for individuals under its care or to whom it is providing services or financial assistance, but such appointment may only be made if there is no other individual, nonprofit corporation, bank or trust company, or other public agency that is equally or better qualified and willing to serve.

(h) The sheriff of the county in which a court has assumed jurisdiction may be appointed as a guardian, a conservator, or both.

(i) Other than a bank or trust company authorized to exercise trust powers or to engage in trust business in this state, a person who has an interest as a creditor of
88 a protected person shall not be eligible for appointment
89 as either a guardian or conservator of the protected
90 person.


(a) The court shall have the discretion to determine
whether the posting of a bond by a guardian, once
appointed, is necessary.

(b) The court shall require the posting of a bond by
a conservator upon appointment except where the
conservator is excused from posting bond under the
provisions of section eighteen, article four of chapter
thirty-one-a of this code. In determining the amount or
type of a conservator's bond, the court shall consider:

(1) The value of the personal estate and annual gross
income and other receipts within the conservator's
control;

(2) The extent to which the estate has been deposited
under an arrangement requiring an order of court for
its removal;

(3) Whether an order has been entered waiving the
requirement that accountings be filed and presented or
permitting accountings to be presented less frequently
than annually;

(4) The extent to which the income and receipts are
payable directly to a facility responsible for or which
has assumed responsibility for the care or custody of the
protected person;

(5) The extent to which the income and receipts are
derived from state or federal programs that require
periodic accountings;

(6) Whether a guardian has been appointed, and if so,
whether the guardian has presented reports as required;
and

(7) Whether the conservator was appointed pursuant
to a nomination which requested that bond be waived.

(c) Any required bond shall be with such surety and
in such amount and form as the court may order, and
the court may order additional bond or reduce the bond
whenever the court finds that such modification is in the
best interests of the protected person or of the estate.
The court may allow a property bond in lieu of a cash
bond.

(d) In case of a breach of any condition placed on the
bond of any guardian or conservator, an action may be
instituted by any interested person for the use and
benefit of the protected person, for the estate of the
protected person or for the beneficiaries of such estate.

(e) The following requirements and provisions apply
to any bond which the court may require under this
section:

(1) Unless otherwise provided by the terms of the
approved bond, sureties are jointly and severally liable
with the guardian/conservator and with each other.

(2) By executing an approved bond of a guardian or
conservator, the surety consents to the jurisdiction of the
court in any proceeding pertaining to the fiduciary
duties of the conservator and naming the surety as a
party respondent. Notice of any proceeding must be
delivered to the surety or mailed by registered or
certified mail to the address of the surety listed with the
court in which the bond is filed. If the party initiating
a proceeding possesses information regarding the
address of a surety which would appear to be more
current than the address listed with the court, notice
shall also be mailed by registered or certified mail to
the last address of the surety known to the party
initiating the proceeding.

(3) On petition of a successor guardian or conservator
or any interested person, a proceeding may be initiated
against a surety for breach of the obligation of the bond
of the preceding guardian or conservator.

(4) The bond of the guardian or conservator is not void
after any recovery but may be proceeded against from
time to time until the whole penalty is exhausted.

(f) No proceeding may be commenced against the
surety on any matter as to which an action or proceeding
against the guardian or conservator is barred by
adjudication or limitation.

§44A-1-10. Mandatory education.

(a) Any individual appointed to serve as a guardian
or conservator shall receive educational material or
complete mandated educational training, unless other-
wise directed by the court.

(b) Upon a determination that the individual who is
the subject of proceedings under this chapter is a
protected person, as defined in section four of this
article, the required educational training shall be
completed within thirty days of the court's determina-
tion. Upon completion, the appointed guardian or
conservator shall provide an affidavit to the court,
certifying that such educational training has been
completed, and the court shall forthwith issue the order
of appointment in accordance with the provisions of
section thirteen, article two of this chapter.

(c) The secretary of health and human resources, no
later than one year after the effective date of this act,
shall develop and implement an educational program
for guardians and conservators. The secretary shall also
propose legislative rules for promulgation, in accor-
dance with the provisions of chapter twenty-nine-a of
this code, regarding mandatory educational training for
 guardians and conservators. Such educational training
may include the following:

(1) Written materials;

(2) Recorded information, whether audio, visual or
both; or

(3) A combination of the above.

§44A-1-11. Guardian or conservator who resides out of
state to designate resident agent.

A guardian or conservator who is or who later
becomes a nonresident of this state shall file with the
clerk of the circuit court in the county in which the
proceeding is pending or where he or she was appointed
guardian/conservator a designation of an agent residing
in this state to accept service of process. Such filing shall be made promptly following the change of residence.

§44A-1-12. Appointment of guardian or conservator acting in another state.

(a) A guardian, conservator or like fiduciary appointed in another state may be appointed to serve as a guardian or conservator in this state upon presentation of a petition therefor, proof of appointment, and a certified copy of such portion of the court record in the other state as the court in this state may require.

(b) Upon proper notice of hearing to all persons entitled to such notice under section six, article two of this chapter, a hearing shall be held, at which the court may, in its discretion, determine that the appointment in another state has sufficiently fulfilled the requirements of this chapter. Upon such determination, appointment will be ordered forthwith, and the guardian/conservator shall immediately assume all responsibilities and duties required under the provisions of this chapter.


(a) Any guardian or conservator, whether full, temporary, or limited, is entitled to reasonable compensation as allowed by the court from the estate, including reimbursement for costs advanced. The frequency and amount of all compensation must be approved by the court.

(b) No guardian or conservator may use funds out of the estate in defense of an allegation of wrongdoing made on behalf of the protected person against the guardian or conservator.

(c) Attorneys appointed to represent individuals under this article shall be paid a reasonable rate of compensation from the estate, as approved by the circuit court, or, in the event the court determines that the estate is devoid of funds for the payment of such fees, the attorney shall be paid at a rate prescribed by and from funds allocated by the supreme court of appeals.
ARTICLE 2. PROCEDURE FOR APPOINTMENT OF GUARDIANS AND CONSERVATORS FOR PROTECTED PERSONS.

§44A-2-1. Filing of petition; jurisdiction; fees.

(a) A petition for the appointment of a guardian or conservator shall be filed with the clerk of the circuit court in the county in which the alleged protected person resides or, if the alleged protected person has been admitted to a health care or correctional facility, in the county in which that facility is located.

(b) The circuit court in which the proceeding is first commenced shall have exclusive jurisdiction unless that court determines that a transfer of venue would be in the best interests of the person alleged to need protection.

(c) The fee for filing a petition shall be seventy dollars, payable upon filing to the circuit clerk, all of which shall be retained by the circuit clerk. The person bringing the petition shall be responsible for fees for filings of the petition and other papers, for service of process, and for copies of court documents and transcripts. In the event that a guardian and/or conservator is appointed by the court, such fees shall be reimbursed to the individual who filed the petition from the protected person's estate, if funds are available. Any person who is unable to pay such fees and costs as set forth one, chapter fifty-nine of this code, and
chapter fifty-one of this code, will not be required to pay said fees and costs.

§44A-2-2. Who may file petition; contents.

(a) A petition for the appointment of a guardian, a conservator, or both, may be filed by the individual alleged to be a protected person, by a person who is responsible for or has assumed responsibility for the individual's care or custody, by the facility providing care to the individual, by the person that the individual has nominated as guardian or conservator, or by any other interested person, including, but not limited to, the department of health and human resources.

(b) A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship to the alleged protected person, and shall, to the extent known as of the date of filing, include the following:

(1) The alleged protected person's name, date of birth, place of residence or location, and post office address;

(2) The names and post office addresses of the alleged protected person's nearest relatives, in the following order:

(i) The spouse and children, if any; or if none

(ii) The parents and brothers and sisters, if any; or if none

(iii) The nearest known relatives who would be entitled to succeed to the person's estate by intestate succession as set forth in article one, chapter forty-two of this code.

Once a relative or several relatives have been identified in one of the aforementioned categories, relatives in a lower category do not have to be listed in the petition.

(3) The name, place of residence or location, and post office address of the individual or facility that is responsible for or has assumed responsibility for the person's care or custody;
(4) The name, place of residence or location, and post office address of any person designated as a surrogate decision-maker for the alleged protected person, or of any representative or representatives designated under a durable power of attorney, medical power of attorney, or living will, of which the alleged protected person is the principal, and the petitioner shall attach a copy of any such documents, if available;

(5) Whether the person's incapacity will prevent attendance at the hearing and the reasons therefor;

(6) The type of guardianship or conservatorship requested and the reasons for the request;

(7) The proposed guardian or conservator's name, post office address and, if the proposed guardian or conservator is an individual, the individual's age, occupation and relationship to the alleged protected person;

(8) The name and post office address of a guardian nominated by the alleged protected person if different from the proposed guardian or conservator, and, if the person nominated as a guardian or conservator is an individual, the individual's age, occupation and relationship to the alleged protected person;

(9) The name and post office address of any guardian or conservator currently acting, whether in this state or elsewhere;

(10) If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment; and

(11) If the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment.


The petition shall include a report by a licensed physician or psychologist evaluating the condition of the alleged protected person which shall contain, to the best information and belief of its signatory or signatories:

(1) A description of the nature, type and extent of
person’s incapacity, including the person’s specific
cognitive and functional limitations;

(2) Evaluations of the person’s mental and physical
condition and, where appropriate, educational condition,
adaptive behavior and social skills;

(3) If the appointment of a guardian is requested, a
description of the services, if any, currently being
provided for the person’s health, care, safety, habilita-
tion, or therapeutic needs, and a recommendation as to
the most suitable living arrangement and, where
appropriate, treatment or habilitation plan and the
reasons therefor;

(4) An opinion as to whether the appointment of a
guardian or conservator is necessary, the type and scope
of the guardianship or conservatorship needed, and the
reasons therefor;

(5) If the petition states that the incapacity of the
alleged protected person will prevent attendance at the
hearing, an opinion as to whether such attendance would
be detrimental to the person’s health, care, or safety;

(6) If the alleged protected person will attend the
hearing, a statement as to whether the individual is on
any medications that may affect the person’s actions,
demeanor and participation at the hearing;

(7) The signature of the evaluating physician or
psychologist, and the signatures of any other individuals
who performed, supervised or reviewed the assessments
or examinations upon which the report is based or who
made substantial contributions toward the report’s
preparation; and

(8) The date or dates of the assessments and exam-
inations upon which the report is based.

The court, for good cause shown, may grant leave to
file the petition without an evaluation report. If such
leave is granted, the court shall order the appropriate
assessments or examinations and shall order that a
report be prepared and filed with the court.

§44A-2-4. Statement of financial resources.
Prior to a hearing for a conservatorship, the petitioner shall file a statement of the financial resources of the alleged protected person which shall, to the extent known, list the person's social security number, the approximate value of the person's real and personal property, and the person's anticipated annual gross income and other receipts.

§44A-2-5. Confidentiality.

Upon filing of a petition requesting appointment of a guardian or conservator, all pleadings, exhibits and other documents contained in the court file shall be considered confidential and not open for public inspection, either during the pendency of the case or after the case is closed. However, the contents of the court file shall be open to inspection and copying by the parties, their designees, and their attorneys.


(a) Upon the filing of the petition and evaluation report, the court shall promptly issue a notice fixing the date, hour and location for a hearing to take place within sixty days.

(b) The alleged protected person shall be personally served with the notice, a copy of the petition, and the evaluation report not less than fourteen days before the hearing. The person may not waive notice, and a failure to properly notify the person shall be jurisdictional.

(c) A copy of the notice, together with a copy of the petition, shall be mailed by certified mail return receipt requested, by the petitioner, at least fourteen days before the hearing to all individuals seven years of age or older and to all entities whose names and post office addresses appear in the petition. A copy of certified mail return receipts shall be filed in the office of the circuit clerk on or before the date of hearing.

(d) The notice shall include a brief statement in large print of the purpose of the proceedings, and shall inform the alleged protected person of the right to appear at the hearing, the right to an attorney and object to the proposed appointment.
notice shall include the following statement in large print:

POSSIBLE CONSEQUENCES OF A COURT FINDING THAT YOU ARE INCAPACITATED

At the hearing you may lose many of your rights. A guardian may be appointed to make personal decisions for you. A conservator may be appointed to make decisions concerning your property and finances. The appointment may affect control of how you spend your money, how your property is managed and controlled, who makes your medical decisions, where you live, whether you are allowed to vote and other important rights.


(a) The court shall appoint legal counsel for the alleged protected person. In appointing legal counsel, the court shall consider any known preferences of the alleged protected person.

(b) Legal counsel shall have the following major areas of concern: (1) Whether or not a guardian is needed; (2) limitation of the role of the guardian to the protected person’s specific needs — e.g., personal supervisor, business affairs, medical consent only; (3) if needed, assure that the person or entity with the greatest interest in the protected person is appointed; (4) if needed, assure the adequacy of the bond; and (5) if needed, assure consideration of proper placement.

(c) In responsibly pursuing the major areas of concern set forth in subsection (b) of this section, counsel may perform any or all of the following: (1) Promptly notify the individual and any caretaker of the appointment of counsel; (2) contact any caretaker, review the file and all other relevant information; (3) maintain contact with the client throughout the case and assure that the client is receiving services as are appropriate to the client’s needs; (4) contact persons who have or may have knowledge of the client; (5) interview all possible witnesses; (6) pursue discovery of evidence, formal and informal; (7) file appropriate motions; (8) obtain
independent psychological examinations, medical examinations, home studies, as needed; (9) advise the client on the ramifications of the proceeding and inquire into the specific interests and desires of the individual; (10) subpoena witnesses to the hearing; (11) prepare testimony for cross-examination of witnesses to assure relevant material is introduced; (12) review all medical reports; (13) apprise the decision maker of the individual’s desires; (14) produce evidence on all relevant issues; (15) interpose objections to inadmissible testimony and otherwise zealously represent the interests and desires of the client; (16) raise appropriate questions to all nominations for guardian and the adequacy of the bond; (17) take all steps to limit the scope of guardianship to the individual’s actual needs, and make all arguments to limit the amount of the intervention; (18) ensure that the court considers all issues as to the propriety of the individual’s current or intended placement and that the limitations are set forth in the order; (19) inform the client of the right to appeal, and file an appeal to an order when appropriate; and (20) file a motion for modification of an order or a petition for a writ of habeas corpus if a change of circumstances occurs which warrants a modification or termination.

(d) The protected person shall have the right to an independent expert of his or her choice to perform an evaluation and present evidence.

§44A-2-8. Nomination of guardian or conservator of alleged protected person; preferences.

Any person who has sufficient capacity to form a preference may at any time nominate any individual or entity to serve as his or her guardian or conservator. The nomination may be made in writing, by an oral request to the court, or may be proved by any other competent evidence. The designation of a representative under a valid medical power of attorney, a living will or of a surrogate decision-maker shall constitute competent evidence of the nomination of a guardian, and the designation of an attorney under a valid durable power of attorney shall constitute competent evidence of the nomination of a conservator. The court shall appoint the
one so nominated if the nominee is otherwise eligible to act and would serve in the best interests of the alleged protected person.

§44A-2-9. Hearing on petition to appoint.

(a) The court may hear the petition for the appointment of a guardian or conservator or may designate the mental hygiene commissioner in the circuit to serve as the trier of fact at the hearing on the petition. If a mental hygiene commissioner is appointed, a mental hygiene commitment proceeding may not be held simultaneously with a proceeding for the appointment of a guardian or conservator. The designated mental hygiene commissioner shall submit written findings of fact and recommendations to the court upon conclusion of the hearing. The court may accept or reject the recommendations of the mental hygiene commissioner. Only the court may enter an order appointing a guardian or conservator.

(b) The hearing may be held at such convenient place as the court or mental hygiene commissioner directs, including the place where the alleged protected person is located. The hearing shall be closed to the public. The proposed guardian or conservator shall attend the hearing except for good cause shown. Any individual or entity may apply for permission to observe or participate at the hearing, and the court or mental hygiene commissioner shall grant the request if reasonably satisfied that the applicant's participation would be in the best interests of the alleged protected person.

(c) The alleged protected person is entitled to attend the hearing, to oppose the petition, to be represented by an attorney, to present evidence, to compel the attendance of witnesses and to confront and cross-examine all witnesses. If the alleged protected person is present at the hearing, the court or mental hygiene commissioner shall verbally inform the person of such rights, of the contents of the petition, and of the purpose and legal effect of the appointment of a guardian or conservator. The hearing shall not proceed if the alleged protected person is not present unless there is an affidavit of a
physician presented to the court, qualified expert testimony to warrant a finding that the presence of the individual is not possible due to a physical inability or that such presence would significantly impair his or her health, or evidence that the person refuses to appear.

(d) The standard of proof to be applied in determining whether the alleged protected person is a person for whom a guardian or conservator should be appointed is clear and convincing evidence.

e) The court shall make specific findings of fact and conclusions of law in support of any orders entered.

(f) Upon request, a transcript of the proceedings of appointment shall be provided for the purposes of an appeal.

§44A-2-10. Factors to be considered by court.

(a) The court alone shall determine whether a guardian or conservator should be appointed, the type thereof, and the specific areas of protection, management and assistance to be granted. Any determination that the individual is a protected person shall contain a specific finding that the person meets the definition set forth in section four, article one of this chapter. In making the determination, the court shall consider the suitability of the proposed guardian or conservator, the limitations of the alleged protected person, the development of the person’s maximum self-reliance and independence, the availability of less restrictive alternatives including advance directives, and the extent to which it is necessary to protect the person from neglect, exploitation, or abuse.

(b) Except as provided in section eight of this article, the selection of the guardian or conservator shall be in the discretion of the court. The court shall select the individual or entity best qualified to act in the best interest of the protected person, after consideration of the proposed guardian’s or conservator’s geographic location, familial or other relationship with such person, ability to carry out the powers and duties of the office, commitment to promoting such person’s welfare, any...
potential conflicts of interest, and the recommendations
of the spouse, the parents, children or other interested
relatives, whether made by will or otherwise. The court
may only appoint one guardian and one conservator and
it need not appoint the same individual or entity to serve
as both guardian and conservator.

(c) A guardianship or conservatorship appointed
under this article shall be the least restrictive possible,
and the powers shall not extend beyond what is
absolutely necessary for the protection of the individual.


(a) A limited guardian may be appointed for an
individual who is deemed to be a protected person in
need of a guardian within the meaning of section four,
article one of this chapter, but is capable of addressing
some of the essential requirements for his or her health,
care, safety, habilitation, or therapeutic needs.

(b) A limited guardian may be appointed for an
individual who otherwise is deemed to be a protected
person within the meaning of this chapter, and who
resides in a supervised setting such that the individual’s
health, care, safety, habilitation and therapeutic needs
are being attended to without interference, but whose
impairment warrants the appointment of a substitute
decision-maker for purposes of the ultimate decisions of
the location of residence and major medical decisions,
and the like.

(c) A limited guardian may be appointed for the sole
purpose of providing for an individual who otherwise is
deemed to be a protected person within the meaning of
this chapter, and whose health, care, safety, habilitation
and therapeutic needs are being attended to in a
supervised residence, but whose only need is for a
substituted decision-maker in the event of a major
medical decision.

§44A-2-12. Limited conservatorships.

(a) A limited conservator may be appointed for an
individual deemed to be a protected person in need of
a conservator within the meaning of section four, article
one of this chapter, but whose property or financial affairs are so limited that there is only one or more designated contexts for which a limitation of the individual's legal rights is warranted.

(b) No conservator shall be appointed for a person whose only source or major source of income and property is from the Social Security Administration and who has a representative payee functioning in the best interest of the individual, or for such other person whose opportunity for regular expenditure of resources is so limited that the only practical effect of the appointment of a conservator would be to deprive the individual of the right of daily decisions involving minor personal matters.


(a) An order appointing a guardian or conservator may only be issued by the court upon the following:

(1) The guardian or conservator has subscribed to and filed an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;

(2) Posting of any bond, if required; and

(3) The completion of mandatory education, as required under the provisions of section ten, article one of this chapter, unless waived by the court.

(b) In addition to the findings of fact and conclusions of law required in section nine of this article, the order shall include the specific areas of protection or assistance granted in the case of a guardian and the specific areas of management and assistance granted in the case of a conservator.

(c) Within fourteen days following the entry of an order of appointment, the guardian or conservator shall mail a copy of the order of appointment, together with a brief statement in large print of rights to seek an appeal for modification or termination, to the protected person and to all individuals and entities given notice of the petition.
§44A-2-14. Temporary guardians and conservators.

(a) The court may appoint a temporary guardian or temporary conservator, or both, under this section upon a finding that an immediate need exists, that adherence to the procedures otherwise set forth in this chapter for the appointment of a guardian or conservator may result in significant harm to a person or the estate, and that no other individual or entity appears to have authority to act on behalf of the person, or that the individual or entity with authority to act is unwilling, or has ineffectively or improperly exercised the authority.

(b) A temporary guardian or temporary conservator shall have only those powers and duties which are specifically set forth in the order of appointment. The appointment of a temporary guardian or temporary conservator shall expire within forty-five days unless extended by the court for an additional forty-five days for good cause shown.

(c) An appointment of a temporary guardian or temporary conservator shall be made upon timely and adequate notice to the protected person after appointment of counsel and after all other protections have been afforded, in accordance with due process of law, including any other conditions as the court may order. The protected person may petition the court for a substitution of a temporary guardian or temporary conservator at any time.

(d) Within five days following the entry of an order of appointment, a temporary guardian or temporary conservator shall mail a copy of the order of appointment, together with a brief statement in large print of rights to seek an appeal for modification or termination, to the person for whom the appointment was made and to all individuals and entities that would be entitled to notice of hearing on a petition for appointment as set forth in section six of this article.

§44A-2-15. Notice of hearing on petitions subsequent to the appointment of a guardian or conservator.
Except as otherwise provided herein or as ordered by
the court for good cause shown, notice of hearing on a
petition for an order subsequent to the appointment of
a guardian or conservator shall be personally served
upon the protected person and mailed to all attorneys
of record, to those individuals who would be entitled to
notice of the filing of an original petition to appoint, to
any facility that is responsible for the care or custody
of the protected person, to the guardian or conservator,
if the guardian or conservator is not the petitioner, and
to such other individuals or entities as the court may
order. Unless otherwise ordered by the court, the notice
shall be personally served upon the protected person or
mailed by the petitioner by certified mail return receipt
requested to other parties entitled to notice at least
fourteen days prior to the hearing and shall be accom-
panied by a copy of the petition and other relevant
documents. A copy of the certified mail return receipts
shall be filed in the office of the circuit clerk on or
before the date of the hearing. If deceased, notice to a
protected person shall be sent to his or her last known
address or to his or her successors in interest, if known.

§44A-3-1. Duties of guardian of protected person.
§44A-3-2. Reports by guardian of protected person.
§44A-3-3. Distributive duties and powers of the conservator of a protected
person.
§44A-3-4. Management powers and duties of conservator.
§44A-3-5. Sale or mortgage of real estate.
§44A-3-6. Protective arrangements.
§44A-3-7. Estate planning.
§44A-3-8. Conservator's inventory.
§44A-3-9. Accountings by conservator.
§44A-3-10. Waiver of accountings.
§44A-3-11. Filing of reports and accountings.
§44A-3-12. Self-dealing and conflicts of interest.
§44A-3-13. Personal liability of guardians.
§44A-3-14. Personal liability of conservators.
§44A-3-15. Protection for persons conducting business with guardians and
conservators.
§44A-3-16. Court modification of powers and duties of guardian or
conservator.

§44A-3-1. Duties of guardian of protected person.
A guardian of a protected person shall be responsible for obtaining provision for and making decisions with respect to the protected person's support, care, health, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of commitment or custody, to determine the protected person's residence. A guardian shall maintain sufficient contact with the protected person to know of the protected person's capabilities, limitations, needs, and opportunities, and such contact shall not be less frequent than one visit every six months. A guardian shall be required to seek prior court authorization to change the protected person's residence to another state, to terminate or consent to a termination of the protected person's parental rights, to initiate a change in the protected person's marital status, to deviate from a protected person's living will or medical power of attorney, or to revoke or amend a durable power of attorney executed by the protected person.

A guardian shall exercise authority only to the extent necessitated by the protected person's limitations, and, where feasible, shall encourage the protected person to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage personal affairs. A guardian shall, to the extent known, consider the express desires and personal values of the protected person when making decisions, and shall otherwise act in the protected person's best interests and exercise reasonable care, diligence, and prudence.

§44A-3-2. Reports by guardian of protected person.

Any guardian appointed pursuant to the provisions of this chapter shall file periodic reports, in accordance with section eleven of this article.

(a) The guardian's report shall include:

(1) A description of the current mental, physical, and social condition of the protected person;

(2) A description of the protected person's living arrangements during the reported period;

(3) The medical, educational, vocational, and other
professional services provided to the protected person
and the guardian's opinion as to the adequacy of the
protected person's care;

(4) A summary of the guardian's visits with and
activities on behalf of the protected person;

(5) A statement of whether the guardian agrees with
the current treatment or habilitation plan;

(6) A recommendation as to the need for continued
guardianship and any recommended changes in the
scope of the guardianship;

(7) Any other information requested by the court or
useful in the opinion of the guardian;

(8) The compensation requested and the reasonable
and necessary expenses incurred by the guardian; and

(9) A verification signed by the guardian stating that
all of the information contained in the report is true and
correct to the best of his or her knowledge.

(b) The court may order the guardian to attend a
hearing on the report by motion of the court, or upon
the petition of any interested person. A report of the
guardian may be incorporated into and made a part of
the accounting of the conservator.

§44A-3-3. Distributive duties and powers of the conservator of a protected person.

(a) A conservator of a protected person, without the
necessity of seeking prior court authorization, shall
apply the income and principal of the estate as needed
for the protected person's support, care, health, and if
applicable, habilitation, education or therapeutic needs.
A conservator shall also apply the income and principal
as needed for the support of any legal dependents who
are unable to support themselves and who are in need
of support.

(b) A conservator, when making distributions, shall
exercise authority only to the extent necessitated by the
protected person's limitations, and shall, where feasible,
encourage the protected person to participate in
decisions, to act on his or her own behalf, and to develop
or regain the capacity to manage the estate and his or
her financial affairs. A conservator shall also consider
the size of the estate, the probable duration of the
conservatorship, the protected person’s accustomed
manner of living, other resources known to the conser-
vator to be available, and the recommendations of the
guardian.

(c) A conservator shall, to the extent known, consider
the express desires and personal values of the protected
person when making decisions, and shall otherwise act
in the protected person’s best interests and exercise
reasonable care, diligence, and prudence.

(d) A conservator may not revoke or amend a durable
power of attorney which has been executed by the
protected person without the prior approval of the court.

§44A-3-4. Management powers and duties of
conservator.

A conservator, in managing the estate, shall act as a
fiduciary and serve in the best interests of the protected
person and shall, in addition, have the following powers
which may be exercised without prior court authoriza-
tion except as otherwise specifically provided:

(1) To invest and reinvest the funds of the estate in
accordance with a standard of prudent investing;

(2) To collect, hold, and retain assets of the estate,
including land in another state, and to receive additions
to the estate;

(3) To continue or participate in the operation of any
unincorporated business or other enterprise;

(4) To deposit estate funds in a state or federally
insured financial institution, including one operated by
the conservator;

(5) To manage, control and sell at public or private
sale, for cash or for credit, the personal property of the
estate;

(6) To perform a contract entered into by a protected
person, including a contract to convey or purchase real

or personal property;

(7) To renew a lease entered into by a protected person

as lessor or lessee with or without an option to purchase,

including leases for real and personal property and

leases and other arrangements for exploration and

removal of minerals or other natural resources notwith-

standing that the lease or other arrangement may

extend beyond the term of the conservatorship;

(8) To borrow money and to place, renew or extend

an encumbrance upon any property, real or personal,

including the power to borrow from a financial institu-

tion operated by the conservator, subject to the provi-

sions of section twelve of this article;

(9) To abandon property when, in the opinion of the

conservator, it is valueless or is so encumbered or in

such condition that it is of no benefit to the estate;

(10) To make ordinary or extraordinary repairs or

alterations in buildings or other property and to grant

easements for public or private use, or both, with or

without consideration;

(11) To vote a security, in person or by general or

limited proxy, and to consent to the reorganization,

consolidation, merger, dissolution, or liquidation of a

corporation or other enterprise;

(12) To sell or exercise stock subscription or conver-

sion rights and to pay calls, assessments, and any other

sums chargeable or accruing against or on account of

securities;

(13) To hold a security in the name of a nominee or

in other form without disclosure of the conservatorship,

so that title to the security may pass by delivery, but

the conservator is liable for any act of the nominee in

connection with a security so held;

(14) To insure the assets of the estate against damage

or loss, and the guardian and conservator against

liability with respect to third persons;

(15) To allow, pay, reject, contest or settle any claim
by or against the estate or protected person by com-
promise or otherwise, and to release, in whole or in part,
 any claim belonging to the estate to the extent it is
 uncollectible;

(16) To pay taxes, assessments and other expenses
incurred in the collection, care and administration of the
estate;

(17) To pay any sum distributable for the benefit of
the protected person or for the benefit of a legal
dependent by paying the sum directly to the distributee,
to the provider of goods and services, to any individual
or facility that is responsible for or has assumed
responsibility for care and custody, to a distributee's
custodian under a Uniform Gifts or Transfers Act of any
applicable jurisdiction, or by paying the sum to the
guardian of the protected person or, in the case of a
dependent, to the dependent's guardian or conservator;

(18) To employ persons, including attorneys, account-
tants, investment advisors, or agents; to act upon their
recommendations without independent investigation; to
delegate to them any power, whether ministerial or
discretionary; and to pay them reasonable compensation;

(19) To maintain life, health, casualty and liability
insurance for the benefit of the protected person, or
legal dependents;

(20) To manage the estate following the termination
of the conservatorship and until its delivery to the
protected person, or successors in interest; and

(21) To execute and deliver all instruments and to
take all other actions that will accomplish or facilitate
the exercise of the powers conferred in accordance with
the provisions of this chapter.

§44A-3-5. Sale or mortgage of real estate.

A conservator shall not sell real estate and shall not
be authorized to mortgage any real estate until thirty
days after persons entitled to notice of hearing of the
original petition are notified, and the court has consid-
ered any objections and determined whether additional
§44A-3-6. Protective arrangements.

Upon petition therefor, the court may authorize a conservator to enter into a protective arrangement, to disburse the estate of the protected person and to petition for termination of the conservatorship. "Protective arrangements" include, but are not limited to, the payment, delivery, deposit, or retention of funds or property; the sale, mortgage, lease, or other transfer of property; the execution of an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; and the addition to or establishment of a suitable trust.

§44A-3-7. Estate planning.

(a) Upon petition, the court may authorize a conservator to exercise the following powers over the estate or financial affairs of a protected person which the protected person could have exercised if he or she were not subject to conservatorship:

(1) To make gifts to charity or other donees and to convey interests in any property;

(2) To provide support for individuals who are not legal dependents;

(3) To amend or revoke trusts or to create or make additions to revocable or irrevocable trusts even though such trusts may extend beyond the life of the protected person;

(4) To disclaim, renounce, or release any interest or power, or to exercise any power;

(5) To exercise options or change the beneficiary on or withdraw the cash value of any life insurance policy, annuity policy, or retirement plan;

(6) To elect against the estate of the protected person's spouse;

(7) To withdraw funds from multiple party bank accounts, to change the beneficiary on or dispose of any payable or transfer on death arrangement, or to dispose
of any property specifically devised or bequeathed under
the protected person's will.

(b) The court, in authorizing the conservator to
exercise any of the above powers, shall primarily
consider the decision which the protected person would
have made, to the extent that the decision can be
ascertained. The court shall also consider the financial
needs of the protected person and the needs of legal
dependents for support, possible reduction of income,
estate, inheritance or other tax liabilities, eligibility for
governmental assistance, the protected person's prior
pattern of giving or level of support, the existing estate
plan, the protected person's probable life expectancy,
the probability that the conservatorship will terminate
prior to the protected person's death, and any other
factors which the court believes pertinent.

c) No order may be entered under this section unless
notice of hearing is first given to the protected person,
to the beneficiaries of the protected person's estate plan
and to the individuals who would succeed to the
protected person's estate by intestate succession. No
trust may be amended or revoked without prior notice
of hearing to the trustee thereof.

d) In making a determination under this section, the
court shall be entitled to compel the production of
documents, including the protected person's will.

e) Nothing in this section shall be construed to create
a duty on the part of a conservator to revise a protected
person's estate plan.

§44A-3-8. Conservator's inventory.

(a) Within ninety days following entry of an order of
appointment, a conservator shall file with the court an
inventory of the real and personal estate of the protected
person which has come into the conservator's possession
or knowledge. The inventory shall include, with reason-
able detail, a listing of each item of the estate, its
approximate fair market value and the type and amount
of encumbrance to which it is subject. If any real or
personal estate comes into the possession or knowledge
of the conservator subsequent to the filing of the initial inventory, the conservator shall either amend the inventory or list the same in the next accounting required to be filed with the court, as described in section eight of this article.

(b) A conservator shall mail a copy of the inventory to the individuals and entities who received notice of hearing, as specified in section six, article two of this chapter, no later than fourteen days following its presentation of the inventory.

§44A-3-9. Accountings by conservator.

Any conservator appointed pursuant to the provisions of this chapter shall file periodic accountings as provided for under section eleven of this article.

(a) The accounting shall include:

(1) A listing of the receipts, disbursements and distributions from the estate under the conservator’s control during the period covered by the accounting;

(2) A listing of the estate;

(3) The services being provided to the protected person;

(4) The significant actions taken by the conservator during the reporting period;

(5) A recommendation as to the continued need for conservatorship and any recommended change in the scope of the conservatorship.

(6) Any other information requested by the court or useful in the opinion of the conservator;

(7) The compensation requested and the reasonable and necessary expenses incurred by the conservator; and

(8) A verification signed by the conservator stating that all of the information contained in the accounting is true and correct to the best of his or her knowledge.

(b) The court may order the conservator to attend a hearing on the accounting by motion of the court or upon the petition of any interested person. An accounting by
§44A-3-10. Waiver of accountings.

(a) The court, upon petition therefor, may waive the requirement that accountings be filed or may permit accountings to be filed less frequently than annually if it determines that the expense involved or burden placed on the conservator in preparing and presenting annual accountings outweighs the benefit and protection afforded thereby to the protected person.

(b) In determining whether accountings may be waived or filed less frequently than annually, the court shall consider:

1. The relationship of the conservator to the protected person;
2. The value of the estate and annual gross income and other receipts within the conservator’s control;
3. The amount of the bond;
4. The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;
5. The extent to which the income and receipts are payable directly to a facility responsible for the care or custody of the protected person;
6. The extent to which the income and receipts are derived from state or federal programs that require periodic accountings;
7. Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and
8. Any other factors which the court deems appropriate.

§44A-3-11. Filing of reports and accountings.

(a) Reports of guardians and accountings of conservators, as described in this article shall be filed with the circuit clerk of the county in which appointed, within
sixty days following the first anniversary of the appointment and:

(1) At least annually thereafter;

(2) When the court orders additional reports or accountings to be filed;

(3) When the guardian or conservator resigns or is removed; and

(4) When the appointment of the guardian or conservator is terminated, except that in the case of a guardian, the court may determine that there is no need for a report upon such termination; and in the case of a conservator, no accounting will be required if the persons entitled to the estate consent thereto.

§44A-3-12. Self-dealing and conflicts of interest.

(a) Unless court approval is first obtained, or unless such relationship existed prior to the appointment and was disclosed in the petition for appointment, a conservator may not:

(1) Have any interest, financial or otherwise, directly or indirectly, in any business transaction or activity with the conservatorship;

(2) Acquire an ownership, possessors, security, or other pecuniary interest adverse to the protected person, or to the estate, or an interest in an asset in which the protected person also owns an interest;

(3) Directly or indirectly purchase, lease, or sell any property from or to the protected person or from or to the estate;

(4) Borrow or loan funds to the protected person to the estate, except for reasonable advances
interest for the protection of the estate;

(5) Compromise or otherwise modify a debt owed by the conservator to the protected person or to the estate;

(6) Employ individuals or entities who were associated with or employed by the conservator prior to the appointment; or

(7) Directly or indirectly purchase, lease or sell property or services from or to any entity in which the conservator or a relative of the conservator is an officer, director, shareholder or proprietor, or owns a significant financial interest.

(b) Any activity prohibited by this section is voidable by the court upon the petition of any interested person or upon a motion of the court. This section does not limit any other remedies which may be available for a breach by the conservator or others of their fiduciary duty to the protected person or to the estate.

§44A-3-13. Personal liability of guardians.

(a) A guardian shall have a fiduciary duty to the protected person for whom he or she was appointed guardian and may be held personally liable for a breach of that duty.

(b) A guardian shall not be liable for the acts of the protected person, unless the guardian is personally negligent, nor shall a guardian be required to expend personal funds on behalf of the protected person.

§44A-3-14. Personal liability of conservators.

(a) A conservator shall have a fiduciary duty to the protected person for whom he or she was appointed conservator and may be held personally liable for a breach of that duty.

(b) Unless otherwise provided in the contract, a conservator is not personally liable on a contract entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the representative capacity or to identify the estate in the contract.
(c) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if personally negligent.

(d) Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(e) A successor conservator is not personally liable for the contracts or actions of a predecessor. However, a successor conservator is not immunized from liability for a breach of fiduciary duty committed by a predecessor if the successor learns of the breach and fails to take reasonable corrective action.

§44A-3-15. Protection for persons conducting business with guardians and conservators.

Any individual or entity who, in good faith, conducts business with a guardian or conservator as to any matter or transaction is entitled to presume that the guardian or conservator is properly authorized to act. The fact that an individual or entity conducts business with a guardian or conservator with knowledge of the representative capacity does not alone require an inquiry into the authority of the guardian or conservator, except that any such individual or entity shall be charged with knowledge of restrictions which may appear in an order appointing the guardian or conservator. No individual or entity shall be required to see to the proper application of any funds or property paid to or delivered to a conservator.

§44A-3-16. Court modification of powers and duties of guardian or conservator.

Nothing in this chapter shall prohibit the court from limiting the powers which may otherwise be exercised by a guardian or conservator without prior authorization, from authorizing transactions...
might otherwise be prohibited, or from granting additional powers to a guardian or conservator. Nothing in this chapter shall prohibit a guardian or conservator from seeking court authorization, instructions or ratification for any actions, proposed actions, or omissions to act.

ARTICLE 4. TERMINATION, REVOCATION AND MODIFICATION OF APPOINTMENTS.

§44A-4-1. Termination of appointment of guardian or conservator.

The appointment of a guardian or conservator shall terminate upon the death, resignation, or removal of the guardian or conservator or upon the termination of the guardianship or conservatorship. A termination of an appointment does not affect the liability of a guardian or conservator for prior acts or the responsibility of a conservator to account for the estate of the protected person.

§44A-4-2. Appointment of successor guardian or conservator.

The court may appoint a successor guardian or conservator prior to or at the time of a termination. A successor guardian appointed prior to a termination shall be immediately empowered to assume the duties of office but shall be required to file the requisite oath, post any required bond, and complete mandatory education, if required by the court, within thirty days of the termination of the predecessor. A successor guardian or conservator shall succeed to the powers and duties of the predecessor unless otherwise ordered by the court.

§44A-4-3. Resignation of guardian or conservator.
A guardian or conservator shall petition the court for permission to resign at least sixty days prior to the effective date of resignation. The court shall grant the permission to resign, except for good cause, and, pursuant to the provisions of section two of this article, shall appoint a suitable successor who is willing to serve.

§44A-4-4. Removal of guardian or conservator.

Upon the petition of any interested person or upon the motion of the court, the court may remove a guardian or conservator or order other appropriate relief if the guardian or conservator:

1. Is acting under an order entered pursuant to material misrepresentation or mistake, whether fraudulent or innocent;

2. Has an incapacity or illness, including substance abuse, which affects his or her fitness to perform or is adjudged to be a protected person in this or in any other jurisdiction;

3. Is convicted of a crime which reflects upon his or her fitness to perform;

4. Wastes or mismanages the estate, unreasonably withholds distributions or makes distributions in a negligent or reckless manner or otherwise abuses powers or fails to discharge duties;

5. Neglects the care and custody of the protected person or legal dependents;

6. Has an interest adverse to the faithful performance of duties such that there is a substantial risk that the guardian or conservator will fail to properly perform those duties;

7. Fails to file reports or accountings when required, or fails to comply with any court order;

8. Fails to file sufficient bond after being ordered by the court to do so;

9. Avoids service of process or notice;

10. Becomes incapable of performing duties; or
(11) Is not acting in the best interests of the protected person or of the estate, with or without fault. The court may appoint a temporary guardian pending a determination on a petition for removal of a guardian or conservator.

§44A-4-5. Termination of guardianship or conservatorship of protected person—When authorized.

A guardianship or conservatorship of a protected person shall terminate upon the death of the protected person, whenever jurisdiction is transferred to another state or if ordered by the court following a hearing on the petition of any interested person.

§44A-4-6. Petition for termination, revocation or modification; standards.

(a) Upon a petition filed pursuant to this section, or upon a petition for a writ of habeas corpus, duly filed, the court may terminate the appointment of a guardian or conservator.

(b) Upon petition by the protected person, by the guardian or conservator, by any other interested person, or upon the motion of the court, the court may terminate a guardianship, conservatorship, or both, or modify the type of appointment or the areas of protection, management or assistance previously granted. Such termination, revocation or modification may be ordered if:

(1) The protected person is no longer in need of the assistance or protection of a guardian or conservator;

(2) The extent of protection, management or assistance previously granted is either excessive or insufficient considering the current need therefor;

(3) The protected person’s understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant such action;

(4) No suitable guardian or conservator can be secured who is willing to exercise the assigned duties; or
(5) It is otherwise in the best interest of the protected person.

(c) In making a determination under this section, the court shall appoint legal counsel for the protected person and may appoint such other persons whom it deems qualified to make such evaluations as it shall determine appropriate.

§44A-4-7. Hearing on petition to terminate, revoke or modify.

A hearing on a petition to terminate, revoke or modify shall be conducted with the same notice and in the same manner and the protected person shall have the same rights as the protected person would obtain at a hearing on a petition for the appointment of a guardian or conservator. The protected person and the guardian or conservator shall attend the hearing except for good cause shown.

CHAPTER 65
(H. B. 4481—By Delegates Staton and Browning)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to the uniform registration and permitting of motor vehicles operated by persons engaged in the highway transportation of hazardous materials into, through or within the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6B. REGISTRATION AND IDENTIFICATION OF VEHICLES OPERATED BY PERSONS ENGAGED IN HAZARDOUS MATERIALS TRANSPORTATION.
§24A-6B-1. Participation in the hazardous materials transportation registration system.

(a) The commission shall have power and authority to promulgate rules implementing a hazardous materials transportation registration and permitting program for operators of motor vehicles transporting hazardous materials upon or over the public highways within the borders of this state. Rules adopted under this section shall be consistent with, and equivalent in scope, coverage, and content to, the report submitted by the alliance for uniform hazardous material transportation procedures to the secretary of transportation, United States department of transportation, pursuant to paragraph (c) of section twenty-two of the "Hazardous Materials Transportation Uniform Safety Act of 1990", Public Law 101-615.

(b) The hazardous materials transportation registration and permitting program established in this section shall be coordinated with hazardous materials regulations enforced by other agencies of the state, and shall preempt and supersede hazardous materials transportation regulation and permitting programs administered or enforced by any municipality, county or other political subdivision of this state.

(c) The funds for the program established in this section shall be obtained from fees paid by registrants hereunder. Those fees shall be established by rulemaking and shall be apportioned; by the percentage of the registrant's activity in this state; by the percentage of a registrant's business that is related to hazardous materials; and by the number of motor vehicles operated in this state by a registrant. Rulemaking may also establish fees for processing and registration: Provided, That said fees established in this section shall not exceed fifty dollars per registrant per annum, nor fifty dollars per vehicle per annum: Provided, however, That said apportioned vehicle fee shall not be required under this program sooner than the registration year beginning on the first day of July, one thousand nine hundred ninety-five.
(d) The commission may enter into agreements with other states, a national repository or federal agencies as necessary to implement the program established under this section.

(e) To achieve the purposes of this section, the commission may, through its inspectors or other authorized employees, inspect any facilities or motor vehicles of any person who transports hazardous materials subject to this program.

(f) It shall be unlawful for any person to operate, or cause to be operated, a motor vehicle transporting hazardous materials upon or over the public highways within this state without first having complied with the requirements of the registration and permitting program, as established by the commission. Failure to comply with the program requirements, as determined by the commission after notice and opportunity to be heard, may be sufficient cause for suspension or revocation of permits and registration under the program.

CHAPTER 66

(Com. Sub. for H. B. 4516—By Mr. Speaker, Mr. Chambers, and Delegates P. White, Gallagher, Kiss, Rowe, Ashcraft and Rutledge)

[Passed March 12, 1994: in effect from passage. Approved by the Governor.]
four, article sixteen-c of said chapter; to amend article sixteen-d of said chapter by adding thereto a new section, designated section fourteen; to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-d; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-c; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-c, all relating to child immunization services; requiring free distribution of additional vaccines; requiring all third party payors to provide first-dollar coverage for cost of childhood immunizations and vaccine administration.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.


33. Insurance.
§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

(a) The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

(b) The group hospital or surgical insurance coverage and group major medical insurance coverage herein provided for shall include coverages and benefits for X-ray and laboratory services in connection with mammograms and pap smears when performed for cancer screening or diagnostic services and annual checkups for prostate cancer in men age fifty and over. Such benefits shall include, but not be limited to, the following:
(1) Baseline or other recommended mammograms for women age thirty-five to thirty-nine, inclusive;

(2) Mammograms recommended or required for women age forty to forty-nine, inclusive, every two years or as needed;

(3) A mammogram every year for women age fifty and over;

(4) A pap smear annually or more frequently based on the woman's physician's recommendation for women age eighteen and over; and

(5) A checkup for prostate cancer annually for men age fifty or over.

(c) The group life and accidental death insurance herein provided for shall be in the amount of ten thousand dollars for every employee. The amount of the group life and accidental death insurance to which an employee would otherwise be entitled shall be reduced to five thousand dollars upon such employee attaining age sixty-five.

(d) All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

(e) The provisions of article three, chapter five-a of this code, relating to the division of purchases of the department of finance and administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as herein authorized, said director shall invite competent bids from all qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired. The director shall deal directly with insurers in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or
agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for such agent or agents may be paid by the underwriting company or companies: Provided, That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award such contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.

(f) The director may authorize the carrier with whom a primary contract is executed to reinsure portions of such contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

(g) Each employee who is covered under any such contract or contracts shall receive a statement of benefits to which such employee, his or her spouse and his or her dependents are entitled thereunder, setting forth such information as to whom such benefits shall be payable, to whom claims shall be submitted, and a summary of the provisions of any such contract or contracts as they affect the employee, his or her spouse
and his or her dependents.

(h) The director may at the end of any contract period discontinue any contract or contracts it has executed with any carrier and replace the same with a contract or contracts with any other carrier or carriers meeting the requirements of this article.

(i) The director shall provide by contract or contracts entered into under the provisions of this article the cost for coverage of children’s immunization services from birth through age sixteen years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b and whooping cough. Additional immunizations may be required by the commissioner of the bureau of public health for public health purposes. Any contract entered into to cover these services shall require that all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration, be exempt from any deductible, per visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICAIBLE AND OTHER INFECTIOUS DISEASES.

§16-3-5. Distribution of free vaccine preventives of disease.

(a) Declaration of legislative findings and purpose. — The Legislature finds and declares that early immunization for preventable diseases represents one of the most cost-effective means of disease prevention. The savings which can be realized from immunization, compared to the cost of health care necessary to treat the illness and lost productivity, are substantial. Immunization of children at an early age serves as a preventative measure both in time and money and is essential to maintain our children’s health and well-
being. The costs of childhood immunizations should not be allowed to preclude the benefits available from a comprehensive, medically supervised child immunization service. Furthermore, the federal government has established goals that require ninety percent of all children to be immunized by age two and provided funding to allow uninsured children to meet this goal.

(b) The state director of health shall acquire vaccine for the prevention of polio, measles, mumps, rubella, diphtheria, pertussis, tetanus, hepatitis-b, haemophilus influenzae-b and other vaccine preventives of disease as may be deemed necessary or required by law, and shall distribute the same, free of charge, in such quantities as he or she may deem necessary, to county and municipal health officers, to be used by them for the benefit of, and without expense to the citizens within their respective jurisdictions, to check contagions and control epidemics.

(c) The county and municipal health officers shall have the responsibility to properly store and distribute, free of charge, vaccines to private medical or osteopathic physicians within their jurisdictions to be utilized to check contagions and control epidemics: Provided, That the private medical or osteopathic physicians shall not make a charge for the vaccine itself when administering it to a patient. The county and municipal health officers shall provide a receipt to the state director of health for any vaccine delivered as herein provided.

(d) The director of the division of health is charged with establishing a childhood immunization advisory committee to plan for universal access, make recommendations on the distribution of vaccines acquired pursuant to this section and tracking of immunization compliance in accordance with federal and state laws. The childhood immunization advisory committee shall be appointed by the secretary of the department of health and human resources no later than the first day of July, one thousand nine hundred ninety-four, and shall be comprised of representatives from the following groups: Public health nursing, public health officers, primary health care providers, pediatricians, family
practice physicians, health care administrators, state medicaid program, the health insurance industry, the public employees insurance agency, the self-insured industry and consumers. The state epidemiologist shall serve as an advisor to the committee. Members of the advisory committee shall serve two-year terms.

(e) All health insurance policies and prepaid care policies issued in this state which provide coverage for the children of the insured shall provide coverage for child immunization services to include the cost of the vaccine, if incurred by the health care provider, and all costs of administration from birth through age sixteen years. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not exempt other health care services provided at the time of immunization from any deductible and/or copayment provisions.

(f) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics and other appropriate health care providers shall provide parents of newborns and preschool age children with information on the following immunizations: Diphtheria, polio, mumps, measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b and whooping cough. This information should include the availability of free immunization services for children.

CHAPTER 33. INSURANCE.

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
16A. Group Health Insurance Conversion.
16C. Employer Group Accident and Sickness Insurance Policies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.
§33-15-15. Insurance commissioner to establish minimum benefits and coverages for an individual policy design; basic policy benefits; exemptions; legislative rules; premiums; applicability.


§33-15-15. Insurance commissioner to establish minimum benefits and coverages for an individual policy design; basic policy benefits; exemptions; legislative rules; premiums; applicability.

(a) The insurance commissioner shall establish minimum benefits which may be included in any individual accident and sickness insurance policy issued pursuant to this article. The commissioner may accept bids on designs for such minimum plans and shall compile a final basic benefit plan for use by insurers within six months after the effective date of this article.

(b) The basic policy plan established by the insurance commissioner may include coverage for the services of medical physicians or surgeons, podiatrists, physician assistants, osteopathic physicians or surgeons, chiropractors, midwives, advanced nurse practitioners or any other professional health care provider as deemed appropriate by the insurance commissioner.

(c) The following shall serve as a guide to the commissioner in the design of a basic policy issued pursuant to this article:

1. Inpatient hospital care up to twenty days per year;
2. Outpatient hospital care including, but not limited to, surgery and anesthesia, pre-admission testing, radiation therapy and chemotherapy;
3. Accident or emergency care through emergency room care and emergency admissions to a hospital;
4. Physician office visits for primary, preventive, well, acute or sick care, up to four visits per year, and laboratory fees, surgery and anesthesia, diagnostic X rays, physician care in a hospital inpatient or outpatient setting;
5. Prenatal care, including a minimum of one
prenatal office visit per month during the first two
trimesters of pregnancy, two office visits per month
during the seventh and eighth months of pregnancy, and
one office visit per week during the ninth month and
until term. Coverage for each such visit shall include
necessary appropriate screening, including history,
physical examination, and such laboratory and diagnos-
tic procedures as may be deemed appropriate by the
physician based upon recognized medical criteria for the
risk group of which the patient is a member. Coverage
for each office visit shall also include such prenatal
counseling as the physician deems appropriate;

(6) Obstetrical care, including physician’s services,
delivery room and other medically necessary hospital
services;

(7) X-ray and laboratory services in connection with
mammograms or pap smears when performed for
cancer screening or diagnostic purposes, at the direction
of a physician, including, but not limited to, the
following:

(A) Baseline or other recommended mammograms for
women age thirty-five to thirty-nine, inclusive;

(B) Mammograms recommended or required for
women age forty to forty-nine, inclusive, every two years
or as needed;

(C) A mammogram every year for women age fifty
and over; or

(D) A pap smear annually or more frequently based
on the woman’s physician’s recommendation for women
age eighteen or over. A basic policy issued pursuant to
this article may apply to mammograms or pap smears
the same deductibles or copayments as apply to other
covered services;

(8) Medical and laboratory services in connection with
annual checkups for prostate cancer in men age fifty
and over; and

(9) Child immunization services as described in
section five, article three, chapter sixteen of this code.
This coverage will cover all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

(d) Notwithstanding any other provision of this code to the contrary, any basic policy issued pursuant to this section shall be exempt from all statutorily and regulatorily mandated benefits and coverages except for the minimum benefits and coverages as established by the commissioner pursuant to subsection (a) of this section.

(e) Nothing in this section shall preclude an insurer from offering any other benefit or coverage under a basic policy issued pursuant to this article, for an appropriate additional premium: Provided, That any additional benefit or coverage must first be approved by the insurance commissioner.

(f) A basic policy issued pursuant to this section may include deductibles, copayments and maximum benefits: Provided, That any additional benefit must first be approved by the insurance commissioner.

(g) The insurance commissioner shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code to implement the provisions of this section, including, but not limited to, rules regarding bids, forms and rates.

(h) The premiums paid for insurance provided pursuant to this article shall be exempt from the premium tax required to be paid pursuant to sections fourteen and fourteen-a, article three of this chapter.

(i) A basic policy provided by this section shall be issued only to individuals who have been without health insurance coverage for at least one year prior to

All policies issued pursuant to this article shall cover the cost of child immunization services as described in section five, article three, chapter sixteen of this code, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-12. Child immunization services coverage.

All policies issued pursuant to this article shall cover the cost of child immunization services as described in section five, article three, chapter sixteen of this code, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.


All policies issued pursuant to this article shall cover the cost of child immunization services as described in section five, article three, chapter sixteen of this code, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts.
contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

ARTICLE 16C. EMPLOYER GROUP ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16C-3. Exemption from mandatory benefits and coverages; optional benefits and coverages; deductibles and copayments.

(a) Notwithstanding any other provision of this code to the contrary, any basic policy issued pursuant to this article shall be exempt from all statutorily and regulatorily mandated benefits and coverages except for the minimum benefits and coverages provided for in section four of this article.

(b) Nothing in this article shall preclude an insurer from offering any other benefit or coverage under a basic policy issued pursuant to this article, for an appropriate additional premium: Provided, That any additional benefit or coverage must first be approved by the insurance commissioner.

(c) A basic policy issued pursuant to this article may include deductibles, copayments and maximum benefits: Provided, That any additional benefit must first be approved by the insurance commissioner: Provided, however, That child immunization services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not exempt other health care services provided at the time of immunization from any deductible and/or copayment provisions.

§33-16C-4. Insurance commissioner to establish minimum benefits and coverages; basic policy benefits.

(a) The insurance commissioner shall establish
minimum benefits which shall be included in every insurance policy issued pursuant to this article. The commissioner may accept bids on designs for such minimum plans and shall compile a final basic benefit plan for use by insurers within six months after the effective date of this article.

(b) The basic policy plan established by the insurance commissioner may include coverage for the services of medical physicians or surgeons, podiatrists, physician assistants, osteopathic physicians or surgeons, chiropractors, midwives, advanced nurse practitioners, or any other professional health care provider as deemed appropriate by the insurance commissioner.

(c) The following shall serve as a guide to the commissioner in the design of a basic policy issued pursuant to this article:

(1) Inpatient hospital care up to twenty days per year;

(2) Outpatient hospital care including, but not limited to, surgery and anesthesia, pre-admission testing, radiation therapy and chemotherapy;

(3) Accident or emergency care through emergency room care and emergency admissions to a hospital;

(4) Physician office visits for primary, preventive, well, acute or sick care, up to four visits per year, and laboratory fees, surgery and anesthesia, diagnostic X rays, physician care in a hospital inpatient or outpatient setting;

(5) Prenatal care, including a minimum of one prenatal office visit per month during the first two trimesters of pregnancy, two office visits per month during the seventh and eighth months of pregnancy, and one office visit per week during the ninth month and until term. Coverage for each such visit shall include necessary appropriate screening, including history, physical examination, and such laboratory and diagnostic procedures as may be deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member. Coverage for each office visit shall also include such prenatal
counseling as the physician deems appropriate;

(6) Obstetrical care, including physician’s services, delivery room and other medically necessary hospital services;

(7) X-ray and laboratory services in connection with mammograms or pap smears when performed for cancer screening or diagnostic purposes, at the direction of a physician, including, but not limited to, the following:

(A) Baseline or other recommended mammograms for women age thirty-five to thirty-nine, inclusive;

(B) Mammograms recommended or required for women age forty to forty-nine, inclusive, every two years or as needed;

(C) A mammogram every year for women age fifty and over; or

(D) A pap smear annually or more frequently based on the woman’s physician’s recommendation for women age eighteen or over. A basic policy issued pursuant to this article may apply to mammograms or pap smears the same deductibles or copayments as apply to other covered services;

(8) Medical and laboratory services in connection with annual checkups for prostate cancer in men age fifty and over; and

(9) Child immunization services as described in section five, article three, chapter sixteen of this code. This coverage will cover all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.
ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-14. Child immunization services coverage.

1. All policies issued pursuant to this article shall cover the cost of child immunization services as described in section five, article three, chapter sixteen of this code, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7d. Required provisions in contracts which include child immunization services in the terms of the contract.

1. Each contract made by the corporation with participating hospitals, physicians, and other health agencies which provide immunizations to children shall require that bills submitted to the corporation for child immunization services rendered under the terms of their contracts will set forth separately those charges for said services. Charges for other health care services provided during the same visit shall not be included in the charge for immunization services.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8c. Third party payment for child immunization services.

1. Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article
applies, any entity regulated by this article shall, on or after the first day of July, one thousand nine hundred ninety-four, provide as benefits to all subscribers and members coverage for child immunization services as described in section five, article three, chapter sixteen of this code. This coverage will cover all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies, provisions, plans, agreements or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8c. Third party payment for child immunization services.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on or after the first day of July, one thousand nine hundred ninety-four, provide as benefits to all subscribers and members coverage for child immunization services as described in section five, article three, chapter sixteen of this code. This coverage will cover all costs associated with immunization, including the cost of the vaccine, if incurred by the health care provider, and all costs of vaccine administration. These services shall be exempt from any deductible, per-visit charge and/or copayment provisions which may be in force in these policies, provisions, plans, agreements or contracts. This section does not require that other health care services provided at the time of immunization be exempt from any deductible and/or copayment provisions.
AN ACT to amend and reenact sections two and nine, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and five, article five-e of said chapter; and to amend and reenact sections one and two-a, article five-h of said chapter, all relating to nursing, personal care and residential board and care homes; amending the definition of director; amending the definitions of facilities with respect to the number of persons who may be served by nursing homes, personal care homes and residential board and care homes; inserting a definition for "limited and intermittent nursing care" for licensed facilities; increasing the minimum number of persons served from three to four for classification as a nursing home; increasing from two to three the number of persons who may be served by a legally unlicensed health care facility; increasing from three to eight to four to ten the number of persons who may be served by residential board and care homes; requiring compliance with requirements of the fire commission; deleting reference to the requirement that certain residential board and care homes have a specific type of sprinkler system; amending the definition of service provider to include the provision of limited and intermittent nursing care; eliminating reference to the residential board and care homes automatic sprinkler system requirement; requiring legally unlicensed health care facilities to provide consumers, orally and in writing, with certain information if limited and intermittent care is provided by a facility; and requiring residential board and care homes to comply with regulations of the state fire commission and requiring the fire marshal to make fire and safety inspections.

Be it enacted by the Legislature of West Virginia:

That sections two and nine, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be amended and reenacted; that sections two and five, article five-e of said chapter be amended and reenacted; and that sections one and two-a, article five-h of said chapter be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

Article 5C. Nursing and Personal Care Homes and Residential Board and Care Homes.

5E. Registration of Service Providers in Legally Unlicensed Health Care Facilities.

5H. Residential Board and Care Homes.

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.

§16-5C-2. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) The term “director” means the secretary of the department of health and human resources or his or her designee;

(b) The term “facility” means any nursing home, personal care home or residential board and care home as defined in subdivisions (d), (e) and (f) of this section: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home, personal care home, or residential board and care home within the meaning of this article. Nothing contained in this article shall apply to hospitals, as defined under section one, article five-b of this chapter, or state institutions as defined under section six, article one, chapter twenty-seven of this code or section three, article one, chapter twenty-five of this code, or nursing homes operated by the federal government or the state government, or institutions operated for the treatment and care of alcoholic patients, or offices of physicians, or hotels, boarding homes or other similar places that
furnish to their guests only room and board, or extended
care facilities operated in conjunction with a hospital;

(c) The term "limited and intermittent nursing care"
means care which may only be provided when the need
for such care meets these factors: (1) The resident
requests to remain in the facility; (2) the resident is
advised of the availability of other specialized health
care facilities to treat his or her condition; and (3) the
need for such care is the result of a medical pathology
or a result of the normal aging process. Limited and
intermittent nursing care shall only be provided by or
under the direct supervision of a registered professional
nurse and in accordance with rules promulgated by the
board of health;

(d) The term "nursing home" means any institution,
residence or place, or any part or unit thereof, however
named, in this state which is advertised, offered,
maintained or operated by the ownership or manage-
ment, whether for a consideration or not, for the express
or implied purpose of providing accommodations and
care, for a period of more than twenty-four hours, for
four or more persons who are ill or otherwise incapac-
itated and in need of extensive, on-going nursing care
due to physical or mental impairment, or which
provides services for the rehabilitation of persons who
are convalescing from illness or incapacitation;

(e) The term "personal care home" means any
institution, residence or place, or any part or unit
thereof, however named, in this state which is adver-
tised, offered, maintained or operated by the ownership
or management, whether for a consideration or not, for
the express or implied purpose of providing accommo-
dations and personal assistance and supervision, for a
period of more than twenty-four hours, to four or more
persons who are dependent upon the services of others
by reason of physical or mental impairment who may
require limited and intermittent nursing care, including
those individuals who qualify for and are receiving
services coordinated by a licensed hospice: Provided,
That services utilizing equipment which requires
auxiliary electrical power in the event of a power failure
shall not be used unless the personal care home has a backup power generator;

(f) The term “residential board and care home” means any residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and personal assistance and supervision, for a period of more than twenty-four hours, to four to ten persons who are not related to the owner or manager by blood or marriage within the degree of consanguinity of second cousin and are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but are capable of self-preservation and are not bedfast, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure shall not be used unless the residential board and care home has a backup power generator;

(g) The term “nursing care” means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterizations, special procedure contributing to rehabilitation and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person;

(h) The term “personal assistance” means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(i) The term “patient” means an individual under care in a nursing home;
(j) The term “resident” means an individual living in a personal care home or a residential board and care home;

(k) The term “sponsor” means the person or agency legally responsible for the welfare and support of a patient or resident;

(l) The term “person” means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state.

The director may define in regulations any term used herein which is not expressly defined.

§16-5C-9. Inspections.

The director and any duly designated employee or agent thereof shall have the right to enter upon and into the premises of any facility for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a nursing home, personal care home or residential board and care home without a license. If such entry is refused by the owner or person in charge of any such facility, the director shall apply to the circuit court of the county in which the facility is located or the circuit court of Kanawha County for a warrant authorizing inspection, and such court shall issue an appropriate warrant if it finds good cause for inspection.

The director, by the director’s authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the facility with applicable statutes and regulations promulgated thereunder. All facilities shall comply with regulations of the state fire commission. The state fire marshal, by his employees or authorized agents, shall make all fire, safety and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this
If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a consumer's health or safety exists, the director may invoke any remedies available pursuant to section eleven of this article. Any facility aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve of this article.

Article 5E. Registration of Service Providers in Legally Unlicensed Health Care Facilities.

§16-5E-2. Definitions.
§16-5E-5. Inspections; right of entry.

§16-5E-2. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) The term "consumer" means an individual who is provided services, whether or not for a fee, by a service provider, but consumer does not include a person receiving services provided by another who is related to him or her or the spouse thereof by blood or marriage, within the degree of consanguinity of second cousin. Limited and intermittent nursing care may only be provided when the need for such care: (1) Arises from the consumer's desire to remain in the facility; (2) the consumer is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of the normal aging process. Limited and intermittent nursing care shall only be provided by or under the direct supervision of a registered professional nurse and in accordance with rules promulgated by the secretary of the department of health and human resources. If limited and intermittent nursing care is provided in an unlicensed health care facility, the facility shall: (1) Provide consumers, at the time of admission, with the name, address and telephone number of the offices of health facility licensure and certification, the state long-term care
ombudsman, and adult protective services, all within the
department of health and human resources; and (2)
advise consumers both orally and in writing of their
right to file a complaint with the aforementioned
entities;

(b) The term "director" means the secretary of the
department of health and human resources or his or her
designee;

c) The term "nursing care" means those procedures
commonly employed in providing for the physical,
emotional and rehabilitational needs of the ill or
otherwise incapacitated which require technical skills
and knowledge beyond that which the untrained person
possesses, including, but not limited to, such procedures
as: Irrigations; catheterization; special procedures
contributing to rehabilitation; and administration of
medication by any method prescribed by a physician
which involves a level of complexity and skill in
administration not possessed by the untrained person;

(d) The term "personal assistance" means personal
services, including, but not limited to, the following:
Help in walking, bathing, dressing, feeding or getting
in or out of bed, or supervision required because of the
age or physical or mental impairment of the resident;

(e) The term "service provider" means the individual
administratively responsible for providing to consumers
for a period of more than twenty-four hours, whether for
compensation or not, services of personal assistance for
one to three consumers and who may require limited
and intermittent nursing care, including those individ-
uals who qualify for and are receiving services coordi-
nated by a licensed hospice: Provided, That services
utilizing equipment which requires auxiliary electrical
power in the event of a power failure shall not be used
unless the health care facility has a backup power
generator.

§16-5E-5. Inspections; right of entry.

1 The director may employ inspectors to enforce the
provisions of this article. These inspectors shall have the right of entry into any place where services are provided by a service provider, to determine the number of consumers therein and the adequacy of services being provided to them. The director may obtain a search warrant to inspect those premises that the director has reason to believe are being used to provide services.

If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a resident's health or safety exists, the director may petition the circuit court for an injunction, order of abatement or other appropriate action or proceeding to: (1) Close the facility; (2) transfer consumers in the facility to other facilities; or (3) appoint temporary management to oversee the operation of the facility to assure the health, safety, welfare and rights of the facility's consumers where there is a need for temporary management to ensure compliance with the court's order. Any facility aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve, article five-c of this chapter.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-1. Definitions.
§16-5H-2a. Fire protection.

§16-5H-1. Definitions.

(a) The term "residential board and care home" means any residence or place or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four hours, to four to ten persons who are not related to the owner or manager by blood or marriage, within the degree of consanguinity of second cousin, and who are dependent upon the services
of others by reason of physical or mental impairment or
who may require limited and intermittent nursing care
but who are capable of self-preservation and are not
bedfast, including those individuals who qualify for and
are receiving services coordinated by a licensed hospice:
Provided, That services utilizing equipment which
requires auxiliary electrical power in the event of a
power failure shall not be used unless the residential
board and care home has a backup power generator.

(b) The term “self-preservation” means that a person
is, at least, capable of removing his or her physical self
from situations involving imminent danger, such as fire.

(c) The term “limited and intermittent nursing care”
means care which may only be provided when: (1) The
resident desires to remain in the facility; (2) the resident
is advised of the availability of other specialized health
care facilities to treat his or her condition; and (3) the
need for such care is the result of a medical pathology
or a result of the normal aging process. Limited and
intermittent nursing care shall only be provided by or
under the direct supervision of a registered professional
nurse and in accordance with rules promulgated by the
secretary of the department of health and human
resources.

§16-5H-2a. Fire protection.

All residential board and care homes shall comply
with regulations of the state fire commission. The state
fire marshal, by his or her employees or authorized
agents, shall make regular fire and safety inspections of
board and care homes.

CHAPTER 68

(Com. Sub. for S. B. 408—By Senators Burdette, Mr. President,
Wooton, Sharpe, Chafin, Minard and Whitlow)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]
section seven, relating to enforcement of statutes preventing the possession or use of tobacco products by minors; duties of division of public safety; use of minors by law-enforcement authorities with parental consent; defenses; duties of court clerks upon convictions; providing annual reports on enforcement and compliance activities; providing that form of reports conform with federal law; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-7. Enforcement of youth smoking laws; random inspections; use of minors in inspections; annual reports; penalties; defenses.

1 (a) The division of public safety, acting with and through the sheriffs of the counties of this state and the chiefs of police of municipalities of this state, shall annually conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with the provisions of sections two and three of this article and in such manner as to conform with Section 1926 of the Public Health Services Act and applicable rules. Persons under the age of eighteen years may be enlisted by such superintendent, sheriffs or chiefs of police or employees thereof to test compliance with these sections: Provided, That the minors may be used to test compliance only if the testing is conducted under the direct supervision of the superintendent, sheriffs or chiefs of police or employees thereof and written consent of the parent or guardian of such person is first obtained. It is unlawful for any person to use persons under the age of eighteen years to test compliance in any manner not set forth herein and the person so using a minor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined the same amounts as set forth in section two of this article.
(b) A person charged with a violation of section two or three of this article as the result of a random inspection under subsection (a) of this section has a complete defense if, at the time the cigarette or other tobacco product or cigarette wrapper was sold, delivered, bartered, furnished or given:

(1) The buyer or recipient falsely evidenced that he was eighteen years of age or older;

(2) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be eighteen years of age or older; and

(3) Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was eighteen years of age or older.

c) Any fine collected after a conviction of violating either section two or three of this article shall be paid to the clerk of the court in which the conviction was obtained. The clerk of the court upon receiving the fine shall promptly notify the superintendent of the division of public safety of the conviction and the collection of the fine.

d) The superintendent of the division of public safety shall prepare and submit to the governor on the first day of May of each year a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the same. The report shall be in the form and substance that the governor shall submit to the secretary of the United States department of health and human services, in compliance with Section 1926, Subpart I, Part E, Title XIX of the federal Public Health Service Act (42 U.S.C. 300x-26).
CHAPTER 69

(Com. Sub. for H. B. 4614—By Delegates McKinley, L. White and Houvouras)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fifteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public health; state housing law; definitions; and the definition of “mayor.”

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. STATE HOUSING LAW.


1. The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

   (a) “Authority” or “housing authority” shall mean a corporate body organized in accordance with the provisions of this article for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

   (b) “Mayor” shall mean the chief executive of the city, whether the official designation of his office be mayor, city manager or otherwise: Provided, That the term “mayor” may also be the chief elected officer of the municipality regardless of whether or not the corporate charter provides for a city manager appointed by the city council who is the chief executive officer.

   (c) “Council” shall mean the chief legislative body of the city.

   (d) “Commissioner” shall mean one of the members of an authority appointed in accordance with the provisions of this article.
(e) "Government" shall include the state and federal governments and any subdivisions, agency or instrumentality, corporate or otherwise, of either of them.

(f) The "state" shall mean the state of West Virginia.

(g) "City" shall mean any incorporated city, town or village.

(h) "Slum clearance" shall include the removal of housing conditions which shall be considered by the housing authority of the city in which such conditions exist to be unsanitary or substandard or a menace to public health.

(i) "Low-cost housing" shall include any housing accommodations which are or are to be rented at not in excess of a maximum rate per room, or maximum average rate per room, which shall be specified or provided by the housing authority of the city in which such housing accommodations are or are to be located, or the Legislature, or a duly constituted agency of the state, or of the United States of America.

(j) "Project" shall include all lands, buildings and improvements, acquired, owned, leased, managed or operated by a housing authority, and all buildings and improvements constructed, reconstructed or repaired by a housing authority, designed to provide housing accommodations, or stores, offices and community facilities appurtenant thereto, which are planned as a unit, whether or not acquired or constructed at one time, and which ordinarily are contiguous or adjacent to one another. The term "project" may also be applied to the planning of buildings and improvements, the acquisition of property, the demolition of existing structures, the clearing of land, the construction, reconstruction and repair of improvements and all other work in connection therewith.

(k) "Community facilities" shall include lands, buildings and equipment of recreation or social assembly, for educational, health or welfare activities and other necessary utilities primarily for use and benefit of the occupants of housing accommodations to be constructed and operated hereunder.