

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1994
First Extraordinary Session, 1994
Second Extraordinary Session, 1993

Volume I
Chapters 1—69

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FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 71st Legislature, 1994 and the Second Extraordinary Session, 1993.

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.

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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MEMBERS OF THE SENATE

REGULAR SESSION, 1994

OFFICERS

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

District	Name	Address	Prior Legislative Service
First	Thais Blatnik (D)	Wheeling	(House 63rd: 65th-67th); 69th-70th
	John G. Chernenko (D)	Wellsburg	66th-70th
Second	Don Macnaughtan (D)	New Martinsville	70th
	Larry Wiedebusch (D)	Glen Dale	(House 62nd-67th); 69th-70th
Third	Donna Jean Boley (R)	St. Marys	Appt. 5/14/85. 67th; 68th-70th
	Keith Burdette (D)	Parkersburg	(House 64th-65th); 66th-70th
Fourth	Oshel B. Craigo (D)	Hurricane	(House 65th); 66th-70th
	Robert L. Dittmar (D)	Ravenswood	69th-70th
Fifth	Bartow Ned Jones (D)	Huntington	Appt. 12/30/85. 67th; 68th-70th
	Robert H. Plymale (D)	Ceredo	
Sixth	H. Truman Chafin (D)	Williamson	66th-70th
	A. Keith Wagner (D)	Jaeger	69th-70th
Seventh	Sammy D. Dalton (D)	Harts	(House 62nd-67th; 69th); 70th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 66th-70th
Eighth	David Grubb (D)	Charleston	(House 69th-70th)
	James F. Humphreys (D)	Charleston	(House 66th-68th); Appt. 9/13/89. 69th; 70th
Ninth	Billy Wayne Bailey, Jr. (D)	Alpoca	Appt. 1/8/91. 70th
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th); 70th
Tenth	Leonard W. Anderson (D)	Hinton	70th
	Tony E. Whitlow (D)	Princeton	(House 60th-61st; 63rd-66th); 67th- 70th
Eleventh	Randy Schoonover (D)	Clay	(House 69th-70th); Appt. 9/27/93
	Robert K. Holliday (D)	Fayetteville	(House 56th-58th); 59th-60th; 65th- 70th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House, Appt. 1/10/83. 66th; 67th- 69th); 70th
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-70th
Thirteenth	Eugene Claypole (D)	Granville	70th
	Joe Manchin, III (D)	Fairmont	(House 66th); 68th-70th
Fourteenth	David E. Miller (D)	Tunnelton	(House 69th-70th); Appt. 9/27/93
	J. M. Withers (D)	Grafton	70th
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr.; 69th); Appt. 9/25/89. 69th; 70th
	Mike Ross (D)	Coalton	
Sixteenth	Sondra Moore Lucht (D)	Martinsburg	66th-70th
	John C. Yoder (R)	Harpers Ferry	
Seventeenth	Martha Yeager Walker (D)	Charleston	(House 70th)
	Martha G. Wehrle (D)	Charleston	(House 62nd-66th); Appt. 9/5/89. 69th. 70th

¹Appointed to fill the vacancy created by the resignation of J. D. Brackenhric.

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

(D) Democrats	32
(R) Republicans	2
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

District	Name	Address	Prior Legislative Service
First	Sam Love (D)	Weirton	66th-70th
	Tamara Pettit (D)	New Cumberland	Appt. 11/20/89. 69th; 70th
Second	Paul R. Higgins (D)	Follansbee	70th
	Robert G. Lindsev, Jr. (D)	Wellsburg	70th
Third	David B. McKinley (R)	Wheeling	65th-70th
	L. Gil White (R)	Wheeling	70th
Fourth	A. E. Tribett (D)	McMechen	69th
	Scott G. Varner (D)	Moundsville	
Fifth	Dave Pethel (D)	Hundred	69th-70th
Sixth	James E. Willison (R)	Sistersville	69th-70th
Seventh	Otis A. Leggett (R)	St. Marys	68th-70th
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	
Ninth	Larry Border (R)	Davisville	70th
Tenth	J. D. Beane (D)	Vienna	70th
	Brenda K. Brum (D)	Parkersburg	70th
	Robert W. Burk, Jr. (R)	Parkersburg	58th-59th (Appt. to Senate 2/23/69. 59th); Appt. to House 1/17/86. 67th; 68th-70th
Eleventh	Bob Ashley (R)	Spencer	67th-70th
Twelfth	Karen L. Facemyer (R)	Ripley	
Thirteenth	Brady R. Paxton (D)	Poca	
	Patricia Holmes White (D)	Poca	67th-70th
Fourteenth	Deborah F. Phillips (D)	Scott Depot	67th-70th
	Ben Vest (D)	Scott Depot	70th
Fifteenth	Robert Chambers (D)	Huntington	64th-70th
	Margarette R. Leach (D)	Huntington	
	Evelyn E. Richards (R)	Huntington	64th; 67th; 69th-70th
Sixteenth	Rick Houvouras (D)	Huntington	68th-70th
	John C. Huntwork (D)	Huntington	70th
	Stephen T. Williams (D)	Huntington	68th-70th
Seventeenth	Kenneth R. Adkins (D)	Huntington	Appt. 1/20/92. 70th
Eighteenth	Larry Jack Heck (D)	Huntington	
Nineteenth	Grant Preece (D)	Ragland	70th
	Harry Keith White (D)	Gilbert	Appt. 9/11/92. 70th
Twentieth	Tracy Dempsey (D)	Harts	70th
	Danny L. Ellis (D)	Chapmanville	
	Larry Hendricks (D)	Chapmanville	70th
	David E. Whitman (D)	Chapmanville	Appt. 2/17/89. 69th
Twenty-first	Delores W. Cook (D)	Ridgeview	69th-70th
Twenty-second	Ernest C. Moore (D)	Thorpe	60th-63rd; 65th-70th
	Emily W. Yeager (D)	Welch	Appt. 3/10/93
Twenty-third	Richard Browning (D)	Oceana	69th-70th
	W. Richard Staton (D)	Mulens	69th-70th
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/29/93
Twenty-fifth	Richard D. Flanigan (D)	Princeton	66th-70th
	Odell H. Huffman (D)	Princeton	59th-60th; (Senate 61st-66th); 70th
Twenty-sixth	Mary Pearl Compton (D)	Union	69th-70th

HOUSE OF DELEGATES

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Twenty-seventh	Robert S. Kiss (D).....	Beckley.....	69th-70th
	Warren R. McGraw, II (D).....	Beckley.....	
	Robert P. Pulliam (D).....	Beckley.....	
	Pat Reed (D).....	Beckley.....	70th
	Arnold W. Ryan (D).....	Hinton.....	67th-69th
Twenty-eighth	James J. Rowe (D).....	Lewisburg.....	69th-70th
	Bill Wallace (R).....	Clintonville.....	69th-70th
Twenty-ninth	Tom Louisos (D).....	Oak Hill.....	67th-68th; 70th
	Bruce N. Petersen (D).....	Fayetteville.....	
	John Pino (D).....	Oak Hill.....	67th-68th
Thirtieth	Bonnie L. Brown (D).....	South Charleston.....	66th-68th; 70th
	Joe Farris (D).....	Charleston.....	70th
	Nancy Kessel (D).....	Charleston.....	70th
	Margaret Miller (R).....	South Charleston.....	69th-70th
	Phyllis J. Rutledge (D).....	Charleston.....	59th-61st; 69th-70th
	Joe F. Smith (D).....	Charleston.....	
	Sharon Spencer (D).....	Charleston.....	66th; 68th-70th
Thirty-first	Nelson A. Sorah (D).....	Charleston.....	
Thirty-second	Steve Harrison (R).....	Nitro.....	
	Dick Henderson (R).....	St. Albans.....	
	William Jay Nesbitt (R).....	Cross Lanes.....	
	Ronald Neal Walters (R).....	Cross Lanes.....	
Thirty-third	*Clinton N. Nichols (D).....	Clay.....	Appt. 10/14/93
Thirty-fourth	John Campbell (D).....	Sutton.....	70th
Thirty-fifth	C. Farrell Johnson (D).....	Summersville.....	68th-70th
Thirty-sixth	Joseph B. Talbott (D).....	Webster Springs	
Thirty-seventh	Joe Martin (D).....	Elkins.....	Appt. 6/15/78, 63rd; 64th-70th
	William D. Proudfoot (D).....	Elkins.....	70th
Thirty-eighth	James R. Fealy (D).....	Weston.....	
Thirty-ninth	Dale F. Riggs (R).....	Buckhannon.....	69th-70th
Fortieth	Richard H. Everson (D).....	Philippi.....	
Forty-first	Percy C. Ashcraft, II (D).....	Clarksburg.....	66th-70th
	Ron Fragale (D).....	Nutter Fort.....	70th
	Larry A. Lynch (D).....	Clarksburg.....	
	Barbara A. Warner (D).....	Bridgeport.....	69th-70th
Forty-second	John F. Bennett (D).....	Grafton.....	
Forty-third	Nick Fantasia (D).....	Kingmont.....	52nd-53rd; 57th-60th; 62nd; 69th; Appt. 2/26/93
	Roman W. Prezioso (D).....	Fairmont.....	69th-70th
	William E. Stewart (D).....	Fairmont.....	66th; 68th; 70th
Forty-fourth	Robert C. Beach (D).....	Core.....	Appt. 7/27/90, 69th; 70th
	Stephen L. Cook (D).....	Morgantown.....	Appt. 1/21/80, 64th; 65th (Senate 66th-67th); 69th-70th
	Brian Gallagher (D).....	Morgantown.....	Appt. 5/22/89, 69th; 70th
	Michael A. Oliverio, II (D).....	Morgantown.....	
Forty-fifth	*Larry A. Williams (D).....	Tunnelton.....	Appt. 10/8/93
Forty-sixth	David Collins (D).....	Davis.....	70th
Forty-seventh	Harold K. Michael (D).....	Moorefield.....	69th-70th
Forty-eighth	Allen V. Evans (R).....	Dorcas.....	70th
Forty-ninth	James T. Nicol (D).....	Keyser.....	
Fiftieth	Jerry L. Mezzatesta (D).....	Romney.....	68th-70th
Fifty-first	Charles S. Trump, IV (R).....	Berkeley Springs	
Fifty-second	Vicki V. Douglas (D).....	Martinsburg.....	70th
Fifty-third	Larry V. Faircloth (R).....	Inwood.....	65th-70th
Fifty-fourth	John Overington (R).....	Martinsburg.....	67th-70th
Fifty-fifth	John Dolye (D).....	Shepherdstown.....	66th
Fifty-sixth	Dale Manuel (D).....	Charles Town.....	69th-70th

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 E. 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, Pethtel, 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

Martin (*Chair*), Michael (*Vice Chair*), Beane, Dempsey, Fantasia, Fragale, Frederick, Heck, Higgins, Louisos, Love, McGraw, Oliverio, Preece, Pulliam, Smith, Stewart, Varner, Vest, Border, Evans, Facemyer, Nesbitt, Walters and Willison.

Health and Human Resources

P. White (*Chair*), S. Cook (*Vice Chair*), Brown, Brum, Compton, Douglas, Doyle, Ellis, Fantasia, Fealy, Flanigan, 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

Rowe (*Chair*), Staton (*Vice Chair*), Brum, Brown, Collins, Douglas, Gallagher, Huffman, Huntwork, Kessel, Linch, Manuel, Moore, Pethel, Phillips, Pino, Reed, Sorah, Tribett, Whitman, Ashley, Faircloth, Riggs, Trump and L. White.

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,

Bennett, D. Cook, Dempsey, Everson, Fealy, Fragale, Hendricks, Higgins, Leach, Love, Paxton, Pino, Smith, Talbott, Varner, Whitman, Border, Evans, Leggett, Nesbitt and Wallace.

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**

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

Juvenile Law

Brown (*Cochair*), 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.

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.

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 Cochair*), Anderson, Macnaughtan, Minard and Boley.

Pensions and Retirement

Wehrle (*Cochair*), Manchin (*Vice Cochair*), Dittmar, Lucht, Miller, Walker and Withers.

Rules

Burdette (*Cochair*), Craigo and Boley.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 1994

CHAPTER 1

(Com. Sub. for S. B. 426—By Senator Plymale)

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

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.
- §19-25-5. Definitions.

§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.

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

§19-25-4. Application of article.

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

11 Nothing herein creates a duty of care or ground of
12 liability for injury to person or property.

13 Nothing herein limits in any way the obligation of a
14 person entering upon or using the land of another for
15 recreational or wildlife propagation purposes to exercise
16 due care in his or her use of such land and in his or
17 her activities thereon.

***§19-25-5. Definitions.**

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

3 (1) "Charge" means:

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

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

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

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

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

26 (5) "Recreational purposes" includes, but shall not be
27 limited to, any one or any combination of the following
28 noncommercial recreational activities: Hunting, fishing,
29 swimming, boating, camping, picnicking, hiking,
30 pleasure driving, motorcycle or all-terrain vehicle
31 riding, bicycling, horseback riding, nature study, water
32 skiing, winter sports and visiting, viewing or enjoying
33 historical, archaeological, scenic or scientific sites or
34 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.

35 (6) "Wildlife propagation purposes" applies to and
36 includes all ponds, sediment control structures, perman-
37 ent water impoundments or any other similar or like
38 structure created or constructed as a result of or in
39 connection with surface-mining activities, as governed
40 by article three, chapter twenty-two-a of this code, or
41 from the use of surface in the conduct of underground
42 coal mining as governed by articles one, two and three
43 of said chapter, and rules promulgated thereunder,
44 which ponds, structures or impoundments are hereafter
45 designated and certified in writing by the director of the
46 division of natural resources and the owner to be
47 necessary and vital to the growth and propagation of
48 wildlife, animals, birds and fish or other forms of
49 aquatic life, and finds and determines that the premises
50 has the potential of being actually used by the wildlife
51 for those purposes and that the premises are no longer
52 used or necessary for mining reclamation purposes. The
53 certification shall be in form satisfactory to the director
54 and shall provide that the designated ponds, structures
55 or impoundments shall not be removed without the joint
56 consent of the director and the owner; and

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

CHAPTER 2

**(Com. Sub. for S. B. 259—By Senators Burdette, Mr. President,
Craig, 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
2 accordance with an act of Congress or the statutes of this
3 state may be filed in the office of the clerk of any circuit
4 court of this state. The clerk shall treat the foreign
5 judgment in the same manner as a judgment of any
6 circuit court of this state. A judgment so filed has the
7 same effect and is subject to the same procedures,
8 defenses and proceedings for reopening, vacating or
9 staying as a judgment of a circuit court of this state and
10 may be enforced or satisfied in like manner: *Provided,*
11 That notwithstanding any other provision of this article
12 to the contrary, a citizen of this state shall be entitled
13 to the same exemption from execution, attachment or
14 seizure and sale as a citizen of the state where the
15 original judgment was entered. A debt collector seeking
16 to enforce a foreign judgment in this state shall ensure
17 that any suggestee execution or other legal process
18 seeking to seize property of a debtor pursuant to a
19 foreign judgment shall clearly state, on the face of the
20 petition or other filing, any property exempt in the state
21 in which the original judgment was entered and it shall
22 specify that the property is exempt from execution,
23 attachment or seizure and sale in this state. Any person
24 seeking to enforce a foreign judgment in this state who
25 violates any provision of this section shall be liable to
26 the person against whom the judgment is sought to be

27 enforced for actual damages and, in addition thereto,
 28 shall be liable to such person for a penalty in an amount
 29 not more than one thousand dollars. Any person seeking
 30 to enforce a foreign judgment in this state who willfully
 31 violates any provision of this section shall be guilty of
 32 a misdemeanor and, upon conviction thereof, shall be
 33 fined not more than one thousand dollars or confined in
 34 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.

3	<i>90—Division of Highways</i>		
4	(WV Code Chapters 17 and 17C)		
5	“Former” Account No. 6700		
6	“WVFIMS” Account No.		
7	Fund <u>9017</u> FY <u>1994</u> Org <u>0803</u>		
8			Act-
9			ivity
10			State
			Road
			Fund
11	1	Debt Service	040 \$ 52,900,000
12	2	ARC Assessment.....	136 700,000
13	3	Maintenance, Expressway,	
14	4	Trunkline and Feeder	270 67,298,000
15	5	Maintenance, State	
16	6	Local Services	271 108,218,000
17	7	Maintenance, Contract Paving	
18	8	and Secondary Road	
19	9	Maintenance.....	272 50,300,000
20	10	Bridge Repair and	
21	11	Replacement	273 24,000,000
22	12	Industrial Access Roads	274 4,000,000
23	13	Inventory Revolving	275 1,250,000
24	14	Equipment Revolving	276 11,500,000
25	15	General Operations	277 28,411,502
26	16	Interstate Construction.....	278 55,000,000
27	17	Other Federal Aid Programs	279 70,000,000
28	18	Appalachian Programs.....	280 120,000,000
29	19	Nonfederal Aid Construction	281 46,000,000
30	20	Highway Litter Control	282 1,500,000
31	21	Total	\$641,077,502
32	<i>91—Division of Highways—</i>		
33	<i>Federal Aid Highway Matching Fund</i>		
34	(WV Code Chapters 17 and 17C)		
35	“Former” Account No. 6701		
36	“WVFIMS” Account No.		
37	Fund <u>9018</u> FY <u>1994</u> Org <u>0803</u>		

38	1	Interstate Construction	278	\$	11,500,000
39	2	Appalachian Program	280		87,000,000
40	3	Other Federal Aid Programs	279		161,000,000
					161,000,000
41	4	Total		\$	259,500,000

42 The purpose of this supplementary appropriation bill
 43 is to supplement, amend, reduce and transfer between
 44 existing items in the aforesaid accounts for the desig-
 45 nated spending unit. The amounts as itemized for
 46 expenditure in fiscal year 1993-1994 shall be available
 47 for expenditure upon the effective date of this bill.

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:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations from federal funds.		
3	EXECUTIVE		
4	<i>191a—Governor's Office—</i>		
5	<i>Commission for National and Community Service</i>		
6	“Former” Account No. 7754		
7	“WVFIMS” Account No.		
8	Fund <u>8800</u>	FY <u>1994</u>	Org <u>0100</u>
9		Acti-	Federal
10		vity	Funds
11	1 Unclassified—Total	096	\$ 144,177

12 The purpose of this supplementary appropriation bill
 13 is to supplement the budget bill for the fiscal year 1993-
 14 1994 by providing for a new item of appropriation to be
 15 established therein to appropriate federal moneys
 16 available for expenditure in the fiscal year ending the
 17 thirtieth day of June, one thousand nine hundred ninety-
 18 four. Such amount shall be available for expenditure
 19 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	<i>129—Bureau of Employment Programs—</i>		
6	<i>Workers' Compensation Fund</i>		
7	(WV Code Chapter 23)		
8	"Former" Account No. 9000		
9	"WVFIMS" Account No.		
10	Fund	FY	Org
	3440	1994	0322
11		Act-	Other
12		ivity	Funds
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		<hr/> \$32,707,749

18 The purpose of this supplementary appropriation bill
19 is to supplement and amend this account in the budget
20 bill for the fiscal year 1993-1994 from the unappropriated
21 balance, in order to implement program performance
22 initiatives, by adding four hundred sixty-four
23 thousand, eight hundred twenty dollars to the personal
24 services line item, by adding one hundred seventy
25 thousand, five hundred fourteen dollars to the employee
26 benefits line item, and by adding four million, eight
27 hundred three thousand, eleven dollars to the unclassified
28 line item, for a total increase in authorized spending
29 authority of five million, four hundred thirty-eight
30 thousand, three hundred forty-five dollars to be available
31 for expenditure upon passage of this bill.

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.

§5A-2-20. Reduction of appropriations — Powers of governor.

1 (a) Notwithstanding any provision of this section, the
2 governor may reduce appropriations according to any of
3 the methods set forth in sections twenty-one and twenty-
4 two of this article. The governor may, in lieu of imposing
5 a reduction in appropriations, request an appropriation

6 by the Legislature from the revenue shortfall reserve
7 fund established in this section.

8 (b) A revenue shortfall reserve fund is hereby created
9 within the state treasury. The revenue shortfall reserve
10 fund shall be funded as set forth herein from surplus
11 revenues, if any, in the state fund, general revenue, as
12 such surplus revenues may accrue from time to time.
13 Commencing with the fiscal year ending the thirtieth
14 day of June, one thousand nine hundred ninety-four and
15 for each fiscal year thereafter, within sixty days of the
16 end of each fiscal year, the secretary shall cause to be
17 deposited into the revenue shortfall reserve fund the
18 first fifty percent of all surplus revenues, if any,
19 determined to have accrued during the fiscal year just
20 ended. The revenue shortfall reserve fund shall be
21 funded continuously and on a revolving basis in
22 accordance with this subsection up to an aggregate
23 amount not to exceed five percent of the total appropri-
24 ations from the state fund, general revenue, for the
25 fiscal year just ended. If at the end of any fiscal year
26 the revenue shortfall reserve fund is funded at an
27 amount equal to or exceeding five percent of the state's
28 general revenue fund budget for the fiscal year just
29 ended, then there shall be no further obligation of the
30 secretary under the provisions of this section to apply
31 any surplus revenues as set forth herein until such time
32 as the revenue shortfall reserve fund balance is less than
33 five percent of the total appropriations from the state
34 fund, general revenue.

35 (c) Not earlier than the first day of November of each
36 calendar year, if the state's fiscal circumstances are
37 such as to otherwise trigger the authority of the
38 governor to reduce appropriations under section twenty,
39 twenty-one or twenty-two of this article, then in such
40 event the governor may notify in writing the presiding
41 officers of both houses of the Legislature of his or her
42 intention to convene the Legislature pursuant to section
43 19, article VI of the West Virginia Constitution for the
44 purpose of requesting the introduction of a supplement-
45 ary appropriation bill or to request a supplementary
46 appropriation bill at the next preceding regular session

47 of the Legislature to draw money from the surplus
48 revenue shortfall reserve fund to meet any anticipated
49 revenue shortfall. If the Legislature fails to enact a
50 supplementary appropriation from the revenue shortfall
51 reserve fund during any special legislative session called
52 for the purposes set forth in this section or during the
53 next preceding regular session of the Legislature, then
54 the governor may proceed with a reduction of appropri-
55 ations pursuant to section twenty-one and section
56 twenty-two of this article. Should any amount drawn
57 from the revenue shortfall reserve fund pursuant to an
58 appropriation made by the Legislature prove insuffi-
59 cient to address any anticipated shortfall, then the
60 governor may also proceed with a reduction of appro-
61 priations pursuant to sections twenty-one and twenty-
62 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 assessments 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.

1 (a) All moneys collected by the commissioner from
2 financial institutions and bank holding companies for
3 assessments, examination fees, investigation fees or
4 other necessary expenses incurred by the commissioner
5 in administering such duties shall be paid to the
6 commissioner and paid by the commissioner to the
7 treasurer of the state to the credit of a special revenue
8 account to be known as the "Commissioner's Assessment
9 and Examination Fund" which is hereby established.
10 The assessments and fees paid into this account shall be
11 appropriated by law and used to pay the costs and
12 expenses of the division of banking and all incidental
13 costs and expenses necessary for its operations. At the
14 end of each fiscal year, if the fund contains a sum of
15 money in excess of twenty percent of the appropriated
16 budget of the division of banking, the amount of the
17 excess shall be transferred to the general revenue fund
18 of the state. The Legislature may appropriate money to
19 start the special revenue account.

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

25 (1) For each state banking institution, a semiannual
26 assessment payable on the first day of January and the
27 first day of July, each year, computed upon the total
28 assets of the banking institution shown on the report of
29 condition of the banking institution filed as of the
30 preceding thirtieth day of June and the thirty-first day
31 of December respectively as follows:

	Total Assets					
	Over		But Not	This	Plus	Of Excess
	Over	Over	Over	Amount	Plus	Over
	Million	Million	Million	Amount	Plus	Million
36	\$ 0	\$ 2	\$ 0	0	.001645020	0
37	2	20	3,290	3,290	.000205628	2
38	20	100	6,991	6,991	.000164502	20
39	100	200	20,151	20,151	.000106926	100
40	200	1,000	30,844	30,844	.000090476	200
41	1,000	2,000	103,225	103,225	.000074026	1,000
42	2,000	6,000	177,251	177,251	.000065801	2,000
43	6,000	20,000	440,454	440,454	.000055988	6,000
44	20,000	40,000	1,224,292	1,224,292	.000052670	20,000

45 (2) For each industrial loan company an annual
 46 assessment as provided for in section thirteen, article
 47 seven, chapter thirty-one of this code, as follows:

	Total Assets					
	Over		But Not	This	Plus	Of Excess
	Over	Over	Over	Amount	Plus	Over
51	\$ 0	\$ 1,000,000	800	800	—	—
52	1,000,000	5,000,000	800	800	.000400	1,000,000
53	5,000,000	10,000,000	2,400	2,400	.000200	5,000,000
54	10,000,000	—	4,200	4,200	.000100	10,000,000

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

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

	Total Assets					
	Over		But Not	This	Plus	Of Excess
	Over	Over	Over	Amount	Plus	Over
65	\$ 0	\$ 100,000	100	100	—	—
66	100,000	500,000	300	300	—	—
67	500,000	1,000,000	500	500	—	—
68	1,000,000	5,000,000	500	500	.000400	1,000,000
69	5,000,000	10,000,000	2,100	2,100	.000200	5,000,000
70	10,000,000	—	3,100	3,100	.000100	10,000,000

71 (4) For each bank holding company, an annual
72 assessment as provided for in section five, article eight-
73 a of this chapter. The annual assessment shall not
74 exceed ten dollars per million dollars in deposits
75 rounded off to the nearest million dollars.

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

85 (c) The commissioner shall each December and each
86 June prepare and send to each state banking institution
87 a statement of the amount of the assessment due. The
88 commissioner shall, further, each June, prepare and
89 send to each industrial loan company, each state credit
90 union and each supervised lender a statement of the
91 amount of the assessment due. The commissioner shall,
92 annually, during the month of January, prepare and
93 send to each bank holding company a statement of the
94 amount of the assessment due.

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

107 (d) For making an examination within the state of any
108 other financial institution for which assessments are not
109 provided by this code, the commissioner of banking shall
110 charge and collect from such other financial institution

111 and pay into the special revenue account for the division
112 of banking the actual and necessary costs and expenses
113 incurred in connection therewith, as fixed and deter-
114 mined by the commissioner.

115 (e) If the records of an institution are located outside
116 this state, the institution at its option shall make them
117 available to the commissioner at a convenient location
118 within the state, or pay the reasonable and necessary
119 expenses for the commissioner or his or her represen-
120 tatives to examine them at the place where they are
121 maintained. The commissioner may designate represen-
122 tatives, including comparable officials of the state in
123 which the records are located, to inspect them on his or
124 her behalf.

125 (f) The commissioner of banking may maintain an
126 action for the recovery of all assessments, costs and
127 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.

1 Any banking institution may cause to be copied or
2 reproduced, by any photographic, photostatic, micropho-
3 tographic or by similar miniature photographic process
4 or by nonerasable optical image disks (commonly
5 referred to as compact disks) or by other records
6 retention technology approved by rule of the commis-
7 sioner of banking, all or any number of its checks, and
8 all or any part of its documents, books, records,
9 correspondence and all other instruments, papers and
10 writings, in any manner relating to the operation of its
11 business, other than its notes, bonds, mortgages and
12 other securities and investments, and may substitute
13 such copies or reproductions either in positive or
14 negative form for the originals thereof. Thereafter, such
15 copy or reproduction in the form of a positive print
16 thereof, shall be deemed for all purposes to be an
17 original counterpart of and shall have the same force
18 and effect as the original thereof and shall be admissible
19 in evidence in all courts and administrative agencies in
20 this state, to the same extent, and for the same purposes
21 as the original thereof, and the banking institution may
22 destroy or otherwise dispose of the original. But every
23 banking institution shall retain either the originals or
24 such copies or reproductions of its records of final entry,
25 including, without limiting the generality of the
26 foregoing, cards used under the card system and deposit
27 tickets for deposits made, for a period of at least six
28 years from the date of the last entry on such books or
29 the date of making of such deposit tickets and card
30 records, or, in the case of a banking institution exercis-
31 ing trust or fiduciary powers, until the expiration of six
32 years from the date of termination of any trust or
33 fiduciary relationship by a final accounting, release,
34 court decree or other proper means of termination.

35 All circumstances surrounding the making or issu-
36 ance of such checks, documents, books, records, corres-
37 pondence and other instruments, papers or writings, or
38 the photographic, photostatic or microphotographic

39 copies or optical disks or other permissible reproduc-
40 tions thereof, when the same are offered in evidence,
41 may be shown to affect the weight but not the admis-
42 sibility thereof.

43 Any device used to copy or reproduce such documents
44 and records shall be one which correctly and accurately
45 reproduces the original thereof in all details and any
46 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.

1 (a) In addition to Sundays and legal holidays any
2 banking institution may remain closed on any one fixed
3 weekday or portion of a day in each calendar week, or
4 on any one fixed weekday and a portion of another
5 weekday in each calendar week, or on portions of two
6 weekdays in each calendar week, which day and/or
7 portion or portions of the day or days when the

8 institution is to remain closed shall be designated by a
9 resolution adopted by the board of directors thereof.
10 Prior to any such closing, the banking institution shall
11 post a notice in a conspicuous place in its banking room
12 stating that beginning on a day certain the banking
13 institution will remain closed on a fixed weekday and/or
14 portions thereof. Concurrently with the posting of the
15 notice of closure, the banking institution shall cause a
16 notice to be published as a Class II legal advertisement
17 in compliance with the provisions of article three,
18 chapter fifty-nine of this code, and the publication area
19 for the publication shall be the county in which the
20 principal office of the bank is located. The notice shall
21 set forth the time or times on which the bank will
22 remain closed and the date when the closing becomes
23 effective. A certified copy of the resolution certified by
24 the cashier or secretary of the banking institution,
25 together with an affidavit of posting and proof of
26 publication of the notice herein required, shall be filed
27 with the commissioner of banking.

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

36 (c) Any fixed weekday and/or portion of one or more
37 weekdays on which any banking institution shall elect
38 to close and any period during which the commissioner
39 may permit it to close pursuant to the authority of this
40 section shall constitute a legal holiday with respect to
41 the banking institution and not a business day or
42 banking day for the purposes of the law relating to
43 negotiable instruments, and any act or contract autho-
44 rized, required or permitted to be carried out or
45 performed at, by or with respect to the banking
46 institution may be performed on the next business or
47 banking day, and no liability or loss of rights on the part
48 of any person or banking institution shall result
49 therefrom.

CHAPTER 10

(Com. Sub. for H. B. 4132—By Delegates S. Williams, H. White,
Phillips, Rutledge and Harrison)

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

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.

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

8 (1) Acceptance of a deposit at the offices of any
9 subsidiary, as defined in section two, article eight-a of
10 this chapter, for credit to the customer's account at any
11 other subsidiary of the same bank holding company is
12 permissible and does not constitute branch banking.

13 (2) A banking institution located in a county where
14 there is also a higher educational institution as defined
15 in section two, article one, chapter eighteen-b of this
16 code, may establish a temporary business office on the
17 campus of any such educational institution located in
18 such county for the limited purposes of opening accounts
19 and accepting deposits for a period not in excess of four
20 business days per semester, trimester or quarter:
21 *Provided*, That prior to opening any temporary office,
22 a banking institution must first obtain written permis-
23 sion from the institution of higher education. The term
24 "business days," for the purpose of this subsection,
25 means days exclusive of Saturdays, Sundays and legal
26 holidays as defined in section one, article two, chapter
27 two of this code.

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

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

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

51 (1) The construction, lease or acquisition of branch
52 bank facilities as follows:

53 (A) After the seventh of June, one thousand nine
54 hundred eighty-four, within the county in which that
55 banking institution's principal office is located or within
56 the county in which that banking institution had prior
57 to January first, one thousand nine hundred eighty-four,
58 established a branch bank, pursuant to subdivision (2)
59 of this subsection; and

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

63 (2) The purchase of the business and assets and
64 assumption of the liabilities of, or merger or consolida-
65 tion with, another banking institution.

66 (d) Notwithstanding any other provision of this
67 chapter to the contrary, subject to and in furtherance
68 of the board's authority under the provisions of subdivi-
69 sion (6), subsection (b), section two, article three of this
70 chapter, and subsection (g) of this section, the board may
71 approve or disapprove the application of any state
72 banking institution to establish a branch bank.

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

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

85 (g) The board shall, upon receipt of any application
86 to establish a branch bank, provide notice of such
87 application to all banking institutions. A banking
88 institution may, within ten days after receipt of such
89 notice, file a petition to intervene and shall, if it so files
90 such petition, thereupon become a party to any hearing
91 relating thereto before the board.

92 (h) The commissioner shall prescribe the form of the
93 application for a branch bank and shall collect an
94 examination and investigation fee of one thousand
95 dollars for each filed application for a branch bank that
96 is to be established by the construction, lease or
97 acquisition of a branch bank facility, and two thousand
98 five hundred dollars for a branch bank that is to be
99 established by the purchase of the business and assets
100 and assumption of the liabilities of, or merger or
101 consolidation with another banking institution. Notwith-
102 standing the above, if the merger or consolidation is
103 between an existing banking institution and a bank
104 newly incorporated solely for the purpose of facilitating
105 the acquisition of the existing banking institution, the
106 commissioner shall collect an examination and investi-
107 gation fee of five hundred dollars. The board shall
108 complete the examination and investigation within
109 ninety days from the date on which such application and
110 fee are received, unless the board request in writing
111 additional information and disclosures concerning the
112 proposed branch bank from the applicant banking
113 institution, in which event such ninety-day period shall
114 be extended for an additional period of thirty days plus
115 the number of days between the date of such request and
116 the date such additional information and disclosures are
117 received.

118 (i) Upon completion of the examination and investiga-
119 tion with respect to such application, the board shall, if
120 a hearing be required pursuant to subsection (j) of this
121 section, forthwith give notice and hold a hearing
122 pursuant to the following provisions:

123 (1) Notice of such hearing shall be given to the
124 banking institution with respect to which the hearing is
125 to be conducted in accordance with the provisions of
126 section two, article seven, chapter twenty-nine-a of this
127 code, and such hearing and the administrative proce-
128 dures in connection therewith shall be governed by all
129 of the provisions of article five, chapter twenty-nine-a of
130 this code, and shall be held at a time and place set by
131 the board but shall not be less than ten nor more than
132 thirty days after such notice is given.

133 (2) At any such hearing a party may represent himself
134 or be represented by an attorney at law admitted to
135 practice before any circuit court of this state.

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

145 (j) No state banking institution may establish a branch
146 bank until the board, following an examination, inves-
147 tigation, notice and hearing, enters an order approving
148 an application for that branch bank: *Provided*, That no
149 such hearing shall be required with respect to any
150 application to establish a branch bank which is ap-
151 proved by the board unless a banking institution has
152 timely filed a petition to intervene pursuant to subsec-
153 tion (g) of this section. The order shall be accompanied
154 by findings of fact that:

155 (1) Public convenience and advantage will be pro-
156 moted by the establishment of the proposed branch
157 bank;

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

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

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

168 (5) The establishment of the proposed branch bank
169 would not result in a monopoly, nor be in furtherance
170 of any combination or conspiracy to monopolize the
171 business of banking in any section of this state; and

172 (6) The establishment of the proposed branch bank
173 would not have the effect in any section of the state of
174 substantially lessening competition, nor tend to create a
175 monopoly or in any other manner be in restraint of
176 trade, unless the anticompetitive effects of the establish-
177 ment of that proposed branch bank are clearly out-
178 weighed in the public interest by the probable effect of
179 the establishment of the proposed branch bank in
180 meeting the convenience and needs of the community to
181 be served by that proposed branch bank.

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

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

197 (m) Any violation of any provision of this section shall
198 constitute a misdemeanor offense punishable by appli-
199 cable penalties as provided in section fifteen of this
200 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. BLANNERHASSETT 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 Belennerhassett 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
2 eighty-nine, there is established within the division of
3 commerce the Blennerhassett Island historical state
4 park commission. As of said date, all assets, real and
5 personal property, debts, liabilities, duties, powers and
6 authority of the Blennerhassett Island historical state
7 park commission are hereby transferred to the division
8 of commerce. The Blennerhassett Island historical state
9 park commission shall be maintained as an advisory
10 commission as hereinafter provided. The commission
11 shall be composed of ten members who shall be citizens
12 and residents of this state, appointed by the governor for
13 terms of four years, by and with the advice and consent
14 of the Senate: *Provided*, That the terms of all members
15 previously appointed to the Blennerhassett historical
16 state park commission prior to the amendment and
17 reenactment of this section shall continue for the periods
18 originally specified, and no such member serving as of
19 the effective date of such amendment and reenactment
20 need be reappointed.

21 Each member shall be qualified to carry out the
22 functions of the commission under this article by reason

23 of his special interest, training, education or experience.

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

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

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

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

59 The commission shall advise the division of commerce
60 in all matters relating to the development, establish-
61 ment and maintenance of the Blennerhassett Island
62 historical state park.

63 All employee positions in the former Blennerhassett
64 Island historical state park commission are hereby
65 transferred to the division of commerce and shall be
66 included in the classified service of the civil service
67 system pursuant to article six of this chapter. Any
68 person included in the classified service by the provi-
69 sions of this section who is employed in any of such
70 positions as of the effective date of this amendment and
71 reenactment shall not be required to take and pass
72 qualifying or competitive examinations upon or as a
73 condition to being added to the classified service:
74 *Provided*, That no person included in the classified
75 service by the provisions of this section who is employed
76 in any of such positions as of the effective date of this
77 section shall be thereafter severed, removed or termi-
78 nated from such employment prior to his entry into the
79 classified service except for cause as if such person had
80 been in the classified service when severed, removed or
81 terminated.

82 Notwithstanding any provision of this code to the
83 contrary, the division of commerce shall have exclusive
84 regulatory authority over watercraft transport of
85 visitors to the Blennerhassett Island portion of the
86 Blennerhassett Island historical state park and such
87 watercraft transport shall not be subject to the provi-
88 sions 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.**

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

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

9 (2) Exercise his powers in the state of Ohio to the
10 extent permitted by the laws of the state of Ohio;

11 (3) Enter into any agreement with the state of Ohio
12 or any person, firm or corporation therein for the
13 provision of electricity, water, sewer and such similar
14 services to Blennerhassett Island as are necessary;

15 (4) Own or operate, or both, individually or in
16 conjunction with any other public agency or any private
17 person, firm or corporation, such facilities and equip-
18 ment as he considers necessary or convenient for the
19 implementation of his duties under this article. Without
20 limiting the generality of the foregoing, such facilities
21 and equipment may include boats, docks, an amphi-
22 theater, parking facilities, the reconstructed Blenner-
23 hassett mansion and other buildings; and

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

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.

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

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

16 (c) Every blind person, every deaf person and every
17 person who is physically disabled because of any
18 neurological, muscular or skeletal disorder that causes
19 weakness or inability to perform any physical function
20 shall have the right to be accompanied by a guide or
21 support dog, wearing a harness, especially trained for
22 the purpose, which serves as a guide, leader, listener or
23 support in any of the places, accommodations or
24 conveyances specified in subsection (b) of this section
25 without being required to pay an extra charge for the
26 admission of such guide or support dog, but the blind,
27 deaf or disabled person shall, upon request, present for
28 inspection credentials issued by an accredited school for
29 training guide or support dogs. The blind, deaf or
30 disabled person shall be liable for any damage done by
31 such guide or support dog to the premises or facilities
32 or to persons using such premises or facilities: *Provided,*
33 That the blind, deaf or disabled person shall not be
34 liable for any damage done by such guide or support dog
35 to any person or the property of a person who has
36 contributed to or caused the dog's behavior by inciting
37 or provoking such behavior. Such dog shall not occupy
38 a seat in any public conveyance and shall be upon a
39 leash while using the facilities of a common carrier.

CHAPTER 13

(Com. Sub. for H. B. 4399—By Delegates Prezioso and Browning)

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

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.
3. Municipal Bond Commission.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

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

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

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 of 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
2 governing body of such political division shall, by
3 resolution, authorize the issuance of such bonds in an
4 amount not exceeding the principal amount permitted
5 by section one of this article, fix the date thereof, the
6 rate or rates of interest which such bonds shall bear,
7 payable semiannually, and require that the bonds shall
8 bear, payable at the office of the state board of
9 investments and at such other place or places as the
10 body issuing the same may designate. Such resolution
11 shall also provide that such bonds shall mature serially
12 in annual installments beginning not more than three
13 years after the date thereof, and the last of such annual
14 installments shall mature in not exceeding thirty-four
15 years from the date of such bonds. The amount payable
16 in each year on the refunding bonds, together with any
17 unrefunded or unissued bonds of the prior issue, may be
18 so fixed that, when the amount of interest is added to
19 the principal amount to be paid during the respective
20 years, the total amount payable in each year shall be as
21 nearly equal as practicable; or such bonds may be made
22 payable in annual installments as nearly equal in
23 principal as may be practicable.

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

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

1 The governing body of the political body of the
2 political subdivision issuing bonds under this article
3 may sell the same or any part thereof and collect the

4 proceeds, or such bonds may be delivered to the holder
5 or holders of the bonds to be refunded in exchange
6 therefor.

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

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

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

39 (b) Direct obligations of the United States of America
40 or the state of West Virginia, or obligations fully and
41 irrevocably secured as to the payment of both principal
42 and interest by such direct obligations, the payment on
43 which when due will provide moneys, sufficient to pay

44 when and as due at maturity or prior redemption all
45 amounts of principal, redemption premium, if any, and
46 interest payable on such bonds.

47 All such amounts shall be set aside and held in trust
48 and irrevocably dedicated solely to the payment of such
49 bonds, except that amount in excess of the amounts
50 required for the payment of the bonds so refunded may
51 be applied to the payment of costs related to the
52 issuance, carrying, insuring or servicing the refunding
53 bonds, including costs of credit or market enhancement
54 services, such as letters of credit, remarketing arrange-
55 ments and similar services. Any amount deposited
56 pursuant to this section may include amounts already
57 held on deposit by the West Virginia municipal bond
58 commission for the payment of the bonds to be refunded.

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§13-3-7a. Escrowing bond issues.

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

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

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

16 (b) The moneys and securities held by the commission
17 pursuant to this section shall be held by the commission
18 in trust and irrevocably dedicated solely to the payment
19 of principal or redemption price, if applicable, of and
20 interest on the bonds: *Provided*, That this action shall
21 be taken solely at the direction of the issuer. Following
22 such irrevocable commitment of moneys and securities

23 in trust, funds on account with the commission for said
24 bonds which are surplus may be immediately returned
25 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-3. Definitions.

§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.

§13-2C-3. Definitions.

1 Unless the context clearly indicates otherwise, as used
2 in this article:

3 (a) "Commercial project" means real or personal
4 property or both, including any buildings, improve-
5 ments, additions, extensions, replacements, appurtenan-
6 ces, lands, rights in land, water rights, franchises,
7 machinery, equipment, furnishings, landscaping, utili-
8 ties, railroad spurs and sidings, parking facilities,
9 farms, parking wharfs, approaches and roadways or any
10 number or combination of the foregoing necessary or
11 desirable in connection with a commercial enterprise or
12 incidental thereto and includes, without limiting the
13 generality of the foregoing, hotels and motels and
14 related facilities, nursing homes and other health care
15 facilities, facilities for participatory or spectator sports,
16 conventions or trade show facilities, airport facilities,
17 shopping centers, office buildings, residential real
18 property for family units, and mass commuting facili-
19 ties, dormitories, apartments and other housing facili-
20 ties for the students and faculties of institutions of
21 higher education, instructional buildings and other
22 facilities used in connection with nonpublic institutions
23 of higher education, facilities providing housing for the
24 elderly, including, but not limited to, life care facilities,
25 congregate living facilities and adult residential
26 facilities.

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

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

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

38 (e) "Industrial project" means any site, structure,
39 building, industrial park, water dock, wharf or port
40 facilities, fixtures, machinery, equipment and related
41 facility, including real and personal property, or any
42 combination thereof, suitable as a factory, mill or shop,

43 or processing, assembly, manufacturing or fabricating
44 project, or warehouse or distribution facility, or
45 facilities for the extraction, production or distribution of
46 mineral resources and related facilities, or sewage or
47 solid waste disposal facilities, or facilities for the local
48 furnishing of electric energy or gas, or facilities for the
49 furnishing of water, if available on reasonable demand
50 to members of the general public, or storage or training
51 facilities related to any of the foregoing, or research or
52 development facility or pollution abatement or control
53 facility and includes the reconstruction, modernization
54 and modification of any existing industrial project for
55 the abatement or control of industrial pollution.

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

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

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

8 (b) The three private members shall be appointed by
9 the governor, with the advice and consent of the Senate:
10 *Provided*, That one private member shall be appointed
11 from each congressional district of the state, in such a
12 manner as to provide a broad geographical distribution
13 of members of the committee: *Provided, however*, That
14 at least one private member appointed pursuant to this
15 subdivision shall have significant experience in eco-
16 nomic development. No more than two private members

17 shall be from the same political party.

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

39 (d) Members shall not be entitled to compensation for
40 services performed as members, but shall be entitled to
41 reimbursement for all reasonable and necessary ex-
42 penses actually incurred in the performance of their
43 duties.

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

52 (f) The committee shall review and evaluate all
53 applications for reservation of funds submitted to the
54 development office by a governmental body pursuant to
55 the provisions of subsections (d) and (e), section twenty-
56 one of this article, and shall make reservations of the

57 state allocation (as defined in subdivision (2), subsection
58 (b), section twenty-one of this article) pursuant to
59 subdivision (3), subsection (b) and subsection (c), section
60 twenty-one of this article.

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

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

29 (b) On or before the first day of each calendar year,
30 the executive director of the development office shall
31 determine the state ceiling for such year based on the
32 criteria of the United States Internal Revenue Code.

33 which annual ceiling shall be allocated among the
34 several issuers of bonds under this article or under
35 article eighteen, chapter thirty-one of this code, as
36 follows:

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

42 (2) The amount remaining after the allocation to the
43 West Virginia housing development fund described in
44 subdivision (1) shall be retained by the West Virginia
45 development office and shall be referred to in this
46 section as the "state allocation."

47 (3) Thirty percent of the state allocation shall be set
48 aside by the development office to be made available for
49 lessees, purchasers or owners of proposed projects,
50 hereafter in this section referred to as "nonexempt
51 projects", which do not qualify as exempt facilities as
52 defined by United States Revenue Code [26 U.S.C.
53 §142(a)]. All reservations of private activity bonds for
54 nonexempt projects shall be approved and awarded by
55 the committee based upon an evaluation of general
56 economic benefit and any rule or regulation that the
57 council for community and economic development may
58 promulgate pursuant to section three, article two,
59 chapter five-b of this code: *Provided*, That on the first
60 day of September of each calendar year, the uncommit-
61 ted portion of this part of the state allocation shall revert
62 to and become part of the state allocation portion
63 described in subsection (c) of this section.

64 (c) The remaining seventy percent of the state
65 allocation shall be made available for lessees, purchasers
66 or owners of proposed commercial or industrial projects
67 which qualify as exempt facilities as defined by section
68 142(a) of the United States Internal Revenue Code [26
69 U.S.C. §142(a)]. All reservations of private activity
70 bonds for exempt facilities shall be approved and
71 awarded by the committee based upon an evaluation of
72 general economic benefit and any rule or regulation that

73 the council for community and economic development
74 may promulgate pursuant to section three, article two,
75 chapter five-b of this code: *Provided*, That no such
76 reservation shall be in an amount in excess of fifty
77 percent of this portion of the state allocation.

78 (d) No reservation shall be made for any project until
79 the governmental body seeking the same shall submit
80 a notice of reservation of funds as provided in subsection
81 (e) of this section. The governmental body must first
82 adopt an inducement resolution approving the prospec-
83 tive issuance of bonds and setting forth the maximum
84 amount of bonds to be issued. Each governmental body
85 seeking a reservation of funds following the adoption of
86 such inducement resolution shall submit a notice of
87 inducement signed by its clerk, secretary or recorder or
88 other appropriate official to the development office.
89 Such notice shall include such information as may be
90 required by the development office pursuant to any rule
91 or regulation of the council for community and economic
92 development. Notwithstanding the foregoing, when a
93 governmental body proposes to issue bonds for the
94 purpose of constructing an energy producing project
95 which relies, in whole or in part, upon coal waste as fuel,
96 to the extent such project qualifies as a solid waste
97 facility under section 142(a)(6) of the United States
98 Internal Revenue Code of 1986, such project may be
99 awarded a reservation of funds from the state allocation
100 available for three years subsequent to the year in which
101 the notice of reservation of funds is submitted, at the
102 discretion of the executive director of the development
103 office: *Provided*, That no such discretionary reservation
104 may be made for any single project in an amount in
105 excess of thirty-five percent of the state allocation
106 available for such year subsequent to the year in which
107 the request is made. A discretionary reservation of the
108 state allocation for a project described in the preceding
109 sentence shall not be granted by the executive director
110 of the development office unless the project for which
111 the request is made has received a certification from the
112 Federal Energy Regulatory Commission as a qualifying
113 facility or a cogeneration project.

114 (e) Currently with or following the submission of its
115 notice of inducement, the governmental body at any
116 time deemed expedient by it may submit its notice of
117 reservation of funds which shall include the following
118 information:

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

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

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

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

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

130 (6) The type of issue; and

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

133 (f) The development office shall accept the notice of
134 reservation of funds no earlier than the first calendar
135 work day of the year for which a reservation of funds
136 is sought: *Provided*, That a notice of reservation of funds
137 with respect to an energy producing project that is
138 eligible for a reservation of funds for a year subsequent
139 to the year in which the notice of reservation of funds
140 is submitted may contain an application for funds from
141 a subsequent year's state allocation. Upon receipt of the
142 notice of reservation of funds, the development office
143 shall immediately note upon the face of such notice the
144 date and time of reception.

145 (g) If the bond issue for which a reservation has been
146 made has not been finally closed within one hundred
147 twenty days of the date of the reservation to be made
148 by the committee, or the thirty-first day of December
149 following such date of reservation if sooner and a
150 statement of bond closure which has been executed by
151 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.

- 1 (a) The commissions appointed on behalf of the state

2 of West Virginia and the commonwealth of Virginia to
3 study and make a report on the true and correct
4 boundary between Jefferson County, West Virginia, and
5 Loudoun County, Virginia, have completed their inves-
6 tigation and have agreed upon the boundary line.

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

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

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

34 (e) The commission created by section two of this
35 article is continued and is directed, in cooperation with
36 the like commission created by the commonwealth of
37 Virginia, or other agency designated by the common-
38 wealth of Virginia for the purpose to survey and erect
39 permanent markers designating the boundary line set
40 forth in this section. The markers shall be of the nature
41 and kind the commission deems appropriate.

- 42 (f) This section shall take effect upon the adoption by
43 the Congress of the United States of appropriate
44 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
2 "Commercial Bungee Jumping Safety Act."

§21-12-2. Definitions.

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

§21-12-3. Rules.

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

§21-12-4. Inspection and permit fees.

1 The division shall determine a schedule of inspection
2 and permit fees, which fees shall not exceed one
3 hundred dollars per commercial bungee jumping site
4 per year. All fees received shall be deposited in the

5 general revenue fund. No fees may be charged to public
6 agencies.

§21-12-5. Inspectors.

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

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

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

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

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

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

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

1 An owner or operator of a commercial bungee
2 jumping site shall notify the division not later than
3 twenty-four hours after any fatality or accident occur-
4 ring as a result of the operation of the commercial
5 bungee jumping site that results in a serious physical
6 injury requiring medical treatment or results in a loss
7 of consciousness. The notice may be oral or written. The

8 division shall investigate each fatality or accident and
9 any safety related complaint involving a commercial
10 bungee jumping site in this state about which the
11 division receives notice. Every owner or operator of a
12 commercial bungee jumping site shall keep a record of
13 each accident or fatality and the record shall be kept
14 with the certificate of inspection required by this article
15 and shall be readily accessible to the public for
16 inspection at any reasonable time at the commercial
17 bungee jumping site or where the attraction is located.

§21-12-9. Service of process.

1 Any person, firm or corporation operating a commer-
2 cial bungee jumping site may be served with civil
3 process in the same manner as if the owner or operator
4 was a domestic or foreign corporation.

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

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

§21-12-11. Insurance; bond.

1 No person may operate a commercial bungee jumping
2 site unless at the time there is in existence (a) a policy
3 of insurance approved by the division and obtained from
4 an insurer authorized to do business in this state in an
5 amount of not less than three hundred thousand dollars
6 per person and one million dollars in the aggregate for
7 each commercial bungee jumping site or jump platform
8 location insuring the owner or operator against liability
9 for injury suffered by persons jumping from the jump
10 platform or by persons in, on, under or near the jump
11 platform or commercial bungee jumping site, or (b) a
12 bond in a like amount, as approved by the division:
13 *Provided*, That the aggregate liability of the surety
14 under any bond shall not exceed the face amount

15 thereof, or (c) cash or other security acceptable to the
 16 division. Satisfactory evidence of insurance, bond or
 17 other security shall accompany the permit application.

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

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

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

1 Any operator or owner who knowingly permits the
 2 operation of a commercial bungee jumping site or event
 3 in violation of the provisions of section six of this article
 4 is guilty of a misdemeanor, and, upon conviction thereof,
 5 shall be fined not more than one thousand dollars,
 6 imprisoned in the county jail not more than twelve
 7 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.

1 The Legislature hereby finds and declares that the
2 assistance, promotion, encouragement, development and
3 advancement of economic prosperity and employment
4 throughout this state requires an efficient, coherent,
5 accurate and simplified system for the registration of
6 businesses with state and local agencies. The Legislature
7 further finds and declares that the establishment of such
8 a system will promote consistent, fair and efficient
9 compliance with registration, licensing and other
10 similar statutory obligations by all businesses in the
11 state. The Legislature finds that staff of the secretary
12 of state, the department of tax and revenue and the
13 bureau of employment programs, as well as staff from
14 other state agencies with an interest in the issue, have
15 studied the need for, and the feasibility of, a simplified
16 system of business registration and have designed
17 certain elements of such a system, specifically, a
18 common data base of information regarding businesses
19 registering with said agencies. The Legislature recog-
20 nizes the need for continued involvement and coopera-
21 tion by said agencies and it is the intent of the

22 Legislature to build upon the work of these agencies in
23 order to develop a simplified business registration
24 system in the manner contemplated by this article. The
25 purposes of the system created by this article are
26 therefore to make government more responsive to the
27 needs of West Virginia businesses in their dealings with
28 government and to better enable government agencies
29 to assure that all West Virginia businesses comply with
30 legal requirements.

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

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

4 (b) For the purpose of designing and implementing
5 the simplified business registration system contem-
6 plated by this article, there is hereby established the
7 business registration interagency advisory group, which
8 shall consist of representatives designated by the
9 secretary of state; the secretary of tax and revenue; the
10 executive director of the development office; secretary
11 of commerce, labor and environmental resources; and
12 the commissioner of the bureau of employment pro-
13 grams. The advisory group shall consult with represen-
14 tatives of such other state offices and agencies as
15 necessary to accomplish the purposes of this article. In
16 implementing the simplified business registration
17 system described in this article, the tax commissioner
18 shall be guided by the recommendations of the advisory
19 group.

20 (c) The office of business registration, with the
21 cooperation and assistance of all interested governmen-
22 tal entities, shall establish a system of centralized
23 records, which may be in the form of a centralized data
24 base, for the acquisition and storage of information the
25 departments, divisions and agencies may require for
26 registration, licensing and other similar statutory
27 purposes related to the initiation of new businesses in
28 West Virginia.

29 (d) Not later than the thirtieth day of November, one
30 thousand nine hundred ninety-four, the office of business

31 registration shall design a single basic registration
32 information form for the purpose of fulfilling, to the
33 extent feasible, the business registration information
34 requirements of the department of tax and revenue, the
35 secretary of state and the bureau of employment
36 programs. The information to be provided on the form
37 will include the name, address and telephone number of
38 the prospective new business; the standard industry
39 code or codes appropriate to the business; the number
40 of employees of the business; and such other appropriate
41 information. Prospective new businesses must register
42 with the office of business registration and disclose the
43 business registration information required by that
44 office.

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

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

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

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

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

**§11-12D-3. Agency contact list, dispersal of data base
information to agencies, agency contact
with prospective businesses.**

1 (a) An agency contact list consisting of those state
2 government agencies and offices having registration,
3 licensing or other similar statutory provisions related to
4 the initiation of new businesses in West Virginia or
5 which should otherwise have contact with a new
6 business, will be maintained by the office of business
7 registration in conjunction with the centralized records
8 for new business registration.

9 (b) Based upon the proposed location, size, number of
10 employees, type of business, standard industry code or
11 codes and other pertinent information relating to the
12 business, each prospective new business, upon having a
13 record established in the centralized records for new
14 business registration, shall be informed by the office of
15 business registration of those state agencies or offices
16 having a registration, licensing and other similar
17 statutory provisions related to the initiation of a new
18 business in West Virginia or other function relating to
19 prospective new business such that the agency or office
20 should by law or regulation be given notice of the
21 establishment or operation of a new business in West
22 Virginia. The office of business registration shall
23 establish a record of the new business in the centralized
24 data base for the use and benefit of any agency or officer
25 of the state of West Virginia having access to the data
26 base and which should, by law or regulation, receive
27 notice of the establishment or operation of a particular
28 business. The record should contain such information as
29 is necessary to fulfill the regulatory, registration or
30 licensing function of that agency, or in lieu of such
31 information, the name, address and other pertinent
32 information relating to the particular business whereby
33 the agency or office may initiate such procedures or
34 make such contact with the particular business as is
35 appropriate for the fulfillment of the regulatory,
36 registration, licensing or other statutory duties of the
37 office or agency.

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

1 (a) Notwithstanding any other provision of this code,
2 new business registration information may be dissem-

3 inated to the state of West Virginia, its political
4 subdivisions, agencies and offices in accordance with
5 this article.

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

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

1 (a) It is the intent of the Legislature that the staff of
2 the office of business registration established by this
3 article be composed of existing positions within the
4 departments, divisions and agencies of the state whose
5 functions are centralized by this article, and particu-
6 larly from existing staff of the department of tax and
7 revenue and the bureau of employment programs.

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

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

1 It is the intent of the Legislature in enacting this
2 article to simplify the methods by which government
3 agencies gather information from businesses for the
4 purposes of registration, licensing or other similar
5 statutory purpose related to the initiation of new
6 businesses in West Virginia: *Provided*, That this article
7 shall not be construed to change any existing require-
8 ment of this code, nor to modify any existing agency
9 responsibility or power, except as may be necessary to
10 simplify the information-gathering functions described
11 in this article.

CHAPTER 18

(S. B. 514—Originating in the Committee on Government Organization.)

[Passed March 12, 1994; in effect July 1, 1994. Approved by the Governor.]

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.

1 The supreme court of appeals shall appoint and
 2 maintain a five-member panel, consisting of five persons
 3 who are willing to serve in such capacity, to visit,
 4 inspect and interview residents of all juvenile institu-
 5 tions, detention facilities and places in or out of the state
 6 wherein West Virginia juveniles may be held involun-
 7 tarily, to make public reports of such reviews: *Provided,*
 8 That the panel shall not visit, inspect or interview adult
 9 inmates of county jails, regional jails or facilities under
 10 the direction of the commissioner of corrections used for
 11 the incarceration of adult offenders or detainees:
 12 *Provided, however,* That the panel shall have no author-
 13 ity to enforce jail and prison standards for county jails
 14 and regional jails as they pertain to adults confined
 15 therein. In visiting and inspecting any facility pursuant
 16 to the provisions of this section, the panel shall have
 17 prompt and direct access to the head of the facility for
 18 any purpose pertaining to the performance of functions
 19 and responsibilities under this section. The members so
 20 appointed shall serve without compensation for their
 21 time, however, each member shall receive the same
 22 expense reimbursement as is paid to members of the

23 Legislature for their interim duties as recommended by
24 the citizens legislative compensation commission and
25 authorized by law for each day or portion thereof
26 engaged in the discharge of official duties.

27 Copies of the panel's report shall be submitted
28 annually to the president of the Senate and the speaker
29 of the House of Delegates.

30 Pursuant to the provisions of article ten, chapter four
31 of this code, the juvenile facilities review panel shall
32 continue to exist until the first day of July, one thousand
33 nine hundred ninety-five, to allow for the completion of
34 a performance audit by the joint committee on govern-
35 ment operations.

CHAPTER 19

(S. B. 18—By Senators Burdette, Mr. President, and Boley)

[By Request of the Executive]

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

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
2 or any rule promulgated thereunder to the contrary, an
3 employee in the classified service who has performed
4 work for a reasonable period of time in a position with

5 a classification that is higher than the position in which
6 he is employed and classified may, in the event that his
7 regular position would be terminated as a result of a
8 reduction in force in his division, have the right to
9 request that his classification be reviewed and that, in
10 his or her supervisor's discretion, he be promoted to the
11 higher classified position by passing a qualifying
12 examination for such higher position and providing
13 sufficient evidence of his work periods and satisfactory
14 performance of the duties and responsibilities of the
15 higher classified position.

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

23 (b) The provisions of this subsection shall be of no
24 force and effect on and after the first day of July, one
25 thousand nine hundred ninety-five. Notwithstanding
26 any other provision of this code to the contrary, a
27 managerial or supervisory employee in the classified
28 service of this state with a classified service pay grade
29 of sixteen or higher who is adversely affected by a
30 reduction in force shall not be entitled to be reassigned,
31 transferred or otherwise retained for any position in
32 state government except as provided in this section, and
33 no regulation or policy shall provide for such a right:
34 *Provided*, That there shall be no redesignation of the
35 levels of pay grades in the classified service in effect on
36 the first day of May, one thousand nine hundred ninety-
37 four. Any such employee shall have the right, upon
38 notice of and prior to the effective date of the reduction
39 in force, to accept a position in a lower job class at no
40 less than the entry salary of that position if the
41 employee: (1) Has formerly performed the duties of that
42 position or the substantial equivalent thereof and is
43 otherwise qualified within the classified service for that
44 position; and (2) is a more senior employee than the least
45 senior employee then employed in such position. No

46 provision of this section shall be construed to deny the
47 right of the appointing authority, in his or her discre-
48 tion, to reassign, transfer or otherwise retain such
49 employee to or for another position for which the
50 employee is qualified within the classified service.
51 Where the employee is not reassigned, transferred or
52 otherwise retained pursuant to the provisions of this
53 section, no provision of this section shall be construed
54 to deny the employee the opportunity to reapply for
55 entrance in the classified service of the state through
56 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 commission; office of the chief medical examiner; railroad

maintenance authority; state treasurer; and supreme court of appeals, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact
2 and recommendations reported to it by the court of
3 claims concerning various claims against the state and
4 agencies thereof, and in respect to each of the following
5 claims the Legislature adopts those findings of fact as
6 its own, and in respect of certain claims herein, the
7 Legislature has independently made findings of fact and
8 determinations of award and hereby declares it to be the
9 moral obligation of the state to pay each such claim in
10 the amount specified below, and directs the auditor to
11 issue warrants for the payment thereof out of any fund
12 appropriated and available for the purpose.

13 (a) *Claims against the Alcohol Beverage Control
Administration:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15	(1) Chesapeake and Potomac Telephone		
16	Company of WV	\$	5,199.16
17	(2) Exxon Company USA	\$	29.00

18 (b) *Claims against the Attorney General:*

19 (TO BE PAID FROM GENERAL REVENUE FUND)

20	(1) Larry M. Bonham	\$	125.00
21	(2) The Michie Company	\$	149.64
22	(3) Xerox Corporation	\$	1,269.60

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

25 (TO BE PAID FROM SPECIAL REVENUE FUND)

26	(1) Terrill W. Wood	\$	106.50
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27 (d) *Claim against the Board of Coal Mine Safety and
28 Technical Review Committee:*

29 (TO BE PAID FROM SPECIAL REVENUE FUND)

30	(1) MPL Corporation	\$	1,519.25
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31 (e) *Claim against the Board of Education:*

32 (TO BE PAID FROM GENERAL REVENUE FUND)

33 (1) The Board of Education of the
34 County of McDowell\$ 461,163.32

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

43 (f) *Claim against the Board of Trustees of the Univer-*
44 *sity System of West Virginia:*

45 (TO BE PAID FROM SPECIAL REVENUE FUND)

46 (1) Jared Taylor\$ 59.63

47 (g) *Claims against the Bureau of Employment*
48 *Programs:*

49 (TO BE PAID FROM SPECIAL REVENUE FUND)

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

51 (TO BE PAID FROM WORKERS' COMPENSATION FUND)

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

53 (3) Mary L. Tyburski\$ 250.00

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

55 (h) *Claims against the Consolidated Medical Services*
56 *Fund:*

57 (TO BE PAID FROM GENERAL REVENUE FUND)

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

59 (2) Helen Keller National Center\$ 9,800.00

60 (3) Kidspace National Centers for
61 Kids in Crisis\$ 6,990.00

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

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

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

66 (7) University Health Associates\$ 249.00

67 (i) *Claims against the Department of Administration:*

68 (TO BE PAID FROM GENERAL REVENUE FUND)

69	(1) Chesapeake and Potomac Telephone		
70	Company of WV	\$	656.88
71	(2) Tyler Mountain Water		
72	Company, Inc.	\$	215.45

73 (j) *Claims against the Department of Education:*

74 (TO BE PAID FROM GENERAL REVENUE FUND)

75	(1) Donna E. Kimbrew	\$	293.00
76	(2) Mary Anne Mullenax	\$	293.00
77	(3) Carol J. White	\$	293.00
78	(4) Salena M. Williams	\$	50.00

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

80 (TO BE PAID FROM GENERAL REVENUE FUND)

81	(1) IBM Corporation	\$	1,012.00
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82 (l) *Claims against the Division of Corrections:*

83 (TO BE PAID FROM GENERAL REVENUE FUND)

84	(1) Steven W. Adkins	\$	150.00
85	(2) John A. Bacon	\$	409.80
86	(3) Barbour County Commission	\$	23,325.00
87	(4) Boone County Commission	\$	74,025.00
88	(5) Braxton County Commission	\$	11,220.38
89	(6) Cabell County Commission	\$	168,150.00
90	(7) Doddridge County Commission	\$	1,050.00
91	(8) Fayette County Commission	\$	34,391.38
92	(9) Gilmer County Commission	\$	5,726.96
93	(10) Grant County Commission	\$	9,407.54
94	(11) Greenbrier County Commission	\$	22,986.24
95	(12) Hancock County Commission	\$	21,908.51
96	(13) Harrison County Commission	\$	36,050.00
97	(14) Steven D. Hawley	\$	200.00
98	(15) Jackson County Commission	\$	20,200.00
99	(16) Kanawha County Commission	\$	386,729.00
100	(17) Lewis County Commission	\$	10,901.18
101	(18) Logan County Commission	\$	40,000.00
102	(19) Marion County Commission	\$	30,449.58
103	(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	
118		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

128 (m) *Claims against the Division of Environmental*
 129 *Protection:*

130 (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	
135		Education & Professional	
136		Development	\$ 4,022.00

137 (n) *Claims against the Division of Health:*

138 (TO BE PAID FROM SPECIAL REVENUE FUND)

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

141 (o) *Claims against the Division of Highways:*

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

184	(35) Matthew A. Tullius	\$	500.00
185	(p) <i>Claims against the Division of Human Services:</i>		
186	(TO BE PAID FROM GENERAL REVENUE FUND)		
187	(1) Kanawha County Commission	\$	18,896.00
188	(2) Marion County Commission	\$	718.11
189	(3) Putnam County Commission	\$	14,850.00
190	(q) <i>Claim against the Division of Natural Resources:</i>		
191	(TO BE PAID FROM SPECIAL REVENUE FUND)		
192	(1) Gibbons and Kawash	\$	18,025.00
193	(r) <i>Claims against the Division of Public Safety:</i>		
194	(TO BE PAID FROM GENERAL REVENUE FUND)		
195	(1) Baxter & Company, Inc.	\$	485.20
196	(2) Helicopter Flite Services, Inc.	\$	2,850.69
197	(3) IBM Corporation	\$	1,018.64
198	(4) James K. Schubert	\$	300.00
199	(s) <i>Claim against the Lottery Commission:</i>		
200	(TO BE PAID FROM SPECIAL REVENUE FUND)		
201	From Account No. 7200		
202	(1) Fahlgren, Inc.	\$	200,000.00
203	(t) <i>Claim against the Office of the Chief Medical</i>		
204	<i>Examiner:</i>		
205	(TO BE PAID FROM GENERAL REVENUE FUND)		
206	(1) Morgantown Removals, Inc.	\$	1,566.00
207	(u) <i>Claims against the Railroad Maintenance</i>		
208	<i>Authority:</i>		
209	(TO BE PAID FROM GENERAL REVENUE FUND)		
210	(1) MARC Train Service	\$	10,000.00
211	(TO BE PAID FROM SPECIAL REVENUE FUND)		
212	From Account No. 8344-06		
213	(2) Ronald W. Combs	\$	635.00
214	(v) <i>Claim against the State Treasurer:</i>		

215	(TO BE PAID FROM GENERAL REVENUE FUND)	
216	(1) Exxon Company, USA	\$ 166.61
217	(w) <i>Claims against the Supreme Court of Appeals:</i>	
218	(TO BE PAID FROM GENERAL REVENUE FUND)	
219	(1) Carl Berkley	\$ \$1,500.00
220	(2) Process-Strategies Institute	\$ 375.00
221	The Legislature finds that the above moral obligations	
222	and the appropriations made in satisfaction thereof shall	
223	be the full compensation for all claimants, and that prior	
224	to the payments to any claimant provided for in this bill,	
225	the court of claims shall receive a release from said	
226	claimant releasing any and all claims for moral	
227	obligations arising from the matters considered by the	
228	Legislature in the finding of the moral obligations and	
229	the making of the appropriations for said claimant. The	
230	court of claims shall deliver all releases obtained from	
231	claimants to the department against which the claim	
232	was allowed.	

CHAPTER 21

(H. B. 4565—By Delegates Campbell, Browning, Rutledge,
H. White and McKinley)

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

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.

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

12 *Claims for crime victims compensation awards:*

13 (To be paid from Crime Victims Compensation Fund)

14	(1) Auvil, Rosemarie	\$ 2,500.00
15	(2) Barnes, Maggie A., as guardian	
16	of Candy Jo Toppins	\$ 5,000.00
17	(3) Barnes, Maggie A., as guardian	
18	of David D. Toppins	\$ 5,000.00
19	(4) Bennett, Beda C.	\$ 5,000.00
20	(5) Bragg, Karen L., as guardian	
21	of Laura Randolph	\$ 5,000.00
22	(6) Burton, Vera L.	\$ 1,000.00
23	(7) Bush, Charlotte R., as guardian	
24	of Jeddie P. Bush, IV	\$ 5,000.00
25	(8) Bush, Charlotte R., as guardian	
26	of Robert C. Bush	\$ 5,000.00
27	(9) Clark, Renwick	\$ 5,000.00
28	(10) Dakon, Christopher L.	\$ 15,000.00
29	(11) Davis, William F.	\$ 1,000.00
30	(12) Davis, William F., as guardian	
31	of Barbara Ann Davis	\$ 1,000.00
32	(13) Davis, William F., as guardian	
33	of Earl Dwain Smith, Jr.	\$ 1,000.00
34	(14) Davis, William F., as guardian	
35	of William Earnest Davis	\$ 1,000.00
36	(15) Dunkin, Maurice L.	\$ 15,000.00
37	(16) Foster, Margaret M.	\$ 10,000.00
38	(17) Foster, Margaret M., as guardian	
39	of Charles Foster	\$ 10,000.00

40	(18) Fugate, Sherry L., as guardian	
41	of Ruondro D. Fugate	\$ 1,000.00
42	(19) Gentry, David D.	\$ 15,000.00
43	(20) Green, Delena M.	\$ 2,000.00
44	(21) Hall, William H. & Mildred J.,	
45	as guardians of Amber S. Hall	\$ 5,000.00
46	(22) Heilig, Garnett M.	\$ 2,000.00
47	(23) Lemley, Mark N.	\$ 3,450.00
48	(24) Martin, Lisa A.	\$ 10,000.00
49	(25) Rucker, Patricia A., as guardian	
50	of Terry Lee Rucker	\$ 2,000.00
51	(26) Rucker, Patricia A., as guardian	
52	of Troy Lee Rucker	\$ 2,000.00
53	(27) Santer, Joseph, guardian ad litem	
54	for Michael P. Gordon	\$ 2,500.00
55	(28) Santer, Joseph, guardian ad litem	
56	for Billie J. Gordon	\$ 2,500.00
57	(29) Santer, Joseph, guardian ad litem	
58	for Keith A. Wright	\$ 2,500.00
59	(30) Santer, Joseph, guardian ad litem	
60	for Earl J. Gordon	\$ 2,500.00
61	(31) Shane, Karen S.	\$ 10,000.00
62	(32) Smith, Sandra A., as guardian	
63	of William W. Donelow	\$ 1,000.00
64	(33) Vanhoose, Darrell G.	\$ 5,000.00
65	(34) Ward, Michael K.	\$ 2,500.00
66	(35) Ward, Terry G.	\$ 10,000.00
67	(36) Wayt, Rodney J.	\$ 15,000.00
68	(37) Wellman, Sheri L.	\$ 15,000.00
69	(38) Wisenbaler, Judy A., as guardian	
70	of J.A.W.	\$ 2,000.00
71	(39) Williamstown National Bank, assignee of	
72	Mark N. Lemley	\$ 1,550.00
73	TOTAL	\$207,000.00

74 The Legislature finds that the above moral obligations
 75 and the appropriations made in satisfaction thereof shall
 76 be the full compensation for all claimants herein.

CHAPTER 22

(H. B. 4564—By Delegates Campbell, Browning, Rutledge,
H. White and McKinley)

[Passed March 10, 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 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.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commod-
3 ities received and/or services rendered by certain
4 claimants herein and has considered these claims
5 against the state, and agencies thereof, which have
6 arisen due to over-expenditures of the departmental
7 appropriations by officers of such state spending units,
8 such claims having been previously considered by the
9 court of claims which also found that the state has
10 received the benefit of the commodities received and/or
11 services rendered by the claimants, but were denied by
12 the court of claims on the purely statutory grounds that
13 to allow such claims would be condoning illegal acts
14 contrary to the laws of the state. The Legislature
15 pursuant to its findings of fact and also by the adoption
16 of the findings of fact by the court of claims as its own,
17 and, while not condoning such illegal acts, hereby
18 declares it to be the moral obligation of the state to pay
19 these claims in the amounts specified below, and directs
20 the auditor to issue warrants upon receipt of properly
21 executed requisitions supported by itemized invoices,

22 statements or other satisfactory documents as required
 23 by section ten, article three, chapter twelve of the code
 24 of West Virginia, one thousand nine hundred thirty-one,
 25 as amended, for the payments thereof out of any fund
 26 appropriated and available for the purpose.

27 (a) *Claims against the Division of Corrections:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29	(1) ALCO Health Services Corporation	\$ 42,320.94
30	(2) ARA Health Services, dba Correctional	
31	Medical Systems	\$ 78,067.73
32	(3) James N. Aldridge, Jr., M.D.	\$ 90.00
33	(4) R. David Allara, M.D.	\$ 80.00
34	(5) American Surgical Associates	\$ 65.00
35	(6) Ashmore Optical Company, Inc.	\$ 92.00
36	(7) Associated Emergency	
37	Physicians, Inc.	\$ 212.87
38	(8) Associated Radiologists, Inc.	\$ 1,485.50
39	(9) BMA of West Virginia, Inc.,	
40	dba BMA of Morgantown	\$ 60,615.00
41	(10) Gaspar Z. Barcinas, M.D.	\$ 1,800.00
42	(11) Robert S. Bear, M.D.	\$ 460.00
43	(12) Beckley Hospital, Inc.	\$ 83.90
44	(13) Darrell C. Belcher, M.D.	\$ 876.20
45	(14) Russell Buindo, M.D.	\$ 4,070.00
46	(15) Bluefield Regional Medical Center	\$ 1,234.11
47	(16) Rano S. Bofill, M.D.	\$ 183.00
48	(17) Braxton County Memorial Hospital	\$ 1,912.50
49	(18) Broaddus Hospital Association	\$ 326.50
50	(19) John P. Burgess, D.D.S.	\$ 450.00
51	(20) John W. Byers, D.D.S.	\$ 2,004.00
52	(21) C & C Pharmacy, Inc.	\$ 1,314.96
53	(22) CAMC Dental Center	\$ 309.00
54	(23) Camden-Clark Memorial Hospital	\$ 4,362.21
55	(24) Cardiovascular Associates of WV	\$ 100.00
56	(25) Charleston Area Medical Center	\$ 49,113.02
57	(26) Chesapeake and Potomac	
58	Telephone Co. of WV	\$ 221.88
59	(27) Citizens Drug	\$ 2,465.41
60	(28) City Pharmacy, Inc.	\$ 772.73
61	(29) Community Health Systems, Inc.	\$ 2,496.61
62	(30) Community Radiology, Inc.	\$ 234.00

63	(31) Nancy L. Craig, M.D.	\$	165.00
64	(32) Glenn Crotty, Jr., M.D.	\$	108.00
65	(33) Doctors Anesthesia Associates, Inc.	\$	620.50
66	(34) Drs. Black, Jackfert, Gilbert,		
67	Yates and Syner	\$	42.00
68	(35) EENT Physicians and Surgeons	\$	370.00
69	(36) Ear, Nose and Throat Associates of		
70	Clarksburg, Inc.	\$	5,200.00
71	(37) Fairlea Immediate Care, Inc.	\$	1,255.00
72	(38) Sami H. Farra, M.D.	\$	152.00
73	(39) Earl J. Foster, M.D.	\$	714.00
74	(40) Galen Health Care of WV, Inc.	\$	1,832.95
75	(41) Dominic Gaziano, M.D.	\$	1,050.00
76	(42) General Anesthesia Services, Inc.	\$	957.00
77	(43) General Welding Supply Company	\$	1,292.21
78	(44) Manuel A. Gomez, M.D.	\$	85.00
79	(45) A. A. Goodarzi, M.D.	\$	746.00
80	(46) Grafton City Hospital	\$	8,314.00
81	(47) Grant Memorial Hospital	\$	71.75
82	(48) Greenbrier Anesthesia Services, Inc. \$		814.00
83	(49) John B. Haley, Jr., D.D.S.	\$	22.00
84	(50) Harrison Medical Services	\$	103.00
85	(51) Highlawn Pharmacy, Inc.	\$	1,397.87
86	(52) William H. Hitt, D.D.S.	\$	123.00
87	(53) David R. Holliday, O.D.	\$	52.00
88	(54) Harold H. Howell, III, D.M.D.	\$	755.00
89	(55) Huntington Anesthesiology		
90	Group, Inc.	\$	1,640.00
91	(56) Jackson General Hospital	\$	92.00
92	(57) Jackson Surgical Associates, Inc.	\$	30.00
93	(58) Jan Care Ambulance Service, Inc.	\$	290.00
94	(59) John Marshall Medical Services,		
95	dba Huntington Surgical Assoc.	\$	450.00
96	(60) Kanawha Valley Radiologists	\$	145.00
97	(61) David A. Lattanzi, D.D.S.	\$	87.00
98	(62) Maurice W. Lewis, D.D.S.	\$	219.00
99	(63) Clifford M. Linkous, D.D.S., Ltd.	\$	1,765.00
100	(64) Marietta Imaging, Inc.	\$	85.00
101	(65) Marshall County		
102	Sheriff's Department	\$	3,482.50
103	(66) McDowell County Correctional Center \$		1,103.32
104	(67) Medical Center of Taylor County	\$	238.58

105	(68) Mercer Drug Store Inc.	\$ 187.22
106	(69) William A. Merva, M.D.	\$ 710.00
107	(70) Metro Radiology Greenbrier	\$ 322.00
108	(71) Robert B. Miller, M.D.	\$ 220.00
109	(72) Monongalia General Hospital	\$ 36,940.67
110	(73) Morgantown Internal Medicine Group	\$ 4,170.00
111	(74) Mountainview Regional Rehabilitation	
112	Hospital	\$112,500.38
113	(75) Myers Clinic	\$ 435.50
114	(76) Nicholas County Commission	\$ 9,543.38
115	(77) Oral and Maxillofacial Surgery	\$ 621.00
116	(78) Parkersburg Neurological	
117	Associates, Inc.	\$ 185.00
118	(79) Parkersburg Radiology Services	\$ 810.00
119	(80) Pearle Vision Center	\$ 271.95
120	(81) James B. Phillips,	
121	dba Phillips Pharmacy	\$ 78.45
122	(82) Prime Care 12	\$ 3,134.50
123	(83) Princeton Community Hospital	\$ 29,701.22
124	(84) Princeton Emergency Physicians	
125	Billing Service	\$ 1,195.00
126	(85) Princeton Internists, Inc.	\$ 160.00
127	(86) Princeton Pharmacy, Inc.	\$ 4,049.25
128	(87) Professional Imaging Inc.	\$ 2,284.00
129	(88) Putnam General Hospital	\$ 3,724.75
130	(89) Aristotle E. Rabanal, M.D.	\$ 360.00
131	(90) Radiological Consultants	\$ 140.00
132	(91) Radiology Associates, Inc.	\$ 17.50
133	(92) Radiology, Inc.	\$ 375.00
134	(93) Raleigh Radiology, Inc.	\$ 49.00
135	(94) Rana Medical Services, Inc.	\$ 1,000.00
136	(95) Reynolds Memorial Hospital	\$253,030.75
137	(96) Roche Biomedical Laboratories, Inc.	\$ 214.00
138	(97) Saint Francis Hospital	\$ 4,884.40
139	(98) Shabb & Hoak, M.D., Inc.	\$ 1,975.00
140	(99) Mian W. Shah, M.D.	\$ 90.00
141	(100) Southern West Virginia Clinic	\$ 1,919.00
142	(101) Technical Imaging Inc.	\$ 773.00
143	(102) Thomas Memorial Hospital	\$ 1,078.15
144	(103) Tri State Otolaryngology	\$ 1,800.00
145	(104) United Hospital Center	\$ 7,988.22
146	(105) University Health Associates	\$ 41,855.00

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		
151	Hospitals, Inc.	\$	76,503.75
152	(110) Wheeling Clinic, Inc.	\$	2,278.45
153	(111) Greg J. Wrobleski, D.D.S.	\$	55.00
154	<i>(b) Claims against the Division of Human Services:</i>		
155	(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
168	<i>(c) Claims against the Division of Professional and</i>		
169	<i>Occupational Licenses—State Athletic Commission:</i>		
170	(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:

§14-2-15. Rules of practice and procedure.

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

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

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

31 Under its rules, the court shall not be bound by the
32 usual common law or statutory rules of evidence. The
33 court may accept and weigh, in accordance with its
34 evidential value, any information that will assist the
35 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.
- §22-21-2. Definitions.
- §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.
- §22-21-9. Notice to owners.
- §22-21-10. Procedure for filing comments.
- §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.
- §22-21-16. Notice to owners.
- §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.
- §22-21-19. Validity of unit agreements.
- §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.

§22-21-24. Existing mining rights.

§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.

§22-21-28. Penalties.

§22-21-29. Construction.

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

1 (a) The Legislature hereby declares and finds that the
2 venting of coalbed methane from mine areas and
3 degasification of coal seams has been and continues to
4 be approved by the state for the purpose of ensuring the
5 safe recovery of coal; that the value of coal is far greater
6 than the value of coalbed methane and any development
7 of the coalbed methane should be undertaken in such a
8 way as to protect and preserve coal for future safe
9 mining and maximum recovery of the coal; that subject
10 to the above declarations and findings, commercial
11 recovery and marketing of coalbed methane should in
12 some cases be facilitated because the energy needs of
13 this state and the United States indicate that the fullest
14 practical recovery of both coal and coalbed methane
15 should be encouraged; that the Energy Policy Act of
16 1992 was enacted in part to encourage coalbed methane
17 development and the state of West Virginia should enact
18 legislation which carries out the purposes of said act;
19 that in order to encourage and ensure the fullest
20 practical recovery of coal and coalbed methane in this
21 state and to further ensure the safe recovery of both
22 natural resources, it is in the public interest to enact this
23 article authorizing coalbed methane well permits,
24 regulating the design of coalbed methane wells and
25 recovery techniques, authorizing coalbed methane well
26 units and pooling of interests therein to provide all
27 coalbed methane operators and coalbed methane owners
28 with an opportunity to recover their just and equitable
29 share of production.

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

32 (1) Preserve coal seams for future safe mining;

33 facilitate the expeditious, safe evacuation of coalbed
34 methane from the coalbeds of this state, and maintain
35 the ability and absolute right of coal operators at all
36 times to vent coalbed methane from mine areas;

37 (2) Foster, encourage and promote the commercial
38 development of this state's coalbed methane by estab-
39 lishing procedures for issuing permits and forming
40 drilling units for coalbed methane wells without
41 adversely affecting the safety of mining or the minea-
42 bility of coal seams;

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

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

52 (5) Create a state permitting procedure and authority
53 to provide for and facilitate coalbed methane develop-
54 ment as encouraged by the Energy Policy Act of 1992;
55 and

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

§22-21-2. Definitions.

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

3 (a) "Review board" means the West Virginia coalbed
4 methane review board which shall be comprised of the
5 members of the West Virginia shallow gas well review
6 board provided for in article eight, chapter twenty-two-
7 c of this code, the state geologist, a representative of the
8 United Mine Workers of America, an employee of the
9 gas industry, and the director of the office of miners'
10 health, safety and training, and the chairman of the

11 review board shall be the chairman of the West Virginia
12 shallow gas review board;

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

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

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

22 (e) "Coalbed methane well" means any hole or well
23 sunk, drilled, bored or dug into the earth for the
24 production of coalbed methane for consumption or sale,
25 including a gob well. The term "well" shall mean a
26 coalbed methane well unless the context indicates
27 otherwise. The term "coalbed methane well" does not
28 include any shaft, hole or well sunk, drilled, bored or
29 dug into the earth for core drilling, production of coal
30 or water, venting gas from a mine area, or degasifica-
31 tion of a coal seam;

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

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

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

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

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

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

46 (l) "Gob well" means a well drilled or vent hole
47 converted to a well pursuant to this article which

48 produces or is capable of producing coalbed methane or
49 other natural gas from a distressed zone created above
50 and below a mined-out coal seam by any prior full seam
51 extraction of the coal;

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

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

58 (o) "Person" means any natural person, corporation,
59 firm, partnership, partnership association, venture,
60 receiver, trustee, executor, administrator, guardian,
61 fiduciary, other representative of any kind, any recog-
62 nized legal entity, or political subdivision or agency
63 thereof;

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

70 (q) "Waste" means (i) physical waste as the term is
71 generally understood in the gas industry and as
72 provided for in article six of this chapter, but giving
73 special consideration to coal mining operations and the
74 safe recovery of coal; (ii) the locating, drilling, equip-
75 ping, operating, producing or transporting coalbed
76 methane in a manner that causes or tends to cause a
77 substantial reduction in the quantity of coalbed methane
78 recoverable from a pool under prudent and proper
79 operations, or that causes or tends to cause a substantial
80 or unnecessary or excessive surface loss of coalbed
81 methane; (iii) the drilling of more wells than are
82 reasonably required to recover efficiently and econom-
83 ically the maximum amount of coalbed methane from
84 a pool; or (iv) substantially inefficient, excessive or
85 improper use, or the substantially unnecessary dissipa-
86 tion of reservoir pressure. Waste does not include
87 coalbed methane vented or released from any mine area,

88 the degasification of a coal seam for the purpose of
89 mining coal, the plugging of coalbed methane wells for
90 the purpose of mining coal, or the conversion of coalbed
91 methane wells to vent holes for the purpose of mining
92 coal;

93 (r) "Workable coalbed" or "workable coal seam" means
94 any seam of coal twenty inches or more in thickness, or
95 any seam of less thickness which is being commercially
96 mined or can be shown to be capable of being commer-
97 cially mined.

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

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

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

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

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

26 (1) The provisions of section three pertaining to the

27 findings and orders of inspectors concerning violations,
28 determination of reasonable time for abatement, exten-
29 sions of time for abatement, special inspections, notice
30 of findings and orders;

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

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

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

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

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

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

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

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

63 (10) The provisions of section thirty-two providing for
64 the right of adjacent owner or operator to prevent waste

65 of gas and recovery of costs;

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

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

70 (13) The provisions of section thirty-five providing for
71 civil action for contamination or deprivation of fresh-
72 water source or supply and presumption;

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

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

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

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

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

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

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

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

16 (2) Perform all duties as the permit issuing authority

17 for the state in all matters pertaining to the exploration,
18 development, production and recovery of coalbed
19 methane in accordance with the provisions of this
20 article;

21 (3) Perform such acts as may be necessary or approp-
22 riate to secure to this state the benefits of federal
23 legislation by establishing programs relating to the
24 exploration, development, production and recovery of
25 coalbed methane, which programs are assumable by the
26 state;

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

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

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

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

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

16 (b) At least ten days prior to every meeting of the
17 board called pursuant to the provisions of this section,
18 the chairman shall also notify the applicant, all persons

19 to whom copies of the application were required to be
20 mailed pursuant to the provisions of section nine of this
21 article and all persons who filed written protests or
22 objections with the board in accordance with the
23 provisions of section ten or eleven of this article.

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

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

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

42 (f) The board may:

43 (1) Take evidence and issue orders concerning appli-
44 cations for drilling permits and coalbed methane gas
45 drilling units in accordance with the provisions of this
46 article;

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

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

53 (4) Issue subpoenas for the attendance of and sworn
54 testimony by witnesses and subpoenas duces tecum for
55 the production of any books, records, maps, charts,
56 diagrams and other pertinent documents in its own

57 name or at the request of any party pursuant to article
58 five, chapter twenty-nine-a.

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

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

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

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

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

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

31 (4) The approximate depth to which the well is to be
32 drilled, deepened or converted, the coal seams (stating
33 the depth and thickness of each seam) in which the well
34 will be completed for production, and any other coal

35 seams (including the depth and thickness of each seam)
36 which will be penetrated by the well;

37 (5) A description of any means to be used to stimulate
38 the well;

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

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

50 (8) Except for a gob well or vent hole proposed to be
51 converted to a well, if the proposed coalbed methane
52 well will be completed in some but not all coal seams
53 for production, a plan and design for the well which will
54 protect all workable coal seams which will be pene-
55 trated by the well;

56 (9) If the proposed operations will include horizontal
57 drilling of a well commenced on the surface, a descrip-
58 tion of such operations, including both the vertical and
59 horizontal alignment and extent of the well from the
60 surface to total depth;

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

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

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

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

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

71 (4) The consent and agreement of the coal owner as

72 required by section seven and, if applicable, section
73 twenty of this article;

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

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

96 (d) An erosion and sediment control plan shall
97 accompany each application for a permit. Such plan
98 shall contain methods of stabilization and drainage,
99 including a map of the project area indicating the
100 amount of acreage disturbed. The erosion and sediment
101 control plan shall meet the minimum requirements of
102 the West Virginia erosion and sediment control manual
103 as adopted and from time to time amended by the office
104 of oil and gas in consultation with the several soil
105 conservation districts pursuant to the control program
106 established in this state through section 208 of the
107 federal Water Pollution Control Act Amendments of
108 1972 [33 U.S.C. 1288]. The erosion and sediment control
109 plan shall become part of the terms and conditions of
110 a permit and the provisions of the plan shall be carried
111 out where applicable in operations under the permit.
112 The erosion and sediment control plan shall set out the

113 proposed method of reclamation which shall comply
114 with the requirements of section thirty, article six of this
115 chapter.

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

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

133 (g) The chief shall deny the issuance of a permit if he
134 or she determines that the applicant has committed a
135 substantial violation of a previously issued permit,
136 including the erosion and sediment control plan, or a
137 substantial violation of one or more of the rules
138 promulgated hereunder, and has failed to abate or seek
139 review of the violation. In the event that the chief finds
140 that a substantial violation has occurred with respect to
141 existing operations and that the operator has failed to
142 abate or seek review of the violation in the time
143 prescribed, he or she may suspend the permit on which
144 said violation exists, after which suspension the operator
145 shall forthwith cease all work being conducted under
146 the permit until the chief reinstates the permit, at which
147 time the work may be continued. The chief shall make
148 written findings of any such determination made by him
149 or her and may enforce the same in the circuit courts
150 of this state and the operator may appeal such suspen-
151 sion pursuant to the provisions of section twenty-five of
152 this article. The chief shall make a written finding of
153 any such determination.

154 (h) Any person who violates any provision of this
155 section shall be guilty of a misdemeanor, and, upon
156 conviction thereof, shall be fined not more than five
157 thousand dollars, or be imprisoned in the county jail not
158 more than twelve months, or both fined and imprisoned.

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

1 (a) No permit shall be issued for a coalbed methane
2 well unless and until the applicant has obtained and
3 filed with the chief a consent and agreement from each
4 owner and each operator of any workable coal seam
5 twenty-eight inches or more in thickness which is within
6 seven hundred fifty horizontal feet of the proposed well
7 bore and (i) which coal seam the applicant proposes to
8 stimulate or (ii) which coal seam is within one hundred
9 vertical feet above or below a coal seam which the
10 applicant proposes to stimulate. The requirement for
11 consent and agreement contained in this section shall
12 not be considered to impair, abridge or affect any
13 contractual rights or objections arising out of a contract
14 or lease which provides for the development of coalbed
15 methane and stimulation of wells between the applicant
16 and any coal owner or operator and the existence of any
17 such contract or lease shall constitute a waiver of the
18 requirement to file an additional signed consent and
19 agreement. Such consent and agreement must provide:
20 (i) That such coal owner or operator has been provided
21 with a copy of the application for permit as required by
22 section six of this article and with a copy of all plats
23 and documents which must accompany the application
24 and (ii) that such coal owner or operator consents and
25 agrees to the stimulation of the coal seam as described
26 in such application.

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

32 (1) A statement that a coal owner or operator as
33 described in subsection (a) of this section has refused to

34 provide written authorization to stimulate the well;

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

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

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

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

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

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

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

4 (b) A separate bond may be furnished for a particular
5 coalbed methane well in the sum of ten thousand dollars,
6 payable to the state of West Virginia, conditioned on full
7 compliance with all laws and rules relating to the
8 drilling, operation and stimulation of such wells, to the
9 plugging, abandonment and reclamation thereof, and

10 for furnishing such reports and information as may be
11 required by the chief.

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

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

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

§22-21-9. Notice to owners.

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

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

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

12 (3) Each coal owner and each coal operator (i) from
13 whom a consent and agreement provided for in section
14 seven of this article is required, or (ii) whose coal seam

15 will be penetrated by the proposed coalbed methane well
16 or is within seven hundred fifty feet of any portion of
17 the well bore; and

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

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

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

45 (d) Materials served upon persons described in
46 subsections (a) and (b) of this section shall contain a
47 statement of the methods and time limits for filing
48 comment and objection, who may file comment and
49 objection, the name and address of the chief with whom
50 the comment and objection must be filed, the ability to
51 obtain additional information from the chief, the fact
52 that such persons may request notice of the permit
53 decision, and a list of persons qualified to test water as
54 provided in this section.

55 (e) Any person entitled to submit comment or objec-
56 tion shall also be entitled to receive a copy of the permit
57 as issued or a copy of the order denying the permit if
58 such person requests the receipt thereof as a part of the
59 comment or objection concerning said permit
60 application.

61 (f) Persons entitled to notice may contact the district
62 office of the office of oil and gas to ascertain the names
63 and location of water testing laboratories in the area
64 capable and qualified to test water supplies in accor-
65 dance with standard accepted methods. In compiling
66 such list of names the office of oil and gas shall consult
67 with the state and local health departments.

§22-21-10. Procedure for filing comments.

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

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

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

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

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

4 No permit shall be issued less than fifteen days after
5 the filing date of the application for any well work
6 except plugging or replugging; and no permit for
7 plugging or replugging shall be issued less than five

8 days after the filing date of the application except a
9 permit for plugging or replugging a dry hole: *Provided,*
10 That if the applicant certifies that all persons entitled
11 to notice of the application under the provisions of this
12 article have been served in person or by certified mail,
13 return receipt requested, with a copy of the permit
14 application, including the erosion and sediment control
15 plan, if required, and the plat required by section six
16 of this article, and further files written statements of no
17 objection by all such persons, the chief may issue the
18 permit at any time.

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

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

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

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

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

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

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

9 (b) The review board shall forthwith schedule a

10 hearing for the purpose of considering such objection or
11 comment. Notice shall be given fifteen days in advance
12 of the hearing to any person filing comment or objection,
13 and to any person to whom notice of the application
14 required, and to any applicant, and the review board
15 shall hold such hearing within thirty days after the
16 deadline for filing objection or comment. At such
17 hearing the review board shall consider the matters
18 raised in any objection or comment, including surface
19 topography and use, and with respect to the ability to
20 mine any affected coal seam safely and the protection
21 of any such seam for future mining shall consider the
22 following:

23 (1) Whether the drilling location is above or in close
24 proximity to any mine opening, shaft, entry, travelway,
25 airway, haulageway, drainageway or passageway, or to
26 any proposed extension thereof, any abandoned, operat-
27 ing coal mine or any coal mine already surveyed and
28 platted but not yet being operated;

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

33 (3) Whether the proposed well can be drilled safely,
34 taking into consideration the dangers from creeps,
35 squeezes or other disturbances due to the extraction of
36 coal;

37 (4) The extent to which the proposed drilling location
38 unreasonably interferes with the safe recovery of coal or
39 coalbed methane;

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

45 (6) The feasibility of moving the proposed drilling
46 location to a mined-out area, below the coal outcrop, or
47 to some other location;

48 (7) The feasibility of a drilling moratorium for not

49 more than one year in order to permit the completion
50 of imminent coal mining operations;

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

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

55 (10) The surface topography and use;

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

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

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

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

85 (1) Refuse a drilling permit; or

86 (2) Issue a drilling permit for the proposed drilling

87 location; or

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

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

99 (5) Issue a permit authorizing the applicant to
100 stimulate the well in the absence of consent of the
101 affected coal operators or owners of workable coal seams
102 of twenty-eight inches or more in thickness as described
103 in subsection (a) of section seven of this article, as
104 proposed or as modified by the order of the board. Such
105 order shall further provide for the applicant to furnish
106 evidence of financial security in one of the following
107 forms: (a) A corporate surety bond having on it a
108 company authorized to do business in this state as
109 surety; (b) bonds of the United States or agency thereof,
110 or those guaranteed by, or for which the credit of the
111 United States or agency therefor is pledged for the
112 payment of the principal and interest thereof; (c) direct
113 general obligation bonds of this state, or any other state,
114 or territory of the United States, or the District of
115 Columbia if such other state, territory or the District of
116 Columbia has the power to levy taxes for the payment
117 of the principal and interest of such securities, and if
118 at the time of the deposit such other state, territory or
119 the District of Columbia is not in default in the payment
120 of any part of the principal or interest owing by it upon
121 any part of its funded indebtedness; (d) direct general
122 obligation bonds of any county, district, city, town,
123 village, school district or other political subdivision of
124 this state issued pursuant to law and payable from ad
125 valorem taxes levied on all taxable property located
126 herein, that the total indebtedness after deducting
127 sinking funds and all debts incurred for self-sustaining

128 public works does not exceed five percent of the assessed
129 value of all taxable property therein at the time of the
130 last assessment made before the date of such deposit,
131 and that the issuer has not, within five years prior to
132 the making thereof, been in default for more than ninety
133 days in the payment of any part of the principal or
134 interest on any debt, evidenced by its bonds; (e) revenue
135 bonds issued by this state or any agency of this state
136 when such bonds are payable from revenues or earnings
137 specifically pledged for the payment of principal and
138 interest, and a lawful sinking fund or reserve fund has
139 been established and is being maintained for the
140 payment of such bonds; (f) revenue bonds issued by a
141 municipality in this state for the acquisition, construc-
142 tion, improvement or extension of a waterworks system,
143 or a sewerage system, or a combined waterworks and
144 sewerage system, when such bonds are payable from
145 revenue or earnings specifically pledged for the pay-
146 ment of principal and interest, and a lawful sinking
147 fund or reserve fund has been established and is being
148 maintained for the payment of such bonds; (g) revenue
149 bonds issued by a public service board of a public
150 service district in this state for the acquisition, construc-
151 tion, improvement or extension of any public service
152 properties, or for the reimbursement of payment of the
153 costs and expenses of creating the district, when such
154 bonds are payable from revenue or earnings specifically
155 pledged for the payment of principal and interest, and
156 a lawful sinking fund or reserve fund has been estab-
157 lished and is being maintained for the payment of such
158 bonds; (h) revenue bonds issued by a board of trustees
159 of a sanitary district in this state for the corporate
160 purposes of such district, when such bonds are payable
161 from revenue or earnings specifically pledged for the
162 payment of principal and interest, and a lawful sinking
163 fund or reserve fund has been established and is being
164 maintained for the payment of such bonds; and (i) bonds
165 issued by a federal land bank or home owners' loan
166 corporation; (j) cash; or (k) any combination of the above.
167 The operator of the well shall be entitled to all interest
168 and income earned on the collateral securities provided
169 pursuant to the order. Such security given shall be

170 placed in an escrow account. The operator providing
171 security shall be entitled from time to time to receive,
172 upon written order of the board, the whole or any
173 portion of such securities upon depositing in lieu thereof
174 cash equal to the approved securities of the classes
175 herein specified.

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

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

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

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

202 If a permit is issued, the chief shall indicate the
203 approved drilling location on the plat filed with the
204 application for a permit and shall number and keep an
205 index of and docket each plat, the name of the well
206 operator, the names and addresses of all persons
207 notified, the dates of conferences, hearings and all other
208 actions taken by the chief and the review board. The
209 chief shall also prepare a record of the proceedings,

210 which record shall include all applications, plats and
211 other documents filed with the chief, all notices given
212 and proof of service thereof, all orders issued, all
213 permits issued and a transcript of the hearing. The
214 record prepared by the chief shall be open to inspection
215 by the public.

216 (e) Notwithstanding any finding or determination
217 made by the board, in the event a workable coal seam
218 twenty-eight inches or more in thickness is stimulated
219 absent the consent of the coal owner or operator, the
220 applicant and well operator shall be liable in tort
221 without proof of negligence for any damage to such coal
222 seam stimulated or any other workable coal seam
223 twenty-eight inches or more in thickness within seven
224 hundred fifty horizontal feet or one hundred vertical
225 feet of the stimulation and for damages to any mining
226 equipment proximately caused by such stimulation.
227 Such applicant and well operator shall indemnify and
228 hold the coal owner and coal operator harmless against
229 any liability for injury, death or damage to property
230 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.**

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

15 permitted depth.

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

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

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

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

1 (a) In the absence of a voluntary agreement, an
2 operator, owner or other party claiming an ownership
3 interest in the coalbed methane may file an application

4 with the chief to pool (i) separately owned interests in
5 a single tract, (ii) separately owned tracts, (iii) separ-
6 ately owned interests in any tract, and (iv) any combi-
7 nation of (i), (ii) and (iii) to form a drilling unit for the
8 production of coalbed methane from one or more coalbed
9 methane wells.

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

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

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

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

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

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

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

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

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

40 (1) A plat prepared by a licensed land surveyor or

41 registered professional engineer showing the location of
42 the coalbed methane well or wells, or proposed well or
43 wells; the boundary and acreage of the proposed drilling
44 unit, the boundary and acreage of each tract contained
45 in the unit and, where parts of tracts are included, the
46 boundary and acreage of such parts, a name identifica-
47 tion of each tract, and the district and county in which
48 the unit is located. All boundaries must be shown with
49 courses and distances;

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

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

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

§22-21-16. Notice to owners.

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

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

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

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

17 (4) Any other person or entity known to the operator
18 to have an interest in the coal or coalbed methane.

19 (b) The notice required by subsection (a) of this section
20 shall specify a time and place for a conference and a
21 hearing on this application, shall advise the persons
22 notified that the applicant has filed an application for
23 a drilling unit for the production of coalbed methane,
24 that they may be present and object or offer comments
25 to the formation of the proposed unit, and shall be
26 accompanied with copies of (i) the permit application for
27 the coalbed methane well, (ii) the permit application for
28 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.**

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

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

20 (b) The review board shall, upon request of a proposed
21 applicant for a drilling unit or upon request of a coal
22 owner or operator, provide a convenient date and time
23 for a hearing on the application for a drilling unit,
24 which hearing date shall be no sooner than thirty-five
25 days nor more than sixty days of the date the request

26 for hearing is made. The review board shall review the
27 application and on the date specified for a hearing shall
28 conduct a public hearing. The review board shall take
29 evidence, making a record thereof, and consider:

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

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

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

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

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

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

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

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

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

64 or wells; and

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

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

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

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

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

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

85 (5) Establish a reasonable fee for the operator for
86 operating costs, which shall include routine mainte-
87 nance of the well and all accounting necessary to pay
88 all expenses, royalties and amounts due working interest
89 owners;

90 (6) Such other findings and provisions as are approp-
91 riate for each order.

92 (d) The operator designated in such order shall be
93 responsible for drilling, completing, equipping, operat-
94 ing, plugging and abandoning the well, shall market all
95 production therefrom, shall collect all proceeds therefor,
96 and shall distribute such proceeds in accordance with
97 the division order issued by the review board.

98 (e) Upon issuance of the pooling order, the coalbed
99 methane owners or any lessee of any such owners or any
100 claimants thereto 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
103 operator on such terms as the parties may agree, or if
104 unable to agree, upon such terms as are set forth by the
105 board in its order;

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

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

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

113 (f) The working interest in the well shall include (i)
114 the right to participate in decisions regarding expendi-
115 tures in excess of operating costs, taxes, any royalties
116 in excess of one eighth, and other costs and expenses
117 allowed in the pooling order and (ii) the obligation to pay
118 for all expenditures. The working interest shall exist in
119 (i) all owners who participate in the risk and cost of
120 drilling and completing the well and (ii) carried interest
121 owners after recoupment provided in subsection (h) of
122 this section. The working interest owners' net revenue
123 share shall be seven eighths of the proceeds of sales of
124 coalbed methane at the wellhead after deduction of
125 operating costs, taxes, any royalties in excess of one
126 eighth, and other costs and expenses allowed in a
127 pooling order. Unless the working interest owners
128 otherwise agree, the working interest owners shall share
129 in all costs and decisions in proportion to their owner-
130 ship interest in the unit. If any working interest owner
131 deposits or contributes amounts in the escrow account
132 which exceed actual costs, such owner shall be entitled
133 to a refund; and if amounts deposited or contributed are
134 less than actual costs, such owner shall make a deposit
135 or contribution for the deficiency.

136 (g) The royalty interest in a well shall include the
137 right to receive one eighth of the gross proceeds
138 resulting from the sale of methane at the wellhead and
139 such interest shall exist in the coalbed methane owners:

140 *Provided*, That any coalbed methane owner who in good
141 faith has entered a lease or other contract prior to
142 receiving notice of an application to form the drilling
143 unit as provided herein, shall be entitled to such owner's
144 fractional interest in the royalty calculated at a rate
145 provided for in such contract. Each such owner shall be
146 entitled to share in the royalty in proportion to his or
147 her fractional interest in the unit.

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

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

162 (1) Each participating working interest owner, except
163 for the operator, shall deposit in the escrow account its
164 proportionate share of the costs allocable to the owner-
165 ship interest claimed by such working interest owner.

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

173 (j) After each coalbed methane owner has made, or
174 has been deemed to have made, an election under
175 subsection (e) of this section, the review board shall
176 enter a division order which shall set out the net revenue
177 interest of each working interest owner, including each
178 carried interest owner and the royalty interest of each
179 coalbed methane owner. Thereafter payments shall be

180 made to working interest owners, carried interest
181 owners and royalty interest owners in accordance with
182 the division order, except that payments attributable to
183 conflicting claims shall be deposited in the escrow
184 account. The fractional interest of each owner shall be
185 expressed as a decimal carried to the sixth place.

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

192 (1) Each legally entitled working interest owner shall
193 receive its proportionate share of the proceeds attribu-
194 table to the conflicting ownership interests;

195 (2) Each legally entitled carried interest owner shall
196 receive its proportionate share of the proceeds attribu-
197 table to the conflicting ownership interests, after
198 recoupment of amounts provided in subsection (h) of this
199 section;

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

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

207 (l) The review board shall enact rules for the admin-
208 istration and protection of funds delivered to escrow
209 accounts.

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

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

1 All operations including, but not limited to, the
2 commencement, drilling or operation of a well upon a
3 drilling unit for which a pooling order has been entered,

4 are hereby deemed to be operations on each separately
5 owned tract in the drilling unit by the several owners.
6 That portion of the production allocated to a separately
7 owned tract included in a drilling unit is hereby deemed
8 to be produced from that tract.

§22-21-19. Validity of unit agreements.

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

§22-21-20. Spacing.

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

§22-21-21. Dry or abandoned wells.

1 Any coalbed methane well which is completed as a dry
2 hole or which has not produced coalbed methane in
3 paying quantities for a period of twelve consecutive
4 months shall be presumed to have been abandoned and
5 the operator shall promptly plug the well and reclaim
6 all surface land affected by the well in accordance with
7 the provisions of this article, unless the operator
8 furnishes satisfactory proof to the chief that there is a
9 bona fide future use for such well in accordance with
10 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.

1 (a) Prior to the commencement of plugging operations
2 the operator shall give thirty days' advance notice to the
3 chief and to all coal owners and operators whose names
4 and addresses would be required for a permit applica-
5 tion under subdivision (2), subsection (b), section six of
6 this article as of the date of the notice. Such notice shall
7 set out the number and other identification of the well,
8 a copy of the well plat, the date plugging will com-
9 mence, and the manner and method of plugging.

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

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

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

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

§22-21-23. Method of plugging.

1 All coalbed methane wells shall be plugged in such
2 a manner that any workable coal seam surrounding the
3 well can be safely mined and that the well can be mined
4 through. The chief shall promulgate rules specifying the
5 manner and method of plugging coalbed methane wells
6 and in doing so, or in entering any order for such

7 plugging and reclamation, shall give special considera-
8 tion to the ability to mine any affected coal seam safely
9 and the protection of any affected coal seam for future
10 mining.

§22-21-24. Existing mining rights.

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

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

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

6 (b) The judgment of the circuit court is final unless
7 reversed, vacated or modified on appeal to the supreme
8 court of appeals in accordance with the provisions of
9 section one, article six, chapter twenty-nine-a of this
10 code.

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

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

1 In any case where title to subsurface minerals has
2 been severed in such a way that title to natural gas
3 underlying such tract and title to coal underlying such

4 tract are in different persons, it shall be an affirmative
5 defense to any action for willful trespass arising from
6 the drilling and commercial production of methane from
7 any coal seam underlying such tract, that the operator
8 of such well permitted, drilled and completed such well
9 under color of title of any instrument, deed, or lease for
10 oil and gas purposes from the gas owner, or an
11 instrument, deed or lease for coal mining purposes from
12 the coal owner.

§22-21-27. Injunctive relief.

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

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

30 (c) The judgment of the circuit court upon any

31 application permitted by the provisions of this section
32 is final unless reversed, vacated or modified on appeal
33 to the supreme court of appeals.

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

42 (e) If the chief or review board refuses or fails to apply
43 for an injunctive relief to enjoin a violation or threatened
44 violation of any provision of this article, any rule
45 promulgated by the chief or review board hereunder or
46 any order or final decision of the chief or review board,
47 within ten days after receipt of a written request to do
48 so by any person who is or will be adversely affected
49 by such violation or threatened violation, the person
50 making such request may apply in his or her own behalf
51 for an injunction to enjoin the violation or threatened
52 violation in any court in which the chief or review board
53 might have brought suit. The chief or review board shall
54 be made a party defendant in the application in addition
55 to the person or persons violating or threatening to
56 violate any provision of this article, any rule promul-
57 gated by the chief or review board hereunder or any
58 order of the chief or review board. The application shall
59 proceed and injunctive relief may be granted without
60 bond or other undertaking in the same manner as if the
61 application had been made by the chief or review board.

§22-21-28. Penalties.

1 (a) Any person who violates any term or condition of
2 a permit issued under this article, and the violation is
3 found by the chief or review board to have rendered
4 unmineable all or a portion of a workable coal seam, is
5 subject to civil penalties, to be imposed and collected by
6 the chief or review board in an amount not to exceed
7 the reasonably expected net profit lost to the coal owner
8 as a result. All penalties collected shall be transferred

9 to the special reclamation fund as provided by section
10 twenty-nine, article six of this chapter.

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

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

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

§22-21-29. Construction.

1 This article shall be liberally construed so as to
2 effectuate the declaration of public policy set forth in
3 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.

§46A-1-102. General definitions.

1 In addition to definitions appearing in subsequent
2 articles, in this chapter: (1) "Actuarial method" means
3 the method, defined by rules adopted by the commis-
4 sioner, of allocating payments made on a debt between
5 principal or amount financed and loan finance charge
6 or sales finance charge pursuant to which a payment is
7 applied first to the accumulated loan finance charge or
8 sales finance charge and the balance is applied to the
9 unpaid principal or unpaid amount financed.

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

16 (3) "Agricultural purpose" means a purpose related to
17 the production, harvest, exhibition, marketing, trans-
18 portation, processing or manufacture of agricultural
19 products by a natural person who cultivates, plants,
20 propagates or nurtures the agricultural products.
21 "Agricultural products" includes agricultural, horticul-
22 tural, viticultural and dairy products, livestock, wildlife,
23 poultry, bees, forest products, fish and shellfish, and any
24 products thereof, including processed and manufactured
25 products, and any and all products raised or produced
26 on farms and any processed or manufactured products
27 thereof.

28 (4) "Amount financed" means the total of the following
29 items to the extent that payment is deferred:

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

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

37 (c) If not included in the cash price:

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

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

42 (iii) Additional charges permitted by this chapter.

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

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

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

64 (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,
67 mortgage, settlement statement or other documents;
- 68 (c) Escrows for future payments of taxes and
69 insurance;
- 70 (d) Official fees and fees for notarizing deeds and
71 other documents;
- 72 (e) Appraisal fees; and
- 73 (f) Credit reports.
- 74 (8) "Code" means the official code of West Virginia,
75 one thousand nine hundred thirty-one, as amended.
- 76 (9) "Commercial facsimile transmission" means the
77 electronic or telephonic transmission in the state to a
78 facsimile device to encourage a person to purchase
79 goods, realty or services.
- 80 (10) "Commissioner" means the commissioner of
81 banking of West Virginia.
- 82 (11) "Conspicuous": A term or clause is conspicuous
83 when it is so written that a reasonable person against
84 whom it is to operate ought to have noticed it. Whether
85 a term or clause is conspicuous or not is for decision by
86 the court.
- 87 (12) "Consumer" means a natural person who incurs
88 debt pursuant to a consumer credit sale or a consumer
89 loan.
- 90 (13) (a) Except as provided in paragraph (b), "con-
91 sumer credit sale" is a sale of goods, services or an interest
92 in land in which:
- 93 (i) Credit is granted either by a seller who regularly
94 engages as a seller in credit transactions of the same
95 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
98 purchased primarily for a personal, family, household or
99 agricultural purpose;

100 (iv) Either the debt is payable in installments or a
101 sales finance charge is made; and

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

105 (b) "Consumer credit sale" does not include a sale in
106 which the seller allows the buyer to purchase goods or
107 services pursuant to a lender credit card or similar
108 arrangement.

109 (14) (a) "Consumer lease" means a lease of goods:

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

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

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

117 (b) "Consumer lease" does not include a lease made
118 pursuant to a lender credit card or similar
119 arrangement.

120 (15) "Consumer loan" is a loan made by a person
121 regularly engaged in the business of making loans in
122 which:

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

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

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

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

131 (16) "Cosigner" means a natural person who assumes
132 liability for the obligation on a consumer credit sale or
133 consumer loan without receiving goods, services or
134 money in return for the obligation or, in the case of a
135 revolving charge account or revolving loan account of a

136 consumer, without receiving the contractual right to
137 obtain extensions of credit under the account. The term
138 cosigner includes any person whose signature is re-
139 quested as a condition to granting credit to a consumer
140 or as a condition for forbearance on collection of a
141 consumer's obligation that is in default. The term
142 cosigner does not include a spouse whose signature is
143 required to perfect a security interest. A person who
144 meets the definition in this paragraph is a "cosigner"
145 whether or not the person is designated as such on the
146 credit obligation.

147 (17) "Credit" means the privilege granted by a
148 creditor to a debtor to defer payment of debt or to incur
149 debt and defer its payment.

150 (18) "Earnings" means compensation paid or payable
151 to an individual or for his account for personal services
152 rendered or to be rendered by him, whether denomi-
153 nated as wages, salary, commission, bonus or otherwise,
154 and includes periodic payments pursuant to a pension,
155 retirement or disability program.

156 (19) "Facsimile device" means a machine that receives
157 and copies reproductions or facsimiles of documents or
158 photographs that have been transmitted electronically
159 or telephonically over telecommunications lines.

160 (20) "Federal Consumer Credit Protection Act" means
161 the "Consumer Credit Protection Act" (Public Law 90-
162 321; 82 Stat. 146), as amended, and includes regulations
163 issued pursuant to that act.

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

168 (22) "Home solicitation sale" means a consumer credit
169 sale in excess of twenty-five dollars in which the buyer
170 receives a solicitation of the sale at a place other than
171 the seller's business establishment at a fixed location
172 and the buyer's agreement or offer to purchase is there
173 given to the seller or a person acting for the seller. The
174 term does not include a sale made pursuant to a

175 preexisting open-end credit account with the seller in
176 existence for at least three months prior to the transac-
177 tion, a sale made pursuant to prior negotiations between
178 the parties at the seller's business establishment at a
179 fixed location, a sale of motor vehicles, mobile homes or
180 farm equipment or a sale which may be rescinded under
181 the Federal Truth in Lending Act (being Title I of the
182 Federal Consumer Credit Protection Act). A sale which
183 would be a home solicitation sale if credit were extended
184 by the seller is a home solicitation sale although the
185 goods or services are paid for, in whole or in part, by
186 a consumer loan in which the creditor is subject to
187 claims and defenses arising from the sale.

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

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

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

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

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

205 (25) "Loan" includes:

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

210 (b) The creation of debt by a credit to an account with
211 the lender upon which the consumer is entitled to draw
212 immediately;

213 (c) The creation of debt pursuant to a lender credit
214 card or similar arrangement; and

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

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

233 (b) If a lender makes a loan to a consumer by
234 purchasing or satisfying obligations of the consumer
235 pursuant to a lender credit card or similar arrange-
236 ment, and the purchase or satisfaction is made at less
237 than the face amount of the obligation, the discount is
238 not part of the loan finance charge.

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

244 (28) "Official fees" means:

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

250 (b) Premiums payable for insurance or fees escrowed
251 in a special account for the purpose of funding self-

252 insurance or its equivalent in lieu of perfecting a
253 security interest otherwise required by the creditor in
254 connection with the sale, lease or loan, if such premium
255 or fee does not exceed the fees and charges described
256 in paragraph (a) which would otherwise be payable.

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

260 (30) "Payable in installments" means that payment is
261 required or permitted by agreement to be made in (a)
262 two or more periodic payments, excluding a down
263 payment, with respect to a debt arising from a consumer
264 credit sale pursuant to which a sales finance charge is
265 made, (b) four or more periodic payments, excluding a
266 down payment, with respect to a debt arising from a
267 consumer credit sale pursuant to which no sales finance
268 charge is made, or (c) two or more periodic payments
269 with respect to a debt arising from a consumer loan. If
270 any periodic payment other than the down payment
271 under an agreement requiring or permitting two or
272 more periodic payments is more than twice the amount
273 of any other periodic payment, excluding the down
274 payment, the consumer credit sale or consumer loan is
275 "payable in installments."

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

278 (32) "Person related to" with respect to an individual
279 means (a) the spouse of the individual, (b) a brother,
280 brother-in-law, sister or sister-in-law of the individual,
281 (c) an ancestor or lineal descendant of the individual or
282 his spouse, and (d) any other relative, by blood or
283 marriage, of the individual or his spouse who shares the
284 same home with the individual. "Person related to" with
285 respect to an organization means (a) a person directly
286 or indirectly controlling, controlled by or under common
287 control with the organization, (b) an officer or director
288 of the organization or a person performing similar
289 functions with respect to the organization or to a person
290 related to the organization, (c) the spouse of a person
291 related to the organization, and (d) a relative by blood

292 or marriage of a person related to the organization who
293 shares the same home with him.

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

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

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

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

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

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

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

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

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

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

327 (c) To the extent that payment is deferred:

328 (i) Amounts actually paid or to be paid by the lender
329 for registration, certificate of title, or license fees if not
330 included in (a); and

331 (ii) Additional charges permitted by this chapter.

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

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

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

362 (40) "Sale of an interest in land" includes a lease in
363 which the lessee has an option to purchase the interest
364 and all or a substantial part of the rental or other
365 payments previously made by him are applied to the
366 purchase price.

367 (41) "Sale of services" means furnishing or agreeing
368 to furnish services and includes making arrangements
369 to have services furnished by another.

370 (42) "Sales finance charge" means the sum of (a) all
371 charges payable directly or indirectly by the buyer and
372 imposed directly or indirectly by the seller or issuer of
373 a seller credit card as an incident to the extension of
374 credit, including any of the following types of charges
375 which are applicable: Time-price differential, however
376 denominated, including service, carrying or other
377 charge, premium or other charge for any guarantee or
378 insurance protecting the seller against the buyer's
379 default or other credit loss, and (b) charges incurred for
380 investigating the collateral or credit worthiness of the
381 buyer or for commissions or brokerage for obtaining the
382 credit, irrespective of the person to whom the charges
383 are paid or payable; unless the seller had no notice of
384 the charges when the credit was granted. The term does
385 not include charges as a result of default, additional
386 charges, delinquency charges or deferral charges. If the
387 seller or issuer of a seller credit card purchases or
388 satisfies obligations of the consumer and the purchase
389 or satisfaction is made at less than the face amount of
390 the obligation, the discount is not part of the sales
391 finance charge.

392 (43) Except as otherwise provided, "seller" includes an
393 assignee of the seller's right to payment but use of the
394 term does not in itself impose on an assignee any
395 obligation of the seller.

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

406 (45) "Services" includes (a) work, labor and other

407 personal services, (b) privileges with respect to transpor-
408 tation, use of vehicles, hotel and restaurant accommoda-
409 tions, education, entertainment, recreation, physical
410 culture, hospital accommodations, funerals, cemetery
411 accommodations, and the like, and (c) insurance.

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

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

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

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

425 (48) "Supervised loan" means a consumer loan made
426 by other than a supervised financial organization,
427 including a loan made pursuant to a revolving loan
428 account, where the principal does not exceed two
429 thousand dollars, and in which the rate of the loan
430 finance charge exceeds eight percent per year as
431 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.]

AN ACT to amend article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred twenty-nine-a; and to amend article

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

5 reasonable attorney fees, court costs and fees, to the
6 consumer. On a finding by the court that a claim
7 brought under this chapter applying to illegal, fraudu-
8 lent or unconscionable conduct or any prohibited debt
9 collection practice was brought in bad faith and for the
10 purposes of harassment, the court may award to the
11 defendant reasonable attorney fees.

§46A-5-105. Willful violations.

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

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

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 adjust
4 the damages awarded pursuant to section one hundred
5 one of this article to account for inflation from the time
6 that the West Virginia consumer credit and protection
7 act became operative, specifically 12:01 a.m. on the first
8 day of September, one thousand nine hundred seventy-
9 four, to the time of the award of damages in an amount
10 equal to the consumer price index. Consumer price
11 index means the last consumer price index for all
12 consumers published by the United States department
13 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.]

AN ACT to amend and reenact section one hundred nine, 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; 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.

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

6 (1) Official fees and taxes;

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

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

20 (4) Charges for other benefits, including insurance,
21 conferred on the consumer, if the benefits are of value

22 to him or her and if the charges are reasonable in
23 relation to the benefits, are of a type which is not for
24 credit, and are excluded as permissible additional
25 charges from the sales finance charge or loan finance
26 charge by rule adopted by the commissioner: *Provided,*
27 That as to insurance, the policy as distinguished from
28 a certificate of coverage thereunder must be issued by
29 an individual licensed under the laws of this state to sell
30 such insurance and the determination of whether the
31 charges therefor are reasonable in relation to the
32 benefits shall be determined by the insurance commis-
33 sioner of this state;

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

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

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

55 (1) The amount, terms and conditions of property
56 insurance shall have a reasonable relation to the existing
57 hazards or risk of loss, damage or destruction and be
58 reasonable in relation to the character and value of the
59 property insured or to be insured; and the term of such
60 insurance shall be reasonable in relation to the terms of

61 credit: *Provided*, That nothing shall be deemed to
62 prohibit the consumer from obtaining, at his or her
63 option, greater coverages for longer periods of time if
64 he or she so desires;

65 (2) Life insurance shall be in an initial amount not to
66 exceed the total amount repayable under the consumer
67 credit agreement, and where a consumer credit sale or
68 consumer loan is repayable in installments, such
69 insurance shall at no time exceed the scheduled or
70 actual amount of unpaid indebtedness, whichever is
71 greater. Life insurance authorized by this subdivision
72 shall provide that the benefits shall be paid to the
73 creditor to reduce or extinguish the unpaid indebted-
74 ness: *Provided*, That if a separate charge is made for
75 such insurance and the amount of insurance exceeds the
76 unpaid indebtedness, where not prohibited, then such
77 excess shall be payable to the estate of the consumer.
78 The initial term of such life insurance in connection with
79 a consumer credit sale, other than a sale pursuant to a
80 revolving charge account, or in connection with a
81 consumer loan, other than a loan pursuant to a revolving
82 loan account, shall not exceed the scheduled term of the
83 consumer credit agreement by more than fifteen days.
84 The aggregate amount of periodic benefits payable by
85 credit accident and health insurance in the event of
86 disability, as defined in the policy, and loss of income
87 insurance in the event of involuntary loss of employ-
88 ment, as defined in the policy, shall not exceed the
89 unpaid amount of such indebtedness; periodic benefits
90 payable in connection with a consumer credit sale
91 pursuant to a revolving charge account or of a consumer
92 loan pursuant to a revolving loan account may be based
93 upon the authorized credit limit;

94 (3) When the insurance is obtained or provided by or
95 through a creditor, the creditor may collect from the
96 consumer or include as part of the cash price of a
97 consumer credit sale or as part of the principal of a
98 consumer loan, or deduct from the proceeds of any
99 consumer loan the premium, or in the case of group
100 insurance, the identifiable charge. The premium or

101 identifiable charge for such insurance required or
102 obtained by a creditor may equal, but shall not exceed
103 the premium rate filed by the insurer with the insur-
104 ance commissioner. In any case, when the creditor
105 collects the entire premium for such insurance in
106 advance, such premium shall be remitted by such
107 creditor to the insurer or the insurance agent, as
108 specified by the insurer, within ten days from or after
109 the end of the month in which such collection was made;

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

117 (5) With respect to consumer credit insurance provid-
118 ing life, accident, health or loss of income coverage, no
119 creditor shall require a consumer to purchase such
120 insurance or to purchase such insurance from such
121 creditor or any particular agent, broker or insurance
122 company as a condition precedent to extending credit to
123 or on behalf of such consumer;

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

132 (A) If such insurance was not sold or provided by the
133 creditor, the creditor receiving the payment shall notify
134 the debtor that he or she may have the right to receive
135 a refund of unearned premiums from any other seller
136 or provider of such insurance, and advise the debtor of
137 his or her obligation to notify any other insurer of the
138 payment of the loan balance and the cancellation of the
139 consumer credit insurance, and request a refund or

140 credit of unearned premiums, if applicable. Such notice
141 shall be sent on a form as prescribed by the insurance
142 commissioner as provided in chapter twenty-nine-a of
143 this code and shall contain the name and address of the
144 seller and the insurer; or

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

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

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

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

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

168 (c) The insurance commissioner of this state shall
169 promulgate legislative rules in accordance with the
170 provisions of chapter twenty-nine-a of this code to
171 implement the provisions of this article relating to
172 insurance, and the authority of the insurance commis-
173 sioner to promulgate the same shall be exclusive
174 notwithstanding any other provisions of this code to the
175 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 (1) If a creditor makes a change in the terms of a
2 revolving charge account or revolving loan account
3 without complying with this section, any additional cost
4 or charge to the consumer resulting from the change is
5 an excess charge and subject to the remedies provided
6 in this chapter.

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

13 (3) The notice provided for in this section is given to
14 the debtor when mailed to him at the address used by
15 the creditor for mailing periodic billing statements.

16 (4) Under no circumstances may a change under the
17 provisions of this section be made so as to increase a
18 sales finance charge or loan finance charge above that
19 permitted by the appropriate provisions on sales finance
20 charges or loan finance charges: *Provided*, That a
21 creditor may apply a higher permitted sales finance
22 charge or loan finance charge to the account balance or
23 debt balance unpaid as of the date the change becomes
24 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
2 substances, by whatever official name, common or usual
3 name, chemical name or brand name designated, listed
4 in this section.

5 (b) *Stimulants*. — Unless specifically excepted or
6 unless listed in another schedule, any material, com-
7 pound, mixture or preparation which contains any

8 quantity of the following substances having a stimulant
9 effect on the central nervous system, including its salts,
10 isomers (whether optical, position or geometric), and
11 salts of such isomers whenever the existence of such
12 salts, isomers and salts of isomers is possible within the
13 specific chemical designation:

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

23 (2) Benzphetamine;

24 (3) Chlorphentermine;

25 (4) Clortermine;

26 (5) Phendimetrazine;

27 (6) Hydrocodone.

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

33 (1) Any compound, mixture or preparation containing:

34 (A) Amobarbital;

35 (B) Secobarbital;

36 (C) Pentobarbital; or any salt thereof and one or more
37 other active medicinal ingredients which are not listed
38 in any schedule;

39 (2) Any suppository dosage form containing:

40 (A) Amobarbital;

41 (B) Secobarbital;

42 (C) Pentobarbital; or any salt of any of these drugs and

43 approved by the food and drug administration for
44 marketing only as a suppository;

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

47 (4) Chlorhexadol;

48 (5) Glutethimide;

49 (6) Lysergic acid;

50 (7) Lysergic acid amide;

51 (8) Methyprylon;

52 (9) Sulfondiethylmethane;

53 (10) Sulfonethylmethane;

54 (11) Sulfonmethane;

55 (12) Tiletamine and zolazepam or any salt thereof;
56 some trade or other names for a tiletamine-zolazepam
57 combination product: Telazol; some trade or other
58 names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-
59 cyclohexanone; some trade or other names for zolaze-
60 pam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpy-
61 razolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrzapon;

62 (13) Human growth hormones or anabolic steroids.

63 (d) *Nalorphine*.

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

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

73 (2) Not more than 1.8 grams of codeine per 100
74 milliliters and not more than 90 milligrams per dosage
75 unit, with one or more active, nonnarcotic ingredients
76 in recognized therapeutic amounts;

77 (3) Not more than 300 milligrams of dihydrocodeinone
78 or hydrocodone per 100 milliliters and not more than 15
79 milligrams per dosage unit, with a fourfold or greater
80 quantity of an isoquinoline alkaloid of opium;

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

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

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

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

98 (8) Not more than 50 milligrams of morphine per 100
99 milliliters or per 100 grams and not more than 2.5
100 milligrams per dosage unit, with one or more active,
101 nonnarcotic ingredients in recognized therapeutic
102 amounts.

§60A-2-210. Schedule IV.

1 (a) The controlled substances listed in this section are
2 included in Schedule IV.

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any material, compound, mixture or
5 preparation which contains any quantity of the follow-
6 ing substances, including its salts, isomers and salts of
7 isomers whenever the existence of such salts, isomers
8 and salts of isomers is possible within the specific
9 chemical designation:

10 (1) Alprazolam;

- 11 (2) Barbital;
- 12 (3) Bromazepam;
- 13 (4) Camazepam;
- 14 (5) Chloral betaine;
- 15 (6) Chloral 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;

- 38 (29) Medazepam;
- 39 (30) Meprobamate;
- 40 (31) Methohexital;
- 41 (32) Methylphenobarbital (mephobarbital);
- 42 (33) Medazolam;
- 43 (34) Nimetazepam;
- 44 (35) Nitrazepam;
- 45 (36) Nordiazepam;
- 46 (37) Oxazepam;
- 47 (38) Oxazolam;
- 48 (39) Paraldehyde;
- 49 (40) Petrichloral;
- 50 (41) Phenobarbital;
- 51 (42) Pinazepam;
- 52 (43) Prazepam;
- 53 (44) Quazepam;
- 54 (45) Temazepam;
- 55 (46) Tetrazepam;
- 56 (47) Triazolam;
- 57 (48) Zolpidem.

58 (c) Any material, compound, mixture or preparation
59 which contains any quantity of the following substance,
60 including its salts, isomers (whether optical, position or
61 geometric) and salts of such isomers whenever the
62 existence of such salts, isomers and salts of isomers is
63 possible: Fenfluramine.

64 (d) Unless specifically excepted or unless listed in
65 another schedule, any material, compound, mixture or
66 preparation which contains any quantity of the follow-
67 ing substances having a stimulant effect on the central

68 nervous system, including its salts, isomers (whether
69 optical, position or geometric) and salts of such isomers
70 whenever the existence of such salts, isomers and salts
71 of isomers is possible within the specific chemical
72 designation:

73 (1) Cathine ((+)-norpseudophedrine);

74 (2) Diethylpropion;

75 (3) Fencamfamin;

76 (4) Fenproporex;

77 (5) Mazindol;

78 (6) Mefenorex;

79 (7) Phentermine;

80 (8) Pemoline (including organometallic complexes and
81 chelates thereof);

82 (9) Pipradrol;

83 (10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

84 (e) *Other substances.* — Unless specifically excepted or
85 unless listed in another schedule, any material, com-
86 pound, mixture or preparation which contains any
87 quantity of the following substances, including its salts:

88 (1) Dextropropoxyphene (alpha -(#) -4 -dimethylamino-
89 1,2 -diphenyl-3-methyl -2 -propionoxybutane);

90 (2) Not more than 1 milligram of difenoxin and not
91 less than 25 micrograms of antropine sulfate per dosage
92 unit;

93 (3) Pentazocine.

94 Amyl nitrite, butyl nitrite, isobutyl nitrite and the
95 other organic nitrites are controlled substances and not
96 product containing these compounds as a significant
97 component shall be possessed, bought or sold other than
98 pursuant to a bona fide prescription or for industrial or
99 manufacturing purposes.

CHAPTER 30

(Com. Sub. for H. B. 4012—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed February 25, 1994; in effect ninety days from passage. Approved by the Governor.]

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
- 2 dispenses any controlled substance within this state or
- 3 who proposes to engage in the manufacture, distribu-
- 4 tion, or dispensing of any controlled substance within
- 5 this state, must obtain annually a registration issued by

6 the state board of pharmacy or the appropriate depart-
7 ment, board, or agency, as the case may be, as specified
8 in section three hundred one, in accordance with its
9 rules.

10 (b) Persons registered by said state board of pharmacy
11 or said appropriate department, board, or agency, as the
12 case may be, under this act to manufacture, distribute,
13 dispense, or conduct research with controlled substances
14 may possess, manufacture, distribute, dispense, or
15 conduct research with those substances to the extent
16 authorized by their registration and in conformity with
17 the other provisions of this article.

18 (c) (1) The following persons need not register and
19 may lawfully possess, deliver, or transport into this state
20 controlled substances under this act:

21 (A) An agent or employee of any registered manufac-
22 turer, distributor, or dispenser of any controlled
23 substance if he is acting in the usual course of his
24 business or employment;

25 (B) A common or contract carrier or warehouseman,
26 or an employee thereof, whose possession, delivery, or
27 transportation into this state of any controlled substance
28 is in the usual course of a lawful business or
29 employment;

30 (2) The following persons need not register and may
31 lawfully possess or transport into this state controlled
32 substances under this act: An ultimate user or a person
33 in possession of any controlled substance pursuant to a
34 lawful order of a practitioner or in lawful possession of
35 a Schedule V substance.

36 (d) The said state board of pharmacy or said appro-
37 priate department, board, or agency, as the case may be,
38 may waive by rule the requirement for registration of
39 certain manufacturers, distributors, or dispensers if it
40 finds it consistent with the public health and safety.

41 (e) A separate registration is required at each
42 principal place of business or professional practice
43 where the applicant manufactures, distributes, or
44 dispenses controlled substances.

45 (f) The said state board of pharmacy or said appro-
46 priate department, board, or agency, as the case may be,
47 may inspect the establishment of a registrant or
48 applicant for registration in accordance with the rule of
49 said state board of pharmacy or said appropriate
50 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.

1 (a) Except as otherwise authorized by the provisions
2 of this code, it shall be unlawful for any person to
3 transport into this state a controlled substance with the
4 intent to deliver the same or with the intent to manu-
5 facture a controlled substance.

6 (b) Any person who violates this section with respect
7 to:

8 (1) A controlled substance classified in Schedule I or
9 II which is a narcotic drug, shall be guilty of a felony,
10 and, upon conviction, may be imprisoned in the peniten-
11 tiary for not less than one year nor more than fifteen
12 years, or fined not more than twenty-five thousand
13 dollars, or both;

14 (2) Any other controlled substance classified in
15 Schedule I, II or III, shall be guilty of a felony, and,
16 upon conviction, may be imprisoned in the penitentiary
17 for not less than one year nor more than five years, or
18 fined not more than fifteen thousand dollars, or both;

19 (3) A substance classified in Schedule IV, shall be
20 guilty of a felony, and, upon conviction, may be
21 imprisoned in the penitentiary for not less than one year
22 nor more than three years, or fined not more than ten
23 thousand dollars, or both;

24 (4) A substance classified in Schedule V, shall be
25 guilty of a misdemeanor, and, upon conviction, may be
26 confined in the county jail for not less than six months
27 nor more than one year, or fined not more than five
28 thousand dollars, or both.

29 (c) The offense established by this section shall be in
30 addition to and a separate and distinct offense from any
31 other offense set forth in this code.

CHAPTER 31

(Com. Sub. for H. B. 4357—By Delegates Mezzatesta, Nicol and Evans)

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

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.
8. Municipal Corporations.

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
2 conferred by law upon county commissions, such
3 commissions are hereby authorized and empowered to
4 install, construct, repair, maintain and operate water-
5 works, water mains, sewer lines and sewage disposal
6 plants in connection therewith within their respective
7 counties: *Provided*, That the county commission of
8 Webster County is authorized to expend county funds in

9 the opening of, and upkeep of a sulphur well now situate
10 on county property: *Provided, however,* That such
11 authority and power herein conferred upon county
12 commissions shall not extend into the territory within
13 any municipal corporation: *Provided further,* That any
14 county commission is hereby authorized to enter into
15 contracts or agreements with any municipality within
16 the county, or with a municipality in an adjoining
17 county, with reference to the exercise of the powers
18 vested in such commissions by this section.

19 Considering the importance of public fire protection,
20 any county commission, public service district, public or
21 private utility which installs, constructs, maintains, or
22 upgrades water mains shall ensure that all new mains
23 specifically intended to provide fire protection are
24 supplied by mains which are not less than six inches in
25 diameter. A permit or other written approval shall be
26 obtained from the department of health and human
27 resources for each hydrant or group of hydrants
28 installed in compliance with section nine, article one,
29 chapter sixteen of the West Virginia code as amended:
30 *Provided,* That all newly constructed water distribution
31 systems transferred to a public or private utility shall
32 have mains at least six inches in diameter where fire
33 flows are desired or required by the public or private
34 utility: *Provided, however,* That the utility providing
35 service has sufficient hydraulic capacity as determined
36 by the department of health and human resources. In
37 addition to the foregoing, the county commission shall
38 have the power to improve streets, sidewalks and alleys
39 and lay sewers and enter into contracts for maintenance
40 of county roads and subdivision roads used by the public
41 but not in the state road system as follows: Upon petition
42 in writing duly verified, of the persons, firms or
43 corporations owning not less than sixty percent of the
44 frontage of the lots abutting on both sides of any street
45 or alley, between any two cross-streets, or between a
46 cross-street and an alley in any unincorporated com-
47 munity, requesting the county commission so to do
48 according to plans and specifications submitted with
49 such petition and offering to have their property so
50 abutting assessed not only with their portion of the cost

51 of such improvement abutting upon their respective
52 properties, but also offering to have their said properties
53 proportionately assessed with the total cost of paving,
54 grading and curbing the intersections of such streets
55 and alleys, or the total cost of maintenance of county
56 roads or subdivision roads used by the public but not
57 in the state road system, the county commission may
58 cause any such street or alley to be improved or paved
59 or repaved substantially with the materials and accord-
60 ing to such plans and specifications as hereinafter
61 provided: *Provided*, That the county commission is
62 further authorized, if the said county commission so
63 determines by a unanimous vote of its constituted
64 membership, that two or more intersecting streets,
65 sidewalks, alleys and sewers, should be improved as one
66 project, in order to satisfy peculiar problems resulting
67 from access as well as drainage problems, then, in that
68 event, the said county commission may order such
69 improvements as one single unit and project, upon
70 petition in writing duly verified of the persons, firms or
71 corporations owning not less than sixty percent of the
72 frontage of the lots abutting on both sides of all streets
73 or alleys, or portions thereof included by said county
74 commission in said unit and project.

75 The total cost including labor and materials, engineer-
76 ing, and legal service of grading and paving, curbing,
77 improving any such road, street or alley (including the
78 cost of the intersections) and assessing the cost thereof
79 shall be borne by the owners of the land abutting upon
80 such road, street or alley when the work is completed
81 and accepted according to the following plan, that is to
82 say, payment is to be made by all landowners on either
83 side of such road, street or alley so paved or improved
84 in such proportion of the total cost as the frontage in
85 feet of each owner's land so abutting bears to the total
86 frontage of all the land so abutting on such road, street
87 or alley, so paved or improved as aforesaid, which
88 computation shall be made by the county engineer or
89 surveyor and certified by him to the clerk of said
90 commission.

91 Upon petition in writing duly verified, of the persons,

92 firms or corporations owning not less than sixty percent
93 of the frontage of the lots abutting on one side of any
94 county or subdivision road or roads between any two
95 cross-roads, all used by the public but not in the state
96 road system or street between any two cross-streets or
97 between a cross-street and an alley in any unincorporated
98 community requesting the county commission so
99 to do according to plans and specifications submitted
100 with such petition and offering to have their property
101 so abutting assessed with the total cost thereof, the
102 county commission may cause any sidewalk to be
103 improved, or paved, or repaved, substantially with such
104 materials according to such plans and specifications and
105 the total cost including labor and materials, engineering
106 and legal service of improving, grading, paving or
107 repaving such sidewalk and assessing the cost thereof
108 shall, when the work is completed and accepted, be
109 assessed against the owners of the lots or fractional part
110 of lots abutting on such sidewalk, in such portion of the
111 total cost as the frontage in feet of each owner's land
112 so abutting bears to the total frontage of all lots so
113 abutting on such sidewalk so paved or improved, as
114 aforesaid, which computation shall be made by the
115 county engineer or surveyor and certified by him to the
116 clerk of said commission.

117 Upon petition in writing duly verified, of the persons,
118 firms or corporations owning not less than sixty percent
119 of the frontage of the lots abutting on both sides of any
120 street or alley, in any unincorporated community
121 requesting the county commission so to do according to
122 plans and specifications submitted with such petition
123 and offering to have their property so abutting assessed
124 with the cost, as hereinafter provided, the county
125 commission may lay and construct sanitary sewers in
126 any street or alley with such materials and substantially
127 according to such plans and specifications and when
128 such sewer is completed and accepted, the county
129 engineer or surveyor shall report to the county commis-
130 sion, in writing, the total cost of such sewer and a
131 description of the lots and lands, as to the location,
132 frontage, depth and ownership liable for such sewer
133 assessment, so far as the same may be ascertained,

134 together with the amount chargeable against each lot
135 and owner, calculated in the following manner: The total
136 cost of constructing and laying the sewer including
137 labor, materials, legal and engineering services shall be
138 borne by the owners of the land abutting upon the
139 streets and alleys, in which the sewer is laid according
140 to the following plan: Payment is to be made by each
141 landowner on either side of such portion of a street or
142 alley in which such sewer is laid, in such proportions
143 as the frontage of his land upon said street or alley bears
144 to the total frontage of all lots so abutting on such street
145 or alley. In case of a corner lot, frontage is to be
146 measured along the longest dimensions thereof abutting
147 on such street or alley in which such sewer is laid. Any
148 lot having a depth of two hundred feet or more, and
149 fronting on two streets or alleys, one in the front and
150 one in the rear of said lot, shall be assessed on both of
151 said streets or alleys if a sewer is laid in both such
152 streets and alleys. Where a corner lot has been assessed
153 on the end it shall not be assessed on the side for the
154 same sewer and where it has been assessed on the side
155 it shall not be assessed on the end for the same sewer.

156 If the petitioners request the improvement of any such
157 county road or subdivision road, street, alley or sidewalk
158 in a manner which does not require the permanent
159 paving or repaving thereof, the county commission shall
160 likewise have authority to improve such county road or
161 subdivision road, street, alley or sidewalk, substantially
162 as requested in such petition, and the total cost thereof
163 including labor, materials, engineering and legal
164 services shall be assessed against the abutting owners
165 in the proportion which the frontage of their lots
166 abutting upon such county road or subdivision road,
167 street, alley or sidewalk bears to the total frontage of
168 all lots abutting upon such street, alley or sidewalk so
169 improved.

170 Upon the filing of such petition and before work is
171 begun, or let to contract, the county commission shall
172 fix a time and place for hearing protests and shall
173 require the petitioners to post notice of such hearing in
174 at least two conspicuous places on the county road or

175 subdivision road, street, alley or sidewalk affected, and
176 to give notice thereof by publication of such notice as
177 a Class I legal advertisement in compliance with the
178 provisions of article three, chapter fifty-nine of this code,
179 and the publication area for such publication shall be
180 the county in which the improvement is to be made. The
181 hearing shall be held not less than ten nor more than
182 thirty days after the filing of such petition.

183 At the time and place set for hearing protests the
184 county commission may examine witnesses and consider
185 other evidence to show that said petition was filed in
186 good faith; that the signatures thereto are genuine; and
187 that the proposed improvement, paving, repaving or
188 sewerage will result in special benefits to all owners of
189 property abutting on said county road or subdivision
190 road, street, alley or sidewalk in an amount at least
191 equal in value to the cost thereof. The commission shall
192 within ten days thereafter enter a formal order stating
193 its decision and if the petition be granted shall proceed
194 after due advertisement, reserving the right to reject
195 any or all bids, to let a contract for such work and
196 materials to the lowest responsible bidder.

197 Any owner of property abutting upon said county road
198 or subdivision road, street, alley or sidewalk aggrieved
199 by such order shall have the right to review the same
200 on the record made before the county commission by
201 filing within ten days after the entry of such order a
202 petition with the clerk of the circuit court assigning
203 errors and giving bond in a penalty to be fixed by the
204 circuit court to pay any costs or expenses incurred upon
205 such appeal should the order of the county commission
206 be affirmed. The circuit court shall proceed to review
207 the matter as in other cases of appeal from the county
208 commission.

209 All assessments made under this section shall be
210 certified to the county clerk and recorded in a proper
211 trust deed book and indexed in the name of the owner
212 of any lot or fractional part of a lot so assessed. The
213 assessment so made shall be a lien on the property liable
214 therefor, and shall have priority over all other liens

215 except those for taxes, and may be enforced by a civil
216 action in the name of the contractor performing the
217 work in the same manner as provided for other liens for
218 permanent improvements. Such assessment shall be
219 paid in not more than ten equal annual installments,
220 bearing interest at a rate not to exceed twelve percent
221 per annum, as follows: The first installment, together
222 with interest on the whole assessment, shall be paid not
223 later than one year from the date of such assessment,
224 and a like installment with interest on the whole amount
225 remaining unpaid each year thereafter until the
226 principal and all interest shall have been paid in full.

227 The county commission may issue coupon-bearing
228 certificates payable in not more than ten equal annual
229 installments for the amount of such assessment and the
230 interest thereon, to be paid by the owner of any lot or
231 fractional part thereof, fronting on such county road or
232 subdivision road, street, alley or sidewalk which has
233 been improved, paved, or repaved or in which a sewer
234 has been laid, as aforesaid, and the holder of said
235 certificate shall have a lien having priority over all other
236 liens except those for taxes upon the lot or part of lot
237 fronting on such county road or subdivision road, street,
238 alley or sidewalk, and such certificate shall likewise
239 draw interest from the date of assessment at a rate not
240 to exceed twelve percent per annum, and payment
241 thereof may be enforced in the name of the holder of
242 said certificate by proper civil action in any court
243 having jurisdiction to enforce such lien.

244 Certificates authorized under this section may be
245 issued, sold or negotiated to the contractor doing the
246 work, or to his assignee, or to any person, firm or
247 corporation: *Provided*, That the county commission in
248 issuing such certificates shall not be held as a guarantor,
249 or in any way liable for the payment thereof. Certifi-
250 cates so issued shall contain a provision to the effect that
251 in the event of default in the payment of any one or more
252 of said installments, when due, said default continuing
253 for a period of sixty days, all unpaid installments shall
254 thereupon become due and payable, and the owner of
255 said certificates may proceed to collect the unpaid

256 balance thereof in the manner hereinbefore provided.

257 In all cases where petitioners request paving or
258 repaving, or the laying of sewers under the provisions
259 of this section, the county commission shall let the work
260 of grading, paving, curbing or sewerage to contract to
261 the lowest responsible bidder. In each such case the
262 county commission shall require a bond in the penalty
263 of the contract price guaranteeing the faithful perfor-
264 mance of the work and each such contract shall require
265 the contractor to repair any defects due to defective
266 workmanship or materials discovered within one year
267 after the completion of the work.

268 Upon presentation to the clerk of the county commis-
269 sion of the certificates evidencing the lien, duly canceled
270 and marked paid by the holder thereof, or evidence of
271 payment of the assessment if no certificates have been
272 issued, said clerk shall execute and acknowledge a
273 release of the lien which release may be recorded, as
274 other releases in the office of the clerk of the county
275 commission.

276 The owner of any lot or fractional part of a lot
277 abutting upon such county road or subdivision road,
278 street, alley or sidewalk so improved, paved, repaved, or
279 sewerage shall have the right to anticipate the payment
280 of any such assessment or certificate by paying the
281 principal amount due, with interest accrued thereon to
282 date of payment, and also to pay the entire amount,
283 without interest at any time, within thirty days follow-
284 ing the date of the assessment.

285 Nothing in this section contained shall be construed
286 to authorize the county commissions of the various
287 counties to acquire any road construction, ditching or
288 paving equipment. The county commissions are hereby
289 authorized to rent from the state road commissioner or
290 any other person, firm or corporation such equipment
291 as may be necessary from time to time, to improve any
292 county road or subdivision road used by the public but
293 not in the state road system, street or sidewalk which
294 petitioners do not desire to have paved in a permanent
295 manner, and for such purpose to employ such labor as

296 may be necessary but no expense connected therewith
297 shall be charged to any county funds.

298 No county commission shall be under any duty after
299 the paving, repaving or improvement of any county road
300 or subdivision road used by the public but not in the
301 state road system, street, alley or sidewalk or the laying
302 of any sanitary sewer under the provisions of this
303 section, to maintain or repair the same, but any such
304 commission shall have authority upon petition duly
305 verified, signed by at least sixty percent of the owners
306 of property abutting upon any improvement made under
307 this section, to maintain or repair such improvement or
308 sewer and to assess the cost thereof against the owners
309 of such abutting property in the same manner as the
310 cost of the original improvement.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-21. Specifications for water mains and water service pipes.

1 Considering the importance of public fire protection,
2 any state or local government, public service district,
3 public or private utility which installs, constructs,
4 maintains, or upgrades water mains, shall ensure that
5 all new mains specifically intended to provide fire
6 protection are supplied by mains which are not less than
7 six inches in diameter. A permit or other written
8 approval shall be obtained from the department of
9 health and human resources for each hydrant or group
10 of hydrants installed in compliance with section nine,
11 article one, chapter sixteen of the West Virginia code
12 as amended: *Provided*, That all newly constructed water
13 distribution systems transferred to a public or private
14 utility shall have mains at least six inches in diameter
15 where fire flows are desired or required by the public
16 or private utility: *Provided, however*, That the utility
17 providing service has sufficient hydraulic capacity as
18 determined by the department of health and human
19 resources.

CHAPTER 32

(H. B. 4472—By Delegates Burk, Beane, Anderson, Border and Brum)

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

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
2 county commission of a county is authorized by law to
3 sell or dispose of any property, either real or personal,
4 belonging to the county or held by it for the use of any
5 district thereof. The property shall be sold at public
6 auction, at the front door of the courthouse of the county,
7 and such sale shall be conducted by the president of the
8 county commission, but before making any such sale,
9 notice of the time, terms and place of sale, together with
10 a brief description of the property to be sold, shall be
11 published as a Class II legal advertisement in com-
12 pliance with the provisions of article three, chapter fifty-
13 nine of this code, and the publication area for such
14 publication shall be the county: *Provided*, That this
15 section shall not apply to the sale of any one item of
16 property of less value than one thousand dollars:
17 *Provided, however*, That the provisions of this section
18 concerning sale at public auction shall not apply to a
19 county commission selling or disposing of its property
20 for a public use to the United States of America, its
21 instrumentalities, agencies or political subdivisions or to
22 the state of West Virginia, or its political subdivisions,
23 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

6. General Provisions Respecting Officers.

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.

1 Any justice, judge, or magistrate may be retired from
 2 office because of advancing years and attendant physical
 3 or mental incapacity, in the manner prescribed in
 4 section eight of article eight of the constitution of this
 5 state, and by rules prescribed, adopted, promulgated
 6 and amended pursuant thereto.

7 The Senate or House of Delegates may expel a
 8 member of the body in the manner prescribed in section
 9 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.**

1 (a) Every person who is now serving or shall hereafter
 2 serve as a judge of any court of record of this state shall
 3 pay into the judges' retirement fund six percent of the
 4 salary received by such person out of the state treasury:
 5 *Provided*, That when a judge becomes eligible to receive
 6 benefits from such trust fund by actual retirement, no
 7 further payment by him or her shall be required, since
 8 such employee contribution, in an equal treatment sense,
 9 ceases to be required in the other retirement systems of
 10 the state, also, only after actual retirement: *Provided*,
 11 *however*, That on and after the first day of January, one
 12 thousand nine hundred ninety-five, every person who is
 13 then serving or shall thereafter serve as a judge of any
 14 court of record in this state shall pay into the judges'
 15 retirement fund nine percent of the salary received by
 16 that person. Any prior occurrence or practice to the
 17 contrary, in any way allowing discontinuance of re-
 18 quired employee contributions prior to actual retire-

* Clerk's Note: This section was also amended by H. B. 4031 (Chapter 99) which passed prior to this act.

19 ment under this retirement system, is rejected as
20 erroneous and contrary to legislative intent and as
21 violative of required equal treatment and is hereby
22 nullified and discontinued fully, with the state auditor
23 to require such contribution in every instance hereafter,
24 except where no contributions are required to be made
25 under any of the provisions of this article.

26 In drawing warrants for the salary checks of judges,
27 the state auditor shall deduct from the amount of each
28 such salary check six percent thereof, which amount so
29 deducted shall be credited by the consolidated public
30 retirement board to the trust fund: *Provided*, That on
31 or after the first day of January, one thousand nine
32 hundred ninety-five, the amount so deducted and
33 credited shall be nine percent of each such salary check.

34 Any judge seeking to qualify military service to be
35 claimed as credited service, in allowable aggregate
36 maximum amount up to five years, shall be entitled to
37 be awarded the same without any required payment in
38 respect thereof to the judges' retirement fund. Any
39 judge holding office as such on the effective date of the
40 amendments to this article adopted by the Legislature
41 at its regular session in the year one thousand nine
42 hundred eighty-seven, who seeks to qualify service as a
43 prosecuting attorney as credited service, which service
44 credit must have been earned prior to the year one
45 thousand nine hundred eighty-seven, shall be required
46 to pay into the judges' retirement fund nine percent of
47 the annual salary which was actually received by such
48 person as prosecuting attorney during the time such
49 prosecutorial service was rendered prior to the year one
50 thousand nine hundred eighty-seven, and for which
51 credited service is being sought, together with applica-
52 ble interest. No judge whose term of office shall
53 commence after the effective date of such amendments
54 to this article shall be eligible to claim any credit for
55 service rendered as a prosecuting attorney as eligible
56 service for retirement benefits under this article, nor
57 shall any time served as a prosecutor after the year one
58 thousand nine hundred eighty-eight be considered as
59 eligible service for any purposes of this article.

60 (b) The Legislature finds that any increase in salary
 61 for judges of courts of record directly affects the
 62 actuarial soundness of the retirement system for judges
 63 of courts of record and, therefore, an increase in the
 64 required percentage contributions of members of that
 65 retirement system is the same subject for purposes of
 66 determining the single object of this bill.

CHAPTER 34

(Com. Sub. for S. B. 41—By Senators Schoonover, Anderson, Bailey, Biatnik, Boley, Burdette, Mr. President, Chafin, Claypole, Craigo, Dalton, Dittmar, Grubb, Helmick, 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
 2 or agrees to give to another person money, property,
 3 service or other thing of value in consideration for the
 4 recipient's locating, providing or procuring a minor
 5 child for any purpose which entails a transfer of the
 6 legal or physical custody of said child, including, but not
 7 limited to, adoption or placement, shall be guilty of a
 8 felony and subject to fine and imprisonment as provided
 9 herein.

10 (b) Any person who knowingly receives, accepts or
11 offers to accept money, property, service or other thing
12 of value to locate, provide or procure a minor child for
13 any purpose which entails a transfer of the legal or
14 physical custody of said child, including, but not limited
15 to, adoption or placement, shall be guilty of a felony and
16 subject to fine and imprisonment as provided herein.

17 (c) Any person who violates the provisions of this
18 section shall be guilty of a felony, and, upon conviction
19 thereof, may be imprisoned in the penitentiary for not
20 less than one year nor more than five years or, in the
21 discretion of the court, be confined in jail not more than
22 one year and shall be fined not less than one hundred
23 dollars nor more than two thousand dollars.

24 (d) A child whose parent, guardian or custodian has
25 sold or attempted to sell said child in violation of the
26 provisions of this article may be deemed an abused child
27 as defined by section three, article one, chapter forty-
28 nine of this code. The court may place such a child in
29 the custody of the department of health and human
30 resources or with such other responsible person as the
31 best interests of the child dictate.

32 (e) This section does not prohibit the payment or
33 receipt of the following:

34 (1) Fees paid for reasonable and customary services
35 provided by the department of health and human
36 resources or any licensed or duly authorized adoption or
37 child-placing agency.

38 (2) Reasonable and customary legal, medical, hospital
39 or other expenses incurred in connection with legal
40 adoption proceedings.

41 (3) Fees and expenses included in any agreement in
42 which a woman agrees to become a surrogate mother.

43 (4) Any fees or charges authorized by law or approved
44 by a court in a proceeding relating to the placement
45 plan, prospective placement or placement of a minor
46 child for adoption.

CHAPTER 35

(H. B. 4654—By Delegates Staton, Whitman, Trump, Kessel,
Huntwork, L. White and Faircloth)

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

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.
- 62. Criminal Procedure.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article

- 2. Crimes Against the Person.
- 11. General Provisions Concerning Crimes.

ARTICLE 2. CRIMES AGAINST THE PERSON.

- §61-2-3. Penalty for murder of second degree.
- §61-2-4. Voluntary manslaughter; penalty.

§61-2-3. Penalty for murder of second degree.

1 Murder of the second degree shall be punished by a
2 definite term of imprisonment in the penitentiary which
3 is not less than ten nor more than forty years. A person
4 imprisoned pursuant to the provisions of this section is
5 not eligible for parole prior to having served a minimum
6 of ten years of his or her sentence or the minimum
7 period required by the provisions of section thirteen,
8 article twelve, chapter sixty-two, whichever is greater.

§61-2-4. Voluntary manslaughter; penalty.

1 Voluntary manslaughter shall be punished by a
2 definite term of imprisonment in the penitentiary which
3 is not less than three nor more than fifteen years. A
4 person imprisoned pursuant to the provisions of this
5 section is not eligible for parole prior to having served
6 a minimum of three years of his or her sentence or the
7 minimum period required by the provisions of section
8 thirteen, article twelve, chapter sixty-two, whichever is
9 greater.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-8. Attempts; classification and penalties therefor.

§61-11-18. Punishment for second or third offense of felony.

§61-11-8. Attempts; classification and penalties therefor.

1 Every person who attempts to commit an offense, but
2 fails to commit or is prevented from committing it,
3 shall, where it is not otherwise provided, be punished
4 as follows:

5 (1) If the offense attempted be punishable with life
6 imprisonment, the person making such attempt shall be
7 guilty of a felony, and, upon conviction, shall be
8 imprisoned in the penitentiary not less than one nor
9 more than five years.

10 (2) If the offense attempted be punishable by impri-
11 sonment in the penitentiary for a term less than life,
12 such person shall be guilty of a felony, and, upon
13 conviction, shall, in the discretion of the court, either be

14 imprisoned in the penitentiary for not less than one nor
15 more than three years, or be confined in jail not less
16 than six nor more than twelve months, and fined not
17 exceeding five hundred dollars.

18 (3) If the offense attempted be punishable by confine-
19 ment in jail, such person shall be guilty of a misdemea-
20 nor, and, upon conviction, shall be confined in jail not
21 more than six months, or fined not exceeding one
22 hundred dollars.

**§61-11-18. Punishment for second or third offense of
felony.**

1 (a) Except as provided by subsection (b) of this section,
2 when any person is convicted of an offense and is subject
3 to confinement in the penitentiary therefor, and it is
4 determined, as provided in section nineteen of this
5 article, that such person had been before convicted in
6 the United States of a crime punishable by imprison-
7 ment in a penitentiary, the court shall, if the sentence
8 to be imposed is for a definite term of years, add five
9 years to the time for which the person is or would be
10 otherwise sentenced. Whenever in such case the court
11 imposes an indeterminate sentence, five years shall be
12 added to the maximum term of imprisonment otherwise
13 provided for under such sentence.

14 (b) Notwithstanding the provisions of subsection (a) or
15 (c) of this section or any other provision of this code to
16 the contrary, when any person is convicted of first
17 degree murder or second degree murder or a violation
18 of section three, article eight-b, chapter sixty-one of this
19 code, and it is determined, as provided in section
20 nineteen of this article, that such person had been before
21 convicted in this state of first degree murder, second
22 degree murder or a violation of section three, article
23 eight-b of said chapter, or has been so convicted under
24 any law of the United States or any other state for an
25 offense which has the same elements as any offense
26 described in this subsection, such person shall be
27 punished by imprisonment in the penitentiary for life
28 and is not eligible for parole.

29 (c) When it is determined, as provided in section

30 nineteen hereof, that such person shall have been twice
31 before convicted in the United States of a crime
32 punishable by confinement in a penitentiary, the person
33 shall be sentenced to be confined in the penitentiary for
34 life.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 3. TRIAL OF CRIMINAL CASES.

§62-3-15. Verdict and sentence in murder cases.

1 If a person indicted for murder be found by the jury
2 guilty thereof, they shall in their verdict find whether
3 he or she is guilty of murder of the first degree or second
4 degree. If the person indicted for murder is found by
5 the jury guilty thereof, and if the jury find in their
6 verdict that he or she is guilty of murder of the first
7 degree, or if a person indicted for murder pleads guilty
8 of murder of the first degree, he or she shall be punished
9 by imprisonment in the penitentiary for life, and he or
10 she, notwithstanding the provisions of article twelve,
11 chapter sixty-two of this code, shall not be eligible for
12 parole: *Provided*, That the jury may, in their discretion,
13 recommend mercy, and if such recommendation is
14 added to their verdict, such person shall be eligible for
15 parole in accordance with the provisions of said article
16 twelve, except that, notwithstanding any other provision
17 of this code to the contrary, such person shall not be
18 eligible for parole until he or she has served fifteen
19 years: *Provided, however*, That if the accused pleads
20 guilty of murder of the first degree, the court may, in
21 its discretion, provide that such person shall be eligible
22 for parole in accordance with the provisions of said
23 article twelve, and, if the court so provides, such person
24 shall be eligible for parole in accordance with the
25 provisions of said article twelve in the same manner and
26 with like effect as if such person had been found guilty
27 by the verdict of a jury and the jury had recommended
28 mercy, except that, notwithstanding any provision of
29 said article twelve or any other provision of this code
30 to the contrary, such person shall not be eligible for
31 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.

1 (a) Any person who knowingly, willfully, and repeat-
2 edly follows and harasses, or knowingly, willfully, and
3 repeatedly follows and makes a credible threat or
4 knowingly, willfully and repeatedly harasses and makes
5 a credible threat against a person with whom he or she
6 has, or in the past has had or with whom he or she seeks
7 to establish a personal or social relationship, whether or
8 not such intention is reciprocated, or against a member
9 of that person's immediate family, with the intent to
10 place that person in reasonable apprehension that he or
11 she or a member of his or her immediate family will
12 suffer death, bodily injury, sexual assault, battery or
13 kidnapping, is guilty of a misdemeanor and, upon
14 conviction thereof, shall be incarcerated in the county
15 or regional jail for not more than six months or fined
16 not more than one thousand dollars, or both.

17 (b) Notwithstanding the provisions of section ten,

18 article two-a, chapter forty-eight of this code, any person
19 who violates the provisions of subsection (a) of this
20 section in violation of an order entered by a circuit
21 court, magistrate court or family law master, in effect
22 and entered pursuant to section thirteen or fifteen,
23 article two, chapter forty-eight of this code or section
24 five or six, article two-a, chapter forty-eight is guilty of
25 a misdemeanor and, upon conviction thereof, shall be
26 incarcerated in the county jail for not less than ninety
27 days nor more than one year or fined not less than two
28 thousand dollars nor more than five thousand dollars, or
29 both.

30 (c) A second conviction for a violation of this section
31 occurring within five years of a prior conviction is
32 punishable by incarceration in the county jail for not
33 less than ninety days nor more than one year or fined
34 not less than two thousand dollars nor more than five
35 thousand dollars, or both.

36 (d) A third or subsequent conviction for a violation of
37 this section occurring within five years of a prior
38 conviction is a felony punishable by incarceration in the
39 penitentiary for not less than one year nor more than
40 five years or fined not less than three thousand dollars
41 nor more than ten thousand dollars, or both.

42 (e) Notwithstanding any provision of this code, any
43 person against whom a permanent restraining order
44 issued pursuant to subsection (i) of this section who is
45 convicted of a second or subsequent violation of the
46 provisions of this section shall be incarcerated in the
47 county jail for not less than six months nor more than
48 one year, or fined not less than two thousand dollars nor
49 more than five thousand dollars, or both.

50 (f) For the purposes of this section:

51 (1) "Harasses" means knowing and willful conduct
52 directed at a specific person which is done with the
53 intent to cause mental injury or emotional distress;

54 (2) "Credible threat" means a threat of bodily injury
55 made with the apparent ability to carry out the threat
56 and with the result that a reasonable person would
57 believe that the threat would be carried out;

58 (3) "Bodily injury" means substantial physical pain,
59 illness or any impairment of physical condition;

60 (4) "Immediate family" means a spouse, parent, child,
61 sibling, or any person who regularly resides in the
62 household or within the prior six months regularly
63 resided in the household.

64 (g) Nothing in this section shall be construed to
65 prevent lawful assembly and petition for the redress of
66 grievances, including, but not limited to: Any labor
67 dispute; demonstration at the seat of federal, state,
68 county or municipal government; activities protected by
69 the West Virginia Constitution or the United States
70 Constitution or any statute of this state or the United
71 States.

72 (h) Any person convicted under the provisions of this
73 section who is granted probation or for whom execution
74 or imposition of a sentence or incarceration is suspended
75 shall have as a condition of probation or suspension of
76 sentence that he or she participate in counseling or
77 medical treatment as directed by the court.

78 (i) Upon conviction, the court may issue an order
79 restraining the defendant from any contact with the
80 victim for a period not to exceed ten years. The length
81 of any restraining order shall be based upon the
82 seriousness of the violation before the court, the
83 probability of future violations, and the safety of the
84 victim or his or her immediate family. The duration of
85 the restraining order may be longer than five years only
86 in such cases when a longer duration is necessary to
87 protect the safety of the victim or his or her immediate
88 family.

89 (j) It shall be a condition of bond for any person
90 accused of the offense described in this section that the
91 person shall have no contact, direct or indirect, verbal
92 or physical, with the alleged victim.

93 (k) Nothing in this section shall be construed to
94 preclude a sentencing court from exercising its power
95 to impose home confinement with electronic monitoring
96 as an alternative sentence.

CHAPTER 37

(Com. Sub. for S. B. 46—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 12, 1994; to take effect August 1, 1994. Approved by the Governor.]

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
2 display and offer for rent or sale, or, where the person
3 is other than a natural person, to knowingly permit an
4 employee thereof to publicly display and offer for rent
5 or sale, to any passersby on any street, road or alley, any
6 deadly weapon, machine gun, submachine gun or other
7 fully automatic weapon, any rifle, shotgun or ammuni-
8 tion for same.

9 (2) Any person violating the provisions of this
10 subsection shall be guilty of a misdemeanor, and, upon
11 conviction thereof, shall be fined not more than five
12 thousand dollars or shall be confined in the county jail
13 for not more than one year, or both fined and confined,
14 except that where the person violating the provisions of
15 this subsection is other than a natural person, such
16 person shall be fined not more than ten thousand dollars.

17 (b) (1) It shall be unlawful for any person to knowingly
18 sell, rent, give or lend, or, where the person is other than
19 a natural person, to knowingly permit an employee
20 thereof to knowingly sell, rent, give or lend, any deadly
21 weapon to a person prohibited from possessing same by
22 any provision of this article.

23 (2) Any person violating the provisions of this
24 subsection shall be guilty of a felony, and, upon
25 conviction thereof, shall be fined not more than twenty-
26 five thousand dollars or shall be imprisoned in the
27 penitentiary of this state for a definite term of years of
28 not less than three years nor more than ten years, or
29 both fined and imprisoned, except that where the person
30 violating the provisions of this subsection is other than

31 a natural person, such person shall be fined not more
32 than fifty thousand dollars.

§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; criminal penalties.

1 It shall be unlawful for any person armed with a
2 firearm or other deadly weapon, whether licensed to
3 carry the same or not, to carry, brandish or use such
4 weapon in a way or manner to cause, or threaten, a
5 breach of the peace. Any person violating this section
6 shall be guilty of a misdemeanor, and, upon conviction
7 thereof, shall be fined not less than fifty nor more than
8 one thousand dollars, or shall be confined in the county
9 jail not less than ninety days nor more than one year,
10 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.

1 (a) The Legislature hereby finds that the safety and
2 welfare of the citizens of this state are inextricably
3 dependent upon assurances of safety for children in
4 school in this state and for those persons employed with
5 the judicial department of this state. It is for the purpose
6 of providing such assurances of safety, therefore, that
7 subsection (b) of this section is enacted as a reasonable
8 regulation of the manner in which citizens may exercise
9 those rights accorded to them pursuant to section
10 twenty-two, article three of the Constitution of the state
11 of West Virginia.

12 (b) (1) It shall be unlawful for any person to possess
13 any firearm or any other deadly weapon on any school
14 bus as defined in section one, article one, chapter
15 seventeen-a of this code, or in or on any public or private
16 primary or secondary education building, structure,
17 facility or grounds thereof, including any vocational
18 education building, structure, facility or grounds thereof
19 where secondary vocational education programs are
20 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

60 addition, it shall be the duty of the principal of each
61 school subject to the authority of the state board of
62 education to report any violation of subsection (b) or (c)
63 of this section discovered by such principal to the
64 appropriate local office of the division of public safety
65 within seventy-two hours after such violation occurs.

66 (e) In addition to the methods of disposition provided
67 by article five, chapter forty-nine of this code, any court
68 which adjudicates a person who is fourteen years of age
69 or older as delinquent for a violation of subsection (b)
70 or (c) of this section may, in its discretion, order the
71 division of motor vehicles to suspend any driver's license
72 or instruction permit issued to such person for such
73 period of time as the court may deem appropriate, such
74 suspension, however, not to extend beyond such person's
75 nineteenth birthday; or, where such person has not been
76 issued a driver's license or instruction permit by this
77 state, order the division of motor vehicles to deny such
78 person's application for the same for such period of time
79 as the court may deem appropriate, such denial,
80 however, not to extend beyond such person's nineteenth
81 birthday. Any suspension ordered by the court pursuant
82 to this subsection shall be effective upon the date of
83 entry of such order. Where the court orders the
84 suspension of a driver's license or instruction permit
85 pursuant to this subsection, the court shall confiscate
86 any driver's license or instruction permit in the
87 adjudicated person's possession and forward the same to
88 the division of motor vehicles.

89 (f) (1) If a person eighteen years of age or older is
90 convicted of violating subsection (b) or (c) of this section,
91 and if such person does not act to appeal such conviction
92 within the time periods described in subdivision (2) of
93 this subsection, such person's license or privilege to
94 operate a motor vehicle in this state shall be revoked in
95 accordance with the provisions of this section.

96 (2) The clerk of the court in which the person is
97 convicted as described in subdivision (1) of this subsec-
98 tion shall forward to the commissioner a transcript of
99 the judgment of conviction. If the conviction is the
100 judgment of a magistrate court, the magistrate court

101 clerk shall forward such transcript when the person
102 convicted has not requested an appeal within twenty
103 days of the sentencing for such conviction. If the
104 conviction is the judgment of a circuit court, the circuit
105 clerk shall forward such transcript when the person
106 convicted has not filed a notice of intent to file a petition
107 for appeal or writ of error within thirty days after the
108 judgment was entered.

109 (3) If, upon examination of the transcript of the
110 judgment of conviction, the commissioner shall deter-
111 mine that the person was convicted as described in
112 subdivision (1) of this subsection, the commissioner shall
113 make and enter an order revoking such person's license
114 or privilege to operate a motor vehicle in this state for
115 a period of one year, or, in the event the person is a
116 student enrolled in a secondary school, for a period of
117 one year or until the person's twentieth birthday,
118 whichever is the greater period. The order shall contain
119 the reasons for the revocation and the revocation period.
120 The order of suspension shall advise the person that
121 because of the receipt of the court's transcript, a
122 presumption exists that the person named in the order
123 of suspension is the same person named in the trans-
124 cript. The commissioner may grant an administrative
125 hearing which substantially complies with the require-
126 ments of the provisions of section two, article five-a,
127 chapter seventeen-c of this code upon a preliminary
128 showing that a possibility exists that the person named
129 in the notice of conviction is not the same person whose
130 license is being suspended. Such request for hearing
131 shall be made within ten days after receipt of a copy
132 of the order of suspension. The sole purpose of this
133 hearing shall be for the person requesting the hearing
134 to present evidence that he or she is not the person
135 named in the notice. In the event the commissioner
136 grants an administrative hearing, the commissioner
137 shall stay the license suspension pending the commis-
138 sioner's order resulting from the hearing.

139 (4) For the purposes of this subsection, a person is
140 convicted when such person enters a plea of guilty or
141 is found guilty by a court or jury.

142 (g) (1) It shall be unlawful for any parent, custodian
143 or other legal guardian of a person less than eighteen
144 years of age who knows that said person is in violation
145 of subsection (b) or (c) of this section, or who has
146 reasonable cause to believe that said person's violation
147 of said subsections is imminent, to fail to report such
148 knowledge or belief to the appropriate school or law-
149 enforcement officials.

150 (2) Any person violating this subsection shall be guilty
151 of a misdemeanor, and, upon conviction thereof, shall be
152 fined not more than one thousand dollars, or shall be
153 confined in jail not more than one year, or both.

154 (h) (1) It shall be unlawful for any person to possess
155 any firearm or any other deadly weapon on any
156 premises which houses a court of law or in the offices
157 of a family law master.

158 (2) This subsection shall not apply to:

159 (A) A law-enforcement officer acting in his or her
160 official capacity; and

161 (B) A person exempted from the provisions of this
162 subsection by order of record entered by a court with
163 jurisdiction over such premises or offices.

164 (3) Any person violating this subsection shall be guilty
165 of a misdemeanor, and, upon conviction thereof, shall be
166 fined not more than one thousand dollars, or shall be
167 confined in jail not more than one year, or both.

168 (i) (1) It shall be unlawful for any person to possess
169 any firearm or any other deadly weapon on any
170 premises which houses a court of law or in the offices
171 of a family law master with the intent to commit a
172 crime.

173 (2) Any person violating this subsection shall be guilty
174 of a felony, and, upon conviction thereof, shall be
175 imprisoned in the penitentiary of this state for a definite
176 term of years of not less than two years nor more than
177 ten years, or fined not more than five thousand dollars,
178 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.

1 Any person who wantonly performs any act with a
2 firearm which creates a substantial risk of death or
3 serious bodily injury to another shall be guilty of a
4 felony, and, upon conviction thereof, shall be confined in
5 the penitentiary for a definite term of years of not less
6 than one year nor more than five years, or, in the
7 discretion of the court, confined in the county jail for not
8 more than one year, or fined not less than two hundred
9 fifty dollars nor more than two thousand five hundred
10 dollars, or both.

11 For purposes of this section, the term "firearm" shall
12 have the same meaning ascribed to such term as set
13 forth in section two of this article.

CHAPTER 39

(S. B. 33—By Senators Wiedebusch, Anderson, Dittmar, Grubb,
Holliday, Macnaughtan, Miller, Plymale, Ross, Wagner, Wooton and Yoder)

[Passed February 15, 1994; in effect from passage. Approved by the Governor.]

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
2 a dead human body, or any part of a dead human body,
3 placed or deposited in any vault, mausoleum or any
4 temporary or permanent burial place, is guilty of a
5 felony, and, upon conviction thereof, shall be confined in
6 the penitentiary or other suitable state correctional
7 facility for a determinate sentence of not less than two
8 nor more than five years.

9 (b) (1) Any person who intentionally desecrates any
10 cemetery, graveyard, mausoleum or other designated
11 human burial site is guilty of a misdemeanor, and, upon
12 conviction thereof, shall be fined not more than two
13 thousand dollars, or confined in jail not more than one
14 year, or both fined and confined.

15 (2) For the purposes of this subsection, “desecrate”
 16 means defacing, damaging or otherwise physically
 17 mistreating in a way that a reasonable person knows
 18 will outrage the sensibilities of persons likely to observe
 19 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.

1 Section twenty-three, article eleven, chapter sixty-one
 2 of the code of West Virginia, one thousand nine hundred
 3 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-1. Short title.
- §62-11B-2. Applicability.
- §62-11B-3. Definitions.
- §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-7. Home incarceration fees; special fund.
- §62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.
- §62-11B-8. Offender responsible for certain expenses.
- §62-11B-9. Violation of order of home incarceration procedures; penalties.
- §62-11B-10. Information to be provided law-enforcement agencies.
- §62-11B-11. Discretion of the court; provisions of article not exclusive.
- §62-11B-12. Supervision of home incarceration by circuit court.

§62-11B-1. Short title.

- 1 This article may be cited as the "Home Incarceration
- 2 Act".

§62-11B-2. Applicability.

- 1 This article applies to adult offenders and to juveniles
- 2 who have committed a delinquent act that would be a
- 3 crime if committed by an adult.

§62-11B-3. Definitions.

- 1 As used in this article:
- 2 (1) "Home" means the actual living area of the
- 3 temporary or permanent residence of an offender. The
- 4 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 transmit-
10 ting of information regarding an offender's presence or
11 absence from the offender's home;

12 (B) Minimally intrusive upon the privacy of the
13 offender or other persons residing in the offender's
14 home; and

15 (C) Incapable of recording or transmitting:

16 (i) Visual images;

17 (ii) Oral or wire communications or any auditory
18 sound; or

19 (iii) Information regarding the offender's activities
20 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
12 electronic monitoring may not be required in a specific
13 case if a circuit court upon petition thereto finds by

14 order that electronic monitoring is not necessary.

15 (b) The period of home incarceration may be contin-
16 uous or intermittent, as the circuit court orders, or
17 continuous except as provided by section five of this
18 article if ordered by a magistrate. However, the
19 aggregate time actually spent in home incarceration
20 may not exceed the term of imprisonment or incarcer-
21 ation prescribed by this code for the offense committed
22 by the offender.

23 (c) A grant of home incarceration under this article
24 constitutes a waiver of any entitlement to deduction
25 from a sentence for good conduct under the provisions
26 of section twenty-seven, article five, chapter twenty-
27 eight of this code.

**§62-11B-5. Requirements for order for home
incarceration.**

1 An order for home incarceration of an offender under
2 section four of this article shall include, but not be
3 limited to, the following:

4 (1) A requirement that the offender be confined to the
5 offender's home at all times except when the offender
6 is:

7 (A) Working at employment approved by the circuit
8 court or magistrate, or traveling to or from approved
9 employment;

10 (B) Unemployed and seeking employment approved
11 for the offender by the circuit court or magistrate;

12 (C) Undergoing medical, psychiatric, mental health
13 treatment, counseling or other treatment programs
14 approved for the offender by the circuit court or
15 magistrate;

16 (D) Attending an educational institution or a program
17 approved for the offender by the circuit court or
18 magistrate;

19 (E) Attending a regularly scheduled religious service
20 at a place of worship;

21 (F) Participating in a community work release or

22 community service program approved for the offender
23 by the circuit court, in circuit court cases; or

24 (G) Engaging in other activities specifically approved
25 for the offender by the circuit court or magistrate.

26 (2) Notice to the offender of the penalties which may
27 be imposed if the circuit court or magistrate subse-
28 quently finds the offender to have violated the terms and
29 conditions in the order of home incarceration.

30 (3) A requirement that the offender abide by a
31 schedule, prepared by the probation officer in circuit
32 court cases, or by the supervisor or sheriff in magistrate
33 court cases, specifically setting forth the times when the
34 offender may be absent from the offender's home and
35 the locations the offender is allowed to be during the
36 scheduled absences.

37 (4) A requirement that the offender is not to commit
38 another crime during the period of home incarceration
39 ordered by the circuit court or magistrate.

40 (5) A requirement that the offender obtain approval
41 from the probation officer or supervisor or sheriff before
42 the offender changes residence or the schedule described
43 in subdivision (3) of this section.

44 (6) A requirement that the offender maintain:

45 (A) A working telephone in the offender's home;

46 (B) If ordered by the circuit court or as ordered by
47 the magistrate, an electronic monitoring device in the
48 offender's home, or on the offender's person, or both; and

49 (C) Electric service in the offender's home if use of a
50 monitoring device is ordered by the circuit court or any
51 time home incarceration is ordered by the magistrate.

52 (7) A requirement that the offender pay a home
53 incarceration fee set by the circuit court or magistrate.
54 If a magistrate orders home incarceration for an
55 offender, the magistrate shall follow a fee schedule
56 established by the supervising circuit judge in setting
57 the home incarceration fee.

58 (8) A requirement that the offender abide by other

59 conditions set by the circuit court or by the magistrate.

§62-11B-6. Circumstances under which home incarceration may not be ordered.

1 (a) A circuit court or magistrate may not order home
2 incarceration for an offender unless the offender agrees
3 to abide by all of the requirements set forth in the
4 court's order issued under this article.

5 (b) A circuit court or magistrate may not order home
6 incarceration for an offender who is being held under
7 a detainer, warrant or process issued by a court of
8 another jurisdiction.

9 (c) A magistrate may order home incarceration for an
10 offender only with electronic monitoring and only if the
11 county of the offender's home has an established
12 program of electronic monitoring that is equipped,
13 operated and staffed by the county supervisor or sheriff
14 for the purpose of supervising participants in a home
15 incarceration program: *Provided*, That electronic
16 monitoring may not be required in a specific case if a
17 circuit court upon petition thereto finds by order that
18 electronic monitoring is not necessary.

19 (d) A magistrate may not order home incarceration
20 for an offender convicted of a crime of violence against
21 the person.

22 (e) Home incarceration shall not be available as a
23 sentence if the language of a criminal statute expressly
24 prohibits its application.

§62-11B-7. Home incarceration fees; special fund.

1 All home incarceration fees ordered by the circuit
2 court shall be paid to the circuit clerk, who shall
3 monthly remit the fees to the sheriff. All home incar-
4 ceration fees ordered by a magistrate shall be paid to
5 the magistrate court clerk, who shall monthly remit the
6 fees to the county sheriff. The county sheriff shall
7 establish a special fund designated the home incarcer-
8 ation services fund, in which the sheriff shall deposit all
9 home incarceration fees remitted by the clerks. The
10 county commission shall appropriate money from the

11 fund to administer a home incarceration program,
12 including the purchase of electronic monitoring devices
13 and other supervision expenses, and may as necessary
14 supplement the fund with additional appropriations.

§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.

1 The county commission may employ one or more
2 persons with the approval of the circuit court and who
3 shall be subject to the supervision of the sheriff as a
4 home incarceration supervisor or may designate the
5 county sheriff to supervise offenders ordered to undergo
6 home incarceration and to administer the county's home
7 incarceration program. Any person so supervising shall
8 have authority, equivalent to that granted to a probation
9 officer pursuant to section ten, article twelve of this
10 chapter, to arrest a home incarceration participant
11 when reasonable cause exists to believe that such
12 participant has violated the conditions of his or her
13 home incarceration. Unless otherwise specified, the use
14 of the term "supervisor" in this article shall refer to a
15 home incarceration supervisor.

§62-11B-8. Offender responsible for certain expenses.

1 An offender ordered to undergo home incarceration
2 under section four of this article is responsible for
3 providing his own food, housing, clothing, medical care
4 and other treatment expenses. The offender is eligible
5 to receive government benefits allowable for persons on
6 probation, parole or other conditional discharge from
7 confinement or incarceration.

§62-11B-9. Violation of order of home incarceration procedures; penalties.

1 (a) If at any time during the period of home incarcer-
2 ation there is reasonable cause to believe that a
3 participant in a home incarceration program has
4 violated the terms and conditions of the circuit court's
5 home incarceration order, he or she shall be subject to
6 the procedures and penalties set forth in section ten,
7 article twelve of this chapter.

8 (b) If at any time during the period of home incar-

9 ceration there is reasonable cause to believe that a
10 participant sentenced to home incarceration by the
11 circuit court has violated the terms and conditions of the
12 court's order of home incarceration and said partici-
13 pant's participation was imposed as an alternative
14 sentence to another form of incarceration, said partici-
15 ipant shall be subject to the same procedures involving
16 revocation as would a probationer charged with a
17 violation of the order of home incarceration. Any
18 participant under an order of home incarceration shall
19 be subject to the same penalty or penalties, upon the
20 circuit court's finding of a violation of the order of home
21 incarceration, as he or she could have received at the
22 initial disposition hearing: *Provided*, That the partici-
23 pant shall receive credit towards any sentence imposed
24 after a finding of violation for the time spent in home
25 incarceration.

26 (c) If at any time during the period of home incarcer-
27 ation there is reasonable cause to believe that a
28 participant sentenced to home incarceration by a
29 magistrate has violated the terms and conditions of the
30 magistrate's order of home incarceration as an alterna-
31 tive sentence to incarceration in jail, the supervising
32 authority may arrest the participant upon the obtaining
33 of an order or warrant and take the offender before a
34 magistrate within the county of the offense. The
35 magistrate shall then conduct a prompt and summary
36 hearing on whether the participant's home incarceration
37 should be revoked. If it appears to the satisfaction of the
38 magistrate that any condition of home incarceration has
39 been violated, the magistrate may revoke the home
40 incarceration and order that the sentence of incarcera-
41 tion in jail be executed. Any participant under an order
42 of home incarceration shall be subject to the same
43 penalty or penalties, upon the magistrate's finding of a
44 violation of the order of home incarceration, as the
45 participant could have received at the initial disposition
46 hearing: *Provided*, That the participant shall receive
47 credit towards any sentence imposed after a finding of
48 violation for the time spent in home incarceration.

§62-11B-10. Information to be provided law-enforcement agencies.

1 A probation department charged by a circuit court or
2 a supervisor or sheriff charged by a magistrate with
3 supervision of offenders ordered to undergo home
4 incarceration shall provide all law-enforcement agencies
5 having jurisdiction in the place where the probation
6 department or the office of the supervisor or sheriff is
7 located with a list of offenders under home incarceration
8 supervised by the probation department, supervisor or
9 sheriff. The list must include the following information
10 about each offender:

11 (1) The offender's name, any known aliases, and the
12 location of the offender's home incarceration;

13 (2) The crime for which the offender was convicted;

14 (3) The date the offender's home incarceration expires;
15 and

16 (4) The name, address and telephone number of the
17 offender's supervising probation officer or supervisor, as
18 the case may be, for home incarceration.

§62-11B-11. Discretion of the court; provisions of article not exclusive.

1 Home incarceration pursuant to the provisions of this
2 article may be imposed at the discretion of the circuit
3 court or magistrate court as an alternative means of
4 incarceration for any offense. Except for offenses for
5 which the penalty includes mandatory incarceration,
6 home incarceration shall not be considered an exclusive
7 means of alternative sentencing.

§62-11B-12. Supervision of home incarceration by circuit court.

1 Notwithstanding any provision of this code to the
2 contrary, in any case where a person has been ordered
3 to home incarceration where that person is not in the
4 custody or control of the division of corrections, the
5 circuit court shall have the authority of the board of
6 probation and parole regarding the release, early
7 release or release on parole of the person.

CHAPTER 42

(H. B. 4617—By Delegates Beane, L. White, Mezzatesta,
Linch, Love, Michael and Martin)

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

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
2 the sheriff's deputies sick leave with pay to be computed
3 as follows: Full-time deputies are entitled to one and
4 one-half days sick leave for each calendar month
5 worked, or greater part thereof; part-time deputies are
6 entitled to sick leave at the same rate and in the same
7 proportion that hours actually worked bears to hours
8 regularly scheduled for full-time deputies.

9 (b) Sick leave may be granted only when illness on the
10 part of or injury to the deputy incapacitates him or her
11 for duty: *Provided*, That the sheriff of the county in
12 which the deputy is employed has the authority to
13 require the deputy to produce a statement from an
14 attending physician for each day of sick leave beyond
15 two days. This statement shall include dates of treat-
16 ment and also state that the deputy was unable to work.
17 In the absence of the physician's statement, if required,
18 annual leave shall be charged for the entire period.

- 19 (c) In the event of illness, a full-time deputy may take
 20 without limit emergency sick leave without pay after all
 21 accrued sick leave, annual leave and compensatory time
 22 available to the full-time deputy has been exhausted.

CHAPTER 43

(Com. Sub. for S. B. 228—By Senators Boley, Schoonover, Whillow,
 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.

- 1 (a) Upon a specific finding of good cause shown and
 2 upon findings of fact and conclusions of law in support
 3 thereof, an order for child support may provide that
 4 payments of such support continue beyond the date
 5 when the child reaches the age of eighteen, so long as
 6 the child is unmarried and residing with a parent and
 7 is enrolled as a full-time student in a secondary
 8 educational or vocational program and making substan-
 9 tial progress towards a diploma: *Provided*, That such

10 payments may not extend past the date that the child
11 reaches the age of twenty.

12 (b) Nothing herein shall be construed to abrogate or
13 modify existing case law regarding the eligibility of
14 handicapped or disabled children to receive child
15 support beyond the age of eighteen.

16 (c) The reenactment of this section during the regular
17 session of the Legislature in the year one thousand nine
18 hundred ninety-four shall not, by operation of law, have
19 any effect upon or vacate any order or portion thereof
20 entered under the prior enactment of this section which
21 awarded educational and related expenses for an adult
22 child accepted or enrolled and making satisfactory
23 progress in an educational program at a certified or
24 accredited college. Any such order or portion thereof
25 shall continue in full force and effect until the court,
26 upon motion of a party, modifies or vacates the order
27 upon a finding that:

28 (1) The facts and circumstances which supported the
29 entry of the original order have changed, in which case
30 the order may be modified;

31 (2) The facts and circumstances which supported the
32 entry of the original order no longer exist because the
33 child has not been accepted or is not enrolled in and
34 making satisfactory progress in an educational program
35 at a certified or accredited college, or the parent ordered
36 to pay such educational and related expenses is no
37 longer able to make such payments, in which case the
38 order shall be vacated;

39 (3) The child, at the time the order was entered, was
40 under the age of sixteen years, in which case the order
41 shall be vacated;

42 (4) The amount ordered to be paid was determined by
43 an application of child support guidelines in accordance
44 with the provisions of section eight, article two, chapter
45 forty-eight-a of this code or legislative rules promul-
46 gated thereunder, in which case the order may be
47 modified or vacated; or

- 48 (5) The order was entered after the fourteenth day of
49 March, one thousand nine hundred ninety-four, in which
50 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.

§48-2-27. Confidentiality of domestic relations court files.

1 All orders in domestic relations cases entered in the
2 civil order books by circuit clerks are public records.
3 For purposes of this section, domestic relations cases
4 shall include actions for divorce, annulment, separate
5 maintenance, paternity, child support, custody, visita-
6 tion, actions brought under the provisions of the uniform
7 reciprocal enforcement of support act and petitions for
8 writs of habeas corpus wherein the issue is child
9 custody.

10 Upon the filing of a domestic relations case, all
11 pleadings, exhibits or other documents contained in the
12 court file are confidential and not open for public
13 inspection either during the pendency of the case or
14 after the case is closed.

15 When sensitive information has been disclosed during
16 a hearing or in pleadings, evidence, or documents filed
17 in the record, a circuit judge or family law master may,
18 sua sponte or upon motion of a party, order such
19 information sealed in the court file. Sealed documents
20 or court files shall only be opened by order of a circuit
21 judge or family law master: *Provided*, That, in any case
22 pending before a family law master, the master may
23 open and inspect the entire contents of the court file.

24 The parties, their designees, their attorneys, a duly
25 appointed guardian ad litem or any person who has
26 standing to modify or enforce a support order, shall have
27 the right to examine and copy any document in a
28 confidential court file which has not been sealed by
29 order of a circuit judge or family law master. Upon
30 motion and for good cause shown, the circuit court or
31 family law master may permit a person not a party to
32 the action the right to examine and copy such documents
33 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.

61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-6. Protective orders.

§48-2A-10. Enforcement procedure for temporary and final protective orders.

§48-2A-14. Arrest in domestic violence matters; conditions.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing and if the
2 petitioner has proven the allegations of abuse by a
3 preponderance of the evidence, then the court shall issue
4 a protective order which shall direct the respondent to
5 refrain from abusing the petitioner and/or the minor
6 children. The terms of a protective order may include:

7 (1) Granting possession to the petitioner of the
8 residence or household jointly resided in at the time the
9 abuse occurred;

10 (2) Awarding temporary custody of or establishing
11 temporary visitation rights with regard to minor
12 children;

13 (3) Establishing temporary visitation rights with

14 regard to the minor children and requiring third party
15 supervision of visitations if necessary to protect the
16 petitioner and/or the minor children;

17 (4) Ordering the noncustodial parent to pay to the
18 custodial parent a sum for temporary support and
19 maintenance of the petitioner and children, if any;

20 (5) Ordering the respondent to pay to the petitioner
21 a sum for temporary support and maintenance of the
22 petitioner, where appropriate;

23 (6) Ordering the respondent to refrain from entering
24 the school, business or place of employment of the
25 petitioner or household members or family members for
26 the purpose of violating the protective order;

27 (7) Directing the respondent to participate in counsel-
28 ing; or

29 (8) Ordering the respondent to refrain from contact-
30 ing, telephoning, communicating, harassing or verbally
31 abusing the petitioner in any public place.

32 (b) Any final protective order shall be for a fixed
33 period of time not to exceed ninety days: *Provided*, That
34 if a party has filed for divorce, separate maintenance or
35 annulment and no temporary or final divorce order is
36 entered prior to expiration of the protective order, upon
37 petitioner's motion, the protective order shall remain in
38 effect until such temporary or final divorce order is
39 entered. The court may amend its order at any time
40 upon subsequent petition filed by either party. If the
41 court enters an initial order for a period of less than
42 ninety days, it shall, after notice and hearing, extend its
43 initial order for the full ninety-day period if it finds the
44 petitioner or the minor child or children continue to
45 need protection from abuse. The order shall be in full
46 force and effect in every county in this state. The order
47 shall state that it is in full force and effect in every
48 county in this state.

49 (c) No order under this article shall in any manner
50 affect title to any real property.

51 (d) Certified copies of any order made under the

52 provisions of this section shall be issued to the petitioner,
53 the respondent and any law-enforcement agency having
54 jurisdiction to enforce the order, including the city
55 police, the county sheriff's office or local office of the
56 division of public safety within twenty-four hours of the
57 entry of the order.

58 (e) No mutual protective orders shall be granted
59 unless both parties have filed a petition under section
60 four of this article and have proven the allegations of
61 abuse by a preponderance of the evidence.

**§48-2A-10. Enforcement procedure for temporary and
final protective orders.**

1 (a) Upon issuance of a temporary order as provided
2 in section five of this article, and service thereof upon
3 the respondent, or under relief granted in a protective
4 order as provided in subsections (a) and (b), section six
5 of this article of which the respondent has notice, a copy
6 of such order shall, no later than the close of the next
7 business day, be delivered by the court or the clerk to
8 a local office of the city police, the county sheriff and
9 the West Virginia division of public safety, where it
10 shall be placed in a confidential file, with access
11 provided only to the law-enforcement agency and the
12 respondent named on said order: *Provided*, That upon
13 the expiration of any order issued pursuant to section
14 five or six of this article, any such law-enforcement
15 agency which has any such order on file shall imme-
16 diately expunge its confidential file of any reference
17 thereto and destroy all copies of such order in its
18 possession, custody or control. A sworn affidavit may be
19 executed by the party awarded exclusive possession of
20 the residence or household, pursuant to an order entered
21 under subsection (b), section six of this article, and
22 delivered to such law-enforcement agency simultane-
23 ously with any such order, giving his or her consent for
24 a law-enforcement officer to enter such residence or
25 household, without a warrant, to enforce such protective
26 order or temporary order. Orders shall be promptly
27 served upon the respondent. Failure to serve shall not
28 stay the effect of a valid order if the respondent has
29 actual notice of the existence and contents of the order.

30 (b) Any person who observes a violation of such order
31 or the violated party may call a local law-enforcement
32 agency, which shall verify the existence of a current
33 order, and shall direct a law-enforcement officer to
34 promptly investigate the alleged violation.

35 (c) Where a law-enforcement officer observes a
36 violation of a valid order, he or she shall immediately
37 arrest the subject of the order. In cases of violation of
38 such orders occurring outside the presence of an officer,
39 any person authorized to file a petition under the
40 provisions of section four of this article or a legal
41 guardian or guardian ad litem may apply to a court in
42 session in the county in which the violation occurred or
43 the county in which the order was issued for a warrant
44 of arrest. If the court finds probable cause to believe
45 that a valid order has been violated, the court shall issue
46 such warrant for the arrest of the subject of the order
47 wherever he or she may be found.

48 (d) Where there is an arrest, the officer shall take the
49 arrested person before a court or a magistrate and upon
50 a finding of probable cause to believe a violation of an
51 order has taken place, the court or magistrate shall set
52 a time and place for a hearing, to take place within five
53 days, and serve forthwith upon the alleged violator an
54 order to show cause why he or she should not be held
55 in contempt for violation of the prior order, which unless
56 waived by the defendant shall be by trial by a jury of
57 six persons. The remedies provided by this section shall
58 be limited to violations of a temporary order or
59 protective order entered pursuant to subsection (a) or
60 (b), section six of this article. A respondent who shall
61 abuse the petitioner and/or minor children in knowing
62 and willful violation of the terms of a temporary or final
63 protective order issued under the provisions of this
64 article shall be guilty of a misdemeanor, and, upon
65 conviction thereof, shall be confined in the county jail
66 for a period of not less than one day nor more than one
67 year, which jail term shall include actual confinement
68 of not less than twenty-four hours, and shall be fined not
69 less than two hundred fifty dollars nor more than two
70 thousand dollars.

§48-2A-14. Arrest in domestic violence matters; conditions.

1 (a) Notwithstanding any provision of this code, where
2 a family or household member is alleged to have
3 committed a violation of the provisions of subsection (a)
4 or (b), section twenty-eight, article two, chapter sixty-
5 one of this code against another family or household
6 member, in addition to any other authority to arrest
7 granted by this code, a law-enforcement officer has
8 authority to arrest the alleged perpetrator for said
9 offense when:

10 (1) The law-enforcement officer has observed credible
11 corroborative evidence that the offense has occurred;
12 and

13 (2) The law-enforcement officer has received, from the
14 victim or a witness, a verbal or written allegation of
15 facts constituting a violation of section twenty-eight,
16 article two, chapter sixty-one of this code; or

17 (3) The law-enforcement officer has observed credible
18 evidence that the accused committed the offense.

19 (b) Credible corroborative evidence means evidence
20 that is worthy of belief and corresponds with the
21 allegations of one or more elements of the offense and
22 may include, but is not limited to, the following
23 conditions:

24 (1) *Condition of the alleged victim.*—One or more
25 contusions, scratches, cuts, abrasions, swellings; missing
26 hair; torn clothing or clothing in disarray consistent
27 with a struggle; observable difficulty in breathing or
28 breathlessness consistent with the effects of choking or
29 a body blow; observable difficulty in movement consist-
30 ent with the effects of a body blow or other unlawful
31 physical contact.

32 (2) *Condition of the accused.*—Physical injury or other
33 conditions similar to those set out for the condition of
34 the victim which are consistent with the alleged offense
35 or alleged acts of self-defense by the victim.

36 (3) *Condition of the scene.*—Damaged premises or

37 furnishings; disarray or misplaced objects consistent
38 with the effects of a struggle.

39 (4) *Other conditions.*—Statements by the accused
40 admitting one or more elements of the offense; threats
41 made by the accused in the presence of an officer;
42 audible evidence of a disturbance heard by the dis-
43 patcher or other agent receiving the request for police
44 assistance; written statements by witnesses.

45 (c) Whenever any person is arrested pursuant to
46 subsection (a) of this section, the arrested person shall
47 be taken before a magistrate within the county in which
48 the offense charged is alleged to have been committed
49 in a manner consistent with the provisions of Rule 1 of
50 the Administrative Rules for the Magistrate Courts of
51 West Virginia.

52 (d) Where an arrest for a violation of subsection (c),
53 section twenty-eight, article two, chapter sixty-one of
54 this code is authorized pursuant to this section, such
55 shall constitute prima facie evidence that the person
56 arrested constitutes a threat or danger to the victim or
57 other family or household members for the purpose of
58 setting conditions of bail pursuant to section seventeen-
59 c, article one-c, chapter sixty-two of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-28. Domestic violence — Criminal acts.

1 (a) *Domestic battery.*—If any family or household
2 member unlawfully and intentionally makes physical
3 contact of an insulting or provoking nature with another
4 family or household member or unlawfully and inten-
5 tionally causes physical harm to another family or
6 household member, he or she is guilty of a misdemeanor,
7 and, upon conviction thereof, shall be confined in jail for
8 not more than twelve months, or fined not more than
9 five hundred dollars, or both fined and confined.

10 (b) *Domestic assault.*—If any family or household
11 member unlawfully attempts to commit a violent injury

12 of another family or household member or unlawfully
13 commits an act which places another family or house-
14 hold member in reasonable apprehension of imme-
15 diately receiving a violent injury, he or she is guilty of
16 a misdemeanor, and, upon conviction thereof, shall be
17 confined in jail for not more than six months, or fined
18 not more than one hundred dollars, or both fined and
19 confined.

20 (c) *Third offense.*—A family or household member who
21 has been convicted of a third or subsequent domestic
22 battery and/or domestic assault as defined in this
23 section, assault and/or battery as defined in section nine
24 of this article when committed against a family or
25 household member, or any combination of such offenses,
26 is guilty of a felony if such offense occurs within ten
27 years of a prior conviction of any of these offenses, and,
28 upon conviction thereof, shall be confined in the
29 penitentiary not less than one nor more than five years
30 and fined not exceeding five hundred dollars.

31 (d) For the purposes of this section, the term “family
32 or household member” means “family or household
33 member” as defined in section two, article two-a,
34 chapter forty-eight of this code.

35 (e) A person charged with violation of this section may
36 not also be charged with a violation of subsection (b) or
37 (c), section nine of this article.

38 (f) No law-enforcement officer shall be subject to any
39 civil or criminal action for false arrest or unlawful
40 detention for affecting an arrest pursuant to this section
41 or pursuant to section fourteen, article two-a, chapter
42 forty-eight of this code.

CHAPTER 46

(Com. Sub. for H. B. 4479—By Delegates Peihitel, Pino, Tribett,
Petersen, Varner and Mezzatesta)

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

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.

1 (a) The Legislature finds that circumstances may
2 arise where it is appropriate for circuit courts of this
3 state to have jurisdiction to grant to the grandparents
4 of minor children a right of visitation to enhance the
5 best interests of the minor child or children as well as
6 the grandparent. The Legislature further finds that in
7 such situations, as in all situations involving children,
8 the best interests of children must be the paramount
9 consideration. It is the express intent of the Legislature
10 that the provisions for grandparent visitation set forth
11 in this article shall be exclusive and under all circum-
12 stances the interests of the child or children involved
13 shall be the court's first and paramount consideration.

14 (b) For purposes of this article, "grandparent" means
15 a biological grandparent, a person married or pre-
16 viously married to a biological grandparent, or a person
17 who has previously been granted custody of the parent
18 of a minor child with whom visitation is sought by a
19 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.

1 The West Virginia board of education is hereby
2 authorized to construct, erect, acquire and improve
3 dining halls, cottages, and other buildings or recrea-
4 tional facilities it considers necessary and beneficial for
5 the proper conduct and management of the camp and
6 conference center and may charge such rates, fees,
7 rentals and other charges for the use of the buildings
8 and recreational facilities as it determines necessary
9 and advisable.

10 The construction, erection, acquisition and improve-
11 ment of dining halls, cottages and other buildings or

12 recreational facilities may be financed by the issuance
13 of revenue bonds or notes of the state of West Virginia
14 payable solely from the revenues derived from the
15 operation of the camp and conference center notwith-
16 standing any of the provisions of section sixteen of this
17 article.

18 The revenue bonds or notes shall be authorized by
19 resolution of the West Virginia board of education,
20 hereinafter referred to in this section as the "board", and
21 the revenue bonds or notes shall not constitute a debt
22 of the state of West Virginia within the meaning of any
23 of its statutes or constitution.

24 The principal of and interest on the bonds or notes
25 shall be payable solely from the special fund provided
26 for in this section for such payment. The board shall
27 pledge the moneys in the special fund, except that part
28 of the proceeds of sale of any bonds or notes to be used
29 to pay the cost of a project, for the payment of the
30 principal of and interest on bonds or notes issued
31 pursuant to this section. The pledge shall apply equally
32 and ratably to separate series of bonds or notes or upon
33 such priorities as the board determines. The bonds or
34 notes shall be authorized by resolution of the board
35 which shall recite an estimate of the cost of the project,
36 and shall provide for the issuance of bonds or notes in
37 an amount sufficient, when sold as provided in this
38 section, to produce such cost, less the amount of any
39 funds, grant or grants, gift or gifts, contribution or
40 contributions received, or in the opinion of the board
41 expected to be received from any source. The acceptance
42 by the board of any and all funds, grants, gifts and
43 contributions, whether in money or in land, labor or
44 materials, is hereby expressly authorized. All bonds or
45 notes shall have and are hereby declared to have all the
46 qualities of negotiable instruments. The bonds or notes
47 shall bear interest at not more than twelve percent per
48 annum, payable semiannually, and shall mature in not
49 more than forty years from their date or dates of
50 issuance, and may be made redeemable at the option of
51 the board, at such price and under such terms and
52 conditions, as the board may fix prior to the issuance
53 of the bonds or notes. The board shall determine the

54 form of the bonds or notes, including coupons, if any,
55 to be attached thereto to evidence the right of interest
56 payments, which bonds or notes shall be signed by the
57 chairman and secretary of the board, under the great
58 seal of the state, attested by the secretary of state, and
59 the coupons, if any, attached thereto shall bear the
60 facsimile signature of the chairman of the board. In case
61 any of the officers whose signatures appear on the bonds
62 or notes or coupons issued as authorized under this
63 section shall cease to be such officers before the delivery
64 of the bonds or notes, the signatures are nevertheless
65 valid and sufficient for all purposes the same as if they
66 had remained in office until such delivery. The board
67 shall fix the denominations of the bonds or notes, the
68 principal and interest of which shall be payable at the
69 office of the treasurer of the state of West Virginia at
70 the state capitol, or at the option of the holder, at some
71 bank or trust company within or without the state of
72 West Virginia to be named in the bonds or notes, in such
73 medium as may be determined by the board. The bonds
74 or notes and interest thereon are exempt from taxation
75 by the state of West Virginia, or any county or
76 municipality in the state. The board may provide for the
77 registration of the bonds or notes in the name of the
78 owners as to principal alone, and as to both principal
79 and interest under such terms and conditions as the
80 board may determine, and shall sell the bonds or notes
81 in such manner as it may determine to be for the best
82 interest of the state and the board, taking into consid-
83 eration the financial responsibility of the purchaser, and
84 the terms and conditions of the purchase, and especially
85 the availability of the proceeds of the bonds or notes
86 when required for payment of the cost of the project, the
87 sale to be made at a price not lower than a price which,
88 computed upon standard tables of bond values, will
89 show a net return of not more than thirteen percent per
90 annum to the purchaser upon the amount paid therefor.
91 The proceeds of the bonds or notes shall be used solely
92 for the payment of the cost of the project for which
93 bonds or notes were issued, and shall be deposited and
94 checked out in the same manner as provided by article
95 six, chapter five of this code, and under such further

96 restrictions, if any, as the board may provide. If the
97 proceeds of bonds or notes issued for a project or a
98 specific group of projects exceeds the cost of the project
99 or projects, the surplus shall be paid into the fund
100 provided for in this section for payment of the principal
101 and interest of the bonds or notes. The fund may be used
102 for the purchase of any of the outstanding bonds or notes
103 payable from the fund at the market price, but at not
104 exceeding the price, if any, at which the bonds or notes
105 are in the same year redeemable. All bonds or notes
106 redeemed or purchased shall forthwith be canceled, and
107 shall not again be issued. Prior to the preparation of
108 definitive bonds or notes, the board may, under like
109 restrictions, issue temporary bonds or notes with or
110 without coupons, exchangeable for definitive bonds or
111 notes upon the issuance of the latter. Notwithstanding
112 the provisions of sections nine and ten, article six,
113 chapter twelve of this code, revenue bonds or notes
114 issued under the authority granted in this section are
115 eligible as investments for the workers' compensation
116 fund, teachers retirement fund, division of public safety
117 death, disability and retirement fund, West Virginia
118 public employees retirement system and as security for
119 the deposit of all public funds. The revenue bonds or
120 notes may be issued without any other proceedings or
121 the happening of any other conditions or things than
122 those proceedings, conditions and things which are
123 specified and required by this article, or by the
124 constitution of the state. For all projects authorized
125 under the provisions of this section, the aggregate
126 amount of all issues of bonds or notes outstanding at one
127 time shall not exceed two million five hundred thousand
128 dollars including the renegotiation, reissuance or
129 refinancing of any bonds or notes.

130 Notwithstanding anything in this section to the
131 contrary, the board is authorized to issue bonds or notes
132 or otherwise finance or refinance the projects in this
133 section, including the costs of issuance and sale of the
134 bonds or notes or financing, all necessary financial and
135 legal expenses and creation of debt service reserve funds
136 in an amount not to exceed two million five hundred
137 thousand dollars.

138 The board may enter into an agreement or agree-
 139 ments with any trust company, or with any bank having
 140 the powers of a trust company, whether within or
 141 outside of the state, as trustee for the holders of bonds
 142 or notes issued under this section, setting forth in the
 143 agreement the duties of the state and of the board in
 144 respect of the acquisition, construction, improvement,
 145 maintenance, operation, repair and insurance of the
 146 project, the conservation and application of all moneys,
 147 the insurance of moneys on hand or on deposit, and the
 148 rights and remedies of the trustee and the holders of the
 149 bonds or notes, as may be agreed upon with the original
 150 purchasers of the bonds or notes. The agreement or
 151 agreements shall include provisions restricting the
 152 individual right of action of bondholders or noteholders
 153 as is customary in trust agreements respecting bonds or
 154 notes and debentures of corporations, protecting and
 155 enforcing the rights and remedies of the trustee and the
 156 bondholders or noteholders, and provide for approval by
 157 the original purchasers of the bonds or notes of the
 158 appointment of consulting architects, and of the security
 159 given by those who contract to construct the project, and
 160 by any bank or trust company in which the proceeds of
 161 bonds or notes or rentals shall be deposited, and for
 162 approval by the consulting architects of all contracts for
 163 construction. All expenses incurred in carrying out the
 164 agreement may be treated as a part of the cost of
 165 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
2 as an educational resource or teaching device any
3 historical document related to the founding of the
4 United States of America or any government publica-
5 tion solely because the document contains a religious
6 reference or references: *Provided*, That the use of such
7 materials must serve a bona fide secular educational
8 purpose which does not advance or inhibit a religion or
9 particular religious belief.

10 (b) (1) As used in subsection (a) of this section, the
11 term "historical document related to the founding of the
12 United States of America" shall include, but not be
13 limited to, such documents as the declaration of
14 independence and the United States constitution.

15 (2) As used in subsection (a) of this section, the term
16 "government publication" shall include, but not be
17 limited to, such documents as decisions of the United
18 States supreme court and acts of Congress.

19 (c) In determining the purpose of the use of a
20 document containing a reference to a deity or a religion,
21 consideration shall be given to the overall context of the
22 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-26. Computation of annuities.

§18-7A-17. Statement and computation of teachers' service.

- 1 Under such rules and regulations as the retirement
- 2 board may adopt, each teacher shall file a detailed
- 3 statement of his length of service as a teacher for which
- 4 he claims credit. The retirement board shall determine
- 5 what part of a year is the equivalent of a year of service.
- 6 In computing such service, however, it shall credit no
- 7 period of more than a month's duration during which

8 a member was absent without pay, nor shall it credit
9 for more than one year of service performed in any
10 calendar year.

11 For the purpose of this article, the retirement board
12 shall grant prior service credit to new entrants and
13 other members of the retirement system for service in
14 any of the armed forces of the United States in any
15 period of national emergency within which a Federal
16 Selective Service Act was in effect. For purposes of this
17 section, "armed forces" shall include Women's Army
18 Corps, Women's Appointed Volunteers for Emergency
19 Service, Army Nurse Corps, Spars, Women's Reserve
20 and other similar units officially parts of the military
21 service of the United States. Such military service shall
22 be deemed equivalent to public school teaching, and the
23 salary equivalent for each year of such service shall be
24 the actual salary of the member as a teacher for his first
25 year of teaching after discharge from military service.
26 Prior service credit for military service shall not exceed
27 ten years for any one member, nor shall it exceed
28 twenty-five percent of total service at the time of
29 retirement.

30 For service as a teacher in the employment of the
31 federal government, or a state or territory of the United
32 States, or a governmental subdivision of such state or
33 territory, the retirement board shall grant credit to the
34 member: *Provided*, That the member shall pay to the
35 system double the amount he contributed during the
36 first full year of current employment, times the number
37 of years for which credit is granted, plus interest at a
38 rate to be determined by the retirement board. Such
39 interest shall be deposited in the reserve fund and
40 service credit so granted at the time of retirement shall
41 not exceed the lesser of ten years or fifty percent of the
42 member's total service as a teacher in West Virginia.
43 Any transfer of out-of-state service, as provided in this
44 article, shall not be used to establish eligibility for a
45 retirement allowance and the retirement board shall
46 grant credit for such transferred service as additional
47 service only: *Provided, however*, That a transfer of out-
48 of-state service shall be prohibited if such service is used

49 to obtain a retirement benefit from another retirement
50 system: *Provided further*, That salaries paid to members
51 for service prior to entrance into the retirement system
52 shall not be used to compute the average final salary of
53 such member under the retirement system.

54 Service credit for members or retired members shall
55 not be denied on the basis of minimum income regula-
56 tions promulgated by the teachers retirement board:
57 *Provided*, That the member or retired member shall pay
58 to the system the amount he would have contributed
59 during the year or years of public school service for
60 which credit was denied as a result of such minimum
61 income regulations of the teachers retirement board.

62 No members shall be deemed absent from service
63 while serving as a member or employee of the Legisla-
64 ture of the state of West Virginia during any duly
65 constituted session of that body or while serving as an
66 elected member of a county commission during any duly
67 constituted session of that body: *Provided*, That the
68 member makes contributions to the system equal to
69 what would have been contributed during the period of
70 absence had he performed his duties.

71 No member shall be deemed absent from service as
72 a teacher while serving as an officer with a statewide
73 professional teaching association, or who has served in
74 such capacity, and no retired teacher, who served in
75 such capacity while a member, shall be deemed to have
76 been absent from service as a teacher by reason of such
77 service: *Provided*, That the period of service credit
78 granted for such service shall not exceed six years:
79 *Provided, however*, That a member or retired teacher
80 who is serving or has served as an officer of a statewide
81 professional teaching association shall make deposits to
82 the teachers retirement board, for the time of any such
83 absence, in an amount double the amount which he
84 would have contributed in his regular assignment for a
85 like period of time.

86 The teachers retirement board shall grant service
87 credit to any former or present member of the West
88 Virginia public employees retirement system who has

89 been a contributing member for more than three years,
90 for service previously credited by the public employees
91 retirement system, and (1) shall require the transfer of
92 the member's contributions to the teachers retirement
93 system or (2) shall require a repayment of the amount
94 withdrawn any time prior to the member's retirement:
95 *Provided*, That there shall be added by the member to
96 the amounts transferred or repaid under this paragraph
97 an amount which shall be sufficient to equal the
98 contributions he would have made had the member been
99 under the teachers retirement system during the period
100 of his membership in the public employees retirement
101 system plus interest at a rate of six percent compounded
102 annually from the date of withdrawal to the date of
103 payment. The interest paid shall be deposited in the
104 reserve fund.

105 For service as a teacher in an elementary or second-
106 ary parochial school, located within this state and fully
107 accredited by the West Virginia department of educa-
108 tion, the retirement board shall grant credit to the
109 member: *Provided*, That the member shall pay to the
110 system double the amount contributed during the first
111 full year of current employment, times the number of
112 years for which credit is granted, plus interest at a rate
113 to be determined by the retirement board. Such interest
114 shall be deposited in the reserve fund and service so
115 granted at the time of retirement shall not exceed the
116 lesser of ten years or fifty percent of the member's total
117 service as a teacher in the West Virginia public school
118 system. Any transfer of parochial school service, as
119 provided in this section, may not be used to establish
120 eligibility for a retirement allowance and the board
121 shall grant credit for such transfer as additional service
122 only: *Provided, however*, That a transfer of parochial
123 school service is prohibited if such service is used to
124 obtain a retirement benefit from another retirement
125 system.

126 If a member is not eligible for prior service credit or
127 pension as provided in this article, then his prior service
128 shall not be deemed a part of his total service.

129 A member who withdrew from membership shall be

130 permitted to regain his former membership rights as
131 specified in section thirteen of this article only in case
132 he has served two years since his last withdrawal.

133 Subject to the above provisions, the board shall verify
134 as soon as practicable the statements of service submit-
135 ted. The retirement board shall issue prior service
136 certificates to all persons eligible therefor under the
137 provisions of this article. Such certificates shall state the
138 length of such prior service credit, but in no case shall
139 the prior service credit exceed forty years.

§18-7A-26. Computation of annuities.

1 Annuitants whose annuities were approved by the
2 retirement board effective before July first, one thou-
3 sand nine hundred eighty, shall be paid the annuities
4 which were approved by the retirement board.

5 Annuities approved by the board effective after June
6 thirty, one thousand nine hundred eighty, shall be
7 computed as provided herein.

8 Upon establishment of eligibility for a retirement
9 allowance, a member shall be granted an annuity which
10 shall be the sum of the following:

11 (a) Two percent of the member's average salary
12 multiplied by his total service credit as a teacher. In this
13 paragraph "average salary" shall mean the average of
14 the highest annual salaries received by the member
15 during any five years contained within his last fifteen
16 years of total service credit: *Provided*, That the highest
17 annual salary used in this calculation for certain
18 members employed by the West Virginia board of
19 regents at institutions of higher education under its
20 control shall be four thousand eight hundred dollars, as
21 provided by section fourteen-a of this article and
22 chapter;

23 (b) The actuarial equivalent of the voluntary deposits
24 of the member in his individual account up to the time
25 of his retirement, with regular interest.

26 The disability annuities of all teachers retired for
27 disability shall be based upon a disability table prepared

28 by a competent actuary approved by the retirement
29 board.

30 Upon the death of an annuitant who qualified for an
31 annuity as a surviving spouse or because of permanent
32 disability, the estate of the deceased or beneficiary
33 designated for such purpose, shall be paid the differ-
34 ence, if any, between the member's contributions with
35 regular interest thereon, and the sum of the annuity
36 payments.

37 All annuities shall be paid in twelve monthly pay-
38 ments. In computing the monthly payments, fractions of
39 a cent shall be deemed a cent. The monthly payments
40 shall cease with the payment for the month within
41 which the beneficiary dies, and shall begin with the
42 payment for the month succeeding the month within
43 which the annuitant became eligible under this article
44 for the annuity granted; in no case, however, shall an
45 annuitant receive more than four monthly payments
46 which are retroactive after the board receives his
47 application for annuity. Beginning with the first day of
48 July, one thousand nine hundred ninety-four, the
49 monthly payments shall be made on the twenty-fifth day
50 of each month, except the month of December, when the
51 payment shall be made on the eighteenth day of
52 December. If the date of payment falls on a holiday,
53 Saturday or Sunday, then the payment shall be made
54 on the preceding workday.

55 In case the retirement board receives data affecting
56 the approved annuity of a retired teacher, the annuity
57 shall be changed in accordance with the data, the
58 change being effective with the payment for the month
59 within which the board received the new data.

60 Any person who has attained the age of sixty-five and
61 who has served at least twenty-five years as a teacher
62 prior to July one, one thousand nine hundred forty-one,
63 shall be eligible for prior service credit and for prior
64 service pensions as prescribed in this section.

**ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIRE-
MENT SYSTEM.**

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.

1 Beginning the first day of July, one thousand nine
2 hundred ninety-one, the teachers' defined contribution
3 retirement system shall be the single retirement
4 program for all new employees whose employment
5 commences on or after that date. No additional new
6 employees except as may be provided herein may be
7 admitted to the existing retirement system. Members of
8 the existing retirement system whose employment
9 continues beyond the first day of July, one thousand nine
10 hundred ninety-one, are not affected by this article and
11 shall continue to contribute and participate in the
12 existing system without change in provisions or benefits.

13 Notwithstanding the provisions of section twenty-
14 three, article seven-a of this chapter, any employee
15 whose employment terminates after the thirtieth day of
16 June, one thousand nine hundred ninety-one, who is
17 later reemployed by an employer shall be eligible for
18 membership only in the teachers' defined contribution
19 system: *Provided*, That if such reemployment with an
20 existing employer occurs not more than six months after
21 the employee's previous employment, he or she shall be
22 entitled to readmission to the existing retirement system
23 in which he or she was originally a member: *Provided*,
24 *however*, That if such employee has ten or more years
25 of credited service in the existing retirement system, he
26 or she shall be entitled to readmission into the existing
27 retirement system in which he or she was originally a
28 member, so long as he or she has not withdrawn his or
29 her contributions from the existing retirement system:
30 *Provided further*, That if such employee has withdrawn
31 his or her contribution from the existing retirement
32 system, then readmission shall not be permitted and the
33 employee will be entitled only to the defined contribu-
34 tion system.

35 An employee whose employment with an employer
36 was suspended or terminated while he or she served as
37 an officer with a statewide professional teaching
38 association is eligible for readmission to the existing
39 retirement system in which he or she was a member.

40 An employee whose employment with an employer or
41 an existing employer is suspended as a result of an
42 approved leave of absence, approved maternity or
43 paternity break in service, or any other approved break
44 in service authorized by the board, is eligible for
45 readmission to the existing retirement system in which
46 he or she was a member.

47 In all cases where a question exists as to readmission
48 to membership in the existing retirement system, the
49 board shall decide the question.

CHAPTER 50

(Com. Sub. for H. B. 4546—Delegate Houvouras)

[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.

1 Compulsory school attendance shall begin with the
2 school year in which the sixth birthday is reached prior
3 to the first day of September of such year or upon
4 enrolling in a publicly supported kindergarten program
5 and continue to the sixteenth birthday.

6 Exemption from the foregoing requirements of
7 compulsory public school attendance shall be made on
8 behalf of any child for the following causes or conditions,
9 each such cause or condition being subject to confirma-
10 tion by the attendance authority of the county:

11 *Exemption A. Instruction in a private, parochial or*
12 *other approved school.* — Such instruction shall be in a
13 school approved by the county board of education and
14 for a time equal to the school term of the county for the
15 year. In all such schools it shall be the duty of the
16 principal or other person in control, upon the request of
17 the county superintendent of schools, to furnish to the
18 county board of education such information and records
19 as may be required with respect to attendance, instruc-
20 tion and progress of pupils enrolled between the
21 entrance age and sixteen years;

22 *Exemption B. Instruction in home or other approved*
23 *place.* — (a) Such instruction shall be in the home of
24 such child or children or at some other place approved
25 by the county board of education and for a time equal
26 to the school term of the county. If such request for home
27 instruction is denied by the county board of education,
28 good and reasonable justification for such denial must
29 be furnished in writing to the applicant by the county
30 board of education. The instruction in such cases shall
31 be conducted by a person or persons who, in the
32 judgment of the county superintendent and county
33 board of education, are qualified to give instruction in
34 subjects required to be taught in the free elementary
35 schools of the state. It shall be the duty of the person
36 or persons providing the instruction, upon request of the
37 county superintendent, to furnish to the county board of
38 education such information and records as may be
39 required from time to time with respect to attendance,
40 instruction and progress of pupils enrolled between the
41 entrance age and sixteen years receiving such instruc-
42 tion. The state department of education shall develop
43 guidelines for the homeschooling of special education
44 students including alternative assessment measures to
45 assure that satisfactory academic progress is achieved.

46 (b) Notwithstanding the provisions of subsection (a) of

47 this Exemption B, the person or persons providing home
48 instruction meet the requirements for Exemption B
49 when the conditions of this subsection are met: *Provided,*
50 That the county superintendent shall have the right to
51 seek from the circuit court of the county an order
52 denying the home instruction, which order may be
53 granted upon a showing of clear and convincing
54 evidence that the child will suffer educational neglect
55 or that there are other compelling reasons to deny home
56 instruction.

57 (1) The person or persons providing home instruction
58 present to the county superintendent or county board of
59 education a notice of intent to provide home instruction
60 and the name and address of any child of compulsory
61 school age to be instructed: *Provided,* That if a child is
62 enrolled in a public school, notice of intent to provide
63 home instruction shall be given at least two weeks prior
64 to withdrawing such child from public school;

65 (2) The person or persons providing home instruction
66 submit satisfactory evidence of (i) a high school diploma
67 or equivalent and (ii) formal education at least four
68 years higher than the most academically advanced child
69 for whom the instruction will be provided;

70 (3) The person or persons providing home instruction
71 outline a plan of instruction for the ensuing school year;
72 and

73 (4) The person or persons providing home instruction
74 shall annually obtain an academic assessment of the
75 child for the previous school year. This shall be satisfied
76 in one of the following ways:

77 (i) Any child receiving home instruction annually
78 takes a standardized test, to be administered at a public
79 school in the county where the child resides, or admin-
80 istered by a licensed psychologist or other person
81 authorized by the publisher of the test, or administered
82 by a person authorized by the county superintendent or
83 county board of education. The child shall be adminis-
84 tered a test which has been normed by the test publisher
85 on that child's age or grade group. In no event may the
86 child's parent or legal guardian administer the test.

87 Where a test is administered outside of a public school,
88 the child's parent or legal guardian shall pay the cost
89 of administering the test. The public school or other
90 qualified person shall administer to children of compul-
91 sory school age the Comprehensive Test of Basic Skills,
92 the California achievement test, the Stanford achieve-
93 ment test, or the Iowa tests of basic skills, achievement
94 and proficiency, or an individual standardized achieve-
95 ment test that is nationally normed and provides
96 statistical results which test will be selected by the
97 public school, or other person administering the test, in
98 the subjects of language, reading, social studies, science
99 and mathematics; and shall be administered under
100 standardized conditions as set forth by the published
101 instructions of the selected test. No test shall be
102 administered if the publication date is more than ten
103 years from the date of the administration of the test.
104 Each child's test results shall be reported as a national
105 percentile for each of the six subjects tested. Each
106 child's test results shall be made available on or before
107 the thirtieth day of June of the school year in which the
108 test is to be administered to the person or persons
109 providing home instruction, the child's parent or legal
110 guardian and the county superintendent. Upon request
111 of a duly authorized representative of the West Virginia
112 department of education, each child's test results shall
113 be furnished by the person or persons providing home
114 instruction, or by the child's parent or legal guardian,
115 to the state superintendent of schools. Upon notification
116 of the mean of the child's test results for any single year
117 has fallen below the fortieth percentile, the county board
118 of education shall notify the parents or legal guardian
119 of said child, in writing, of the services available to
120 assist in the assessment of the child's eligibility for
121 special education services: *Provided*, That the identifi-
122 cation of a disability shall not preclude the continuation
123 of home schooling.

124 If the mean of the child's test results for any single
125 year for language, reading, social studies, science and
126 mathematics fall below the fortieth percentile on the
127 selected tests, then the person or persons providing
128 home instruction shall initiate a remedial program to

129 foster achievement above that level and the student shall
130 show improvement. If, after two calendar years, the
131 mean of the child's test results fall below the fortieth
132 percentile level, home instruction shall no longer satisfy
133 the compulsory school attendance requirement exemp-
134 tion; or

135 (ii) The county superintendent is provided with a
136 written narrative indicating that a portfolio of samples
137 of the child's work has been reviewed and that the
138 child's academic progress for the year is in accordance
139 with the child's abilities. This narrative shall be
140 prepared by a certified teacher or other person mutually
141 agreed upon by the parent or legal guardian and the
142 county superintendent. It shall be submitted on or
143 before the thirtieth day of June of the school year
144 covered by the portfolio. The parent or legal guardian
145 shall be responsible for payment of fees charged for the
146 narrative; or

147 (iii) Evidence of an alternative academic assessment
148 of the child's proficiency mutually agreed upon by the
149 parent or legal guardian and the county superintendent
150 is submitted to the county superintendent by the
151 thirtieth day of June of the school year being assessed.
152 The parent or legal guardian shall be responsible for
153 payment of fees charged for the assessment.

154 The superintendent or a designee shall offer such
155 assistance, including textbooks, other teaching materials
156 and available resources, as may assist the person or
157 persons providing home instruction subject to their
158 availability. Any child receiving home instruction may,
159 upon approval of the county board of education, exercise
160 the option to attend any class offered by the county
161 board of education as the person or persons providing
162 home instruction may deem appropriate subject to
163 normal registration and attendance requirements;

164 *Exemption C. Physical or mental incapacity.* —
165 Physical or mental incapacity shall consist of incapacity
166 for school attendance and the performance of school
167 work. In all cases of prolonged absence from school due
168 to incapacity of the child to attend, the written state-
169 ment of a licensed physician or authorized school nurse

170 shall be required under the provisions of this article:
171 *Provided*, That in all cases incapacity shall be narrowly
172 defined and in no case shall the provisions of this article
173 allow for the exclusion of the mentally, physically,
174 emotionally or behaviorally handicapped child otherwise
175 entitled to a free appropriate education;

176 *Exemption D. Residence more than two miles from*
177 *school or school bus route.* — The distance of residence
178 from a school, or school bus route providing free
179 transportation, shall be reckoned by the shortest
180 practicable road or path, which contemplates travel
181 through fields by right of permission from the land-
182 holders or their agents. It shall be the duty of the county
183 board of education, subject to written consent of
184 landholders, or their agents, to provide and maintain
185 safe foot bridges across streams off the public highways
186 where such are required for the safety and welfare of
187 pupils whose mode of travel from home to school or to
188 school bus route must necessarily be other than along
189 the public highway in order for said road or path to be
190 not over two miles from home to school or to school bus
191 providing free transportation;

192 *Exemption E. Hazardous conditions.* — Conditions
193 rendering school attendance impossible or hazardous to
194 the life, health or safety of the child;

195 *Exemption F. High school graduation.* — Such
196 exemption shall consist of regular graduation from a
197 standard senior high school;

198 *Exemption G. Granting work permits.* — The county
199 superintendent may, after due investigation, grant work
200 permits to youths under sixteen years of age, subject to
201 state and federal labor laws and regulations: *Provided*,
202 That a work permit may not be granted on behalf of any
203 youth who has not completed the eighth grade of school;

204 *Exemption H. Serious illness or death in the imme-*
205 *diately family of the pupil.* — It is expected that the county
206 attendance director will ascertain the facts in all cases
207 of such absences about which information is inadequate
208 and report same to the county superintendent of schools;

209 *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.

CHAPTER 51

(Com. Sub. for S. B. 23—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 12, 1994; in effect July 1, 1994. Approved by the Governor.]

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.
4. Salaries, Wages and Other Benefits.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-13. Guidelines for full-day and half-day cooks.

- 1 Each county board of education shall: (1) Require
- 2 each school to report: (a) The number of meals served;
- 3 (b) the number of cooks employed; and (c) the average
- 4 number of meals served per cooks hours worked; and (2)
- 5 submit a county-wide report to the state superintendent
- 6 of schools delineating the above information by the first
- 7 day of November, one thousand nine hundred ninety-
- 8 four. The state superintendent of schools shall report
- 9 such information to the legislative oversight commission
- 10 on education accountability by the first day of January,

11 one thousand nine hundred ninety-five.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§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.

1 (a) Each teacher shall receive the amount prescribed
 2 in "state minimum salary schedule I": *Provided*, That
 3 effective the first day of July, one thousand nine
 4 hundred ninety-four, and thereafter, each teacher shall
 5 receive the amount prescribed in the "state minimum
 6 salary schedule" as set forth in this section, specific
 7 additional amounts prescribed in this section or article,
 8 and any county supplement in effect in a county
 9 pursuant to section five-a of this article during the
 10 contract year.

11 STATE MINIMUM SALARY SCHEDULE I

12	(1)	(2)	(3)	(4)	(5)	(6)	(7)
13	Years	4th	3rd	2nd	A.B.	A.B.	M.A.
	Exp.	Class	Class	Class	A.B.	+15	M.A.
14	0	16,816	17,453	17,708	18,918	19,653	21,361
15	1	17,032	17,669	17,924	19,318	20,053	21,761
16	2	17,248	17,886	18,141	19,718	20,453	22,161
17	3	17,465	18,102	18,357	20,118	20,853	22,561
18	4	17,917	18,554	18,810	20,754	21,489	23,197
19	5	18,133	18,771	19,026	21,154	21,889	23,597
20	6	18,350	18,987	19,242	21,554	22,289	23,997
21	7		19,203	19,459	21,954	22,689	24,397
22	8		19,420	19,675	22,354	23,089	24,797
23	9			19,891	22,754	23,489	25,197
24	10			20,107	23,155	23,890	25,598
25	11				23,555	24,290	25,998
26	12				23,955	24,690	26,398
27	13				24,355	25,090	26,798
28	14						27,198
29	15						27,598
30	16						27,998
31	17						

32	18			
33	19			
34		(8)	(9)	(10)
35	Years	M.A.	M.A.	Doc-
36	Exp.	+15	+30	torate
37	0	22,096	22,831	23,831
38	1	22,496	23,231	24,231
39	2	22,896	23,631	24,631
40	3	23,296	24,031	25,031
41	4	23,932	24,667	25,667
42	5	24,332	25,067	26,067
43	6	24,732	25,467	26,467
44	7	25,132	25,867	26,867
45	8	25,532	26,267	27,267
46	9	25,932	26,667	27,667
47	10	26,333	27,068	28,068
48	11	26,733	27,468	28,468
49	12	27,133	27,868	28,868
50	13	27,533	28,268	29,268
51	14	27,933	28,668	29,668
52	15	28,333	29,068	30,068
53	16	28,733	29,468	30,468
54	17		29,868	30,868
55	18		30,268	31,268
56	19		30,668	31,668

57 STATE MINIMUM SALARY SCHEDULE

58	(1)	(2)	(3)	(4)	(5)	(6)	(7)
59	Years	4th	3rd	2nd	A.B.	A.B.	M.A.
	Exp.	Class	Class	Class	A.B.	+15	M.A.
60	0	17,316	17,953	18,208	19,418	20,153	21,861
61	1	17,572	18,209	18,464	19,858	20,593	22,301
62	2	17,828	18,466	18,721	20,298	21,033	22,741
63	3	18,085	18,722	18,977	20,738	21,473	23,181
64	4	18,577	19,214	19,470	21,414	22,149	23,857
65	5	18,833	19,471	19,726	21,854	22,589	24,297
66	6	19,090	19,727	19,982	22,294	23,029	24,737
67	7		19,983	20,239	22,734	23,469	25,177
68	8		20,240	20,495	23,174	23,909	25,617
69	9			20,751	23,614	24,349	26,057
70	10			21,007	24,055	24,790	26,498

71	11			24,495	25,230	26,938
72	12			24,935	25,670	27,378
73	13			25,375	26,110	27,818
74	14					28,258
75	15					28,698
76	16					29,138
77	17					
78	18					
79	19					
80		(8)	(9)	(10)	(11)	
81	Years	M.A.	M.A.	M.A.	Doc-	
82	Exp.	+15	+30	+45	torate	
83	0	22,596	23,331	24,066	25,066	
84	1	23,036	23,771	24,506	25,506	
85	2	23,476	24,211	24,946	25,946	
86	3	23,916	24,711	25,386	26,386	
87	4	24,592	25,327	26,062	27,062	
88	5	25,332	25,767	26,502	27,502	
89	6	25,472	26,207	26,942	27,942	
90	7	25,912	26,647	27,382	28,382	
91	8	26,352	27,087	27,822	28,822	
92	9	26,792	27,527	28,262	29,262	
93	10	27,233	27,968	28,703	29,703	
94	11	27,673	28,408	29,143	30,143	
95	12	28,113	28,848	29,583	30,583	
96	13	28,553	29,288	30,023	31,023	
97	14	28,993	29,728	30,463	31,463	
98	15	29,433	30,168	30,903	31,903	
99	16	29,873	30,608	31,343	32,343	
100	17		31,048	31,783	32,783	
101	18		31,488	32,223	33,223	
102	19		31,928	32,663	33,663	

103 (b) Six hundred dollars shall be paid annually to each
 104 classroom teacher who has at least twenty years of
 105 teaching experience. Such payments: (i) Shall be in
 106 addition to any amounts prescribed in the "state
 107 minimum salary schedule"; (ii) shall be paid in equal
 108 monthly installments; and (iii) shall be deemed a part
 109 of the state minimum salaries for teachers.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

1 The state board of education shall establish the
2 minimum salary schedule for teachers where specialized
3 training may be required for vocational, technical and
4 adult education, and such other permits as may be
5 authorized by said board.

6 On and after the first day of July, one thousand nine
7 hundred eighty-five, any vocational industrial, technical,
8 occupational home economics, or health occupations
9 teacher who is required to hold a vocational certificate
10 and is paid a salary equivalent to the amount prescribed
11 for "A.B. + 15" training classification in the state
12 minimum salary schedule for teachers under section two
13 of this article shall, upon application therefor, receive
14 advanced salary classification and be entitled to
15 increased compensation on and after such date in
16 respect to and based upon additional semester hours,
17 approved by the state board of education and completed
18 either prior to or subsequent to such date. All such hours
19 earned must be from a regionally accredited institution
20 of higher education.

21 The advanced salary classification shall be as follows:

22 (1) Those who have earned fifteen such additional
23 semester hours shall receive an amount equal to that
24 prescribed for the "M.A." training classification under
25 section two of this article.

26 (2) Those who have earned thirty such additional
27 semester hours shall receive an amount equal to that
28 prescribed for the "M.A. + 15" training classification
29 under section two of this article.

30 (3) Those who have earned forty-five such additional
31 semester hours shall receive an amount equal to that
32 prescribed for the "M.A. + 30" training classification
33 under section two of this article.

34 (4) Those who have earned sixty such additional
35 semester hours shall receive an amount equal to that
36 prescribed for the "M.A. + 45" training classification
37 under section two of this article.

38 Any such teacher who has a permanent vocational
 39 certificate and who has earned or earns a bachelor's
 40 degree prior or subsequent to the issuance of such
 41 certificate shall be entitled to receive the amount
 42 prescribed for the "M.A. + 30" training classification
 43 upon application: *Provided*, That any such teacher who
 44 has a permanent vocational certificate and who has
 45 earned or earns fifteen graduate hours prior or subse-
 46 quent to the issuance of such certificate shall be entitled
 47 to receive the amount prescribed for the "M.A. + 45"
 48 training classification upon application therefor, such
 49 advanced salary to take effect immediately upon
 50 qualification therefor: *Provided, however*, That any
 51 vocational teacher receiving the amount prescribed for
 52 the "M.A. + 30" training classification under prior
 53 enactments of this section who have not been issued a
 54 permanent vocational certificate shall not have such
 55 salary reduced as a result of this section: *Provided*
 56 *further*, That any teacher with a vocational certificate
 57 and under contract for the school year one thousand nine
 58 hundred eighty-five—eighty-six who has earned a
 59 bachelor's degree prior to the end of such school year
 60 shall be entitled to receive the amount prescribed for the
 61 "M.A. + 30" training classification, upon application
 62 therefor, for the school year beginning on the first day
 63 of July, one thousand nine hundred eighty-six, and
 64 thereafter.

65 No teacher holding a valid professional certificate
 66 shall incur a salary reduction resulting from assignment
 67 out of the teacher's field by the superintendent, with the
 68 approval of the county board, under any authorization
 69 or regulation of the state board.

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

1 STATE MINIMUM PAY SCALE PAY GRADE									
2	3 Years								
3	4 of Em-								
4	5 ploy-								
5	ment	A	B	C	D	E	F	G	H
6	0	950	970	1,010	1,060	1,110	1,170	1,200	1,270
7	1	972	992	1,032	1,082	1,132	1,192	1,222	1,292

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

37 STATE MINIMUM PAY SCALE PAY GRADE I

38	Years								
39	of em-								
40	ploy-								
41	ment	A	B	C	D	E	F	G	H
42	0	1,010	1,030	1,070	1,120	1,170	1,230	1,260	1,330
43	1	1,035	1,055	1,095	1,145	1,195	1,255	1,285	1,355
44	2	1,060	1,080	1,120	1,170	1,220	1,280	1,310	1,380
45	3	1,085	1,105	1,145	1,195	1,245	1,305	1,335	1,405
46	4	1,110	1,130	1,170	1,220	1,270	1,330	1,360	1,430
47	5	1,135	1,155	1,195	1,245	1,295	1,355	1,385	1,455
48	6	1,160	1,180	1,220	1,270	1,320	1,380	1,410	1,480

49	7	1,185	1,205	1,245	1,295	1,345	1,405	1,435	1,505
50	8	1,210	1,230	1,270	1,320	1,370	1,430	1,460	1,530
51	9	1,235	1,255	1,295	1,345	1,395	1,455	1,485	1,555
52	10	1,260	1,280	1,320	1,370	1,420	1,480	1,510	1,580
53	11	1,285	1,305	1,345	1,395	1,445	1,505	1,535	1,605
54	12	1,310	1,330	1,370	1,420	1,470	1,530	1,560	1,630
55	13	1,335	1,355	1,395	1,445	1,495	1,555	1,585	1,655
56	14	1,360	1,380	1,420	1,470	1,520	1,580	1,610	1,680
57	15	1,385	1,405	1,445	1,495	1,545	1,605	1,635	1,705
58	16	1,410	1,430	1,470	1,520	1,570	1,630	1,660	1,730
59	17	1,435	1,455	1,495	1,545	1,595	1,655	1,685	1,755
60	18	1,460	1,480	1,520	1,570	1,620	1,680	1,710	1,780
61	19	1,485	1,505	1,545	1,595	1,645	1,705	1,735	1,805
62	20	1,510	1,530	1,570	1,620	1,670	1,730	1,760	1,830
63	21	1,535	1,555	1,595	1,645	1,695	1,755	1,785	1,855
64	22	1,560	1,580	1,620	1,670	1,720	1,780	1,810	1,880
65	23	1,585	1,605	1,645	1,695	1,745	1,805	1,835	1,905
66	24	1,610	1,630	1,670	1,720	1,770	1,830	1,860	1,930
67	25	1,635	1,655	1,695	1,745	1,795	1,855	1,885	1,955
68	26	1,660	1,680	1,720	1,770	1,820	1,880	1,910	1,980
69	27	1,685	1,705	1,745	1,795	1,845	1,905	1,935	2,005
70	28	1,710	1,730	1,770	1,820	1,870	1,930	1,960	2,030
71	29	1,735	1,755	1,795	1,845	1,895	1,955	1,985	2,055
72	30	1,760	1,780	1,820	1,870	1,920	1,980	2,010	2,080

73	CLASS TITLE	PAY GRADE
74	Accountant I	D
75	Accountant II	E
76	Accountant III	F
77	Aide I	A
78	Aide II	B
79	Aide III	C
80	Aide IV	D
81	Audiovisual Technician	C
82	Auditor	G
83	Autism Mentor	E
84	Braille or Sign Language Specialist.....	E
85	Bus Operator	D
86	Buyer	F
87	Cabinetmaker	G
88	Cafeteria Manager	D
89	Carpenter I.....	E
90	Carpenter II	F

91	Chief Mechanic	G
92	Clerk I	B
93	Clerk II	C
94	Computer Operator	E
95	Cook I	A
96	Cook II	B
97	Cook III	C
98	Crew Leader	F
99	Custodian I	A
100	Custodian II	B
101	Custodian III	C
102	Custodian IV	D
103	Director or Coordinator of Services	H
104	Draftsman	D
105	Electrician I	F
106	Electrician II	G
107	Electronic Technician I	F
108	Electronic Technician II	G
109	Executive Secretary	G
110	Food Services Supervisor	G
111	Foreman	G
112	General Maintenance	C
113	Glazier	D
114	Graphic Artist	D
115	Groundsman	B
116	Handyman	B
117	Heating and Air Conditioning Mechanic I	E
118	Heating and Air Conditioning Mechanic II	G
119	Heavy Equipment Operator	E
120	Inventory Supervisor	D
121	Key Punch Operator	B
122	Locksmith	G
123	Lubrication Man	C
124	Machinist	F
125	Mail Clerk	D
126	Maintenance Clerk	C
127	Mason	G
128	Mechanic	F
129	Mechanic Assistant	E
130	Office Equipment Repairman I	F
131	Office Equipment Repairman II	G
132	Painter	E

133	Paraprofessional	F
134	Plumber I	E
135	Plumber II	G
136	Printing Operator	B
137	Printing Supervisor	D
138	Programmer	H
139	Roofing/Sheet Metal Mechanic	F
140	Sanitation Plant Operator	F
141	School Bus Supervisor	E
142	Secretary I	D
143	Secretary II	E
144	Secretary III	F
145	Supervisor of Maintenance	H
146	Supervisor of Transportation	H
147	Switchboard Operator-Receptionist	D
148	Truck Driver	D
149	Warehouse Clerk	C
150	Watchman	B
151	Welder	F

152 (1) The minimum monthly pay for each service
 153 employee whose employment is for a period of more than
 154 three and one-half hours a day shall be at least the
 155 amounts indicated in the "state minimum pay scale pay
 156 grade" and the minimum monthly pay and the min-
 157 imum monthly pay for each service employee whose
 158 employment is for a period of three and one-half hours
 159 or less a day shall be at least one half the amount
 160 indicated in the "state minimum pay scale pay grade"
 161 set forth in this section: *Provided*, That on and after the
 162 first day of July, one thousand nine hundred ninety-four,
 163 the minimum monthly pay for each service employee
 164 whose employment is for a period of more than three
 165 and one-half hours a day shall be at least the amounts
 166 indicated in the "state minimum pay scale pay grade I"
 167 as set forth in this section, and the minimum monthly
 168 pay for each service employee whose employment is for
 169 a period of three and one-half hours or less a day shall
 170 be at least one half the amount indicated in the "state
 171 minimum pay scale pay grade I" set forth in this section.

172 (2) An additional ten dollars per month shall be added
 173 to the minimum monthly pay of each service employee

174 who holds a high school diploma or its equivalent.

175 (3) An additional ten dollars per month shall also be
176 added to the minimum monthly pay of each service
177 employee who holds twelve college hours or comparable
178 credit obtained in a trade or vocational school as
179 approved by the state board of education.

180 (4) When any part of a school service employee's daily
181 shift of work is performed between the hours of six
182 o'clock p.m. and five o'clock a.m. following, the employee
183 shall be paid no less than an additional ten dollars per
184 month and one half of such pay shall be paid with local
185 funds.

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

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

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

202 (8) The minimum hourly rate of pay for extra duty
203 assignments as defined in section eight-b of this article
204 shall be no less than one seventh of the employee's daily
205 total salary for each hour the employee is involved in
206 performing the assignment and paid entirely from local
207 funds: *Provided*, That an alternative minimum hourly
208 rate of pay for performing extra duty assignments
209 within a particular category of employment may be
210 utilized if the alternate hourly rate of pay is approved
211 both by the county board of education and by the
212 affirmative vote of a two-thirds majority of the regular

213 full-time employees within that classification category of
214 employment within that county: *Provided, however,* That
215 the vote shall be by secret ballot if so requested by a
216 service personnel employee within that classification
217 category within that county. The salary for any fraction
218 of an hour the employee is involved in performing the
219 assignment shall be prorated accordingly. When per-
220 forming extra duty assignments, employees who are
221 regularly employed on a one-half day salary basis shall
222 receive the same hourly extra duty assignment pay
223 computed as though such an employee were employed
224 on a full-day salary basis.

225 (9) The minimum pay for any service personnel
226 employees engaged in the removal of asbestos material
227 or related duties required for asbestos removal shall be
228 their regular total daily rate of pay and no less than an
229 additional three dollars per hour or no less than five
230 dollars per hour for service personnel supervising
231 asbestos removal responsibilities for each hour these
232 employees are involved in asbestos related duties.
233 Related duties required for asbestos removal shall
234 include, but not be limited to, travel, preparation of the
235 work site, removal of asbestos, decontamination of the
236 work site, placing and removal of equipment and
237 removal of structures from the site. If any member of
238 an asbestos crew is engaged in asbestos related duties
239 outside of the employee's regular employment county,
240 the daily rate of pay shall be no less than the minimum
241 amount as established in the employee's regular employ-
242 ment county for asbestos removal and an additional
243 thirty dollars per each day the employee is engaged in
244 asbestos removal and related duties. The additional pay
245 for asbestos removal and related duties shall be payable
246 entirely from county funds. Before service personnel
247 employees may be utilized in the removal of asbestos
248 material or related duties, they shall have completed a
249 federal Environmental Protection Act approved train-
250 ing program and be licensed. The employer shall
251 provide all necessary protective equipment and main-
252 tain all records required by the Environmental Protec-
253 tion Act.

254 (10) For the purpose of qualifying for additional pay
 255 as provided in section eight, article five of this chapter,
 256 an aide shall be considered to be exercising the
 257 authority of a supervisory aide and control over pupils
 258 if the aide is required to supervise, control, direct,
 259 monitor, escort or render service to a child or children
 260 when not under the direct supervision of certificated
 261 professional personnel within the classroom, library,
 262 hallway, lunchroom, gymnasium, school building, school
 263 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.

1 The purpose of this section is to establish an employ-
2 ment term and class titles for service personnel. The
3 employment term for service personnel shall be no less
4 than ten months, a month being defined as twenty
5 employment days: *Provided*, That the county board of
6 education may contract with all or part of these
7 personnel for a longer term. The beginning and closing
8 dates of the ten-month employment term shall not
9 exceed forty-three weeks.

10 Service personnel employed on a yearly or twelve-
11 month basis may be employed by calendar months.
12 Whenever there is a change in job assignment during
13 the school year, the minimum pay scale and any county
14 supplement shall be applicable.

15 Service personnel employed in the same classification
16 for more than the two hundred day minimum employ-
17 ment term shall be paid for additional employment at
18 a daily rate of not less than the daily rate paid for the
19 two hundred day minimum employment term.

20 No service employee, without his agreement, shall be
21 required to report for work more than five days per
22 week and no part of any working day may be accum-
23 ulated by the employer for future work assignments,
24 unless the employee agrees thereto.

25 Should an employee whose regular work week is
26 scheduled from Monday through Friday agree to
27 perform any work assignments on a Saturday or
28 Sunday, the employee shall be paid for at least one-half
29 day of work for each such day he reports for work, and
30 if the employee works more than three and one-half
31 hours on any Saturday or Sunday, he shall be paid for
32 at least a full day of work for each such day.

33 Custodians, aides, maintenance, office and school
34 lunch employees required to work a daily work schedule
35 that is interrupted, that is, who do not work a continuous
36 period in one day, shall be paid additional compensation
37 which shall be equal to at least one eighth of their total
38 salary as provided by their state minimum salary and
39 any county pay supplement, and payable entirely from
40 county funds: *Provided*, That when engaged in duties of

41 transporting students exclusively, aides shall not be
42 regarded as working an interrupted schedule.

43 Upon the change in classification or upon meeting the
44 requirements of an advanced classification of or by any
45 employee, his salary shall be made to comply with the
46 requirements of this article, and to any county salary
47 schedule in excess of the minimum requirements of this
48 article, based upon his advanced classification and
49 allowable years of employment.

50 An employee's contract as provided in section five,
51 article two of this chapter shall state the appropriate
52 monthly salary the employee is to be paid, based on the
53 class title as provided in this article and any county
54 salary schedule in excess of the minimum requirements
55 of this article.

56 The column heads of the state minimum pay scale and
57 class titles, set forth in section eight-a of this article, are
58 defined as follows:

59 "Pay grade" means the monthly salary applicable to
60 class titles of service personnel.

61 "Years of employment" means the number of years
62 which an employee classified as service personnel has
63 been employed by a board of education in any position
64 prior to or subsequent to the effective date of this section
65 and including service in the armed forces of the United
66 States if the employee were employed at the time of his
67 induction. For the purpose of section eight-a of this
68 article, years of employment shall be limited to the
69 number of years shown and allowed under the state
70 minimum pay scale as set forth in section eight-a of this
71 article.

72 "Class title" means the name of the position or job held
73 by service personnel.

74 "Accountant I" means personnel employed to main-
75 tain payroll records and reports and perform one or
76 more operations relating to a phase of the total payroll.

77 "Accountant II" means personnel employed to main-
78 tain accounting records and to be responsible for the

79 accounting process associated with billing, budgets,
80 purchasing and related operations.

81 "Accountant III" means personnel who are employed
82 in the county board of education office to manage and
83 supervise accounts payable and/or payroll procedures.

84 "Aide I" means those personnel selected and trained
85 for teacher-aide classifications such as monitor aide,
86 clerical aide, classroom aide or general aide.

87 "Aide II" means those personnel referred to in the
88 "Aide I" classification who have completed a training
89 program approved by the state board of education, or
90 who hold a high school diploma or have received a
91 general educational development certificate. Only
92 personnel classified in an Aide II class title shall be
93 employed as an aide in any special education program.

94 "Aide III" means those personnel referred to in the
95 "Aide I" classification who hold a high school diploma
96 or a general educational development certificate, and
97 have completed six semester hours of college credit at
98 an institution of higher education or are employed as an
99 aide in a special education program and have one year's
100 experience as an aide in special education.

101 "Aide IV" means personnel referred to in the "Aide
102 I" classification who hold a high school diploma or a
103 general educational development certificate and who
104 have completed eighteen hours of state board-approved
105 college credit at a regionally accredited institution of
106 higher education, or who have completed fifteen hours
107 of state board-approved college credit at a regionally
108 accredited institution of higher education and success-
109 fully completed an in-service training program deter-
110 mined by the state board to be the equivalent of three
111 hours of college credit.

112 "Audiovisual technician" means personnel employed
113 to perform minor maintenance on audiovisual equip-
114 ment, films, supplies and the filling of requests for
115 equipment.

116 "Auditor" means personnel employed to examine and
117 verify accounts of individual schools and to assist schools

118 and school personnel in maintaining complete and
119 accurate records of their accounts.

120 “Autism mentor” means personnel who work with
121 autistic students and who meet standards and expe-
122 rience to be determined by the state board: *Provided*,
123 That the state board shall determine these standards
124 and experience on or before the first day of July, one
125 thousand nine hundred ninety-two.

126 “Braille or sign language specialist” means personnel
127 employed to provide braille and/or sign language
128 assistance to students.

129 “Bus operator” means personnel employed to operate
130 school buses and other school transportation vehicles as
131 provided by the state board of education.

132 “Buyer” means personnel employed to review and
133 write specifications, negotiate purchase bids and
134 recommend purchase agreements for materials and
135 services that meet predetermined specifications at the
136 lowest available costs.

137 “Cabinetmaker” means personnel employed to con-
138 struct cabinets, tables, bookcases and other furniture.

139 “Cafeteria manager” means personnel employed to
140 direct the operation of a food services program in a
141 school, including assigning duties to employees, approv-
142 ing requisitions for supplies and repairs, keeping
143 inventories, inspecting areas to maintain high standards
144 of sanitation, preparing financial reports and keeping
145 records pertinent to food services of a school.

146 “Carpenter I” means personnel classified as a carpen-
147 ter’s helper.

148 “Carpenter II” means personnel classified as a
149 journeyman carpenter.

150 “Chief mechanic” means personnel employed to be
151 responsible for directing activities which ensure that
152 student transportation or other board-owned vehicles
153 are properly and safely maintained.

154 “Clerk I” means personnel employed to perform
155 clerical tasks.

156 “Clerk II” means personnel employed to perform

157 general clerical tasks, prepare reports and tabulations
158 and operate office machines.

159 "Computer operator" means qualified personnel
160 employed to operate computers.

161 "Cook I" means personnel employed as a cook's helper.

162 "Cook II" means personnel employed to interpret
163 menus, to prepare and serve meals in a food service
164 program of a school and shall include personnel who
165 have been employed as a "Cook I" for a period of four
166 years, if such personnel have not been elevated to this
167 classification within that period of time.

168 "Cook III" means personnel employed to prepare and
169 serve meals, make reports, prepare requisitions for
170 supplies, order equipment and repairs for a food service
171 program of a school system.

172 "Crew leader" means personnel employed to organize
173 the work for a crew of maintenance employees to carry
174 out assigned projects.

175 "Custodian I" means personnel employed to keep
176 buildings clean and free of refuse.

177 "Custodian II" means personnel employed as a
178 watchman or groundsman.

179 "Custodian III" means personnel employed to keep
180 buildings clean and free of refuse, to operate the heating
181 or cooling systems and to make minor repairs.

182 "Custodian IV" means personnel employed as head
183 custodians. In addition to providing services as defined
184 in "Custodian III," their duties may include supervising
185 other custodian personnel.

186 "Director or coordinator of services" means personnel
187 who are assigned to direct a department or division.
188 Nothing herein shall prohibit professional personnel or
189 professional educators as defined in section one, article
190 one of this chapter, from holding this class title, but
191 professional personnel shall not be defined or classified
192 as service personnel unless the professional personnel
193 held a service personnel title under this section prior to

194 holding class title of "director or coordinator of
195 services": *Provided*, That funding for professional
196 personnel in positions classified as directors or coordi-
197 nators of services who were assigned prior to the first
198 day of May, one thousand nine hundred ninety-four,
199 shall not be required to be redirected from service
200 personnel categories as a result of this provision until
201 the first day of July, one thousand nine hundred ninety-
202 six. Thereafter, directors or coordinators of service
203 positions shall be classified as either a professional
204 personnel or service personnel position for state aid
205 formula funding purposes and funding for directors or
206 coordinators of service positions shall be based upon the
207 employment status of the director or coordinator either
208 as a professional personnel or service personnel.

209 "Draftsman" means personnel employed to plan,
210 design and produce detailed architectural/engineering
211 drawings.

212 "Electrician I" means personnel employed as an
213 apprentice electrician helper or who holds an electrician
214 helper license issued by the state fire marshal.

215 "Electrician II" means personnel employed as an
216 electrician journeyman or who holds a journeyman
217 electrician license issued by the state fire marshal.

218 "Electronic technician I" means personnel employed
219 at the apprentice level to repair and maintain electronic
220 equipment.

221 "Electronic technician II" means personnel employed
222 at the journeyman level to repair and maintain elec-
223 tronic equipment.

224 "Executive secretary" means personnel employed as
225 the county school superintendent's secretary or as a
226 secretary who is assigned to a position characterized by
227 significant administrative duties.

228 "Food services supervisor" means qualified personnel
229 not defined as professional personnel or professional
230 educators in section one, article one of this chapter,
231 employed to manage and supervise a county school
232 system's food service program. The duties would include

- 233 preparing in-service training programs for cooks and
234 food service employees, instructing personnel in the
235 areas of quantity cooking with economy and efficiency,
236 and keeping aggregate records and reports.
- 237 “Foremen” means skilled persons employed for
238 supervision of personnel who work in the areas of repair
239 and maintenance of school property and equipment.
- 240 “General maintenance” means personnel employed as
241 helpers to skilled maintenance employees and to
242 perform minor repairs to equipment and buildings of a
243 county school system.
- 244 “Glazier” means personnel employed to replace glass
245 or other materials in windows and doors and to do minor
246 carpentry tasks.
- 247 “Graphic artist” means personnel employed to pre-
248 pare graphic illustrations.
- 249 “Groundsmen” means personnel employed to perform
250 duties that relate to the appearance, repair and general
251 care of school grounds in a county school system.
252 Additional assignments may include the operation of a
253 small heating plant and routine cleaning duties in
254 buildings.
- 255 “Handyman” means personnel employed to perform
256 routine manual tasks in any operation of the county
257 school system.
- 258 “Heating and air conditioning mechanic I” means
259 personnel employed at the apprentice level to install,
260 repair and maintain heating and air conditioning plants
261 and related electrical equipment.
- 262 “Heating and air conditioning mechanic II” means
263 personnel employed at the journeyman level to install,
264 repair and maintain heating and air conditioning plants
265 and related electrical equipment.
- 266 “Heavy equipment operator” means personnel em-
267 ployed to operate heavy equipment.
- 268 “Inventory supervisor” means personnel who are
269 employed to supervise or maintain operations in the

- 270 receipt, storage, inventory and issuance of materials and
271 supplies.
- 272 “Key punch operator” means qualified personnel
273 employed to operate key punch machines or verifying
274 machines.
- 275 “Locksmith” means personnel employed to repair and
276 maintain locks and safes.
- 277 “Lubrication man” means personnel employed to
278 lubricate and service gasoline or diesel-powered equip-
279 ment of a county school system.
- 280 “Machinist” means personnel employed to perform
281 machinist tasks which include the ability to operate a
282 lathe, planer, shaper, threading machine and wheel
283 press. Such personnel should also have ability to work
284 from blueprints and drawings.
- 285 “Mail clerk” means personnel employed to receive,
286 sort, dispatch, deliver or otherwise handle letters,
287 parcels and other mail.
- 288 “Maintenance clerk” means personnel employed to
289 maintain and control a stocking facility to keep ade-
290 quate tools and supplies on hand for daily withdrawal
291 for all school maintenance crafts.
- 292 “Mason” means personnel employed to perform tasks
293 connected with brick and block laying and carpentry
294 tasks related to such laying.
- 295 “Mechanic” means personnel employed who can
296 independently perform skilled duties in the maintenance
297 and repair of automobiles, school buses and other
298 mechanical and mobile equipment to use in a county
299 school system.
- 300 “Mechanic assistant” means personnel employed as a
301 mechanic apprentice and helper.
- 302 “Multi-classification” means personnel employed to
303 perform tasks that involve the combination of two or
304 more class titles in this section. In such instances the
305 minimum salary scale shall be the higher pay grade of
306 the class titles involved.

307 "Office equipment repairman I" means personnel
308 employed as an office equipment repairman apprentice
309 or helper.

310 "Office equipment repairman II" means personnel
311 responsible for servicing and repairing all office
312 machines and equipment. Personnel shall be responsible
313 for parts being purchased necessary for the proper
314 operation of a program of continuous maintenance and
315 repair.

316 "Painter" means personnel employed to perform
317 duties of painting, finishing and decorating of wood,
318 metal and concrete surfaces of buildings, other struc-
319 tures, equipment, machinery and furnishings of a
320 county school system.

321 "Paraprofessional" means a person certified pursuant
322 to section two-a, article three of this chapter to perform
323 duties in a support capacity including, but not limited
324 to, facilitating in the instruction and direct or indirect
325 supervision of pupils under the direction of a principal,
326 a teacher, or another designated professional educator:
327 *Provided*, That no person employed on the effective date
328 of this section in the position of an aide may be reduced
329 in force or transferred to create a vacancy for the
330 employment of a paraprofessional.

331 "Plumber I" means personnel employed as an ap-
332 prentice plumber and helper.

333 "Plumber II" means personnel employed as a journey-
334 man plumber.

335 "Printing operator" means personnel employed to
336 operate duplication equipment, and as required, to cut,
337 collate, staple, bind and shelve materials.

338 "Printing supervisor" means personnel employed to
339 supervise the operation of a print shop.

340 "Programmer" means personnel employed to design
341 and prepare programs for computer operation.

342 "Roofing/sheet metal mechanic" means personnel
343 employed to install, repair, fabricate and maintain roofs,
344 gutters, flashing and duct work for heating and

345 ventilation.

346 "Sanitation plant operator" means personnel em-
347 ployed to operate and maintain a water or sewage
348 treatment plant to ensure the safety of the plant's
349 effluent for human consumption or environmental
350 protection.

351 "School bus supervisor" means qualified personnel
352 employed to assist in selecting school bus operators and
353 routing and scheduling of school buses, operate a bus
354 when needed, relay instructions to bus operators, plan
355 emergency routing of buses and promoting good
356 relationships with parents, pupils, bus operators and
357 other employees.

358 "Secretary I" means personnel employed to transcribe
359 from notes or mechanical equipment, receive callers,
360 perform clerical tasks, prepare reports and operate
361 office machines.

362 "Secretary II" means personnel employed in any
363 elementary, secondary, kindergarten, nursery, special
364 education, vocational or any other school as a secretary.
365 The duties may include performing general clerical
366 tasks, transcribing from notes or stenotype or mechan-
367 ical equipment or a sound-producing machine, prepar-
368 ing reports, receiving callers and referring them to
369 proper persons, operating office machines, keeping
370 records and handling routine correspondence. There is
371 nothing implied herein that would prevent such em-
372 ployees from holding or being elevated to a higher
373 classification.

374 "Secretary III" means personnel assigned to the
375 county board of education office administrators in
376 charge of various instructional, maintenance, transpor-
377 tation, food services, operations and health departments,
378 federal programs or departments with particular
379 responsibilities of purchasing and financial control or
380 any personnel who have served in a position which meets
381 the definition of "Secretary II" or "Secretary III" herein
382 for eight years.

383 "Supervisor of maintenance" means skilled personnel

384 not defined as professional personnel or professional
385 educators as in section one, article one of this chapter.
386 The responsibilities would include directing the upkeep
387 of buildings and shops, issuing instructions to subordi-
388 nates relating to cleaning, repairs and maintenance of
389 all structures and mechanical and electrical equipment
390 of a board of education.

391 "Supervisor of transportation" means qualified
392 personnel employed to direct school transportation
393 activities, properly and safely, and to supervise the
394 maintenance and repair of vehicles, buses, and other
395 mechanical and mobile equipment used by the county
396 school system.

397 "Switchboard operator-receptionist" means personnel
398 employed to refer incoming calls, to assume contact with
399 the public, to direct and to give instructions as neces-
400 sary, to operate switchboard equipment and to provide
401 clerical assistance.

402 "Truck driver" means personnel employed to operate
403 light or heavy duty gasoline and diesel-powered vehicles.

404 "Warehouse clerk" means personnel employed to be
405 responsible for receiving, storing, packing and shipping
406 goods.

407 "Watchman" means personnel employed to protect
408 school property against damage or theft. Additional
409 assignments may include operation of a small heating
410 plant and routine cleaning duties.

411 "Welder" means personnel employed to provide
412 acetylene or electric welding services for a school
413 system.

414 In addition to the compensation provided for in
415 section eight-a of this article, for service personnel, each
416 service employee shall, notwithstanding any provisions
417 in this code to the contrary, be entitled to all service
418 personnel employee rights, privileges and benefits
419 provided under this or any other chapter of this code
420 without regard to such employee's hours of employment
421 or the methods or sources of compensation.

422 Service personnel whose years of employment exceed
423 the number of years shown and provided for under the
424 state minimum pay scale set forth in section eight-a of
425 this article may not be paid less than the amount shown
426 for the maximum years of employment shown and
427 provided for in the classification in which he is
428 employed.

429 The county boards shall review each service personnel
430 employee job classification annually and shall reclassify
431 all service employees as required by such job classifi-
432 cations. The state superintendent of schools is hereby
433 authorized to withhold state funds appropriated pursu-
434 ant to this article for salaries for service personnel who
435 are improperly classified by such county boards.
436 Further, he shall order county boards to correct
437 immediately any improper classification matter and
438 with the assistance of the attorney general shall take any
439 legal action necessary against any county board to
440 enforce such order.

441 No service employee, without his written consent, may
442 be reclassified by class title, nor may a service employee,
443 without his written consent, be relegated to any
444 condition of employment which would result in a
445 reduction of his salary, rate of pay, compensation or
446 benefits earned during the current fiscal year or which
447 would result in a reduction of his salary, rate of pay,
448 compensation or benefits for which he would qualify by
449 continuing in the same job position and classification
450 held during said fiscal year and subsequent years.

451 Any board failing to comply with the provisions of
452 this article may be compelled to do so by mandamus,
453 and shall be liable to any party prevailing against the
454 board for court costs and his reasonable attorney fee, as
455 determined and established by the court.

456 Notwithstanding any provisions in this code to the
457 contrary, service personnel who hold a continuing
458 contract in a specific job classification and are physi-
459 cally unable to perform the job's duties as confirmed by
460 a physician chosen by the employee shall be given
461 priority status over any employee not holding a contin-

462 uing contract in filling other service personnel job
463 vacancies if qualified as provided in section eight-e of
464 this article.

§18A-4-8g. Determination of seniority for service personnel.

1 The seniority for service personnel shall be deter-
2 mined in the following manner:

3 Seniority accumulation for a regular school service
4 employee shall begin on the date such employee enters
5 upon regular employment duties pursuant to a contract
6 as provided in section five, article two of this chapter
7 and shall continue until the employee's employment as
8 a regular employee is severed with the county board of
9 education. Seniority shall not cease to accumulate when
10 an employee is absent without pay as authorized by the
11 county board or the absence is due to illness or other
12 reasons over which the employee has no control as
13 authorized by the county board. Seniority accumulation
14 for a substitute employee shall begin upon the date the
15 employee enters upon the duties of a substitute as
16 provided in section fifteen, article four of this chapter,
17 after executing with the board a contract of employment
18 as provided in section five, article two of this chapter.
19 The seniority of a substitute employee, once established,
20 shall continue until such employee enters into the duties
21 of a regular employment contract as provided in section
22 five, article two of this chapter or employment as a
23 substitute with the county board of education is severed.
24 Seniority of a regular or substitute employee shall
25 continue to accumulate except during the time when an
26 employee is willfully absent from employment duties
27 because of a concerted work stoppage or strike or is
28 suspended without pay.

29 For all purposes including the filling of vacancies and
30 reduction in force, seniority shall be accumulated within
31 particular classification categories of employment as
32 those classification categories are referred to in section
33 eight-e of this article: *Provided*, That when implement-
34 ing a reduction in force, an employee with the least
35 seniority within a particular classification category shall

36 be properly released and placed on the preferred recall
37 list. The particular classification title held by an
38 employee within the classification category shall not be
39 taken into consideration when implementing a reduction
40 in force.

41 On or before the first day of September and the
42 fifteenth day of January of each school year, county
43 boards of education shall post at each county school or
44 working station the current seniority list or lists of each
45 school service classification. Each list shall contain the
46 name of each regularly employed school service person-
47 nel employed in each classification and the date that
48 each employee began performing his assigned duties in
49 each classification. Current seniority lists of substitute
50 school service personnel shall be available to employees
51 upon request at the county board of education office.

52 The seniority of an employee who transfers out of a
53 class title or classification category of employment and
54 subsequently returns to said class title or classification
55 category of employment shall be calculated as follows:

56 The county board of education shall establish the
57 number of calendar days between the date the employee
58 left the class title or category of employment in question
59 and the date of return to the class title or classification
60 category of employment. This number of days shall be
61 added to the employee's initial seniority date to establish
62 a new beginning seniority date within the class title or
63 classification category. The employee shall then be
64 considered as having held uninterrupted service within
65 the class title or classification category from the newly
66 established seniority date. The seniority of an employee
67 who has had a break in the accumulation of seniority
68 as a result of being willfully absent from employment
69 duties because of a concerted work stoppage or strike
70 shall be calculated in a like manner.

71 A substitute school service employee shall acquire
72 regular employment status and seniority if said em-
73 ployee receives a position pursuant to subsections (2) and
74 (5), section fifteen, article four of this chapter. County
75 boards of education shall not be prohibited from

76 providing any benefits of regular employment for
77 substitute employees, but such benefits shall not include
78 regular employee status and seniority.

79 If two or more employees accumulate identical
80 seniority, the priority shall be determined by a random
81 selection system established by the employees and
82 approved by the county board.

83 A board of education shall conduct such random
84 selection within thirty days upon said employees
85 establishing an identical seniority date. All employees
86 with an identical seniority date within the same class
87 title or classification category shall participate in the
88 random selection. As long as the affected employees hold
89 identical seniority within the same classification
90 category, the initial random selection conducted by the
91 board of education shall be permanent for the duration
92 of the employment within the same classification
93 category of said employees by the board of education.
94 This random selection priority shall apply to the filling
95 of vacancies and to the reduction in force of school
96 service personnel.

97 Service personnel who are employed in a classification
98 category of employment at the time when a vacancy is
99 posted in the same classification category of employment
100 shall be given first opportunity to fill such vacancy.

101 Seniority acquired as a substitute and as a regular
102 employee shall be calculated separately and shall not be
103 combined for any purpose. Seniority acquired within
104 different classification categories shall be calculated
105 separately: *Provided*, That when a school service
106 employee makes application for a position outside of the
107 classification category currently held, if the vacancy is
108 not filled by an applicant within the classification
109 category of the vacancy, the applicant shall combine all
110 regular employment seniority acquired for the purposes
111 of bidding on the position.

112 School service personnel who hold multi-classification
113 titles shall accrue seniority in each classification
114 category of employment which said employee holds and
115 shall be considered an employee of each classification

116 category contained within his multi-classification title.
117 Multi-classified employees shall be subject to reduction
118 in force in any category of employment contained within
119 their multi-classification title based upon the seniority
120 accumulated within said category of employment:
121 *Provided*, That if a multi-classified employee is reduced
122 in force in one classification category, said employee
123 shall retain employment in any of the other classifica-
124 tion categories that he holds within his multi-classifica-
125 tion title. In such a case, the county board of education
126 shall delete the appropriate classification title or
127 classification category from the contract of the multi-
128 classified employee.

129 When applying to fill a vacancy outside the classifi-
130 cation categories held by the multi-classified employee,
131 seniority acquired simultaneously in different classifica-
132 tion categories shall be calculated as if accrued in one
133 classification category only.

134 The seniority conferred herein shall apply retroac-
135 tively to all affected school service personnel, but the
136 rights incidental thereto shall commence as of the
137 effective date of this section.

§18A-4-15. Employment of service personnel substitutes.

1 The county board shall employ and the county
2 superintendent, subject to the approval of the county
3 board of education, shall assign substitute service
4 personnel on the basis of seniority to perform any of the
5 following duties:

6 (1) To fill the temporary absence of another service
7 employee;

8 (2) To fill the position of a regular service employee
9 on leave of absence: *Provided*, That if such leave of
10 absence is to extend beyond thirty days, the board,
11 within twenty working days from the commencement of
12 the leave of absence, shall give regular employee status
13 to a person hired to fill such position. The person
14 employed on a regular basis shall be selected under the
15 procedure set forth in section eight-b of this article. The
16 substitute shall hold such position and regular employee

17 status only until the regular employee shall be returned
18 to such position and the substitute shall have and shall
19 be accorded all rights, privileges and benefits pertain-
20 ing to such position;

21 (3) To perform the service of a service employee who
22 is authorized to be absent from duties without loss of
23 pay;

24 (4) To temporarily fill a vacancy in a permanent
25 position caused by severance of employment by the
26 resignation, transfer, retirement, permanent disability
27 or death of the regular service employee who had been
28 assigned to fill such position: *Provided*, That within
29 twenty working days from the commencement of the
30 vacancy, the board shall fill such vacancy under the
31 procedures set out in section eight-b of this article and
32 section five, article two of this chapter and such person
33 hired to fill the vacancy shall have and shall be accorded
34 all rights, privileges and benefits pertaining to such
35 position;

36 (5) To fill the vacancy created by a regular employee's
37 suspension: *Provided*, That if the suspension is for more
38 than thirty working days the substitute service em-
39 ployee shall be assigned to fill the vacancy on a regular
40 basis and shall have and be accorded all rights,
41 privileges and benefits pertaining to such position until
42 such termination by the county board of education
43 becomes final. If the suspended employee is not returned
44 to his job, the board shall fill the vacancy under the
45 procedures set out in section eight-b of this article and
46 section five, article two of this chapter; and

47 (6) To temporarily fill a vacancy in a newly created
48 position prior to employment of a service personnel on
49 a regular basis under the procedure set forth in section
50 eight-b of this article.

51 Substitutes shall be assigned in the following manner:
52 A substitute with the greatest length of service time,
53 that is, from the date he began his assigned duties as
54 a substitute in that particular category of employment,
55 shall be given priority in accepting the assignment
56 throughout the period of the regular employee's absence

57 or until the vacancy is filled on a regular basis under
58 the procedures set out in section eight-b of this article.
59 All substitutes shall be employed on a rotating basis
60 according to the length of their service time until each
61 substitute has had an opportunity to perform similar
62 assignments: *Provided*, That if there are regular service
63 employees employed in the same building or working
64 station as the absent employee and who are employed
65 in the same classification category of employment, such
66 regular employees shall be first offered the opportunity
67 to fill the position of the absent employee on a rotating
68 and seniority basis with the substitute then filling the
69 regular employee's position. A regular employee as-
70 signed to fill the position of an absent employee shall be
71 given the opportunity to hold that position throughout
72 such absence.

73 The salary of a substitute service employee shall be
74 based upon his years of employment as defined in
75 section eight of this article and as provided in the state
76 minimum pay scale set forth in section eight-a of this
77 article and shall be in accordance with the salary
78 schedule of persons regularly employed in the same
79 position in the county in which he is employed.

80 Before any substitute service employee enters upon
81 his duties, he shall execute with the county board of
82 education a written contract as provided in section five,
83 article two of this chapter.

84 To establish a uniform system of providing a fair and
85 equitable opportunity for substitutes to enter upon their
86 duties for the first time, the following method shall be
87 used: The initial order of assigning newly employed
88 substitutes shall be determined by a random selection
89 system established by the affected substitute employees
90 and approved by the county board. This initial priority
91 order shall be in effect only until the substitute service
92 personnel have entered upon their duties for the first
93 time.

94 Substitute service employees who have worked thirty
95 days for a school system shall have all rights pertaining
96 to suspension, dismissal and contract renewal as is

97 granted to regular service personnel in sections six,
98 seven, eight and eight-a, article two of this chapter.

§18A-4-16. Extracurricular assignments.

1 (1) The assignment of teachers and service personnel
2 to extracurricular assignments shall be made only by
3 mutual agreement of the employee and the superintend-
4 ent, or designated representative, subject to board
5 approval. Extracurricular duties shall mean, but not be
6 limited to, any activities that occur at times other than
7 regularly scheduled working hours, which include the
8 instructing, coaching, chaperoning, escorting, providing
9 support services or caring for the needs of students, and
10 which occur on a regularly scheduled basis.

11 (2) The employee and the superintendent, or a
12 designated representative, subject to board approval,
13 shall mutually agree upon the maximum number of
14 hours of extracurricular assignment in each school year
15 for each extracurricular assignment.

16 (3) The terms and conditions of the agreement
17 between the employee and the board of education shall
18 be in writing and signed by both parties.

19 (4) An employee's contract of employment shall be
20 separate from the extracurricular assignment agree-
21 ment provided for in this section and shall not be
22 conditioned upon the employee's acceptance or continu-
23 ance of any extracurricular assignment proposed by the
24 superintendent, a designated representative, or the
25 board.

26 (5) The board of education shall fill extracurricular
27 and supplemental school service personnel assignments
28 and vacancies in accordance with section eight-b, article
29 four of this chapter: *Provided*, That an alternative
30 procedure for making extracurricular and supplemental
31 school service personnel assignments within a particular
32 classification category of employment may be utilized if
33 the alternative procedure is approved both by the county
34 board of education and by an affirmative vote of two
35 thirds of the employees within that classification
36 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
2 guardian in exercising authority over the school, and
3 shall have control of all pupils enrolled in the school
4 from the time they reach the school until they have
5 returned to their respective homes, except that where
6 transportation of pupils is provided, the driver in charge
7 of the school bus or other mode of transportation shall
8 exercise such authority and control over the children
9 while they are in transit to and from the school. Subject
10 to the rules of the state board of education, the teacher
11 shall exclude from the school any pupil or pupils known
12 to have or suspected of having any infectious disease, or
13 any pupil or pupils who have been exposed to such
14 disease, and shall immediately notify the proper health
15 officer, or medical inspector, of such exclusion. Any
16 pupil so excluded shall not be readmitted to the school
17 until such pupil has complied with all the requirements
18 of the rules governing such cases, or has presented a

19 certificate of health signed by the medical inspector or
20 other proper health officer. The teacher shall have
21 authority to suspend any pupil guilty of disorderly,
22 refractory, indecent or immoral conduct, and the
23 district board of education may expel or exclude any
24 such pupil if, on investigation, the conduct of such pupil
25 is found to be detrimental to the progress and the
26 general conduct of the school.

27 Corporal punishment of any pupil by a school em-
28 ployee is prohibited.

29 The West Virginia board of education and county
30 boards of education shall adopt policies consistent with
31 the provisions of this section encouraging the use of
32 alternatives to corporal punishment, providing for the
33 training of school personnel in alternatives to corporal
34 punishment and for the involvement of parents and
35 guardians in the maintenance of school discipline.

36 For the purpose of this section: (1) "Pupil" shall
37 include any child, youth or adult who is enrolled in any
38 instructional program or activity conducted under
39 board authorization and within the facilities of or in
40 connection with any program under public school
41 direction: *Provided*, That in the case of adults the pupil-
42 teacher relationship shall terminate when the pupil
43 leaves the school or other place of instruction or activity;
44 (2) "teacher" shall mean all professional educators as
45 defined in section one, article one of this chapter and
46 shall include the driver of a school bus or other mode
47 of transportation.

48 Teachers shall exercise such other authority and
49 perform such other duties as may be prescribed for
50 them by law or by the rules of the state board of
51 education not inconsistent with the provisions of this
52 chapter and chapter eighteen of this code.

CHAPTER 54

(S. B. 442—By Senators Lucht and Burdette, Mr. President)

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

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
 2 a correspondence, business, occupational or trade school
 3 inside or outside this state, as such shall be defined by
 4 the board of directors by rule promulgated in accor-
 5 dance with article three-a, chapter twenty-nine-a of this
 6 code, to solicit, sell or offer to sell courses of instruction
 7 to any resident of this state for consideration or
 8 remuneration unless the school first applies for a
 9 permit, or obtains a permit, from the West Virginia
 10 board of directors in the manner and on the terms
 11 herein prescribed.

12 All private training or educational institutions,

13 schools or academies or other organizations shall apply
14 for a permit from the board of directors of the state
15 college system on forms provided by the board. This
16 section does not apply to private organizations that offer
17 only tax return preparation courses. Each initial
18 application shall be accompanied by a nonrefundable fee
19 of two thousand dollars. The board may also assess an
20 additional fee based on any additional expense required
21 to evaluate the application. The board shall make a
22 determination on the initial permit application within
23 ninety days after receipt of the application and fee. An
24 applicant for an initial permit shall show proof at the
25 time of filing an application that adequate facilities are
26 available and ready for occupancy and that all instructional
27 equipment, books and supplies and personnel are
28 in place and ready for operation. A representative of the
29 board shall make an on-site visit to all new applicants'
30 facilities to confirm its readiness for operation prior to
31 issuance of the initial permit if the facilities are located
32 in West Virginia.

33 A school is considered to be established under the
34 provisions of this article on the date it first begins to
35 lawfully operate. An established school is not required
36 to reapply for a permit as a result of changes in
37 governance; administration; ownership; or form of
38 operation. After the first permit year an annual fee of
39 five hundred dollars is imposed on each school for each
40 campus it operates in this state.

41 (b) Each application shall be accompanied by a surety
42 bond in the penal sum of thirty-five thousand dollars for
43 any school which has its physical facilities located in this
44 state and which has operated in this state for at least
45 ten years: *Provided*, That if the school has changed
46 ownership within the last ten years by transfer of
47 ownership control to a person who is a spouse, parent,
48 sibling, child or grandchild of the previous owner, the
49 surety bond shall continue in the penal sum of thirty-
50 five thousand dollars: *Provided, however*, That any
51 school which has operated in West Virginia for less than
52 ten years, including those schools which have changed
53 ownership within the last ten years except those schools

54 noted above who have transferred ownership control to
55 a spouse, parent, sibling, child or grandchild of the
56 previous owner within the last ten years and any school
57 located in another state which applies for a permit
58 hereunder, shall provide a surety bond of fifty thousand
59 dollars: *Provided further*, That any school may be
60 required to increase its bond to one hundred fifty
61 thousand dollars if its accreditation is terminated for
62 cause or if the school's institutional eligibility under the
63 Higher Education Act of 1965, as amended, has been
64 terminated for cause: *And provided further*, That
65 expiration, nonrenewal or voluntary relinquishment of
66 accreditation or institutional eligibility under said act,
67 or failure to meet the requirements of one or more
68 programs under said act, shall not be deemed a
69 termination for cause.

70 In addition, any school may be required to increase
71 its bond to an amount not to exceed four hundred
72 thousand dollars if, in accordance with the standards of
73 the American institute of certified public accountants,
74 the school's audited financial statements are qualified
75 because the school's continued financial viability as an
76 ongoing concern is in doubt, and the board of directors
77 determines an increased bond is reasonably necessary to
78 protect the financial obligations legally due the students
79 then enrolled at the institution. A school may be
80 required to maintain the increased bonding require-
81 ments described above until all students attending
82 classes at the date of termination either graduate or
83 withdraw. The bond may be continuous and shall be
84 conditioned to provide indemnification to any student
85 suffering loss as a result of any fraud or misrepresen-
86 tation used in procuring the student's enrollment;
87 failure of the school to meet contractual obligations; or
88 failure of the school to meet the requirements of this
89 section. The bond shall be given by the school itself as
90 a blanket bond covering all of its representatives. The
91 surety on any such bond may cancel the same upon
92 giving thirty days' notice in writing to the principal on
93 said bond and to the state board of directors and
94 thereafter shall be relieved of liability for any breach
95 of condition occurring after the effective date of said

96 cancellation.

97 (c) A permit shall be valid for one year corresponding
98 to the effective date of the bond and, upon application,
99 accompanied by the required fee and the surety bond
100 as herein required, may be renewed. All fees collected
101 for the issuance or renewal of such permit shall be
102 deposited in the state treasury to the credit of the board
103 of directors.

104 The board may refuse a permit to any school if the
105 board finds that the school engages in practices which
106 are inconsistent with this section or with rules and
107 regulations issued pursuant thereto. A permit issued
108 hereunder, upon fifteen days' notice and after a hearing,
109 if a hearing is requested by the school, may be sus-
110 pended or revoked by the board of directors for fraud
111 or misrepresentation in soliciting or enrolling students,
112 for failure of the school to fulfill its contract with one
113 or more students who are residents of West Virginia, or
114 for violation of or failure to comply with any provision
115 of this section or with any regulation of the state board
116 of directors pertinent thereto. Prior to the board taking
117 any adverse action, including refusal, suspension or
118 revocation of a permit, the school shall be given
119 reasonable opportunity to take corrective measures. Any
120 refusal, suspension or revocation of a permit, or any
121 other adverse action against a school, shall comply with
122 all constitutional provisions, including due process,
123 relating to the protection of property rights.

124 (d) All correspondence, business, occupational or
125 trade schools which have been issued a permit shall
126 make annual reports to the board of directors on forms
127 furnished by the board and shall provide such approp-
128 riate information as the board reasonably may require.
129 All correspondence, business, occupational or trade
130 schools which have been issued a permit shall furnish
131 to the board of directors a list of its official represen-
132 tatives. Each school shall be issued a certificate of
133 identification by the board of directors for each of its
134 official representatives.

135 (e) The issuance of a permit pursuant to this section

136 does not constitute approval or accreditation of any
137 course or school. No school nor any representative of a
138 school shall make any representation stating, asserting
139 or implying that a permit issued pursuant to this section
140 constitutes approval or accreditation by the state of
141 West Virginia, state board of directors or any other
142 department or agency of the state.

143 The board of directors is hereby authorized to adopt
144 rules and conduct on-site reviews to evaluate academic
145 standards maintained by schools for the awarding of
146 certificates, diplomas and specialized associate degrees,
147 which standards may include curriculum, personnel,
148 facilities, materials and equipment: *Provided*, That in
149 the case of accredited correspondence, business, occupa-
150 tional and trade schools under permit on the first day
151 of July, one thousand nine hundred seventy-nine, having
152 their physical facilities located in this state, and which
153 are accredited by the appropriate nationally recognized
154 accrediting agency or association approved by the
155 United States department of education, the accrediting
156 agency's standards, procedures and criteria shall be
157 accepted as meeting applicable laws, standards and
158 rules of the board of directors: *Provided, however*, That
159 institutions, which are institutionally accredited by
160 accrediting agencies that are recognized by the United
161 States department of education to establish academic
162 standards for postsecondary education, may offer
163 postsecondary educational programs leading to (and
164 upon successful completion of such programs award
165 graduates) certificates, diplomas and associate degrees
166 in accordance with the academic standards required by
167 such accrediting agency. If a review undertaken by the
168 board indicates there may be deficiencies in the
169 academic standards the institution maintains in its
170 educational programs, that are of such a material
171 nature as to jeopardize continued accreditation, the
172 board shall notify the institution. If the board and the
173 institution are unable to agree on the deficiencies or the
174 steps necessary to correct the deficiencies, the board
175 shall consult with the institution's accrediting agency
176 regarding an academically appropriate resolution,
177 which resolution may include a joint on-site review by

178 the board and the accrediting agency. The board may
179 also review the academic standards of unaccredited
180 institutions and may require such institutions to
181 maintain recognized academic standards that are
182 reasonably appropriate to the nature of the institution
183 and the training offered. The board of directors may
184 authorize an investigation of written student complaints
185 alleging a violation of this section, board rules, or
186 accreditation standards and may take appropriate
187 action based on the findings of such an investigation. All
188 evaluations or investigations of correspondence, busi-
189 ness, occupational and trade schools, and actions
190 resulting from such evaluations or investigations, shall
191 be made in accordance with rules promulgated by the
192 board of directors pursuant to article three-a, chapter
193 twenty-nine-a of this code.

194 For the purposes of this section, proprietary schools
195 that award specialized associate degrees shall be defined
196 as institutions of higher education, and specialized
197 associate degrees shall mean degrees awarded by such
198 institutions pursuant to a program of not less than two
199 academic years: *Provided*, That nothing herein shall be
200 construed to qualify the said proprietary schools for
201 additional state moneys not otherwise qualified for
202 under other provisions of this code.

203 (f) In regard to private, proprietary educational
204 institutions operating under this section of the code,
205 accredited by a national or regional accrediting agency
206 or association recognized by the United States depart-
207 ment of education and which provide training at a
208 campus located in this state:

209 (1) Any rule or standard which is authorized by this
210 or any section of the code or other law and which is now
211 in effect or promulgated hereafter by the board of
212 directors (or other agency with jurisdiction) shall be
213 clearly, specifically and expressly authorized by nar-
214 rowly construed enabling law and shall be unenforcea-
215 ble and without legal effect unless authorized by an act
216 of the Legislature under the provisions of article three-
217 a, chapter twenty-nine-a of this code.

218 (2) Notwithstanding any other provision of this section
219 or other law to the contrary, the institution's accrediting
220 agency standards, procedures and criteria shall be
221 accepted as the standards and rules of the board of
222 directors (or other agency with jurisdiction) and as
223 meeting other law or legal requirements relating to the
224 operation of proprietary institutions which such board
225 or other agency has the legal authority to enforce under
226 any section of the code or other law: *Provided*, That
227 nothing in this section shall be construed to deny
228 students the use of remedies that would otherwise be
229 available under state or federal consumer laws or
230 federal law relating to federal college financial assist-
231 ance programs.

232 (3) Accredited institutions operating hereunder are
233 hereby recognized as postsecondary. Academic progress
234 shall be measured and reported in credit hours and all
235 reports/documents filed on a credit hour basis unless the
236 institution notifies the board that it utilizes clock hours
237 as its unit of measurement.

238 (g) A representative of any school who solicits, sells
239 or offers to sell courses of instruction to any resident of
240 this state for consideration or remuneration unless the
241 school first applies for a permit, or obtains a permit,
242 shall be guilty of a misdemeanor, and, upon conviction
243 thereof, shall be fined not more than two hundred dollars
244 per day per violation, or imprisoned in the county jail
245 not more than sixty days, or both fined and imprisoned.
246 No correspondence, business, occupational or trade
247 school shall maintain an action in any court of this state
248 to recover for services rendered pursuant to a contract
249 solicited by the school if the school did not hold a valid
250 permit at the time the contract was signed by any of
251 the parties thereto. The attorney general or any county
252 prosecuting attorney, at the request of the board of
253 directors or upon his or her own motion, may bring any
254 appropriate action or proceeding in any court of
255 competent jurisdiction for the enforcement of the
256 provisions of this section relating to permits, bonds and
257 sureties.

258 (h) In regard to institutions operating under this

259 section, all substantive standards and procedural
260 requirements established by the board of directors (or
261 the West Virginia state program review entity or other
262 agency with jurisdiction over institutions operating
263 hereunder) shall meet all substantive and procedural
264 standards of due process relating to the protection of an
265 individual citizen's property rights as provided for
266 under the United States Constitution, and shall follow
267 the substantive standards and procedural requirements
268 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-9-2. Definitions.
- §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.

§18B-9-2. Definitions.

- 1 As used in this article:
- 2 (a) "Classified employee or employee" means any
- 3 regular full-time or regular part-time employee of a
- 4 governing board, including all employees of the West
- 5 Virginia network for educational telecomputing and
- 6 beginning the first day of July, one thousand nine
- 7 hundred ninety, includes employees at the central office
- 8 of the governing boards, who hold a position that is
- 9 assigned a particular job title and pay grade in
- 10 accordance with the personnel classification system
- 11 established by the appropriate governing board and
- 12 shall include all employees of the West Virginia network
- 13 for educational telecomputing;
- 14 (b) "Nonclassified employee" means an individual who
- 15 is responsible for policy formation at the institutional
- 16 level or reports directly to the president: *Provided*, That
- 17 the percentage of personnel placed in the category of
- 18 "nonclassified" at any given institution shall not exceed
- 19 four percent of the total number of employees of that
- 20 institution who are eligible for membership in any state
- 21 retirement system of the state of West Virginia or other
- 22 retirement plan authorized by the state. Final approval
- 23 of such placement shall be with the appropriate

24 governing board;

25 (c) "Job description" means the specific listing of
26 duties and responsibilities as determined by the approp-
27 riate governing board and associated with a particular
28 job title;

29 (d) "Job title" means the name of the position or job
30 as defined by the appropriate governing board;

31 (e) "Merit increases and salary adjustments" means
32 the amount of additional salary increase allowed on a
33 merit basis or to rectify salary inequities or accommo-
34 date competitive market conditions in accordance with
35 rules established by the appropriate governing board;

36 (f) "Pay grade" means the number assigned by the
37 appropriate governing board to a particular job title and
38 refers to the vertical column heading of the salary
39 schedule established in section three of this article;

40 (g) "Personnel classification system" means the
41 process of job categorization adopted by the appropriate
42 governing board by which job title, job description, pay
43 grade and placement on the salary schedule are
44 determined;

45 (h) "Salary" means the amount of compensation paid
46 through the state treasury per annum to a classified
47 employee;

48 (i) "Schedule" or "salary schedule" means the grid of
49 annual salary figures established in section three of this
50 article; and

51 (j) "Years of experience" means the number of years
52 a person has been an employee of the state of West
53 Virginia and refers to the horizontal column heading of
54 the salary schedule established in section three of this
55 article. For the purpose of placement on the salary
56 schedule pursuant to said section, employment for nine
57 months or more shall equal one year of experience, but
58 no classified employee may accrue more than one year
59 of experience during any given fiscal year. Employment
60 for less than full time or less than nine months during
61 any fiscal year shall be prorated. For the purpose of

62 determining the amount of annual salary increase
 63 pursuant to subsection (b), section five of this article,
 64 employment for less than twelve months during any
 65 fiscal year shall be prorated. In accordance with rules
 66 established by the appropriate governing board, a
 67 classified employee may be granted additional years of
 68 experience not to exceed the actual number of years of
 69 prior, relevant work or experience at accredited
 70 institutions of higher education other than state institu-
 71 tions of higher education.

§18B-9-3. Higher education classified employee annual salary schedule.

1 There is hereby established a state annual salary
 2 schedule for classified employees consisting of a
 3 minimum annual salary for each pay grade in accor-
 4 dance with years of experience: *Provided*, That payment
 5 of the minimum salary shall be subject to the availabil-
 6 ity of funds, and nothing in this article shall be
 7 construed to guarantee payment to any classified
 8 employee of the salary indicated on the schedule at the
 9 actual years of experience absent specific legislative
 10 appropriation therefor. The minimum salary herein
 11 indicated shall be prorated for classified employees
 12 working less than thirty-seven and one-half hours per
 13 week.

**HIGHER EDUCATION
 CLASSIFIED EMPLOYEE ANNUAL
 SALARY SCHEDULE
 YEARS OF EXPERIENCE**

18	PAY									
19	GRADE	0	1	2	3	4	5	6	7	8
20	1	10,092	10,788	11,028	11,268	11,508	11,760	12,012	12,276	12,540
21	2	10,392	11,340	11,592	11,844	12,108	12,372	12,648	12,924	13,212
22	3	10,716	11,928	12,192	12,468	12,756	13,044	13,332	13,632	13,944
23	4	11,040	12,564	12,852	13,140	13,440	13,752	14,076	14,400	14,724
24	5	11,376	13,236	13,548	13,872	14,196	14,520	14,868	15,216	15,576
25	6	11,736	13,968	14,304	14,652	15,000	15,360	15,720	16,104	16,488
26	7	12,396	14,760	15,120	15,492	15,864	16,248	16,644	17,052	17,460
27	8	13,116	15,612	15,996	16,392	16,800	17,220	17,640	18,084	18,528
28	9	13,884	16,524	16,944	17,376	17,808	18,264	18,720	19,188	19,680

29	10	14,712	17,520	17,964	18,432	18,900	19,392	19,884	20,388	20,916
30	11	15,612	18,588	19,080	19,572	20,076	20,604	21,144	21,696	22,260
31	12	16,596	19,752	20,268	20,808	21,360	21,924	22,500	23,100	23,712
32	13	17,640	21,000	21,564	22,140	22,740	23,352	23,976	24,624	25,284
33	14	18,780	22,356	22,968	23,592	24,240	24,900	25,572	26,280	27,000
34	15	20,004	23,820	24,480	25,164	25,860	26,580	27,312	28,068	28,848
35	16	21,348	25,416	26,124	26,868	27,624	28,392	29,196	30,012	30,864
36	17	22,800	27,144	27,912	28,716	29,532	30,372	31,248	32,136	33,048
37	18	24,372	29,016	29,856	30,720	31,608	32,520	33,468	34,440	35,436
38	19	26,088	31,056	31,968	32,904	33,864	34,860	35,892	36,948	38,028
39	20	27,948	33,264	34,260	35,280	36,336	37,416	38,532	39,672	40,860
40	21	29,964	35,676	36,756	37,872	39,012	40,188	41,400	42,648	43,944
41	22	32,172	38,304	39,480	40,692	41,928	43,212	44,544	45,900	47,304
42	23	34,584	41,172	42,456	43,764	45,120	46,524	47,964	49,452	50,988
43	24	37,212	44,304	45,696	47,124	48,612	50,136	51,708	53,328	55,008
44	25	40,080	47,712	49,236	50,796	52,416	54,084	55,800	57,576	59,412

45

HIGHER EDUCATION

46

CLASSIFIED EMPLOYEE ANNUAL

47

SALARY SCHEDULE

48

YEARS OF EXPERIENCE

49

PAY

50

GRADE 9 10 11 12 13 14 15

51	1	12,804	13,080	13,368	13,656	13,956	14,256	14,568
52	2	13,500	13,800	14,112	14,424	14,736	15,072	15,396
53	3	14,256	14,580	14,904	15,240	15,588	15,936	16,296
54	4	15,060	15,408	15,768	16,128	16,500	16,884	17,268
55	5	15,936	16,308	16,692	17,088	17,484	17,892	18,312
56	6	16,872	17,280	17,688	18,120	18,552	18,996	19,440
57	7	17,892	18,324	18,768	19,224	19,692	20,172	20,664
58	8	18,984	19,452	19,932	20,436	20,940	21,456	21,984
59	9	20,172	20,676	21,204	21,732	22,284	22,848	23,412
60	10	21,456	21,996	22,560	23,148	23,736	24,348	24,972
61	11	22,836	23,436	24,036	24,672	25,308	25,968	26,652
62	12	24,336	24,984	25,644	26,328	27,024	27,732	28,464
63	13	25,968	26,664	27,384	28,116	28,872	29,652	30,444
64	14	27,732	28,488	29,268	30,072	30,888	31,728	32,604
65	15	29,652	30,468	31,320	32,184	33,072	33,996	34,932
66	16	31,728	32,628	33,540	34,488	35,460	36,456	37,488
67	17	33,996	34,968	35,964	36,996	38,052	39,132	40,260
68	18	36,468	37,524	38,604	39,720	40,872	42,060	43,284
69	19	39,144	40,296	41,484	42,696	43,956	45,252	46,572

70	20	42,072	43,332	44,616	45,948	47,316	48,732	50,172
71	21	45,264	46,632	48,048	49,500	50,988	52,524	54,120
72	22	48,756	50,244	51,780	53,364	55,008	56,688	58,416
73	23	52,560	54,192	55,872	57,612	59,388	61,236	63,132
74	24	56,736	58,512	60,348	62,244	64,200	66,216	68,304
75	25	61,296	63,240	65,256	67,332	69,468	71,676	73,956

§§18B-9-5. Classified employee salary.

1 (a) Each classified employee who is employed by a
 2 governing board on the first day of July, one thousand
 3 nine hundred ninety-three, shall receive for the same
 4 employment at the same pay grade during the fiscal
 5 year commencing on such date and thereafter, subject
 6 to an appropriation by the Legislature therefor, and in
 7 addition to the experience increment increase provided
 8 for in subsection (b) of this section, a monthly salary
 9 which is at least one hundred twenty-five dollars more
 10 than the final base monthly salary paid such classified
 11 employee for the fiscal year commencing on the first day
 12 of July, one thousand nine hundred ninety-two, to be
 13 paid in equal installments within the regular pay
 14 periods and to be prorated for classified employees
 15 working less than thirty-seven and one-half hours per
 16 week.

17 (b) Commencing with the fiscal year beginning on the
 18 first day of July, one thousand nine hundred ninety-one,
 19 and each fiscal year thereafter, each classified employee
 20 with three or more years of experience shall receive an
 21 annual salary increase equal to thirty-six dollars times
 22 the employee's years of experience: *Provided*, That such
 23 annual salary increase shall not exceed the amount
 24 granted for the maximum of twenty years of experience.
 25 These incremental increases shall be in lieu of any
 26 salary increase received pursuant to section two, article
 27 five, chapter five of this code; shall be in addition to any
 28 across-the-board, cost-of-living or percentage salary
 29 increases which may be granted in any fiscal year by
 30 the Legislature; and shall be paid in like manner as the
 31 annual payment to eligible state employees of the
 32 incremental salary increases based on years of service
 33 under the provisions of said section.

34 (c) Any classified employee may receive merit
35 increases and/or salary adjustments in accordance with
36 policies established by the board: *Provided*, That funds
37 for such increases and/or adjustments shall be distrib-
38 uted in accordance with rules of the appropriate
39 governing board and shall be available to all state
40 institutions of higher education on an equitable basis.

41 (d) The current annual salary of any classified
42 employee may not be reduced by the provisions of this
43 article nor by any other action inconsistent with the
44 provisions of this article, and nothing in this article shall
45 be construed to prohibit promotion of any classified
46 employee to a job title carrying a higher pay grade if
47 such promotion is in accordance with the provisions of
48 this article and the personnel classification system
49 established by the appropriate governing board.

§18B-9-11. Institutional salary policies; salary increase authorization.

1 (a) Beginning with the fiscal year commencing on the
2 first day of July, one thousand nine hundred ninety-four,
3 classified employee salary increases shall be distributed
4 within each state institution of higher education, to the
5 extent of legislative appropriation therefor, in accor-
6 dance with a written institutional salary policy which
7 does not conflict with the uniform employee classifica-
8 tion system and which achieves or moves toward the
9 following goals:

10 (1) Each classified employee receives at least the
11 amount indicated by the minimum salary schedules
12 pursuant to section three of this article;

13 (2) Each classified employee within a classification
14 group receives a salary which will achieve salary equity
15 as defined in the uniform employee classification system
16 established pursuant to subsection (b), section four of
17 this article;

18 (3) Equity among salaries is maintained; and

19 (4) The institution's classified employees are effec-
20 tively involved in the administration of the campus-level
21 classified employee salary policy.

22 (b) Subject to an appropriation by the Legislature
23 therefor, for the fiscal year commencing on the first day
24 of July, one thousand nine hundred ninety-four, seven
25 hundred fifty dollars per full-time classified employee
26 is recommended to be appropriated and distributed in
27 that fiscal year for salary increases to each classified
28 employee. For the fiscal year commencing on the first
29 day of July, one thousand nine hundred ninety-five, an
30 amount equal to one thousand five hundred dollars per
31 full-time classified employee is recommended to be
32 appropriated and distributed in that fiscal year for
33 salary increases for classified employees, such distribu-
34 tion to be in accordance with the resource allocation
35 policies developed pursuant to the provisions of section
36 two, article five of this chapter and the salary policies
37 required in subsection (a) of this section: *Provided*, That
38 nothing in this section shall be construed to prohibit
39 future salary increases for classified employees deter-
40 mined to be at the maximum for their pay grade under
41 any new classification system promulgated in accor-
42 dance with subsection (b), section four of this article and
43 in accordance with policies which shall be adopted by
44 each governing board relating to salary increases for
45 classified employees determined to be at maximum
46 salary.

47 (c) Subject to appropriations by the Legislature
48 therefor, each classified employee whose annual salary
49 under subsections (a) and (b) of this section is less than
50 the minimum monthly salary for zero years of expe-
51 rience for the appropriate pay grade as set forth in
52 section three of this article shall receive additional
53 compensation such that the monthly salary is at least the
54 minimum amount prescribed for the appropriate pay
55 grade at zero years of experience: *Provided*, That such
56 amounts may be reduced proportionately based upon the
57 amount of funds available for such purpose.

§18B-9-12. Probationary employees.

1 Each full-time classified employee hired by the
2 governing boards shall serve an initial six-month
3 probationary period. At the end of said probationary
4 period the employee shall receive a written evaluation

5 of his or her performance. The employee's supervisor
6 shall meet with the employee and explain the contents
7 of said evaluation and whether the employee is being
8 offered regular employment. Probationary employees
9 shall receive five percent less than the agreed upon
10 entry rate salary for their position in accordance with
11 the salary schedule set forth in section three of this
12 article, as determined by the governing board's policy,
13 during their probationary employment. Whenever
14 probationary employment becomes regular employment,
15 the employee shall receive an immediate five percent
16 salary increase.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-4. Depositories for assistive devices and services.

1 There is hereby created under the authority, super-
2 vision and direction of the two governing boards of the
3 state institutions of higher education, two assistive
4 device depositories, one of which is to be located in a
5 state supported college or university in the northern
6 part of the state and the other depository is to be located
7 in a state supported college or university in the southern
8 part of the state. Each assistive device depository shall
9 obtain assistive devices either through public or private
10 funding, develop an inventory of assistive devices and
11 services for individuals with disabilities, catalog
12 equipment, receive and fulfill requests, and track and
13 maintain assistive devices.

14 In coordination with the secretary of education and
15 the arts, the governing boards shall establish the
16 depositories upon receipt of line item appropriations by
17 the Legislature for such purposes. Educational agencies,
18 including public and private educational agencies,
19 public and private service agencies, individuals, families
20 and communities shall have access to these depositories
21 and the equipment and services available at each
22 depository. Public and private higher education institu-
23 tions shall have priority access to the depositories.

24 Each depository shall coordinate its activities with the
25 West Virginia assistive technology system at the
26 university affiliated center for developmental disabili-

27 ties. Each depository shall undertake outreach efforts
28 and shall coordinate services and equipment programs
29 with other state and local agencies to share resources.
30 Services to individuals with disabilities in higher
31 education shall include, but not be limited to: Interpre-
32 ters for the deaf, peer tutors, note takers, readers for
33 the blind; and shall further be defined as community
34 service under provisions of the national and community
35 service act and other applicable state and federal
36 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.

1 (a) Contingent on the transfer of the property
2 described in subsection (b) of this section to Bluefield
3 state college from the department of health and human
4 resources and notwithstanding the provisions of article
5 one-a, chapter twenty of this code to the contrary,
6 Bluefield state college, with the approval of the board
7 of directors, is hereby authorized and empowered to sell
8 as surplus real property and deposit the net proceeds
9 from that sale into a special revenue account to be
10 utilized or made available for repair or prevention of
11 future structural problems not currently evident in the
12 main classroom building on the grounds of the former
13 Greenbrier college for women occupied by the Greenb-
14 rier community college center of Bluefield state college
15 in Lewisburg, West Virginia.

16 (b) The property to be sold contingent on the transfer
17 from the department of health and human resources is
18 described as that property situated on McElhenny road
19 in Lewisburg, Greenbrier County, West Virginia,
20 bounded and described as follows:

21 A parcel of land within the corporate limits of
22 Lewisburg, Greenbrier County, West Virginia, and
23 lying generally on the south side of the McElhenny Road
24 in said Lewisburg, more particularly bounded and
25 described as follows:

26 Beginning at a fence post, corner of a parcel of the
27 Beni Kadem lands, thence with a fence and its extension
28 through a three-fourths inch steel bar to the center of
29 the aforesaid McElhenny Road, N 77-23-00 E 141.14
30 feet, and with same the following courses and distances:
31 S 39-09-00 E 39.40 feet, S 44-24-00 E 42.86 feet, S 44-
32 27-00 E 208.86 feet, S 43-01-00 E 24.54 feet, S 41-01-
33 00 E 48.51 feet, S 39-40-00 E 41.30 feet, S 39-01-00 E
34 90.42 feet, S 37-43-00 E 64.97 feet, S 35-26-00 E 74.34
35 feet, S 36-01-00 E 99.63 feet, S 38-32-30 E 60.56 feet,
36 S 41-26-30 E 71.56 feet, S 46-12-30 E 143.28 feet, S 50-
37 43-00 E 20.82 feet, S 52-19-00 E 34.17 feet, S 56-46-00
38 E 31.94 feet, S 61-28-00 E 351.64 feet, S 64-48-00 E
39 29.06 feet, S 69-30-00 E 32.50 feet, S 77-09-00 E 33.00

40 feet and S 23-16-00 E 12.67 feet to a point in the center
41 of said McElhenny Road opposite a fence post corner to
42 Pietro, thence leaving McElhenny and with a fence and
43 Pietro, S 03-10-00 E 202.27 feet and S 87-48-00 E 120.69
44 feet to a one-half inch iron pin found, corner to Pietro,
45 thence continuing with the fence and with Pietro and
46 Mareneck, among others, S 36-18-30 E 486.19 feet to a
47 fence corner and continuing with said fence and with
48 Taylor, among others, S 51-42-00 W 285.28 feet to a
49 fence post at the edge of a concrete drive, corner to Breit
50 and with same and a fence N 06-26-00 W 109.75 feet,
51 N 83-08-00 W 60.26 feet, S 50-09-00 W 59.44 feet, N 39-
52 45-00 W 22.08 feet and S 50-57-00 W 183.85 feet to a
53 fence post corner to Mikeel Don Rich, thence with a
54 subdivision, and consecutively with Rich, Chu, Aleshire,
55 Banton and Yarid to a common corner with Hamilton,
56 the following N 47-58-00 W 375.49 feet and S 55-50-00
57 W 827.18 feet to a three-fourths inch iron pin set, corner
58 to Lawson Hamilton and continuing with same and
59 generally with a fence, N 47-53-00 W 1086.74 feet to a
60 post with a concrete monument on the line of Dawkins
61 and continuing with same and a fence and three tracts
62 of the Beni Kedem Temple, N 72-21-00 E 364.27 feet,
63 and N 10-50-00 E 1171.56 feet to the place of beginning,
64 containing 46.91 acres net (meaning less the portion of
65 McElhenny Road described herein), and being a portion
66 of the lands conveyed by Greenbrier College Corporation
67 to the State of West Virginia on May 31, 1973, as
68 recorded in the County Clerk's Office in Greenbrier
69 County in Deed Book 280 at page 31.

70 (c) Prior to the sale, the board of directors of the state
71 college system shall cause the property to be appraised
72 by three independent licensed appraisers and shall not
73 sell the property for less than the average of the three
74 appraisals.

CHAPTER 57

(Com. Sub. for H. B. 2587—By Delegate Fragale)

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

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,
2 upon entering the election room, clearly state his name
3 and residence to one of the poll clerks who shall
4 thereupon announce the same in a clear and distinct
5 tone of voice. If such person is found to be duly
6 registered as a voter at that precinct, he shall be
7 required to sign his name in the space marked "signa-
8 ture of voter" on the pollbook prescribed and provided
9 for the precinct. If such person be physically or
10 otherwise unable to sign his name, his mark shall be
11 affixed by one of the poll clerks in the presence of the
12 other and the name of the poll clerk affixing the voter's
13 mark shall be indicated immediately under such
14 affixation. No ballot shall be given to such person until
15 he so signs his name on the pollbook or his signature
16 is so affixed thereon.

17 (b) The clerk of the county commission is authorized,
18 upon verification that the precinct at which a handi-

19 capped person is registered to vote is not handicap
20 accessible, to transfer such person's registration to the
21 nearest polling place in the county which is handicap
22 accessible. Requests by such persons for a transfer of
23 registration shall be received by the county clerk no
24 later than thirty days prior to the date of the election.
25 Any handicapped person who has not made a request
26 for a transfer of registration at least thirty days prior
27 to the date of the election may vote a challenged ballot,
28 at a handicap accessible polling place in the county of
29 his or her registration, and, if during the canvass the
30 county commission determines that the person had been
31 registered in a precinct not handicap accessible, the
32 voted ballot, if otherwise valid, shall be counted. The
33 handicapped person may vote in the precinct to which
34 the registration was transferred only as long as the
35 disability exists or the precinct from which the handi-
36 capped person was transferred remains inaccessible to
37 the handicapped. To ensure confidentiality of such
38 transferred ballot, the county clerk processing the ballot
39 shall provide the voter with an unmarked envelope and
40 an outer envelope designated "challenged bal-
41 lot/handicapped voter." After validation of the ballot at
42 the canvass, the outer envelope shall be destroyed and
43 the handicapped voter's ballot shall be placed with other
44 approved challenged ballots prior to removal of the
45 ballot from the unmarked envelope.

46 (c) When the voter's signature is properly on the
47 pollbook, the two poll clerks shall sign their names in
48 the places indicated on the back of the official ballot and
49 shall deliver the ballot to the voter to be voted by him
50 then without leaving the election room. If he returns the
51 ballot spoiled to the clerks, they shall immediately mark
52 such ballot "spoiled" and the same shall be preserved
53 and placed in a spoiled ballot envelope together with
54 other spoiled ballots to be delivered to the board of
55 canvassers and deliver to the voter another official
56 ballot, signed by the clerks on the reverse side as before
57 done. The voter shall thereupon retire alone to the booth
58 or compartment prepared within the election room for
59 voting purposes and there prepare his ballot, using a
60 ballpoint pen of not less than five inches in length or

61 other indelible marking device of not less than five
62 inches in length. In voting for candidates in general and
63 special elections, the voter shall comply with the rules
64 and procedures prescribed in section five, article six of
65 this chapter.

66 (d) It shall be the duty of a poll clerk, in the presence
67 of the other poll clerk, to indicate by a check mark
68 inserted in the appropriate place on the registration
69 record of each voter the fact that such voter voted in the
70 election. In primary elections the clerk shall also insert
71 thereon a distinguishing initial or initials of the political
72 party for whose candidates the voter voted. If a person
73 is challenged at the polls, such fact shall be indicated
74 by the poll clerks on the registration record together
75 with the name of the challenger. The subsequent
76 removal of the challenge shall be recorded on the
77 registration record by the clerk of the county
78 commission.

79 (e) (1) No voter shall receive any assistance in voting
80 unless, by reason of blindness, disability, advanced age
81 or inability to read and write, that voter is unable to vote
82 without assistance. Any voter qualified to receive
83 assistance in voting under the provisions of this section
84 may:

85 (A) Declare his or her choice of candidates to an
86 election commissioner of each political party who, in the
87 presence of the voter and in the presence of each other,
88 shall prepare the ballot for voting in the manner
89 hereinbefore provided, and, on request, shall read over
90 to such voter the names of candidates on the ballot as
91 so prepared; or

92 (B) Require the election commissioners to indicate to
93 him or her the relative position of the names of the
94 candidates on the ballot, whereupon the voter shall
95 retire to one of the booths or compartments to prepare
96 his ballot in the manner hereinbefore provided; or

97 (C) Be assisted by any person of the voter's choice:
98 *Provided*, That such assistance may not be given by the
99 voter's present or former employer or agent of that
100 employer or by the officer or agent of a labor union of

101 which the voter is a past or present member.

102 (2) Any voter who requests assistance in voting but
103 who is believed not to be qualified for such assistance
104 under the provisions of this section shall nevertheless be
105 permitted to vote a challenged ballot with the assistance
106 of any person herein authorized to render assistance.

107 (3) Any one or more of the election commissioners or
108 poll clerks in the precinct may challenge such ballot on
109 the ground that the voter thereof received assistance in
110 voting it when in his or their opinion that the person
111 who received assistance in voting is not so illiterate,
112 blind, disabled or of such advanced age as to have been
113 unable to vote without assistance. The election commis-
114 sioner or poll clerk or commissioners or poll clerks
115 making such challenge shall enter the challenge and
116 reason therefor on the form and in the manner pre-
117 scribed or authorized by article three of this chapter.

118 (4) An election commissioner or other person who
119 assists a voter in voting:

120 (A) Shall not in any manner request, or seek to
121 persuade, or induce the voter to vote any particular
122 ticket or for any particular candidate or for or against
123 any public question, and shall not keep or make any
124 memorandum or entry of anything occurring within the
125 voting booth or compartment, and shall not, directly or
126 indirectly, reveal to any person the name of any
127 candidate voted for by the voter, or which ticket he had
128 voted, or how he had voted on any public question, or
129 anything occurring within the voting booth or compart-
130 ment or voting machine booth, except when required
131 pursuant to law to give testimony as to such matter in
132 a judicial proceeding; and

133 (B) Shall sign a written oath or affirmation before
134 assisting such voter on a form prescribed by the
135 secretary of state stating that he or she will not override
136 the actual preference of the voter being assisted,
137 attempt to influence the voter's choice or mislead the
138 voter into voting for someone other than the candidate
139 of voter's choice. Such person assisting the voter shall
140 also swear or affirm that he or she believes that the

141 voter is voting free of intimidation or manipulation:
142 *Provided*, That no person providing assistance to such
143 voter shall be required to sign such oath or affirmation
144 where the reason for requesting such assistance is the
145 voter's inability to vote without assistance because of
146 blindness as defined in section three, article fifteen,
147 chapter five of this code, and such inability to vote
148 without assistance because of blindness is certified in
149 writing by a physician of the voter's choice and is on file
150 in the office of the clerk of the county commission.

151 (5) In accordance with instructions issued by the
152 secretary of state, the clerk of the county commission
153 shall provide a form entitled "List of Assisted Voters,"
154 the form of which list shall likewise be prescribed by
155 the secretary of state. The commissioners shall enter the
156 name of each voter receiving assistance in voting the
157 ballot, together with the poll slip number of that voter
158 and the signature of the person or the commissioner
159 from each party who assisted the voter. If no voter shall
160 have been assisted in voting the ballot as herein
161 provided, the commissioners shall likewise make and
162 subscribe to an oath of that fact on such list.

163 (f) After preparing the ballot the voter shall fold the
164 same so that the face shall not be exposed and so that
165 the names of the poll clerks thereon shall be seen. The
166 voter shall then announce his name and present his
167 ballot to one of the commissioners who shall hand the
168 same to another commissioner, of a different political
169 party, who shall deposit it in the ballot box, if such
170 ballot is the official one and properly signed. The
171 commissioner of election may inspect every ballot before
172 it is deposited in the ballot box, to ascertain whether it
173 is single, but without unfolding or unrolling it, so as to
174 disclose its content. When the voter has voted, he shall
175 retire immediately from the election room, and beyond
176 the sixty-foot limit thereof, and shall not return, except
177 by permission of the commissioners.

178 (g) Following the election, the oaths or affirmations
179 required by this section from those assisting voters
180 together with the "List of Assisted Voters," shall be
181 returned by the election commissioners to the clerk of

182 the county commission along with the election supplies,
183 records and returns, who shall make such oaths,
184 affirmations and list available for public inspection and
185 who shall preserve the same for a period of twenty-two
186 months or until disposition is authorized or directed by
187 the secretary of state, or court of record.

188 (h) Any person making an oath or affirmation
189 required under the provisions of this section who shall
190 therein knowingly swear falsely, or any person who shall
191 counsel, or advise, aid or abet another in the commission
192 of false swearing under this section, shall be guilty of
193 a misdemeanor, and, upon conviction thereof, shall be
194 fined not more than one thousand dollars, or imprisoned
195 in the county jail for a period of not more than one year,
196 or both.

197 (i) Any election commissioner or poll clerk who
198 authorizes or provides unchallenged assistance to a voter
199 when such voter is known to such election commissioner
200 or poll clerk not to require assistance in voting, shall be
201 guilty of a felony, and, upon conviction thereof, shall be
202 fined not more than five thousand dollars, or imprisoned
203 in the penitentiary for a period of not less than one year
204 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.
- §3-2-24. Systematic purging program for removal of ineligible voters from active voter registration files using manual voter registration system.
- §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.

§3-2-36. Crimes and offenses relating to applications for registration or change of registration; penalties.

§3-2-37. Effective date.

§3-2-1. Permanent voter registration law; uniform system of voter registration.

1 (a) This article, providing a permanent and uniform
2 system for the registration of the voters of the state of
3 West Virginia, may be cited as the "Permanent Voter
4 Registration Law".

5 (b) A permanent voter registration system is hereby
6 established which shall be uniform in its requirements
7 throughout the state and all of its subdivisions. No voter
8 so registered shall be required to register again for any
9 election while continuing to reside within the same
10 county, unless the voter's registration is canceled as
11 provided in this article.

12 (c) A person who is not eligible or not duly registered
13 to vote shall not be permitted to vote at any election in
14 any subdivision of the state, except that such a voter
15 may cast a "provisional" or "challenged" ballot as
16 provided in this chapter if the voter's eligibility or
17 registration is in question, and such "provisional" or
18 "challenged" ballot may be counted only if a positive
19 determination of the voter's eligibility and proper
20 registration can be ascertained.

§3-2-2. Eligibility to register to vote.

1 (a) Any person who possesses the constitutional
2 qualifications for voting may register to vote. Such a
3 person shall be a citizen of the United States and a legal
4 resident of West Virginia and of the county where he
5 or she is applying to register, shall be at least eighteen
6 years of age, except that a person who is at least
7 seventeen years of age and who will be eighteen years
8 of age by the time of the next ensuing general election
9 may also be permitted to register, and shall not be
10 otherwise legally disqualified: *Provided*, That a regis-
11 tered voter who has not reached eighteen years of age
12 may vote both partisan and nonpartisan ballots in a
13 state, county or municipal primary election, but is not
14 eligible to vote in a municipal general election or special

15 election.

16 (b) Any person who has been convicted of a felony,
17 treason or bribery in an election, under either state or
18 federal law, is disqualified and shall not be eligible to
19 register or to continue to be registered to vote during
20 the term of any sentence for such conviction, including
21 any period of incarceration, probation or parole related
22 thereto. Any person who has been determined to be
23 mentally incompetent by a court of competent jurisdic-
24 tion is disqualified and shall not be eligible to register
25 or to continue to be registered to vote for as long as that
26 determination remains in effect.

**§3-2-3. State authority relating to voter registration;
chief election officer.**

1 (a) The secretary of state, as chief election official of
2 the state as provided in section six, article one-a of this
3 chapter, shall have general supervision of the voter
4 registration procedures and practices and the mainte-
5 nance of voter registration records in the state, and shall
6 have authority to require reports and investigate
7 violations to ensure the proper conduct of voter regis-
8 tration throughout the state and all of its subdivisions.

9 (b) The secretary of state is hereby designated as the
10 chief election official responsible for the coordination of
11 this state's responsibilities under the "National Voter
12 Registration Act of 1993" (42 U.S.C. 1973gg). The
13 secretary of state shall have general supervision of voter
14 registration procedures and practices at agencies and
15 locations providing services as required by the provi-
16 sions of this article and shall have the authority to
17 propose procedural, interpretive and legislative rules for
18 promulgation in accordance with the provisions of
19 chapter twenty-nine-a of this code, for application for
20 registration, transmission of applications, reporting and
21 maintenance of records required by the provisions of
22 this article and for the development, implementation
23 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 commis-
sion relating to voter registration.**

1 (a) Subject to the authority of the secretary of state,
2 the clerk of the county commission shall be the chief
3 registration authority in each respective county and all
4 subdivisions therein, and shall supervise their deputies,
5 employees and registrars in the performance of their
6 respective duties.

7 (b) The county commission of each county shall
8 allocate sufficient resources for the proper and efficient
9 performance of duties relating to voter registration as
10 required by law, and shall provide for temporary
11 clerical assistance necessary for systematic purging
12 procedures or other duties of short duration required by
13 the provisions of this article.

14 (c) The county commission shall have authority on its
15 own motion to summon and examine any person
16 concerning the registration of voters, to investigate any
17 irregularities in registration, to summon and examine
18 witnesses, to require the production of any relevant
19 books and papers and to conduct hearings on any
20 matters relating to the registration of voters.

21 (d) The clerk of the county commission shall be
22 responsible for the administration of voter registration
23 within the county and shall establish procedures and
24 practices which ensure the full implementation of the
25 requirements of federal and state laws and rules
26 relating to voter registration, and which ensure nondis-
27 criminatory practices.

**§3-2-5. Forms for application for registration; informa-
tion required and requested; types of applica-
tion forms; notices.**

1 (a) (1) All state forms for application for voter
2 registration shall be prescribed by the secretary of state
3 and shall conform with the requirements of the "Na-
4 tional Voter Registration Act of 1993" (42 U.S.C.
5 1973gg) and the requirements of the provisions of this
6 article. Separate application forms may be prescribed
7 for voter registration conducted by the clerk of the
8 county commission, registration by mail, registration in
9 conjunction with an application for motor vehicle
10 driver's license and registration at designated agencies.

11 These forms may consist of one or more parts, may be
12 combined with other forms for use in registration by
13 designated agencies or in conjunction with driver
14 licensing, and may be revised and reissued as required
15 by the secretary of state to provide for the efficient
16 administration of voter registration. After the first day
17 of January, one thousand nine hundred ninety-five, all
18 state forms issued for the purpose of voter registration
19 shall be those prescribed pursuant to the provisions of
20 this article, and no form used or issued for voter
21 registration pursuant to laws in effect before that date
22 shall be provided to any person for the purpose of
23 registration.

24 (2) Notwithstanding any provisions of subdivision (1)
25 of this subsection to the contrary, the federal postcard
26 application for voter registration issued pursuant to the
27 "Uniformed and Overseas Citizens Absentee Voting Act
28 of 1986" (42 U.S.C. 1973 et seq.), and the mail voter
29 registration application form prescribed by the Federal
30 Election Commission pursuant to the "National Voter
31 Registration Act of 1993" (42 U.S.C. 1973gg) shall be
32 accepted as a valid form of application for registration
33 pursuant to the provisions of this article.

34 (b) Each application form for registration shall
35 include:

36 (1) A statement specifying the eligibility require-
37 ments for registration and an attestation that the
38 applicant meets each eligibility requirement;

39 (2) Any specific notice or notices required for a
40 specific type or use of application by the "National Voter
41 Registration Act of 1993" (42 U.S.C. 1973gg);

42 (3) A notice that a voter may be permitted to vote the
43 partisan primary election ballot of a political party only
44 if the voter has designated that political party on the
45 application for registration, unless the political party
46 has determined otherwise; and

47 (4) Any other instructions or information essential to
48 complete the application process.

49 (c) Each application form shall require that the

50 following be provided by the applicant, under oath, and
51 any application which does not contain each of the
52 following shall be considered incomplete:

53 (1) The applicant's legal name, including the first
54 name, middle or maiden name and last name;

55 (2) The month, day and year of the applicant's birth;

56 (3) The applicant's gender; and

57 (4) The applicant's residence address, including the
58 number and street or route and city and county of
59 residence except:

60 (A) In the case of a person eligible to register under
61 the provisions of the "Uniformed and Overseas Citizens
62 Absentee Voting Act", (42 U.S.C. 1973ff), the address at
63 which he or she last resided before leaving the United
64 States or entering the uniformed services, or if a
65 dependent child of such a person, the address at which
66 his or her parent last resided; and

67 (B) In the case of a homeless person having no fixed
68 residence address who nevertheless resides and remains
69 regularly within the county, the address of a shelter,
70 assistance center or family member with whom he or
71 she has regular contact, or other specific location
72 approved by the clerk of the county commission for the
73 purposes of establishing a voting residence;

74 (5) The applicant's signature, under penalty of
75 perjury, as provided in section thirty-six of this article,
76 to the attestation of eligibility to register to vote and to
77 the truth of the information given; and

78 (6) The date the application is signed.

79 (d) The applicant shall be requested to provide the
80 following information, but no application shall be
81 rejected for lack of this information:

82 (1) An indication whether the application is for a new
83 registration, change of address, change of name or
84 change of party affiliation;

85 (2) The applicant's choice of political party affiliation,
86 if any, or an indication of no affiliation: *Provided, That*

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 election.

1 (a) Voter registration for an election shall close on the
2 thirtieth day before the election, or on the first day
3 thereafter which is not a Saturday, Sunday or legal
4 holiday.

5 (b) An application for voter registration, transfer of

6 registration, change of name or change of political party
7 affiliation submitted by an eligible voter by the close of
8 voter registration shall be effective for any subsequent
9 primary, general or special election if the following
10 conditions are met:

11 (1) The application contains the required information
12 as set forth in subsection (c), section five of this article:
13 *Provided*, That incomplete applications for registration
14 containing information which are submitted within the
15 required time may be corrected within four days after
16 the close of registration if the applicant provides the
17 required information; and

18 (2) The application is received by the appropriate
19 clerk of the county commission no later than the hour
20 of the close of registration or is otherwise submitted by
21 the following deadlines:

22 (A) If mailed, the application shall be addressed to the
23 appropriate clerk of the county commission and post-
24 marked by the postal service no later than the date of
25 the close of registration: *Provided*, That if the postmark
26 is missing or illegible, the application shall be presumed
27 to have been mailed no later than the close of registra-
28 tion if it is received by the appropriate clerk of the
29 county commission no later than the third day following
30 the close of registration;

31 (B) If accepted by a designated agency or motor
32 vehicle licensing office, the application shall be received
33 by that agency or office no later than the close of
34 registration;

35 (C) If accepted through a registration outreach
36 program, the application shall be received by the clerk,
37 deputy clerk or registrar no later than the close of
38 registration; and

39 (3) The verification notice required by the provisions
40 of section sixteen of this article mailed to the voter at
41 the residence indicated on the application is not
42 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.

1 (a) The clerk of the county commission shall provide
2 voter registration services at all times when the office
3 of the clerk is open for regular business. In addition, the
4 office of the clerk shall remain open for voter registra-
5 tion from 9:00 a.m. until 8:00 p.m. on the Friday and
6 Monday, and from 9:00 a.m. until 5:00 p.m. on the
7 Saturday, prior to the close of registration for statewide
8 primary and general elections.

9 (b) Any eligible voter who desires to apply for voter
10 registration in person at the office of the clerk of the
11 county commission shall complete a voter registration
12 application on the prescribed form and shall sign the
13 oath required on that application in the presence of the
14 clerk of the county commission or his or her deputy. The
15 applicant shall then present valid identification and
16 proof of age, except that the clerk may waive the proof
17 of age requirement if the applicant is clearly over the
18 age of eighteen.

19 (c) The clerk shall attempt to establish whether the
20 residence address given is within the boundaries of an
21 incorporated municipality and, if so, make the proper
22 entry required for municipal residents to be properly
23 identified for municipal voter registration purposes.

24 (d) Upon receipt of the completed registration
25 application, the clerk shall either:

26 (1) Provide a notice of procedure for verification and
27 notice of disposition of the application and immediately
28 begin the verification process prescribed by the provi-
29 sions of section sixteen of this article; or

30 (2) Upon presentation of a current driver's license or
31 state issued identification card containing the residence
32 address as it appears on the voter registration applica-
33 tion, issue the receipt of registration.

**§3-2-8. Registration outreach services by the clerk of the
county commission; challenge of voter's
registration.**

1 (a) Registration outreach services, including applica-
2 tion for registration, change of address, name or party
3 affiliation and correction or cancellation of registration,
4 may be provided at locations outside the office of said
5 clerk of the county commission by the clerk, one or more
6 of his or her deputy clerks, or by temporary registrars
7 or volunteer registrars appointed in accordance with the
8 provisions of section nine of this article.

9 (b) (1) The clerk of the county commission may
10 establish temporary registration offices to provide voter
11 registration services to residents of the county. The clerk
12 shall file a list of the scheduled times and locations of
13 any temporary registration offices with the county
14 commission at least fourteen days prior to opening the
15 temporary office and shall solicit public service adver-
16 tising of the location and times for any temporary
17 registration office on radio, television and newspapers
18 serving that county.

19 (2) The clerk of the county commission shall establish
20 an approved program of voter registration services for
21 eligible high school students at each high school within
22 the county and shall conduct that program of voter
23 registration at an appropriate time during each school
24 year, but no later than forty-five days before a statewide
25 primary election held during a school year. The
26 secretary of state shall issue guidelines for approval of
27 programs of voter registration for eligible students, and
28 all such programs shall include opportunities for
29 students to register in person and present identification
30 at the high school where the student is enrolled. Official
31 school records shall be accepted as identification and
32 proof of age for eligible students.

33 (c) When the boundaries of precincts are altered
34 requiring the transfer of a portion of the voters of one
35 precinct to another precinct, the clerk of the county
36 commission or temporary registrars appointed for the
37 purpose may conduct door-to-door registration services
38 in the areas affected by the boundary changes and may
39 register, alter or transfer the registration of voters
40 found to reside in those areas. Upon a determination
41 that a voter who previously registered in the area

42 canvassed no longer resides at that address, except for
43 those persons who are qualified to maintain a legal
44 residence at the address, the clerk of the county
45 commission shall challenge the registration of the voter
46 in accordance with the provisions of section twenty-eight
47 of this article.

48 (d) The procedures required upon receipt of an
49 application for registration as prescribed in subsection
50 (b), section seven of this article shall also be performed
51 by the authorized persons conducting the registration
52 outreach services.

§3-2-9. Appointment of temporary and volunteer registrars for registration outreach services.

1 (a) Temporary registrars and volunteer registrars
2 may be appointed to perform registration outreach
3 services as provided in section eight of this article.
4 Whenever registration outreach services are conducted
5 by temporary registrars or volunteer registrars, two
6 persons of opposite political parties shall serve together.
7 All temporary registrars and volunteer registrars shall
8 be trained by the clerk of the county commission before
9 beginning their duties and shall thereafter be super-
10 vised by said clerk.

11 (b) Temporary registrars and volunteer registrars
12 shall have the same eligibility qualifications as required
13 of election officials and shall be subject to suspension by
14 the same procedures as prescribed for election officials
15 as provided in section twenty-eight, article one of this
16 chapter. Eligibility may be suspended for the following
17 reasons:

18 (1) Failure to appear at the required time and place
19 or to perform the duties of a registrar as required by
20 law;

21 (2) Alteration or destruction of a voter registration
22 application;

23 (3) Improper influence of the choice of party affilia-
24 tion of a voter, or other improper interference or
25 intimidation relating to the voter's decision to register
26 or not to register to vote; or

27 (4) Being under the influence of alcohol or drugs, or
28 having anything wagered or bet on an election.

29 (c) Each temporary or volunteer registrar, before
30 beginning the duties of the office, shall take an oath to
31 perform the duties of the office according to law and the
32 oath shall be filed with the clerk of the county
33 commission.

34 (d) (1) The county commission may appoint temporary
35 registrars to conduct registration as provided in section
36 eight of this article. An equal number of such registrars
37 shall be selected from the two major political parties.
38 The county commission shall notify each county execu-
39 tive committee, in writing, specifying the number of
40 registrars to be appointed, the general schedule of
41 registration activities to be performed, and the date by
42 which the nominations must be received, which date
43 shall be not less than twenty-eight days following the
44 date of the notice. Each executive committee, by
45 majority vote of the committee, may nominate the
46 number of persons needed to serve as registrars and
47 shall submit the nominations in writing to the county
48 commission by the date specified in the notice. The clerk
49 of the county commission shall notify those persons so
50 nominated and appointed. If any person declines to serve
51 or fails to appear, the clerk of the county commission
52 shall fill the vacancy with a qualified person of the same
53 political party.

54 (2) Temporary registrars shall be compensated at a
55 rate not less than the federal minimum wage and may
56 be reimbursed for mileage traveled between the county
57 courthouse and any temporary registration site.

58 (e) The clerk of the county commission may appoint
59 volunteer registrars to conduct registration outreach
60 services as provided in section eight of this article.
61 Volunteer registrars shall serve without compensation.
62 At least fourteen days before beginning any registration
63 outreach service to be conducted by volunteer registrars,
64 the clerk shall notify the county commission in writing
65 listing the proposed schedule for all registration
66 outreach activities and the name and party affiliation of

67 each volunteer registrar appointed.

§3-2-10. Application for registration by mail.

1 (a) Any qualified person may apply to register,
2 change, transfer or correct his or her voter registration
3 by mail. Application shall be made on a prescribed form
4 as provided by section five of this article, and the voter
5 shall not be required to pay postage to mail the
6 completed application.

7 (b) To the extent possible with funds allocated
8 annually for such purpose, the secretary of state shall
9 make state mail registration forms available for
10 distribution through governmental and private entities
11 and organized voter registration programs. The secre-
12 tary of state shall make a record of all requests by
13 entities or organizations for ten or more forms with a
14 description of the dates and locations in which the
15 proposed registration drive is to be conducted. The
16 secretary of state may limit the distribution to a
17 reasonable amount per group.

18 (c) The clerk of the county commission shall provide
19 up to four mail registration forms to any resident of the
20 county upon request. To the extent possible with funds
21 allocated annually for the purpose, the clerk of the
22 county commission shall make state mail registration
23 forms available for distribution through organized voter
24 registration programs within the county. The clerk of
25 the county commission shall make a record of all
26 requests by entities or organizations for ten or more
27 forms with a description of the dates and locations in
28 which the proposed registration drive is to be conducted.
29 The clerk may limit the distribution to a reasonable
30 amount per group.

31 (d) The applicant shall provide all required informa-
32 tion and only after completing the information, sign the
33 prescribed applicant's oath under penalty of perjury, as
34 provided in section thirty-six of this article. No person
35 may alter or add any entry or make any mark which
36 would alter any material information on the voter
37 registration application after the applicant has signed
38 the oath: *Provided*, That the clerk of the county

39 commission may correct any entry upon the request of
40 the applicant provided the request is properly docu-
41 mented and the correction is dated and initialed by the
42 clerk.

43 (e) Completed applications shall be mailed or deli-
44 vered to the clerk of the county commission of the county
45 in which the voter resides. If a clerk receives a
46 completed mail application form from a voter whose
47 residence address is located in another county, the clerk
48 shall forward that application within three days to the
49 clerk of the county commission of the county of the
50 applicant's residence.

51 (f) Upon receipt of the application for registration by
52 the appropriate clerk of the county commission, the
53 clerk shall:

54 (1) Attempt to establish whether the residence
55 address given is within the boundaries of an incorpo-
56 rated municipality and, if so, make the proper entry
57 required for municipal residents to be properly identi-
58 fied for municipal voter registration purposes; and

59 (2) Immediately begin the verification process re-
60 quired by the provisions of section sixteen of this article.

61 (g) Any person who registers by mail pursuant to this
62 section shall be required to make his or her first vote
63 in person at the polls or in person at the office of the
64 clerk of the circuit court to vote an absentee ballot in
65 order to make the registration valid: *Provided*, That any
66 person who has applied for an absentee ballot pursuant
67 to the provisions of subdivision (1), subsection (d), section
68 one, article three of this chapter or paragraph (B),
69 subdivision (2) of said subsection or subdivision (3) of
70 said subsection or of subsection (e) of said section shall
71 not have his or her ballot in that election challenged for
72 failure to appear in person or for failure to present
73 identification.

74 (h) Any person required by this section to make his
75 or her first vote in person shall present valid identifi-
76 cation and proof of age to the clerks at the poll or at
77 the office of the clerk of the circuit court or the clerk

78 of the county commission of the county in which he or
79 she is registered before casting the first ballot.

80 (i) Any person who submits a state mail voter
81 registration application to the clerk of the county
82 commission in the county in which he or she is currently
83 registered for the purpose of entering a change of
84 address within the county, making a change of party
85 affiliation or recording a change of legal name shall not
86 be required to make his or her first vote in person or
87 to present identification or proof of age.

**§3-2-11. Registration in conjunction with driver
licensing.**

1 (a) Beginning on the first day of January, one
2 thousand nine hundred ninety-five, the division of motor
3 vehicles and the department of public safety, or such
4 other division or department as may be established by
5 law to perform motor vehicle driver licensing services,
6 shall provide each qualified voter, as an integral and
7 simultaneous part of every process of application for the
8 issuance, renewal or change of address of any motor
9 vehicle driver's license or official identification card,
10 pursuant to the provisions of article two, chapter
11 seventeen-b of this code, a voter registration application
12 form as prescribed in section five of this article.

13 (b) Any person who fails to sign the voter registration
14 application or who fails to return the voter registration
15 application to a driver licensing facility or to an
16 appropriate voter registration office shall be deemed to
17 have declined to register. Information regarding any
18 person's failure to sign the voter registration application
19 shall be confidential and shall not be used for any
20 purpose other than to determine voter registration.

21 (c) Any qualified voter who submits the application
22 for registration pursuant to the provisions of subsection
23 (a) of this section in person at a driver licensing facility
24 at the time of applying for, obtaining, renewing or
25 transferring his or her driver's license or official
26 identification card and who presents identification and
27 proof of age at that time shall not be required to make
28 his or her first vote in person or to again present

29 identification in order to make that registration valid.

30 (d) Any qualified voter who submits by mail or by
31 delivery by a third party an application for registration
32 on the form used in conjunction with driver licensing
33 shall be required to make his or her first vote in person
34 and present identification as required for other mail
35 registration in accordance with the provisions of
36 subsection (g), section ten of this article: *Provided*, That
37 if the applicant has been previously registered in the
38 jurisdiction and the application is for a change of
39 address, change of name, change of political party
40 affiliation or other correction, the presentation of
41 identification and first vote in person shall not be
42 required.

43 (e) Any application for voter registration submitted
44 pursuant to the provisions of this section shall be
45 considered as updating any previous voter registration
46 by the applicant and shall authorize the cancellation of
47 registration in any other county or state in which the
48 applicant was previously registered.

49 (f) Any change of address from one residence to
50 another within the same county which is submitted for
51 driver licensing purposes in accordance with applicable
52 law shall also serve as a notice of change of address for
53 voter registration purposes unless the individual
54 indicates on the form that the change of address is not
55 for voter registration purposes.

56 (g) Completed applications for voter registration or
57 change of address for voting purposes received by any
58 office providing driver licensing services shall be
59 forwarded to the secretary of state within five days of
60 receipt. The secretary of state shall remove and file any
61 forms which have not been signed by the applicant and
62 shall forward completed, signed applications to the clerk
63 of the appropriate county commission within five days
64 of receipt.

65 (h) Voter registration application forms containing
66 voter information which are returned to a driver
67 licensing office unsigned shall be collected and main-
68 tained for two years according to procedural rules

69 promulgated by the secretary of state.

§3-2-12. Combined voter registration and driver licensing fund.

1 (a) Fifty cents of each license fee collected pursuant
2 to the provisions of section one, article three, chapter
3 seventeen of this code shall be paid into the state
4 treasury to the credit of a special revenue fund to be
5 known as the "Combined Voter Registration and Driver
6 Licensing Fund". The moneys so credited to such fund
7 may be used by the secretary of state for the following
8 purposes:

9 (1) Printing and distribution of combined driver
10 licensing or other agency applications and voter
11 registration forms, or for the printing of voter registra-
12 tion forms to be used in conjunction with driver
13 licensing or other agency applications;

14 (2) Printing and distribution of mail voter registration
15 forms for purposes of this article;

16 (3) Supplies, postage and mailing costs for correspon-
17 dence relating to voter registration for agency registra-
18 tion sites and for the return of completed voter regis-
19 tration forms to the appropriate state or county election
20 official;

21 (4) Reimbursement of postage and mailing costs
22 incurred by clerks of the county commissions for
23 sending a verification mailing, confirmation of registra-
24 tion or other mailings directly resulting from an
25 application to register, change or update a voter's
26 registration through a driver licensing or other agency;

27 (5) Reimbursement to state funded agencies desig-
28 nated to provide voter registration services under this
29 chapter for personnel costs associated with the time
30 apportioned to voter registration services and assistance;

31 (6) The purchase, printing and distribution of public
32 information and other necessary materials or equipment
33 to be used in conjunction with voter registration services
34 provided by state funded agencies designated pursuant
35 to the provisions of this article;

36 (7) The development of a statewide program of
37 uniform voter registration computerization for use by
38 each county registration office and the secretary of state,
39 purchase of uniform voter registration software, pay-
40 ment of software installation costs and reimbursement
41 to the county commissions of not more than fifty percent
42 of the cost per voter for data entry or data conversion
43 from a previous voter registration software program;

44 (8) Payment of up to fifty percent of the costs of
45 conducting a joint program with participating counties
46 to identify ineligible voters by using the United States
47 postal service information as provided in section twenty-
48 five of this article: *Provided*, That such assistance shall
49 be available only to counties which maintain voter
50 registration lists on the statewide uniform voter data
51 system; and

52 (9) Payment or reimbursement of other costs asso-
53 ciated with implementation of the requirements of the
54 "National Voter Registration Act of 1993" (42 U.S.C.
55 1973gg): *Provided*, That revenue received by the fund
56 in any fiscal year shall first be allocated to the purposes
57 set forth in subdivisions (1) through (8) of this
58 subsection.

59 (b) The secretary of state shall promulgate rules
60 pursuant to the provisions of chapter twenty-nine-a of
61 this code to provide for the administration of the fund
62 established in subsection (a) of this section.

**§3-2-13. Agencies to provide voter registration services;
designation of responsible employees; forms;
prohibitions; confidentiality.**

1 (a) For the purposes of this article, "agency" means
2 a department, division or office of state or local
3 government, or a program supported by state funds,
4 which is designated under this section to provide voter
5 registration services, but does not include departments,
6 divisions or offices required by other sections of this
7 article to provide voter registration services.

8 (b) Beginning on the first day of January, one
9 thousand nine hundred ninety-five, the following

10 agencies shall provide voter registration services
11 pursuant to the provisions of this article:

12 (1) Those state agencies which administer or provide
13 services under the food stamp program, the "Aid to
14 Families with Dependent Children" (AFDC) program,
15 the "Women, Infants and Children" (WIC) program and
16 the medicaid program;

17 (2) Those state funded agencies primarily engaged in
18 providing services to persons with disabilities;

19 (3) County marriage license offices; and

20 (4) Armed services recruitment offices, as required by
21 federal law.

22 (c) No later than the first day of October, one
23 thousand nine hundred ninety-four, the secretary of
24 state shall, in conjunction with a designated represen-
25 tative of each of the appropriate state agencies, review
26 those programs and offices established and operating
27 with state funds which administer or provide public
28 assistance or services to persons with disabilities, and
29 shall promulgate an emergency rule pursuant to the
30 provisions of chapter twenty-nine-a of this code desig-
31 nating the specific programs and offices required to
32 provide voter registration services in order to comply
33 with the requirements of this section and the require-
34 ments of the "National Voter Registration Act of 1993"
35 (42 U.S.C. 1973gg). The offices and programs so
36 designated shall begin providing voter registration
37 services on the first day of January, one thousand nine
38 hundred ninety-five.

39 (d) No later than the first day of July, one thousand
40 nine hundred ninety-six, and each even-numbered year
41 thereafter, the secretary of state shall, in conjunction
42 with the designated representatives of the appropriate
43 state agencies, perform the review as required by the
44 provisions of subsection (c) of this section and the
45 secretary of state shall promulgate a legislative rule
46 pursuant to the provisions of chapter twenty-nine-a of
47 this code designating the specific agencies required to
48 provide voter registration services beginning on the first

49 day of July of the following year.

50 (e) Each state agency required to provide services
51 pursuant to the provisions of this article shall designate
52 a current employee of that agency to serve as a state
53 supervisor to administer voter registration services
54 required in all programs under their jurisdiction. Each
55 state supervisor shall be responsible for coordination
56 with the secretary of state, overall operation of the
57 program in conjunction with services within the agency,
58 designation and supervision of local coordinators and for
59 the review of any complaints filed against employees
60 relating to voter registration as provided in this chapter.

61 (f) The state supervisor shall designate a current
62 employee as a local coordinator for voter registration
63 services for each office or program delivery center who
64 shall be responsible for the proper conduct of voter
65 registration services, timely return of completed voter
66 registration applications, proper handling of declina-
67 tions and reporting requirements. Notice of the desig-
68 nation of these persons shall be made upon request of
69 the secretary of state, and within five days following any
70 change of such designation.

71 (g) The registration application forms used for agency
72 registration shall be issued pursuant to the provisions
73 of section five of this article.

74 (h) The secretary of state, in conjunction with those
75 agencies designated to provide voter registration
76 services pursuant to the provisions of this section, shall
77 prescribe the form or portion of the appropriate agency
78 form required by the provisions of Section 7(a)(6)(B) of
79 the "National Voter Registration Act of 1993" (42 U. S.
80 C. 1973gg), containing the required notices and provid-
81 ing boxes for the applicant to check to indicate whether
82 the applicant would like to register or decline to register
83 to vote. Such form or portion of form is designated the
84 "declination form".

85 (i) A person who provides voter registration services
86 shall not:

87 (1) Seek to influence an applicant's political prefer-

88 ence or party registration;

89 (2) Display to any applicant any political preference
90 or party allegiance;

91 (3) Make any statement to an applicant or take any
92 action the purpose or effect of which is to discourage the
93 applicant from registering to vote; or

94 (4) Make any statement to an applicant or take any
95 action the purpose or effect of which is to lead the
96 applicant to believe that a decision to register or not to
97 register has any bearing on the availability of services
98 or benefits.

99 (j) No information relating to the identity of a voter
100 registration agency through which any particular voter
101 is registered or to a declination to register to vote in
102 connection with an application made at any designated
103 agency, may be used for any purpose other than voter
104 registration.

§3-2-14. Registration procedures at agencies.

1 (a) For the purpose of this section, "applicant" means
2 a person who applies in person, whether at an agency
3 office or other site of direct contact with an agency
4 employee responsible for accepting applications, seeking
5 services or assistance for himself or herself or for a
6 member of his or her immediate family.

7 (b) No later than the first day of December, one
8 thousand nine hundred ninety-four, the secretary of
9 state shall promulgate procedural rules governing the
10 duties and training of agency employees responsible for
11 providing voter registration services, including the
12 distribution, handling, transmittal and retention of
13 voter registration applications and other forms used in
14 conjunction with agency registration, and any reporting
15 necessary to comply with the "National Voter Registra-
16 tion Act of 1993" (42 U.S.C. 1973gg).

17 (c) Beginning on the first day of January, one
18 thousand nine hundred ninety-five, or on the first day
19 of July of any subsequent odd-numbered year after
20 which an agency has been designated, each agency

21 designated under the provisions of section thirteen of
22 this article shall:

23 (1) Distribute with each application for service or
24 assistance, and with each recertification, renewal or
25 change of address form relating to that service or
26 assistance, the declination form prescribed in subsection
27 (h), section thirteen of this article, and a voter registra-
28 tion application issued for the purposes of agency
29 registration pursuant to the provisions of section five of
30 this article;

31 (2) Provide to each applicant who does not decline to
32 register to vote the same degree of assistance in voter
33 registration as is provided for the completion of the
34 agency's other forms, unless the applicant refuses
35 assistance;

36 (3) Accept completed voter registration applications
37 and forward those applications to the secretary of state
38 within five days of receipt;

39 (4) Accept declination forms and retain or forward
40 those forms in a manner prescribed by procedural rules
41 promulgated by the secretary of state;

42 (5) Provide, on the request of an applicant or person
43 assisting an applicant, a reasonable number of mail
44 application forms for use by other eligible persons
45 residing with the applicant; and

46 (6) Make any reports as may be required.

47 (d) Any applicant who checks "no" or fails to check
48 "yes" or "no" on the declination form shall be deemed
49 to have declined to register; and any applicant who
50 checks "yes" on the declination form, but fails or refuses
51 to sign the voter registration application or fails to
52 return the voter registration application to an agency or
53 to an appropriate voter registration office shall be
54 deemed to have declined to register.

55 (e) Upon receipt of registration forms from an agency,
56 the secretary of state shall remove and file any forms
57 which have not been signed by the applicant and shall
58 forward completed, signed applications to the clerk of

59 the appropriate county commission within five days of
60 receipt.

61 (f) Any qualified voter who submits the application
62 for registration pursuant to the provisions of this section
63 in person at an agency or to an agency employee
64 providing services at another location, and who presents
65 identification and proof of age at that time or has
66 previously presented identification and proof of age to
67 the same agency, shall not be required to make his or
68 her first vote in person or to again present identification
69 in order to make that registration valid.

70 (g) Any qualified voter who submits by mail or by
71 delivery by a third party an application for registration
72 on the form used in conjunction with agency registration
73 shall be required to make his or her first vote in person
74 and to present identification as required for other mail
75 registration in accordance with the provisions of
76 subsection (g), section ten of this article.

77 (h) Voter registration application forms which are
78 returned to an agency unmarked shall be collected for
79 reuse according to procedures prescribed by the
80 secretary of state.

**§3-2-15. Special procedures relating to agency registra-
tion at marriage license offices.**

1 When a qualified voter appears in person to apply for
2 a marriage license, the applicant shall be presented a
3 voter registration application. If the applicant does not
4 intend to change his or her legal name or residence
5 address upon marriage, the applicant may immediately
6 apply to register or to update a previous registration,
7 in accordance with the procedures prescribed in section
8 fourteen of this article, except that the completed
9 applications shall be forwarded directly to the registra-
10 tion office of the clerk of the county commission if the
11 residence given is within the same county. If the
12 applicant does intend to change his or her legal name
13 or residence address upon marriage, and desires to
14 register to vote, the applicant shall instead be given a
15 mail registration card for use after the change of name
16 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.

1 (a) Upon receipt of an application for voter registra-
2 tion, the clerk of the county commission shall determine
3 whether the application is complete, whether the
4 applicant appears to be eligible to register to vote within
5 the county and whether the applicant is currently
6 registered within the county. If the application is
7 incomplete or the applicant appears not to be eligible,
8 the clerk shall take the appropriate action as prescribed
9 in section seventeen of this article.

10 (b) If the application received is complete and appears
11 to be from an eligible person who has not previously
12 been registered within the county, or has not been
13 included within the active voter registration files as
14 defined in section eighteen of this article within the
15 preceding calendar year and does not present a driver's
16 license containing the residence address pursuant to the
17 provisions of subdivision (2), subsection (d), section seven
18 of this article, the clerk of the county commission shall
19 conduct the following verification procedure:

20 (1) The clerk shall issue or mail, by first-class
21 nonforwardable return requested, a verification notice
22 addressed to the applicant at the residence and mailing
23 address given on the application, except that the mailing
24 address shall not be included on the notice if it appears
25 to identify a distinctly different location from the
26 residence address, such as a business address, another
27 residence or a different city or town, unless the voter
28 has registered as a uniformed services, overseas or
29 homeless voter and provided a local residence address
30 pursuant to the provisions of subdivision (4), subsection
31 (c), section five of this article.

32 (2) The verification notice shall state the purpose of
33 the procedure, the fact that no further action is required
34 of the applicant, and the fact that a notice of the
35 disposition of the registration application will be mailed
36 after the ten day return period has expired.

37 (3) If the verification notice is not returned as
38 undeliverable within ten days, the application for
39 registration shall be accepted and entered into the active
40 voter registration files and a registration receipt mailed
41 designating the voter's assigned precinct.

42 (4) If the verification notice is returned undeliverable
43 within ten days, the clerk shall compare the address
44 given on the voter registration application with the
45 address used on the envelope and, if there is any
46 discrepancy, shall send a second verification notice to
47 the correct address. If there is no discrepancy, the
48 application for registration shall be denied and the
49 notice of denial prescribed in section seventeen of this
50 article shall be mailed.

51 (5) If the verification notice is returned undeliverable
52 after the registration has been accepted, the clerk shall
53 initiate the confirmation procedure prescribed in section
54 twenty-six of this article.

55 (c) If the application received is complete and appears
56 to be from an eligible person who is currently registered
57 within the county, or has been included within the active
58 voter registration files as defined in section eighteen of
59 this article within the preceding calendar year, the clerk
60 of the county commission shall send, by first-class
61 nonforwardable return requested mail, a registration
62 receipt or other notice of the disposition of the applica-
63 tion; and

64 (1) If the application is for a change of name, change
65 of address, change of political party affiliation, rein-
66 statement or other correction of the previous voter
67 registration, the clerk shall include a new voter
68 registration receipt;

69 (2) If the application does not make any change in the
70 previous voter registration, the clerk shall notify the
71 registrant that the voter is not required to reregister or
72 update the registration as long as he or she lives at the
73 same address and has the same legal name; or

74 (3) If the notice of disposition is returned undeliver-
75 able after the registration has been accepted, the clerk

76 shall initiate the confirmation procedure prescribed in
77 section twenty-six of this article.

78 (d) If the application contains information indicating
79 the address at which the applicant was previously
80 registered to vote in another county or state, the clerk
81 of the county commission shall give notice to the clerk
82 or registrar of that jurisdiction for the purpose of
83 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, deci-
sion; appeal to circuit court.**

1 (a) If the clerk of the county commission finds that
2 any of the following is true, based on the application or
3 official documentation of ineligibility, the clerk shall
4 deny the application for voter registration:

5 (1) The applicant, at the time the application is
6 received, is not eligible to register in the county and
7 state pursuant to the provisions of section two of this
8 article;

9 (2) The applicant has submitted an application which
10 is incomplete, pursuant to the provisions of subsection
11 (c), section five of this article; or

12 (3) The verification notice as required in section
13 sixteen of this article is returned as undeliverable at the
14 address given by the voter.

15 (b) When the clerk of the county commission deter-
16 mines that the application must be denied, the clerk
17 shall send, by first class forwardable return requested
18 mail, a notice that the application for registration was
19 denied and the reasons therefor.

20 (1) If the reason for denial is an incomplete applica-
21 tion, the clerk shall inform the voter of the right to
22 reapply and shall enclose a mail voter registration form
23 for the purpose.

24 (2) If the reason for denial is return of the verification
25 notice as undeliverable at the address given, the clerk
26 shall inform the voter of the right to present proof of

27 residence in order to validate the registration.

28 (3) If the reason for denial is ineligibility, the notice
29 shall include a statement of eligibility requirements for
30 voter registration and of the applicant's right to appeal
31 the denial.

32 (c) An applicant whose application for registration is
33 denied by the clerk of the county commission because
34 of ineligibility or for failure to submit proof of residence
35 may make a written request for a reconsideration by the
36 clerk, and may present information relating to his or her
37 eligibility. The clerk shall review the request for
38 consideration and shall issue a decision in writing
39 within fourteen days of the receipt of the request.

40 (d) If the application is denied upon reconsideration
41 pursuant to the provisions of subsection (c) of this
42 section, the applicant may make a written request for
43 a hearing before the county commission. The county
44 commission shall schedule and conduct the hearing
45 within thirty days of receipt of the request and shall
46 issue a decision, in writing, within fifteen days of the
47 hearing.

48 (e) An applicant may appeal the decision of the county
49 commission to the circuit court. The circuit court shall
50 only consider the record before the county commission,
51 as authenticated by the clerk of the county commission.
52 The circuit court may affirm the order of the county
53 commission, whether the order be affirmative or
54 negative; but if it deems such order not to be reasonably
55 justified by the evidence considered, it may reverse such
56 orders of the county commission in whole or in part as
57 it deems just and right; and if it deems the evidence
58 considered by the county commission in reaching its
59 decision insufficient, it may remand the proceedings to
60 the county commission for further hearing. Any such
61 order or orders of the circuit court shall be certified to
62 the county commission.

63 (f) Any party to such appeal may, within thirty days
64 after the date of a final order by the circuit court, apply
65 for an appeal to the supreme court of appeals which may
66 grant or refuse such appeal at its discretion. The

67 supreme court of appeals shall have jurisdiction to hear
68 and determine the appeal upon the record before the
69 circuit court and to enter such order as it may find that
70 the circuit court should have entered.

71 (g) It shall be the duty of the circuit court and the
72 supreme court of appeals, in order to expedite registra-
73 tion and election procedures, to hold such sessions as
74 may be necessary to determine any cases involving the
75 registration of voters. Judges of the circuit court and the
76 supreme court of appeals in vacation shall have the same
77 power as that prescribed in this section for their
78 respective courts.

**§3-2-18. Registration records; active, inactive, canceled,
pending and rejected registration files; procedure;
voting records.**

1 (a) For the purposes of this article:

2 (1) "Original voter registration record" means all
3 records submitted or entered in writing for voter
4 registration purposes, including:

5 (A) Any original application or notice submitted by
6 any person for registration or reinstatement, change of
7 address, change of name, change of party affiliation,
8 correction of records, cancellation, confirmation of voter
9 information or other request or notice for voter registra-
10 tion purposes; and

11 (B) Any original entry made on any voter's registra-
12 tion record at the polling place, or made or received by
13 the clerk of the county commission relating to any
14 voter's registration, such as records of voting, presenta-
15 tion of identification and proof of age, challenge of
16 registration, notice of death or obituary notice, notice of
17 disqualifying conviction or ruling of mental incompe-
18 tence or other original document which may affect the
19 status of any person's voter registration.

20 (2) "Active voter registration files" means the files of
21 registration records, whether maintained on paper
22 forms or in digitized data format, containing the names,
23 addresses, birth dates and other required information
24 for all persons within a county who are registered to

25 vote and whose registration has not been designated as
26 "inactive" or "canceled" pursuant to the provisions of
27 this article.

28 (3) "Inactive voter registration files" means the files
29 of registration records, whether maintained on paper
30 forms or in digitized data format, containing the names,
31 addresses, birth dates and other required information
32 for all persons designated "inactive" pursuant to the
33 provisions of section twenty-seven of this article
34 following the return of the prescribed notices as
35 undeliverable at the address entered on the voter
36 registration. For the purposes of this chapter or of any
37 other provisions of this code relating to elections
38 conducted under the provisions of this chapter, whe-
39 never a requirement is based on the number of regis-
40 tered voters, including, but not limited to, the number
41 of ballots to be printed, the limitations on the size of a
42 precinct, or the number of petition signatures required
43 for election purposes, only those registrations included
44 on the active voter registration files shall be counted and
45 voter registrations included on the inactive voter
46 registration files, as defined in this subdivision, shall not
47 be counted.

48 (4) "Canceled voter registration files" means the files
49 containing all required information for all persons who
50 have been removed from the active and inactive voter
51 registration files and who are no longer registered to
52 vote within the county.

53 (5) "Pending application files" means the temporary
54 files containing all information submitted on a voter
55 registration application, pending the expiration of the
56 verification period.

57 (6) "Rejected application files" means the files
58 containing all information submitted on a voter regis-
59 tration application which was rejected for reasons as
60 described in this article.

61 (b) Active voter registration files and inactive voter
62 registration files may be maintained in the same
63 physical location or database, providing the records are
64 coded, marked or arranged in such a way as to make

65 the status of the registration immediately obvious.
66 Canceled voter registration files, pending application
67 files, and rejected application files shall each be
68 maintained in separate physical locations or databases.

69 (c) The effective date of any action affecting any
70 voter's registration status shall be entered on the voter
71 record in the appropriate file, including the effective
72 date of registration, change of name, address or party
73 affiliation or correction of the record, effective date of
74 transfer to inactive status, return to active status or
75 cancellation. When any registration is designated
76 inactive or is canceled, the reason for the designation or
77 cancellation and any reference notation necessary to
78 locate the original documentation related to the change
79 shall be entered on the voter record.

80 (d) Within one hundred twenty days after each
81 primary, general, municipal or special election, the
82 clerk of the county commission shall, as evidenced by the
83 presence or absence of signatures on the pollbooks for
84 such election, correct any errors or omissions on the
85 voter registration records resulting from the poll clerks
86 erroneously checking or failing to check the registration
87 records as required by the provisions of section thirty-
88 four, article one of this chapter, or shall enter the voting
89 records into the state uniform data system if the
90 precinct books have been replaced with printed regis-
91 tration books as provided in section twenty-one of this
92 article.

§3-2-19. Maintenance of active and inactive registration files in precinct record books and county alphabetical registration file.

1 (a) Each county shall continue to maintain a record
2 of each active and inactive voter registration in precinct
3 registration books until the state uniform data system
4 is adopted pursuant to the provisions of section twenty
5 of this article, fully implemented and given final
6 approval by the secretary of state. The precinct
7 registration books shall be maintained as follows:

8 (1) Each active voter registration shall be entered in
9 the precinct book or books for the county precinct in

10 which the voter's residence is located and shall be filed
11 alphabetically by name, alphabetically within catego-
12 ries, or by numerical street address, as determined by
13 the clerk of the county commission for the effective
14 administration of registration and elections. No active
15 voter registration record shall be removed from the
16 precinct registration books unless the registration is
17 lawfully transferred or canceled pursuant to the
18 provisions of this article.

19 (2) Each voter registration which is designated
20 "inactive" pursuant to the procedures prescribed in
21 section twenty-seven of this article shall be retained in
22 the precinct book for the county precinct in which the
23 voter's last recorded residence address is located until
24 the time period expires for which a record must remain
25 on the inactive files. Every inactive registration shall be
26 clearly identified by a prominent tag or notation or
27 arranged in a separate section in the precinct book
28 clearly denoting the registration status. No inactive
29 voter registration record shall be removed from the
30 precinct registration books unless the registration is
31 lawfully transferred or canceled pursuant to the
32 provisions of this article.

33 (b) For municipal elections, the registration records
34 of active and inactive voters shall be maintained as
35 follows:

36 (1) County precinct books shall be used in municipal
37 elections when the county precinct boundaries and the
38 municipal precinct boundaries are the same and all
39 registrants of the precinct are entitled to vote in state,
40 county and municipal elections within the precinct or
41 when the registration records of municipal voters within
42 a county precinct are separated and maintained in a
43 separate municipal section or book for that county
44 precinct and can be used either alone or in combination
45 with other precinct books to make up a complete set of
46 registration records for the municipal election precinct.

47 (2) Separate municipal precinct books may be main-
48 tained only in cases where municipal or ward boundar-
49 ies divide county precincts to the extent that it is

50 impractical to use county precinct books or separate
51 municipal sections of those precinct books.

52 (3) No registration record may be removed from a
53 municipal registration record unless the registration is
54 lawfully transferred or canceled pursuant to the
55 provisions of this article in both the county and the
56 municipal registration records.

57 (c) No later than the first day of January, one
58 thousand nine hundred ninety-five, and within thirty
59 days following the entry of any annexation order or
60 change in street names or numbers, the governing body
61 of an incorporated municipality shall file with the clerk
62 of the county commission a certified current official
63 municipal boundary map and a list of streets and ranges
64 of street numbers within the municipality to assist the
65 clerk in determining whether a voter's address is within
66 the boundaries of the municipality.

67 (d) Each county, so long as precinct registration books
68 are maintained, shall maintain a duplicate record of
69 every active and inactive voter registration in a county
70 alphabetical file. The alphabetical file may be main-
71 tained on individual paper forms or, upon approval of
72 the secretary of state of a qualified data storage
73 program, may be maintained in digitized format. A
74 qualified data storage program shall be required to
75 contain the same information for each voter registration
76 as the precinct books, shall be subject to proper security
77 from unauthorized alteration and shall be regularly
78 duplicated to backup data storage to prevent accidental
79 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.**

1 (a) For the purposes of this article, the term "state
2 uniform voter data system" means a uniform software
3 program and system of digitized electronic storage of
4 voter registration records.

5 (b) A state uniform voter data system shall be
6 established in the state to standardize voter registration

7 record storage in each county, to provide for the efficient
8 maintenance and correction of records, to provide for
9 effective compliance with the "National Voter Registration
10 Act of 1993" (42 U.S.C. 1973gg), to simplify record
11 keeping, training and supervision, and to improve
12 information sharing and transfer capabilities.

13 (c) The state uniform voter data system shall include
14 uniform voter registration software, standard required
15 data elements, uniform security procedures and access
16 requirements, the capacity to interface with common
17 word processing and other software programs, the
18 capacity to be used on a variety of compatible computer
19 hardware and the capacity to transmit data to a central
20 state computer.

21 (d) The secretary of state, in consultation with the
22 state election commission and an advisory committee
23 appointed by the commission, shall develop a compre-
24 hensive plan for the selection and/or development of
25 appropriate voter registration software and for the
26 development and implementation of pilot programs in
27 at least six counties in the state no later than the thirty-
28 first day of December, one thousand nine hundred
29 ninety-five.

30 (1) The advisory committee shall include at least three
31 persons who serve as clerks of a county commission in
32 the state, two persons with expertise in computer
33 technology and two representatives of the general
34 public. No person serving on the advisory committee
35 shall have any previous or current employment with or
36 significant financial interest in any company which
37 develops, offers for sale or provides service for any
38 particular voter registration or election software, or
39 which offers for sale computer hardware.

40 (2) Following the development of a proposed compre-
41 hensive plan pursuant to this subsection, the secretary
42 of state and the advisory committee shall submit the
43 plan to the state election commission and shall make the
44 plan available for public inspection for at least thirty
45 days prior to requesting proposals or bids.

46 (3) The uniform software program licenses for the

47 counties shall be purchased with funds from the
48 combined voter registration and driver licensing fund
49 established in section twelve of this article.

50 (e) Full implementation of the uniform system within
51 each county of the state shall proceed as soon as possible,
52 subject to the extent of available funding and the
53 limitations of time periods immediately preceding and
54 following elections, and shall be completed in each
55 county no later than the first day of July, one thousand
56 nine hundred ninety-nine.

57 (f) Counties which adopt and implement the state
58 uniform voter data system shall be eligible for reimbur-
59 sement pursuant to the provisions of subdivision (7),
60 subsection (a), section twelve of this article for the cost
61 of conversion of existing data or entry of the existing
62 voter records and for the cost of voter list maintenance
63 procedures conducted jointly with other participating
64 counties.

**§3-2-21. Maintenance of records in state uniform voter
data system in lieu of precinct record books.**

1 (a) The clerk of the county commission of each county,
2 upon installation of the state uniform voter data system,
3 shall prepare a "Voter Registration Data System
4 Record" book into which all required records of
5 appointments of authorized personnel, tests, repairs,
6 program alterations or upgrades and any other action
7 by the clerk of the county commission or by any other
8 person under supervision of the clerk affecting the
9 programming or records contained in the system, other
10 than routine data entry, alteration, use, transfer or
11 transmission of records shall be entered.

12 (b) The clerk of the county commission shall appoint
13 all personnel authorized to add, change or transfer voter
14 registration information within the state uniform voter
15 data system, and a record of each appointment and the
16 date of authorization shall be entered as provided in
17 subsection (a) of this section. The assignment and
18 confidential record of assigned system identification or
19 authorized user code for each person appointed shall be
20 as prescribed by the secretary of state.

21 (c) Voter registration records entered into and
22 maintained in the state uniform voter data system shall
23 include the information required for application for
24 voter registration, for maintenance of registration and
25 voting records, for conduct of elections and for statistical
26 purposes, as prescribed by the secretary of state.

27 (d) No person shall make any entry or alteration of
28 any voter record which is not specifically authorized by
29 law. Each entry or action affecting the status of a voter
30 registration shall be based on information in an original
31 voter registration record, as defined in section eighteen
32 of this article.

33 (e) The clerk of the county commission shall maintain,
34 within the data system, active and inactive voter
35 registration files, canceled voter registration files,
36 pending application files, and rejected application files,
37 all as defined in section eighteen of this article.

38 (f) Upon receipt of a completed voter registration
39 application, the clerk shall enter the information
40 provided on the application into the pending application
41 file and initiate the verification or notice of disposition
42 procedure as provided in section sixteen of this article.
43 Upon completion of the verification or notice of dispo-
44 sition, the voter record shall be transferred to the proper
45 file.

46 (g) Upon receipt of an application or written confir-
47 mation from the voter of a change of address within the
48 county, change of name, change of party affiliation or
49 other correction to a registration record in the active
50 voter registration file, the change shall be entered in the
51 record and the required notice of disposition mailed.

52 (h) Upon receipt of an application or written confir-
53 mation from the voter of a change of address within the
54 county, change of name, change of party affiliation or
55 other correction to a registration record in the inactive
56 voter registration file, the change shall be entered in the
57 record, the required notice of disposition mailed and the
58 record transferred to the active registration file or
59 returned to active status, and the date of the transaction
60 shall be recorded.

61 (i) Upon receipt of a notice of death, a notice of
62 conviction or a notice of a determination of mental
63 incompetence, as provided for in section twenty-three of
64 this article, the date and reason for cancellation shall be
65 entered on the voter's record and the record shall be
66 transferred to the canceled voter registration file.

67 (j) Upon receipt from the voter of a request for
68 cancellation or notice of change of address to an address
69 outside the county pursuant to the provisions of section
70 twenty-two of this article, or as a result of a determi-
71 nation of ineligibility through a general program of
72 removing ineligible voters as authorized by the provi-
73 sions of this article, the date and reason for cancellation
74 shall be entered on the voter's record and the record
75 shall be transferred to the canceled voter registration
76 file.

77 (k) At least once each month during a period pres-
78 cribed by the secretary of state, the clerk of the county
79 commission of each county utilizing the state uniform
80 voter data system shall transmit to the secretary of
81 state, by electronic transmission or by the mailing of one
82 or more data disks or other approved means, a copy of
83 the active, inactive and pending application files as of
84 the date of transmission, for the purpose of comparison
85 of those records to the voter registration records of other
86 counties in the state and for any other list maintenance
87 procedures authorized by the provisions of this article.

88 (l) The secretary of state shall promulgate legislative
89 rules pursuant to the provisions of chapter twenty-nine-
90 a of this code establishing procedures for the elimination
91 of separate precinct registration books as the official
92 active and inactive voter registration files and for the
93 use of the state uniform voter data system to maintain
94 all files, to produce voter lists for public inspection and
95 to produce precinct voter records for election day use.
96 Separate precinct registration books shall be main-
97 tained pursuant to the provisions of section nineteen of
98 this article until all necessary provisions required for
99 the conduct of elections at the polling place and for the
100 implementation of the provisions of this chapter have
101 been made. When a county is authorized to use the state

102 uniform voter data system exclusively for all prescribed
103 files, the clerk of the county commission shall transfer
104 the original voter records contained in the precinct
105 registration books to alphabetical record storage files
106 which shall be retained in accordance with the provi-
107 sions of section twenty-nine of this article, and any rules
108 issued pursuant thereto.

§3-2-22. Correction of voter records.

1 (a) Any registered voter who moves from one resi-
2 dence to another within the county may file a request
3 for change of address on the voter registration records
4 by completing and signing, under penalty of perjury, as
5 provided in section thirty-six of this article, and filing:

6 (1) A change of address form at the office of the clerk
7 of the county commission or through any of the voter
8 registration outreach services established pursuant to
9 the provisions of section eight of this article;

10 (2) A state or federal mail registration form;

11 (3) A change of address form for driver licensing
12 purposes;

13 (4) A change of address form for voter registration
14 purposes at any authorized voter registration agency;

15 (5) A confirmation of change of address form received
16 pursuant to the provisions of section twenty-four,
17 twenty-five, twenty-six or twenty-seven of this article; or

18 (6) An affidavit of change of address at the polling
19 place of the precinct in which the new residence is
20 located on election day.

21 (b) Upon the receipt of any request for change of
22 address as provided in subsection (a) of this section, the
23 clerk shall enter the change, assign the proper county
24 precinct number and, if applicable, assign the proper
25 municipal precinct number, and issue an acknowledge-
26 ment notice or mail that notice to the voter at the new
27 address.

28 (c) When the clerk of the county commission receives
29 notice that a voter may have moved from one residence

30 to another within the county from the United States
31 postal service or through state programs to compare
32 voting registration records with records of other official
33 state or county agencies which receive, update and
34 utilize residence address information, the clerk shall
35 enter the change of address onto the voter registration
36 record and send the confirmation notice as prescribed
37 in section twenty-six of this article.

38 (d) Any registered voter who changes his or her legal
39 name through marriage or by order of the circuit court
40 may file a request for change of address on the voter
41 registration records by completing and signing, under
42 penalty of perjury, as provided in section thirty-six of
43 this article, and filing:

44 (1) Any voter registration application form authorized
45 by this article; or

46 (2) An affidavit of change of legal name at the polling
47 place on election day.

48 (e) Upon the receipt of any request for change of legal
49 name as provided in subsection (d) of this section, the
50 clerk shall enter the change and issue an acknowledge-
51 ment notice or mail the notice to the voter.

52 (f) Any registered voter who desires to change his or
53 her political party affiliation may do so by filing, no
54 later than the close of voter registration for an election,
55 any voter registration application form authorized by
56 the provisions of this article. Upon receipt of a request
57 for change of political party affiliation, the clerk shall
58 enter the change and issue an acknowledgement notice
59 or mail the notice to the voter.

60 (g) Any registered voter who finds an error in the
61 information on his or her voter registration record may
62 request a correction of the record by completing, signing
63 and filing any voter registration form authorized by the
64 provisions of this article, or an affidavit requesting such
65 correction at the polling place on election day: *Provided*,
66 That any voter who, in a primary election, alleges the
67 party affiliation entered on the voter registration record
68 at the polling place is incorrect and who desires to vote

69 the ballot of a political party for which he or she does
70 not appear to be eligible, may vote a challenged or
71 provisional ballot of the desired political party: *Pro-*
72 *vided, however,* That the ballot may be counted in the
73 canvass only if the original voter registration record
74 contains a designation of such political party which has
75 been filed no later than the close of registration for the
76 primary election in issue.

§3-2-23. Cancellation of registration of deceased or ineligible voters.

1 The clerk of the county commission shall cancel the
2 registration of a voter:

3 (a) Upon the voter's death as verified by:

4 (1) A death certificate from the registrar of vital
5 statistics or a notice from the secretary of state that a
6 comparison of the records of the registrar with the
7 county voter registration records show the person to be
8 deceased;

9 (2) The publication of an obituary clearly identifying
10 the deceased person by name, residence and age
11 corresponding to the voter record; or

12 (3) An affidavit signed by the parent, legal guardian,
13 child, sibling or spouse of the voter giving the name and
14 birth date of the voter, and date and place of death;

15 (b) Upon receipt of an official notice from a state or
16 federal court that the person has been convicted of a
17 felony, of treason or bribery in an election, in which
18 event, the clerk shall enter a notation on the voter record
19 of the date upon which the term of any sentence for such
20 conviction will cease, unless sooner vacated by court
21 action or pardon;

22 (c) Upon receipt of a notice from the appropriate court
23 of competent jurisdiction of a determination of a voter's
24 mental incompetence;

25 (d) Upon receipt from the voter registration of a
26 written request to cancel the voter's registration, upon
27 confirmation by the voter of a change of address to an
28 address outside the county, upon notice from a voter

29 registrar of another jurisdiction outside the county or
30 state of the receipt of an application for voter registra-
31 tion in that jurisdiction, or upon notice from the
32 secretary of state that a voter registration application
33 accepted in another county of the state subsequent to the
34 last registration date in the first county, as determined
35 from a comparison of voter records;

36 (e) Upon failure to respond and produce evidence of
37 continued eligibility to register following the challenge
38 of the voter's registration pursuant to the provisions of
39 section twenty-eight of this article; or

40 (f) As required under the provisions of section twenty-
41 seven of this article.

**§3-2-24. Systematic purging program for removal of
ineligible voters from active voter registration
files using manual voter registration system.**

1 (a) In any county maintaining active voter registra-
2 tion files only in paper records in precinct registration
3 books and alphabetical files, as provided in section
4 nineteen of this article, the systematic purging program
5 provided in this section shall begin with the mailing of
6 the first notice no earlier than the first day of October
7 and no later than the first day of November of each odd-
8 numbered year, and shall be completed no later than the
9 first day of February of the following year.

10 (b) The clerk of the county commission shall first send
11 to every voter whose registration is designated as active
12 and who has not updated his or her voter registration
13 record since the first day of January of the same year
14 a notice by first class mail, nonforwardable, address
15 correction requested, the form of which shall be
16 prescribed or approved by the secretary of state. The
17 notice shall be addressed to the voter's residence address
18 as it appears on the voter registration card. The clerk
19 shall group the mailings by precinct, alphabetical
20 grouping or zip code, and shall record the date on which
21 each grouping was mailed. Upon the receipt of any such
22 notices returned as undeliverable, the clerk shall
23 arrange them in alphabetical order within the selected
24 grouping.

25 (c) Not less than fourteen nor more than twenty-eight
26 days following the mailing of the first notice to each
27 group, the clerk shall prepare a list containing the name
28 and address of each voter within the group for whom
29 the first notice was returned as undeliverable. The list
30 shall be titled "Systematic Purging Program Notices"
31 and shall include the name of the county, name of the
32 mailing group and the date of the preparation of the list.

33 (d) The clerk shall then mail to each voter whose name
34 appears on the lists prepared pursuant to subsection (c)
35 of this section a confirmation notice in accordance with
36 the provisions of section twenty-six of this article and
37 of Section 8(d)(2) of the "National Voter Registration
38 Act of 1993" (42 U.S.C. 1973gg). All notices mailed to
39 the voters of a particular mailing group shall be mailed
40 on the same day and the date of the mailing of the notice
41 shall be entered on the list. All such notices shall be
42 mailed no later than the thirty-first day of December.

43 (e) Upon receipt of any response or returned mailing
44 sent pursuant to the provisions of subsection (d) of this
45 section, the clerk shall immediately enter the date and
46 type of response received on the list of voters prepared
47 pursuant to the provisions of this section and shall then
48 proceed in accordance with the provisions of section
49 twenty-six of this article. For purposes of complying
50 with the record keeping and public inspection require-
51 ments of the "National Voter Registration Act of 1993"
52 (42 U.S.C. 1973gg), and with the provisions of section
53 twenty-seven of this article, the lists shall be kept in a
54 binder, prepared for such purpose, in the order in which
55 the mailing groups were first given notice, and the
56 binder shall be available for public inspection. Informa-
57 tion concerning whether or not each person has re-
58 sponded to the notice shall be available for public
59 inspection as of the date the information is received.

60 (f) Any voter to whom a confirmation notice was
61 mailed pursuant to the provisions of subsection (d) of
62 this section who fails to respond to the notice or to
63 update his or her voter registration by the first day of
64 February immediately following the completion of the
65 program shall be designated inactive by a clear mark

66 or tag or placed within the inactive voter registration
67 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.

1 (a) In any county maintaining active voter registra-
2 tion files in the state uniform voter data system, as
3 defined in section twenty of this article, the systematic
4 purging program provided for in this section shall begin
5 no earlier than the first day of October of each odd-
6 numbered year and shall be completed no later than the
7 first day of February of the following year. The clerk
8 of the county commission shall transmit or mail on data
9 disk to the secretary of state a copy of the digitized
10 records contained in the active voter registration file as
11 of the first day of October, to be received by the
12 secretary of state no later than the fifteenth day of
13 October.

14 (b) Upon receipt of the voter records in data format,
15 the secretary of state shall provide for the comparison
16 of data records of all participating counties. The
17 secretary of state shall, based on the comparison,
18 prepare a data file or printed list for each county which
19 shall include the voter registration record for each voter
20 shown on that county's list who appears to have
21 registered or to have updated a voter registration in
22 another county at a subsequent date. The resulting files
23 and/or lists shall be returned to the appropriate county
24 and the clerk of the county commission shall proceed
25 with the confirmation procedure for those voters as
26 prescribed in section twenty-six of this article.

27 (c) The secretary of state may provide for the
28 comparison of data records of participating counties
29 with the data records of the division of motor vehicles,
30 the registrar of vital statistics and with the data records
31 of any other state agency which maintains records of
32 residents of the state, if the procedure is practical and

33 the agency agrees to participate. Any resulting informa-
34 tion regarding potentially ineligible voters shall be
35 returned to the appropriate county and the clerk of the
36 county commission shall proceed with the confirmation
37 procedure as prescribed in section twenty-six of this
38 article.

39 (d) The records of all of the voters of all participating
40 counties not identified pursuant to the procedures set
41 forth in subsections (b) and (c) of this section shall be
42 combined for comparison with United States postal
43 service change of address information, as described in
44 Section 8 (c)(A) of the "National Voter Registration Act
45 of 1993" (42 U.S.C. 1973gg). The secretary of state shall
46 contract with an authorized vendor of the United States
47 postal service to perform the comparison. Not less than
48 thirty percent nor more than fifty percent of the cost of
49 the change of address comparison procedure shall be
50 paid for from the combined voter registration and
51 licensing fund established in section twelve of this
52 article and participating counties shall reimburse the
53 fund for the balance of the cost prorated on a per voter
54 basis.

55 (e) The secretary of state shall return to each county
56 the identified matches of the county voter registration
57 records and the postal service change of address records.

58 (1) When the change of address information indicates
59 the voter has moved to a new address within the county,
60 the clerk of the county commission shall enter the new
61 address on the voter record in the active registration file
62 and assign the proper precinct.

63 (2) The clerk of the county commission shall then mail
64 to each voter who appears to have moved from the
65 residence address shown on the registration records a
66 confirmation notice pursuant to section twenty-six of
67 this article and of section 8(d)(2) of the "National Voter
68 Registration Act of 1993" (42 U.S.C. 1973gg). The notice
69 shall be mailed, no later than the thirty-first day of
70 December, to the new address provided by the postal
71 service records or to the old address if a new address
72 is not available.

73 (f) The clerk of the county commission shall prepare
74 a list containing the name and address of each voter to
75 whom a confirmation notice was mailed and the date on
76 which the notice was mailed. The list shall be titled
77 "Systematic Purging Program Notices" and shall
78 include the name of the county and the date of the
79 preparation of the list and shall be arranged in
80 alphabetical order within precincts or for the entire
81 county.

82 (g) Upon receipt of any response or returned mailing
83 sent pursuant to the provisions of subsection (e) of this
84 section, the clerk shall immediately enter the date and
85 type of response received on the list of voters prepared
86 pursuant to the provisions of this section and shall then
87 proceed in accordance with the provisions of section
88 twenty-six of this article.

89 (h) For purposes of complying with the record
90 keeping and public inspection requirements of the
91 "National Voter Registration Act of 1993" (42 U.S.C.
92 1973gg), and with the provisions of section twenty-seven
93 of this article, the lists shall be maintained either in
94 printed form kept in a binder prepared for such purpose
95 and available for public inspection or in read-only data
96 format available for public inspection on computer
97 terminals set aside and available for regular use by the
98 general public. Information concerning whether or not
99 each person has responded to the notice shall be entered
100 onto the list upon receipt and shall be available for
101 public inspection as of the date the information is
102 received.

103 (i) Any voter to whom a confirmation notice was
104 mailed pursuant to the provisions of subsection (e) of this
105 section who fails to respond to the notice or to update
106 his or her voter registration by the first day of February
107 immediately following the completion of the program,
108 shall be designated inactive and placed within the
109 inactive voter registration file, as defined in section
110 nineteen of this article. Any voter designated inactive
111 shall be required to affirm his or her current residence
112 address upon appearing at the polls to vote.

113 (j) A county which uses a digitized data system for
114 voter registration other than the state uniform voter
115 data system shall conduct the systematic purging
116 program for removal of ineligible voters from active
117 voter registration files by contracting directly with an
118 authorized vendor of the United States postal service for
119 change of address information, at county expense, for
120 the identification of potentially ineligible voters, and
121 upon receipt of the list of matches, shall perform the
122 steps required by the provisions of subsections (e)
123 through (i) of this section within the same time limits
124 and procedures required for those counties participating
125 in the state approved system.

126 (k) In addition to the preceding purging procedures,
127 all counties using the change of address information of
128 the United States postal service shall also, once each
129 four years during the period established for systematic
130 purging in the year following a presidential election
131 year, conduct the same procedure by mailing a confir-
132 mation notice to those persons not identified as poten-
133 tially ineligible through the change of address compar-
134 ison procedure but who have not updated their voter
135 registration records and have not voted in any election
136 during the preceding four calendar years. The purpose
137 of this additional systematic confirmation procedure
138 shall be to identify those voters who may have moved
139 without filing a forwarding address, moved with a
140 forwarding address under another name, died in a
141 another county or state so that the certificate of death
142 was not returned to the clerk of the county commission,
143 or who otherwise have become ineligible.

**§3-2-26. Confirmation notices for systematic purging
program.**

1 (a) For purposes of this article, a "confirmation
2 notice" means a specific notice sent to a registered voter
3 when that voter appears to have moved or to have
4 become ineligible to vote, based on:

5 (1) A mailing returned as undeliverable as provided
6 in sections sixteen, seventeen and twenty of this article;
7 or

8 (2) Information obtained through a systematic purg-
9 ing program as provided in sections twenty-four and
10 twenty-five of this article.

11 (b) A confirmation notice shall be sent by first class,
12 forwardable mail and shall include a pre-addressed,
13 postage prepaid or business reply return card on which
14 the registrant may state his or her current address,
15 together with a notice prescribed by the secretary of
16 state to meet the specific requirements of Section 8(d)(2)
17 of the "National Voter Registration Act of 1993" (42
18 U.S.C. 1973gg).

**§3-2-27. Procedure following sending of confirmation
notices; correction or cancellation of registra-
tions upon response; designation of inactive
when no response; cancellation of inactive
voters; records.**

1 (a) Upon receipt of a confirmation response card
2 mailed pursuant to the provisions of section twenty-six
3 of this article and returned completed and signed by the
4 voter, the clerk shall either:

5 (1) Update the voter registration by noting the
6 confirmation of the current address if no other changes
7 are requested or by entering any change of address
8 within the county, change of name or other correction
9 requested by the voter; or

10 (2) Cancel the voter's registration if the voter confirms
11 that he or she has moved out of the county.

12 (b) Upon receipt of the confirmation notice returned
13 undeliverable, the clerk may either:

14 (1) Send a second confirmation notice to the old
15 residence address if the first notice was sent to a new
16 address provided by the postal service; or

17 (2) Designate the registration as "inactive" or transfer
18 it to the inactive voter registration file, as defined in
19 section nineteen of this article.

20 (c) If no response to the confirmation notice is received
21 by the first day of February following the mailing of the
22 confirmation notice, the clerk shall designate the

23 registration as "inactive" or transfer it to the inactive
24 voter registration file as provided in section nineteen of
25 this article.

26 (d) An inactive voter registration shall be returned to
27 active status or transferred to the active voter registra-
28 tion file upon the voter's application to update the
29 registration or to vote in any election while they remain
30 on the inactive list.

31 (e) The clerk of the county commission shall cancel the
32 records of all voters on the inactive file who have not
33 responded to the confirmation notice, otherwise updated
34 their voter registrations or voted in any state, county or
35 municipal primary, general or special election held
36 within the county during a period beginning on the date
37 of the notice and ending on the day after the date of the
38 second general election for federal office which occurs
39 after the date of the notice.

§3-2-28. Challenges; notice; cancellation of registration.

1 (a) The registration of any registered voter may be
2 challenged by the clerk of the county commission, the
3 secretary of state, any registrar of the county, the
4 chairman of any political party committee or by any
5 voter who shall appear in person at the clerk's office.
6 The person challenging the registration shall complete
7 a form prescribed by the secretary of state giving the
8 name and address of the voter and the reason for
9 challenge. The challenge shall be filed as a matter of
10 record in the office of the clerk of the county
11 commission.

12 (b) Upon the receipt of a challenge, the clerk of the
13 county commission shall mail a notice of challenge to the
14 registrant, setting forth that the voter's registration will
15 be canceled if the voter does not appear in person during
16 business hours at the clerk's office within a period of
17 thirty days from the mailing of the notice and present
18 evidence of his or her eligibility. The form of the notice
19 of challenge shall be prescribed by the secretary of state
20 and shall be mailed by certified mail, return receipt

21 requested.

22 (c) If the notice of challenge is returned as undeliv-
23 erable at the registration address, or if the challenged
24 registrant does not appear and present evidence of
25 continued eligibility within the prescribed time, the
26 voter's registration shall be immediately canceled.
27 Returned mail or failure to appear shall be prima facie
28 evidence of the registrant's ineligibility. If the registrant
29 does timely appear and present evidence of his or her
30 eligibility, the clerk shall determine eligibility to be
31 registered as a voter as in any other case. If the reason
32 for ineligibility is that the voter does not reside at the
33 address on the registration and the voter presents
34 evidence of residence elsewhere in the county, the clerk
35 of the county commission shall accept a request for
36 change of address and remove the challenge.

**§3-2-29. Custody of original registration records and
voter registration data files.**

1 (a) All original registration records and voter regis-
2 tration data files shall remain in the custody of the
3 county commission, by its clerk, and shall not be
4 removed except for use in an election or by the order
5 of a court of record or in compliance with a subpoena
6 duces tecum issued by the secretary of state pursuant
7 to the provisions of section six, article one-a of this
8 chapter.

9 (b) All original voter registration records shall be
10 retained for a minimum of five years following the last
11 recorded activity relating to the record, except that any
12 application which duplicates and does not alter an
13 existing registration shall be retained for a minimum
14 of two years following its receipt. The secretary of state
15 shall promulgate rules pursuant to the provisions of
16 chapter twenty-nine-a of this code for the specific
17 retention times and procedures required for original
18 voter registration records.

19 (c) Prior to the destruction of original voter registra-
20 tion applications or registration cards of voters whose

21 registration has been canceled at least five years
22 previously, the clerk of the county commission shall
23 notify the secretary of state of the intention to destroy
24 those records. If the secretary of state determines,
25 within ninety days of the receipt of the notice, that those
26 records are of sufficient historical value that microfilm
27 or other permanent data storage is desirable, the
28 secretary of state may require that the records be
29 delivered to a specified location for processing at state
30 expense.

31 (d) When a county maintains in digitized data format
32 the active, inactive, pending, rejected and canceled
33 registration files, a data format copy of each of the files
34 shall be maintained as a permanent record, as follows:

35 (1) Individual canceled registration records shall be
36 maintained in a regularly accessible data file for a
37 period of at least three years following cancellation.
38 Upon the expiration of three years, those individual
39 records may be removed from the regularly accessible
40 canceled registration file and stored on tape or disk. The
41 records removed may be added to a single file contain-
42 ing previously canceled registration records for perman-
43 ent storage, and the tape or disk shall be clearly labeled.

44 (2) Rejected registration record files shall be main-
45 tained in the same manner as provided for canceled
46 registration files.

47 (3) At least once each calendar year, during the month
48 of February, a data format copy of the active registra-
49 tion file, inactive registration file and pending applica-
50 tion file shall be made containing all records maintained
51 in those files as of the date of the copy. The copy shall
52 be stored on tape or disk and shall be clearly labeled
53 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.

1 (a) The active, inactive, rejected and canceled voter
2 registration records shall be made available for public
3 inspection during office hours of the clerk of the county
4 commission in accordance with the provisions of chapter
5 twenty-nine-b of this code, as follows:

6 (1) When the active and inactive files are maintained
7 on precinct registration books, any person shall be
8 allowed to examine these files under the supervision of
9 the clerk and obtain copies of records, except when a
10 precinct book is in temporary use for updating and
11 preparing lists, or during the time the books are sealed
12 for use in an election. Other original voter registration
13 records, including canceled voter records, pending
14 applications, rejected applications, records of change
15 requests, reinstatements and other documents shall be
16 available for inspection upon specific request.

17 (2) When the active, inactive, rejected and canceled
18 voter files are maintained in data format, any person
19 shall be allowed to examine voter record information in
20 printed form or in a read-only data format on a
21 computer terminal set aside for public use, if available.
22 The data files available shall include all registration and
23 voting information maintained in the file, except that
24 the telephone number and social security number of any
25 voter shall not be available for inspection or copying in
26 any format.

27 (b) Printed lists of registered voters may be purchased
28 for noncommercial use from the clerk of the county
29 commission at a cost of one cent per name.

30 (1) In counties maintaining active and inactive files
31 on precinct registration books only, a separate list for
32 each of the two major political parties and for voters
33 registered independent or other affiliation shall be
34 prepared for each precinct. The lists shall be arranged
35 in alphabetical order or street order, as the books are
36 maintained, and shall include the name, residence
37 address and party affiliation of the voter, along with a
38 designation of inactive status where applicable. The lists
39 shall be prepared prior to the primary election and the
40 clerk shall not be required to supplement or revise those

41 lists as registrations are added or canceled.

42 (2) In counties maintaining active and inactive files
43 in digitized data format, the clerk of the county
44 commission shall, upon request, prepare printed copies
45 of the lists of voters for each precinct. No list prepared
46 under this section may include the telephone number or
47 social security number of the registrant. The clerk shall
48 establish a written policy, which shall be posted within
49 public view, listing the options which may be requested
50 for selection and sorting criteria and available data
51 elements, which shall include at least the name,
52 residence address, political party affiliation and status,
53 and the format of the lists and the times at which lists
54 will be prepared. A copy of the policy shall be filed with
55 the secretary of state no later than the first day of
56 January, one thousand nine hundred ninety-five, and
57 within thirty days after any change in policy.

58 (c) In counties which maintain voter files in a
59 digitized data format, lists of registered voters may be
60 obtained for noncommercial purposes in data format on
61 disk provided and prepared by the clerk of the county
62 commission at a cost of one cent per name plus ten
63 dollars for each disk required. No data file prepared
64 under this subsection may include the telephone number
65 or social security number of the registrant.

66 (d) The fees received by the clerk of the county
67 commission shall be kept in a separate fund under the
68 supervision of the clerk for the purpose of defraying the
69 cost of the preparation of the voter lists. Any unex-
70 pended balance in the fund shall be transferred to the
71 general fund of the county commission.

72 (e) After the implementation of the state uniform
73 voter data system, the secretary of state may make voter
74 lists available for sale subject to the limitations as
75 provided in this section for counties, except that the cost
76 shall be one and one-half cents per name plus ten dollars
77 for each disk required. One cent per name for each voter
78 from a particular county on each list sold shall be
79 reimbursed to the appropriate county and one-half cent
80 per name shall be deposited to a special account for

81 purpose of defraying the cost of the preparation of the
82 lists.

83 (f) No voter registration lists or data files containing
84 the names, addresses or other information relating to
85 voters derived from voter data files obtained pursuant
86 to the provisions of this article may be used for
87 commercial or charitable solicitations or advertising,
88 sold or reproduced for resale, or provided to any person
89 at less than the prescribed cost for any purpose other
90 than official use.

**§3-2-31. Rules pertaining to voting after registration or
change of address within the county.**

1 (a) A voter who designates a political affiliation with
2 a major party on a registration application filed at least
3 thirty days before the primary may vote the ballot of
4 that political party in the primary election. Political
5 parties, through the official action of their state
6 executive committees, shall be permitted to determine
7 whether unaffiliated voters or voters of other parties
8 shall be allowed to vote that party's primary election
9 ballot upon request.

10 (b) A voter whose registration record lists one
11 residence address but the voter has since moved to
12 another residence address within the precinct shall be
13 permitted to update the registration at the polling place
14 and vote without challenge for that reason.

15 (c) A voter whose registration record lists one
16 residence address but the voter has since moved to
17 another residence address in a different precinct in the
18 same county shall be permitted to update the registra-
19 tion at the polling place serving the new precinct and
20 shall be permitted to vote a challenged or provisional
21 ballot at the new polling place. If the voter's registration
22 is found on the registration records within the county
23 during the canvass and no other challenge of eligibility
24 was entered on election day, the challenge shall be
25 removed and the ballot shall be counted.

26 (d) A voter whose registration record has been placed
27 on an inactive status or transferred to an inactive file

28 and who has not responded to a confirmation notice sent
29 pursuant to the provisions of section twenty-four,
30 twenty-five or twenty-six of this article and who offers
31 to vote at the polling place where he or she is registered
32 to vote shall be required to affirm his or her present
33 residence address under penalty of perjury, as provided
34 in section thirty-six of this article.

**§3-2-32. Unlawful registration or rejection of voter;
penalties.**

1 (a) Any registrar or clerk of the county commission
2 who knowingly registers or permits to be registered a
3 person not lawfully entitled to be registered, or who
4 knowingly refuses to register a person entitled to be
5 registered, or who knowingly assists in preventing such
6 person from being registered, or who inserts or inten-
7 tionally permits to be inserted a name or other entry in
8 any registration form or file, knowing or having reason
9 to know that the entry should not be made, shall be
10 guilty of a misdemeanor and, upon conviction, shall be
11 fined not more than one thousand dollars or confined in
12 the county jail for not more than one year, or both, in
13 the discretion of the court.

14 (b) Any person who registers or applies to be regis-
15 tered, or persuades or assists another to be registered,
16 or who applies for a change of residence address,
17 knowing or having reason to know that he or she is not
18 entitled to be registered or to have his or her residence
19 address changed on the registration record, or any
20 person who declares an address known not to be his or
21 her legal residence or who impersonates another in an
22 application for registration, shall be guilty of a misde-
23 meanor and, upon conviction, shall be fined not more
24 than one thousand dollars or confined in the county jail
25 for not more than one year, or both, in the discretion
26 of the court.

**§3-2-33. Neglect of duty by registration officers;
penalties.**

1 Any registrar or clerk of the county commission or his
2 or her authorized deputies or any other persons upon
3 whom a duty is imposed pursuant to the provisions of

4 this article, or the rules, regulations or directions
5 promulgated or issued by the secretary of state as the
6 chief registration official of the state, who shall willfully
7 delay, neglect or refuse to perform such duty, shall be
8 guilty of a misdemeanor and, upon conviction, shall be
9 fined not more than one thousand dollars or confined in
10 the county jail for not more than one year, or both, in
11 the discretion of the court.

§3-2-34. Alteration or destruction of records; penalties.

1 (a) Any person who wrongfully and intentionally
2 inserts or permits to be wrongfully inserted any name
3 or material entry on any registration form, file or any
4 other record in connection with registration, or who
5 wrongfully alters or destroys an entry which has been
6 duly made, or who wrongfully takes and removes any
7 such registration form, or any other record authorized
8 or required in connection with registration from the
9 custody of any person having lawful charge thereof,
10 shall be guilty of a misdemeanor and, upon conviction,
11 shall be fined not more than one thousand dollars or
12 confined in the county jail for not more than one year,
13 or both, in the discretion of the court.

14 (b) Any person, in the absence of specific authority
15 provided under the provisions of this article, who
16 destroys or attempts to destroy any registration docu-
17 ment or record, or who removes or attempts to remove
18 such registration document or record, shall be guilty of
19 a misdemeanor and, upon conviction, shall be fined not
20 less than one hundred dollars nor more than one
21 thousand dollars or confined in the county jail for not
22 more than one year, or both, in the discretion of the
23 court.

§3-2-35. Withholding information; penalties.

1 Any person who neglects to or refuses to furnish to
2 the secretary of state, to the county commission, or to
3 the clerk of the county commission any information
4 which he or she is authorized to obtain in connection
5 with registration, or to exhibit any records, papers or
6 documents herein authorized to be inspected by them,
7 shall be guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not more than one thousand

9 dollars, or confined in the county jail for not more than
10 one year, or both, at the discretion of the court.

§3-2-36. Crimes and offenses relating to applications for registration or change of registration; penalties.

1 (a) A person who willfully provides false information
2 concerning a material matter or thing on an application
3 for registration or change of registration, under oath,
4 affirmation or attestation, shall be deemed guilty of
5 perjury; one who induces or procures another person to
6 do so shall be deemed guilty of subordination of perjury.

7 (b) A person who knowingly offers any application for
8 registration or transfer of registration when the
9 applicant therein is not qualified to register or transfer
10 his registration, or any person who knowingly admin-
11 isters an oath or affirmation to an applicant for
12 registration or change of registration when the applica-
13 tion contains false information concerning a material
14 matter or thing, or any person who falsely represents
15 that an oath or affirmation was executed by an appli-
16 cant for registration or change of registration, shall be
17 guilty of a felony and, upon conviction thereof, shall be
18 imprisoned in the penitentiary not less than one year nor
19 more than three years, or fined not less than five
20 hundred dollars nor more than five thousand dollars, or
21 both fined and imprisoned, or, in the discretion of the
22 court, be confined in the county jail for not more than
23 one year, or fined not less than five hundred dollars nor
24 more than five thousand dollars, or both fined and
25 imprisoned.

§3-2-37. Effective date.

1 (a) Except as may otherwise be specifically provided
2 in this section, the provisions of this article shall take
3 effect on the first day of January, one thousand nine
4 hundred ninety-five. The provisions of this article
5 relating to the preparation for implementation of voter
6 registration programs and procedures under this article
7 and under the "National Voter Registration Act of 1993"
8 (42 U.S.C. 1973gg), including sections three, five, twelve
9 and thirteen of this article and subsections (a) and

10 (b), section fourteen of this article and subdivision (4),
 11 subsection (b), section nineteen of this article and section
 12 twenty of this article, shall take effect upon the effective
 13 date of this article.

14 (b) All procedures and requirements established by
 15 the previous enactment of this article, except the
 16 provisions of subsection (d), section twenty-two of this
 17 article, shall continue in effect until the thirty-first day
 18 of December, one thousand nine hundred ninety-four
 19 inclusive, as if article two of this chapter had not been
 20 amended.

CHAPTER 59

(Com. Sub. for S. B. 400—By Senators Craigo, 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.

1 (a) Each financial statement required by the provi-
2 sions of this article shall contain the following
3 information:

4 (1) The first name, middle initial, if any, and last
5 name, residence and mailing address and telephone
6 number of each candidate, financial agent, treasurer or
7 person, and the full name, address and telephone
8 number of each association, organization or committee
9 filing a financial statement.

10 (2) The balance of cash and any other sum of money
11 on hand at the beginning and the end of the period
12 covered by the financial statement.

13 (3) The first name, middle initial, if any, and the last
14 name in the case of an individual, and the full name of
15 each firm, association or committee, and the amount of
16 such contribution of such individual, firm, association or
17 committee, and, if the aggregate of the sum or sums
18 contributed by any one such individual, firm, association
19 or committee exceeds two hundred fifty dollars, there
20 shall also be reported the residence and mailing address
21 and, in the case of an individual, the major business
22 affiliation and occupation. A contribution totaling more
23 than fifty dollars by any one contributor is prohibited
24 unless it is made by money order or by check, and a
25 violation of this provision is subject to section five-d of
26 this article. As used herein, the term "check" shall have
27 the meaning ascribed to that term in section one
28 hundred four, article three, chapter forty-six of this
29 code.

30 (4) The total amount of contributions received during
31 the period covered by the financial statement.

32 (5) The first name, middle initial, if any, and the last
33 name, residence and mailing address of any individual
34 or the full name and mailing address of each firm,
35 association or committee making or cosigning a loan and
36 the amount of any loan received, the date and terms of
37 the loan, including interest and repayment schedule,
38 along with a copy of the loan agreement.

39 (6) The first name, middle initial, if any, and the last
40 name, residence and mailing address of any individual
41 or the full name and mailing address of each firm,
42 association or committee having previously made or
43 cosigned a loan for which payment is made or a balance
44 is outstanding at the end of the period, together with the
45 amount of repayment on the loan made during the
46 period and the balance at the end of the period.

47 (7) The total outstanding balance of all loans at the
48 end of the period.

49 (8) The first name, middle initial, if any, and the last
50 name, residence and mailing address of any individual,
51 or the full name and mailing address of each firm,
52 association or committee to whom each expenditure was
53 made or liability incurred, together with the amount
54 and purpose of each expenditure or liability incurred
55 and the date of each transaction.

56 (9) The total expenditure for the nomination, election
57 or defeat of a candidate or any person or organization
58 advocating or opposing the nomination, election or
59 defeat of any candidate, or the passage or defeat of any
60 issue, thing or item to be voted upon, in whose behalf
61 an expenditure was made or a contribution was given
62 for the primary or other election.

63 (10) The total amount of expenditures made during
64 the period covered by the financial statement.

65 (b) Any unexpended balance at the time of making the
66 financial statements herein provided for shall be
67 properly accounted for in that financial statement and
68 shall appear as a balance in the next following financial
69 statement.

70 (c) Each financial statement required by this section
71 shall contain a separate section setting forth the
72 following information for each fund-raising event held
73 during the period covered by the financial statement:

74 (1) The type of event, date held, and address and
75 name, if any, of the place where the event was held.

76 (2) All of the information required by subdivision (3),

77 subsection (a) of this section.

78 (3) The total of all moneys received at the fund-raising
79 event.

80 (4) The expenditures incident to the fund-raising
81 event.

82 (5) The net receipts of the fund-raising event.

83 (d) When any lump sum payment is made to any
84 advertising agency or other disbursing person who does
85 not file a report of detailed accounts and verified
86 financial statements as required in this section, such
87 lump sum expenditures shall be accounted for in the
88 same manner as provided for herein.

89 (e) Any contribution or expenditure made by or on
90 behalf of a candidate for public office, to any other
91 candidate, or committee for a candidate for any public
92 office in the same election shall be accounted for in
93 accordance with the provisions of this section.

94 (f) No person, firm, association or committee may
95 make any contribution except from their own funds,
96 unless such person, firm, association or committee
97 discloses in writing to the person required to report
98 under this section the first name, middle initial, if any,
99 and the last name in the case of an individual, or the
100 full name in case of a firm, association or committee,
101 residence and mailing address and the major business
102 affiliation and occupation of the person, firm, association
103 or committee which furnished the funds to such
104 contributor. All such disclosures shall be included in the
105 statement required by this section.

106 (g) Any firm, association, committee or fund permit-
107 ted by section eight of this article to be a political
108 committee shall disclose on the financial statement its
109 corporate or other affiliation.

110 (h) No contribution may be made, directly or indi-
111 rectly, in a fictitious name, anonymously or by one
112 person through an agent, relative or other person so as
113 to conceal the identity of the source of the contribution
114 or in any other manner so as to effect concealment of

115 the contributor's identity.

116 (i) No person, firm, association or committee may
117 accept any contribution for the purpose of influencing
118 the nomination, election or defeat of a candidate or for
119 the passage or defeat of any issue or thing to be voted
120 upon unless the identity of the donor and the amount of
121 the contribution is known and reported.

122 (j) When any candidate, organization, committee or
123 person receives any anonymous contribution which
124 cannot be returned because the donor cannot be
125 identified, that contribution shall be donated to the
126 general revenue fund of the state. Any anonymous
127 contribution shall be recorded as such on the candidate's
128 financial statement, but may not be expended for
129 election expenses. At the time of filing, the financial
130 statement shall include a statement of distribution of
131 anonymous contributions, which total amount shall
132 equal the total of all anonymous contributions received
133 during the period.

134 (k) Any membership organization which raises funds
135 for political purposes by payroll deduction assessing
136 them as part of its membership dues or as a separate
137 assessment may report the amount raised as follows:

138 (1) If the portion of dues or assessments designated
139 for political purposes equals twenty-five dollars or less
140 per member over the course of a calendar year, the total
141 amount raised for political purposes through member-
142 ship dues or assessments during the period is reported
143 by showing the amount required to be paid by each
144 member and the number of members.

145 (2) If the total payroll deduction for political purposes
146 of each participating member equals twenty-five dollars
147 or less over the course of a calendar or fiscal year, as
148 specified by the organization, the organization shall
149 report the total amount received for political purposes
150 through such payroll deductions during the reporting
151 period, and to the maximum extent possible, the amount
152 of each yearly payroll deduction contribution level and
153 the number of members contributing at each such
154 specified level. The membership organization shall

155 maintain records of the name and yearly payroll
156 deduction amounts of each participating member.

157 (3) If any member contributes to the membership
158 organization through individual voluntary contributions
159 by means other than payroll deduction, membership
160 dues, or assessments as provided in this subsection, the
161 reporting requirements of subdivision (3), subsection (a)
162 of this section shall apply. Funds raised for political
163 purposes must be segregated from the funds for other
164 purposes and listed in its report.

165 (l) For purposes of this section:

166 (1) "Political purposes" means advocating or opposing
167 the nomination, election or defeat of one or more
168 candidates, supporting the retirement of the debt of a
169 candidate or activities of an established political party
170 or an organization which has declared itself a political
171 party, supporting the administration or activities of a
172 political committee or advocating or opposing the
173 passage of a ballot issue.

174 (2) "Membership organization" means a group that
175 grants bona fide rights and privileges, such as the right
176 to vote, to elect officers or directors, and the ability to
177 hold office, to its members, and which uses a majority
178 of its membership dues for purposes other than political
179 purposes. This term shall not include organizations that
180 grant membership upon receiving a contribution.

181 (3) "Fund-raising event" means an event such as a
182 dinner, reception, testimonial, cocktail party, auction or
183 similar affair through which contributions are solicited
184 or received by such means as the purchase of a ticket,
185 payment of an attendance fee or by the purchase of
186 goods or services.

187 (m) Notwithstanding the provisions of section five of
188 this article or of the provisions of this section to the
189 contrary, an alternative reporting procedure may be
190 followed by a political party executive committee or a
191 political action committee representing a political party
192 in filing financial reports for fund-raising events if the
193 total profit does not exceed five thousand dollars per

194 year. A political party executive committee or a political
195 action committee representing a political party may
196 report gross receipts for the sale of food, beverages,
197 services, novelty items, raffle tickets or memorabilia,
198 except that any receipt of more than fifty dollars from
199 an individual or organization shall be reported as a
200 contribution. A political party executive committee or a
201 political action committee representing a political party
202 using this alternative method of reporting shall report:
203 (i) The name of the committee; (ii) the type of fund-
204 raising activity undertaken; (iii) the location where the
205 activity occurred; (iv) the date of the fund raiser; (v) the
206 name of any individual who contributed more than fifty
207 dollars worth of items to be sold; (vi) the name and
208 amount received from any person or organization
209 purchasing more than fifty dollars worth of food,
210 beverages, services, novelty items, raffle tickets or
211 memorabilia; (vii) the gross receipts of the fund raiser;
212 and (viii) the date, amount, purpose and name and
213 address of each person or organization from whom items
214 with a fair market value of more than fifty dollars were
215 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; delega-
tion of expenditures.**

1 (a) No candidate, financial agent or treasurer of a
2 political party committee shall pay, give or lend, either
3 directly or indirectly, any money or other thing of value
4 for any election expenses, except for the following
5 purposes:

6 (1) For rent, maintenance and furnishing of offices to
7 be used as political headquarters and for the payment
8 of necessary clerks, stenographers, typists, janitors and
9 messengers actually employed therein;

10 (2) In the case of a candidate who does not maintain
11 a headquarters, for reasonable office expenses and for
12 the payment of necessary clerks, stenographers and
13 typists, actually employed;

14 (3) For printing and distributing books, pamphlets,
15 circulars and other printed matter and radio and
16 television broadcasting and painting, printing and
17 posting signs, banners and other advertisements, all
18 relating to political issues and candidates;

19 (4) For renting and decorating halls for public
20 meetings and political conventions, for advertising
21 public meetings, and for the payment of traveling
22 expenses of speakers and musicians at such meetings;

23 (5) For the necessary traveling and hotel expenses of
24 candidates, political agents and committees, and for
25 stationery, postage, telegrams, telephone, express,
26 freight and public messenger service;

27 (6) For preparing, circulating and filing petitions for
28 nomination of candidates;

29 (7) For examining the lists of registered voters,
30 securing copies thereof, investigating the right to vote
31 of the persons listed therein and conducting proceedings
32 to prevent unlawful registration or voting;

33 (8) For conveying voters to and from the polls;

34 (9) For securing publication in newspapers and by
35 radio and television broadcasting of documents, articles,
36 speeches, arguments and any information relating to
37 any political issue, candidate or question or proposition
38 submitted to a vote;

39 (10) For conducting public opinion poll or polls. For
40 the purpose of this section, the phrase "conducting of
41 public opinion poll or polls" shall mean and be limited
42 to the gathering, collection, collation and evaluation of
43 information reflecting public opinion, needs and prefer-
44 ences as to any candidate, group of candidates, party,
45 issue or issues. No such poll shall be deceptively
46 designed or intentionally conducted in a manner
47 calculated to advocate the election or defeat of any
48 candidate or group of candidates or calculated to
49 influence any person or persons so polled to vote for or
50 against any candidate, group of candidates, proposition
51 or other matter to be voted on by the public at any
52 election: *Provided*, That nothing herein shall prevent the

53 use of the results of any such poll or polls to further,
54 promote or enhance the election of any candidate or
55 group of candidates or the approval or defeat of any
56 proposition or other matter to be voted on by the public
57 at any election;

58 (11) For legitimate advertising agency services,
59 including commissions, in connection with any cam-
60 paign activity for which payment is authorized by
61 subdivisions (3), (4), (5), (6), (7), (9) and (10) of this
62 subsection; and

63 (12) For the purchase of memorials, flowers or
64 citations by political party executive committees or
65 political action committees representing a political
66 party.

67 (b) Every liability incurred and payment made shall
68 be at a rate and for a total amount which is proper and
69 reasonable and fairly commensurate with the services
70 rendered.

71 (c) Every advertising agency subject to the provisions
72 of this article shall file, in the manner and form
73 required by section five-a of this article, the financial
74 statements required by section five of this article at the
75 times required therein and include therein, in itemized
76 detail, all receipts from and expenditures made on
77 behalf of a candidate, financial agent or treasurer of a
78 political party committee.

79 (d) Any candidate may designate a financial agent by
80 a writing duly subscribed by him which shall be in such
81 form and filed in accordance with the provisions of
82 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.

- 1 (a) An enhanced emergency telephone system, at a
2 minimum, shall provide that:
 - 3 (1) All the territory in the county, including every
4 municipal corporation in the county, which is served by
5 telephone company central office equipment that will
6 permit such a system to be established shall be included
7 in the system;
 - 8 (2) Every emergency service provider that provides
9 emergency service within the territory of a county
10 participate in the system;
 - 11 (3) Each county answering point be operated
12 constantly;
 - 13 (4) Each emergency service provider participating in
14 the system maintain a telephone number in addition to
15 the one provided for in the system; and
 - 16 (5) If the county answering point personnel reasonably
17 determine that a call is not an emergency, the personnel
18 provide the caller with the number of the appropriate
19 emergency service provider.
- 20 (b) To the extent possible, enhanced emergency
21 telephone systems shall be centralized.
- 22 (c) In developing an enhanced emergency telephone
23 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 (d) As a condition of continued employment, persons
28 employed to dispatch emergency calls shall successfully
29 complete a forty-hour nationally recognized training
30 course for dispatchers within one year of the date of
31 their employment; except that persons employed to
32 dispatch emergency calls prior to the effective date of
33 this subsection, as a condition of continuing employ-
34 ment, shall successfully complete such a course not later
35 than the first day of July, one thousand nine hundred
36 ninety-five.

37 (e) Each county or municipality shall appoint for each
38 answering point an enhanced emergency telephone
39 system advisory board consisting of at least six members
40 to monitor the operation of the system. The board shall
41 be appointed by the county or municipality and shall
42 include at least one member from affected fire service
43 providers, law-enforcement providers, emergency
44 medical providers and emergency services providers
45 participating in the system and at least one member
46 from the county or municipality. The board may make
47 recommendations to the county or municipality concern-
48 ing the operation of the system.

49 In addition, the director of the county or municipal
50 enhanced telephone system shall serve as an ex officio
51 member of the advisory board. The initial advisory
52 board shall serve staggered terms of one, two and three
53 years. The initial terms of these appointees shall
54 commence on the first day of July, one thousand nine
55 hundred ninety-four. All future appointments shall be
56 for terms of three years, except that an appointment to
57 fill a vacancy shall be for the unexpired term. All
58 members shall serve without compensation. The board
59 shall adopt such policies, rules and regulations as are
60 necessary for its own guidance. The board shall meet
61 monthly on the day of each month which the board may
62 designate. The board may make recommendations to the
63 county or municipality concerning the operation of the
64 system.

- 65 (f) Any advisory board established prior to the first
66 day of January, one thousand nine hundred ninety-four,
67 shall have three years to meet the criteria of subsection
68 (e) of this section.

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 four, chapter 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.**
6. **General Provisions Respecting Officers.**
7. **County Commissions and Officers.**
8. **Municipal Corporations.**
11. **Taxation.**
15. **Public Safety.**
16. **Public Health.**
19. **Agriculture.**
20. **Natural Resources.**
21. **Labor.**
22. **Environmental Resources.**
- 22A. **Miners' Health, Safety and Training.**
- 22B. **Environmental Boards.**
- 22C. **Environmental Resources; Boards, Authorities, Commissions and Compacts.**
23. **Workers' Compensation.**
24. **Public Service Commission.**
29. **Miscellaneous Boards and Officers.**
31. **Corporations.**

- 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.

1 The attorney general shall give written opinions and
2 advice upon questions of law, and shall prosecute and
3 defend suits, actions, and other legal proceedings, and
4 generally render and perform all other legal services,
5 whenever required to do so, in writing, by the governor,
6 the secretary of state, the auditor, the state superintend-
7 ent of free schools, the treasurer, the commissioner of
8 agriculture, the board of public works, the tax commis-
9 sioner, the state archivist and historian, the commis-
10 sioner of banking, the adjutant general, the director of
11 the division of environmental protection, the superin-
12 tendent of public safety, the state commissioner of
13 public institutions, the commissioner of the division of
14 highways, the commissioner of the bureau of employ-
15 ment programs, the public service commission, or any
16 other state officer, board or commission, or the head of
17 any state educational, correctional, penal or eleemosy-
18 nary institution; and it is unlawful from and after the
19 time this section becomes effective for any of the public
20 officers, commissions, or other persons above mentioned
21 to expend any public funds of the state of West Virginia
22 for the purpose of paying any person, firm, or corpora-
23 tion for the performance of any legal services: *Provided,*
24 That nothing contained in this section impairs or affects
25 any existing valid contracts of employment for the
26 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.

1 In addition to all other powers and duties now
2 conferred by law upon county commissions, county
3 commissions are hereby authorized and empowered to
4 create a hazardous material accident response program.
5 The program may include the establishment of a
6 hazardous materials response team. The hazardous
7 materials response team shall include members of the
8 fire departments, recognized and approved by the West
9 Virginia fire commission in the county, who are
10 designated by the county commission. The team shall
11 also include members of emergency medical services
12 certified pursuant to article four-c, chapter sixteen of
13 this code who are acting in their official capacity by
14 providing ambulance or emergency medical services
15 within the county and who are designated as members
16 of the hazardous materials response team by the county
17 commission. The team may also include other people in
18 the community who are recognized as having expertise
19 with hazardous materials or hazardous material inci-
20 dents and who are designated by the county commission
21 to serve on the team. The purpose of the team is to
22 respond to hazardous material incidents. The hazardous
23 materials response team shall function and the members
24 shall serve at the will and pleasure of the county
25 commission. The team shall operate in cooperation with
26 the county office of emergency services and other
27 approved fire departments. The commission is autho-
28 rized to receive donated funds and to expend those funds
29 and to expend its own funds for the acquisition of
30 equipment and materials for use by and training of the
31 members of the team. The county commission is hereby
32 authorized to enter into agreements with other counties
33 to combine or coordinate hazardous material response
34 team training and for the purchase or lease and use of
35 equipment or materials.

36 Any carrier, owner or generator of hazardous mate-
37 rials who receives the services of a county hazardous
38 materials response team is liable for the cost of
39 necessary services provided by a county hazardous
40 materials response team. County commissions may bill
41 a carrier, owner or generator of hazardous materials for
42 any costs incurred by the team in responding to a
43 hazardous materials incident in which the carrier,
44 owner or generator is involved: *Provided*, That the
45 carrier, owner or generator may, within thirty days of
46 receipt of the bill, appeal in writing to the county
47 commission to request a hearing to address any costs
48 which may be considered extraordinary for the services
49 of the hazardous materials response team. The carrier,
50 owner or generator will hold payment of the costs in
51 abeyance pending the final written decision of the
52 county commission. Any funds received by the county
53 commission as a result of billing carrier, owners and
54 generators of hazardous materials shall be used by the
55 county commission to implement the provisions of this
56 section and to reimburse the response teams partici-
57 pants for response costs.

58 Any carrier, owner or generator involved in a
59 hazardous materials incident who fails to pay a bill for
60 services provided by a county hazardous materials
61 incident team within ninety days shall be liable for
62 treble the cost of the services.

63 For purposes of this section, the term "generator"
64 means any person, corporation, partnership, association
65 or other legal entity, by site location, whose act or
66 process produces hazardous materials as identified or
67 listed by the director of the division of environmental
68 protection in regulations promulgated pursuant to
69 section six, article nineteen, chapter twenty-two of this
70 code, in an amount greater than twelve thousand
71 kilograms per year.

72 For purposes of this section, the term "carrier" means
73 any person engaged in the off-site transportation of
74 hazardous materials by air, rail, highway or water.

75 For purposes of this section, "owner" means any

76 person, corporation, partnership, association or other
77 legal entity whose hazardous materials are being
78 transported by the entity or by a carrier.

79 For the purposes of this section, the term "hazardous
80 materials" means those materials which are designated
81 as such pursuant to federal laws and regulations, the
82 designations of which are adopted by reference as of the
83 tenth day of July, one thousand nine hundred ninety-
84 three.

**§7-1-3ff. Duty to require clearance of refuse and debris
from private lands; notice of demand there-
of; procedure to contest demand.**

1 County commissions, as set forth in this article, county
2 health officers, as set forth in section two, article two,
3 chapter sixteen of this code, and state fire marshals as
4 set forth in section twelve, article three, chapter twenty-
5 nine of this code, such commissions and health officers
6 are hereby authorized and obliged to require clearance
7 of any refuse or debris consisting of remnants or
8 remains of any unused or unoccupied dwelling, cement
9 foundation, piping, basements, intact chimneys, non-
10 farm building, structure or manmade appurtenance on
11 all private lands within their respective scopes of
12 authority by the owners thereof that has accumulated
13 as the result of any natural or manmade fire, force or
14 effect which presents a safety or health hazard,
15 including the removal of toxic or contaminant spillage
16 and seepage or which has deteriorated to such a degree
17 as to be unsightly, visually offensive and be depressive
18 of the value of the adjacent properties or uses of such
19 properties: *Provided*, That upon request from a lan-
20 downer and a written determination and approval from
21 the state fire marshal, where appropriate, a landowner
22 may fill the remains of a basement to ground level with
23 inert fill material in lieu of complete removal of such
24 cement foundation, piping and basement.

25 Upon determination by any state fire marshal that
26 substantial accumulations or refuse, debris or destroyed
27 structures or appurtenances, as described above, exist
28 on the property as a result of a natural or manmade fire,

29 notice shall be given by the fire marshal and forwarded
30 to the owner immediately informing the landowner of
31 the requirements of this article to effect repair, removal,
32 closure or demolition of the fire damaged property
33 within ninety days of the receipt of such notice.

34 Upon a determination by a county commission or
35 county health officer that substantial accumulations of
36 refuse or the presence of debris, as described above,
37 exist on any such private lands, notice shall be for-
38 warded to the owner thereof informing the landowner
39 of the following:

40 (a) Of the commission's or health officer's demand to
41 remove all refuse and debris within ninety days of the
42 receipt of such notice unless an extension be granted by
43 said commission or health officer;

44 (b) Of the landowner's right to contest such demand
45 and of the proper procedure in which to do so;

46 (c) That if the landowner fails to both properly contest
47 and comply with the commission's or health officer's
48 demand, that removal will be achieved otherwise and
49 that the reasonable costs incurred thereto will become
50 a civil debt owed by the landowner to the county;

51 (d) That if the county incurs costs of removal and the
52 landowner fails to pay such costs within two months of
53 such removal that a judgment lien on the subject
54 property will be filed in the county clerk's office wherein
55 the subject property exists.

56 The commission or health officer shall send notice as
57 described herein by certified mail. If, for any reason,
58 such certified mail is returned without evidence of
59 proper receipt thereof, then in such event, a Class III-
60 0 legal advertisement shall be published in a newspaper
61 of general circulation in the county wherein such land
62 is situated in order to render proper notice in accor-
63 dance with this section: *Provided*, That if the commis-
64 sion or health officer determines, after notice and
65 inquiry as provided herein, that such refuse or debris
66 was created by someone other than the present lan-
67 downer, without such landowner's expressed or implied

68 permission, the commission or health officer shall
69 remove any such refuse or debris and shall apply to and
70 be eligible to receive from the solid waste reclamation
71 and environmental response fund created under section
72 eleven, article fifteen, chapter twenty-two of this code
73 for reimbursement for all reasonable costs incurred for
74 such removal.

75 In the event any landowner desires to contest any
76 demand brought forth pursuant to this section, the
77 landowner shall do so in accordance with article three,
78 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

- 20. Combined Waterworks and Sewerage Systems.
- 24. Planning and Zoning.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

1 This article is, without reference to any other statute

2 or charter provision, full authority for the acquisition,
3 construction, establishment, extension, equipment,
4 additions, betterment, improvement, repair, mainte-
5 nance and operation of or to the combined waterworks
6 and sewerage system herein provided for and for the
7 issuance and sale of the bonds by this article authorized,
8 and is an additional and alternative method therefor and
9 for the financing thereof, and no petition, referendum
10 or election or other or further proceeding with respect
11 to any such undertaking or to the issuance or sale of
12 bonds under this article and no publication of any
13 resolution, ordinance, notice or proceeding relating to
14 any such undertaking or to the issuance or sale of such
15 bonds is required, except as prescribed by this article,
16 any provisions of other statutes of the state to the
17 contrary notwithstanding: *Provided*, That all functions,
18 powers and duties of the bureau of public health and the
19 division of environmental protection remain unaffected
20 by this article.

21 This article is cumulative authority for any undertak-
22 ing herein authorized, and does not repeal any existing
23 laws with respect thereto.

ARTICLE 24. PLANNING AND ZONING.

§8-24-27. Cooperation between planning commissions; cooperation between commissions and go- verning and administrative bodies and officials.

1 In the exercise of the powers and authority granted
2 by this article, the planning commission of any munic-
3 ipality or county may cooperate with the planning
4 commissions or governing and administrative bodies
5 and officials of other municipalities within or without
6 such county and of other counties, with a view to
7 coordinating and integrating the planning and zoning of
8 such municipality or county with the plans of such other
9 municipalities and of such other counties, and may
10 appoint such committee or committees and may adopt
11 such rules and regulations as may be thought proper to
12 effect such cooperation. Such planning commissions and
13 governing and administrative bodies and officials of

14 other municipalities and counties are hereby authorized
15 to cooperate with such municipal or county planning
16 commissions for the purposes of such coordination and
17 integration. Similarly, such municipal or county plan-
18 ning commissions may cooperate with the division of
19 environmental protection of this state and make use of
20 advice and information furnished by such division and
21 by other appropriate state and federal officials, depart-
22 ments and agencies, and all state departments and
23 agencies having information, maps and data pertinent
24 to the planning and zoning of such municipality or
25 county may make such available for the use of such
26 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.

1 (a) As used in this section:

2 (1) "Industrial property" means real and personal
3 property integrated as a functioning unit intended for
4 the assembling, processing and manufacturing of
5 finished or partially finished products.

6 (2) "Natural resources property" means coal, oil,
7 natural gas, limestone, fireclay, dolomite, sandstone,
8 shale, sand and gravel, salt, lead, zinc, manganese, iron
9 ore, radioactive minerals, oil shale, managed timberland
10 as defined in section two of this article, and other
11 minerals.

12 (b) All owners of industrial property and natural
13 resources property each year shall make a return to the
14 state tax commissioner and, if requested in writing by
15 the assessor of the county where situated, to such county
16 assessor at a time and in the form specified by the

17 commissioner of all industrial or natural resources
18 property owned by them. The commissioner may
19 require any information to be filed which would be
20 useful in valuing the property covered in the return.
21 Any penalties provided for in this chapter or elsewhere
22 in this code relating to failure to list any property or
23 to file any return or report may be applied to any owner
24 of property required to make a return pursuant to this
25 section.

26 (c) The state tax commissioner shall value all indus-
27 trial property in the state at its fair market value within
28 three years of the approval date of the plan for
29 industrial property required in subsection (e) of this
30 section. The commissioner shall thereafter maintain
31 accurate values for all such property. The tax commis-
32 sioner shall forward each industrial property appraisal
33 to the county assessor of the county in which that
34 property is located and the assessor shall multiply each
35 such appraisal by sixty percent and include the result-
36 ing assessed value in the land book or the personal
37 property book, as appropriate for each tax year. The
38 commissioner shall supply support data that the assessor
39 might need to evaluate the appraisal.

40 (d) Within three years of the approval date of the plan
41 required for natural resources property required
42 pursuant to subsection (e) of this section, the state tax
43 commissioner shall determine the fair market value of
44 all natural resources property in the state. The commis-
45 sioner shall thereafter maintain accurate values for all
46 such property.

47 (1) In order to qualify for identification as managed
48 timberland for property tax purposes the owner must
49 annually certify, in writing to the division of forestry,
50 that the property meets the definition of managed
51 timberland as set forth in this article and contracts to
52 manage property according to a plan that will maintain
53 the property as managed timberland. In addition, each
54 owner's certification must state that forest management
55 practices will be conducted in accordance with approved
56 practices from the publication "Best Management
57 Practices for Forestry". Property certified as managed

58 timberland shall be valued according to its use and
59 productive potential. The tax commissioner shall
60 promulgate rules for certification as managed
61 timberland.

62 (2) In the case of all other natural resources property,
63 the commissioner shall develop an inventory on a county
64 by county basis of all such property and may use any
65 resources, including, but not limited to, geological
66 survey information; exploratory, drilling, mining and
67 other information supplied by natural resources prop-
68 erty owners; and maps and other information on file
69 with the state division of environmental protection and
70 office of miners' health, safety and training. Any
71 information supplied by natural resources owners or any
72 proprietary or otherwise privileged information sup-
73 plied by the state division of environmental protection
74 and office of miner's health, safety and training shall be
75 kept confidential unless needed to defend an appraisal
76 challenged by a natural resources owner. Formulas for
77 natural resources valuation may contain differing
78 variables based upon known geological or other common
79 factors. The tax commissioner shall forward each
80 natural resources property appraisal to the county
81 assessor of the county in which that property is located
82 and the assessor shall multiply each such appraisal by
83 sixty percent and include the resulting assessed value
84 in the land book or the personal property book, as
85 appropriate, for each tax year. The commissioner shall
86 supply support data that the assessor might need to
87 explain or defend the appraisal. The commissioner shall
88 directly defend any challenged appraisal when the
89 assessed value of the property in question exceeds two
90 million dollars or an owner challenging an appraisal
91 holds or controls property situated in the same county
92 with an assessed value exceeding two million dollars. At
93 least every five years, the commissioner shall review
94 current technology for the recovery of natural resources
95 property to determine if valuation methodologies need
96 to be adjusted to reflect changes in value which result
97 from development of new recovery technologies.

98 (e) The tax commissioner shall develop a plan for the

99 valuation of industrial property and a plan for the
100 valuation of natural resources property. The plans shall
101 include expected costs and reimbursements, and shall be
102 submitted to the property valuation training and
103 procedures commission on or before the first day of
104 January, one thousand nine hundred ninety-one, for its
105 approval on or before the first day of July of such year.
106 Such plan shall be revised, resubmitted to the commis-
107 sion and approved every three years thereafter.

108 (f) To perform the valuation duties under this section,
109 the state tax commissioner has the authority to contract
110 with a competent property appraisal firm or firms to
111 assist with or to conduct the valuation process as to any
112 discernible species of property statewide if the contract
113 and the entity performing such contract is specifically
114 included in a plan required by subsection (e) of this
115 section or otherwise approved by the commission. If the
116 tax commissioner desires to contract for valuation
117 services only in one county or a group of counties, the
118 contract must be approved by the commission.

119 (g) The county assessor may accept the appraisal
120 provided, pursuant to this section, by the state tax
121 commissioner: *Provided*, That if the county assessor fails
122 to accept the appraisal provided by the state tax
123 commissioner, the county assessor shall show just cause
124 to the valuation commission for the failure to accept
125 such appraisal and shall further provide to the valuation
126 commission a plan by which a different appraisal will
127 be conducted.

128 (h) The costs of appraising the industrial and natural
129 resources property within each county, and any costs of
130 defending same shall be paid by the state: *Provided*,
131 That the office of the state attorney general shall
132 provide legal representation on behalf of the tax
133 commissioner or assessor, at no cost, in the event the
134 industrial and natural resources appraisal is challenged
135 in court.

136 (i) For purposes of revaluing managed timberland as
137 defined in section two of this article, any increase or
138 decrease in valuation by the commissioner does not

139 become effective prior to the first day of July, one
140 thousand nine hundred ninety-one. The property owner
141 may request a hearing by the director of the division of
142 forestry, who may thereafter rescind the disqualification
143 or allow the property owner a reasonable period of time
144 in which to qualify the property. A property owner may
145 appeal a disqualification to the circuit court of the
146 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.

1 It is declared to be the public policy of the state of
2 West Virginia to maintain reasonable standards of
3 purity and quality of the water of the state and a
4 reasonable degree of purity of the air resources of the
5 state. In the exercise of the police power of the state to
6 protect the environment and promote the public health,
7 safety and general welfare, the Legislature has enacted
8 the Water Pollution Control Act as article eleven,
9 chapter twenty-two of this code and the Air Pollution
10 Control Act as article five, chapter twenty-two thereof.
11 It is recognized and declared by the Legislature that
12 pollution control facilities, as hereinafter defined, are
13 required for the protection and benefit of the environ-
14 ment and the general welfare of the people, are
15 nonproductive, do not add to the economic value of a
16 business enterprise and do not have a market value after
17 installation in excess of salvage value.

§11-6A-2. Definition.

1 As used in this article, "pollution control facility"
2 means any personal property designed, constructed or
3 installed primarily for the purpose of abating or
4 reducing water or air pollution or contamination by
5 removing, altering, disposing, treating, storing or
6 dispersing the concentration of pollutants, contami-
7 nants, wastes or heat in compliance with air or water
8 quality or effluent standards prescribed by or promul-
9 gated under the laws of this state or the United States,

10 the design, construction and installation of which
11 personal property was approved as a pollution control
12 facility by either the office of water resources or the
13 office of air quality, both of the division of environmen-
14 tal 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.

1 (a) *Additional coal severance tax.* — Upon every
2 person exercising the privilege of engaging or continu-
3 ing within this state in the business of severing coal, or
4 preparing coal (or both severing and preparing coal), for
5 sale, profit or commercial use, there is hereby imposed
6 an additional severance tax, the amount of which shall
7 be equal to the value of the coal severed or prepared (or
8 both severed and prepared), against which the tax
9 imposed by section three of this article is measured as
10 shown by the gross proceeds derived from the sale
11 thereof by the producer, multiplied by thirty-five one
12 hundredths of one percent. The tax imposed by this
13 subsection shall be in addition to the tax imposed by
14 section three of this article, and this additional tax is
15 hereinafter in this section referred to as the “additional
16 tax on coal”.

17 (b) This additional tax on coal is imposed pursuant to
18 the provisions of section six-a, article ten of the West

19 Virginia constitution. Seventy-five percent of the net
20 proceeds of this additional tax on coal shall, after
21 appropriation thereof by the Legislature, be distributed
22 by the state treasurer in the manner hereinafter
23 specified, to the various counties of this state in which
24 the coal upon which this additional tax is imposed was
25 located at the time it was severed from the ground.
26 Those counties are hereinafter in this section referred
27 to as the "coal-producing counties". The remaining
28 twenty-five percent of the net proceeds of this additional
29 tax on coal shall be distributed, after appropriation,
30 among all the counties and municipalities of this state
31 in the manner hereinafter specified.

32 (c) Such additional tax on coal shall be due and
33 payable, reported and remitted as elsewhere provided in
34 this article for the tax imposed by said section three of
35 this article, and all of the enforcement and other
36 provisions of this article shall apply to such additional
37 tax. In addition to the reports and other information
38 required under the provisions of this article and the
39 tonnage reports required to be filed under the provisions
40 of section seventy-seven, article two, chapter twenty-
41 two-a of this code, the tax commissioner is hereby
42 granted plenary power and authority to promulgate
43 reasonable rules requiring the furnishing by producers
44 of such additional information as may be necessary to
45 compute the allocation required under the provisions of
46 subsection (f) of this section. The tax commissioner is
47 also hereby granted plenary power and authority to
48 promulgate such other reasonable rules as may be
49 necessary to implement the provisions of this section:
50 *Provided*, That notwithstanding any language contained
51 in this code to the contrary, the gross amount of
52 additional tax on coal collected under this article shall
53 be paid over and distributed without the application of
54 any credits against the tax imposed by this section.

55 (d) In order to provide a procedure for the distribution
56 of seventy-five percent of the net proceeds of such
57 additional tax on coal to such coal-producing counties,
58 there is hereby continued in the state treasurer's office
59 the special fund known as the "county coal revenue
60 fund"; and in order to provide a procedure for the

61 distribution of the remaining twenty-five percent of the
62 net proceeds of such additional tax on coal to all counties
63 and municipalities of the state, without regard to coal
64 having been produced therein, there is also hereby
65 continued in the state treasurer's office the special fund
66 known as the "all counties and municipalities revenue
67 fund".

68 Seventy-five percent of the net proceeds of such
69 additional tax on coal shall be deposited in the "county
70 coal revenue fund" and twenty-five percent of such net
71 proceeds shall be deposited in the "all counties and
72 municipalities revenue fund", from time to time, as such
73 proceeds are received by the tax commissioner. The
74 moneys in such funds shall, after appropriation thereof
75 by the Legislature, be distributed to the respective
76 counties and municipalities entitled thereto in the
77 manner set forth in subsection (e) of this section.

78 (e) The moneys in the "county coal revenue fund" and
79 the moneys in the "all counties and municipalities
80 revenue fund" shall be allocated among and distributed
81 quarterly to the counties and municipalities entitled
82 thereto by the state treasurer in the manner hereinafter
83 specified. On or before each distribution date, the state
84 treasurer shall determine the total amount of moneys in
85 each fund which will be available for distribution to the
86 respective counties and municipalities entitled thereto
87 on that distribution date. The amount to which a coal-
88 producing county is entitled from the "county coal
89 revenue fund" shall be determined in accordance with
90 subsection (f) of this section, and the amount to which
91 every county and municipality shall be entitled from the
92 "all counties and municipalities revenue fund" shall be
93 determined in accordance with subsection (g) of this
94 section. After determining as set forth in subsection (f)
95 and subsection (g) of this section the amount each county
96 and municipality is entitled to receive from the respec-
97 tive fund or funds, a warrant of the state auditor for the
98 sum due to such county or municipality shall issue and
99 a check drawn thereon making payment of such sum
100 shall thereafter be distributed to such county or
101 municipality.

102 (f) The amount to which a coal-producing county is

103 entitled from the "county coal revenue fund" shall be
104 determined by: (1) Dividing the total amount of moneys
105 in such fund then available for distribution by the total
106 number of tons of coal mined in this state during the
107 preceding quarter; and (2) multiplying the quotient thus
108 obtained by the number of tons of coal removed from
109 the ground in such county during the preceding quarter.

110 (g) The amount to which each county and municipal-
111 ity is entitled from the "all counties and municipalities
112 revenue fund" shall be determined in accordance with
113 the provisions of this subsection. For purposes of this
114 subsection "population" means the population as deter-
115 mined by the most recent decennial census taken under
116 the authority of the United States:

117 (1) The treasurer shall first apportion the total
118 amount of moneys available in the "all counties and
119 municipalities revenue fund" by multiplying the total
120 amount in such fund by the percentage which the
121 population of each county bears to the total population
122 of the state. The amount thus apportioned for each
123 county is the county's "base share".

124 (2) Each county's "base share" shall then be subdivi-
125 ded into two portions. One portion is determined by
126 multiplying the "base share" by that percentage which
127 the total population of all unincorporated areas within
128 the county bears to the total population of the county,
129 and the other portion is determined by multiplying the
130 "base share" by that percentage which the total
131 population of all municipalities within the county bears
132 to the total population of the county. The former portion
133 shall be paid to the county and the latter portion shall
134 be the "municipalities' portion" of the county's "base
135 share". The percentage of such latter portion to which
136 each municipality in the county is entitled shall be
137 determined by multiplying the total of such latter
138 portion by the percentage which the population of each
139 municipality within the county bears to the total
140 population of all municipalities within the county.

141 (h) All counties and municipalities shall create a "coal
142 severance tax revenue fund" which shall be the depos-

143 itory for moneys distributed to any county or municipal-
144 ity under the provisions of this section, from either or
145 both special funds. Moneys in such "coal severance tax
146 revenue funds", in compliance with subsection (i), may
147 be expended by the county commission or governing
148 body of the municipality for such public purposes as the
149 county commission or governing body shall determine to
150 be in the best interest of the people of its respective
151 county or municipality: *Provided*, That in counties with
152 population in excess of two hundred thousand at least
153 seventy-five percent of such funds received from the
154 county coal revenue fund shall be apportioned to, and
155 expended within the coal-producing area or areas of the
156 county, said coal-producing areas of each county to be
157 determined generally by the state tax commissioner:
158 *Provided, however*, That a line item budgeted amount
159 from the current levy estimated for a county shall be
160 funded at one hundred percent of the preceding year's
161 expenditure from the county general fund prior to the
162 use of coal severance tax revenue fund moneys for the
163 same general purpose: *Provided further*, That said coal
164 severance tax revenue fund moneys shall not be
165 budgeted for personal services in an amount to exceed
166 one fourth of the total funds available in such fund.

167 (i) On or before the twenty-eighth day of March, one
168 thousand nine hundred eighty-six, and each twenty-
169 eighth day of March thereafter, each county commission
170 or governing body of a municipality receiving such
171 revenue shall submit to the tax commissioner on forms
172 provided by the tax commissioner a special budget,
173 detailing how such revenue is to be spent during the
174 subsequent fiscal year. Such budget shall be followed in
175 expending such revenue unless a subsequent budget is
176 approved by the state tax commissioner. All unexpended
177 balances remaining in said special fund at the close of
178 a fiscal year shall be reappropriated to the budget for
179 the subsequent fiscal year. Such reappropriation shall
180 be entered as an amendment to the new budget and
181 submitted to the tax commissioner on or before the
182 fifteenth day of July of the current budget year.

183 (j) On or before the fifteenth day of December, one

184 thousand nine hundred eighty-six, and each fifteenth
185 day of December thereafter, the tax commissioner shall
186 deliver to the clerk of the Senate and the clerk of the
187 House of Delegates a consolidated report of the special
188 budgets, created by subsection (i) of this section, for all
189 county commissions and municipalities as of the
190 fifteenth day of July of the current year.

191 (k) The state tax commissioner shall retain for the
192 benefit of the state from the additional taxes on coal
193 collected the amount of thirty-five thousand dollars
194 annually as a fee for the administration of such
195 additional tax by the tax commissioner.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND COMMUNITY RIGHT-TO-KNOW ACT.

§15-5A-4. State emergency response commission created; composition and organization, qualifications, terms, removal, compensation, meetings.

1 (a) There is hereby created the state emergency
2 response commission.

3 (b) The state emergency response commission shall
4 consist of eleven members, including the director of the
5 division of environmental protection, the commissioner
6 of the division of public health, the chief of the office
7 of air quality of the division of environmental protection,
8 the director of the office of emergency services, the
9 superintendent of the division of public safety, the
10 commissioner of the division of highways; one designee
11 of the public service commission and one designee of the
12 state fire marshal, all of whom are members ex officio.
13 A representative from the chemical industry, a repre-
14 sentative of a municipal or volunteer fire department
15 and a representative of the public who is knowledgeable
16 in the area of emergency response shall be appointed by
17 the governor as public members of the state emergency
18 response commission. The director of the office of
19 emergency services serves as the chair of the commis-
20 sion and may cast a vote only in the event of a tie vote.
21 Members serve without compensation, but shall be
22 reimbursed for all reasonable and necessary expenses

23 actually incurred in the performance of their duties
24 under this article. The initial public members appointed
25 by the governor shall serve for a term ending on the first
26 day of July, one thousand nine hundred ninety-one. A
27 successor to a public member of the commission shall
28 be appointed in the same manner as the original public
29 members and has a term of office expiring two years
30 from the date of the expiration of the term for which
31 his or her predecessor was appointed. In cases of any
32 vacancy among the public members, such vacancy shall
33 be filled by appointment by the governor. Any member
34 appointed to fill a vacancy on the commission occurring
35 prior to the expiration of the term for which his or her
36 predecessor was appointed shall be appointed for the
37 remainder of such term. Members appointed by the
38 governor may be removed by the governor in case of
39 incompetency, neglect of duty, gross immorality or
40 malfeasance in office.

41 (c) The commission shall elect from its membership
42 a vice chair and appoint a secretary. The secretary need
43 not be a member of the commission. The vice chair shall
44 preside over the meetings and hearings of the commis-
45 sion in the absence of the chair. The commission may
46 appoint and employ such personnel as may be required,
47 whose duties shall be defined by the commission and
48 whose compensation, to be fixed by the commission,
49 shall be paid out of the state treasury, upon the
50 requisition of the commission, from moneys approp-
51 riated for such purposes.

52 (d) The commission may establish procedural rules in
53 accordance with chapter twenty-nine-a of the code for
54 the regulation of its affairs and the conduct of all
55 proceedings before it. All proceedings of the commission
56 shall be entered in a permanently bound record book,
57 properly indexed, and the same shall be carefully
58 preserved and attested by the secretary of the commis-
59 sion. The commission shall meet at such times and
60 places as may be agreed upon by the commissioners, or
61 upon the call of the chairman of the commission or any
62 two members of the commission, all of which meetings
63 shall be general meetings for the consideration of any

64 and all matters which may properly come before the
65 commission. A majority of the commission constitutes a
66 quorum for the transaction of business.

CHAPTER 16. PUBLIC HEALTH.

Article

1. State Bureau of Public Health.
9. Offenses Generally.
12. Sanitary Districts for Sewage Disposal.
13. Sewage Works of Municipal Corporations and Sanitary Districts.
- 13A. Public Service Districts for Water, Sewerage and Gas Services.
- 13B. Community Improvement Act.
27. Storage and Disposal of Radioactive Waste Materials.

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

23 representative may issue an order requiring the owner
24 of such system or method to make alterations as may
25 be necessary to correct the improper condition. Such
26 alterations shall be made within a reasonable time
27 which shall not exceed thirty days, unless a time
28 extension is authorized by the commissioner or his or
29 her duly authorized representative.

30 The presence of sewage or excreta being disposed of
31 in a manner not approved by the commissioner of the
32 bureau of public health or his or her authorized
33 representative constitutes prima facie evidence of the
34 existence of a condition endangering public health.

35 The personnel of the bureau of public health shall be
36 available to consult and advise with any person, firm,
37 company, corporation, institution or association,
38 whether publicly or privately owned, county or munic-
39 ipal, or public service authority, as to the most approp-
40 riate design, method of operation or alteration of any
41 such system or method.

42 Any person, firm, company, corporation, institution or
43 association, whether public or private, county or
44 municipal, who violates any provisions of this section is
45 guilty of a misdemeanor, and, upon conviction thereof,
46 shall be punished by a fine of not less than twenty-five
47 dollars nor more than five hundred dollars. The
48 continued failure or refusal of such convicted person,
49 firm, company, corporation, institution or association,
50 whether public or private, county or municipal, to make
51 the alterations necessary to protect the public health
52 required by the commissioner of the bureau of public
53 health or his or her duly authorized representative is a
54 separate, distinct and additional offense for each twenty-
55 four hour period of such failure or refusal, and, upon
56 conviction thereof, the violator shall be fined not less
57 than twenty-five dollars nor more than five hundred
58 dollars for each such conviction: *Provided*, That none of
59 the provisions contained in this section apply to those
60 commercial or industrial wastes which are subject to the
61 regulatory control of the West Virginia division of
62 environmental protection.

63 Magistrates have concurrent jurisdiction with the
64 circuit courts of this state for violations of any provisions
65 of this section.

§16-1-14a. Commissioner authorized to designate a representative to serve in his or her place on certain boards and commissions.

1 Notwithstanding any other provision of this code to
2 the contrary, the commissioner may, at his or her
3 discretion, designate in writing a representative to serve
4 in his or her stead at the meetings and in the duties of
5 all boards and commissions on which the commissioner
6 is designated as a member ex officio. Such appropriately
7 designated representative or proxy may act with the full
8 power and authority of the commissioner in voting,
9 acting upon matters concerning the public health and
10 welfare and such other business as may properly be the
11 duty of any such said board or commission, with any
12 such representative serving as proxy for the commis-
13 sioner at his or her will and pleasure: *Provided*, That
14 the provisions of this section do not apply to the state
15 board of health, the medical licensing board, the air
16 quality board or any other board, commission or body
17 on which the commissioner is designated by this code
18 as chairman ex officio, secretary ex officio or any board,
19 commission or body on which the commissioner is
20 designated by this code as being that person whose
21 signature must appear on licenses, minutes or other
22 documents necessary to carry out the intents and
23 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.

1 Any person who knowingly and willfully throws,
2 causes to be thrown or releases any dead animal,
3 carcass, or part thereof, garbage, sink or shower waste,
4 organic substance, human or animal excrement, con-
5 tents of privy vault, septic tank, cesspool or the effluent
6 from any cesspool or nauseous or offensive or poisonous
7 substances into any well, cistern, spring, brook, pond,
8 stream or other body of water which is used for domestic
9 purposes, is guilty of a misdemeanor, and, upon
10 conviction thereof, shall be fined not less than twenty-
11 five dollars nor more than two hundred dollars. None
12 of the provisions contained in this section shall apply to
13 those commercial or industrial wastes which are subject
14 to the regulatory control of the West Virginia division
15 of environmental protection.

16 Upon conviction of any such offense, the person
17 convicted shall, within twenty-four hours after such
18 conviction, remove and bury or cause to be buried at
19 least three feet under the ground or destroy or cause to
20 be destroyed as otherwise directed by the commissioner
21 of the bureau of public health or his or her duly
22 authorized representative any of such offensive mate-
23 rials which the person so convicted has thrown, caused
24 to be thrown, released or knowingly permitted to remain
25 in water used for domestic purposes, contrary to the
26 provisions of this section, and his or her failure or
27 refusal to do so is a misdemeanor and a second violation
28 of the provisions of this section. The continued failure
29 or refusal of such convicted person to so bury or destroy
30 such offensive materials is a separate, distinct and
31 additional offense for each successive twenty-four hour
32 period of such failure or refusal. Any person convicted
33 of any offense described in this paragraph shall be fined
34 not less than twenty-five dollars nor more than two
35 hundred dollars, or imprisoned in the county jail not
36 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.

1 Any person (1) who throws, causes to be thrown or
2 releases any dead animal, carcass, or part thereof,
3 garbage, sink or shower waste, organic substances,
4 contents of a privy vault, septic tank, cesspool or the
5 effluent from any cesspool, spoiled meat or nauseous or
6 offensive or poisonous substances into any river, creek
7 or other stream, or upon the surface of any land adjacent
8 to any river, creek or other stream in such a location
9 that high water or normal drainage conditions will
10 cause such offensive materials to be washed, drained or
11 cast into the river, creek or other stream; or (2) who
12 throws, or causes to be thrown or releases any of such
13 offensive materials upon the surface of any road, right-
14 of-way, street, alley, city or town lot, public ground,
15 market space, common or private land, or (3) who, being
16 the owner, lessee or occupant of any city or town lot,
17 public ground, market space, common or private land
18 knowingly permits any such offensive materials to
19 remain thereon or neglects or refuses to remove or abate
20 the public health menace or nuisance occasioned
21 thereby, within twenty-four hours of the service of notice
22 thereof in writing from the commissioner of the bureau
23 of public health or his or her duly authorized represen-
24 tative, is guilty of a misdemeanor, and, upon conviction
25 thereof, shall be fined not less than one hundred dollars
26 nor more than one thousand dollars. None of the
27 provisions contained in this section apply to those
28 commercial or industrial wastes which are subject to the
29 regulatory control of the West Virginia division of
30 environmental protection.

31 Upon a conviction for any such offense, the person
32 shall, within twenty-four hours after such conviction,
33 remove and bury or cause to be buried at least three feet
34 under the ground, or destroy or cause to be destroyed
35 as otherwise directed by the commissioner of the bureau
36 of public health or his or her duly authorized represen-

37 tative, any of such offensive materials which the person
38 so convicted has placed or knowingly permitted to
39 remain upon such city or town lot, public ground,
40 market space, common or private land, contrary to the
41 provisions of this section. Such person's failure or
42 refusal to do so is a misdemeanor and a second offense
43 against the provisions of this section. The continued
44 failure or refusal of such convicted person to remove and
45 bury or destroy such offensive materials is a separate,
46 distinct and additional offense for each successive
47 twenty-four-hour period of such failure and refusal. Any
48 person convicted of any offense described in this
49 paragraph shall be fined not less than one hundred
50 dollars nor more than one thousand dollars, or impri-
51 soned in the county jail not more than ninety days, or
52 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.**

1 All sanitary districts organized under the provisions
2 of this article shall proceed as rapidly as possible to
3 provide sewers and a plant or plants for the treatment
4 or purification of its sewage, which plant or plants shall
5 be of suitable kind and sufficient capacity to properly
6 treat and purify such sewage so as to conduce to the
7 preservation of the public health, comfort and conven-
8 ience and to render said sewage harmless, insofar as is
9 reasonably possible, to animal, fish and plant life. Any
10 violation of this proviso and any failure to observe and
11 follow same, by any sanitary district organized under
12 this article, is a misdemeanor on the part of the sanitary
13 district and upon conviction, said sanitary district shall
14 be punished by such fine as law and equity may require,
15 and the trustees thereof may be removed from office as
16 trustees of said sanitary district by an order of the court
17 before whom the cause is heard. It is the duty of the
18 division of environmental protection or the bureau of
19 public health or other body having proper supervision
20 of such matters, to enforce the foregoing provisions; and
21 upon complaint of said office or bureau it is the duty

22 of the attorney general or prosecuting attorney of the
23 county in which such violation may occur, to institute
24 and prosecute such cause by indictment or in the
25 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.**

1 Notwithstanding any other provision contained in this
2 article, and in addition thereto, the governing body of
3 any municipal corporation which has received or which
4 hereafter receives an order issued by the director of the
5 division of environmental protection or the environmen-
6 tal quality board requiring such municipal corporation
7 to cease the pollution of any stream or waters, is hereby
8 authorized and empowered to fix, establish and main-
9 tain, by ordinance, just and equitable rates or charges
10 for the use of the services and facilities of the existing
11 sewer system of such municipal corporation, and/or for
12 the use of the services and facilities to be rendered upon
13 completion of any works and system necessary by virtue
14 of said order, to be paid by the owner, tenant or
15 occupant of each and every lot or parcel of real estate
16 or building that is connected with and uses any part of
17 such sewer system, or that in any way uses or is served
18 thereby, and may change and readjust such rates or
19 charges from time to time. Such rates or charges shall
20 be sufficient for the payment of all the proper and
21 reasonable costs and expenses of the acquisition and
22 construction of plants, machinery and works for the
23 collection and/or treatment, purification and disposal of
24 sewage, and the repair, alteration and extension of
25 existing sewer facilities, as may be necessary to comply
26 with such order of the director of the division of
27 environmental protection or the environmental quality
28 board, and for the operation, maintenance and repair of
29 the entire works and system; and the governing body
30 shall create, by ordinance, a sinking fund to accumulate
31 and hold any part or all of the proceeds derived from
32 rates or charges until completion of said construction,
33 to be remitted to and administered by the municipal

34 bond commission by expending and paying said costs
35 and expenses of construction and operation in the
36 manner as provided by said ordinance; and after the
37 completion of the construction such rates or charges
38 shall be sufficient in each year for the payment of the
39 proper and reasonable costs and expenses of operation,
40 maintenance, repair, replacement and extension from
41 time to time, of the entire sewer and works. No such
42 rates or charges shall be established until after a public
43 hearing, at which all the potential users of the works
44 and owners of property served or to be served thereby
45 and others shall have had an opportunity to be heard
46 concerning the proposed rates or charges. After intro-
47 duction of the ordinance fixing such rates or charges,
48 and before the same is finally enacted, notice of such
49 hearing, setting forth the proposed schedule of such
50 rates or charges, shall be given by publication of such
51 notice as a Class II-O legal advertisement in compliance
52 with the provisions of article three, chapter fifty-nine of
53 this code, and the publication area for such publication
54 is the municipality. The first publication shall be made
55 at least ten days before the date fixed therein for the
56 hearing. After such hearing, which may be adjourned
57 from time to time, the ordinance establishing the rates
58 or charges, either as originally introduced or as
59 modified and amended, may be passed and put into
60 effect. A copy of the schedule of such rates and charges
61 so established shall be kept on file in the office of the
62 sanitary board having charge of the construction and
63 operation of such works, and also in the office of the
64 clerk of the municipality, and shall be open to inspection
65 by all parties interested. The rates or charges so
66 established for any class of users or property served
67 shall be extended to cover any additional premises
68 thereafter served which fall within the same class,
69 without the necessity of any hearing or notice. Any
70 change or readjustment of such rates or charges may be
71 made in the same manner as such rates or charges were
72 originally established as hereinbefore provided: *Pro-*
73 *vided,* That if such change or readjustment be made
74 substantially pro rata, as to all classes of service, no
75 hearing or notice is required. If any rate or charge so

76 established is not paid within thirty days after the same
77 is due, the amount thereof, together with a penalty of
78 ten percent, and a reasonable attorney's fee, may be
79 recovered by the sanitary board of such municipal
80 corporation in a civil action in the name of the munic-
81 ipality. Any municipal corporation exercising the
82 powers given herein has authority to construct, acquire,
83 improve, equip, operate, repair and maintain any plants,
84 machinery, or works necessary to comply with such
85 order of the director of the division of environmental
86 protection or the environmental quality board, and the
87 authority provided herein to establish, maintain and
88 collect rates or charges is an additional and alternative
89 method of financing such works and matters, and is
90 independent of any other provision of this article insofar
91 as such article provides for or requires the issuance of
92 revenue bonds or the imposition of rates and charges in
93 connection with such bonds: *Provided, however,* That
94 except for the method of financing such works and
95 matters, the construction, acquisition, improvement,
96 equipment, custody, operation, repair and maintenance
97 of any plants, machinery or works in compliance with
98 an order of the director of the division of environmental
99 protection or the environmental quality board, and the
100 rights, powers, and duties of such municipal corporation
101 and the respective officers and departments thereof,
102 including the sanitary board, are governed by the
103 provisions of this article.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEW-
ERAGE 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.

1 Each county commission shall conduct a study of all
2 public service districts which have their principal
3 offices within its county and shall develop a plan
4 relating to the creation, consolidation, merger, expan-
5 sion or dissolution of such districts or the consolidation
6 or merger of management and administrative services
7 and personnel and shall present such plan to the public
8 service commission for approval, disapproval, or
9 modification: *Provided*, That within ninety days of the
10 effective date of this section each county commission in
11 this state shall elect either to perform its own study or
12 request that the public service commission perform such
13 study. Each county commission electing to perform its
14 own study has one year from the date of election to
15 present such plan to the public service commission. For
16 each county wherein the county commission elects not
17 to perform its own study, the public service commission
18 shall conduct a study of such county. The public service
19 commission shall establish a schedule for such studies
20 upon a priority basis, with those counties perceived to
21 have the greatest need of creation or consolidation of
22 public service districts receiving the highest priority. In
23 establishing the priority schedule, and in the perfor-
24 mance of each study, the bureau of public health and
25 the division of environmental protection shall offer their
26 assistance and cooperation to the public service commis-
27 sion. Upon completion by the public service commission
28 of each study, it shall be submitted to the appropriate
29 county commission for review and comment. Each
30 county commission has six months in which to review
31 the study conducted by the public service commission,
32 suggest changes or modifications thereof, and present
33 such plan to the public service commission. All county
34 plans, whether conducted by the county commission
35 itself or submitted as a result of a public service
36 commission study, shall, by order, be approved, disap-
37 proved or modified by the public service commission in
38 accordance with rules promulgated by the public service
39 commission and such order shall be implemented by the
40 county commission.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

1 From and after the date of the adoption of the order
2 creating any public service district, it is a public
3 corporation and political subdivision of the state, but
4 without any power to levy or collect ad valorem taxes.
5 Each district may acquire, own and hold property, both
6 real and personal, in its corporate name, and may sue,
7 may be sued, may adopt an official seal and may enter
8 into contracts necessary or incidental to its purposes,
9 including contracts with any city, incorporated town or
10 other municipal corporation located within or without
11 its boundaries for furnishing wholesale supply of water
12 for the distribution system of the city, town or other
13 municipal corporation, and contract for the operation,
14 maintenance, servicing, repair and extension of any
15 properties owned by it or for the operation and improve-
16 ment or extension by the district of all or any part of
17 the existing municipally owned public service properties
18 of any city, incorporated town or other municipal
19 corporation included within the district: *Provided*, That
20 no contract shall extend beyond a maximum of forty
21 years, but provisions may be included therein for a
22 renewal or successive renewals thereof and shall
23 conform to and comply with the rights of the holders of
24 any outstanding bonds issued by the municipalities for
25 the public service properties.

26 The powers of each public service district shall be
27 vested in and exercised by a public service board
28 consisting of not less than three members, who shall be
29 persons residing within the district who possess certain
30 educational, business or work experience which will be
31 conducive to operating a public service district. Each
32 board member shall, within six months of taking office,
33 successfully complete the training program to be
34 established and administered by the public service
35 commission in conjunction with the division of environ-
36 mental protection and the bureau of public health.
37 Board members shall not be or become pecuniarily
38 interested, directly or indirectly, in the proceeds of any
39 contract or service, or in furnishing any supplies or
40 materials to the district, nor shall a former board
41 member be hired by the district in any capacity within
42 a minimum of twelve months after such board member's

43 term has expired or such board member has resigned
44 from the district board. The members shall be appointed
45 in the following manner:

46 Each city, incorporated town or other municipal
47 corporation having a population of more than three
48 thousand but less than eighteen thousand is entitled to
49 appoint one member of the board, and each such city,
50 incorporated town or other municipal corporation
51 having a population in excess of eighteen thousand shall
52 be entitled to appoint one additional member of the
53 board for each additional eighteen thousand population.
54 The members of the board representing such cities,
55 incorporated towns or other municipal corporations
56 shall be residents thereof and shall be appointed by a
57 resolution of the governing bodies thereof and upon the
58 filing of a certified copy or copies of the resolution or
59 resolutions in the office of the clerk of the county
60 commission which entered the order creating the
61 district, the persons so appointed become members of
62 the board without any further act or proceedings. If the
63 number of members of the board so appointed by the
64 governing bodies of cities, incorporated towns or other
65 municipal corporations included in the district equals or
66 exceeds three, then no further members shall be
67 appointed to the board and the members so appointed
68 are the board of the district.

69 If no city, incorporated town or other municipal
70 corporation having a population of more than three
71 thousand is included within the district, then the county
72 commission which entered the order creating the
73 district shall appoint three members of the board, who
74 are persons residing within the district, which three
75 members become members of the board of the district
76 without any further act or proceedings.

77 If the number of members of the board appointed by
78 the governing bodies of cities, incorporated towns or
79 other municipal corporations included within the
80 district is less than three, then the county commission
81 which entered the order creating the district shall
82 appoint such additional member or members of the
83 board, who are persons residing within the district, as

84 is necessary to make the number of members of the
85 board equal three; and the member or members
86 appointed by the governing bodies of the cities, incor-
87 porated towns or other municipal corporations included
88 within the district and the additional member or
89 members appointed by the county commission as
90 aforesaid, are the board of the district. A person may
91 serve as a member of the board in one or more public
92 service districts.

93 The population of any city, incorporated town or other
94 municipal corporation, for the purpose of determining
95 the number of members of the board, if any, to be
96 appointed by the governing body or bodies thereof, is the
97 population stated for such city, incorporated town or
98 other municipal corporation in the last official federal
99 census.

100 Notwithstanding any provision of this code to the
101 contrary, whenever a district is consolidated or merged
102 pursuant to section two of this article, the terms of office
103 of the existing board members shall end on the effective
104 date of the merger or consolidation. The county commis-
105 sion shall appoint a new board according to rules
106 promulgated by the public service commission.

107 The respective terms of office of the members of the
108 first board shall be fixed by the county commission and
109 shall be as equally divided as may be, that is approx-
110 imately one third of the members for a term of two
111 years, a like number for a term of four, and the term
112 of the remaining member or members for six years,
113 from the first day of the month during which the
114 appointments are made. The first members of the board
115 appointed as aforesaid shall meet at the office of the
116 clerk of the county commission which entered the order
117 creating the district as soon as practicable after the
118 appointments and shall qualify by taking an oath of
119 office: *Provided*, That any member or members of the
120 board may be removed from their respective office as
121 provided in section three-a of this article.

122 Any vacancy shall be filled for the unexpired term
123 within thirty days, otherwise successor members of the

124 board shall be appointed for terms of six years and the
125 terms of office shall continue until successors have been
126 appointed and qualified. All successor members shall be
127 appointed in the same manner as the member succeeded
128 was appointed.

129 The board shall organize within thirty days following
130 the first appointments and annually thereafter at its
131 first meeting after the first day of January of each year
132 by selecting one of its members to serve as chair and
133 by appointing a secretary and a treasurer who need not
134 be members of the board. The secretary shall keep a
135 record of all proceedings of the board which shall be
136 available for inspection as other public records. Dupli-
137 cate records shall be filed with the county commission
138 and shall include the minutes of all board meetings. The
139 treasurer is lawful custodian of all funds of the public
140 service district and shall pay same out on orders
141 authorized or approved by the board. The secretary and
142 treasurer shall perform other duties appertaining to the
143 affairs of the district and shall receive salaries as shall
144 be prescribed by the board. The treasurer shall furnish
145 bond in an amount to be fixed by the board for the use
146 and benefit of the district.

147 The members of the board, and the chair, secretary
148 and treasurer thereof, shall make available to the county
149 commission, at all times, all of its books and records
150 pertaining to the district's operation, finances and
151 affairs, for inspection and audit. The board shall meet
152 at least monthly.

**§16-13A-9. Rules; service rates and charges; discontinu-
ance of service; required water and sewer
connections; lien for delinquent fees.**

1 The board may make, enact and enforce all needful
2 rules and regulations in connection with the acquisition,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection and the use of
5 any public service properties owned or controlled by the
6 district, and the board shall establish rates and charges
7 for the services and facilities it furnishes, which shall
8 be sufficient at all times, notwithstanding the provisions

9 of any other law or laws, to pay the cost of maintenance,
10 operation and depreciation of such public service
11 properties and principal of and interest on all bonds
12 issued, other obligations incurred under the provisions
13 of this article and all reserve or other payments
14 provided for in the proceedings which authorized the
15 issuance of any bonds hereunder. The schedule of such
16 rates and charges may be based upon either (a) the
17 consumption of water or gas on premises connected with
18 such facilities, taking into consideration domestic,
19 commercial, industrial and public use of water and gas;
20 or (b) the number and kind of fixtures connected with
21 such facilities located on the various premises; or (c) the
22 number of persons served by such facilities; or (d) any
23 combination thereof; or (e) may be determined on any
24 other basis or classification which the board may
25 determine to be fair and reasonable, taking into
26 consideration the location of the premises served and the
27 nature and extent of the services and facilities fur-
28 nished. Where water, sewer and gas services are all
29 furnished to any premises, the schedule of charges may
30 be billed as a single amount for the aggregate thereof.
31 The board shall require all users of services and
32 facilities furnished by the district to designate on every
33 application for service whether the applicant is a tenant
34 or an owner of the premises to be served. If the
35 applicant is a tenant, he or she shall state the name and
36 address of the owner or owners of the premises to be
37 served by the district. All new applicants for service
38 shall deposit a minimum of fifty dollars with the district
39 to secure the payment of service rates and charges in
40 the event they become delinquent as provided in this
41 section. In any case where a deposit is forfeited to pay
42 service rates and charges which were delinquent at the
43 time of disconnection or termination of service, no
44 reconnection or reinstatement of service may be made
45 by the district until another minimum deposit of fifty
46 dollars has been remitted to the district. Whenever any
47 rates, rentals or charges for services or facilities
48 furnished remain unpaid for a period of thirty days
49 after the same become due and payable, the property
50 and the owner thereof, as well as the user of the services

51 and facilities provided are delinquent and the owner,
52 user and property are liable at law until such time as
53 all such rates and charges are fully paid: *Provided*, That
54 the property owner shall be given notice of any said
55 delinquency by certified mail, return receipt requested.
56 The board may, under reasonable rules promulgated by
57 the public service commission, shut off and discontinue
58 water or gas services to all delinquent users of either
59 water or gas facilities, or both: *Provided, however*, That
60 upon written request of the owner or owners of the
61 premises, the board shall shut off and discontinue water
62 and gas services where any rates, rentals, or charges for
63 services or facilities remain unpaid by the user of the
64 premises for a period of sixty days after the same
65 became due and payable.

66 In the event that any publicly or privately owned
67 utility, city, incorporated town, other municipal corpo-
68 ration or other public service district included within
69 the district owns and operates separately either water
70 facilities or sewer facilities, and the district owns and
71 operates the other kind of facilities, either water or
72 sewer, as the case may be, then the district and such
73 publicly or privately owned utility, city, incorporated
74 town or other municipal corporation or other public
75 service district shall covenant and contract with each
76 other to shut off and discontinue the supplying of water
77 service for the nonpayment of sewer service fees and
78 charges: *Provided*, That any contracts entered into by
79 a public service district pursuant to this section shall be
80 submitted to the public service commission for approval.
81 Any public service district providing water and sewer
82 service to its customers has the right to terminate water
83 service for delinquency in payment of either water or
84 sewer bills. Where one public service district is
85 providing sewer service and another public service
86 district or a municipality included within the boundar-
87 ies of the sewer district is providing water service, and
88 the district providing sewer service experiences a
89 delinquency in payment, the district or the municipality
90 included within the boundaries of the sewer district that
91 is providing water service, upon the request of the
92 district providing sewer service to the delinquent

93 account, shall terminate its water service to the
94 customer having the delinquent sewer account: *Pro-*
95 *vided, however,* That any termination of water service
96 must comply with all rules and orders of the public
97 service commission.

98 Any district furnishing sewer facilities within the
99 district may require, or may by petition to the circuit
100 court of the county in which the property is located,
101 compel or may require the bureau of public health to
102 compel all owners, tenants or occupants of any houses,
103 dwellings and buildings located near any such sewer
104 facilities, where sewage will flow by gravity or be
105 transported by such other methods approved by the
106 bureau of public health including, but not limited to,
107 vacuum and pressure systems, approved under the
108 provisions of section nine, article one, chapter sixteen of
109 this code, from such houses, dwellings or buildings into
110 such sewer facilities, to connect with and use such sewer
111 facilities, and to cease the use of all other means for the
112 collection, treatment and disposal of sewage and waste
113 matters from such houses, dwellings and buildings
114 where there is such gravity flow or transportation by
115 such other methods approved by the bureau of public
116 health including, but not limited to, vacuum and
117 pressure systems, approved under the provisions of
118 section nine, article one, chapter sixteen of this code, and
119 such houses, dwellings and buildings can be adequately
120 served by the sewer facilities of the district, and it is
121 hereby found, determined and declared that the man-
122 datory use of such sewer facilities provided for in this
123 paragraph is necessary and essential for the health and
124 welfare of the inhabitants and residents of such districts
125 and of the state: *Provided,* That if the public service
126 district determines that the property owner must
127 connect with the sewer facilities even when sewage from
128 such dwellings may not flow to the main line by gravity
129 and the property owner must incur costs for any
130 changes in the existing dwellings' exterior plumbing in
131 order to connect to the main sewer line, the public
132 service district board shall authorize the district to pay
133 all reasonable costs for such changes in the exterior
134 plumbing, including, but not limited to, installation,

135 operation, maintenance and purchase of a pump, or any
136 other method approved by the bureau of public health;
137 maintenance and operation costs for such extra instal-
138 lation should be reflected in the users charge for
139 approval of the public service commission. The circuit
140 court shall adjudicate the merits of such petition by
141 summary hearing to be held not later than thirty days
142 after service of petition to the appropriate owners,
143 tenants or occupants.

144 Whenever any district has made available sewer
145 facilities to any owner, tenant or occupant of any house,
146 dwelling or building located near such sewer facility,
147 and the engineer for the district has certified that such
148 sewer facilities are available to and are adequate to
149 serve such owner, tenant or occupant, and sewage will
150 flow by gravity or be transported by such other methods
151 approved by the bureau of public health from such
152 house, dwelling or building into such sewer facilities,
153 the district may charge, and such owner, tenant or
154 occupant shall pay the rates and charges for services
155 established under this article only after thirty-day notice
156 of the availability of the facilities has been received by
157 the owner.

158 All delinquent fees, rates and charges of the district
159 for either water facilities, sewer facilities or gas
160 facilities are liens on the premises served of equal
161 dignity, rank and priority with the lien on such premises
162 of state, county, school and municipal taxes. In addition
163 to the other remedies provided in this section, public
164 service districts are hereby granted a deferral of filing
165 fees or other fees and costs incidental to the bringing
166 and maintenance of an action in magistrate court for the
167 collection of delinquent water, sewer or gas bills. If the
168 district collects the delinquent account, plus reasonable
169 costs, from its customer or other responsible party, the
170 district shall pay to the magistrate the normal filing fee
171 and reasonable costs which were previously deferred. In
172 addition, each public service district may exchange with
173 other public service districts a list of delinquent
174 accounts.

175 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 construction; district to be public instrumentality; tax exemption.

1 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 connection
7 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; hearings, correcting and laying assessments; report on project completion; permits.

1 (a) After the execution of an agreement or agreements
2 for the construction of a project with another govern-
3 mental agency or the acceptance by the board of a bid
4 by one or more contractors as contemplated by section
5 nine of this article, but prior to the commencement of
6 construction, the board shall cause the engineer,
7 governmental agency or person charged by the board
8 with the supervision of the project, to prepare a report
9 describing each lot or parcel of land abutting the project
10 in the case of a wastewater or water project, or each lot
11 or parcel on which a flood relief project shall be
12 undertaken or shall protect in the case of such a project;
13 and setting forth the total cost of the project based on
14 the contract with the governmental agency, or the
15 accepted bid or bids, and all other costs incurred prior
16 to the commencement of construction, and the respective
17 amounts chargeable upon each lot or parcel of land
18 which may be assessed and the proper amount to be
19 assessed against the respective lots or parcels of land in
20 accordance with sections eleven and twelve of this
21 article, with a description of the lots and parcels of land
22 as to ownership, frontage and location. If two or more
23 different kinds of projects are involved, the report shall
24 set forth the portion of the assessment attributable to
25 each respective project. The board shall thereupon give
26 notice to the owners of property to be assessed that on
27 or after a date specified in the notice an assessment may
28 be levied against the property: *Provided*, That construc-
29 tion of a project shall not commence until the assessment
30 district has laid all assessments on the property to be
31 benefitted by the project and has issued all assessment
32 certificates necessary to evidence the assessments in
33 accordance with section fifteen of this article. The notice
34 shall state that the owner of assessed property, or other
35 interested party, may on said date appear before the
36 board to move the revision or correction of the proposed
37 assessment, and shall show the total cost of the project,
38 whether the assessments will pay for all or part of the
39 total cost of the project, and the lots or parcels of
40 property to be assessed and the respective amounts to
41 be assessed against such lots or parcels, with a descrip-
42 tion of the respective lots and parcels of land as to

43 ownership, frontage and location. The notice shall be
44 published as a Class II-O legal advertisement in
45 compliance with the provisions of article three, chapter
46 fifty-nine of the code, and the publication area for such
47 publication is the assessment district. On or after the
48 date so advertised, the board may revise, amend, correct
49 and verify the report and proceed by resolution to lay
50 the assessments as corrected and verified.

51 (b) Upon completion of a project, or the completion of
52 that portion of a project that provides water, wastewater
53 or flood protection benefits to the property subject to the
54 assessments, the board shall cause the engineer or
55 committee charged by the board with the supervision of
56 the project, to prepare a final report certifying the
57 completion of the project and showing the total cost of
58 the project and whether the cost is greater or less than
59 the cost originally estimated. If the total cost of the
60 project is less or greater than the cost shown in the
61 report prepared prior to construction, the board may
62 revise the assessment charged on each lot or parcel of
63 land pursuant to subsection (a) of this section to reflect
64 the total cost of the project as completed, and in so doing
65 shall, in the case of an assessment increase only, (1)
66 follow the same procedure with regard to notice and
67 providing each owner of assessed property the right to
68 appear before the board to move for the revision or
69 correction of such proposed reassessment as required for
70 the original assessment, and (2) issue such additional
71 assessment certificates as may be necessary to evidence
72 the amount by which the assessment applicable to each
73 lot or parcel of land has increased. If an assessment is
74 decreased, the board shall, by resolution and written
75 notice to the sheriff of the county in which the assess-
76 ment district is located, cause the next installment or
77 installments of assessment fees then due and payable by
78 each affected property owner to be reduced pro rata,
79 and shall provide written notice to such property owners
80 of the amount of such decrease by the deposit of such
81 notice in the United States mail, postage prepaid. In
82 such cases the board shall also transmit to the sheriff
83 an amount of funds equal to the difference between the
84 cost of the project upon which the assessments were

85 originally laid and the cost of the project as completed,
86 and the sheriff shall disburse such funds to the holders
87 of the assessment certificates issued in connection with
88 the project on a pro rata basis.

89 (c) Prior to the construction of a project, the board
90 shall obtain all permits and licenses required by law for
91 the construction and operation of the project: *Provided*,
92 That the board is not required to obtain a certificate of
93 public convenience from the public service commission
94 under article two, chapter twenty-four of this code:
95 *Provided, however*, That prior to the construction of each
96 project, the board shall apply to the public service
97 commission for authorization enabling the construction
98 and shall submit with said application any certificate
99 required by the division of public health, any certifica-
100 tion or permit required by the division of environmental
101 protection, the contract for utility service, if a utility
102 will be involved, a copy of the utility's applicable,
103 existing rate tariff, a copy of the order or ordinance
104 creating the board and a certificate of a qualified
105 professional engineer that the utility providing service
106 has the capacity to provide or treat, as the case may be.
107 The public service commission shall render its final
108 decision on any application filed under the provisions of
109 this section within (i) ninety days in the case of a project
110 serving twenty-five or fewer residential customers, or
111 (ii) one hundred twenty days in the case projects serving
112 commercial customers or more than twenty-five residen-
113 tial customers, following the submission of such appli-
114 cation and all information herein required.

**ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE
WASTE MATERIALS.**

**§16-27-2. Storage or disposal of radioactive waste mate-
rial within the state prohibited; exceptions.**

1 (a) No person shall store or dispose of any radioactive
2 waste material within the state: *Provided*, That the
3 provisions of this section do not prohibit (1) the storage
4 or disposal of such material produced within the state
5 as a result of medical, educational, research or indus-
6 trial activities and so stored or disposed of in compliance
7 with all applicable state and federal laws, or (2) the

8 transportation of such material out of or through the
9 state when done in compliance with all applicable state
10 and federal laws: *Provided, however,* That such waste
11 from industrial activities does not include, for the
12 purpose of this article, such material produced from the
13 operation of any nuclear power generation facility,
14 nuclear processing facility, or nuclear reprocessing
15 facility.

16 (b) The disposal of radioactive waste material in a
17 solid waste facility or in a commercial solid waste
18 facility, as defined in section two, article fifteen, chapter
19 twenty-two of this code, is prohibited.

CHAPTER 19. AGRICULTURE.

Article

- 1B. Sediment Control During Commercial Timber Harvesting Operations.
- 12A. Farm Management Commission.
- 21A. Soil Conservation Districts.
- 25. Limiting Liability of Landowners.

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

- §19-1B-3. Definitions.
- §19-1B-5. Compliance orders, suspension of timbering operating license.
- §19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules .

*§19-1B-3. Definitions.

1 (a) "Best management practices" means sediment
2 control measures, structural or nonstructural, used
3 singly or in combination, to reduce soil runoff from land
4 disturbances associated with commercial timber
5 harvesting.

6 (b) "Chief" means the chief of the office of water
7 resources of the division of environmental protection, or
8 his or her designee.

9 (c) "Director" means the director of the division of
10 forestry of the department of commerce, labor and
11 environmental resources, or his or her authorized
12 designee.

13 (d) "Operator" means any person who conducts
14 timbering operations.

* Clerk's Note: This section was also amended by H. B. 4402 (Chapter 119), which passed prior to this act.

15 (e) "Timbering operations" means activities directly
16 related to the severing or removal of standing trees from
17 the forest as a raw material for commercial processes
18 or purposes. For the purpose of this article, timbering
19 operations do not include the severing of evergreens
20 grown for and severed for the traditional Christmas
21 holiday season, or the severing of trees incidental to
22 ground-disturbing construction activities, including well
23 sites, access roads and gathering lines for oil and
24 natural gas operations, or the severing of trees for
25 maintaining existing, or during construction of, rights-
26 of-way for public highways or public utilities or any
27 company subject to the jurisdiction of the federal energy
28 regulatory commission unless the trees so severed are
29 being sold or provided as raw material for commercial
30 wood product purposes, or the severing of trees by an
31 individual on the individual's own property for his or
32 her individual use provided that the individual does not
33 have the severing done by a person whose business is
34 the severing or removal of trees.

35 (f) "Sediment" means solid particulate matter, usually
36 soil or minute rock fragments, moved by wind, rainfall
37 or snowmelt into the streams of the state.

**§19-1B-5. Compliance orders, suspension of timbering
operating license.**

1 (a) Upon a finding by the chief that failure to use a
2 particular best management practice is causing or
3 contributing, or has the potential to cause or contribute,
4 to soil erosion or water pollution, the chief shall notify
5 the director of the location of the site, the problem
6 associated with the site, and any suggested corrective
7 action. Upon the failure of the director to take approp-
8 riate action within three days of providing notice to the
9 director, the chief may seek relief through the confer-
10 ence panel in accordance with section eleven of this
11 article.

12 (b) Upon notification of the chief or upon a finding
13 by the director that failure to use a particular best
14 management practice is causing or contributing, or has
15 the potential to cause or contribute, to soil erosion or

16 water pollution, the director shall issue a written
17 compliance order requiring the person conducting the
18 timber operation to take corrective action. The order
19 shall mandate compliance within a reasonable and
20 practical time, not to exceed ten days. The person
21 subject to the order may appeal the order within forty-
22 eight hours of its issuance to the conference panel in
23 accordance with section eleven of this article.

24 (c) In any circumstance where observed damage or
25 circumstances on a logging operation, in the opinion of
26 the director, are sufficient to endanger life or result in
27 uncorrectable soil erosion or water pollution, or if the
28 operator is not licensed pursuant to this article, or if a
29 certified logger is not supervising the operation, the
30 director shall order the immediate suspension of the
31 timber operation and the operation shall remain
32 suspended until the corrective action mandated in the
33 compliance order suspending the operation is instituted.
34 The director shall not issue an order cancelling the
35 suspension order until compliance is satisfactory or until
36 overruled on appeal. Failure to comply with any
37 compliance order is a violation of this article. The person
38 subject to the order may appeal to the conference panel
39 in accordance with the provisions of section eleven of
40 this article.

41 (d) The director may suspend the license of any person
42 conducting a timbering operation or the certification of
43 any certified logger supervising a timbering operation,
44 for no less than thirty nor more than ninety days, if the
45 person is found in violation of this article or article
46 eleven, chapter twenty-two of this code, for a second
47 time within any two-year period: *Provided*, That one or
48 more violations for the same occurrence is only one
49 violation for purposes of this subsection.

50 (e) The director may revoke the license of any person
51 conducting timbering operations or the certification of
52 any certified logger if the person is found in violation
53 of this article or article eleven, chapter twenty-two of
54 this code, for a third time within any two-year period:
55 *Provided*, That one or more violations for the same
56 occurrence is only one violation for purposes of this

57 subsection. A revoked license is not subject to reissue
58 during the licensing period for which it was issued.

59 (f) The director shall notify the chief of any order
60 issued or any suspension or revocation of a license
61 pursuant to this section within three days of the date of
62 the director's action.

**§19-1B-7. Certification of persons supervising timbering
operations, timbering operations to be su-
pervised, promulgation of rules .**

1 (a) After the first day of July, one thousand nine
2 hundred ninety-three, any individual supervising any
3 timbering operation must be certified pursuant to this
4 article.

5 (b) The director is responsible for the development of
6 standards and criteria for establishment of a regularly
7 scheduled program of education, training and examina-
8 tion that all persons must successfully complete in order
9 to be certified to supervise any timbering operation. The
10 program for certified loggers shall provide, at a
11 minimum, for education and training in the safe conduct
12 of timbering operations, in first aid procedures, and in
13 the use of best management practices to prevent, in-so-
14 far as possible, soil erosion on timbering operations. The
15 goals of this program will be to assure that timbering
16 operations are conducted in accordance with applicable
17 state and federal safety regulations in a manner that is
18 safest for the individuals conducting the operations and
19 that they are performed in an environmentally sound
20 manner.

21 (c) The director shall provide for such programs by
22 using the resources of the division, other appropriate
23 state agencies, educational systems, and other qualified
24 persons. Each inspector under the jurisdiction of the
25 chief shall attend a certification program free of charge
26 and complete the certification requirements of this
27 section.

28 (d) The director shall promulgate legislative rules in
29 accordance with article three, chapter twenty-nine-a, of
30 this code, which provide the procedure by which

31 certification pursuant to this article may be obtained
32 and shall require the payment of an application fee and
33 an annual renewal fee of fifty dollars.

34 (e) Upon a person's successful completion of the
35 certification requirements, the director shall provide
36 that person with proof of the completion by issuing a
37 numbered certificate and a wallet-sized card to that
38 person. The division shall maintain a record of each
39 certificate issued and the person to whom it was issued.

40 (f) A certification granted pursuant to this section is
41 renewable only for two succeeding years. For the third
42 renewal and every third renewal thereafter, the licensee
43 shall first attend a program designed by the director to
44 update the training.

45 (g) After the first day of July, one thousand nine
46 hundred ninety-three, every timbering operation must
47 have at least one person certified pursuant to this section
48 supervising the operation at any time the timbering
49 operation is being conducted and all timbering opera-
50 tors shall be guided by the West Virginia forest practice
51 standards and the West Virginia silvicultural best
52 management practices in selecting practices approp-
53 riate and adequate for reducing sediment movement
54 during a timber operation.

55 (h) The director shall, at no more than three-year
56 intervals after the effective date of this article, convene
57 a committee to review the best management practices
58 so as to ensure that they reflect and incorporate the most
59 current technologies. The committee shall, at a min-
60 imum, include a person doing research in the field of
61 silvicultural best management practices, a person doing
62 research in the field of silviculture, two loggers certified
63 under this article, a representative of the office of water
64 resources of the division of environmental protection,
65 and a representative of an environmentally active
66 organization. The director shall chair the committee and
67 may adjust the then current best management practices
68 according to the suggestions of the committee in time
69 for the next certification cycle.

§19-12A-5. Powers, duties and responsibilities of commission.

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety, the commission shall meet and
3 confer with respect to the development of a management
4 plan to determine the optimum use or disposition of all
5 institutional farms, at which time the farm management
6 director shall provide the commission with a complete
7 inventory of all institutional farms, and such informa-
8 tion relating to easements, mineral rights, appurtenan-
9 ces, farm equipment, agricultural products, livestock,
10 inventories and farm facilities as may be necessary to
11 develop such management plan. The commission shall
12 complete and provide to the governor a management
13 plan, which plan shall set forth the objectives of the
14 commission with respect to institutional farms, the
15 criteria by which the commission shall determine the
16 optimum use or disposition of such property, and
17 determinations as to whether each institutional farm
18 shall be used in production, sold, or leased, in whole or
19 in part. Prior to the adoption of any plan, the commis-
20 sion shall consult with the secretaries of the various
21 departments of state government and shall request from
22 such secretaries suggestions for land use and resource
23 development on farm commission lands. On or before
24 the first day of December, one thousand nine hundred
25 ninety, such management plan shall be presented to the
26 Legislature, by providing a copy to the president of the
27 Senate and the speaker of the House of Delegates. The
28 commission may confer with any other agency or
29 individual in implementing and adjusting its manage-
30 ment plan. The management plan established pursuant
31 to this subsection may be amended, from time to time,
32 as may be necessary.

33 (b) The commission shall manage its institutional
34 farms, equipment and other property in order to most
35 efficiently produce food products for state institutions
36 and shall implement the intent of the Legislature as set
37 forth by this article. From the total amount of food, milk
38 and other commodities produced on institutional farms,
39 the commission shall sell, at prevailing wholesale prices,

40 and each of the institutions under the control of the
41 bureau of public health and the division of corrections
42 shall purchase, a proportionate amount of these products
43 based on the dietary needs of each institution.

44 (c) If requested by the commissioner of corrections,
45 the commission may authorize the division of corrections
46 to operate a farm or other enterprise using inmates as
47 labor on such lands. The commissioner of corrections is
48 responsible for the selection, direction and supervision
49 of the inmates and shall assign the work to be performed
50 by inmates.

51 (d) The commission is hereby authorized and empo-
52 wered to:

53 (1) Lease to public or private parties, for purposes
54 including agricultural production or experimentation,
55 public necessity, or other purposes permitted by the
56 management plan, any land, easements, equipment, or
57 other property, except that property may not be leased
58 for any use in any manner that would render the land
59 toxic for agricultural use, nor may toxic or hazardous
60 materials as identified by the commissioner of agricul-
61 ture be used or stored upon such property unless all
62 applicable state and federal permits necessary are
63 obtained. Any lease for an annual consideration of one
64 thousand dollars or more shall be by sealed bid auction
65 and the commission shall give notice of such auction by
66 publication thereof as a Class II-0 legal advertisement
67 in compliance with the provisions of article three,
68 chapter fifty-nine of this code, and the publication area
69 for such publication is the county in which the property
70 to be leased is located;

71 (2) Transfer to the public land corporation land
72 designated in its management plan as land to be
73 disposed of, which land shall be sold, exchanged or
74 otherwise transferred pursuant to sections four and five,
75 article one-a, chapter twenty of this code: *Provided*, That
76 the net proceeds of the sale of farm commission lands
77 shall be deposited in the general revenue fund of the
78 state: *Provided, however*, That no sale may be concluded
79 until on or after the fifteenth day of March, one

80 thousand nine hundred ninety-one, except with respect
81 to: (A) Properties located at institutions closed on or
82 before the effective date of this section, the tenth day
83 of March, one thousand nine hundred ninety; or (B)
84 properties conveyed to or from the farm management
85 commission to or from any other entity in order to
86 facilitate the construction of a regional jail or correc-
87 tional facility by the regional jail and correctional
88 facilities authority or the state building commission,
89 with the decision to execute any such conveyance being
90 solely within the discretion of, and at the direction of,
91 the regional jail and correctional facilities authority;

92 (3) Develop lands to which it has title for the public
93 use including forestation, recreation, wildlife, stock
94 grazing, agricultural production, rehabilitation and/or
95 other conservation activities and may contract or lease
96 for the proper development of timber, oil, gas or mineral
97 resources, including coal by underground mining or by
98 surface mining where reclamation as required by
99 specifications of the division of environmental protection
100 will increase the beneficial use of such property. Any
101 such contract or lease shall be by sealed bid auction as
102 provided for in subdivision (1) above;

103 (4) Exercise all other powers and duties necessary to
104 effectuate the purposes of this article.

105 (e) Notwithstanding the provisions of subsection (d)
106 herein, no timberland may be leased, sold, exchanged or
107 otherwise disposed of unless the division of forestry of
108 the department of commerce, labor and environmental
109 resources certifies that there is no commercially salable
110 timber on the timberland, an inventory is provided, an
111 appraisal of the timber is provided, and the sale, lease,
112 exchange or other disposition is accomplished by the
113 sealed bid auction procedure provided above in subdivi-
114 sions (1) or (2), as applicable.

115 (f) The commission shall promulgate, pursuant to
116 chapter twenty-nine-a of this code, rules and regulations
117 relating to the powers and duties of the commission as
118 enumerated in this section.

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee; continuation.

1 (a) The state soil conservation committee is continued.
2 It is to serve as an agency of the state and to perform
3 the functions conferred upon it in this article. The
4 committee shall consist of seven members. The following
5 shall serve, ex officio, as members of the committee: The
6 director of the state cooperative extension service; the
7 director of the state agricultural experiment station; the
8 director of the division of environmental protection; and
9 the state commissioner of agriculture, who shall be
10 chairman of the committee.

11 The governor shall appoint as additional members of
12 the committee three representative citizens. The term of
13 members thus appointed shall be four years, except that
14 of the first members so appointed, one shall be ap-
15 pointed for a term of two years, one for a term of three
16 years, and one for a term of four years. In the event of
17 a vacancy, appointment shall be for the unexpired term.

18 The committee may invite the secretary of agriculture
19 of the United States of America to appoint one person
20 to serve with the committee as an advisory member.

21 The committee shall keep a record of its official
22 actions, shall adopt a seal, which seal shall be judicially
23 noticed, and may perform such acts, hold such public
24 hearings and promulgate such rules as may be neces-
25 sary for the execution of its functions under this article.

26 (b) The state soil conservation committee may employ
27 an administrative officer and such technical experts and
28 such other agents and employees, permanent and
29 temporary, as it may require, and shall determine their
30 qualifications, duties and compensation. The committee
31 may call upon the attorney general of the state for such
32 legal services as it may require. It shall have authority
33 to delegate to its chairman, to one or more of its
34 members, or to one or more agents or employees, such
35 powers and duties as it may deem proper. The commit-
36 tee is empowered to secure necessary and suitable office
37 accommodations, and the necessary supplies and equip-
38 ment. Upon request of the committee, for the purpose

39 of carrying out any of its functions, the supervising
40 officer of any state agency, or of any state institution of
41 learning shall, insofar as may be possible, under
42 available appropriations, and having due regard to the
43 needs of the agency to which the request is directed,
44 assign or detail to the committee, members of the staff
45 or personnel of such agency or institution of learning,
46 and make such special reports, surveys or studies as the
47 committee may request.

48 (c) A member of the committee shall hold office so
49 long as he shall retain the office by virtue of which he
50 shall be serving on the committee. A majority of the
51 committee shall constitute a quorum, and the concu-
52 rence of a majority in any matter within their duties
53 shall be required for its determination. The chairman
54 and members of the committee shall receive no compen-
55 sation for their services on the committee, but shall be
56 entitled to expenses, including traveling expenses,
57 necessarily incurred in the discharge of their duties on
58 the committee. The committee shall provide for the
59 execution of surety bonds for all employees and officers
60 who shall be entrusted with funds or property; shall
61 provide for the keeping of a full and accurate public
62 record of all proceedings and of all resolutions, rules and
63 orders issued or adopted; and shall provide for an
64 annual audit of the accounts of receipts and
65 disbursements.

66 (d) In addition to the duties and powers hereinafter
67 conferred upon the state soil conservation committee, it
68 shall have the following duties and powers:

69 (1) To offer such assistance as may be appropriate to
70 the supervisors of soil conservation districts, organized
71 as provided hereinafter, in the carrying out of any of
72 their powers and programs;

73 (2) To keep the supervisors of each of the several
74 districts, organized under the provisions of this article,
75 informed of the activities and experience of all other
76 districts organized hereunder, and to facilitate an
77 interchange of advice and experience between such
78 districts and cooperation between them;

79 (3) To coordinate the programs of the several soil
80 conservation districts organized hereunder so far as this
81 may be done by advice and consultation;

82 (4) To secure the cooperation and assistance of the
83 United States and any of its agencies, and of agencies
84 of this state, in the work of such districts;

85 (5) To disseminate information throughout the state
86 concerning the activities and programs of the soil
87 conservation districts organized hereunder, and to
88 encourage the formation of such districts in areas where
89 their organization is desirable;

90 (6) To accept and receive donations, gifts, contribu-
91 tions, grants and appropriations in money, services,
92 materials or otherwise, from the United States or any
93 of its agencies, from the state of West Virginia, or from
94 other sources, and to use or expend such money,
95 services, materials or other contributions in carrying out
96 the policy and provisions of this article, including the
97 right to allocate such money, services or materials in
98 part to the various soil conservation districts created by
99 this article in order to assist them in carrying on their
100 operations; and

101 (7) To obtain options upon and to acquire by purchase,
102 exchange, lease, gift, grant, bequest, devise or other-
103 wise, any property, real or personal, or rights or
104 interests therein; to maintain, administer, operate and
105 improve any properties acquired, to receive and retain
106 income from such property and to expend such income
107 as required for operation, maintenance, administration
108 or improvement of such properties or in otherwise
109 carrying out the purposes and provisions of this article;
110 and to sell, lease or otherwise dispose of any of its
111 property or interests therein in furtherance of the
112 purposes and the provisions of this article. Money
113 received from the sale of land acquired in the small
114 watershed program shall be deposited in the special
115 account of the state soil conservation committee and
116 expended as herein provided.

117 After having conducted a performance audit through
118 its joint committee on government operations, pursuant

119 to article ten, chapter four of this code, the Legislature
120 hereby finds and declares that the state soil conservation
121 committee should be continued and reestablished.
122 Accordingly, pursuant to the provisions of section five
123 of said article, the state soil conservation committee
124 shall continue to exist until the first day of July, one
125 thousand nine hundred ninety-eight.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

*§19-25-5. Definitions.

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

3 (1) "Charge" means:

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

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

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

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

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

26 (5) "Recreational purposes" includes, but shall not be
27 limited to, any one or any combination of the following
28 noncommercial recreational activities: Hunting, fishing,
29 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.

30 pleasure driving, motorcycle or all-terrain vehicle
31 riding, bicycling, horseback riding, nature study, water
32 skiing, winter sports and visiting, viewing or enjoying
33 historical, archaeological, scenic or scientific sites or
34 otherwise using land for purposes of the user;

35 (6) "Wildlife propagation purposes" applies to and
36 includes all ponds, sediment control structures, perman-
37 ent water impoundments or any other similar or like
38 structure created or constructed as a result of or in
39 connection with surface mining activities, as governed
40 by article three, chapter twenty-two of this code, or from
41 the use of surface in the conduct of underground coal
42 mining as governed by said article, and rules promul-
43 gated thereunder, which ponds, structures or impound-
44 ments are hereafter designated and certified in writing
45 by the director of the division of environmental protec-
46 tion and the owner to be necessary and vital to the
47 growth and propagation of wildlife, animals, birds and
48 fish or other forms of aquatic life, and finds and
49 determines that the premises has the potential of being
50 actually used by the wildlife for those purposes and that
51 the premises are no longer used or necessary for mining
52 reclamation purposes. The certification shall be in form
53 satisfactory to the director and shall provide that the
54 designated ponds, structures or impoundments shall not
55 be removed without the joint consent of the director and
56 the owner; and

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

CHAPTER 20. NATURAL RESOURCES.

Article

1. Organization and Administration.
- 5J. Medical Waste Act.
7. Law Enforcement, Motorboating, Litter.
8. General and Miscellaneous Provisions.
11. West Virginia Recycling Program.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

§20-1-7. Additional powers, duties and services of director.

§20-1-14. Sections within division.

***§20-1-2. Definitions.**

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

3 "Agency" means any branch, department or unit of
4 the state government, however designated or
5 constituted.

6 "Alien" means any person not a citizen of the United
7 States.

8 "Bag limit" or "creel limit" means the maximum
9 number of wildlife which may be taken, caught, killed
10 or possessed by any licensee.

11 "Bona fide resident, tenant or lessee" means a person
12 who permanently resides on the land.

13 "Citizen" means any native born citizen of the United
14 States, and foreign born persons who have procured
15 their final naturalization papers.

16 "Closed season" means the time or period during
17 which it shall be unlawful to take any wildlife as
18 specified and limited by the provisions of this chapter.

19 "Commission" means the natural resources
20 commission.

21 "Commissioner" means a member of the advisory
22 commission of the natural resources commission.

23 "Director" means the director of the division of
24 natural resources.

25 "Fishing" or "to fish" means the taking, by any means,
26 of fish, minnows, frogs or other amphibians, aquatic
27 turtles and other forms of aquatic life used as fish bait.

28 "Fur-bearing animals" include: (a) The mink; (b) the
29 weasel; (c) the muskrat; (d) the beaver; (e) the opossum;
30 (f) the skunk and civet cat, commonly called polecat; (g)
31 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.

32 bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

33 "Game" means game animals, game birds and game
34 fish as herein defined.

35 "Game animals" include: (a) The elk; (b) the deer; (c)
36 the cottontail rabbits and hares; (d) the fox squirrels,
37 commonly called red squirrels, and gray squirrels and
38 all their color phases — red, gray, black or albino; (e)
39 the raccoon; (f) the black bear; and (g) the wild boar.

40 "Game birds" include: (a) The Anatidae, commonly
41 known as swan, geese, brants and river and sea ducks;
42 (b) the Rallidae, commonly known as rails, sora, coots,
43 mudhens and gallinales; (c) the Limicolae, commonly
44 known as shorebirds, plover, snipe, woodcock, sandpip-
45 ers, yellow legs and curlews; (d) the Galli, commonly
46 known as wild turkey, grouse, pheasants, quails and
47 partridges (both native and foreign species); and (e) the
48 Columbidae, commonly known as doves, and the Icteri-
49 dae, commonly known as blackbirds, redwings and
50 grackle.

51 "Game fish" include: (a) Brook trout; (b) brown trout;
52 (c) rainbow trout; (d) golden rainbow trout; (e) Kokanee
53 salmon; (f) largemouth bass; (g) smallmouth bass; (h)
54 Kentucky or spotted bass; (i) striped bass; (j) pickerel;
55 (k) muskellunge; (l) walleye pike or pike perch; (m)
56 northern pike; (n) rock bass; (o) white bass; (p) white and
57 black crappie; (q) all sunfish; (r) channel and flathead
58 catfish; and (s) sauger.

59 "Hunt" means to pursue, chase, catch or take any wild
60 birds or wild animals.

61 "Lands" means land, waters and all other appurtenan-
62 ces connected therewith.

63 "Migratory birds" means any migratory game or
64 nongame birds included in the terms of conventions
65 between the United States and Great Britain and
66 between the United States and United Mexican States,
67 known as the "Migratory Bird Treaty Act", for the
68 protection of migratory birds and game mammals
69 concluded, respectively, the sixteenth day of August, one
70 thousand nine hundred sixteen, and the seventh day of

71 February, one thousand nine hundred thirty-six.

72 “Nonresident” means any person who is a citizen of
73 the United States and who has not been a domiciled
74 resident of the state of West Virginia for a period of
75 thirty consecutive days immediately prior to the date of
76 his or her application for a license or permit except any
77 full-time student of any college or university of this
78 state, even though he or she is paying a nonresident
79 tuition.

80 “Open season” means the time during which the
81 various species of wildlife may be legally caught, taken,
82 killed or chased in a specified manner, and shall include
83 both the first and the last day of the season or period
84 designated by the director.

85 “Person” except as otherwise defined elsewhere in this
86 chapter, means the plural “persons” and shall include
87 individuals, partnerships, corporations or other legal
88 entities.

89 “Preserve” means all duly licensed private game
90 farmlands, or private plants, ponds or areas, where
91 hunting or fishing is permitted under special licenses or
92 seasons other than the regular public hunting or fishing
93 seasons.

94 “Protected birds” means all wild birds not included
95 within the definition of “game birds” and “unprotected
96 birds”.

97 “Resident” means any person who is a citizen of the
98 United States and who has been a domiciled resident of
99 the state of West Virginia for a period of thirty
100 consecutive days or more immediately prior to the date
101 of his or her application for license or permit: *Provided*,
102 That a member of the armed forces of the United States
103 who is stationed beyond the territorial limits of this
104 state, but who was a resident of this state at the time
105 of his or her entry into such service, and any full-time
106 student of any college or university of this state, even
107 though he or she is paying a nonresident tuition, shall
108 be considered a resident under the provisions of this
109 chapter.

110 "Roadside menagerie" means any place of business,
111 other than commercial game farm, commercial fish
112 preserve, place or pond, where any wild bird, game
113 bird, unprotected bird, game animal or fur-bearing
114 animal is kept in confinement for the attraction and
115 amusement of the people for commercial purposes.

116 "Take" means to hunt, shoot, pursue, lure, kill,
117 destroy, catch, capture, keep in captivity, gig, spear,
118 trap, ensnare, wound or injure any wildlife, or attempt
119 to do so.

120 "Unprotected birds" shall include: (a) The English
121 sparrow, (b) the European starling, (c) the cowbird, and
122 (d) the crow.

123 "Wild animals" means all mammals native to the state
124 of West Virginia occurring either in a natural state or
125 in captivity, except house mice or rats.

126 "Wild birds" shall include all birds other than: (a)
127 Domestic poultry — chickens, ducks, geese, guinea fowl,
128 peafowls and turkeys; (b) psittacidae, commonly called
129 parrots and parakeets; and (c) other foreign cage birds
130 such as the common canary, exotic finches and ring
131 dove. All wild birds, either: (a) Those occurring in a
132 natural state in West Virginia; or (b) those imported
133 foreign game birds, such as waterfowl, pheasants,
134 partridges, quail and grouse, regardless of how long
135 raised or held in captivity, shall remain wild birds
136 under the meaning of this chapter.

137 "Wildlife" means wild birds, wild animals, game and
138 fur-bearing animals, fish (including minnows), reptiles,
139 amphibians, mollusks, crustaceans and all forms of
140 aquatic life used as fish bait, whether dead or alive.

141 "Wildlife refuge" means any land set aside by action
142 of the director as an inviolate refuge or sanctuary for
143 the protection of designated forms of wildlife.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsi-
2 bilities granted and assigned to the director in this

3 chapter and elsewhere by law, the director is hereby
4 authorized and empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the
8 conservation of the natural resources of the state which
9 best effectuates the purpose of this chapter and which
10 makes adequate provisions for the natural resources
11 laws of the state;

12 (2) Sign and execute in the name of the state by the
13 "division of natural resources" any contract or agree-
14 ment with the federal government or its departments or
15 agencies, subdivisions of the state, corporations, associ-
16 ations, partnerships or individuals;

17 (3) Conduct research in improved conservation
18 methods and disseminate information matters to the
19 residents of the state;

20 (4) Conduct a continuous study and investigation of
21 the habits of wildlife, and for purposes of control and
22 protection, to classify by regulation the various species
23 into such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be
26 taken, or chased, unless otherwise specified by this
27 chapter;

28 (6) Hold at least six meetings each year at such time
29 and at such points within the state, as in the discretion
30 of the natural resources commission may appear to be
31 necessary and proper for the purpose of giving inter-
32 ested persons in the various sections of the state an
33 opportunity to be heard concerning open season for their
34 respective areas, and report the results of the meetings
35 to the natural resources commission before such season
36 and bag limits are fixed by it;

37 (7) Suspend open hunting season upon any or all
38 wildlife in any or all counties of the state with the prior
39 approval of the governor in case of an emergency such
40 as a drought, forest fire hazard or epizootic disease

41 among wildlife. The suspension shall continue during
42 the existence of the emergency and until rescinded by
43 the director. Suspension, or reopening after such
44 suspension, of open seasons may be made upon twenty-
45 four hours' notice by delivery of a copy of the order of
46 suspension or reopening to the wire press agencies at the
47 state capitol;

48 (8) Supervise the fiscal affairs and responsibilities of
49 the division;

50 (9) Designate such localities as he or she shall
51 determine to be necessary and desirable for the perpetu-
52 ation of any species of wildlife;

53 (10) Enter private lands to make surveys or inspec-
54 tions for conservation purposes, to investigate for
55 violations of provisions of this chapter, to serve and
56 execute warrants and processes, to make arrests and to
57 otherwise effectively enforce the provisions of this
58 chapter;

59 (11) Acquire for the state in the name of the "division
60 of natural resources" by purchase, condemnation, lease
61 or agreement, or accept or reject for the state, in the
62 name of the division of natural resources, gifts, dona-
63 tions, contributions, bequests or devises of money,
64 security or property, both real and personal, and any
65 interest in such property, including lands and waters,
66 which he or she deems suitable for the following
67 purposes:

68 (a) For state forests for the purpose of growing
69 timber, demonstrating forestry, furnishing or protecting
70 watersheds or providing public recreation;

71 (b) For state parks or recreation areas for the purpose
72 of preserving scenic, aesthetic, scientific, cultural,
73 archaeological or historical values or natural wonders,
74 or providing public recreation;

75 (c) For public hunting, trapping or fishing grounds
76 or waters for the purpose of providing areas in which
77 the public may hunt, trap or fish, as permitted by the
78 provisions of this chapter, and the rules issued
79 hereunder;

80 (d) For fish hatcheries, game farms, wildlife research
81 areas and feeding stations;

82 (e) For the extension and consolidation of lands or
83 waters suitable for the above purposes by exchange of
84 other lands or waters under his or her supervision;

85 (f) For such other purposes as may be necessary to
86 carry out the provisions of this chapter;

87 (12) Capture, propagate, transport, sell or exchange
88 any species of wildlife as may be necessary to carry out
89 the provisions of this chapter;

90 (13) Sell, with the approval in writing of the governor,
91 timber for not less than the value thereof, as appraised
92 by a qualified appraiser appointed by the director, from
93 all lands under the jurisdiction and control of the
94 director, except those lands that are designated as state
95 parks and those in the Kanawha state forest. The
96 appraisal shall be made within a reasonable time prior
97 to any sale, reduced to writing, filed in the office of the
98 director and shall be available for public inspection.
99 When the appraised value of the timber to be sold is
100 more than five hundred dollars, the director, before
101 making sale thereof, shall receive sealed bids therefor,
102 after notice by publication as a Class II legal advertise-
103 ment in compliance with the provisions of article three,
104 chapter fifty-nine of this code, and the publication area
105 for such publication shall be each county in which the
106 timber is located. The timber so advertised shall be sold
107 at not less than the appraised value to the highest
108 responsible bidder, who shall give bond for the proper
109 performance of the sales contract as the director shall
110 designate; but the director shall have the right to reject
111 any and all bids and to readvertise for bids. If the
112 foregoing provisions of this section have been complied
113 with, and no bid equal to or in excess of the appraised
114 value of the timber is received, the director may, at any
115 time, during a period of six months after the opening
116 of the bids, sell the timber in such manner as he or she
117 deems appropriate, but the sale price shall not be less
118 than the appraised value of the timber advertised. No
119 contract for sale of timber made pursuant to this section

120 shall extend for a period of more than ten years. And
121 all contracts heretofore entered into by the state for the
122 sale of timber shall not be validated by this section if
123 the same be otherwise invalid. The proceeds arising
124 from the sale of the timber so sold, shall be paid to the
125 treasurer of the state of West Virginia, and shall be
126 credited to the division and used exclusively for the
127 purposes of this chapter: *Provided*, That nothing
128 contained herein shall prohibit the sale of timber which
129 otherwise would be removed from rights-of-way neces-
130 sary for and strictly incidental to the extraction of
131 minerals;

132 (14) Sell or lease, with the approval in writing of the
133 governor, coal, oil, gas, sand, gravel and any other
134 minerals that may be found in the lands under the
135 jurisdiction and control of the director, except those
136 lands that are designated as state parks. The director,
137 before making sale or lease thereof, shall receive sealed
138 bids therefor, after notice by publication as a Class II
139 legal advertisement in compliance with the provisions of
140 article three, chapter fifty-nine of this code, and the
141 publication area for such publication shall be each
142 county in which such lands are located. The minerals so
143 advertised shall be sold or leased to the highest
144 responsible bidder, who shall give bond for the proper
145 performance of the sales contract or lease as the director
146 shall designate; but the director shall have the right to
147 reject any and all bids and to readvertise for bids. The
148 proceeds arising from any such sale or lease shall be
149 paid to the treasurer of the state of West Virginia and
150 shall be credited to the division and used exclusively for
151 the purposes of this chapter;

152 (15) Exercise the powers granted by this chapter for
153 the protection of forests, and regulate fires and smoking
154 in the woods or in their proximity at such times and in
155 such localities as may be necessary to reduce the danger
156 of forest fires;

157 (16) Cooperate with departments and agencies of
158 state, local and federal governments in the conservation
159 of natural resources and the beautification of the state;

160 (17) Report to the governor each year all information
161 relative to the operation and functions of the division
162 and the director shall make such other reports and
163 recommendations as may be required by the governor,
164 including an annual financial report covering all
165 receipts and disbursements of the division for each fiscal
166 year, and he or she shall deliver such report to the
167 governor on or before the first day of December next
168 after the end of the fiscal year so covered. A copy of such
169 report shall be delivered to each house of the Legislature
170 when convened in January next following;

171 (18) Keep a complete and accurate record of all
172 proceedings, record and file all bonds and contracts
173 taken or entered into, and assume responsibility for the
174 custody and preservation of all papers and documents
175 pertaining to his or her office, except as otherwise
176 provided by law;

177 (19) Offer and pay, in his or her discretion, rewards
178 for information respecting the violation, or for the
179 apprehension and conviction of any violators, of any of
180 the provisions of this chapter;

181 (20) Require such reports as he or she may deem to
182 be necessary from any person issued a license or permit
183 under the provisions of this chapter, but no person shall
184 be required to disclose secret processes or confidential
185 data of competitive significance;

186 (21) Purchase as provided by law all equipment
187 necessary for the conduct of the division;

188 (22) Conduct and encourage research designed to
189 further new and more extensive uses of the natural
190 resources of this state and to publicize the findings of
191 such research;

192 (23) Encourage and cooperate with other public and
193 private organizations or groups in their efforts to
194 publicize the attractions of the state;

195 (24) Accept and expend, without the necessity of
196 appropriation by the Legislature, any gift or grant of
197 money made to the division for any and all purposes
198 specified in this chapter, and he or she shall account for

199 and report on all such receipts and expenditures to the
200 governor;

201 (25) Cooperate with the state historian and other
202 appropriate state agencies in conducting research with
203 reference to the establishment of state parks and
204 monuments of historic, scenic and recreational value,
205 and to take such steps as may be necessary in establish-
206 ing such monuments or parks as he or she deems
207 advisable;

208 (26) Maintain in his or her office at all times, properly
209 indexed by subject matter, and also, in chronological
210 sequence, all rules and regulations made or issued under
211 the authority of this chapter. Such records shall be
212 available for public inspection on all business days
213 during the business hours of working days;

214 (27) Delegate the powers and duties of his or her
215 office, except the power to execute contracts, to
216 appointees and employees of the division, who shall act
217 under the direction and supervision of the director and
218 for whose acts he or she shall be responsible;

219 (28) Conduct schools, institutions and other educa-
220 tional programs, apart from or in cooperation with other
221 governmental agencies, for instruction and training in
222 all phases of the natural resources programs of the state;

223 (29) Authorize the payment of all or any part of the
224 reasonable expenses incurred by an employee of the
225 division in moving his or her household furniture and
226 effects as a result of a reassignment of the employee:
227 *Provided*, That no part of the moving expenses of any
228 one such employee shall be paid more frequently than
229 once in twelve months; and

230 (30) Promulgate rules, in accordance with the provi-
231 sions of chapter twenty-nine-a of this code, to implement
232 and make effective the powers and duties vested in him
233 or her by the provisions of this chapter and take such
234 other steps as may be necessary in his or her discretion
235 for the proper and effective enforcement of the provi-
236 sions of this chapter.

§20-1-14. Sections within division.

1 Sections of wildlife resources and of law enforcement
2 are hereby continued within the division of natural
3 resources. Subject to provisions of law, the director of
4 the division of natural resources shall allocate the
5 functions and services of the division to the sections,
6 offices and activities thereof and may from time to time
7 establish and abolish other sections, offices and activities
8 within the division in order to carry out fully and in an
9 orderly manner the powers, duties and responsibilities
10 of the office as director. The director shall select and
11 designate a competent and qualified person to be chief
12 of each section. The chief is the principal administrative
13 officer of that section and is accountable and responsible
14 for the orderly and efficient performance of the duties,
15 functions and services thereof.

ARTICLE 5J. MEDICAL WASTE ACT.

§20-5J-6. Powers of secretary; authority to promulgate rules.

§20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.

§20-5J-6. Powers of secretary; authority to promulgate rules.

1 (a) The secretary shall promulgate legislative rules, in
2 accordance with the provisions of chapter twenty-nine-
3 a of this code, necessary to effectuate the findings and
4 purposes of this article. Said rules shall include, but not
5 be limited to, the following:

6 (1) A plan designed to encourage and foster reduction
7 in the volume of infectious and noninfectious medical
8 waste and the separation of infectious and noninfectious
9 medical waste;

10 (2) Guidelines and procedures for the development
11 and implementation of local infectious medical waste
12 management plans, to be followed by all generators, that
13 set forth proper methods for the management of
14 infectious and noninfectious medical waste;

15 (3) Criteria for identifying the characteristics of
16 infectious medical waste and identifying the character-
17 istics of noninfectious medical waste;

18 (4) Standards applicable to generators of medical
19 waste necessary to protect public health, safety and the
20 environment, which standards shall establish require-
21 ments respecting:

22 (A) Record-keeping practices that accurately identify
23 the quantities of infectious medical waste generated, the
24 constituents thereof which are significant in quantity or
25 in potential harm to human health or the environment,
26 and the disposition of such waste;

27 (B) Labeling practices for containers used in the
28 storage, transportation or disposal of infectious medical
29 waste which will accurately identify such waste;

30 (C) Use of appropriate containers for infectious
31 medical waste;

32 (D) Furnishing of information regarding the general
33 composition of infectious medical wastes to persons
34 transporting, treating, storing or disposing of such
35 waste;

36 (E) Use of a manifest system and other reasonable
37 means to assure that all infectious medical waste is
38 designated for and arrives at treatment, storage or
39 disposal facilities for which the secretary has issued
40 permits, other than facilities on the premises where the
41 waste is generated; and

42 (F) The submission of reports to the secretary, at such
43 times as the secretary deems necessary, setting out the
44 quantity of infectious medical waste generated during
45 a particular time period, and the disposition of such
46 infectious medical waste;

47 (5) Performance standards applicable to owners and
48 operators of facilities for the treatment, storage or
49 disposal of infectious medical waste necessary to protect
50 public health and safety and the environment, which
51 standards shall include, but need not be limited to,
52 requirements respecting:

53 (A) Maintaining records of all infectious medical
54 waste and the manner in which such waste was treated,
55 stored or disposed of;

56 (B) Reporting, monitoring and inspection of and
57 compliance with the manifest system referred to in
58 subdivision (4), subsection (a) of this section;

59 (C) Treatment, storage or disposal of all infectious
60 medical waste received by the facility pursuant to
61 operating methods, techniques and practices as may be
62 satisfactory to the secretary;

63 (D) The location, design and construction of infectious
64 medical waste treatment, disposal or storage facilities;

65 (E) Contingency plans for effective action to minimize
66 unanticipated damage from any treatment, storage or
67 disposal of infectious medical waste;

68 (F) The maintenance or operation of such facilities
69 and requiring additional qualifications as to ownership,
70 continuity of operation, training for personnel and
71 financial responsibility as may be necessary or desira-
72 ble: *Provided*, That no private entity may be precluded
73 by reason of criteria established under this subsection
74 from the ownership or operation of facilities providing
75 infectious medical waste treatment, storage or disposal
76 services where such entity can provide assurances of
77 financial responsibility and continuity of operation
78 consistent with the degree and duration of risks
79 associated with the treatment, storage or disposal of
80 infectious medical waste; and

81 (G) Compliance with the requirements of this article
82 respecting permits for treatment, storage or disposal;

83 (6) The terms and conditions under which the
84 secretary shall issue, modify, suspend, revoke or deny
85 permits required by this article. The legislative rules
86 required by this subdivision shall be promulgated by the
87 first day of August, one thousand nine hundred ninety-
88 one;

89 (7) Establishing and maintaining records; making
90 reports; taking samples and performing tests and
91 analyses; installing, calibrating, operating and main-
92 taining monitoring equipment or methods; and provid-
93 ing any other information necessary to achieve the
94 purposes of this article;

95 (8) Standards and procedures for the certification of
96 personnel at infectious medical waste treatment, storage
97 or disposal facilities or sites;

98 (9) Procedures for public participation in the imple-
99 mentation of this article;

100 (10) Procedures and requirements for the use of
101 manifests during the transportation of infectious
102 medical wastes;

103 (11) Procedures and requirements for the submission
104 and approval of a plan by the owners or operators of
105 infectious medical waste storage, treatment and disposal
106 facilities, for closure of such facilities, post-closure
107 monitoring and maintenance, and for both sudden and
108 nonsudden accidental occurrences; and

109 (12) A schedule of fees to recover the costs of
110 processing permit applications and renewals, training,
111 enforcement, inspections and program development.

112 (b) The legislative rules required by subsection (a)
113 shall be promulgated within six months after the
114 effective date of this article.

115 (c) Within twelve months after the effective date of
116 this article, the secretary shall conduct and publish a
117 study of infectious medical waste management in this
118 state which shall include, but not be limited to:

119 (1) A description of the sources of infectious medical
120 waste generation within the state, including the types
121 and quantities of such waste;

122 (2) A description of current infectious medical waste
123 management practices and costs, including treatment,
124 storage and disposal within the state; and

125 (3) An inventory of existing infectious medical waste
126 treatment, storage and disposal sites.

127 (d) Any person aggrieved or adversely affected by an
128 order of the secretary pursuant to this article, or by the
129 denial or issuance of a permit, or the failure or refusal
130 of said secretary to act within a reasonable time on an
131 application for a permit or the terms or conditions of

132 a permit granted under the provisions of this article,
133 may appeal to a special hearing examiner appointed to
134 hear contested cases in accordance with the provisions
135 of chapter twenty-nine-a of this code. The secretary shall
136 promulgate legislative rules establishing procedures for
137 appeal and the conduct of hearings.

138 (e) In addition to those enforcement and inspection
139 powers conferred upon the secretary elsewhere by law,
140 the secretary has the enforcement and inspection powers
141 as provided in sections seven, eight and nine of this
142 article.

143 (f) Nothing in this section diminishes or alters the
144 authority of the director of the division of environmental
145 protection under article five, chapter twenty-two of this
146 code.

§20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.

1 (a) On and after the first day of July, one thousand
2 nine hundred ninety-one, collectors, haulers and trans-
3 porters of infectious medical waste who are "common
4 carriers by motor vehicle," as defined in section two,
5 article one, chapter twenty-four-a of this code, shall be
6 regulated by the public service commission in accor-
7 dance with the provisions of chapter twenty-four-a and
8 rules promulgated thereunder. The rules of the public
9 service commission shall not conflict nor take prece-
10 dence over the rules promulgated by the secretary.

11 (b) The commission shall provide a separate and
12 distinct category of special certificates of convenience
13 and necessity for infectious medical waste collectors,
14 haulers and transporters regulated by this section:
15 *Provided*, That within six months of the effective date
16 of this article, the commission may issue such special
17 certificates to existing common carriers of solid waste
18 who are presently transporting infectious medical waste
19 and who demonstrate that they are in compliance with
20 the provisions of this article: *Provided, however*, That
21 such common carriers need not make any additional
22 demonstration of public convenience and necessity.

23 Regulation of collectors, haulers and transporters of
24 medical waste shall be separate and distinct from the
25 regulation of solid waste collectors, haulers and trans-
26 porters provided for in section twenty-three, article
27 three, chapter twenty-two-c of this code.

28 (c) At any hearing conducted by the public service
29 commission pertaining to infectious medical waste
30 collectors, haulers and transporters, the secretary may
31 appear before the commission and present evidence.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of conservation officers.

§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.

§20-7-28. Litter along streams, criminal penalties, enforcement.

§20-7-29. Assistance to solid waste authorities.

§20-7-4. Powers and duties of conservation officers.

1 Conservation officers and all other persons authorized
2 to enforce the provisions of this chapter shall be under
3 the supervision and direction of the director in the
4 performance of their duties as herein provided. The
5 authority, powers and duties of the conservation officers
6 shall be statewide and they shall have authority to:

7 (1) Arrest on sight, without warrant or other court
8 process, any person or persons committing a criminal
9 offense in violation of any of the laws of this state, in
10 the presence of such officer, but no such arrest shall be
11 made where any form of administrative procedure is
12 prescribed by this chapter for the enforcement of any
13 of the particular provisions contained herein;

14 (2) Carry such arms and weapons as may be pres-
15 cribed by the director in the course and performance of
16 their duties, but no license or other authorization shall
17 be required of such officers for this privilege;

18 (3) Search and examine, in the manner provided by
19 law, any boat, vehicle, automobile, conveyance, express
20 or railroad car, fish box, fish bucket or creel, game bag
21 or game coat, or any other place in which hunting and
22 fishing paraphernalia, wild animals, wild birds, fish,

23 amphibians or other forms of aquatic life could be
24 concealed, packed or conveyed whenever they have
25 reason to believe that they would thereby secure or
26 discover evidence of the violation of any provisions of
27 this chapter;

28 (4) Execute and serve any search warrant, notice or
29 any process of law issued under the authority of this
30 chapter or any law relating to wildlife, forests, and all
31 other natural resources, by a magistrate or any court
32 having jurisdiction thereof, in the same manner, with
33 the same authority, and with the same legal effect, as
34 any sheriff can serve or execute such warrant, notice or
35 process;

36 (5) Require the operator of any motor vehicle or other
37 conveyance on or about the public highways or road-
38 ways, or in or near the fields and streams of this state,
39 to stop for the purpose of allowing such officers to
40 conduct game-kill surveys;

41 (6) Summon aid in making arrests or seizures or in
42 executing any warrants, notices or processes, and they
43 shall have the same rights and powers as sheriffs have
44 in their respective counties in so doing;

45 (7) Enter private lands or waters within the state
46 while engaged in the performance of their official duties
47 hereunder;

48 (8) Arrest on sight, without warrant or other court
49 process, subject to the limitations set forth in subdivision
50 (1) of this section, any person or persons committing a
51 criminal offense in violation of any law of this state in
52 the presence of any such officer on any state-owned
53 lands and waters and lands and waters under lease by
54 the division of natural resources and all national forest
55 lands, waters and parks, and U.S. Corps of Army
56 Engineers' properties within the boundaries of the state
57 of West Virginia, and, in addition to any authority
58 conferred in the other subdivisions of this section,
59 execute all warrants of arrest on such state and national
60 lands, waters and parks, and U.S. Corps of Army
61 Engineers' properties, consistent with the provisions of
62 article one, chapter sixty-two of this code;

63 (9) Arrest any person who enters upon the land or
64 premises of another without written permission from
65 the owner of the land or premises in order to cut,
66 damage, or carry away, or cause to be cut, damaged, or
67 carried away any timber, trees, logs, posts, fruit, nuts,
68 growing plants, or products of any growing plant. Any
69 person convicted of the foregoing shall be liable to the
70 owner in the amount of three times the value of the
71 timber, trees, logs, posts, fruit, nuts, growing plants, or
72 products of any growing plant, which shall be in
73 addition to and notwithstanding any other penalties by
74 law provided by section thirteen, article three, chapter
75 sixty-one of this code; and

76 (10) Do all things necessary to carry into effect the
77 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.

1 (a) (1) Any person who places, deposits, dumps or
2 throws or causes to be placed, deposited, dumped or
3 thrown any litter as defined in section twenty-four of
4 this article, in or upon any public or private highway,
5 road, street or alley, or upon any private property
6 without the consent of the owner, or in or upon any
7 public park or other public property other than in such
8 place as may be set aside for such purpose by the
9 governing body having charge thereof, is guilty of a
10 misdemeanor, and, upon his or her first conviction, shall
11 be fined not less than fifty dollars nor more than five
12 hundred dollars: *Provided*, That a person shall not be
13 held responsible for the actions of animals under their
14 direct control. At the request of the defendant or in the
15 discretion of the court, the court may sentence the
16 defendant to pick up and remove from any public
17 highway, road, street, alley or any other public park or
18 public property as designated by the court, any and all
19 litter, garbage, refuse, trash, cans, bottles, papers,
20 ashes, carcass of any dead animal or any part thereof,

21 offal or any other offensive or unsightly matter placed,
22 deposited, dumped or thrown contrary to the provisions
23 of this section by anyone prior to the date of such
24 conviction. For the first offense, the alternative sentence
25 of litter pickup shall be not less than eight hours nor
26 more than sixteen hours in lieu of other such fine. For
27 purposes of this subdivision, the term "court" includes
28 circuit, magistrate and municipal courts.

29 (2) Upon his or her second conviction, such person
30 shall be fined not less than two hundred fifty dollars nor
31 more than one thousand dollars and imprisoned in the
32 county jail not less than twenty-four hours nor more
33 than six months: *Provided*, That a person shall not be
34 held responsible for the actions of animals under their
35 direct control. At the request of the defendant or in the
36 discretion of the court, the court may sentence the
37 defendant to pick up and remove from any public
38 highway, road, street, alley or any other public park or
39 public property as designated by the court, any and all
40 litter, garbage, refuse, trash, cans, bottles, papers,
41 ashes, carcass of any dead animal or any part thereof,
42 offal or any other offensive or unsightly matter placed,
43 deposited, dumped or thrown contrary to the provisions
44 of this section by anyone prior to the date of such
45 conviction. For the second offense, the alternative
46 sentence of litter pickup shall be not less than sixteen
47 hours nor more than thirty-two hours in lieu of such fine
48 or incarceration, but not both. For purposes of this
49 subdivision, the term "court" shall include circuit and
50 magistrate courts.

51 (3) Upon such person's third and successive conviction,
52 he or she shall be fined not less than five hundred
53 dollars nor more than two thousand dollars and imprisoned
54 in the county jail not less than forty-eight hours
55 nor more than one year: *Provided*, That a person shall
56 not be held responsible for the actions of animals under
57 their direct control. At the request of the defendant or
58 in the discretion of the court, the court may sentence the
59 defendant to pick up and remove from any public
60 highway, road, street, alley or any other public park or
61 public property as designated by the court, any and all

62 litter, garbage, refuse, trash, cans, bottles, papers,
63 ashes, carcass of any dead animal or any part thereof,
64 offal or any other offensive or unsightly matter placed,
65 deposited, dumped or thrown contrary to the provisions
66 of this section by anyone prior to the date of such
67 conviction. Upon a third conviction, the alternative
68 sentence of litter pickup shall be not less than thirty-
69 two hours nor more than sixty-four hours in lieu of such
70 fine or incarceration, but not both. For purposes of this
71 subdivision, the term "court" includes circuit and
72 magistrate courts.

73 (4) The alternative sentence of litter pickup herein set
74 forth shall be verified by the conservation officers from
75 the division of natural resources or environmental
76 inspectors from the division of environmental protection
77 or a regional engineering technician from the division
78 of environmental protection pollution prevention and
79 open dumps program (PPOD) of the county in which the
80 offense occurred. Any defendant receiving the herein
81 specified alternative sentence of litter pickup shall
82 provide within a time to be set by the court written
83 acknowledgement from said conservation officers or
84 environmental officers that the sentence has been
85 completed.

86 (5) Any person who has been found by the court to
87 have willfully failed to comply with the terms of an
88 alternative sentence imposed by the court pursuant to
89 this section is subject at the discretion of the court to
90 up to twice the original penalty provisions available to
91 the court at the time of conviction.

92 (6) If any litter is thrown or cast from a motor vehicle
93 or boat, such action is prima facie evidence that the
94 driver of such motor vehicle or boat intended to violate
95 the provisions of this section. If any litter is dumped or
96 discharged from a motor vehicle or boat, such action is
97 prima facie evidence that the owner and driver of such
98 motor vehicle or boat intended to violate the provisions
99 of this section.

100 (b) Any litter found on any public or private property
101 with any indication of ownership on it will be evidence

102 creating a rebuttable inference it was deposited improv-
103 erly by the person whose identity is indicated, and any
104 person who improperly disposes of litter is subject to
105 either a civil fine of up to five hundred dollars for such
106 litter or required to pay the costs of removal of such
107 litter if the removal of such litter is required to be done
108 by the division, at the discretion of the director. All such
109 fines and costs shall be deposited to the litter control
110 fund: *Provided*, That no inference shall be drawn solely
111 from the presence of any logo, trademark, trade name
112 or other similar mass reproduced identifying character
113 appearing on litter found.

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

122 The clerk of the circuit court, magistrate court or
123 municipal court wherein such additional costs are
124 imposed shall, on or before the last day of each month,
125 transmit all such costs received under this subsection to
126 the state treasurer for deposit in the state treasury to
127 the credit of a special revenue fund to be known as the
128 litter control fund which is hereby continued. Expendi-
129 tures for purposes set forth in this section are not
130 authorized from collections but are to be made only in
131 accordance with appropriation and in accordance with
132 the provisions of article three, chapter twelve of this
133 code and upon fulfillment of the provisions set forth in
134 article two, chapter five-a of this code: *Provided*, That
135 for the fiscal year ending the thirtieth day of June, one
136 thousand nine hundred ninety-three, expenditures shall
137 be authorized from collections. Amounts collected which
138 are found from time to time to exceed the funds needed
139 for the purposes set forth in this article may be
140 transferred to other accounts or funds and redesignated
141 for other purposes by appropriation of the Legislature.

142 (d) (1) The commissioner of the division of motor

143 vehicles, upon registering a motor vehicle or issuing an
144 operator's or chauffeur's license, shall issue to the owner
145 or licensee, as the case may be, a copy of subsection (a)
146 of this section.

147 (2) The commissioner of the division of highways shall
148 cause appropriate signs to be placed at the state
149 boundary on each primary and secondary road, and at
150 other locations throughout the state, informing those
151 entering the state of the maximum penalty provided for
152 disposing of litter in violation of subsection (a) of this
153 section.

154 (e) Any state agency or political subdivision that owns,
155 operates or otherwise controls any public area as may
156 be designated by the director by rule promulgated
157 pursuant to subdivision (8), subsection (a), section
158 twenty-five of this article, shall procure and place litter
159 receptacles at its own expense upon its premises and
160 shall remove and dispose of litter collected in such litter
161 receptacles. After receiving two written warnings from
162 any law-enforcement officer or officers to comply with
163 this subsection or the said rules of the director, any
164 person who fails to place and maintain such litter
165 receptacles upon his or her premises in violation of this
166 subsection or the rules of the director shall be fined
167 fifteen dollars per day of such violation.

168 (f) No portion of this section shall be construed to
169 restrict a private owner in the use of the owner's own
170 private property in any manner otherwise authorized by
171 law.

172 (g) Any law-enforcement officer who shall observe a
173 person violating the provisions of this section has a
174 mandatory duty to arrest or otherwise prosecute the
175 violator to the limits provided herein. The West Virginia
176 division of highways shall investigate and cause to be
177 prosecuted violations of this section occurring upon the
178 highways of the state as the term "highways" is defined
179 in chapter seventeen of this code.

**§20-7-28. Litter along streams, criminal penalties,
enforcement.**

1 (a) It is unlawful to place, deposit, dump or throw, or
2 cause to be placed, deposited, dumped or thrown, any
3 litter as defined in section twenty-four of this article and
4 also any garbage, refuse, trash, can, bottle, paper, ashes,
5 carcass of any dead animal or any part thereof, offal or
6 any other offensive or unsightly matter into any river,
7 stream, creek, branch, brook, lake or pond, or upon the
8 surface of any land within one hundred yards thereof,
9 or in such location that high water or normal drainage
10 conditions will cause any such materials or substances
11 to be washed into any river, stream, creek, branch,
12 brook, lake or pond.

13 (b) No portion of this section restricts an owner,
14 renter or lessee in the use of his or her own private
15 property or rented or leased property or to prohibit the
16 disposal of any industrial and other wastes into waters
17 of this state in a manner consistent with the provisions
18 of article eleven, chapter twenty-two of this code. But
19 if any owner, renter or lessee, private or otherwise,
20 knowingly permits any such materials or substances to
21 be placed, deposited, dumped or thrown in such location
22 that high water or normal drainage conditions will
23 cause any such materials or substances to wash into any
24 river, stream, creek, branch, brook, lake or pond, it is
25 prima facie evidence that such owner, renter or lessee
26 intended to violate the provisions of this section:
27 *Provided*, That if a landowner, renter or lessee, private
28 or otherwise, reports any such placing, depositing,
29 dumping or throwing of any such substances or mate-
30 rials upon his or her property to the prosecuting
31 attorney, county commission, or the division of natural
32 resources or the division of environmental protection,
33 then the landowner, renter or lessee will be presumed
34 to not have knowingly permitted such placing, deposit-
35 ing, dumping or throwing of such materials or
36 substances.

37 (c) In addition to enforcement by the director, the
38 director of the division of environmental protection, the
39 chief of the office of water resources of the division of
40 environmental protection, and the division of natural
41 resources' chief law-enforcement officer, the provisions

42 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

83 magistrate courts.

84 (3) Upon such person's third and successive conviction,
85 tion, he or she shall be fined not less than five hundred
86 dollars nor more than two thousand dollars and imprisoned
87 in the county jail not less than forty-eight hours
88 nor more than one year. At the request of the defendant
89 or in the discretion of the court, the court may sentence
90 the defendant to pick up and remove from any area of
91 a bank of any river, stream, creek, branch, brook, lake
92 or pond, or other property with prior permission of the
93 owner, the area to be specified by the court, any and all
94 litter, garbage, refuse, trash, cans, bottles, papers,
95 ashes, carcass of any dead animal or any part thereof,
96 offal or any other offensive or unsightly matter placed,
97 deposited, dumped or thrown contrary to the provisions
98 of this section by anyone prior to the date of such
99 conviction. Upon a third conviction the alternative
100 sentence of litter pickup shall be not less than thirty-
101 two hours nor more than sixty-four hours in lieu of such
102 fine or incarceration, but not both. For purposes of this
103 subdivision, the term "court" includes circuit and
104 magistrate courts.

105 (4) The alternative sentence of litter pickup herein set
106 forth shall be verified by division of natural resources
107 conservation officers or by environmental inspectors
108 from the division of environmental protection or a
109 regional engineering technician from the pollution
110 prevention and open dumps program (PPOD) of the
111 division of environmental protection, of the county in
112 which the offense occurred. Any defendant receiving the
113 herein specified alternative sentence of litter pickup
114 shall provide within a time to be set by the court written
115 acknowledgement from said conservation officers or
116 environmental officers that the sentence has been
117 completed.

118 (5) Any person who has been found by the court to
119 have willfully failed to comply with the terms of an
120 alternative sentence imposed by the court pursuant to
121 this section is subject at the discretion of the court to
122 up to twice the original penalty provisions available to
123 the court at the time of conviction.

§20-7-29. Assistance to solid waste authorities.

1 The director may expend funds from the litter control
2 fund established pursuant to section twenty-six of this
3 article to assist county and regional solid waste author-
4 ities in the formulation of their comprehensive litter and
5 solid waste control plans pursuant to section eight,
6 article four, chapter twenty-two-c of this code and in the
7 construction and maintenance of approved commercial
8 solid waste facilities and collection equipment, including
9 the provision of grants as well as bonding assistance for
10 those authorities which would in the opinion of the
11 director be unable to construct or maintain an approved
12 commercial solid waste facility without grant funds.

ARTICLE 8. GENERAL AND MISCELLANEOUS PROVISIONS.**§20-8-1. Transition in terms; continuity.**

1 Whenever in this code and elsewhere in law the terms
2 "the conservation commission of West Virginia,"
3 "conservation commission," "director of conservation"
4 and similar and related terms are used and referenced,
5 they shall be read, understood and construed in the light
6 of the enactment of this chapter by which the conser-
7 vation commission and the office of director of conser-
8 vation are abolished and the responsibilities, functions
9 and services thereof are transferred to and absorbed in
10 the division of natural resources, the natural resources
11 commission and the office of director of the division of
12 natural resources as in this chapter provided.

13 Any litigation instituted, entered into or pending to
14 which any of the governmental corporations and
15 agencies abolished by this chapter are named parties
16 may be continued and prosecuted to completion in such
17 party names or, at the option of the litigants and by
18 leave of court, such party names may be amended or
19 changed to correspond with the names of the successor
20 governmental corporations and agencies as in this
21 chapter provided.

22 All contracts, compacts and agreements, heretofore
23 entered into by any of the governmental corporations
24 and agencies hereby abolished, shall continue to be the

25 obligations of the respective successor corporations and
 26 agencies as in this chapter provided. No provision of this
 27 chapter shall be construed as impairing the obligation
 28 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.

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

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

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

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

§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

1 (a) *Imposition.* — Effective the first day of January,
 2 one thousand nine hundred ninety-two, a recycling
 3 assessment fee is hereby levied and imposed upon the
 4 disposal of solid waste at all solid waste disposal
 5 facilities in this state, to be collected at the rate of two
 6 dollars per ton or part thereof of solid waste. The fee
 7 imposed by this section is in addition to all other fees
 8 levied by law.

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

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

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

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

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

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

45 (6) Whenever the owner of a solid waste disposal
46 facility leases the solid waste facility to an operator, the
47 operator is primarily liable for collection and remittance

48 of the fee imposed by this section and the owner is
49 secondarily liable for remittance of the fee imposed by
50 this section. However, if the operator fails, in whole or
51 in part, to discharge his or her obligations under this
52 section, the owner and the operator of the solid waste
53 facility are jointly and severally responsible and liable
54 for compliance with the provisions of this section.

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

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

70 (c) *Regulated motor carriers.* — The fee imposed by
71 this section is a necessary and reasonable cost for motor
72 carriers of solid waste subject to the jurisdiction of the
73 public service commission under chapter twenty-four-a
74 of this code. Notwithstanding any provision of law to the
75 contrary, upon the filing of a petition by an affected
76 motor carrier, the public service commission shall,
77 within fourteen days, reflect the cost of said fee in said
78 motor carrier's rates for solid waste removal service. In
79 calculating the amount of said fee to said motor carrier,
80 the commission shall use the national average of pounds
81 of waste generated per person per day as determined by
82 the United States Environmental Protection Agency.

83 (d) *Definitions.* — For purposes of this section:

84 "Solid waste disposal facility" means any approved
85 solid waste facility or open dump in this state and
86 includes a transfer station when the solid waste collected
87 at the transfer station is not finally disposed of at a solid

88 waste facility within this state that collects the fee
89 imposed by this section.

90 Nothing herein authorizes in any way the creation or
91 operation of or contribution to an open dump.

92 (e) *Exemptions.* — The following transactions are
93 exempt from the fee imposed by this section:

94 (1) Disposal of solid waste at a solid waste facility by
95 the person who owns, operates or leases the solid waste
96 disposal facility if it is used exclusively to dispose of
97 waste originally produced by such person in such
98 person's regular business or personal activities or by
99 persons utilizing the facility on a cost-sharing or
100 nonprofit basis;

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

102 (3) Disposal of residential solid waste by an individual
103 not in the business of hauling or disposing of solid waste
104 on such days and times as designated by the director of
105 the division of environmental protection by rule as
106 exempt from the fee imposed pursuant to section eleven,
107 article fifteen, chapter twenty-two of this code.

108 (f) *Procedure and administration.* — Notwithstanding
109 section three, article ten, chapter eleven of this code,
110 each and every provision of the "West Virginia Tax
111 Procedure and Administration Act" set forth in article
112 ten, chapter eleven of this code applies to the fee
113 imposed by this section with like effect as if said act
114 were applicable only to the fee imposed by this section
115 and were set forth in extenso herein.

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

122 (h) *Dedication of proceeds.* — The proceeds of the fee
123 collected pursuant to this section shall be deposited by
124 the tax commissioner, at least monthly, in a special
125 revenue account designated as the "Recycling Assistance

126 Fund" which is hereby created. The director of the
127 division of natural resources shall allocate the proceeds
128 of the said fund as follows:

129 (1) Fifty percent of the total proceeds shall be
130 provided in grants to assist municipalities, counties and
131 other interested parties in the planning and implemen-
132 tation of recycling programs, public education pro-
133 grams, and recycling market procurement efforts,
134 established pursuant to this article. The director of the
135 division of natural resources shall promulgate rules, in
136 accordance with chapter twenty-nine-a of this code,
137 containing application procedures, guidelines for
138 eligibility, reporting requirements and other matters
139 deemed appropriate;

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

143 (3) Twelve and one-half percent of the total proceeds
144 shall be transferred to the West Virginia development
145 office, to be used in assisting counties and municipalities
146 in the design and construction of wastewater treatment
147 facilities;

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

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

161 (i) *Severability.* — If any provision of this section or
162 the application thereof is for any reason adjudged by
163 any court of competent jurisdiction to be invalid, such
164 judgment does not affect, impair or invalidate the

165 remainder of this section, but is confined in its operation
166 to the provision thereof directly involved in the controv-
167 ersy in which such judgment is rendered, and the
168 applicability of such provision to other persons or
169 circumstances is not affected thereby.

170 (j) *Effective date.* — This section is effective on the
171 first day of January, one thousand nine hundred ninety-
172 two.

**§20-11-5b. Solid and hazardous waste supplemental
assessment fee.**

1 (a) *Imposition.* — Effective the first day of January,
2 one thousand nine hundred ninety-two, a solid and
3 hazardous waste supplemental assessment fee is hereby
4 imposed upon the disposal of solid or hazardous waste
5 at all solid waste or hazardous waste disposal facilities
6 in this state, to be collected at the rate of twenty-five
7 cents per ton or part thereof of solid or hazardous waste.
8 The fee imposed by this section is in addition to all other
9 fees levied by law.

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

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

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

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

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

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

47 (6) Whenever the owner of a solid or hazardous waste
48 disposal facility leases the solid or hazardous waste
49 facility to an operator, the operator is primarily liable
50 for collection and remittance of the fee imposed by this
51 section and the owner is secondarily liable for remit-
52 tance of the fee imposed by this section. However, if the
53 operator fails, in whole or in part, to discharge his or
54 her obligations under this section, the owner and the
55 operator of the solid or hazardous waste disposal facility
56 are jointly and severally responsible and liable for
57 compliance with the provisions of this section.

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

67 (8) Each person disposing of solid or hazardous waste
68 at a solid or hazardous waste disposal facility and each
69 person required to collect the fee imposed by this section

70 shall keep complete and accurate records in such form
71 as the tax commissioner may require in accordance with
72 the rules and regulations of the tax commissioner.

73 (c) *Regulated motor carriers.* — The fee imposed by
74 this section is a necessary and reasonable cost for motor
75 carriers of solid or hazardous waste subject to the
76 jurisdiction of the public service commission under
77 chapter twenty-four-a of this code. Notwithstanding any
78 provision of law to the contrary, upon the filing of a
79 petition by an affected motor carrier, the public service
80 commission shall, within fourteen days, reflect the cost
81 of said fee in said motor carrier's rates for solid or
82 hazardous waste removal service. In calculating the
83 amount of said fee to said motor carrier, the commission
84 shall use the national average of pounds of waste
85 generated per person per day as determined by the
86 United States Environmental Protection Agency.

87 (d) *Definitions.* — For purposes of this section:

88 (1) "Solid or hazardous waste disposal facility" means
89 any approved solid or hazardous waste facility or open
90 dump in this state and includes a transfer station when
91 the solid or hazardous waste collected at the transfer
92 station is not finally disposed of at a solid or hazardous
93 waste facility within this state that collects the fee
94 imposed by this section;

95 (2) "Coal combustion byproduct" means the residuals,
96 including fly ash, bottom ash, bed ash, and boiler slag
97 produced by coal-fired or coal/gas-fired electrical or
98 steam generating units. For nonelectrical steam gener-
99 ating units burning a combination of solid waste and
100 coal, a carbon monoxide level of less than or equal to
101 one hundred parts per million on a twenty-four hour
102 average basis is required for the byproducts to meet this
103 definition. The carbon monoxide level shall be calcu-
104 lated on a dry gas basis corrected to seven percent
105 oxygen; and

106 (3) "Sludge" means any solid, semisolid, residue or
107 precipitate, separated from or created by a municipal,
108 commercial or industrial waste treatment plant, water
109 supply treatment plant or air pollution control facility

110 or any other such waste having similar origin.

111 Nothing herein authorizes in any way the creation or
112 operation of or contribution to an open dump.

113 (e) *Exemptions.* — The following transactions are
114 exempt from the fee imposed by this section:

115 (1) Disposal of solid waste in which the recycling
116 assessment fee levied and imposed by section five-a of
117 this article has been paid;

118 (2) Disposal of sludge or coal combustion byproducts;

119 (3) Reuse or recycling of any solid or hazardous waste;
120 or

121 (4) Disposal of residential solid waste by an individual
122 not in the business of hauling or disposing of solid waste
123 on such days and times as designated by the director of
124 the division of environmental protection by rule as
125 exempt from the fee imposed pursuant to section eleven,
126 article fifteen, chapter twenty-two of this code.

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

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

142 (h) *Dedication of proceeds.*—The proceeds of the fee
143 collected pursuant to this section shall be deposited by
144 the tax commissioner, at least monthly, to the hazardous
145 waste emergency response fund established in article
146 nineteen, chapter twenty-two of this code.

147 (i) *Severability*.—If any provision of this section or the
148 application thereof is for any reason adjudged by any
149 court of competent jurisdiction to be invalid, such
150 judgment does not affect, impair or invalidate the
151 remainder of this section, but is confined in its operation
152 to the provision thereof directly involved in the contro-
153 versy in which such judgment is rendered, and the
154 applicability of such provision to other persons or
155 circumstances is not affected thereby.

156 (j) *Effective date*. — This section is effective on the
157 first day of January, one thousand nine hundred ninety-
158 two.

§20-11-9. Recycled oil advisory committee.

1 (a) The division of natural resources recycled oil
2 advisory committee is continued. The recycled oil
3 advisory committee shall consist of nine members
4 appointed by the governor, for terms of two years, who
5 serve without compensation. One member of the com-
6 mittee shall have significant experience in the oil
7 refining industry, one member shall have significant
8 experience in the jobbing or distributing of motor oil,
9 one member shall be a representative of retail gasoline
10 dealers, one member shall be a representative of retail
11 merchants, one member shall be a representative of the
12 insurance industry, one member shall be a member of
13 a county or regional solid waste authority, one member
14 shall be a member of the general public, one member
15 shall be a member of the House of Delegates recom-
16 mended by the speaker of the House of Delegates, and
17 one member shall be a member of the Senate recom-
18 mended by the president of the Senate. The director of
19 the division of natural resources or his or her designated
20 representative shall be an ex officio member of the
21 committee and shall serve as chair of the committee.
22 The recycled oil advisory committee shall meet at least
23 monthly, or upon the call of four members, to discuss
24 all aspects of the collection, handling, transportation,
25 storage, disposal and recycling of used motor oil.

26 (b) The functions of the committee include, but are not
27 limited to, the following:

28 (1) Making recommendations to the division of natural
29 resources, division of environmental protection and the
30 Legislature concerning the adoption of management
31 standards with respect to collection, handling, transpor-
32 tation, storage, disposal and recycling of used motor oil.
33 The committee shall make the first report of its
34 recommendations on or before the fifteenth day of
35 January, one thousand nine hundred ninety-two, and
36 other such reports may be made at such times as the
37 committee deems appropriate.

38 (2) Carrying out education and promotional activities
39 regarding the use of recycled oil.

40 (3) Identifying areas in the public and private sectors
41 where recycled oil could be utilized.

42 (4) Entertaining proposals from citizens, corporations
43 and businesses related to all aspects of used motor oil.

44 (5) Identifying administrative requirements at both
45 the state and local levels to ascertain resources and
46 needs relating to used motor oil.

47 (6) Examining federal law and regulations, both
48 existing and proposed, to assure that West Virginia
49 businesses and individuals who generate used motor oil
50 may participate in a program of handling and disposing
51 of used motor oil that complies with federal statutes and
52 regulatory requirements.

§20-11-12. Recycling facilities exemption.

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

CHAPTER 21. LABOR.

ARTICLE 3B. EMPLOYER ASSISTANCE FOR ENVIRONMENTAL PROTECTION.

§21-3B-3. Environmental assistance resource board.

1 There is hereby created within the division of labor
2 an environmental assistance resource board to advise
3 and assist the commissioner of labor in developing the
4 technical resources necessary to administer the provi-
5 sions of this article. The board is composed of the
6 commissioner of the division of labor, who serves as
7 chair; the chief of the office of air quality of the division
8 of environmental protection; the chief of the office of
9 water resources of the division of environmental
10 protection; the chief of the office of waste management
11 of the division of environmental protection; the director
12 of the division of environmental protection; one member
13 of the House of Delegates appointed by the speaker of
14 the House; and one member of the Senate appointed by
15 the president of the Senate. Terms of legislative
16 members of the board run concurrent with the
17 member's legislative term of office.

18 The board shall meet within thirty days of the
19 effective date of this article and thereafter at the call
20 of the chair. The board shall establish an information
21 network wherein the commissioner of labor and any
22 consultant advising employers, in order to provide
23 accurate information regarding compliance with envir-
24 onmental and hazardous waste rules, may access written
25 materials or staff having technical expertise within the
26 agencies represented on the board. At the request of the
27 board, the secretary of the department of commerce,
28 labor and environmental resources is authorized to
29 direct the assignment of staff, on a temporary or
30 permanent basis, from any agency represented on the
31 board to the division of labor to assist in the implemen-
32 tation of the employer assistance program set forth in
33 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.
9. Underground Gas Storage Reservoirs.
10. Abandoned Well Act.
11. Water Pollution Control Act.
12. Groundwater Protection Act.
13. Natural Streams Preservation Act.
14. Dam Control Act.
15. Solid Waste Management Act.
16. Solid Waste Landfill Closure Assistance Program.
17. Underground Storage Tank Act.
18. Hazardous Waste Management Act.
19. Hazardous Waste Emergency Response Fund.
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.
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§22-1-1. Legislative findings; legislative statement of policy and purpose.

1 (a) The Legislature finds that:

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

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

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

15 (4) Efficiency in the wise use, enhancement, preser-
16 vation, protection and conservation of the environment
17 can best be accomplished by an integrated and interdis-
18 ciplinary approach in decision making and would
19 benefit from the coordination, consolidation and integra-
20 tion of state programs and agencies which are signifi-
21 cantly concerned with the use, enhancement, preserva-
22 tion, protection and conservation of the environment.

23 (5) Those functions of government which regulate the
24 environment should be consolidated in order to accomp-
25 lish the purposes set forth in this article, to carry out
26 the environmental functions of government in the most
27 efficient and cost effective manner, to protect human
28 health and safety and, to the greatest degree practica-
29 ble, to prevent injury to plant, animal and aquatic life,
30 improve and maintain the quality of life of our citizens,
31 and promote economic development consistent with
32 environmental goals and standards.

33 (b) The Legislature declares that the establishment of
34 a division of environmental protection is in the public
35 interest and will promote the general welfare of the
36 state of West Virginia without sacrificing social and
37 economic development. It is the policy of the state of
38 West Virginia, in cooperation with other governmental
39 agencies, public and private organizations, and the
40 citizens of this state, to use all practicable means and
41 measures to prevent or eliminate harm to the environ-
42 ment and biosphere, to create and maintain conditions
43 under which man and nature can exist in productive
44 harmony, and fulfill the social, economic and other
45 requirements of present and future generations. The

46 purposes of this chapter are:

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

49 (2) To consolidate environmental regulatory programs
50 in a single state agency;

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

55 (4) To supplement and complement the efforts of the
56 state by coordinating state programs with the efforts of
57 other governmental entities, public and private organ-
58 izations, and the general public; to improve the quality
59 of the environment, the public health and public
60 enjoyment of the environment, and the propagation and
61 protection of animal, aquatic and plant life, in a manner
62 consistent with the benefits to be derived from strong
63 agricultural, manufacturing, tourism and energy-
64 producing industries;

65 (5) Insofar as federal environmental programs require
66 state participation, to endeavor to obtain and continue
67 state primacy in the administration of such federally-
68 mandated environmental programs, and to endeavor to
69 maximize federal funds which may be available to
70 accomplish the purposes of the state and federal
71 environmental programs and to cooperate with approp-
72 riate federal agencies to meet environmental goals;

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

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

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

81 (9) To increase the accountability of state environmen-
82 tal protection programs to the governor, the Legislature
83 and the public generally.

§22-1-2. Definitions.

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

3 (1) "Department" means the department of commerce,
4 labor and environmental resources.

5 (2) "Director" means the director of the division of
6 environmental protection.

7 (3) "Division" means the division of environmental
8 protection.

9 (4) "Function" includes any duty, obligation, power,
10 authority, responsibility, right, privilege, activity or
11 program.

12 (5) "Office" includes any office, board, agency, unit,
13 organizational entity, or component thereof.

14 (6) "Secretary" means the secretary of the department
15 of commerce, labor and environmental resources.

§22-1-3. Rule making generally; relationship to federal programs.

1 (a) The director has the power and authority to
2 propose legislative rules for promulgation in accordance
3 with the provisions of article three, chapter twenty-nine-
4 a of this code to carry out and implement the provisions
5 of this chapter and to carry out and implement any
6 other provision of law relating to offices or functions of
7 the division.

8 (b) The requirements and limitations set forth in this
9 section apply to any rule-making authority granted
10 pursuant to this chapter or chapters twenty-two-b and
11 twenty-two-c of this code.

12 (c) Prior to the proposal of any new rule, the director
13 shall consult with the division of environmental protec-
14 tion advisory council and after such consultation, the
15 director may determine that such a rule should be the
16 same in substance as a counterpart federal regulation.
17 If the director determines that the rule should be the
18 same in substance as a counterpart regulation, then to
19 the greatest degree practicable, such proposed rule shall

20 incorporate by reference the counterpart federal
21 regulation. The director shall file, contemporaneously
22 with the proposed rule, a statement setting forth
23 whether the rule is the same in substance as a counter-
24 part federal regulation. If the director determines that
25 the rule should not be the same in substance as a
26 counterpart federal regulation, then the director shall
27 file contemporaneously with the proposed rule, a
28 statement setting forth the differences between the
29 proposed rule and the counterpart federal regulation. In
30 addition, the director shall file a statement setting forth
31 the results of the consultation with the advisory council.

32 (d) Whenever any existing rule is modified, amended
33 or replaced, the provisions of subsection (c) of this
34 section apply to the proposal of any such modification,
35 amendment or replacement rule.

36 (e) Notwithstanding the provisions of article three,
37 chapter twenty-nine-a of this code, at least one public
38 hearing shall be held by the division in conjunction with
39 each rule making prior to the expiration of the public
40 comment period for the proposed rules.

§22-1-3a. Rules — New or amended environmental provisions.

1 Except for legislative rules promulgated for the
2 purpose of implementing the provisions of section four,
3 article twelve, section six, article seventeen, and section
4 six, article eighteen, all of this chapter, and notwith-
5 standing the provisions of section four, article five of this
6 chapter, legislative rules promulgated by the director
7 which become effective on or after the first day of July,
8 one thousand nine hundred ninety-four, may include
9 new or amended environmental provisions which are
10 more stringent than the counterpart federal rule or
11 program to the extent that the director first provides
12 specific written reasons which demonstrate that such
13 provisions are reasonably necessary to protect, preserve
14 or enhance the quality of West Virginia's environment
15 or human health or safety, taking into consideration the
16 scientific evidence, specific environmental characteris-
17 tics 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
24 director which become effective on or after the first day
25 of July, one thousand nine hundred ninety-four, include
26 new or amended environmental provisions which are
27 less stringent than a counterpart federal rule which
28 recommends, but does not require, a particular standard
29 or any federally recommended environmental standard
30 whether or not there be a counterpart federal rule, the
31 division shall first provide specific written reasons
32 which demonstrate that such provisions are not reason-
33 ably necessary to protect, preserve or enhance the
34 quality of West Virginia's environment or human health
35 or safety, taking into consideration the scientific
36 evidence, specific environmental characteristic of West
37 Virginia or an area thereof, or stated legislative
38 findings, policies or purposes relied upon by the director
39 in making such determination. In the case of specific
40 rules which have a technical basis, the director shall also
41 provide the specific technical basis upon which the
42 director has relied.

43 In the absence of a federal rule, the adoption of a state
44 rule shall not be construed to be more stringent than a
45 federal rule, unless the absence of a federal rule is the
46 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

3 agency for this state for all purposes of federal legisla-
4 tion relating to all activities regulated under this
5 chapter.

§22-1-6. Director of the division of environmental protection.

1 (a) The director is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the director shall organize the division
4 into such offices, sections, agencies and other units of
5 activity as may be found by the director to be desirable
6 for the orderly, efficient and economical administration
7 of the division and for the accomplishment of its objects
8 and purposes. The director may appoint assistants,
9 hearing officers, clerks, stenographers, and other
10 officers, technical personnel and employees needed for
11 the operation of the division and may prescribe their
12 powers and duties and fix their compensation within
13 amounts appropriated therefor.

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

29 (c) The director has responsibility for the conduct of
30 the intergovernmental relations of the division, includ-
31 ing assuring: (1) That the division carries out its
32 functions in a manner which supplements and comple-
33 ments the environmental policies, programs and proce-
34 dures of the federal government, other state govern-
35 ments, and other instrumentalities of this state; and (2)

36 that appropriate officers and employees of the division
37 consult with individuals responsible for making policy
38 relating to environmental issues in the federal govern-
39 ment, other state governments, and other instrumental-
40 ities of this state concerning differences over environ-
41 mental policies, programs and procedures and concern-
42 ing the impact of statutory law and rules upon the
43 environment of this state.

44 (d) In addition to other powers, duties and responsi-
45 bilities granted and assigned to the director by this
46 chapter, the director is hereby authorized and empo-
47 wered to:

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

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

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

74 (4) Acquire for the state in the name of the "division
75 of environmental protection" by purchase, condemna-

76 tion, lease or agreement, or accept or reject for the state,
77 in the name of the division of environmental protection,
78 gifts, donations, contributions, bequests or devises of
79 money, security or property, both real and personal, and
80 any interest in such property;

81 (5) Provide for workshops, training programs and
82 other educational programs, apart from or in coopera-
83 tion with other governmental agencies, necessary to
84 insure adequate standards of public service in the
85 division. The director may also provide for technical
86 training and specialized instruction of any employee.
87 Approved educational programs, training and instruc-
88 tion time may be compensated for as a part of regular
89 employment. The director is further authorized to pay
90 out of federal or state funds, or both, as such funds are
91 available, fees and expenses incidental to such educa-
92 tional programs, training, and instruction. Eligibility
93 for participation by employees will be in accordance
94 with guidelines established by the director; and

95 (6) Issue certifications required under 33 U.S.C.
96 §1341. Prior to issuing any such certification the
97 director shall solicit from the division of natural
98 resources reports and comments concerning the possible
99 certification. The reports and comments shall be
100 directed from the division of natural resources to the
101 director for consideration.

102 (e) The director shall be appointed by the governor,
103 by and with the advice and consent of the Senate, and
104 serves at the will and pleasure of the governor:
105 *Provided*, That in lieu of appointing a director, the
106 governor may order the secretary to directly exercise
107 the powers of the director. The secretary shall designate
108 the order in which other officials of the division shall
109 act for and perform the functions of the secretary or the
110 director during the absence or disability of both the
111 secretary and the director or in the event of vacancies
112 in both of those offices.

113 (f) At the time of his or her initial appointment, the
114 director shall be at least thirty years old and shall be
115 selected with special reference and consideration given

116 to his or her administrative experience and ability, to
117 his or her demonstrated interest in the effective and
118 responsible regulation of the energy industry and the
119 conservation and wise use of natural resources. The
120 director shall have at least a bachelor's degree in a
121 related field and shall have at least three years of
122 experience in a position of responsible charge in at least
123 one discipline relating to the duties and responsibilities
124 for which the director will be responsible upon assump-
125 tion of the office of director. The director shall not be
126 a candidate for or hold any other public office, shall not
127 be a member of any political party committee and shall
128 immediately forfeit and vacate his or her office as
129 director in the event he or she becomes a candidate for
130 or accepts appointment to any other public office or
131 political party committee.

132 (g) The director shall receive an annual salary of
133 sixty-five thousand dollars and shall be allowed and paid
134 necessary expenses incident to the performance of his or
135 her official duties. Prior to the assumption of the duties
136 of his or her office, the director shall take and subscribe
137 to the oath required of public officers prescribed by
138 section five, article four of the constitution of West
139 Virginia and shall execute a bond, with surety approved
140 by the governor, in the penal sum of ten thousand
141 dollars, which executed oath and bond shall be filed in
142 the office of the secretary of state. Premiums on the
143 bond shall be paid from the division funds.

§22-1-7. Offices within division.

1 Consistent with the provisions of this article the
2 director shall, at a minimum, maintain the following
3 offices within the division:

4 (1) The office of abandoned mine lands and reclama-
5 tion, which is charged, at a minimum, with administer-
6 ing and enforcing, under the supervision of the director,
7 the provisions of article two of this chapter;

8 (2) The office of mining and reclamation, which is
9 charged, at a minimum, with administering and
10 enforcing, under the supervision of the director the
11 provisions of articles three and four of this chapter;

12 (3) The office of air quality, which is charged, at a
13 minimum, with administering and enforcing, under the
14 supervision of the director, the provisions of article five
15 of this chapter;

16 (4) The office of oil and gas, which is charged, at a
17 minimum, with administering and enforcing, under the
18 supervision of the director, the provisions of articles six,
19 seven, eight, nine and ten of this chapter;

20 (5) The office of water resources, which is charged,
21 at a minimum, with administering and enforcing, under
22 the supervision of the director, the provisions of articles
23 eleven, twelve, thirteen and fourteen of this chapter; and

24 (6) The office of waste management, which is charged,
25 at a minimum, with administering and enforcing, under
26 the supervision of the director, the provisions of articles
27 fifteen, sixteen, seventeen, eighteen, nineteen and
28 twenty of this chapter.

§22-1-8. Supervisory officers.

1 (a) The director shall appoint a competent and
2 qualified person to be chief of each office specified in
3 section seven of this article. The chief is the principal
4 administrative officer of that office and is accountable
5 and responsible for the orderly and efficient perfor-
6 mance of the duties, functions and services of her or his
7 office.

8 (b) There shall be in the division such other supervi-
9 sory officers as the director determines is necessary to
10 administer the functions of the division. Such supervi-
11 sory officers are "administrators" as such term is
12 defined in section two, article six, chapter twenty-nine
13 of this code, notwithstanding the fact that the positions
14 filled by such persons are not statutorily created. Any
15 such supervisory officer may be designated by the
16 director as a deputy director, assistant director, chief,
17 administrator, or other administrative title or designa-
18 tion. Each of the supervisory officers shall be appointed
19 by the director and serve at the will and pleasure of the
20 director. The compensation of such supervisory officers
21 shall be fixed by the director. A single individual may

22 be appointed to serve simultaneously in two distinct
23 supervisory positions, but in a case where such dual
24 appointment is made, such supervisory officer shall not
25 receive additional compensation above that which would
26 be paid for serving in one supervisory position.

27 (c) A supervisory officer appointed pursuant to the
28 provisions of this section shall report directly to the
29 director and shall, in addition to any functions vested
30 in or required to be delegated to such officer, perform
31 such additional functions as the director may prescribe.

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

§22-1-9. Environmental protection advisory council.

1 (a) There is created within the department of com-
2 merce, labor and environmental resources the environ-
3 mental protection advisory council. The environmental
4 protection advisory council consists of seven members.
5 The director serves as an ex officio member of the
6 council and as its chair. The remaining six members are
7 appointed by the governor. Each member serves for a
8 term of four years and may be reappointed. Of the
9 members of the council first appointed, two shall be
10 appointed for terms ending on the thirtieth day of June,
11 one thousand nine hundred ninety-six, and two each for
12 terms ending one and two years thereafter. Vacancies
13 on the council shall be filled within sixty days after the
14 vacancy occurs.

15 (b) Two members of the council shall represent
16 industries regulated by the division or their trade
17 associations. Two members shall represent organiza-
18 tions advocating environmental protection. One member
19 shall represent organizations representing local govern-

20 ments. One member shall represent public service
21 districts. In making subsequent appointments this
22 balance of membership shall be maintained.

23 (c) Appointed members shall be paid the same
24 compensation and expense reimbursement as is paid to
25 members of the Legislature for their interim duties as
26 recommended by the citizens legislative compensation
27 commission and authorized by law for each day or
28 portion thereof engaged in the discharge of official
29 duties.

30 (d) The council shall meet at least once every quarter
31 and at the call of the chair.

32 (e) The council shall:

33 (1) Consult with and advise the director on program
34 and policy development, problem solving and other
35 appropriate subjects;

36 (2) Identify and define problems associated with the
37 implementation of the policy set forth in section one of
38 this article;

39 (3) Provide and disseminate to industry and the public
40 early identification of major federal program and
41 regulatory changes;

42 (4) Provide a forum for the resolution of conflicts
43 between constituency groups;

44 (5) To the extent possible, strive for consensus on the
45 development of overall environmental policy; and

46 (6) Provide an annual report to the joint committee
47 on government and finance on or before the first day of
48 January of each year relating to its findings with regard
49 to the division's performance during the previous year.
50 The report will specifically address the division's
51 performance in accomplishing the nine purposes set
52 forth in subsection (b), section one of this article.

**§22-1-10. Allocation of appropriations and effect on
personnel.**

1 (a) The director may, with the exception of the special
2 reclamation fund established in section eleven, article

3 three of this chapter, expend, in accordance with the
4 provisions of chapter five-a of this code, from special
5 revenue accounts, and funds established pursuant to this
6 chapter and chapters twenty-two-b and twenty-two-c of
7 this code, amounts necessary to implement and admin-
8 ister the general powers, duties and responsibilities of
9 the division of environmental protection: *Provided*, That
10 federal funds required by law to be expended for a
11 specific purpose may not be expended for any purpose
12 contrary to the laws, rules or regulations of the federal
13 government.

14 (b) With respect to employees affected by the creation
15 of the division or the transfer of functions and offices
16 to the division the layoff and recall rights of such
17 employees within the classified service of the state as
18 provided in subsections (5) and (6), section ten, article
19 six, chapter twenty-nine of this code are limited to the
20 department of commerce, labor and environmental
21 resources and further limited to an occupational group
22 substantially similar to the occupational group estab-
23 lished by the classification and compensation plan for
24 the classified service of the agency or board in which
25 the employee was employed: *Provided*, That the em-
26 ployee has the qualifications established for the job
27 class. The duration of recall rights provided in this
28 subsection is limited to two years or the length of tenure,
29 whichever is less. Except as provided in this subsection,
30 nothing contained in this section abridges the rights of
31 employees within the classified service of the state as
32 provided in sections ten and ten-a, article six, chapter
33 twenty-nine of this code.

34 (c) The director is empowered to authorize the
35 payment of all or any part of the reasonable expenses
36 of employees of the division in moving their household
37 furniture and effects as a result of a reassignment of
38 such employee caused by a transfer of functions or
39 offices to the division.

§22-1-11. Saving provisions.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds, author-

3 izations and privileges which have been issued, made,
4 granted, or allowed to become effective by the governor,
5 any state department or agency or official thereof, or by
6 a court of competent jurisdiction, in the performance of
7 functions which have been transferred to the director or
8 to the division, and were in effect on the date such
9 transfer occurred continue in effect, for the benefit of
10 the division, according to their terms until modified,
11 terminated, superseded, set aside, or revoked in accor-
12 dance with the law by the governor, the secretary, the
13 director, or other authorized official, a court of compe-
14 tent jurisdiction, or by operation of law.

15 (b) Any proceedings, including notices of proposed
16 rule making, or any application for any license, permit,
17 certificate, or financial assistance pending before any
18 department, division or other office, functions of which
19 were transferred to the division are not affected by the
20 transfer. Orders issued in any such proceedings shall
21 continue in effect until modified, terminated, super-
22 seded, or revoked by the governor, the secretary, the
23 director, by a court of competent jurisdiction, or by
24 operation of law. Nothing in this subsection prohibits
25 the discontinuance or modification of any such proceed-
26 ing under the same terms and conditions and to the
27 same extent that such proceeding could have been
28 discontinued or modified if the division had not been
29 created or if functions or offices had not been trans-
30 ferred to the division. The director is authorized to
31 propose legislative rules in accordance with the provi-
32 sions of chapter twenty-nine-a of this code for the
33 orderly transfer of proceedings continued under the
34 provisions of this subsection.

35 (c) Except as provided in subsection (e) of this section,
36 the creation of the division and the subsequent transfer
37 of functions to it do not affect suits commenced prior to
38 the effective date of the creation or any transfer of
39 functions or offices to it, and in all such suits, proceed-
40 ings shall be had, appeals taken, and judgments
41 rendered in the same manner and with like effect as if
42 the creation or transfer had not occurred.

43 (d) No suit, action or other proceeding commenced by

44 or against any officer in the official capacity of such
45 individual as an officer of any department, division or
46 other office, functions of which were transferred to the
47 division abates by reason of such transfer. No cause of
48 action by or against any department, division or other
49 office, functions of which were transferred to the
50 division, or by or against any officer thereof in the
51 official capacity of such officer, abates by reason of the
52 transfer.

53 (e) If, before the transfer, any department, division or
54 other office, or officer thereof in the official capacity of
55 such officer, was a party to a suit, and any function of
56 such department, division or other office, or officer was
57 transferred to the secretary, the director or other officer
58 of the division, then such suit shall be continued with
59 the secretary, the director or other appropriate officer
60 substituted or added as a party.

§22-1-12. Public information.

1 The division shall collect, organize and from time to
2 time distribute to the public, through news media or
3 otherwise, interesting facts, information and data
4 concerning the state's environment and its environmen-
5 tal regulatory programs. The director may organize and
6 promote lectures, demonstrations, symposiums, schools
7 and other educational programs relating to the state's
8 environment and its protection. Video tapes, motion
9 pictures, slide films and other photographic services
10 may be provided for instruction on the environment and
11 its protection for schools, other governmental agencies,
12 and civic organizations under such rules as may be
13 prescribed by the director.

14 The director shall select and designate a competent
15 and qualified person as division public information
16 officer, who is responsible for the organization and
17 management of the division's public information and
18 public affairs programs.

§22-1-13. Notification of permitting decisions.

1 Any person may request the director to notify the
2 person of a decision to issue or deny a specific permit

3 applied for under this chapter. The request must be in
4 writing and received by the director within the public
5 comment period or at a public hearing held for the
6 specific permit application. If there is no public
7 comment period or public hearing held for the specific
8 permit application the director is required to make the
9 notification under this section only if the request for
10 notification is received by the director at least two
11 working days prior to notifying the applicant of the
12 decision. The director shall notify all persons who have
13 made a timely request under this section of the decision
14 on the application at the same time the applicant is
15 notified of the decision. The notification shall advise the
16 person of any appeal rights under this chapter.

**§22-1-14. Stream restoration fund; creation; special
account; purposes and expenditures.**

1 (a) There is hereby created in the state treasury a
2 special interest bearing account known as the "stream
3 restoration fund." Moneys received by the division
4 pursuant to transfers from any other account lawfully
5 transferred, from the federal government and other
6 sources, from mitigation, moneys, from gifts, bequests,
7 donations and contributions, and other moneys lawfully
8 received from whatever source, may be deposited in the
9 state treasury to the credit of the stream restoration
10 fund.

11 (b) Expenditures from the fund are not authorized
12 from collections but shall only be authorized by line item
13 appropriation by the Legislature. The moneys are to be
14 used and expended for the restoration and enhancement
15 of the streams and water resources of this state which
16 have been affected by coal mining or acid mine
17 drainage.

**§22-1-15. Laboratory certification; rules; fees; revocation
and suspension; environmental laboratory
certification fund; programs affected; and
appeals.**

1 (a) The director shall promulgate rules to require the
2 certification of laboratories conducting waste and
3 wastewater tests and analyses to be used for purposes

4 of demonstrating compliance under the covered statu-
5 tory programs, including reasonable annual certifica-
6 tion fees based upon the type or classification of tests
7 or analyses being conducted by laboratories not to
8 exceed an annual program aggregate of one hundred
9 fifty thousand dollars, to be assessed against laboratory
10 owners or operators in such an amount as is necessary
11 to cover the actual costs of administration of this
12 program and the processing of certification applications,
13 to be deposited in the state environmental laboratory
14 certification fund created pursuant to this section. By
15 the first day of July of each year beginning the first day
16 of July, one thousand nine hundred ninety-five, the
17 director shall provide to the secretary a written report
18 reflecting funds collected, how the funds were expended,
19 and an assessment of the adequacy of the funding to
20 administer the program.

21 (b) After the effective date of the rules promulgated
22 pursuant to this section, waste and wastewater tests and
23 analyses conducted in laboratories that are not certified
24 for the parameters or toxicity being tested or analyses
25 shall not be accepted by the division, except as otherwise
26 provided, as being in compliance with the requirements,
27 rules or orders of the division issued under authority of
28 one or more of the covered statutory programs: *Pro-*
29 *vided*, That field tests and remote monitoring or testing
30 equipment which is conducted or located away from any
31 laboratory shall not be deemed a laboratory for purposes
32 of assessing the fee but shall be subject to such quality
33 assurance and quality control standards as may be
34 established by the director in rules promulgated
35 pursuant to this section. The director shall provide by
36 rule for the granting of certification for laboratories
37 located outside of West Virginia without performance
38 testing or assessment of certification fee pursuant to this
39 section if such laboratories provide written documenta-
40 tion that approval has been received under require-
41 ments in another state determined by the director to be
42 equivalent to the West Virginia laboratory certification
43 program. Such reciprocal certification shall be granted
44 only for testing methods and parameters for which the
45 laboratory holds a valid authorization in such other state

46 and only for laboratories in states which allow reciproc-
47 ity with respect to laboratories located in this state.

48 (c) Application shall be made to the director for
49 approval or certification by laboratories on forms and
50 in a manner prescribed by the director.

51 (d) Certification shall be renewed on an annual basis.
52 The existing certification shall remain in effect until the
53 director notifies the applicant for renewal that renewal
54 of certification has been granted or denied.

55 (e) Certification shall be granted for those tests or
56 parameters for which the laboratory demonstrates
57 adequate performance on performance evaluation tests
58 based on the criteria established in rules by the director.
59 The director shall, by rule, establish criteria governing
60 what shall be considered in any decision to deny or issue
61 a certification.

62 (f) Failure to comply with the requirements of the
63 applicable analytical methods and procedures or
64 standards specified in the rules of the director shall be
65 grounds for revocation or suspension of certification for
66 the affected test procedures or parameters.

67 (g) No person subject to the covered statutory
68 programs shall be allowed to use data or test results
69 from waste and wastewater tests and analyses con-
70 ducted at laboratories lacking certification for purposes
71 of demonstrating compliance under the covered statu-
72 tory programs: *Provided*, That any person whose data
73 or test results are invalidated because such person had
74 relied upon a laboratory which loses its certification,
75 shall be granted thirty days after notice thereof by the
76 director during which data or test results may be
77 repeated or reanalyzed by a certified laboratory for
78 purposes of demonstrating compliance under the
79 covered statutory programs.

80 (h) A special revenue fund designated the "environ-
81 mental laboratory certification fund" shall be estab-
82 lished in the state treasury on the first day of July, one
83 thousand nine hundred ninety-four. The net proceeds of
84 all fees collected pursuant to this section shall be

85 deposited in the environmental laboratory certification
86 fund. Upon line item appropriation by the Legislature,
87 the director shall expend the proceeds of the environ-
88 mental laboratory certification fund solely for the
89 administration of the requirements of this section:
90 *Provided*, That for fiscal year one thousand nine
91 hundred ninety-five, expenditures are permitted from
92 collection without further appropriation by the
93 Legislature.

94 (i) For purposes of this section, "covered statutory
95 program" means one of the regulatory programs
96 developed under statutory authority of one of the
97 following acts of the Legislature: Water Pollution
98 Control Act, article eleven of this chapter; Hazardous
99 Waste Management Act, article eighteen of this chapter;
100 Hazardous Waste Emergency Response Fund Act,
101 article nineteen of this chapter; Underground Storage
102 Tank Act, article seventeen of this chapter; the Solid
103 Waste Management Act, article fifteen of this chapter;
104 or the Groundwater Protection Act, article twelve of this
105 chapter.

106 (j) Any person adversely affected by an order or action
107 by the director pursuant to this section, or aggrieved by
108 the failure or refusal of the director to act within a
109 reasonable time, or by the action of the director in
110 granting or denying a certification or renewal thereof,
111 may appeal to the environmental quality board pursuant
112 to article one, chapter twenty-two-b of this code.

113 (k) The provisions of this section shall apply only to
114 tests and analyses of waste or wastewater subject to
115 regulation by the division of environmental protection.
116 The provisions of this section do not apply to tests or
117 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.

1 This article shall be known and may be cited as the
2 "Private Real Property Protection Act".

§22-1A-2. Legislative findings and purpose.

1 It is the policy of this state that action by the division
2 of environmental protection affecting private real
3 property is subject to such protection as is afforded by
4 the constitutions of the United States and of West
5 Virginia and the principles of nuisance law. The
6 Legislature intends that the division of environmental
7 protection follow certain procedures to ensure constitu-
8 tional protection of private real property rights, while
9 also meeting its obligation to protect the quality of the
10 environment, and reduce the burden on citizens, local
11 governments and this state caused by certain actions
12 affecting private real property. The purpose of this
13 article is to establish an orderly, consistent process that
14 better enables the division to evaluate how potential
15 administrative action by it may affect privately owned
16 real property. It is not the purpose of this article to
17 reduce or expand the scope of private real property
18 protections provided in section nine, article three of the
19 constitution of West Virginia and the fifth and four-
20 teenth amendments of the constitution of the United
21 States, as those provisions have been and may in the
22 future be interpreted by the state and federal courts of
23 competent jurisdiction with respect to such matters for
24 this state.

**§22-1A-3. Actions by division of environmental protec-
tion; requirement for assessment.**

1 (a) Whenever the division of environmental protection
2 considers any action within its statutory authority that
3 is reasonably likely to deprive a private real property
4 owner of his or her property in fee simple or to deprive
5 an owner of all productive use of his or her private real
6 property, it shall prepare an assessment that includes,
7 but need not be limited to, the following:

8 (1) An identification of the risk created by the private
9 real property use, and a description of the environmen-

10 tal, health, safety, or other benefit to be achieved by the
11 proposed action;

12 (2) The anticipated effects, if any, on other real
13 property owners or on the environment if the division
14 does not take the proposed action;

15 (3) An explanation of how the division believes its
16 action advances the purpose of protecting against the
17 risk;

18 (4) The reasons that the division believes that its
19 action is likely to result in requiring the state, under
20 applicable constitutional principles and case law, to
21 compensate the owner of private real property, includ-
22 ing a description of how the action affects the use or
23 value of private real property;

24 (5) Alternatives, if any, to the proposed action that the
25 division believes will fulfill the legal obligations of the
26 division, reduce the impact on the private real property
27 owner and reduce the likelihood of requiring compen-
28 sation; and

29 (6) An estimate of the cost to the state for compen-
30 sation in the event such compensation is required.

31 No assessment is required under this article, unless
32 the West Virginia Supreme Court of Appeals or the
33 United State Supreme Court has under similar factual
34 circumstances required compensation to be paid.

35 (b) In the case of an immediate threat to human
36 health and safety that constitutes an emergency and
37 requires an immediate response, the assessment re-
38 quired by this section may be delayed until after the
39 emergency response is completed.

40 (c) The following do not require an assessment under
41 this section:

42 (1) Licensing or permitting conditions, requirements
43 or limitations to the use of private real property
44 pursuant to any applicable state or federal statutes,
45 rules or regulations; or

46 (2) Rules and emergency rules of the division that are

47 reasonably likely to limit the use of private real property
48 pursuant to any applicable state or federal statutes,
49 rules or regulations; or

50 (3) Enforcement actions undertaken by the division
51 pursuant to any applicable state or federal statutes,
52 rules or regulations.

§22-1A-4. Buffer zones.

1 (a) Prior to the division of environmental protection
2 requiring that a buffer zone be created on private real
3 property, the division shall prepare a report which shall
4 identify the public purpose or policy which is to be
5 served by the creation of the buffer zone and how the
6 creation and maintenance of the buffer zone promotes
7 or fulfills that public purpose or policy. This report is
8 in addition to any other assessment required pursuant
9 to the provisions of this article.

10 (b) Any report made pursuant to this section is public
11 information.

12 (c) In the case of an immediate threat to human health
13 and safety that constitutes an emergency and requires
14 an immediate response, the report required by this
15 section may be delayed until after the emergency
16 response is completed.

§22-1A-5. Remedies.

1 When a court of competent jurisdiction determines
2 that action of the division of environmental protection,
3 within its statutory authority, requires that compensa-
4 tion be paid to a private real property owner pursuant
5 to section nine, article three of the constitution of West
6 Virginia, or the fifth or fourteenth amendments of the
7 constitution of the United States or the principles of
8 nuisance law, the private real property owner is also
9 entitled to his or her reasonable attorney fees and costs:

10 (1) If the court determines that the division failed to
11 perform the assessment required in section three of this
12 article; or

13 (2) If the court determines that the division performed
14 the assessment required in section three of this article

15 but failed to conclude that its action was reasonably
16 likely to require compensation to be paid to the private
17 real property owner.

§22-1A-6. Scope of application.

1 The provisions of this article only apply to the
2 programs administered by the division of environmental
3 protection on the effective date of this article.

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-1. Short title.

§22-2-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

§22-2-3. Definitions.

§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

§22-2-5. Powers and duties of director; program plans and reclamation projects.

§22-2-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

§22-2-7. Liens against reclaimed land; petition by landowners; appeal; priority of liens.

§22-2-8. Filling voids and sealing tunnels.

§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.

§22-2-1. Short title.

1 This article shall be known and cited as the “Aban-
2 doned Mine Lands and Reclamation Act”.

§22-2-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

1 The Legislature finds that there are a substantial
2 number of acres of land throughout the state that were
3 disturbed by surface-mining operations prior to the time
4 of present day effective control and regulation. There
5 was little or no reclamation conducted and the impacts
6 from these unreclaimed lands impose social and eco-
7 nomic costs on residents in nearby and adjoining areas
8 as well as continue to impair environmental quality,
9 prevent or damage the beneficial use of land or water
10 resources, or endanger the health and safety of the
11 public.

12 Further, the Legislature finds and declares that, due
13 to the passage of the federal Surface Mining Control and
14 Reclamation Act of 1977, certain areas within the
15 boundaries of this state do not meet present day
16 standards for reclamation.

17 Further, the Legislature finds that Title IV of the
18 federal Surface Mining Control and Reclamation Act of
19 1977, Public Law 95-87, provides for the collection of
20 thirty-five cents per ton of coal produced from surface-
21 mine operations and fifteen cents per ton of coal
22 produced from underground mine operations in West
23 Virginia to be collected by the secretary of the United
24 States department of the interior until the thirtieth day
25 of September, two thousand four. At least fifty percent
26 of the funds collected are to be allocated directly to the
27 state of West Virginia to accomplish reclamation of
28 abandoned coal mining operations, as of the date the
29 state of West Virginia obtained an approved abandoned
30 mine reclamation plan in accordance with Sections 405
31 and 503 of the federal Surface Mining Control and
32 Reclamation Act of 1977, as amended.

33 Therefore, it is the intent of the Legislature by this
34 article to vest jurisdiction and authority in the director
35 of the division of environmental protection to maintain
36 program approval by, and receipt of funds from, the
37 United States department of the interior to accomplish
38 the desired restoration and reclamation of our land and
39 water resources.

§22-2-3. Definitions.

1 (a) All definitions set forth in article three of this
2 chapter apply to those defined terms which also appear
3 in this article, if applicable.

4 (b) For the purposes of this article the following words
5 have the meanings ascribed to them in this subsection:

6 (1) "Director" means the director of the division of
7 environmental protection or such other person to whom
8 the director has delegated authority or duties pursuant
9 to sections six or eight, article one of this chapter;

10 (2) "Division" means the division of environmental

11 protection; and

12 (3) "Secretary" means the secretary of the United
13 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
2 under Title IV of the federal Surface Mining Control
3 and Reclamation Act of 1977, as amended, private
4 donations received, any state appropriated or trans-
5 ferred funds, or funds received from the sale of land by
6 the director, under this article shall be deposited with
7 the treasurer of the state of West Virginia to the credit
8 of the abandoned land reclamation fund heretofore
9 created, and expended pursuant to the requirements of
10 this article.

11 (b) Moneys in the fund may be used by the director
12 for the following:

13 (1) Reclamation and restoration of land and water
14 resources adversely affected by past coal surface-mining
15 operations, including, but not limited to, reclamation
16 and restoration of abandoned surface mine areas,
17 abandoned coal processing areas and abandoned coal
18 processing waste areas; sealing and filling abandoned
19 deep mine entries and voids; planting of land adversely
20 affected by past coal surface-mining operations to
21 prevent erosion and sedimentation; prevention, abate-
22 ment, treatment and control of water pollution created
23 by coal mine drainage, including restoration of stream
24 beds and construction and operation of water treatment
25 plants; prevention, abatement and control of burning
26 coal processing waste areas and burning coal in situ;
27 prevention, abatement and control of coal mine subsi-
28 dence; and payment of administrative expenses and all
29 other necessary expenses incurred to accomplish the
30 purpose of this article: *Provided*, That all expenditures
31 from this fund shall reflect the following priorities in
32 the order stated:

33 (A) The protection of public health, safety, general
34 welfare and property from extreme danger of adverse

35 effects of past surface-mining practices;

36 (B) The protection of public health, safety and general
37 welfare from adverse effects of past coal surface-mining
38 practices;

39 (C) The restoration of land and water resources and
40 environment previously degraded by adverse effects of
41 past coal surface-mining practices, including measures
42 for the conservation and development of soil, water
43 (excluding channelization), woodland, fish and wildlife,
44 recreation resources and agricultural productivity;

45 (D) Research and demonstration projects relating to
46 the development of surface-mining reclamation and
47 water quality control program methods and techniques;

48 (E) The protection, repair, replacement, construction
49 or enhancement of public facilities such as utilities,
50 roads, recreation and conservation facilities adversely
51 affected by past coal surface-mining practices; and

52 (F) The development of publicly owned land adversely
53 affected by past coal surface-mining practices, including
54 land acquired as provided in this article for recreation
55 and historic purposes, conservation and reclamation
56 purposes and open space benefits.

57 (2) (A) The director may expend up to thirty percent
58 of the funds allocated to the state in any year through
59 the grants made available under paragraphs (1) and (5),
60 subsection (g) of Section 402 of the federal Surface
61 Mining Control and Reclamation Act of 1977, as
62 amended, for the purpose of protecting, repairing,
63 replacing, constructing or enhancing facilities relating
64 to water supply, including water distribution facilities
65 and treatment plants, to replace water supplies adver-
66 sely affected by coal surface-mining practices.

67 (B) If the adverse effects on water supplies referred
68 to in this subdivision occurred both prior to and after
69 the third day of August, one thousand nine hundred
70 seventy-seven, subsection (c) of this section does not
71 prohibit the state from using funds for the purposes of
72 this subdivision if the director determines that the
73 adverse effects occurred predominantly prior to the

74 third day of August, one thousand nine hundred seventy-
75 seven.

76 (3) The director may receive and retain up to ten
77 percent of the total of the grants made annually to the
78 state under paragraphs (1) and (5), subsection (g) of
79 Section 402 of the federal Surface Mining Control and
80 Reclamation Act of 1977, as amended, if the amounts
81 are deposited to the credit of either:

82 (A) The special account in the state treasury desig-
83 nated the "Reclamation and Restoration Fund" is hereby
84 continued. Moneys in the fund may be expended by the
85 director to achieve the priorities stated in subdivision (1)
86 of this subsection after the thirtieth day of September,
87 one thousand nine hundred ninety-five and for asso-
88 ciated administrative and personnel expenses; or

89 (B) The special account in the state treasury desig-
90 nated the "Acid Mine Drainage Abatement and Treat-
91 ment Fund" is hereby continued. Moneys in the fund
92 may be expended by the director to implement, in
93 consultation with the United States soil conservation
94 service, acid mine drainage abatement and treatment
95 plans approved by the secretary of the United States
96 department of interior and for associated administrative
97 and personnel expenses. The plans shall provide for the
98 comprehensive abatement of the causes and treatment
99 of the effects of acid mine drainage within qualified
100 hydrologic units affected by coal surface-mining
101 practices.

102 (c) Except as provided for in this subsection, lands
103 and water eligible for reclamation or drainage abate-
104 ment expenditures under this article are those which
105 were mined for coal or which were affected by the
106 mining, wastebanks, coal processing or other coal
107 mining processes, and abandoned or left in an inade-
108 quate reclamation status prior to the third day of
109 August, one thousand nine hundred seventy-seven, and
110 for which there is no continuing reclamation responsi-
111 bility: *Provided*, That moneys from the funds made
112 available by the secretary of the United States depart-
113 ment of interior pursuant to paragraphs (1) and (5),

114 subsection (g), Section 402 of the federal Surface Mining
115 Control and Reclamation Act of 1977, as amended, may
116 be expended for the reclamation or drainage abatement
117 of a site that: (1) The surface-mining operation occurred
118 during the period beginning on the fourth day of
119 August, one thousand nine hundred seventy-seven, and
120 ending on or before the twenty-first day of January, one
121 thousand nine hundred eighty-one, and that any funds
122 for reclamation or abatement which are available
123 pursuant to a bond or other financial guarantee or from
124 any other source, and not sufficient to provide for
125 adequate reclamation or abatement of the site; or (2) the
126 surface-mining operation occurred during the period
127 beginning on the fourth day of August, one thousand
128 nine hundred seventy-seven, and ending on or before the
129 fifth day of November, one thousand nine hundred
130 ninety, and that the surety of the surface-mining
131 operation became insolvent during that period, and as
132 of the fifth day of November, one thousand nine hundred
133 ninety, funds immediately available from proceeding
134 relating to the insolvency or from any financial guaran-
135 tees or other sources are not sufficient to provide for
136 adequate reclamation of the site: *Provided, however,*
137 That the director, with the concurrence of the secretary,
138 makes either of the above-stated findings, and that the
139 site is eligible, or more urgent than the reclamation
140 priorities set forth in paragraphs (A) and (B), subdivi-
141 sion (1), subsection (b) of this section.

142 (d) One purpose of this article is to provide additional
143 and cumulative remedies to abate the pollution of the
144 waters of the state and nothing contained in this article
145 abridges or alters rights of action or remedies now or
146 hereafter existing, nor do any provisions in this article
147 or any act done by virtue of this article estop the state,
148 municipalities, public health officers or persons as
149 riparian owners or otherwise in the exercise of their
150 rights to suppress nuisances or to abate any pollution
151 now or hereafter existing or to recover damages.

152 (e) Where the governor certifies that the above
153 objectives of the fund have been achieved and there is
154 a need for construction of specific public facilities in

155 communities impacted by coal development, and other
156 sources of federal funds are inadequate and the secre-
157 tary concurs, then the director may expend money from
158 the fund for the construction.

**§22-2-5. Powers and duties of director; program plans
and reclamation projects.**

1 (a) The director shall submit to the secretary a state
2 reclamation plan and annual projects to carry out the
3 purposes of this article.

4 (b) That reclamation plan shall generally identify the
5 areas to be reclaimed, the purposes for which the
6 reclamation is proposed, the relationship of the lands to
7 be reclaimed and the proposed reclamation to surround-
8 ing areas, the specific criteria for ranking and identi-
9 fying projects to be funded and the legal authority and
10 programmatic capability to perform the work in
11 conformance with the provisions of this article.

12 (c) On an annual basis, the director shall submit to
13 the secretary an application for the support of the state
14 program and implementation of specific reclamation
15 projects. The annual requests shall include information
16 as may be requested by the secretary including:

17 (1) A general description of each proposed project;

18 (2) A priority evaluation of each proposed project;

19 (3) A statement of the estimated benefits in such
20 terms as number of acres restored, miles of stream
21 improved, acres of surface lands protected from subsi-
22 dence, population protected from subsidence, air
23 pollution and hazards of mine and coal refuse disposal
24 area fires;

25 (4) An estimate of the cost for each proposed project;

26 (5) In the case of proposed research and demonstra-
27 tion projects, a description of the specific techniques to
28 be evaluated or objective to be attained;

29 (6) An identification of lands or interest therein to be
30 acquired and the estimated cost; and

31 (7) In each year after the first in which a plan is filed

32 under this article, an inventory of each project funded
33 under the previous year's grant, which inventory shall
34 include details of financial expenditures on the project
35 together with a brief description of the project, includ-
36 ing the project's location, the landowner's name, acreage
37 and the type of reclamation performed.

38 (d) The costs for each proposed project under this
39 section include actual construction costs, actual opera-
40 tion and maintenance costs of permanent facilities,
41 planning and engineering costs, construction inspection
42 costs and other necessary administrative expenses.

**§22-2-6. Acquisition and reclamation of land adversely
affected by past coal surface-mining
practices.**

1 (a) If the director makes a finding of fact that:

2 (1) Land or water resources have been adversely
3 affected by past coal surface-mining practices;

4 (2) The adverse effects are at a stage where, in the
5 public interest, action to restore, reclaim, abate, control
6 or prevent should be taken;

7 (3) The owners of the land or water resources where
8 entry must be made to restore, reclaim, abate, control
9 or prevent the adverse effects of past coal surface-
10 mining practices are not known or readily available; or

11 (4) The owners will not give permission for the
12 director, his or her agents, employees or contractors to
13 enter upon the property to restore, reclaim, abate,
14 control or prevent the adverse effects of past coal
15 surface-mining practices, then, upon giving notice by
16 mail to the owners, if known, or if not known by posting
17 notice upon the premises and advertising once in a
18 newspaper of general circulation in the county in which
19 the land lies, the director, his or her agents, employees
20 or contractors have the right to enter upon the property
21 adversely affected by past coal surface-mining practices
22 and any other property to have access to the property
23 to do all things necessary or expedient to restore,
24 reclaim, abate, control or prevent the adverse effects.
25 The entry shall be construed as an exercise of the police

26 power of the state for the protection of public health,
27 safety and general welfare and shall not be construed
28 as an act of condemnation of property nor of trespass
29 thereon. The moneys expended for the work and the
30 benefits accruing to any premises so entered upon is
31 chargeable against the land and mitigates or offsets any
32 claim in or any action brought by any owner of any
33 interest in the premises for any alleged damages by
34 virtue of the entry: *Provided*, That this provision is not
35 intended to create new rights of action or eliminate
36 existing immunities.

37 (b) The director, his or her agents, employees or
38 contractors have the right to enter upon any property
39 for the purpose of conducting studies or exploratory
40 work to determine the existence of adverse effects of
41 past coal surface-mining practices and to determine the
42 feasibility of restoration, reclamation, abatement,
43 control or prevention of the adverse effects. The entry
44 shall be construed as an exercise of the police power of
45 the state for the protection of public health, safety and
46 general welfare and shall not be construed as an act of
47 condemnation of property nor trespass thereon.

48 (c) The director may acquire any land by purchase,
49 donation or condemnation, which is adversely affected
50 by past coal surface-mining practices, if the director
51 determines that acquisition of the land is necessary to
52 successful reclamation and that:

53 (1) The acquired land, after restoration, reclamation,
54 abatement, control or prevention of the adverse effects
55 of past coal surface-mining practices will serve recrea-
56 tion, historic, conservation or reclamation purposes or
57 provide open space benefits;

58 (2) Permanent facilities such as a treatment plant or
59 a relocated stream channel will be constructed on the
60 land for the restoration, reclamation, abatement, control
61 or prevention of the adverse effects of past coal surface-
62 mining practices; or

63 (3) Acquisition of coal refuse disposal sites and all coal
64 refuse thereon will serve the purposes of this article or
65 that public ownership is desirable to meet emergency

66 situations and prevent recurrences of the adverse effects
67 of past coal surface-mining practices.

68 (d) Title to all lands acquired pursuant to this section
69 shall be in the name of the state of West Virginia, by
70 the West Virginia division of environmental protection.
71 The price paid for land acquired under this section shall
72 reflect the fair market value of the land as adversely
73 affected by past coal surface-mining practices.

74 (e) The director is hereby authorized to transfer land
75 obtained under subsection (c) of this section to the
76 secretary. The director may purchase the land from the
77 secretary after reclamation at the fair market value less
78 the state's original acquisition price.

79 (f) The director may accept and local political
80 subdivisions may transfer to the director land belonging
81 to them to carry out the purposes set out in this article
82 and in that event they have a preferential right to
83 purchase the land after reclamation at the fair market
84 value less the political subdivision's cost of acquisition,
85 but at no time shall the director sell the land to a
86 political subdivision at a price less than the cost of the
87 acquisition and reclamation of the land: *Provided*, That
88 if any land sold to a political subdivision under this
89 subsection is not used for a valid public purpose as
90 specified by the director in the terms and conditions of
91 the sales agreement, then all rights, title and interest
92 in the land revert to the West Virginia division of
93 environmental protection. Any moneys received from
94 the sale shall be deposited in the abandoned land
95 reclamation fund.

96 (g) Where land acquired pursuant to this section is
97 considered to be suitable for industrial, commercial,
98 residential or recreational development, the director
99 may sell the land by public sale under a system of
100 competitive bidding at not less than fair market value
101 and pursuant to rules promulgated to ensure that the
102 lands are put to proper use consistent with state and
103 local land use plans.

104 (h) The director, if requested and after appropriate
105 public notice, shall hold a public hearing in the county

106 in which land acquired pursuant to this section is
107 located. The hearing shall be held at a time which
108 affords local citizens and government the maximum
109 opportunity to participate in the decision concerning the
110 use and disposition of the land after restoration,
111 reclamation, abatement, control or prevention of the
112 adverse effects of past coal surface-mining practices.

113 (i) In addition to the authority to acquire land under
114 other provisions of this section, the director is authorized
115 to use money in the fund to acquire land from any
116 federal, state or local government or from a political
117 subdivision thereof, or from any person, firm, associa-
118 tion or corporation, if he or she determines that such is
119 an integral and necessary element of an economically
120 feasible plan for the project to construct or rehabilitate
121 housing for persons disabled as the result of employment
122 in the mines or work incidental thereto, persons
123 displaced by acquisition of land pursuant to this section,
124 or persons dislocated as the result of adverse effects of
125 coal surface-mining practices which constitute an
126 emergency as provided in section 410 of the federal
127 Surface Mining Control and Reclamation Act of 1977,
128 as amended, or persons dislocated as the result of
129 natural disasters or catastrophic failures from any
130 cause. The activities shall be accomplished under such
131 terms and conditions as the director requires, which
132 may include transfers of land with or without monetary
133 consideration: *Provided*, That to the extent that the
134 consideration is below the fair market value of the land
135 transferred, no portion of the difference between the fair
136 market value and the consideration shall accrue as a
137 profit to such persons, firm, association or corporation.
138 No part of the funds provided under this article may be
139 used to pay the actual construction costs of housing. The
140 director may carry out the purposes of this subsection
141 directly or he or she may make grants and commitments
142 for grants, and may advance money under such terms
143 and conditions as he or she may require to any depart-
144 ment, agency or political subdivision of this state, or any
145 public body or nonprofit organization designated by the
146 director.

§22-2-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

1 (a) Within six months after the completion of a project
2 to restore, reclaim, abate, control or prevent adverse
3 effects of past coal surface-mining practices on a
4 privately owned land, the director shall itemize the
5 moneys so expended and may file a statement thereof
6 in the office of the clerk of the county commission in the
7 county in which the land lies, together with a notarized
8 appraisal by an independent appraiser of the value of
9 the land before the restoration, reclamation, abatement,
10 control or prevention of adverse effects of past coal
11 surface-mining practices, if the moneys so expended
12 result in a significant increase in property value. The
13 statement constitutes a lien upon the land. The lien shall
14 not exceed the amount determined by the appraisal to
15 be the increase in the market value of the land as a
16 result of the restoration, reclamation, abatement, control
17 or prevention of the adverse effects of past coal surface-
18 mining practices. No lien may be filed against the
19 property of any person in accordance with this subsection,
20 who owned the surface prior to the second day of
21 May, one thousand nine hundred seventy-seven, and who
22 neither consented to, nor participated in, nor exercised
23 control over the mining operation which necessitated the
24 reclamation performed hereunder.

25 (b) The landowner may petition the director within
26 sixty days of the filing of the lien to determine the
27 increase in the market value of the land as a result of
28 the restoration, reclamation, abatement, control or
29 prevention of the adverse effects of past coal surface-
30 mining practices. The amount reported to be the
31 increase in value of the premises is the amount of lien
32 and shall be recorded with the statement herein
33 provided. Any party aggrieved by the decision may
34 appeal to the circuit court of the county in which the
35 land is located.

36 (c) The statement filed pursuant to subsection (a) of
37 this section is a lien upon the land as of the date of the
38 expenditure of the moneys and has priority as a lien
39 second only to the lien of real estate taxes imposed upon
40 the land.

§22-2-8. Filling voids and sealing tunnels.

1 (a) The Legislature declares that voids, open and
2 abandoned tunnels, shafts and entryways and subsi-
3 dence resulting from any previous coal surface-mining
4 operation are a hazard to the public welfare and safety
5 and that surface impacts of any underground or surface-
6 mining operation may degrade the environment. The
7 director is authorized to fill the voids, seal the aban-
8 doned tunnels, shafts and entryways, and reclaim
9 surface impacts of underground or surface mines and
10 remove water and other matter from mines which the
11 director determines could endanger life and property,
12 are a hazard to the public welfare and safety or degrade
13 the environment.

14 (b) In those instances where coal mine waste piles are
15 being reworked for conservation purposes, the incre-
16 mental costs of disposing of the wastes from such
17 operations by filling voids and sealing tunnels may be
18 eligible for funding, if the disposal of those wastes meets
19 the purposes of this article.

20 (c) The director may acquire by purchase, donation,
21 easement or otherwise such interest in land as he or she
22 determines necessary to carry out the provisions of this
23 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.

1 (a) The director is authorized to engage in any work
2 and to do all things necessary and proper, including
3 promulgation of rules , to implement and administer the
4 provisions of this article.

5 (b) The director is authorized to engage in cooperative
6 projects under this article with any other agency of the
7 United States of America, any state, county or munic-
8 ipal agency or subdivision thereof.

9 (c) The director may request the attorney general,
10 who is hereby authorized to initiate, in addition to any

11 other remedies provided for in this article, in any court
 12 of competent jurisdiction, an action in equity for an
 13 injunction to restrain any interference with the exercise
 14 of the right to enter or to conduct any work provided
 15 in this article.

16 (d) The director has the authority to construct and
 17 operate a plant or any facilities for the control and
 18 treatment of water pollution resulting from mine
 19 drainage. The extent of this control and treatment may
 20 be dependent upon the ultimate use of the water:
 21 *Provided*, That this subsection does not repeal or
 22 supersede any portion of the applicable federal or state
 23 water pollution control laws and no control or treatment
 24 under this section may be less than that required under
 25 any applicable federal or state water pollution control
 26 law. The construction of any facilities may include
 27 major interceptors and other facilities appurtenant to
 28 the plant.

29 (e) All departments, boards, commissions and agen-
 30 cies of the state shall cooperate with the director by
 31 providing technical expertise, personnel, equipment,
 32 materials and supplies to implement and administer the
 33 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-departmental cooperation.
- §22-3-3. Definitions.
- §22-3-4. Reclamation; duties and functions of director.
- §22-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
- §22-3-6. Duties of surface-mining reclamation inspectors and inspectors in training.
- §22-3-7. Notice of intention to prospect, requirements therefor; bonding; director's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.
- §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.
- §22-3-9. Permit application requirements and contents.
- §22-3-10. Reclamation plan requirements.
- §22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

- §22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent; expiration of rule; reporting.
- §22-3-13. General environmental protection performance standards for surface mining; variances.
- §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.
- §22-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.
- §22-3-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal.
- §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.
- §22-3-18. Approval, denial, revision and prohibition of permit.
- §22-3-19. Permit revision and renewal requirements; incidental boundary revisions; requirements for transfer; assignment and sale of permit rights; and operator reassignment.
- §22-3-20. Public notice; written objections; public hearings; informal conferences.
- §22-3-21. Decision of director on permit application; hearing thereon.
- §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 underlying land designated unsuitable.
- §22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.
- §22-3-24. Water rights and replacement; waiver of replacement.
- §22-3-25. Citizen suits; order of court; damages.
- §22-3-26. Surface-mining operations not subject to article.
- §22-3-27. Leasing of lands owned by state for surface mining of coal.
- §22-3-28. Special permits for reclamation of existing abandoned coal processing waste piles.
- §22-3-29. Experimental practices.
- §22-3-30. Certification and training of blasters.
- §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
- 2 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

2 economic and social well-being of the citizens of the state
3 of West Virginia to strike a careful balance between the
4 protection of the environment and the economical
5 mining of coal needed to meet energy requirements.

6 Further, the Legislature finds that there is great
7 diversity in terrain, climate, biological, chemical and
8 other physical conditions in parts of this nation where
9 mining is conducted; that the state of West Virginia in
10 particular needs an environmentally sound and econom-
11 ically healthy mining industry; and by reason of the
12 above it may be necessary for the director to promulgate
13 rules which vary from federal regulations as is provided
14 for in sections 101 (f) and 201 (c)(9) of the federal
15 Surface Mining Control and Reclamation Act of 1977,
16 as amended, "Public Law 95-87."

17 Further, the Legislature finds that unregulated
18 surface coal mining operations may result in disturban-
19 ces of surface and underground areas that burden and
20 adversely affect commerce, public welfare and safety by
21 destroying or diminishing the utility of land for
22 commercial, industrial, residential, recreational, agri-
23 cultural and forestry purposes; by causing erosion and
24 landslides; by contributing to floods; by polluting the
25 water and river and stream beds; by destroying fish,
26 aquatic life and wildlife habitats; by impairing natural
27 beauty; by damaging the property of citizens; by
28 creating hazards dangerous to life and property; and by
29 degrading the quality of life in local communities, all
30 where proper mining and reclamation is not practiced.

31 (b) Therefore, it is the purpose of this article to:

32 (1) Expand the established and effective statewide
33 program to protect the public and the environment from
34 the adverse effects of surface-mining operations;

35 (2) Assure that the rights of surface and mineral
36 owners and other persons with legal interest in the land
37 or appurtenances to land are adequately protected from
38 such operations;

39 (3) Assure that surface-mining operations are not
40 conducted where reclamation as required by this article
41 is not feasible;

42 (4) Assure that surface-mining operations are con-
43 ducted in a manner to adequately protect the
44 environment;

45 (5) Assure that adequate procedures are undertaken
46 to reclaim surface areas as contemporaneously as
47 possible with the surface-mining operations;

48 (6) Assure that adequate procedures are provided for
49 public participation where appropriate under this
50 article;

51 (7) Assure the exercise of the full reach of state
52 common law, statutory and constitutional powers for the
53 protection of the public interest through effective
54 control of surface-mining operations; and

55 (8) Assure that the coal production essential to the
56 nation's energy requirements and to the state's economic
57 and social well-being is provided.

58 (c) In recognition of these findings and purposes, the
59 Legislature hereby vests authority in the director of the
60 division of environmental protection to:

61 (1) Administer and enforce the provisions of this
62 article as it relates to surface mining to accomplish the
63 purposes of this article;

64 (2) Conduct hearings and conferences or appoint
65 persons to conduct them in accordance with this article;

66 (3) Promulgate, administer and enforce rules pursu-
67 ant to this article;

68 (4) Enter into a cooperative agreement with the
69 secretary of the United States department of the interior
70 to provide for state regulation of surface-mining
71 operations on federal lands within West Virginia
72 consistent with section 523 of the federal Surface
73 Mining Control and Reclamation Act of 1977, as
74 amended; and

75 (5) Administer and enforce rules promulgated pursu-
76 ant to this chapter to accomplish the requirements of
77 programs under the federal Surface Mining Control and
78 Reclamation Act of 1977, as amended.

79 (d) The director of the division of environmental
80 protection and the director of the office of miners'
81 health, safety and training shall cooperate with respect
82 to each agency's programs and records to effect an
83 orderly and harmonious administration of the provisions
84 of this article. The director of the division of environ-
85 mental protection may avail himself or herself of any
86 services which may be provided by other state agencies
87 in this state and other states or by agencies of the
88 federal government, and may reasonably compensate
89 them for such services. Also, he or she may receive any
90 federal funds, state funds or any other funds, and enter
91 into cooperative agreements, for the reclamation of land
92 affected by surface mining.

§22-3-3. Definitions.

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

3 (a) "Adequate treatment" means treatment of water
4 by physical, chemical or other approved methods in a
5 manner so that the treated water does not violate the
6 effluent limitations or cause a violation of the water
7 quality standards established for the river, stream or
8 drainway into which such water is released.

9 (b) "Affected area" means, when used in the context
10 of surface-mining activities, all land and water resour-
11 ces within the permit area which are disturbed or
12 utilized during the term of the permit in the course of
13 surface-mining and reclamation activities. "Affected
14 area" means, when used in the context of underground
15 mining activities, all surface land and water resources
16 affected during the term of the permit: (1) By surface
17 operations or facilities incident to underground mining
18 activities; or (2) by underground operations.

19 (c) "Adjacent areas" means, for the purpose of permit
20 application, renewal, revision, review and approval,
21 those land and water resources, contiguous to or near
22 a permit area, upon which surface-mining and reclama-
23 tion operations conducted within a permit area during
24 the life of such operations may have an impact.
25 "Adjacent areas" means, for the purpose of conducting

26 surface-mining and reclamation operations, those land
27 and water resources contiguous to or near the affected
28 area upon which surface-mining and reclamation
29 operations conducted within a permit area during the
30 life of such operations may have an impact.

31 (d) "Applicant" means any person who has or should
32 have applied for any permit pursuant to this article.

33 (e) "Approximate original contour" means that
34 surface configuration achieved by the backfilling and
35 grading of the disturbed areas so that the reclaimed
36 area, including any terracing or access roads, closely
37 resembles the general surface configuration of the land
38 prior to mining and blends into and complements the
39 drainage pattern of the surrounding terrain, with all
40 highwalls and spoil piles eliminated: *Provided*, That
41 water impoundments may be permitted pursuant to
42 subdivision (8), subsection (b), section thirteen of this
43 article: *Provided, however*, That minor deviations may
44 be permitted in order to minimize erosion and sedimen-
45 tation, retain moisture to assist revegetation, or to direct
46 surface runoff.

47 (f) "Assessment officer" means an employee of the
48 division, other than a surface-mining reclamation
49 supervisor, inspector or inspector-in-training, appointed
50 by the director to issue proposed penalty assessments
51 and to conduct informal conferences to review notices,
52 orders and proposed penalty assessments.

53 (g) "Breakthrough" means the release of water which
54 has been trapped or impounded, or the release of air into
55 any underground cavity, pocket or area as a result of
56 surface-mining operations.

57 (h) "Coal processing wastes" means earth materials
58 which are or have been combustible, physically unstable
59 or acid-forming or toxic-forming, which are wasted or
60 otherwise separated from product coal, and slurried or
61 otherwise transported from coal processing plants after
62 physical or chemical processing, cleaning or concentrat-
63 ing of coal.

64 (i) "Director" means the director of the division of

65 environmental protection or such other person to whom
66 the director has delegated authority or duties pursuant
67 to sections six or eight, article one of this chapter.

68 (j) "Disturbed area" means an area where vegetation,
69 topsoil or overburden has been removed or placed by
70 surface-mining operations, and reclamation is
71 incomplete.

72 (k) "Division" means the division of environmental
73 protection.

74 (l) "Imminent danger to the health or safety of the
75 public" means the existence of such condition or
76 practice, or any violation of a permit or other require-
77 ment of this article, which condition, practice or
78 violation could reasonably be expected to cause substan-
79 tial physical harm or death to any person outside the
80 permit area before such condition, practice or violation
81 can be abated. A reasonable expectation of death or
82 serious injury before abatement exists if a rational
83 person, subjected to the same conditions or practices
84 giving rise to the peril, would not expose the person to
85 the danger during the time necessary for the abatement.

86 (m) "Minerals" means clay, coal, flagstone, gravel,
87 limestone, manganese, sand, sandstone, shale, iron ore
88 and any other metal or metallurgical ore.

89 (n) "Operation" means those activities conducted by an
90 operator who is subject to the jurisdiction of this article.

91 (o) "Operator" means any person who is granted or
92 who should obtain a permit to engage in any activity
93 covered by this article and any rule promulgated
94 hereunder and includes any person who engages in
95 surface mining or surface mining and reclamation
96 operations, or both. The term shall also be construed in
97 a manner consistent with the federal program pursuant
98 to the federal Surface Mining Control and Reclamation
99 Act of 1977, as amended.

100 (p) "Permit" means a permit to conduct surface-
101 mining operations pursuant to this article.

102 (q) "Permit area" means the area of land indicated on

103 the approved proposal map submitted by the operator
104 as part of the operator's application showing the location
105 of perimeter markers and monuments and shall be
106 readily identifiable by appropriate markers on the site.

107 (r) "Permittee" means a person holding a permit
108 issued under this article.

109 (s) "Person" means any individual, partnership, firm,
110 society, association, trust, corporation, other business
111 entity or any agency, unit or instrumentality of federal,
112 state or local government.

113 (t) "Prime farmland" has the same meaning as that
114 prescribed by the United States secretary of agriculture
115 on the basis of such factors as moisture availability,
116 temperature regime, chemical balance, permeability,
117 surface layer composition, susceptibility to flooding and
118 erosion characteristics, and which historically have been
119 used for intensive agricultural purposes and as pub-
120 lished in the federal register.

121 (u) "Surface mine", "surface mining" or "surface-
122 mining operations" means:

123 (1) Activities conducted on the surface of lands for the
124 removal of coal, or, subject to the requirements of
125 section fourteen of this article, surface operations and
126 surface impacts incident to an underground coal mine,
127 including the drainage and discharge therefrom. Such
128 activities include: Excavation for the purpose of
129 obtaining coal, including, but not limited to, such
130 common methods as contour, strip, auger, mountaintop
131 removal, box cut, open pit and area mining; the uses of
132 explosives and blasting; reclamation; in situ distillation
133 or retorting, leaching or other chemical or physical
134 processing; the cleaning, concentrating or other process-
135 ing or preparation and loading of coal for commercial
136 purposes at or near the mine site; and

137 (2) The areas upon which the above activities occur
138 or where such activities disturb the natural land
139 surface. Such areas shall also include any adjacent land,
140 the use of which is incidental to any such activities; all
141 lands affected by the construction of new roads or the

142 improvement or use of existing roads to gain access to
143 the site of such activities and for haulage; and excava-
144 tions, workings, impoundments, dams, ventilation
145 shafts, entryways, refuse banks, dumps, stockpiles,
146 overburden piles, spoil banks, culm banks, tailings,
147 holes or depressions, repair areas, storage areas,
148 processing areas, shipping areas and other areas upon
149 which are sited structures, facilities, or other property
150 or materials on the surface, resulting from or incident
151 to such activities: *Provided*, That such activities do not
152 include the extraction of coal incidental to the extraction
153 of other minerals where coal does not exceed sixteen and
154 two-thirds percent of the tonnage of minerals removed
155 for purposes of commercial use or sale, or coal prospect-
156 ing subject to section seven of this article.

157 (v) "Underground mine" means the surface effects
158 associated with the shaft, slopes, drifts or inclines
159 connected with excavations penetrating coal seams or
160 strata and the equipment connected therewith which
161 contribute directly or indirectly to the mining, prepa-
162 ration or handling of coal.

163 (w) "Significant, imminent environmental harm to
164 land, air or water resources" means the existence of any
165 condition or practice, or any violation of a permit or
166 other requirement of this article, which condition,
167 practice or violation could reasonably be expected to
168 cause significant and imminent environmental harm to
169 land, air or water resources. The term "environmental
170 harm" means any adverse impact on land, air or water
171 resources, including, but not limited to, plant, wildlife
172 and fish, and the environmental harm is imminent if a
173 condition or practice exists which is causing such harm
174 or may reasonably be expected to cause such harm at
175 any time before the end of the abatement time set by
176 the director. An environmental harm is significant if
177 that harm is appreciable and not immediately repair-
178 able.

§22-3-4. Reclamation; duties and functions of director.

- 1 (a) The director shall administer the provisions of this
- 2 article relating to surface-mining operations. The

3 director has within his or her jurisdiction and supervi-
4 sion all lands and areas of the state, mined or susceptible
5 of being mined, for the removal of coal and all other
6 lands and areas of the state deforested, burned over,
7 barren or otherwise denuded, unproductive and subject
8 to soil erosion and waste. Included within such lands and
9 areas are lands seared and denuded by chemical
10 operations and processes, abandoned coal mining areas,
11 swamplands, lands and areas subject to flowage ease-
12 ments and backwaters from river locks and dams, and
13 river, stream, lake and pond shore areas subject to soil
14 erosion and waste. The jurisdiction and supervision
15 exercised by the director shall be consistent with other
16 provisions of this chapter.

17 (b) The director has the authority to:

18 (1) Promulgate rules, in accordance with the provi-
19 sions of chapter twenty-nine-a of this code, to implement
20 the provisions of this article: *Provided*, That the director
21 shall give notice by publication of the public hearing
22 required in article three, chapter twenty-nine-a of this
23 code: *Provided, however*, That any forms, handbooks or
24 similar materials having the effect of a rule as defined
25 in article three, chapter twenty-nine-a of this code were
26 issued, developed or distributed by the director pursu-
27 ant to or as a result of a rule are subject to the provisions
28 of article three, chapter twenty-nine-a of this code;

29 (2) Make investigations or inspections necessary to
30 ensure complete compliance with the provisions of this
31 code;

32 (3) Conduct hearings or appoint persons to conduct
33 hearings under provisions of this article or rules adopted
34 by the director; and for the purpose of any investigation
35 or hearing hereunder, the director or his or her
36 designated representative, may administer oaths or
37 affirmations, subpoena witnesses, compel their attend-
38 ance, take evidence and require production of any books,
39 papers, correspondence, memoranda, agreements, or
40 other documents or records relevant or material to the
41 inquiry;

42 (4) Enforce the provisions of this article as provided

43 herein; and

44 (5) Appoint such advisory committees as may be of
45 assistance to the director in the development of pro-
46 grams and policies: *Provided*, That such advisory
47 committees shall, in each instance, include members
48 representative of the general public.

49 (c) (1) After the director has adopted the rules
50 required by this article, any person may petition the
51 director to initiate a proceeding for the issuance,
52 amendment or appeal of a rule under this article.

53 (2) The petition shall be filed with the director and
54 shall set forth the facts which support the issuance,
55 amendment or appeal of a rule under this article.

56 (3) The director may hold a public hearing or may
57 conduct such investigation or proceeding as he or she
58 considers appropriate in order to determine whether the
59 petition should be granted or denied.

60 (4) Within ninety days after filing of a petition
61 described in subdivision (1) of this subsection, the
62 director shall either grant or deny the petition. If the
63 director grants the petition, he or she shall promptly
64 commence an appropriate proceeding in accordance
65 with the provisions of chapter twenty-nine-a of this code.
66 If the director denies the petition, he or she shall notify
67 the petitioner in writing setting forth the reasons for the
68 denial.

**§22-3-5. Surface-mining reclamation supervisors and
inspectors; appointment and qualifications;
salary.**

1 The director shall determine the number of surface-
2 mining reclamation supervisors and inspectors needed
3 to carry out the purposes of this article and appoint
4 them as such. All such appointees shall be qualified civil
5 service employees, but no person is eligible for such
6 appointment until he or she has served in a probationary
7 status for a period of six months to the satisfaction of
8 the director.

9 Every surface-mining reclamation supervisor shall be

10 paid not less than thirty thousand dollars per year.
11 Every surface-mining reclamation inspector shall be
12 paid not less than twenty-five thousand dollars per year.

§22-3-6. Duties of surface-mining reclamation inspectors and inspectors in training.

1 Except as otherwise provided in this article, surface-
2 mining reclamation inspectors and inspectors in train-
3 ing shall make all necessary surveys and inspections of
4 surface-mining operations required by the provisions of
5 this article, shall administer and enforce all surface-
6 mining laws and rules and shall perform such other
7 duties and services as may be prescribed by the director.
8 Such inspectors shall give particular attention to all
9 conditions of each permit to ensure complete compliance
10 therewith. Such inspectors shall note and describe all
11 violations of this article and immediately report such
12 violations to the director in writing, furnishing at the
13 same time a copy of such report to the operator
14 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.

1 (a) Any person intending to prospect for coal in an
2 area not covered by a surface-mining permit, in order
3 to determine the location, quantity or quality of a
4 natural coal deposit, making feasibility studies or for
5 any other purpose, shall file with the director, at least
6 fifteen days prior to commencement of any disturbance
7 associated with prospecting, a notice of intention to
8 prospect, which notice shall include a description of the
9 prospecting area, the period of supposed prospecting
10 and such other information as required by rules
11 promulgated pursuant to this section: *Provided*, That
12 prior to the commencement of such prospecting, the
13 director may issue an order denying or limiting
14 permission to prospect where the director finds that
15 prospecting operations will damage or destroy a unique
16 natural area, or will cause serious harm to water
17 quality, or that the operator has failed to satisfactorily

18 reclaim other prospecting sites, or that there has been
19 an abuse of prospecting by previous prospecting
20 operations in the area.

21 (b) Notice of intention to prospect shall be made in
22 writing on forms prescribed by the director and shall
23 be signed and verified by the applicant. The notice shall
24 be accompanied by (1) a United States geological survey
25 topographic map showing by proper marking the crop
26 line and the name, where known, of the seam or seams
27 to be prospected, and (2) a bond, or cash, or collateral
28 securities or certificates of the same type and form and
29 in the same manner as provided in section eleven of this
30 article, in the amount of five hundred dollars per acre
31 or fraction thereof for the total estimated disturbed
32 area. If such bond is used, it shall be payable to the state
33 of West Virginia and conditioned that the operator
34 faithfully perform the requirements of this article as
35 they relate to backfilling and revegetation of the
36 disturbed area.

37 (c) Any person prospecting under the provisions of
38 this section shall ensure that such prospecting operation
39 is conducted in accordance with the performance
40 standards in section thirteen of this article for all lands
41 disturbed in explorations, including excavations, roads,
42 drill holes, and the removal of necessary facilities and
43 equipment.

44 (d) Information submitted to the director pursuant to
45 this section as confidential, concerning trade secrets or
46 privileged commercial or financial information, which
47 relates to the competitive rights of the person or entity
48 intended to prospect the described area, is not available
49 for public examination.

50 (e) Any person who conducts any prospecting activ-
51 ities which substantially disturb the natural land
52 surface in violation of this section or rules issued
53 pursuant thereto is subject to the provisions of sections
54 sixteen and seventeen of this article.

55 (f) No operator shall remove more than two hundred
56 fifty tons of coal without the specific written approval
57 of the director. Such approval shall be requested by the

58 operator on forms prescribed by the director. The
59 director shall promulgate rules governing such opera-
60 tions and setting forth information required in the
61 application for approval. Each such application shall be
62 accompanied by a two thousand dollar filing fee.

63 (g) The bond accompanying said notice of intention to
64 prospect shall be released by the director when the
65 operator demonstrates that a permanent species of
66 vegetative cover is established.

67 (h) In the event an operator desires to mine the area
68 currently being prospected, and has requested and
69 received an appropriate surface mine application
70 (S.M.A.) number, the director may permit the postpone-
71 ment of the reclamation of the area prospected. Any
72 part of a prospecting operation, where reclamation has
73 not been postponed as provided above, shall be re-
74 claimed within a period of three months from
75 disturbance.

76 (i) For the purpose of this section, the word "prospect"
77 or "prospecting" does not include core drilling related
78 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.**

1 No person may engage in surface-mining operations
2 unless such person has first obtained a permit from the
3 director in accordance with the following:

4 (1) All permits issued pursuant to the requirements
5 of this article shall be issued for a term not to exceed
6 five years: *Provided*, That if the applicant demonstrates
7 that a specified longer term is reasonably needed to
8 allow the applicant to obtain necessary financing for
9 equipment and the opening of the operation, and if the
10 application is full and complete for such specified longer
11 term, the director may extend a permit for such longer
12 term: *Provided, however*, That subject to the prior
13 approval of the director, with such approval being
14 subject to the provisions of subsection (c), section

15 eighteen of this article, a successor in interest to a
16 permittee who applies for a new permit, or transfer of
17 a permit, within thirty days of succeeding to such
18 interest, and who is able to obtain the bond coverage of
19 the original permittee, may continue surface-mining
20 and reclamation operations according to the approved
21 mining and reclamation plan of the original permittee
22 until such successor's permit application or application
23 for transfer is granted or denied.

24 (2) Proof of insurance is required on an annual basis.

25 (3) A permit terminates if the permittee has not
26 commenced the surface-mining operations covered by
27 such permit within three years of the date the permit
28 was issued: *Provided*, That the director may grant
29 reasonable extensions of time upon a timely showing
30 that such extensions are necessary by reason of litigation
31 precluding such commencement, or threatening sub-
32 stantial economic loss to the permittee, or by reason of
33 conditions beyond the control and without the fault or
34 negligence of the permittee: *Provided, however*, That
35 with respect to coal to be mined for use in a synthetic
36 fuel facility or specific major electric generating
37 facility, the permittee shall be deemed to have com-
38 menced surface-mining operations at such time as the
39 construction of the synthetic fuel or generating facility
40 is initiated.

41 (4) Each application for a new surface-mining permit
42 filed pursuant to this article shall be accompanied by
43 a fee of one thousand dollars. All permit fees and
44 renewal fees provided for in this section or elsewhere in
45 this article shall be collected by the director and
46 deposited with the treasurer of the state of West
47 Virginia to the credit of the operating permit fees fund
48 and shall be used, upon requisition of the director, for
49 the administration of this article.

50 (5) Prior to the issuance of any permit, the director
51 shall ascertain from the commissioner of the division of
52 labor whether the applicant is in compliance with
53 section fourteen, article five, chapter twenty-one of this
54 code. Upon issuance of the permit, the director shall

55 forward a copy to the commissioner of the division of
56 labor, who shall assure continued compliance under
57 such permit.

58 (6) Prior to the issuance of any permit, the director
59 shall ascertain from the commissioner of the bureau of
60 employment programs whether the applicant is in
61 compliance with the provisions of section five, article
62 two, chapter twenty-three of this code. If the applicant
63 is not in compliance, then the permit shall not be issued
64 until the applicant returns to compliance: *Provided,*
65 That in all such inquiries the commissioner of the
66 bureau of employment programs shall make response to
67 the division of environmental protection within fifteen
68 calendar days, otherwise failure to respond timely shall
69 be considered to indicate the applicant is in compliance
70 and such failure will not be used to preclude issuance
71 of the permit.

§22-3-9. Permit application requirements and contents.

1 (a) The surface-mining permit application shall
2 contain:

3 (1) The names and addresses of: (A) The permit
4 applicant; (B) the owner of record of the property,
5 surface and mineral, to be mined; (C) the holders of
6 record of any leasehold interest in the property; (D) any
7 purchaser of record of the property under a real estate
8 contract; (E) the operator, if different from the appli-
9 cant; and (F) if any of these are business entities other
10 than a single proprietor, the names and addresses of the
11 principals, officers and resident agent;

12 (2) The names and addresses of the owners of record
13 of all surface and subsurface areas contiguous to any
14 part of the proposed permit area: *Provided,* That all
15 residents living on property contiguous to the proposed
16 permit area shall be notified by the applicant, by
17 registered or certified mail, of such application on or
18 before the first day of publication of the notice provided
19 for in subdivision (6) of this subsection;

20 (3) A statement of any current surface-mining
21 permits held by the applicant in the state and the permit

22 number and each pending application;

23 (4) If the applicant is a partnership, corporation,
24 association or other business entity, the following where
25 applicable: The names and addresses of every officer,
26 partner, resident agent, director or person performing
27 a function similar to a director, together with the names
28 and addresses of any person owning of record ten
29 percent or more of any class of voting stock of the
30 applicant; and a list of all names under which the
31 applicant, officer, director, partner or principal share-
32 holder previously operated a surface-mining operation
33 in the United States within the five-year period
34 preceding the date of submission of the application;

35 (5) A statement of whether the applicant, or any
36 officer, partner, director, principal shareholder of the
37 applicant, any subsidiary, affiliate or persons controlled
38 by or under common control with the applicant, has ever
39 been an officer, partner, director or principal share-
40 holder in a company which has ever held a federal or
41 state mining permit which in the five-year period prior
42 to the date of submission of the application has been
43 permanently suspended or revoked or has had a mining
44 bond or similar security deposited in lieu of bond
45 forfeited and, if so, a brief explanation of the facts
46 involved;

47 (6) A copy of the applicant's advertisement to be
48 published in a newspaper of general circulation in the
49 locality of the proposed permit area at least once a week
50 for four successive weeks. The advertisement shall
51 contain in abbreviated form the information required by
52 this section including the ownership and map of the
53 tract location and boundaries of the proposed site so that
54 the proposed operation is readily locatable by local
55 residents, the location of the office of the division where
56 the application is available for public inspection and
57 stating that written protests will be accepted by the
58 director until a certain date which is at least thirty days
59 after the last publication of the applicant's
60 advertisement;

61 (7) A description of the type and method of surface-

62 mining operation that exists or is proposed, the engi-
63 neering techniques used or proposed, and the equipment
64 used or proposed to be used;

65 (8) The anticipated starting and termination dates of
66 each phase of the surface-mining operation and the
67 number of acres of land to be affected;

68 (9) A description of the legal documents upon which
69 the applicant's legal right to enter and conduct surface-
70 mining operations on the proposed permit area is based
71 and whether that right is the subject of pending court
72 litigation: *Provided*, That nothing in this article may be
73 construed as vesting in the director the jurisdiction to
74 adjudicate property-rights disputes;

75 (10) The name of the watershed and location of the
76 surface stream or tributary into which surface and pit
77 drainage will be discharged;

78 (11) A determination of the probable hydrologic
79 consequences of the mining and reclamation operations,
80 both on and off the mine site, with respect to the
81 hydrologic regime, quantity and quality of water in
82 surface and groundwater systems, including the dis-
83 solved and suspended solids under seasonal flow
84 conditions and the collection of sufficient data for the
85 mine site and surrounding areas so that an assessment
86 can be made by the director of the probable cumulative
87 impacts of all anticipated mining in the area upon the
88 hydrology of the area, and particularly upon water
89 availability: *Provided*, That this determination is not
90 required until such time as hydrologic information on
91 the general area prior to mining is made available from
92 an appropriate federal or state agency or, if existing and
93 in the possession of the applicant, from the applicant:
94 *Provided, however*, That the permit application shall not
95 be approved until the information is available and is
96 incorporated into the application;

97 (12) Accurate maps to an appropriate scale clearly
98 showing: (A) The land to be affected as of the date of
99 application; (B) the area of land within the permit area
100 upon which the applicant has the legal right to enter
101 and conduct surface-mining operations; and (C) all types

102 of information set forth on enlarged topographical maps
103 of the United States geological survey of a scale of
104 1:24,000 or larger, including all man-made features and
105 significant known archaeological sites existing on the
106 date of application. In addition to other things specified
107 by the director, the map shall show the boundary lines
108 and names of present owners of record of all surface
109 areas abutting the proposed permit area and the
110 location of all structures within one thousand feet of the
111 proposed permit area;

112 (13) Cross-section maps or plans of the proposed
113 affected area, including the actual area to be mined,
114 prepared by or under the direction of and certified by
115 a person approved by the director, showing pertinent
116 elevation and location of test borings or core samplings,
117 where required by the director, and depicting the
118 following information: (A) The nature and depth of the
119 various strata or overburden; (B) the location of
120 subsurface water, if encountered, and its quality; (C) the
121 nature and thickness of any coal or rider seams above
122 the seam to be mined; (D) the nature of the stratum
123 immediately beneath the coal seam to be mined; (E) all
124 mineral crop lines and the strike and dip of the coal to
125 be mined, within the area of land to be affected; (F)
126 existing or previous surface-mining limits; (G) the
127 location and extent of known workings of any under-
128 ground mines, including mine openings to the surface;
129 (H) the location of any significant aquifers; (I) the
130 estimated elevation of the water table; (J) the location
131 of spoil, waste or refuse areas and topsoil preservation
132 areas; (K) the location of all impoundments for waste or
133 erosion control; (L) any settling or water treatment
134 facility or drainage system; (M) constructed or natural
135 drainways and the location of any discharges to any
136 surface body of water on the area of land to be affected
137 or adjacent thereto; and (N) adequate profiles at
138 appropriate cross sections of the anticipated final
139 surface configuration that will be achieved pursuant to
140 the operator's proposed reclamation plan;

141 (14) A statement of the result of test borings or core
142 samples from the permit area, including: (A) Logs of the

143 drill holes; (B) the thickness of the coal seam to be mined
144 and analysis of the chemical and physical properties of
145 the coal; (C) the sulfur content of any coal seam; (D)
146 chemical analysis of potentially acid or toxic forming
147 sections of the overburden; and (E) chemical analysis of
148 the stratum lying immediately underneath the coal to
149 be mined: *Provided*, That the provisions of this subdi-
150 vision may be waived by the director with respect to the
151 specific application by a written determination that
152 such requirements are unnecessary;

153 (15) For those lands in the permit application which
154 a reconnaissance inspection suggests may be prime
155 farmlands, a soil survey shall be made or obtained
156 according to standards established by the secretary of
157 agriculture in order to confirm the exact location of such
158 prime farmlands;

159 (16) A reclamation plan as presented in section ten of
160 this article;

161 (17) Information pertaining to coal seams, test
162 borings, core samplings or soil samples as required by
163 this section shall be made available to any person with
164 an interest which is or may be adversely affected:
165 *Provided*, That information which pertains only to the
166 analysis of the chemical and physical properties of the
167 coal, except information regarding mineral or elemental
168 content which is potentially toxic to the environment,
169 shall be kept confidential and not made a matter of
170 public record;

171 (18) When requested by the director, the climatolog-
172 ical factors that are peculiar to the locality of the land
173 to be affected, including the average seasonal precipi-
174 tation, the average direction and velocity of prevailing
175 winds, and the seasonal temperature ranges; and

176 (19) Other information that may be required by rules
177 reasonably necessary to effectuate the purposes of this
178 article.

179 (b) If the director finds that the probable total annual
180 production at all locations of any coal surface-mining
181 operator will not exceed three hundred thousand tons,

182 the determination of probable hydrologic consequences
183 including the engineering analyses and designs neces-
184 sary as required by this article or rules promulgated
185 thereunder; the development of cross-section maps and
186 plans as required by this article or rules promulgated
187 thereunder; the geologic drilling and statement of
188 results of test borings and core samplings as required
189 by this article or rules promulgated thereunder;
190 preblast surveys required by this article or rules
191 promulgated thereunder; the collection of site-specific
192 resource information and production of protection and
193 enhancement plans for fish and wildlife habitats and
194 other environmental values required by this article or
195 rules promulgated thereunder; and the collection of
196 archaeological and historical information required by
197 this article and rules promulgated thereunder and any
198 other archaeological and historical information required
199 by the federal department of the interior and the
200 preparation of plans that may be necessitated thereby
201 shall, upon the written request of the operator, be
202 performed by a qualified public or private laboratory
203 designated by the director and a reasonable cost of the
204 preparation of such determination and statement shall
205 be assumed by the division from funds provided by the
206 United States department of the interior pursuant to the
207 federal Surface Mining Control and Reclamation Act of
208 1977, as amended.

209 (c) Before the first publication of the applicant's
210 advertisement, each applicant for a surface-mining
211 permit shall file, except for that information pertaining
212 to the coal seam itself, a copy of the application for
213 public inspection in the nearest office of the division as
214 specified in the applicant's advertisement.

215 (d) Each applicant for a permit shall be required to
216 submit to the director as a part of the permit application
217 a certificate issued by an insurance company authorized
218 to do business in this state covering the surface-mining
219 operation for which the permit is sought, or evidence
220 that the applicant has satisfied state self-insurance
221 requirements. The policy shall provide for personal
222 injury and property damage protection in an amount

223 adequate to compensate any persons damaged as a
224 result of surface coal mining and reclamation opera-
225 tions, including use of explosives, and entitled to
226 compensation under the applicable provisions of state
227 law. The policy shall be maintained in full force and
228 effect during the terms of the permit or any renewal,
229 including the length of all reclamation operations.

230 (e) Each applicant for a surface-mining permit shall
231 submit to the director as part of the permit application
232 a blasting plan where explosives are to be used, which
233 shall outline the procedures and standards by which the
234 operator will meet the provisions of the blasting
235 performance standards.

236 (f) The applicant shall file as part of the permit
237 application a schedule listing all notices of violation,
238 bond forfeitures, permit revocations, cessation orders or
239 permanent suspension orders resulting from a violation
240 of the federal Surface Mining Control and Reclamation
241 Act of 1977, as amended, this article or any law or
242 regulation of the United States or any department or
243 agency of any state pertaining to air or environmental
244 protection received by the applicant in connection with
245 any surface-mining operation during the three-year
246 period prior to the date of application, and indicating
247 the final resolution of any notice of violation, forfeiture,
248 revocation, cessation or permanent suspension.

249 (g) Within five working days of receipt of an appli-
250 cation for a permit, the director shall notify the operator
251 in writing, stating whether the application is adminis-
252 tratively complete and whether the operator's advertise-
253 ment may be published. If the application is not
254 administratively complete, the director shall state in
255 writing why the application is not administratively
256 complete.

§22-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a
2 surface-mining permit application shall include, in the
3 degree of detail necessary to demonstrate that reclama-
4 tion required by this article can be accomplished, a
5 statement of:

6 (1) The identification of the lands subject to surface
7 mining over the estimated life of these operations and
8 the size, sequence and timing of the operations for which
9 it is anticipated that individual permits for mining will
10 be sought;

11 (2) The condition of the land to be covered by the
12 permit prior to any mining, including: (A) The uses
13 existing at the time of the application and, if such land
14 has a history of previous mining, the uses which
15 preceded any mining; (B) the capability of the land prior
16 to any mining to support a variety of uses, giving
17 consideration to soil and foundation characteristics,
18 topography and vegetation cover and, if applicable, a
19 soil survey prepared pursuant to subdivision (15),
20 subsection (a), section nine of this article; and (C) the
21 best information available on the productivity of the
22 land prior to mining, including appropriate classifica-
23 tion as prime farmlands, and the average yield of food,
24 fiber, forage or wood products from such lands obtained
25 under high levels of management;

26 (3) The use which is proposed to be made of the land
27 following reclamation, including a discussion of the
28 utility and capacity of the reclaimed land to support a
29 variety of alternative uses and the relationship of such
30 use to existing land use policies and plans, and the
31 comments of any owner of the surface, other state
32 agencies and local governments, which would have to
33 initiate, implement, approve or authorize the proposed
34 use of the land following reclamation;

35 (4) A detailed description of how the proposed
36 postmining land use is to be achieved and the necessary
37 support activities which may be needed to achieve the
38 proposed land use;

39 (5) The engineering techniques proposed to be used in
40 mining and reclamation and a description of the major
41 equipment; a plan for the control of surface water
42 drainage and of water accumulation; a plan where
43 appropriate, for backfilling, soil stabilization and
44 compacting, grading, revegetation and a plan for soil
45 reconstruction, replacement and stabilization pursuant

46 to the performance standards in subdivision (7), subsection
47 tion (b), section thirteen of this article for those food,
48 forage and forest lands identified therein; and a
49 statement as to how the operator plans to comply with
50 each of the applicable requirements set out in section
51 thirteen or fourteen of this article;

52 (6) A detailed estimated timetable for the accomplishment
53 of each major step in the reclamation plan;

54 (7) The consideration which has been given to
55 conducting surface-mining operations in a manner
56 consistent with surface owner plans and applicable state
57 and local land use plans and programs;

58 (8) The steps to be taken to comply with applicable
59 air and water quality laws and rules and any applicable
60 health and safety standards;

61 (9) The consideration which has been given to
62 developing the reclamation plan in a manner consistent
63 with local physical environmental and climatological
64 conditions;

65 (10) All lands, interests in lands or options on such
66 interests held by the applicant or pending bids on
67 interests in lands by the applicant, which lands are
68 contiguous to the area to be covered by the permit;

69 (11) A detailed description of the measures to be taken
70 during the surface-mining and reclamation process to
71 assure the protection of: (A) The quality of surface and
72 groundwater systems, both on and off-site, from adverse
73 effects of the surface-mining operation; (B) the rights of
74 present users to such water; and (C) the quantity of
75 surface and groundwater systems, both on and off-site,
76 from adverse effects of the surface-mining operation or
77 to provide alternative sources of water where such
78 protection of quantity cannot be assured;

79 (12) The results of tests borings which the applicant
80 has made at the area to be covered by the permit, or
81 other equivalent information and data in a form
82 satisfactory to the director, including the location of
83 subsurface water, and an analysis of the chemical
84 properties, including acid forming properties of the

85 mineral and overburden: *Provided*, That information
86 which pertains only to the analysis of the chemical and
87 physical properties of the coal, except information
88 regarding such mineral or elemental contents which are
89 potentially toxic in the environment, shall be kept
90 confidential and not made a matter of public record;

91 (13) The consideration which has been given to
92 maximize the utilization and conservation of the solid
93 fuel resource being recovered so that reffecting the
94 land in the future can be minimized; and

95 (14) Such other requirements as the director may
96 prescribe by rule.

97 (b) The reclamation plan shall be available to the
98 public for review except for those portions thereof
99 specifically exempted in subsection (a) of this section.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

1 (a) After a surface-mining permit application has
2 been approved pursuant to this article, but before a
3 permit has been issued, each operator shall furnish a
4 penal bond, on a form to be prescribed and furnished
5 by the director, payable to the state of West Virginia
6 and conditioned upon the operator faithfully performing
7 all of the requirements of this article and of the permit.
8 The penal amount of the bond shall be one thousand
9 dollars for each acre or fraction thereof. The bond shall
10 cover (1) the entire permit area, or (2) that increment
11 of land within the permit area upon which the operator
12 will initiate and conduct surface-mining and reclama-
13 tion operations within the initial term of the permit. If
14 the operator chooses to use incremental bonding, as
15 succeeding increments of surface mining and reclama-
16 tion operations are to be initiated and conducted within
17 the permit area, the operator shall file with the director
18 an additional bond or bonds to cover such increments
19 in accordance with this section: *Provided*, That once the
20 operator has chosen to proceed with bonding either the
21 entire permit area or with incremental bonding, the

22 operator shall continue bonding in that manner for the
23 term of the permit: *Provided, however,* That the
24 minimum amount of bond furnished shall be ten
25 thousand dollars.

26 (b) The period of liability for bond coverage begins
27 with issuance of a permit and continues for the full term
28 of the permit plus any additional period necessary to
29 achieve compliance with the requirements in the
30 reclamation plan of the permit.

31 (c) (1) The form of the bond shall be approved by the
32 director and may include, at the option of the operator,
33 surety bonding, collateral bonding (including cash and
34 securities), establishment of an escrow account, self-
35 bonding or a combination of these methods. If collateral
36 bonding is used, the operator may elect to deposit cash,
37 or collateral securities or certificates as follows: Bonds
38 of the United States or its possessions, of the federal
39 land bank, or of the homeowners' loan corporation; full
40 faith and credit general obligation bonds of the state of
41 West Virginia, or other states, and of any county,
42 district or municipality of the state of West Virginia or
43 other states; or certificates of deposit in a bank in this
44 state, which certificates shall be in favor of the division.
45 The cash deposit or market value of such securities or
46 certificates shall be equal to or greater than the penal
47 sum of the bond. The director shall, upon receipt of any
48 such deposit of cash, securities or certificates, promptly
49 place the same with the treasurer of the state of West
50 Virginia whose duty it is to receive and hold the same
51 in the name of the state in trust for the purpose for
52 which the deposit is made when the permit is issued.
53 The operator making the deposit is entitled from time
54 to time to receive from the state treasurer, upon the
55 written approval of the director, the whole or any
56 portion of any cash, securities or certificates so depos-
57 ited, upon depositing with him or her in lieu thereof,
58 cash or other securities or certificates of the classes
59 herein specified having value equal to or greater than
60 the sum of the bond.

61 (2) The director may approve an alternative bonding
62 system if it will (A) reasonably assure that sufficient

63 funds will be available to complete the reclamation,
64 restoration and abatement provisions for all permit
65 areas which may be in default at any time, and (B)
66 provide a substantial economic incentive for the permit-
67 tee to comply with all reclamation provisions.

68 (d) The director may accept the bond of the applicant
69 itself without separate surety when the applicant
70 demonstrates to the satisfaction of the director the
71 existence of a suitable agent to receive service of process
72 and a history of financial solvency and continuous
73 operation sufficient for authorization to self-insure.

74 (e) It is unlawful for the owner of surface or mineral
75 rights to interfere with the present operator in the
76 discharge of the operator's obligations to the state for
77 the reclamation of lands disturbed by the operator.

78 (f) All bond releases shall be accomplished in accor-
79 dance with the provisions of section twenty-three of this
80 article.

81 (g) The special reclamation fund previously created is
82 continued. The moneys accrued in the fund, including
83 interest, are reserved solely and exclusively for the
84 purposes set forth in this subsection. The fund shall be
85 administered by the director, and he or she is authorized
86 to expend the moneys in the fund for the reclamation
87 and rehabilitation of lands which were subjected to
88 permitted surface-mining operations and abandoned
89 after the third day of August, one thousand nine
90 hundred seventy-seven, where the amount of the bond
91 posted and forfeited on such land is less than the actual
92 cost of reclamation. The director shall develop a long-
93 range planning process for selection and prioritization
94 of sites to be reclaimed so as to avoid inordinate short-
95 term obligations of the assets in the fund of such
96 magnitude that the solvency of the fund is jeopardized.
97 The director may use an amount, not to exceed twenty-
98 five percent of the annual amount of the fees collected,
99 for the purpose of designing, constructing and maintain-
100 ing water treatment systems when they are required for
101 a complete reclamation of the affected lands described
102 in this subsection. The director may also expend an

103 amount not to exceed ten percent of the total annual
104 assets in the fund to implement and administer the
105 provisions of this article, articles two and four of this
106 chapter and, as they apply to the surface mine board,
107 articles one and four, chapter twenty-two-b of this code.

108 Every person conducting coal surface-mining opera-
109 tions shall contribute into the fund a sum equal to three
110 cents per ton of clean coal mined. This fee shall be
111 collected by the state tax commissioner in the same
112 manner, at the same time, and upon the same tonnage
113 as the minimum severance tax imposed by article
114 twelve-b, chapter eleven of this code is collected:
115 *Provided*, That under no circumstance shall this tax be
116 construed to be an increase in either the minimum
117 severance tax imposed by said article twelve-b or the
118 severance tax imposed by article thirteen of said chapter
119 eleven. Every person liable for payment of this special
120 tax shall pay the amount due without notice or demand
121 for payment. The tax commissioner shall provide to the
122 director a quarterly listing of all persons known to be
123 delinquent in payment of the special tax. The director
124 may take such delinquencies into account in making
125 determinations on the issuance, renewal or revision of
126 any permit. Such tax shall be collected whenever the
127 liabilities of the state established in this subsection
128 exceed the accrued amount in the fund. The tax
129 commissioner shall deposit the fees collected with the
130 treasurer of the state of West Virginia to the credit of
131 the special reclamation fund. The moneys in the fund
132 shall be placed by the treasurer in interest bearing
133 account with the interest being returned to the fund on
134 an annual basis. At the beginning of each quarter, the
135 director shall advise the state tax commissioner and the
136 governor of the assets, excluding payments, expendi-
137 tures and liabilities, in the fund.

**§22-3-12. Site-specific bonding; legislative rule; contents
of legislative rule; legislative intent; expira-
tion of rule; reporting.**

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

4 provisions of this section.

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

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

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

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

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

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

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

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

83 (3) An analysis of various factors related to the

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

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

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

**§22-3-13. General environmental protection performance
standards for surface mining; variances.**

1 (a) Any permit issued by the director pursuant to this
2 article to conduct surface-mining operations shall
3 require that such surface-mining operations will meet
4 all applicable performance standards of this article and
5 other requirements as the director promulgates.

6 (b) The following general performance standards are
7 applicable to all surface mines and require the opera-
8 tion, at a minimum to:

9 (1) Maximize the utilization and conservation of the
10 solid fuel resource being recovered to minimize reffect-

11 ing the land in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting
14 prior to any mining, or higher or better uses of which
15 there is reasonable likelihood so long as the use or uses
16 do not present any actual or probable hazard to public
17 health or safety or pose any actual or probable threat
18 of water diminution or pollution, and the permit
19 applicants' declared proposed land use following
20 reclamation is not deemed to be impractical or unrea-
21 sonable, inconsistent with applicable land use policies
22 and plans, involves unreasonable delay in implementa-
23 tion, or is violative of federal, state or local law;

24 (3) Except as provided in subsection (c) of this section,
25 with respect to all surface mines, backfill, compact
26 where advisable to ensure stability or to prevent
27 leaching of toxic materials, and grade in order to restore
28 the approximate original contour: *Provided*, That in
29 surface mining which is carried out at the same location
30 over a substantial period of time where the operation
31 transects the coal deposit, and the thickness of the coal
32 deposits relative to the volume of the overburden is large
33 and where the operator demonstrates that the over-
34 burden and other spoil and waste materials at a
35 particular point in the permit area or otherwise
36 available from the entire permit area is insufficient,
37 giving due consideration to volumetric expansion, to
38 restore the approximate original contour, the operator,
39 at a minimum, shall backfill, grade and compact, where
40 advisable, using all available overburden and other spoil
41 and waste materials to attain the lowest practicable
42 grade, but not more than the angle of repose, to provide
43 adequate drainage and to cover all acid-forming and
44 other toxic materials, in order to achieve an ecologically
45 sound land use compatible with the surrounding region:
46 *Provided, however*, That in surface mining where the
47 volume of overburden is large relative to the thickness
48 of the coal deposit and where the operator demonstrates
49 that due to volumetric expansion the amount of over-
50 burden and other spoil and waste materials removed in
51 the course of the mining operation is more than

52 sufficient to restore the approximate original contour,
53 the operator shall, after restoring the approximate
54 contour, backfill, grade and compact, where advisable,
55 the excess overburden and other spoil and waste
56 materials to attain the lowest grade, but not more than
57 the angle of repose, and to cover all acid-forming and
58 other toxic materials, in order to achieve an ecologically
59 sound land use compatible with the surrounding region
60 and, such overburden or spoil shall be shaped and
61 graded in such a way as to prevent slides, erosion and
62 water pollution and is revegetated in accordance with
63 the requirements of this article: *Provided further*, That
64 the director shall promulgate rules governing variances
65 to the requirements for return to approximate original
66 contour or highwall elimination and where adequate
67 material is not available from surface-mining operations
68 permitted after the effective date of this article for: (A)
69 Underground mining operations existing prior to the
70 third day of August, one thousand nine hundred seventy-
71 seven, or (B) for areas upon which surface mining prior
72 to the first day of July, one thousand nine hundred
73 seventy-seven, created highwalls;

74 (4) Stabilize and protect all surface areas, including
75 spoil piles, affected by the surface-mining operation to
76 effectively control erosion and attendant air and water
77 pollution;

78 (5) Remove the topsoil from the land in a separate
79 layer, replace it on the backfill area, or if not utilized
80 immediately, segregate it in a separate pile from other
81 spoil and, when the topsoil is not replaced on a backfill
82 area within a time short enough to avoid deterioration
83 of the topsoil, maintain a successful vegetative cover by
84 quick growing plants or by other similar means in order
85 to protect topsoil from wind and water erosion and keep
86 it free of any contamination by other acid or toxic
87 material: *Provided*, That if topsoil is of insufficient
88 quantity or of poor quality for sustaining vegetation, or
89 if other strata can be shown to be more suitable for
90 vegetation requirements, then the operator shall re-
91 move, segregate and preserve in a like manner such
92 other strata which is best able to support vegetation;

- 93 (6) Restore the topsoil or the best available subsoil
94 which is best able to support vegetation;
- 95 (7) Ensure that all prime farmlands are mined and
96 reclaimed in accordance with the specifications for soil
97 removal, storage, replacement and reconstruction
98 established by the United States secretary of agriculture
99 and the soil conservation service pertaining thereto. The
100 operator, at a minimum, shall be required to: (A)
101 Segregate the A horizon of the natural soil, except
102 where it can be shown that other available soil materials
103 will create a final soil having a greater productive
104 capacity, and if not utilized immediately, stockpile this
105 material separately from other spoil, and provide
106 needed protection from wind and water erosion or
107 contamination by other acid or toxic material; (B)
108 segregate the B horizon of the natural soil, or underly-
109 ing C horizons or other strata, or a combination of such
110 horizons or other strata that are shown to be both
111 texturally and chemically suitable for plant growth and
112 that can be shown to be equally or more favorable for
113 plant growth than the B horizon, in sufficient quantities
114 to create in the regraded final soil a root zone of
115 comparable depth and quality to that which existed in
116 the natural soil, and if not utilized immediately,
117 stockpile this material separately from other spoil and
118 provide needed protection from wind and water erosion
119 or contamination by other acid or toxic material; (C)
120 replace and regrade the root zone material described in
121 subparagraph (B) above with proper compaction and
122 uniform depth over the regraded spoil material; and (D)
123 redistribute and grade in a uniform manner the surface
124 soil horizon described in subparagraph (A) above;
- 125 (8) Create, if authorized in the approved surface-
126 mining and reclamation plan and permit, permanent
127 impoundments of water on mining sites as part of
128 reclamation activities in accordance with rules promul-
129 gated by the director;
- 130 (9) Where augering is the method of recovery, seal all
131 auger holes with an impervious and noncombustible
132 material in order to prevent drainage except where the
133 director determines that the resulting impoundment of

134 water in such auger holes may create a hazard to the
135 environment or the public welfare and safety: *Provided,*
136 That the director may prohibit augering if necessary to
137 maximize the utilization, recoverability or conservation
138 of the mineral resources or to protect against adverse
139 water quality impacts;

140 (10) Minimize the disturbances to the prevailing
141 hydrologic balance at the mine site and in associated off-
142 site areas and to the quality and quantity of water in
143 surface and groundwater systems both during and after
144 surface-mining operations and during reclamation by:
145 (A) Avoiding acid or other toxic mine drainage by such
146 measures as, but not limited to: (i) Preventing or
147 removing water from contact with toxic producing
148 deposits; (ii) treating drainage to reduce toxic content
149 which adversely affects downstream water upon being
150 released to water courses; and (iii) casing, sealing or
151 otherwise managing boreholes, shafts and wells and
152 keep acid or other toxic drainage from entering ground
153 and surface waters; (B) conducting surface-mining
154 operations so as to prevent to the extent possible, using
155 the best technology currently available, additional
156 contributions of suspended solids to streamflow or
157 runoff outside the permit area, but in no event shall
158 contributions be in excess of requirements set by
159 applicable state or federal law; (C) constructing an
160 approved drainage system pursuant to subparagraph
161 (B) of this subdivision prior to commencement of
162 surface-mining operations, such system to be certified
163 by a person approved by the director to be constructed
164 as designed and as approved in the reclamation plan; (D)
165 avoiding channel deepening or enlargement in opera-
166 tions requiring the discharge of water from mines; (E)
167 unless otherwise authorized by the director, cleaning out
168 and removing temporary or large settling ponds or other
169 siltation structures after disturbed areas are revege-
170 tated and stabilized, and depositing the silt and debris
171 at a site and in a manner approved by the director; (F)
172 restoring recharge capacity of the mined area to
173 approximate premining conditions; and (G) such other
174 actions as the director may prescribe;

175 (11) With respect to surface disposal of mine wastes,
176 tailings, coal processing wastes and other wastes in
177 areas other than the mine working excavations, stabilize
178 all waste piles in designated areas through construction
179 in compacted layers, including the use of noncombust-
180 ible and impervious materials if necessary, and assure
181 the final contour of the waste pile will be compatible
182 with natural surroundings and that the site will be
183 stabilized and revegetated according to the provisions of
184 this article;

185 (12) Design, locate, construct, operate, maintain,
186 enlarge, modify and remove or abandon, in accordance
187 with standards and criteria developed pursuant to
188 subsection (f) of this section, all existing and new coal
189 mine waste piles consisting of mine wastes, tailings, coal
190 processing wastes or other liquid and solid wastes, and
191 used either temporarily or permanently as dams or
192 embankments;

193 (13) Refrain from surface mining within five hundred
194 feet of any active and abandoned underground mines in
195 order to prevent breakthroughs and to protect health or
196 safety of miners: *Provided*, That the director shall
197 permit an operator to mine near, through or partially
198 through an abandoned underground mine or closer to an
199 active underground mine if: (A) The nature, timing and
200 sequencing of the approximate coincidence of specific
201 surface-mine activities with specific underground mine
202 activities are coordinated jointly by the operators
203 involved and approved by the director; and (B) such
204 operations will result in improved resource recovery,
205 abatement of water pollution or elimination of hazards
206 to the health and safety of the public: *Provided, however*,
207 That any breakthrough which does occur shall be sealed;

208 (14) Ensure that all debris, acid-forming materials,
209 toxic materials or materials constituting a fire hazard
210 are treated or buried and compacted, or otherwise
211 disposed of in a manner designed to prevent contami-
212 nation of ground or surface waters, and that contingency
213 plans are developed to prevent sustained combustion:
214 *Provided*, That the operator shall remove or bury all
215 metal, lumber, equipment and other debris resulting

216 from the operation before grading release;

217 (15) Ensure that explosives are used only in accor-
218 dance with existing state and federal law and the rules
219 promulgated by the director, which shall include
220 provisions to: (A) Provide adequate advance written
221 notice to local governments and residents who might be
222 affected by the use of the explosives by publication of
223 the planned blasting schedule in a newspaper of general
224 circulation in the locality and by mailing a copy of the
225 proposed blasting schedule to every resident living
226 within one-half mile of the proposed blasting site:
227 *Provided*, That this notice shall suffice as daily notice
228 to residents or occupants of the areas; (B) maintain for
229 a period of at least three years and make available for
230 public inspection, upon written request, a log detailing
231 the location of the blasts, the pattern and depth of the
232 drill holes, the amount of explosives used per hole and
233 the order and length of delay in the blasts; (C) limit the
234 type of explosives and detonating equipment, the size,
235 the timing and frequency of blasts based upon the
236 physical conditions of the site so as to prevent: (i) Injury
237 to persons; (ii) damage to public and private property
238 outside the permit area; (iii) adverse impacts on any
239 underground mine; and (iv) change in the course,
240 channel or availability of ground or surface water
241 outside the permit area; (D) require that all blasting
242 operations be conducted by persons certified by the
243 director; and (E) provide that upon written request of
244 a resident or owner of a man-made dwelling or structure
245 within one-half mile of any portion of the permit area,
246 the applicant or permittee shall conduct a preblasting
247 survey or other appropriate investigation of the struc-
248 tures and submit the results to the director and a copy
249 to the resident or owner making the request. The area
250 of the survey shall be determined by the director in
251 accordance with rules promulgated by him or her;

252 (16) Ensure that all reclamation efforts proceed in an
253 environmentally sound manner and as contemporane-
254 ously as practicable with the surface-mining operations.
255 Time limits shall be established by the director requir-
256 ing backfilling, grading and planting to be kept current:

257 *Provided*, That where surface-mining operations and
258 underground mining operations are proposed on the
259 same area, which operations must be conducted under
260 separate permits, the director may grant a variance
261 from the requirement that reclamation efforts proceed
262 as contemporaneously as practicable to permit under-
263 ground mining operations prior to reclamation:

264 (A) If the director finds in writing that:

265 (i) The applicant has presented, as part of the permit
266 application, specific, feasible plans for the proposed
267 underground mining operations;

268 (ii) The proposed underground mining operations are
269 necessary or desirable to assure maximum practical
270 recovery of the mineral resource and will avoid multiple
271 disturbance of the surface;

272 (iii) The applicant has satisfactorily demonstrated
273 that the plan for the underground mining operations
274 conforms to requirements for underground mining in
275 the jurisdiction and that permits necessary for the
276 underground mining operations have been issued by the
277 appropriate authority;

278 (iv) The areas proposed for the variance have been
279 shown by the applicant to be necessary for the imple-
280 menting of the proposed underground mining
281 operations;

282 (v) No substantial adverse environmental damage,
283 either on-site or off-site, will result from the delay in
284 completion of reclamation as required by this article;
285 and

286 (vi) Provisions for the off-site storage of spoil will
287 comply with subdivision (22), subsection (b) of this
288 section;

289 (B) If the director has promulgated specific rules to
290 govern the granting of such variances in accordance
291 with the provisions of this subparagraph and has
292 imposed such additional requirements as the director
293 deems necessary;

294 (C) If variances granted under the provisions of this

295 paragraph are reviewed by the director not more than
296 three years from the date of issuance of the permit:
297 *Provided*, That the underground mining permit shall
298 terminate if the underground operations have not
299 commenced within three years of the date the permit
300 was issued, unless extended as set forth in subdivision
301 (3), section eight of this article; and

302 (D) If liability under the bond filed by the applicant
303 with the director pursuant to subsection (b), section
304 eleven of this article is for the duration of the under-
305 ground mining operations and until the requirements of
306 subsection (g), section eleven and section twenty-three of
307 this article have been fully complied with.

308 (17) Ensure that the construction, maintenance and
309 postmining conditions of access and haulroads into and
310 across the site of operations will control or prevent
311 erosion and siltation, pollution of water, damage to fish
312 or wildlife or their habitat, or public or private
313 property: *Provided*, That access roads constructed for
314 and used to provide infrequent service to surface
315 facilities, such as ventilators or monitoring devices, are
316 exempt from specific construction criteria provided
317 adequate stabilization to control erosion is achieved
318 through alternative measures;

319 (18) Refrain from the construction of roads or other
320 access ways up a stream bed or drainage channel or in
321 proximity to the channel so as to significantly alter the
322 normal flow of water;

323 (19) Establish on the regraded areas, and all other
324 lands affected, a diverse, effective and permanent
325 vegetative cover of the same seasonal variety native to
326 the area of land to be affected or of a fruit, grape or
327 berry producing variety suitable for human consump-
328 tion and capable of self-regeneration and plant succes-
329 sion at least equal in extent of cover to the natural
330 vegetation of the area, except that introduced species
331 may be used in the revegetation process where desirable
332 or when necessary to achieve the approved postmining
333 land use plan;

334 (20) Assume the responsibility for successful revege-

335 tation, as required by subdivision (19) of this subsection,
336 for a period of not less than five growing seasons, as
337 defined by the director, after the last year of augmented
338 seeding, fertilizing, irrigation or other work in order to
339 assure compliance with subdivision (19) of this subsection:
340 *Provided*, That when the director issues a written
341 finding approving a long-term agricultural postmining
342 land use as a part of the mining and reclamation plan,
343 the director may grant exception to the provisions of
344 subdivision (19) of this subsection: *Provided, however*,
345 That when the director approves an agricultural
346 postmining land use, the applicable five growing seasons
347 of responsibility for revegetation begins on the date of
348 initial planting for such agricultural postmining land
349 use;

350 (21) Protect off-site areas from slides or damage
351 occurring during surface-mining operations and not
352 deposit spoil material or locate any part of the operations
353 or waste accumulations outside the permit area:
354 *Provided*, That spoil material may be placed outside the
355 permit area, if approved by the director after a finding
356 that environmental benefits will result from such;

357 (22) Place all excess spoil material resulting from
358 surface-mining activities in such a manner that: (A)
359 Spoil is transported and placed in a controlled manner
360 in position for concurrent compaction and in a way as
361 to assure mass stability and to prevent mass movement;
362 (B) the areas of disposal are within the bonded permit
363 areas and all organic matter is removed immediately
364 prior to spoil placements; (C) appropriate surface and
365 internal drainage system or diversion ditches are used
366 to prevent spoil erosion and movement; (D) the disposal
367 area does not contain springs, natural water courses or
368 wet weather seeps, unless lateral drains are constructed
369 from the wet areas to the main underdrains in a manner
370 that filtration of the water into the spoil pile will be
371 prevented; (E) if placed on a slope, the spoil is placed
372 upon the most moderate slope among those upon which,
373 in the judgment of the director, the spoil could be placed
374 in compliance with all the requirements of this article,
375 and is placed, where possible, upon, or above, a natural

376 terrace, bench or berm, if placement provides additional
377 stability and prevents mass movement; (F) where the toe
378 of the spoil rests on a downslope, a rock toe buttress, of
379 sufficient size to prevent mass movement, is constructed;
380 (G) the final configuration is compatible with the
381 natural drainage pattern and surroundings and suitable
382 for intended uses; (H) design of the spoil disposal area
383 is certified by a qualified registered professional
384 engineer in conformance with professional standards;
385 and (I) all other provisions of this article are met:
386 *Provided*, That where the excess spoil material consists
387 of at least eighty percent, by volume, sandstone,
388 limestone or other rocks that do not slake in water and
389 will not degrade to soil material, the director may
390 approve alternate methods for disposal of excess spoil
391 material, including fill placement by dumping in a
392 single lift, on a site specific basis: *Provided, however*,
393 That the services of a qualified registered professional
394 engineer experienced in the design and construction of
395 earth and rockfill embankment are utilized: *Provided*
396 *further*, That such approval shall not be unreasonably
397 withheld if the site is suitable;

398 (23) Meet such other criteria as are necessary to
399 achieve reclamation in accordance with the purposes of
400 this article, taking into consideration the physical,
401 climatological and other characteristics of the site;

402 (24) To the extent possible, using the best technology
403 currently available, minimize disturbances and adverse
404 impacts of the operation on fish, wildlife and related
405 environmental values, and achieve enhancement of these
406 resources where practicable; and

407 (25) Retain a natural barrier to inhibit slides and
408 erosion on permit areas where outcrop barriers are
409 required: *Provided*, That constructed barriers may be
410 allowed where: (A) Natural barriers do not provide
411 adequate stability; (B) natural barriers would result in
412 potential future water quality deterioration; and (C)
413 natural barriers would conflict with the goal of maxi-
414 mum utilization of the mineral resource: *Provided*,
415 *however*, That at a minimum, the constructed barrier
416 must be of sufficient width and height to provide

417 adequate stability and the stability factor must equal or
418 exceed that of the natural outcrop barrier: *Provided*
419 *further*, That where water quality is paramount, the
420 constructed barrier must be composed of impervious
421 material with controlled discharge points.

422 (c) (1) The director may prescribe procedures pursu-
423 ant to which he or she may permit surface-mining
424 operations for the purposes set forth in subdivision (3)
425 of this subsection.

426 (2) Where an applicant meets the requirements of
427 subdivisions (3) and (4) of this subsection, a permit
428 without regard to the requirement to restore to approx-
429 imate original contour set forth in subsection (b) or (d)
430 of this section may be granted for the surface mining
431 of coal where the mining operation will remove an entire
432 coal seam or seams running through the upper fraction
433 of a mountain, ridge or hill, except as provided in
434 subparagraph (A), subdivision (4) of this subsection, by
435 removing all of the overburden and creating a level
436 plateau or a gently rolling contour with no highwalls
437 remaining, and capable of supporting postmining uses
438 in accordance with the requirements of this subsection.

439 (3) In cases where an industrial, commercial, wood-
440 land, agricultural, residential or public use is proposed
441 for the postmining use of the affected land, the director
442 may grant a permit for a surface-mining operation of
443 the nature described in subdivision (2) of this subsection
444 where: (A) The proposed postmining land use is deemed
445 to constitute an equal or better use of the affected land,
446 as compared with premining use; (B) the applicant
447 presents specific plans for the proposed postmining land
448 use and appropriate assurances that the use will be: (i)
449 Compatible with adjacent land uses; (ii) practicable with
450 respect to achieving the proposed use; (iii) supported by
451 commitments from public agencies where appropriate;
452 (iv) practicable with respect to private financial
453 capability for completion of the proposed use; (v)
454 planned pursuant to a schedule attached to the reclama-
455 tion plan so as to integrate the mining operation and
456 reclamation with the postmining land use; and (vi)
457 designed by a person approved by the director in

458 conformance with standards established to assure the
459 stability, drainage and configuration necessary for the
460 intended use of the site; (C) the proposed use would be
461 compatible with adjacent land uses, and existing state
462 and local land use plans and programs; (D) the director
463 provides the county commission of the county in which
464 the land is located and any state or federal agency which
465 the director, in his or her discretion, determines to have
466 an interest in the proposed use, an opportunity of not
467 more than sixty days to review and comment on the
468 proposed use; and (E) all other requirements of this
469 article will be met.

470 (4) In granting any permit pursuant to this subsection,
471 the director shall require that: (A) A natural
472 barrier be retained to inhibit slides and erosion on
473 permit areas where outcrop barriers are required:
474 *Provided*, That constructed barriers may be allowed
475 where: (i) Natural barriers do not provide adequate
476 stability; (ii) natural barriers would result in potential
477 future water quality deterioration; and (iii) natural
478 barriers would conflict with the goal of maximum
479 utilization of the mineral resource: *Provided, however*,
480 That, at a minimum, the constructed barrier must be
481 sufficient width and height to provide adequate stability
482 and the stability factor must equal or exceed that of the
483 natural outcrop barrier: *Provided further*, That where
484 water quality is paramount, the constructed barrier
485 must be composed of impervious material with controlled
486 discharge points; (B) the reclaimed area is stable;
487 (C) the resulting plateau or rolling contour drains
488 inward from the outslopes except at specific points; (D)
489 no damage will be done to natural watercourses; (E)
490 spoil will be placed on the mountaintop bench as is
491 necessary to achieve the planned postmining land use:
492 *And provided further*, That all excess spoil material not
493 retained on the mountaintop shall be placed in accordance
494 with the provisions of subdivision (22), subsection
495 (b) of this section; and (F) ensure stability of the spoil
496 retained on the mountaintop and meet the other
497 requirements of this article.

498 (5) All permits granted under the provisions of this

499 subsection shall be reviewed not more than three years
500 from the date of issuance of the permit; unless the
501 applicant affirmatively demonstrates that the proposed
502 development is proceeding in accordance with the terms
503 of the approved schedule and reclamation plan.

504 (d) In addition to those general performance stand-
505 ards required by this section, when surface mining
506 occurs on slopes of twenty degrees or greater, or on such
507 lesser slopes as may be defined by rule after consider-
508 ation of soil and climate, no debris, abandoned or
509 disabled equipment, spoil material or waste mineral
510 matter will be placed on the natural downslope below
511 the initial bench or mining cut: *Provided*, That soil or
512 spoil material from the initial cut of earth in a new
513 surface-mining operation may be placed on a limited
514 specified area of the downslope below the initial cut if
515 the permittee can establish to the satisfaction of the
516 director that the soil or spoil will not slide and that the
517 other requirements of this section can still be met.

518 (e) The director may promulgate rules that permit
519 variances from the approximate original contour
520 requirements of this section: *Provided*, That the wa-
521 tershred control of the area is improved: *Provided*,
522 *however*, That complete backfilling with spoil material
523 is required to completely cover the highwall, which
524 material will maintain stability following mining and
525 reclamation.

526 (f) The director shall promulgate rules for the design,
527 location, construction, maintenance, operation, enlarge-
528 ment, modification, removal and abandonment of new
529 and existing coal mine waste piles. In addition to
530 engineering and other technical specifications, the
531 standards and criteria developed pursuant to this
532 subsection must include provisions for review and
533 approval of plans and specifications prior to construc-
534 tion, enlargement, modification, removal or abandon-
535 ment; performance of periodic inspections during
536 construction; issuance of certificates of approval upon
537 completion of construction; performance of periodic
538 safety inspections; and issuance of notices and orders for
539 required remedial or maintenance work or affirmative

540 action: *Provided*, That whenever the director finds that
541 any coal processing waste pile constitutes an imminent
542 danger to human life, he or she may, in addition to all
543 other remedies and without the necessity of obtaining
544 the permission of any person prior or present who
545 operated or operates a pile or the landowners involved,
546 enter upon the premises where any such coal processing
547 waste pile exists and may take or order to be taken such
548 remedial action as may be necessary or expedient to
549 secure the coal processing waste pile and to abate the
550 conditions which cause the danger to human life:
551 *Provided, however*, That the cost reasonably incurred in
552 any remedial action taken by the director under this
553 subsection may be paid for initially by funds appropri-
554 ated to the division for these purposes, and the sums
555 so expended shall be recovered from any responsible
556 operator or landowner, individually or jointly, by suit
557 initiated by the attorney general at the request of the
558 director. For purposes of this subsection "operates" or
559 "operated" means to enter upon a coal processing waste
560 pile, or part thereof, for the purpose of disposing,
561 depositing, dumping coal processing wastes thereon or
562 removing coal processing waste therefrom, or to employ
563 a coal processing waste pile for retarding the flow of or
564 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.

1 (a) The director shall promulgate separate rules
2 directed toward the surface effects of underground coal
3 mining operations, embodying the requirements in
4 subsection (b) of this section: *Provided*, That in adopting
5 such rules, the director shall consider the distinct
6 difference between surface coal mines and underground
7 coal mines in West Virginia. Such rules may not conflict
8 with or supersede any provision of the federal or state
9 coal mine health and safety laws or any rule issued
10 pursuant thereto.

11 (b) Each permit issued by the director pursuant to

12 this article and relating to underground coal mining
13 shall require the operation at a minimum to:

14 (1) Adopt measures consistent with known technology
15 in order to prevent subsidence causing material damage
16 to the extent technologically and economically feasible,
17 maximize mine stability and maintain the value and
18 reasonably foreseeable use of overlying surface lands,
19 except in those instances where the mining technology
20 used requires planned subsidence in a predictable and
21 controlled manner: *Provided*, That this subsection does
22 not prohibit the standard method of room and pillar
23 mining;

24 (2) Seal all portals, entryways, drifts, shafts or other
25 openings that connect the earth's surface to the under-
26 ground mine workings when no longer needed for the
27 conduct of the mining operations in accordance with the
28 requirements of all applicable federal and state law and
29 rules promulgated pursuant thereto;

30 (3) Fill or seal exploratory holes no longer necessary
31 for mining and maximize to the extent technologically
32 and economically feasible, if environmentally accepta-
33 ble, return of mine and processing waste, tailings and
34 any other waste incident to the mining operation to the
35 mine workings or excavations;

36 (4) With respect to surface disposal of mine wastes,
37 tailings, coal processing wastes and other wastes in
38 areas other than the mine workings or excavations,
39 stabilize all waste piles created by the operator from
40 current operations through construction in compacted
41 layers, including the use of incombustible and imper-
42 vious materials, if necessary, and assure that any
43 leachate therefrom will not degrade surface or ground-
44 waters below water quality standards established
45 pursuant to applicable federal and state law and that
46 the final contour of the waste accumulation will be
47 compatible with natural surroundings and that the site
48 is stabilized and revegetated according to the provisions
49 of this section;

50 (5) Design, locate, construct, operate, maintain,
51 enlarge, modify and remove or abandon, in accordance

52 with the standards and criteria developed pursuant to
53 subsection (f), section thirteen of this article, all existing
54 and new coal mine waste piles consisting of mine wastes,
55 tailings, coal processing wastes and solid wastes and
56 used either temporarily or permanently as dams or
57 embankments;

58 (6) Establish on regraded areas and all other dis-
59 turbed areas a diverse and permanent vegetative cover
60 capable of self-regeneration and plant succession and at
61 least equal in extent of cover to the natural vegetation
62 of the area within the time period prescribed in
63 subdivision (20), subsection (b), section thirteen of this
64 article;

65 (7) Protect off-site areas from damages which may
66 result from such mining operations;

67 (8) Eliminate fire hazards and otherwise eliminate
68 conditions which constitute a hazard to health and safety
69 of the public;

70 (9) Minimize the disturbance of the prevailing
71 hydrologic balance at the mine site and in associated off-
72 site areas and to the quantity and the quality of water
73 in surface and groundwater systems both during and
74 after mining operations and during reclamation by: (A)
75 Avoiding acid or other toxic mine drainage by such
76 measures as, but not limited to: (i) Preventing or
77 removing water from contact with toxic producing
78 deposits; (ii) treating drainage to reduce toxic content
79 which adversely affects downstream water before being
80 released to water courses; and (iii) casing, sealing or
81 otherwise managing boreholes, shafts and wells to keep
82 acid or other toxic drainage from entering ground and
83 surface waters; and (B) conducting mining operations so
84 as to prevent, to the extent possible using the best
85 technology currently available, additional contributions
86 of suspended solids to streamflow or runoff outside the
87 permit area, but in no event shall the contributions be
88 in excess of requirements set by applicable state or
89 federal law, and avoiding channel deepening or enlarge-
90 ment in operations requiring the discharge of water
91 from mines: *Provided*, That in recognition of the distinct

92 differences between surface and underground mining
93 the monitoring of water from underground coal mine
94 workings shall be in accordance with the provisions of
95 the Clean Water Act of 1977;

96 (10) With respect to other surface impacts of under-
97 ground mining not specified in this subsection, includ-
98 ing the construction of new roads or the improvement
99 or use of existing roads to gain access to the site of such
100 activities and for haulage, repair areas, storage areas,
101 processing areas, shipping areas, and other areas upon
102 which are sited structures, facilities or other property
103 or materials on the surface, resulting from or incident
104 to such activities, operate in accordance with the
105 standards established under section thirteen of this
106 article for such effects which result from surface-mining
107 operations: *Provided*, That the director shall make such
108 modifications in the requirements imposed by this
109 subdivision as are necessary to accommodate the distinct
110 difference between surface and underground mining in
111 West Virginia;

112 (11) To the extent possible using the best technology
113 currently available, minimize disturbances and adverse
114 impacts of the operation on fish, aquatic life, wildlife
115 and related environmental values, and achieve enhance-
116 ment of such resources where practicable; and

117 (12) Unless otherwise permitted by the director and
118 in consideration of the relevant safety and environmen-
119 tal factors, locate openings for all new drift mines
120 working in acid producing or iron producing coal seams
121 in a manner as to prevent a gravity discharge of water
122 from the mine.

123 (c) In order to protect the stability of the land, the
124 director shall suspend underground mining under
125 urbanized areas, cities, towns and communities and
126 adjacent to industrial or commercial buildings, major
127 impoundments or permanent streams if he or she finds
128 imminent danger to inhabitants of the urbanized areas,
129 cities, towns or communities.

130 (d) The provisions of this article relating to permits,
131 bonds, insurance, inspections, reclamation and enforce-

132 ment, public review and administrative and judicial
133 review are also applicable to surface operations and
134 surface impacts incident to an underground mine with
135 such modifications by rule to the permit application
136 requirements, permit approval or denial procedures and
137 bond requirements as are necessary to accommodate the
138 distinct difference between surface mines and under-
139 ground mines in West Virginia.

§22-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.

1 (a) The director shall cause to be made such inspec-
2 tions of surface-mining operations as are necessary to
3 effectively enforce the requirements of this article and
4 for such purposes the director or his or her authorized
5 representative shall without advance notice and upon
6 presentation of appropriate credentials: (A) Have the
7 right of entry to, upon or through surface-mining
8 operations or any premises in which any records
9 required to be maintained under subdivision (1),
10 subsection (b) of this section are located; and (B) at
11 reasonable times and without delay, have access to and
12 copy any records and inspect any monitoring equipment
13 or method of operation required under this article.

14 (b) For the purpose of enforcement under this article,
15 in the administration and enforcement of any permit
16 under this article, or for determining whether any
17 person is in violation of any requirement of this article:

18 (1) The director shall, at a minimum, require any
19 operator to: (A) Establish and maintain appropriate
20 records; (B) make monthly reports to the division; (C)
21 install, use and maintain any necessary monitoring
22 equipment or methods consistent with subdivision (1),
23 subsection (a), section nine of this article; (D) evaluate
24 results in accordance with such methods, at such
25 locations, intervals and in such manner as the director
26 prescribes; and (E) provide such other information
27 relative to surface-mining operations as the director
28 finds reasonable and necessary; and

29 (2) For those surface-mining operations which remove

30 or disturb strata that serve as aquifers which signifi-
31 cantly ensure the hydrologic balance of water use either
32 on or off the mining site, the director shall require that:
33 (A) Monitoring sites be established to record the
34 quantity and quality of surface drainage above and
35 below the mine site as well as in the potential zone of
36 influence; (B) monitoring sites be established to record
37 level, amount and samples of groundwater and aquifers
38 potentially affected by the surface mining and also
39 below the lowermost mineral seam to be mined; (C)
40 records or well logs and borehole data be maintained;
41 and (D) monitoring sites be established to record
42 precipitation. The monitoring data collection and
43 analysis required by this section shall be conducted
44 according to standards and procedures set forth by the
45 director in order to assure their reliability and validity.

46 (c) All surface-mining operations shall be inspected at
47 least once every thirty days. Such inspections shall be
48 made on an irregular basis without prior notice to the
49 operator or the operator's agents or employees, except
50 for necessary on-site meetings with the operator. The
51 inspections shall include the filing of inspection reports
52 adequate to enforce the requirements, terms and
53 purposes of this article.

54 (d) Each permittee shall maintain at the entrances to
55 the surface-mining operations a clearly visible monu-
56 ment which sets forth the name, business address and
57 telephone number of the permittee and the permit
58 number of the surface-mining operations.

59 (e) Copies of any records, reports, inspection materials
60 or information obtained under this article by the
61 director shall be made immediately available to the
62 public at central and sufficient locations in the county,
63 multicounty or state area of mining so that they are
64 conveniently available to residents in the areas of
65 mining unless specifically exempted by this article.

66 (f) Within thirty days after service of a copy of an
67 order of the director upon an operator by registered or
68 certified mail, the operator shall furnish to the director
69 five copies of a progress map prepared by or under the

70 supervision of a person approved by the director
71 showing the disturbed area to the date of such map.
72 Such progress map shall contain information identical
73 to that required for both the proposed and final maps
74 required by this article, and shall show in detail
75 completed reclamation work as required by the director.
76 Such progress map shall include a geologic survey
77 sketch showing the location of the operation, shall be
78 properly referenced to a permanent landmark, and shall
79 be within such reasonable degree of accuracy as may be
80 prescribed by the director. If no land has been disturbed
81 by operations during the preceding year, the operator
82 shall notify the director of that fact.

83 (g) Whenever on the basis of available information,
84 including reliable information from any person, the
85 director has cause to believe that any person is in
86 violation of this article, any permit condition or any rule
87 promulgated under this article, the director shall
88 immediately order state inspection of the surface-
89 mining operation at which the alleged violation is
90 occurring unless the information is available as a result
91 of a prior state inspection. The director shall notify any
92 person who supplied such reliable information when the
93 state inspection will be carried out. Such person may
94 accompany the inspector during the inspection.

**§22-3-16. Cessation of operation by order of inspector;
informal conference; imposition of affirmative
obligations; appeal.**

1 (a) Notwithstanding any other provisions of this
2 article, a surface-mining reclamation inspector has the
3 authority to issue a cessation order for any portion of
4 a surface-mining operation when an inspector deter-
5 mines that any condition or practice exists, or that any
6 permittee is in violation of any requirements of this
7 article or any permit condition required by this article,
8 which condition, practice or violation also creates an
9 imminent danger to the health or safety of the public,
10 or is causing or can reasonably be expected to cause
11 significant, imminent environmental harm to land, air
12 or water resources. The cessation order takes effect
13 immediately. Unless waived in writing, an informal

14 conference shall be held at or near the site relevant to
15 the violation set forth in the cessation order within
16 twenty-four hours after the order becomes effective or
17 such order shall expire. The conference shall be held
18 before a surface-mining reclamation supervisor who
19 shall, immediately upon conclusion of said hearing,
20 determine when and if the operation or portion thereof
21 may resume. Operators who believe they are aggrieved
22 by the decision of the surface-mining reclamation
23 supervisor may immediately appeal to the director,
24 setting forth reasons why the operation should not be
25 halted. The director forthwith shall determine when the
26 operation or portion thereof may be resumed.

27 (b) The cessation order remains in effect until the
28 director determines that the condition, practice or
29 violation has been abated, or until modified, vacated or
30 released by the director. Where the director finds that
31 the ordered cessation of any portion of a surface coal
32 mining operation will not completely abate the immi-
33 nent danger to health or safety of the public or the
34 significant imminent environmental harm to land, air or
35 water resources, the director shall, in addition to the
36 cessation order, impose affirmative obligations on the
37 operator requiring the operator to take whatever steps
38 the director determines necessary to abate the imminent
39 danger or the significant environmental harm.

40 (c) Any cessation order issued pursuant to this section
41 or any other provision of this article may be released by
42 any inspector. An inspector shall be readily available to
43 terminate a cessation order upon abatement of the
44 violation.

**§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.**

1 (a) If any of the requirements of this article, rules
2 promulgated pursuant thereto or permit conditions have
3 not been complied with, the director shall cause a notice
4 of violation to be served upon the operator or the

5 operator's duly authorized agent. A copy of the notice
6 shall be handed to the operator or the operator's duly
7 authorized agent in person or served by certified mail
8 addressed to the operator at the permanent address
9 shown on the application for a permit. The notice shall
10 specify in what respects the operator has failed to
11 comply with this article, rules or permit conditions and
12 shall specify a reasonable time for abatement of the
13 violation not to exceed thirty days. If the operator has
14 not abated the violation within the time specified in the
15 notice, or any reasonable extension thereof, not to exceed
16 sixty days, the director shall order the cessation of the
17 operation or the portion thereof causing the violation,
18 unless the operator affirmatively demonstrates that
19 compliance is unattainable due to conditions totally
20 beyond the control of the operator. If a violation is not
21 abated within the time specified or any extension
22 thereof, or any cessation order is issued, a mandatory
23 civil penalty of not less than seven hundred fifty dollars
24 per day per violation shall be assessed. A cessation order
25 remains in effect until the director determines that the
26 violation has been abated or until modified, vacated or
27 terminated by the director or by a court. In any
28 cessation order issued under this subsection, the director
29 shall determine the steps necessary to abate the violation
30 in the most expeditious manner possible and shall
31 include the necessary measures in the order.

32 (b) If the director determines that a pattern of
33 violations of any requirement of this article or any
34 permit condition exists or has existed, as a result of the
35 operator's lack of reasonable care and diligence, or that
36 the violations are willfully caused by the operator, the
37 director shall immediately issue an order directing the
38 operator to show cause why the permit should not be
39 suspended or revoked and giving the operator thirty
40 days in which to request a public hearing. If a hearing
41 is requested, the director shall inform all interested
42 parties of the time and place of the hearing. Any
43 hearing under this section shall be recorded and is
44 subject to the provisions of chapter twenty-nine-a of this
45 code. Within sixty days following the public hearing, the

46 director shall issue and furnish to the permittee and all
47 other parties to the hearing a written decision, and the
48 reasons therefor, concerning suspension or revocation of
49 the permit. Upon the operator's failure to show cause
50 why the permit should not be suspended or revoked, the
51 director shall immediately suspend or revoke the
52 operator's permit. If the permit is revoked, the director
53 shall initiate procedures in accordance with rules
54 promulgated by the director to forfeit the entire amount
55 of the operator's bond, or other security posted pursuant
56 to sections eleven or twelve of this article, and give
57 notice to the attorney general, who shall collect the
58 forfeiture without delay: *Provided*, That the entire
59 proceeds of such forfeiture shall be deposited with the
60 treasurer of the state of West Virginia to the credit of
61 the special reclamation fund. All forfeitures collected
62 shall be deposited in the special reclamation fund and
63 shall be expended back upon the areas for which the
64 bond was posted: *Provided, however*, That any excess
65 therefrom shall remain in the special reclamation fund.

66 (c) Any person engaged in surface-mining operations
67 who violates any permit condition or who violates any
68 other provision of this article or rules promulgated
69 pursuant thereto may also be assessed a civil penalty.
70 The penalty shall not exceed five thousand dollars. Each
71 day of continuing violation may be deemed a separate
72 violation for purposes of penalty assessments. In
73 determining the amount of the penalty, consideration
74 shall be given to the operator's history of previous
75 violations at the particular surface-mining operation,
76 the seriousness of the violation, including any irrepar-
77 able harm to the environment and any hazard to the
78 health or safety of the public, whether the operator was
79 negligent, and the demonstrated good faith of the
80 operator charged in attempting to achieve rapid
81 compliance after notification of the violation.

82 (d) (1) Upon the issuance of a notice or order pursuant
83 to this section, the assessment officer shall, within thirty
84 days, set a proposed penalty assessment and notify the
85 operator in writing of such proposed penalty assessment.

86 The proposed penalty assessment must be paid in full
87 within thirty days of receipt or, if the operator wishes
88 to contest either the amount of the penalty or the fact
89 of violation, an informal conference with the assessment
90 officer may be requested within fifteen days or a formal
91 hearing before the surface mine board may be requested
92 within thirty days. The notice of proposed penalty
93 assessment shall advise the operator of the right to an
94 informal conference and a formal hearing pursuant to
95 this section. When an informal conference is requested,
96 the operator has fifteen days from receipt of the
97 assessment officer's decision to request a formal hearing
98 before the board.

99 (A) When an informal conference is held, the assess-
100 ment officer has authority to affirm, modify or vacate
101 the notice, order or proposed penalty assessment.

102 (B) When a formal hearing is requested, the amount
103 of the proposed penalty assessment shall be forwarded
104 to the director for placement in an escrow account.
105 Formal hearings shall be of record and subject to the
106 provisions of article five, chapter twenty-nine-a of this
107 code. Following the hearing the board shall affirm,
108 modify or vacate the notice, order or proposed penalty
109 assessment and, when appropriate, incorporate an
110 assessment order requiring that the assessment be paid.

111 (2) Civil penalties owed under this section may be
112 recovered by the director in the circuit court of
113 Kanawha County. Civil penalties collected under this
114 article shall be deposited with the treasurer of the state
115 of West Virginia to the credit of the special reclamation
116 fund established in section eleven of this article. If,
117 through the administrative or judicial review of the
118 proposed penalty it is determined that no violation
119 occurred or that the amount of the penalty should be
120 reduced, the director shall within thirty days remit the
121 appropriate amount to the person, with interest at the
122 rate of six percent or at the prevailing United States
123 department of the treasury rate, whichever is greater.
124 Failure to forward the money to the director within
125 thirty days is a waiver of all legal rights to contest the

126 violation or the amount of the penalty.

127 (e) Any person having an interest which is or may be
128 adversely affected by any order of the director or the
129 surface mine board may file an appeal only in accor-
130 dance with the provisions of article one, chapter twenty-
131 two-b of this code, within thirty days after receipt of the
132 order.

133 (f) The filing of an appeal or a request for an informal
134 conference or formal hearing provided for in this section
135 does not stay execution of the order appealed from.
136 Pending completion of the investigation and conference
137 or hearing required by this section, the applicant may
138 file with the director a written request that the director
139 grant temporary relief from any notice or order issued
140 under section sixteen or seventeen of this article,
141 together with a detailed statement giving reasons for
142 granting such relief. The director shall issue an order
143 or decision granting or denying such relief expedi-
144 tiously: *Provided*, That where the applicant requests
145 relief from an order for cessation of surface-mining and
146 reclamation operations, the decision on the request shall
147 be issued within five days of its receipt. The director
148 may grant such relief, under such conditions as he or
149 she may prescribe if:

150 (1) All parties to the proceedings have been notified
151 and given an opportunity to be heard on a request for
152 temporary relief;

153 (2) The person requesting the relief shows that there
154 is a substantial likelihood that they will prevail on the
155 merits in the final determination of the proceedings;

156 (3) The relief will not adversely affect the public
157 health or safety or cause significant imminent environ-
158 mental harm to land, air or water resources; and

159 (4) The relief sought is not the issuance of a permit
160 where a permit has been denied, in whole or in part,
161 by the director.

162 (g) Any person who willfully and knowingly violates
163 a condition of a permit issued pursuant to this article

164 or rules promulgated pursuant thereto, or fails or
165 refuses to comply with any order issued under said
166 article and rules or any order incorporated in a final
167 decision issued by the director, is guilty of a misdemea-
168 nor, and, upon conviction thereof, shall be fined not less
169 than one hundred dollars nor more than ten thousand
170 dollars, or imprisoned in the county jail not more than
171 one year, or both fined and imprisoned.

172 (h) Whenever a corporate operator violates a condition
173 of a permit issued pursuant to this article, rules
174 promulgated pursuant thereto, or any order incorpo-
175 rated in a final decision issued by the director, any
176 director, officer or agent of the corporation who willfully
177 and knowingly authorized, ordered or carried out the
178 failure or refusal, is subject to the same civil penalties,
179 fines and imprisonment that may be imposed upon a
180 person under subsections (c) and (g) of this section.

181 (i) Any person who knowingly makes any false
182 statement, representation or certification, or knowingly
183 fails to make any statement, representation or certifica-
184 tion in any application, petition, record, report, plan or
185 other document filed or required to be maintained
186 pursuant to this article or rules promulgated pursuant
187 thereto, is guilty of a misdemeanor, and, upon conviction
188 thereof, shall be fined not less than one hundred dollars
189 nor more than ten thousand dollars, or imprisoned in the
190 county jail not more than one year, or both fined and
191 imprisoned.

192 (j) Whenever any person: (A) Violates or fails or
193 refuses to comply with any order or decision issued by
194 the director under this article; or (B) interferes with,
195 hinders or delays the director in carrying out the
196 provisions of this article; or (C) refuses to admit the
197 director to the mine; or (D) refuses to permit inspection
198 of the mine by the director; or (E) refuses to furnish any
199 reasonable information or report requested by the
200 director in furtherance of the provisions of this article;
201 or (F) refuses to permit access to, and copying of, such
202 records as the director determines necessary in carrying
203 out the provisions of this article; or (G) violates any other

204 provisions of this article, the rules promulgated pursu-
205 ant thereto, or the terms and conditions of any permit,
206 the director, the attorney general or the prosecuting
207 attorney of the county in which the major portion of the
208 permit area is located may institute a civil action for
209 relief, including a permanent or temporary injunction,
210 restraining order or any other appropriate order, in the
211 circuit court of Kanawha County or any court of
212 competent jurisdiction to compel compliance with and
213 enjoin such violations, failures or refusals. The court or
214 the judge thereof may issue a preliminary injunction in
215 any case pending a decision on the merits of any
216 application filed without requiring the filing of a bond
217 or other equivalent security.

218 (k) Any person who shall, except as permitted by law,
219 willfully resists, prevents, impedes or interferes with the
220 director or any of his or her agents in the performance
221 of duties pursuant to this article is guilty of a misde-
222 meanor, and, upon conviction thereof, shall be punished
223 by a fine of not more than five thousand dollars or by
224 imprisonment for not more than one year, or both.

§22-3-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a complete surface-mining
2 application or significant revision or renewal thereof,
3 including public notification and an opportunity for a
4 public hearing, the director shall grant, require revision
5 of, or deny the application for a permit within sixty days
6 and notify the applicant in writing of the decision. The
7 applicant for a permit, or revision of a permit, has the
8 burden of establishing that the application is in
9 compliance with all the requirements of this article and
10 the rules promulgated hereunder.

11 (b) No permit or significant revision of a permit may
12 be approved unless the applicant affirmatively demon-
13 strates and the director finds in writing on the basis of
14 the information set forth in the application or from
15 information otherwise available which shall be docu-
16 mented in the approval and made available to the
17 applicant that:

18 (1) The permit application is accurate and complete
19 and that all the requirements of this article and rules
20 thereunder have been complied with;

21 (2) The applicant has demonstrated that reclamation
22 as required by this article can be accomplished under
23 the reclamation plan contained in the permit
24 application;

25 (3) The assessment of the probable cumulative impact
26 of all anticipated mining in the area on the hydrologic
27 balance, as specified in section nine of this article, has
28 been made by the director and the proposed operation
29 has been designed to prevent material damage to the
30 hydrologic balance outside the permit area;

31 (4) The area proposed to be mined is not included
32 within an area designated unsuitable for surface mining
33 pursuant to section twenty-two of this article or is not
34 within an area under administrative study by the
35 director for such designation; and

36 (5) In cases where the private mineral estate has been
37 severed from the private surface estate, the applicant
38 has submitted: (A) The written consent of the surface
39 owner to the extraction of coal by surface mining; or (B)
40 a conveyance that expressly grants or reserves the right
41 to extract the coal by surface mining; or (C) if the
42 conveyance does not expressly grant the right to extract
43 coal by surface mining, the surface-subsurface legal
44 relationship shall be determined in accordance with
45 applicable law: *Provided*, That nothing in this article
46 shall be construed to authorize the director to adjudicate
47 property rights disputes.

48 (c) Where information available to the division
49 indicates that any surface-mining operation owned or
50 controlled by the applicant is currently in violation of
51 this article or other environmental laws or rules, the
52 permit shall not be issued until the applicant submits
53 proof that such violation has been corrected or is in the
54 process of being corrected to the satisfaction of the
55 director or the department or agency which has
56 jurisdiction over the violation, and no permit may be

57 issued to any applicant after a finding by the director,
58 after an opportunity for hearing, that the applicant or
59 the operator specified in the application controls or has
60 controlled mining operations with a demonstrated
61 pattern of willful violations of this article or of other
62 state or federal programs implementing the federal
63 Surface Mining Control and Reclamation Act of 1977,
64 as amended, of such nature and duration with such
65 irreparable damage to the environment as to indicate an
66 intent not to comply with the provisions of this article
67 or the federal Surface Mining Control and Reclamation
68 Act of 1977, as amended: *Provided*, That if the director
69 finds that the applicant is or has been affiliated with,
70 or managed or controlled by, or is or has been under
71 the common control of, other than as an employee, a
72 person who has had a surface-mining permit revoked or
73 bond or other security forfeited for failure to reclaim
74 lands as required by the laws of this state, he or she
75 shall not issue a permit to the applicant: *Provided*,
76 *however*, That subject to the discretion of the director
77 and based upon a petition for reinstatement, permits
78 may be issued to any applicant if: (1) After the
79 revocation or forfeiture, the operator whose permit has
80 been revoked or bond forfeited has paid into the special
81 reclamation fund any additional sum of money deter-
82 mined by the director to be adequate to reclaim the
83 disturbed area; (2) the violations which resulted in the
84 revocation or forfeiture have not caused irreparable
85 damage to the environment; and (3) the director is
86 satisfied that the petitioner will comply with this article.

87 (d) (1) In addition to finding the application in
88 compliance with subsection (b) of this section, if the area
89 proposed to be mined contains prime farmland, the
90 director may, pursuant to rules promulgated hereunder,
91 grant a permit to mine on prime farmland if the
92 operator affirmatively demonstrates that the operator
93 has the technological capability to restore such mined
94 area, within a reasonable time, to equivalent or higher
95 levels of yield as nonmined prime farmland in the
96 surrounding area under equivalent levels of manage-
97 ment, and can meet the soil reconstruction standards in
98 subdivision (7), subsection (b), section thirteen of this

99 article. Except for compliance with subsection (b) of this
100 section, the requirements of subdivision (1) of this
101 subsection apply to all permits issued after the third day
102 of August, one thousand nine hundred seventy-seven.

103 (2) Nothing in this subsection applies to any permit
104 issued prior to the third day of August, one thousand
105 nine hundred seventy-seven, or to any revisions or
106 renewals thereof, or to any existing surface-mining
107 operations for which a permit was issued prior to said
108 date.

109 (e) If the director finds that the overburden on any
110 part of the area of land described in the application for
111 a permit is such that experience in the state with a
112 similar type of operation upon land with similar
113 overburden shows that one or more of the following
114 conditions cannot feasibly be prevented: (1) Substantial
115 deposition of sediment in stream beds; (2) landslides; or
116 (3) acid-water pollution, the director may delete such
117 part of the land described in the application upon which
118 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.**

1 (a) (1) Any valid permit issued pursuant to this article
2 carries with it the right of successive renewal upon
3 expiration with respect to areas within the boundaries
4 of the existing permit. The holders of the permit may
5 apply for renewal and the renewal shall be issued:
6 *Provided*, That on application for renewal, the burden
7 is on the opponents of renewal, unless it is established
8 that and written findings by the director are made that:
9 (A) The terms and conditions of the existing permit are
10 not being satisfactorily met: *Provided, however*, That if
11 the permittee is required to modify operations pursuant
12 to mining or reclamation requirements which become
13 applicable after the original date of permit issuance, the
14 permittee shall be provided an opportunity to submit a
15 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

55 made by application for another permit. If the permittee
56 desires to add the new area to his or her existing permit
57 in order to have existing areas and new areas under one
58 permit, the director may so amend the original permit:
59 *Provided*, That the application for the new area is
60 subject to all procedures and requirements applicable to
61 applications for original permits under this article.

62 (c) The director shall review outstanding permits of
63 a five-year term before the end of the third year of the
64 permit. Other permits shall be reviewed within the time
65 established by rules. The director may require reasona-
66 ble revision or modification of the permit following
67 review: *Provided*, That such revision or modification
68 shall be based upon written findings and shall be
69 preceded by notice to the permittee of an opportunity
70 for hearing.

71 (d) No transfer, assignment or sale of the rights
72 granted under any permit issued pursuant to this article
73 shall be made without the prior written approval of the
74 director.

**§22-3-20. Public notice; written objections; public hear-
ings; informal conferences.**

1 (a) At the time of submission of an application for a
2 surface-mining permit or a significant revision of an
3 existing permit pursuant to the provisions of this article,
4 the applicant shall submit to the division a copy of the
5 required advertisement. At the time of submission, the
6 applicant shall place the advertisement in a local
7 newspaper of general circulation in the county of the
8 proposed surface-mining operation at least once a week
9 for four consecutive weeks. The director shall notify
10 various appropriate federal and state agencies as well
11 as local governmental bodies, planning agencies and
12 sewage and water treatment authorities or water
13 companies in the locality in which the proposed surface-
14 mining operation will take place, notifying them of the
15 operator's intention to mine on a particularly described
16 tract of land and indicating the application number and
17 where a copy of the proposed mining and reclamation
18 plan may be inspected. These local bodies, agencies,

19 authorities or companies may submit written comments
20 within a reasonable period established by the director
21 on the mining application with respect to the effect of
22 the proposed operation on the environment which is
23 within their area of responsibility. Such comments shall
24 be immediately transmitted by the director to the
25 applicant and to the appropriate office of the division.
26 The director shall provide the name and address of each
27 applicant to the commissioner of the division of labor
28 who shall within fifteen days from receipt notify the
29 director as to the applicant's compliance, if necessary,
30 with section fourteen, article five, chapter twenty-one of
31 this code.

32 (b) Any person having an interest which is or may be
33 adversely affected, or the officer or head of any federal,
34 state or local governmental agency, has the right to file
35 written objections to the proposed initial or revised
36 permit application for a surface-mining operation with
37 the director within thirty days after the last publication
38 of the advertisement required in subsection (a) of this
39 section. Such objections shall be immediately transmit-
40 ted to the applicant by the director and shall be made
41 available to the public. If written objections are filed
42 and an informal conference requested within thirty days
43 of the last publication of the above notice, the director
44 shall then hold a conference in the locality of the
45 proposed mining within three weeks after the close of
46 the public comment period. Those requesting the
47 conference shall be notified and the date, time and
48 location of the informal conference shall also be
49 advertised by the director in a newspaper of general
50 circulation in the locality at least two weeks prior to the
51 scheduled conference date. The director may arrange
52 with the applicant, upon request by any party to the
53 conference proceeding, access to the proposed mining
54 area for the purpose of gathering information relevant
55 to the proceeding. An electronic or stenographic record
56 shall be made of the conference proceeding unless
57 waived by all parties. Such record shall be maintained
58 and shall be accessible to the parties at their respective
59 expense until final release of the applicant's bond or
60 other security posted in lieu thereof. The director's

61 authorized agent will preside over the conference. In the
62 event all parties requesting the informal conference
63 stipulate agreement prior to the conference and with-
64 draw their request, a conference need not be held.

**§22-3-21. Decision of director on permit application;
hearing thereon.**

1 (a) If an informal conference has been held, the
2 director shall issue and furnish the applicant for a
3 permit and persons who were parties to the informal
4 conference with the written finding granting or denying
5 the permit, in whole or in part, and stating the reasons
6 therefor within thirty days of the informal conference,
7 notwithstanding the requirements of subsection (a),
8 section eighteen of this article.

9 (b) If the application is approved, the permit shall be
10 issued. If the application is disapproved, specific reasons
11 therefor must be set forth in the notification. Within
12 thirty days after the applicant is notified of the
13 director's decision, the applicant or any person with an
14 interest which is or may be adversely affected may
15 request a hearing before the surface mine board as
16 provided in article one, chapter twenty-two-b of this
17 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.**

1 (a) The director shall establish a planning process to
2 enable objective decisions based upon competent and
3 scientifically sound data and information as to which, if
4 any, land areas of this state are unsuitable for all or
5 certain types of surface-mining operations pursuant to
6 the standards set forth in subdivisions (1) and (2) of this
7 subsection: *Provided*, That such designation shall not
8 prevent prospecting pursuant to section seven of this
9 article on any area so designated.

10 (1) Upon petition pursuant to subsection (b) of this
11 section, the director shall designate an area as unsuit-

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 opportun-
40 ities 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

52 pursuant to this article, or where substantial legal and
53 financial commitments in the operations were in
54 existence prior to the fourth day of January, one
55 thousand nine hundred seventy-seven.

56 (b) Any person having an interest which is or may be
57 adversely affected has the right to petition the director
58 to have an area designated as unsuitable for surface-
59 mining operations or to have such a designation
60 terminated. The petition shall contain allegations of fact
61 with supporting evidence which would tend to establish
62 the allegations. After receipt of the petition, the director
63 shall immediately begin an administrative study of the
64 area specified in the petition. Within ten months after
65 receipt of the petition, the director shall hold a public
66 hearing in the locality of the affected area after
67 appropriate notice and publication of the date, time and
68 location of the hearing. After the director or any person
69 having an interest which is or may be adversely affected
70 has filed a petition and before the hearing required by
71 this subsection, any person may intervene by filing
72 allegations of fact with supporting evidence which
73 would tend to establish the allegations. Within sixty
74 days after the hearing, the director shall issue and
75 furnish to the petitioner and any other party to the
76 hearing, a written decision regarding the petition and
77 the reasons therefor. In the event that all the petitioners
78 stipulate agreement prior to the requested hearing and
79 withdraw their request, the hearing need not be held.

80 (c) Prior to designating any land areas as unsuitable
81 for surface-mining operations, the director shall prepare
82 a detailed statement on: (1) The potential coal resources
83 of the area; (2) the demand for the coal resources; and
84 (3) the impact of the designation on the environment, the
85 economy and the supply of coal.

86 (d) After the third day of August, one thousand nine
87 hundred seventy-seven, and subject to valid existing
88 rights, no surface-mining operations, except those which
89 existed on that date, shall be permitted:

90 (1) On any lands in this state within the boundaries
91 of units of the national park system, the national wildlife

92 refuge systems, the national system of trails, the
93 national wilderness preservation system, the wild and
94 scenic rivers system, including study rivers designated
95 under section five-a of the Wild and Scenic Rivers Act,
96 and national recreation areas designated by act of
97 Congress;

98 (2) Which will adversely affect any publicly owned
99 park or places included in the national register of
100 historic sites, or national register of natural landmarks
101 unless approved jointly by the director and the federal,
102 state or local agency with jurisdiction over the park, the
103 historic site or natural landmark;

104 (3) Within one hundred feet of the outside right-of-
105 way line on any public road, except where mine access
106 roads or haulage roads join such right-of-way line, and
107 except that the director may permit the roads to be
108 relocated or the area affected to lie within one hundred
109 feet of the road if, after public notice and an opportunity
110 for a public hearing in the locality, the director makes
111 a written finding that the interests of the public and the
112 landowners affected thereby will be protected;

113 (4) Within three hundred feet from any occupied
114 dwelling, unless waived by the owner thereof, or within
115 three hundred feet of any public building, school,
116 church, community or institutional building, public
117 park, or within one hundred feet of a cemetery; or

118 (5) On any federal lands within the boundaries of any
119 national forest: *Provided*, That surface coal mining
120 operations may be permitted on the lands if the
121 secretary of the interior finds that there are no
122 significant recreational, timber, economic or other
123 values which may be incompatible with the surface-
124 mining operations: *Provided, however*, That the surface
125 operations and impacts are incident to an underground
126 coal mine.

127 (e) Notwithstanding any other provision of this code,
128 the coal underlying any lands designated unsuitable for
129 surface-mining operations under any provisions of this
130 article or underlying any land upon which mining is
131 prohibited by any provisions of this article shall be

132 assessed for taxation purposes according to their value
133 and the Legislature hereby finds that the coal has no
134 value for the duration of the designation or prohibition
135 unless suitable for underground mining not in violation
136 of this article: *Provided*, That the owner of the coal shall
137 forthwith notify the proper assessing authorities if the
138 designation or prohibition is removed so that the coal
139 may be reassessed.

**§22-3-23. Release of bond or deposits; application; notice;
duties of director; public hearings; final
maps on grade release.**

1 (a) The permittee may file a request with the director
2 for the release of a bond or deposit. The permittee shall
3 publish an advertisement regarding such request for
4 release in the same manner as is required of advertise-
5 ments for permit applications. A copy of such advertise-
6 ment shall be submitted to the director as part of any
7 bond release application and shall contain a notification
8 of the precise location of the land affected, the number
9 of acres, the permit and the date approved, the amount
10 of the bond filed and the portion sought to be released,
11 the type and appropriate dates of reclamation work
12 performed and a description of the results achieved as
13 they relate to the permittee's approved reclamation
14 plan. In addition, as part of any bond release applica-
15 tion, the permittee shall submit copies of letters which
16 the permittee has sent to adjoining property owners,
17 local government bodies, planning agencies, sewage and
18 water treatment authorities or water companies in the
19 locality in which the surface-mining operation is located,
20 notifying them of the permittee's intention to seek
21 release from the bond. Any request for grade release
22 shall also be accompanied by final maps.

23 (b) Upon receipt of the application for bond release,
24 the director, within thirty days, taking into considera-
25 tion existing weather conditions, shall conduct an
26 inspection and evaluation of the reclamation work
27 involved. Such evaluation shall consider, among other
28 things, the degree of difficulty to complete any remain-
29 ing reclamation, whether pollution of surface and
30 subsurface water is occurring, the probability of

31 continuance or future occurrence of such pollution and
32 the estimated cost of abating such pollution. The
33 director shall notify the permittee in writing of his or
34 her decision to release or not to release all or part of
35 the bond or deposit within sixty days from the date of
36 the initial publication of the advertisement if no public
37 hearing is requested. If a public hearing is held, the
38 director's decision shall be issued within thirty days
39 thereafter.

40 (c) If the director is satisfied that reclamation covered
41 by the bond or deposit or portion thereof has been
42 accomplished as required by this article, he or she may
43 release said bond or deposit, in whole or in part,
44 according to the following schedule:

45 (1) When the operator completes the backfilling,
46 regrading and drainage control of a bonded area in
47 accordance with the operator's approved reclamation
48 plan, the release of sixty percent of the bond or
49 collateral for the applicable bonded area: *Provided*, That
50 a minimum bond of ten thousand dollars shall be
51 retained after grade release;

52 (2) Two years after the last augmented seeding,
53 fertilizing, irrigation or other work to ensure com-
54 pliance with subdivision (19), subsection (b), section
55 thirteen of this article, the release of an additional
56 twenty-five percent of the bond or collateral for the
57 applicable bonded area: *Provided*, That a minimum
58 bond of ten thousand dollars shall be retained after the
59 release provided for in this subdivision; and

60 (3) When the operator has completed successfully all
61 surface mining and reclamation activities, the release of
62 the remaining portion of the bond, but not before the
63 expiration of the period specified in subdivision (20),
64 subsection (b), section thirteen of this article: *Provided*,
65 That the revegetation has been established on the
66 regraded mined lands in accordance with the approved
67 reclamation plan: *Provided, however*, That such a release
68 may be made where the quality of the untreated post-
69 mining water discharged is better than or equal to the
70 premining water quality discharged from the mining

71 site.

72 No part of the bond or deposit may be released under
73 this subsection so long as the lands to which the release
74 would be applicable are contributing additional sus-
75 pended solids to streamflow or runoff outside the permit
76 area in excess of the requirements set by section thirteen
77 of this article, or until soil productivity for prime
78 farmlands has returned to equivalent levels of yield as
79 nonmined land of the same soil type in the surrounding
80 area under equivalent management practices as deter-
81 mined from the soil survey performed pursuant to
82 section nine of this article. Where a sediment dam is to
83 be retained as a permanent impoundment pursuant to
84 section thirteen of this article, or where a road or minor
85 deviation is to be retained for sound future maintenance
86 of the operation, the portion of the bond may be released
87 under this subsection so long as provisions for sound
88 future maintenance by the operator or the landowner
89 have been made with the director.

90 (d) If the director disapproves the application for
91 release of the bond or portion thereof, the director shall
92 notify the permittee, in writing, stating the reasons for
93 disapproval and recommending corrective actions
94 necessary to secure said release and notifying the
95 operator of the right to a hearing.

96 (e) When any application for total or partial bond
97 release is filed with the director, he or she shall notify
98 the municipality in which a surface-mining operation is
99 located by registered or certified mail at least thirty
100 days prior to the release of all or a portion of the bond.

101 (f) Any person with a valid legal interest which is or
102 may be adversely affected by release of the bond or the
103 responsible officer or head of any federal, state or local
104 governmental agency which has jurisdiction by law or
105 special expertise with respect to any environmental,
106 social or economic impact involved in the operation, or
107 is authorized to develop and enforce environmental
108 standards with respect to such operations, has the right
109 to file written objections to the proposed bond release
110 and request a hearing with the director within thirty

111 days after the last publication of the permittee's
112 advertisement. If written objections are filed and a
113 hearing requested, the director shall inform all of the
114 interested parties of the time and place of the hearing
115 and shall hold a public hearing in the locality of the
116 surface-mining operation proposed for bond release
117 within three weeks after the close of the public comment
118 period. The date, time and location of such public
119 hearing shall also be advertised by the director in a
120 newspaper of general circulation in the same locality.

121 (g) Without prejudice to the rights of the objectors, the
122 applicant, or the responsibilities of the director pursuant
123 to this section, the director may hold an informal
124 conference to resolve any written objections and satisfy
125 the hearing requirements of this section thereby.

126 (h) For the purpose of such hearing, the director has
127 the authority and is hereby empowered to administer
128 oaths, subpoena witnesses and written or printed
129 materials, compel the attendance of witnesses, or
130 production of materials, and take evidence including,
131 but not limited to, inspections of the land affected and
132 other surface-mining operations carried on by the
133 applicant in the general vicinity. A verbatim record of
134 each public hearing required by this section shall be
135 made and a transcript made available on the motion of
136 any party or by order of the director at the cost of the
137 person requesting the transcript.

§22-3-24. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article affects in any way the
2 rights of any person to enforce or protect, under
3 applicable law, the person's interest in water resources
4 affected by a surface-mining operation.

5 (b) Any operator shall replace the water supply of an
6 owner of interest in real property who obtains all or part
7 of the owner's supply of water for domestic, agricultu-
8 ral, industrial or other legitimate use from an under-
9 ground or surface source where such supply has been
10 affected by contamination, diminution or interruption
11 proximately caused by such surface-mining operation,

12 unless waived by said owner.

§22-3-25. Citizen suits; order of court; damages.

1 (a) Except as provided in subsection (b) of this section,
2 any person having an interest which is or may be
3 adversely affected may commence a civil action in the
4 circuit court of the county to which the surface-mining
5 operation is located on the person's own behalf to compel
6 compliance with this article:

7 (1) Against the state of West Virginia or any other
8 governmental instrumentality or agency thereof, to the
9 extent permitted by the West Virginia constitution and
10 by law, which is alleged to be in violation of the
11 provisions of this article or any rule, order or permit
12 issued pursuant thereto, or against any other person who
13 is alleged to be in violation of any rule, order or permit
14 issued pursuant to this article; or

15 (2) Against the director, division, surface mine board
16 or appropriate division employees, to the extent permit-
17 ted by the West Virginia constitution and by law, where
18 there is alleged a failure of the above to perform any
19 act or duty under this article which is not discretionary.

20 (b) No action may be commenced:

21 (1) Under subdivision (1), subsection (a) of this section:
22 (A) Prior to sixty days after the plaintiff has given
23 notice in writing of the violation to the director or to any
24 alleged violator, or (B) if the director has commenced
25 and is diligently prosecuting a civil action in a circuit
26 court to require compliance with the provisions of this
27 article or any rule, order or permit issued pursuant to
28 this article; or

29 (2) Under subdivision (2), subsection (a) of this section
30 prior to sixty days after the plaintiff has given notice
31 in writing of such action to the director, except that such
32 action may be brought immediately after such notifica-
33 tion in the case where the violation or order complained
34 of constitutes an imminent threat to the health or safety
35 of the plaintiff or would immediately affect a legal
36 interest of the plaintiff.

37 (c) Any action respecting a violation of this article or
38 the rules thereunder may be brought in any appropriate
39 circuit court. In such action under this section, the
40 director, if not a party, may intervene as a matter of
41 right.

42 (d) The court in issuing any final order in any action
43 brought pursuant to subsection (a) of this section may
44 award costs of litigation, including reasonable attorney
45 and expert witness fees, to any party whenever the court
46 determines such award is appropriate. The court may,
47 if a temporary restraining order or preliminary injunction
48 is sought, require the filing of a bond or equivalent
49 security.

50 (e) Nothing in this section restricts any right which
51 any person or class of persons may have under any
52 statute or common law to seek enforcement of any of the
53 provisions of this article and the rules thereunder or to
54 seek any other relief.

55 (f) Any person or property who is injured through the
56 violation by any operator of any rule, order or permit
57 issued pursuant to this article may bring an action for
58 damages, including reasonable attorney and expert
59 witness fees, in any court of competent jurisdiction.
60 Nothing in this subsection affects the rights established
61 by or limits imposed under state workers' compensation
62 laws.

63 (g) This section applies to violations of this article and
64 the rules promulgated thereto, or orders or permits
65 issued pursuant to said article insofar as said violations,
66 rules, orders and permits relate to surface-mining
67 operations.

**§22-3-26. Surface-mining operations not subject to
article.**

1 The provisions of this article do not apply to any of
2 the following activities:

3 (a) The extraction of coal by a landowner for the
4 landowner's own noncommercial use from land owned
5 or leased by the landowner.

6 (b) The extraction of coal as an incidental part of
7 federal, state, county, municipal or other local govern-
8 ment-financed highway or other construction: *Provided*,
9 That the provisions of the construction contract require
10 the furnishing of a suitable bond which provides for
11 reclamation, wherever practicable, of the area affected
12 by such extraction.

**§22-3-27. Leasing of lands owned by state for surface
mining of coal.**

1 No land or interest in land owned by the state may
2 be leased, and no present lease may be renewed by the
3 state, nor any agency of the state, for the purpose of
4 conducting surface-mining operations thereon unless
5 said lease or renewal has been first authorized by an act
6 of the Legislature: *Provided*, That the provisions of this
7 section do not apply to underground mining on such
8 land.

**§22-3-28. Special permits for reclamation of existing
abandoned coal processing waste piles.**

1 (a) Except where exempted by section twenty-six of
2 this article, it is unlawful for any person to engage in
3 surface mining as defined in this article as an incident
4 to the development of land for commercial, residential,
5 industrial or civic use without having first obtained
6 from the director a permit therefor as provided in
7 section eight of this article, unless a special permit
8 therefor has been first obtained from the director as
9 provided in this section.

10 Application for a special permit to engage in surface
11 mining as an incident to the development of land for
12 commercial, residential, industrial or civic use shall be
13 made in writing on forms prescribed by the director and
14 shall be signed and verified by the applicant. The
15 application shall be accompanied by:

16 (1) A site preparation plan, prepared and certified by
17 or under the supervision of a person approved by the
18 director, showing the tract of land which the applicant
19 proposes to develop for commercial, residential, indus-
20 trial or civic use; the probable boundaries and areas of

21 the coal deposit to be mined and removed from said
22 tract of land incident to the proposed commercial,
23 residential, industrial or civic use thereof; and such
24 other information as prescribed by the director;

25 (2) A development plan for the proposed commercial,
26 residential, industrial or civic use of said land;

27 (3) The name of owner of the surface of the land to
28 be developed;

29 (4) The name of owner of the coal to be mined incident
30 to the development of the land;

31 (5) A reasonable estimate of the number of acres of
32 coal that would be mined as a result of the proposed
33 development of said land: *Provided*, That in no event
34 may such number of acres to be mined, excluding
35 roadways, exceed five acres; and

36 (6) Such other information as the director may
37 require to satisfy and assure the director that the
38 surface mining under special permit is incidental or
39 secondary to the proposed commercial, residential,
40 industrial or civic use of said land.

41 (b) There shall be attached to the application for the
42 special permit a certificate of insurance certifying that
43 the applicant has in force a public liability insurance
44 policy issued by an insurance company authorized to do
45 business in this state affording personal injury protec-
46 tion in accordance with subsection (d), section nine of
47 this article.

48 The application for the special permit shall also be
49 accompanied by a bond, or cash or collateral securities
50 or certificates of the same type, in the form as pres-
51 cribed by the director and in the minimum amount of
52 two thousand dollars per acre, for a maximum distur-
53 bance of five acres.

54 The bond shall be payable to the state of West
55 Virginia and conditioned that the applicant complete
56 the site preparation for the proposed commercial,
57 residential, industrial or civic use of said land. At the
58 conclusion of the site preparation, in accordance with

59 the site preparation plan submitted with the application,
60 the bond conditions are satisfied and the bond and any
61 cash, securities or certificates furnished with said bond
62 may be released and returned to the applicant. The
63 filing fee for the special permit is five hundred dollars.
64 The special permit is valid until work permitted is
65 completed.

66 (c) The purpose of this section is to vest jurisdiction
67 in the director, where the surface mining is incidental
68 or secondary to the preparation of land for commercial,
69 residential, industrial or civic use and where, as an
70 incident to such preparation of land, minerals must be
71 removed, including, but not limited to, the building and
72 construction of railroads, shopping malls, factory and
73 industrial sites, residential and building sites and
74 recreational areas. Anyone who has been issued a special
75 permit shall not be issued an additional special permit
76 on the same or adjacent tract of land unless satisfactory
77 evidence has been submitted to the director that such
78 permit is necessary to subsequent development or
79 construction. As long as the operator complies with the
80 purpose and provisions of this section, the other sections
81 of this article are not applicable to the operator holding
82 a special permit: *Provided*, That the director shall
83 promulgate rules establishing applicable performance
84 standards for operations permitted under this section.

85 (d) The director may, in the exercise of his or her
86 sound discretion, when not in conflict with the purposes
87 and findings of this article and to bring about a more
88 desirable land use or to protect the public and the
89 environment, issue a special permit solely for the
90 removal of existing abandoned coal processing waste
91 piles. The director shall promulgate specific rules for
92 such operations: *Provided*, That a bond and a reclama-
93 tion plan is required for such operations.

§22-3-29. Experimental practices.

1 In order to encourage advances in surface mining and
2 reclamation practices or to allow postmining land use
3 for industrial, commercial, residential, agricultural or
4 public use, including recreational facilities, the director

5 may authorize departures, in individual cases and on an
6 experimental basis, from the environmental protection
7 performance standards promulgated under this article.
8 Such departures may be authorized if the experimental
9 practices are potentially more or at least as environmen-
10 tally protective during and after surface-mining oper-
11 ations as those required by promulgated standards; the
12 surface-mining operations approved for particular land
13 use or other purposes are not larger or more numerous
14 than necessary to determine the effectiveness and
15 economic feasibility of the experimental practices; and
16 the experimental practices do not reduce the protection
17 afforded health or safety of the public below that
18 provided by promulgated standards.

§22-3-30. Certification and training of blasters.

1 The director is responsible for the training, examina-
2 tion and certification of persons engaging in or directly
3 responsible for blasting or use of explosives in surface-
4 mining operations.

**§22-3-31. Conflict of interest prohibited; criminal penal-
ties therefor; employee protection.**

1 (a) No employee of the division engaged in the
2 enforcement or administration of this article or em-
3 ployee of the surface mine board performing any
4 function or duty under this article shall have a direct
5 or indirect financial interest in any surface-mining
6 operation. Whoever knowingly violates the provisions of
7 this subsection is guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not more than two
9 thousand five hundred dollars, or imprisoned in the
10 county jail not more than one year, or both fined and
11 imprisoned. The director shall establish methods by
12 which the provisions of this subsection will be monitored
13 and enforced, including appropriate provisions for the
14 filing and the review of statements and supplements
15 thereto concerning any financial interest which may be
16 affected by this subsection.

17 (b) No person shall discharge or in any other way
18 discriminate against, or cause to be fired or discrimi-
19 nated against, any employee or any authorized represen-

20 tative of employees by reason of the fact that the
21 employee or representative has filed, instituted, or
22 caused to be filed or instituted, any proceeding under
23 this article, or has testified or is about to testify in any
24 proceeding resulting from the administration or en-
25 forcement of the provisions of this article.

26 (c) Any employee or a representative of employees
27 who has reason to believe that he or she has been fired
28 or otherwise discriminated against by any person in
29 violation of subsection (b) of this section may, within
30 thirty days after the alleged violation occurs, petition to
31 the surface mine board for a review of the firing or
32 discrimination. The employee or representative is the
33 petitioner and shall serve a copy of the petition upon the
34 person or operator who will be the respondent. The
35 participants shall be given ten days' written notice of the
36 hearing before the board and the hearing shall be held
37 within thirty days of the filing of the petition. The board
38 shall have the same powers and shall hear the petition
39 in the same manner as provided in article one, chapter
40 twenty-two-b of this code.

41 (d) If the board finds that the alleged violation did
42 occur, it shall issue an order incorporating therein
43 findings of fact and conclusions requiring the partici-
44 pant committing the violation to take such affirmative
45 action to abate the violation by appropriate action,
46 including, but not limited to, the hiring or reinstatement
47 of the employee or representative to his former position
48 with compensation. If the board finds no violation, it
49 shall issue a finding to that effect. Orders issued by the
50 board under this section shall be subject to judicial
51 review in the same manner as other orders of the board
52 issued under this article or article one, chapter twenty-
53 two-b of this code.

54 (e) Whenever an order is issued under this section to
55 abate any violation, at the request of the petitioner a
56 sum equal to the aggregate costs and expenses, includ-
57 ing attorneys' fees to have been reasonably incurred by
58 the petitioner for, or in connection with, the institution
59 and prosecution of the proceedings, shall be assessed
60 against the person committing the violation.

§22-3-32. Special tax on coal production; mines and minerals operations fund.

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

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

28 (c) *Mining and Reclamation Operations Fund.* — The
29 special fund previously created in the state treasury
30 known as the "Mines and Minerals Operations Fund" is
31 renamed the "Mining and Reclamation Operations
32 Fund". The tax commissioner shall, at least quarterly,
33 deposit into the fund the net amount of tax collected
34 under this section, including any additions to tax,
35 penalties and interest collected with respect thereto. The
36 treasurer shall deposit all moneys deposited in or
37 credited to this fund in an interest-bearing account, with
38 the amount of interest earned being credited to this fund
39 as it is earned. The moneys in this special fund shall be

40 expended solely for the purposes of carrying out those
 41 statutory duties relating to the enforcement of environ-
 42 mental regulatory programs for the coal industry as
 43 imposed by this chapter and the federal Surface Mining
 44 Control and Reclamation Act of 1977 and any amend-
 45 ments thereto. Expenditures from the fund are not
 46 authorized from collections but are to be made only in
 47 accordance with appropriations by the Legislature and
 48 in accordance with the provisions of article three,
 49 chapter twelve of this code and upon fulfillment of the
 50 provisions set forth in article two, chapter five-a of this
 51 code.

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

61 (e) *Crimes and penalties.* — Each and every provision
 62 of the “West Virginia Tax Crimes and Penalties Act” set
 63 forth in article nine of said chapter eleven applies to the
 64 special tax imposed by this section with like effect as
 65 if such act were applicable only to the special tax
 66 imposed by this section and set forth in extenso in this
 67 article, notwithstanding the provisions of section two of
 68 said article nine.

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

ment and qualifications; salary.

- §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.
- §22-4-19. Noncompliance.
- §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.

1 Except as otherwise provided in section thirty-eight,
2 article one, chapter twenty-two-a of this code the
3 division of environmental protection is hereby vested
4 with jurisdiction over all aspects of surface mining and
5 with jurisdiction and control over land, water and soil
6 aspects pertaining to surface-mining operations, and the
7 restoration and reclamation of lands surface mined and
8 areas affected thereby.

9 The Legislature finds that, although surface mining
10 provides much needed employment and has produced
11 good safety records, unregulated surface mining causes
12 soil erosion, pyritic shales and materials, landslides,
13 noxious materials, stream pollution and accumulation of
14 stagnant water, increases the likelihood of floods and
15 slides, destroys the value of some lands for agricultural
16 purposes and some lands for recreational purposes,
17 destroys aesthetic values, counteracts efforts for the
18 conservation of soil, water and other natural resources,
19 and destroys or impairs the health, safety, welfare and

20 property rights of the citizens of West Virginia, where
21 proper mining and reclamation is not practiced.

22 The Legislature also finds that there are wide
23 variations regarding location and terrain conditions
24 surrounding and arising out of the surface mining
25 primarily in topographical and geological conditions,
26 and by reason thereof, it is necessary to provide the most
27 effective, beneficial and equitable solution to the
28 problems involved.

29 The Legislature further finds that authority should be
30 vested in the director of the division of environmental
31 protection to administer and enforce the provisions of
32 this article.

33 The director of the division of environmental protec-
34 tion and the director of the office of miners' health,
35 safety and training shall cooperate with respect to each
36 agency's programs and records so as to effect an orderly
37 and harmonious administration of the provisions of this
38 article. The director of the division of environmental
39 protection may avail himself or herself of any services
40 which may be provided by other state agencies in this
41 state and other states or by agencies of the federal
42 government, and may reasonably compensate them for
43 such services. He or she may also receive any federal
44 funds, state funds or any other funds for the reclamation
45 of land affected by surface mining.

46 No public officer or employee in the division of
47 environmental protection, the office of miners' health,
48 safety and training, or in the office of attorney general,
49 having any responsibility or duty either directly or of
50 a supervisory nature with respect to the administration
51 or enforcement of this article shall (1) engage in surface
52 mining as a sole proprietor or as a partner, or (2) be
53 an officer, director, stockholder, owner or part owner of
54 any corporation or other business entity engaged in
55 surface mining, or (3) be employed as an attorney, agent
56 or in any other capacity by any person, partnership,
57 firm, association, trust or corporation engaged in
58 surface mining. Any violation of this paragraph by any
59 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
2 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, limes-
28 tone, 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,

36 firm, association, trust or corporation who or which is
37 granted or should obtain a permit to engage in any
38 activity covered by this article.

39 (h) "Permit area" means the area of land indicated on
40 the approved map submitted by the operator with the
41 reclamation plan as specified in section seven of this
42 article showing the exact location of end strip markers,
43 permit markers and monument.

44 (i) "Person" means any individual, partnership, firm,
45 association, trust or corporation.

46 (j) "Surface mine" means all areas surface mined or
47 being surface mined, as well as adjacent areas ancillary
48 to the operation, together with preparation and process-
49 ing plants, storage areas and haulageways, roads or
50 trails.

51 (k) "Surface mining" means all activity for the
52 recovery of minerals, and all plants and equipment used
53 in processing said minerals: *Provided*, That the bonding
54 and reclamation provisions of this article do not apply
55 to surface mining of limestone, sandstone and sand:
56 *Provided, however*, That the surface mining of limestone,
57 sandstone and sand is subject to separate rules to be
58 promulgated by the director.

59 (l) "Surface of a regraded bench" means the top
60 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
2 director shall administer all of the laws of this state
3 relating to surface mining and shall exercise all of the
4 powers and perform all of the duties by law vested in
5 and imposed upon him or her in relation to said
6 operations.

**§22-4-4. Surface-mining reclamation supervisors and
inspectors; appointment and qualifications;
salary.**

1 The director shall determine the number of surface-
2 mining reclamation supervisors and inspectors needed

3 to carry out the purposes of this article and appoint
4 them as such. All such appointees shall be eligible civil
5 service employees, but no person is qualified for such
6 appointment until he or she has served in a probationary
7 status for a period of one year to the satisfaction of the
8 director.

9 Every surface-mining reclamation supervisor or
10 inspector shall be paid not less than sixteen thousand
11 dollars per year.

§22-4-5. Duties of surface-mining reclamation inspectors.

1 The surface-mining reclamation inspectors shall
2 make all necessary surveys and inspections of surface-
3 mining operations, shall administer and enforce all
4 surface-mining laws and rules, and shall perform such
5 other duties and services as may be prescribed by the
6 director. Such inspectors shall give particular attention
7 to all conditions of each permit to ensure complete
8 compliance therewith. The director shall cause inspec-
9 tions to be made of each active surface-mining operation
10 in this state by a surface-mining reclamation inspector
11 at least once every fifteen days. Said inspector shall note
12 and describe violations of this article and immediately
13 report such violations to the director in writing,
14 furnishing at the same time a copy of such report to the
15 operator concerned.

§22-4-6. Permit required; applications; issuance and renewals; fees and use of proceeds.

1 It is unlawful for any person to engage in surface
2 mining without having first obtained from the division
3 of environmental protection a permit therefor as
4 provided in this section. Application for a surface-
5 mining permit shall be made in writing on forms
6 prescribed by the director, and shall be signed and
7 verified by the applicant. The application, in addition to
8 such other information as may be reasonably required
9 by the director, shall contain the following information:
10 (1) The common name and geologic title, where appli-
11 cable, of the mineral or minerals to be extracted; (2)
12 maps and plans as provided in section seven hereof; (3)
13 the owner or owners of the surface of the land to be

14 mined; (4) the owner or owners of the mineral to be
15 mined; (5) the source of the operator's legal right to
16 enter and conduct operations on the land to be covered
17 by the permit; (6) a reasonable estimate of the number
18 of acres of land that will be disturbed by mining on the
19 area to be covered by the permit; (7) the permanent and
20 temporary post-office addresses of the applicant and of
21 the owners of the surface and the mineral; (8) whether
22 any surface-mining permits are now held and the
23 numbers thereof; (9) the names and post-office addresses
24 of every officer, partner, director (or person performing
25 a similar function), of the applicant, together with all
26 persons, if any, owning of record or beneficially (alone
27 or with associates), if known, ten percent or more of any
28 class of stock of the applicant: *Provided*, That if such list
29 be so large as to cause undue inconvenience, the director
30 may waive the requirements that such list be made a
31 part of such application, except the names and current
32 addresses of every officer, partner, director and
33 applicant must accompany such application; (10) if
34 known, whether applicant, any subsidiary or affiliate or
35 any person controlled by or under common control with
36 applicant, or any person required to be identified by
37 item (9) above, has ever had a surface-mining permit
38 issued under the laws of this state revoked or has ever
39 had a surface-mining bond, or security deposited in lieu
40 of bond, forfeited; and (11) names and addresses of the
41 reputed owner or owners of all surface area within five
42 hundred feet of any part of proposed disturbed land,
43 which such owners shall be notified by registered or
44 certified mail of such application and such owners shall
45 be given ten days within which to file written objections
46 thereto, if any, with the director. There shall be attached
47 to the application a true copy of an original policy of
48 insurance issued by an insurance company authorized to
49 do business in this state covering all surface-mining
50 operations of the applicant in this state and affording
51 personal injury protection in an amount not less than
52 one hundred thousand dollars and property damage
53 including blasting damage, protection in an amount of
54 not less than three hundred thousand dollars.

55 The director shall upon receipt of the application for

56 a permit cause to be published, as a Class III legal
57 advertisement in accordance with the provisions of
58 article three, chapter fifty-nine of this code, a notice of
59 the application for the permit. Such notice shall contain
60 in abbreviated form the information required by this
61 section, together with the director's statement that
62 written protests to such application will be received by
63 him or her until a specified date, which date is at least
64 thirty days after the first publication of the notice.

65 The publication area of the notices required by this
66 section is the county or counties in which the proposed
67 permit area is located. The cost of all publications
68 required by this section shall be borne by the applicant.

69 Upon the filing of an application in proper form,
70 accompanied by the fees and bond required by this
71 article and said true copy of the policy of insurance, and
72 after consideration of the merits of the application and
73 written protests, if any, the director may issue the
74 permit applied for if the applicant has complied with
75 all of the provisions of this article. If the director finds
76 that the applicant is or has been affiliated with or
77 managed or controlled by, or is or has been under the
78 common control of, other than as an employee, a person
79 who or which has had a surface-mining permit revoked
80 or bond or other security forfeited for failure to reclaim
81 lands as required by the laws of this state, he or she
82 shall not issue a permit to the applicant: *Provided*, That
83 no surface-mining permit shall be refused because of
84 any past revocation of a permit and forfeiture of a bond
85 or other security if such revocation and forfeiture
86 occurred before the first day of July, one thousand nine
87 hundred seventy-one, and if, after such revocation and
88 forfeiture, the operator whose permit has been revoked
89 and bond forfeited has paid into the surface-mining
90 reclamation fund the full amount of the bond so
91 forfeited, and any additional sum of money determined
92 by the director to be adequate to reclaim the land
93 covered by such forfeited bond: *Provided, however*, That
94 in no event shall such additional sum be less than sixty
95 dollars per acre.

96 The permit is valid for one year from its date of issue.

97 Upon verified application, containing such information
98 as the director may reasonably require, accompanied by
99 such fees and bond as are required by this article, and
100 a true copy of the policy of insurance as aforesaid, the
101 director shall from year to year renew the permit, if the
102 operation is in compliance with the provisions of this
103 article.

104 The registration fee for all permits for surface mining
105 is five hundred dollars. The annual renewal fee for
106 permits for surface mining is one hundred dollars
107 payable on the anniversary date of said permit upon
108 renewal.

109 The permit of any operator who fails to pay any fees
110 provided for in this article shall be revoked.

111 All registration and renewal fees for surface mining
112 shall be collected by the director and shall be deposited
113 with the treasurer of the state of West Virginia to the
114 credit of the operating permit fees fund and shall be
115 used, upon requisition of the director, for the adminis-
116 tration of this article.

§22-4-7. Preplans.

1 Under the provisions of this article, and rules adopted
2 by the director, the operator shall prepare a complete
3 reclamation and mining plan for the area of land to be
4 disturbed. Said reclamation and mining plan shall
5 include a proposed method of operation, prepared by a
6 registered professional engineer or a person approved
7 by the director, for grading, backfilling, soil prepara-
8 tion, mining and planting and such other proposals as
9 may be necessary to develop the complete reclamation
10 and mining plan contemplated by this article. In
11 developing this complete reclamation and mining plan
12 all reasonable measures shall be taken to eliminate
13 damages to members of the public, their real and
14 personal property, public roads, streams and all other
15 public property from soil erosion, rolling stones and
16 overburden, water pollution and hazards dangerous to
17 life and property. The plan shall be submitted to the
18 director and the director shall notify the applicant by
19 certified mail within thirty days after receipt of the plan

20 and complete application if it is or is not acceptable. If
21 the plan is not acceptable, the director shall set forth
22 the reasons why the plan is not acceptable, and he or
23 she may propose modifications, delete areas or reject the
24 entire plan. Should the applicant disagree with the
25 decision of the director, the applicant may, by written
26 notice, request a hearing before the director. The
27 director shall hold such hearing within thirty days after
28 receipt of this notice. When a hearing is held by the
29 director, he or she shall notify the applicant of his or
30 her decision by certified mail within twenty days after
31 the hearing. Any person aggrieved by a final order of
32 the director made after the hearing or without a hearing
33 may appeal to the surface mine board.

34 The application for a permit shall be accompanied by
35 copies of an enlarged United States geological survey
36 topographic map meeting the requirements of the
37 subdivisions below. Aerial photographs of the area are
38 acceptable if the plan for reclamation can be shown to
39 the satisfaction of the director. The maps shall:

40 (a) Be prepared and certified by or under the
41 supervision of a registered professional civil engineer, or
42 a registered professional mining engineer, or a regis-
43 tered land surveyor, who shall submit to the director a
44 certificate of registration as a qualified engineer or land
45 surveyor;

46 (b) Identify the area to correspond with application;

47 (c) Show probable limits of adjacent deep-mining
48 operations, probable limits of adjacent inactive or
49 mined-out deep-mined areas and the boundaries of
50 surface properties and names of surface and mineral
51 owners of the surface area within five hundred feet of
52 any part of the proposed disturbed area;

53 (d) Be of such scale as may be prescribed by the
54 director;

55 (e) Show the names and locations of all streams,
56 creeks or other bodies of public water, roads, buildings,
57 cemeteries, active, abandoned or plugged oil and gas
58 wells, and utility lines on the area of land to be

59 disturbed and within five hundred feet of such area;

60 (f) Show by appropriate markings the boundaries of
61 the area of land to be disturbed, the crop line of the
62 seam to be mined, if any, and the total number of acres
63 involved in the area of land to be disturbed;

64 (g) Show the date on which the map was prepared,
65 the north point and the quadrangle sketch and exact
66 location of the operation;

67 (h) Show the drainage plan on and away from the area
68 of land to be disturbed. Such plan shall indicate the
69 directional flow of water, constructed drainways,
70 natural waterways used for drainage, and the streams
71 or tributaries receiving or to receive this discharge.
72 Upon receipt of such drainage plan, the director may
73 furnish the office of water resources of the division a
74 copy of all information required by this subdivision, as
75 well as the names and locations of all streams, creeks
76 or other bodies of public water within five hundred feet
77 of the area to be disturbed;

78 (i) Show the presence of any acid-producing materials
79 which when present in the overburden, may cause spoil
80 with a pH factor below 3.5, preventing effective
81 revegetation. The presence of such materials, wherever
82 occurring in significant quantity, shall be indicated on
83 the map, filed with the application for permit. The
84 operator shall also indicate the manner in which acid-
85 bearing spoil will be suitably prepared for revegetation
86 and stabilization, whether by application of mulch or
87 suitable soil material to the surface or by some other
88 type of treatment, subject to approval of the director.

89 The operator shall also indicate the manner in which
90 all permanent overburden disposal sites will be
91 stabilized.

92 The certification of the maps shall read as follows: "I,
93 the undersigned, hereby certify that this map is correct,
94 and shows to the best of my knowledge and belief all
95 the information required by the surface-mining laws of
96 this state." The certification shall be signed and
97 notarized. The director may reject any map as incom-

98 plete if its accuracy is not so attested.

99 In addition to the information and maps required
100 above, each application for a permit shall be accompan-
101 ied by a detailed reclamation plan as required by this
102 article.

103 A monument as prescribed by the director shall be
104 placed in an approved location near the operation. If the
105 operations under a single permit are not geographically
106 continuous, the operator shall locate additional monu-
107 ments and submit additional maps before mining other
108 areas.

109 Upon an order of the director, the operator shall,
110 within thirty days after service of a copy of said order
111 upon said operator by certified United States mail,
112 furnish to the director four copies of a progress map
113 prepared by or under the supervision of a registered
114 professional civil engineer or registered professional
115 mining engineer, or by a registered land surveyor,
116 showing the area disturbed by operations to the date of
117 such map. Such progress map shall contain information
118 identical to that required for both the proposed and final
119 maps, required by this article, and shall show in detail
120 completed reclamation work, as required by the direc-
121 tor. Such progress map shall include a geologic survey
122 sketch showing the location of the operation, shall be
123 properly referenced to a permanent landmark, and shall
124 be within such reasonable degree of accuracy as may be
125 prescribed by the director. If no land has been disturbed
126 by operations during the preceding year, the operator
127 shall notify the director of this fact. A final map shall
128 be submitted within sixty days after completion of
129 mining operations. Failure to submit maps or aerial
130 photographs or notices at specified times shall cause the
131 permit in question to be suspended.

§22-4-8. Installation of drainage system.

1 Prior to the beginning of surface-mining operations,
2 the operator shall complete and shall thereafter main-
3 tain a drainage system including any necessary settling
4 ponds in accordance with the rules as established by the
5 director.

§22-4-9. Alternative plans; time.

1 An operator may propose alternative plans not calling
2 for backfilling where a water impoundment is desired,
3 if such restoration will be consistent with the purpose
4 of this article. Such plans shall be submitted to the
5 director, and if such plans are approved by the director
6 and complied with within such time limits as may be
7 determined by him or her as being reasonable for
8 carrying out such plans, the backfilling requirements of
9 this article may be modified.

10 By rule of the director, time limits shall be estab-
11 lished requiring backfilling, grading and planting to be
12 kept current. All backfilling and grading shall be
13 completed before equipment necessary for such backfil-
14 ling and grading is moved from the operation.

15 If the operator or other person desires to conduct deep
16 mining upon the premises or use a deep-mine opening
17 for haulageways or other lawful purposes, the operator
18 may designate locations to be used for such purposes at
19 which places it will not be necessary to backfill as herein
20 provided for until such deep mining or other use is
21 completed, during which time the bond on file for that
22 portion of that operation shall not be released. Such
23 locations shall be described and designated on the map
24 required by the provisions of section seven of this article.

25 Where applicable, suitable soil material shall be used
26 to cover the surface of the regraded and backfilled area
27 of operation in an amount sufficient to support
28 vegetation.

29 When the backfilling and grading have been com-
30 pleted and approved by the director, the director shall
31 release that portion of the bond which was filed and
32 designated to cover the backfilling and grading require-
33 ments of this article, the remaining portion of the bond
34 in an amount equal to two hundred fifty dollars per
35 acre, but not less than a total amount of five thousand
36 dollars being retained by the treasurer until such time
37 as the planting and revegetation is done according to
38 law and is approved by the director, at which time the
39 director shall release the remainder of the bond.

40 All fill and cut slopes shall be seeded during the first
41 planting or seeding season after the construction of a
42 haulageway to the area. Upon abandonment of any
43 haulageway, the haulageway shall be seeded and every
44 effort made to prevent its erosion by means of culverts,
45 waterbars or other devices required by the director. In
46 proper season, all fill and cut slopes of the operation and
47 haulageways shall be seeded and planted in a manner
48 as prescribed by the director, as soil tests indicate soil
49 suitability and in accordance with accepted agricultural
50 and reforestation practices.

51 In any such area where surface mining is being
52 conducted, mulch is required on all disturbed areas
53 where the remaining slope exceeds twenty degrees from
54 horizontal as shown on the preplan map filed with the
55 director as required by the provisions of section seven
56 of this article.

57 After the operation has been backfilled, graded and
58 approved by the director, the operator shall prepare or
59 cause to be prepared a final planting plan for the
60 planting of trees, shrubs, vines, grasses or legumes upon
61 the area of the land affected in order to provide a
62 suitable vegetative cover. The seed or plant mixtures,
63 quantities, method of planting, type and amount of lime,
64 fertilizer, mulch, and any other measures necessary to
65 provide a suitable vegetative cover shall be defined by
66 the rules of the director.

67 The planting called for by the final planting plan
68 shall be carried out in a manner so as to establish a
69 satisfactory cover of trees, shrubs, grasses, legumes or
70 vines upon the disturbed area covered by the planting
71 plan within a reasonable period of time. Such planting
72 shall be done by the operator or such operator may
73 contract in writing with the soil conservation district for
74 the district in which the operation covered by such
75 permit is located or with a private contractor approved
76 by the director to have such planting done by such
77 district or private contractor. The director shall not
78 release the operator's bond until all haulageways, roads
79 and trails within the permit area have been abandoned
80 according to the provisions of this article and the rules

81 promulgated thereunder or such operator or any other
82 person has secured a permit to deep mine such area as
83 required by article three of this chapter.

84 The purpose of this section is to require restoration
85 of land disturbed by surface mining to a desirable
86 purpose and use. The director may, in the exercise of
87 his or her sound discretion when not in conflict with
88 such purpose, modify such requirements to bring about
89 a more desirable land use, including, but not limited to,
90 industrial sites, sanitary landfills, recreational areas,
91 building sites: *Provided*, That the person or agency
92 making such modifications will execute contracts, post
93 bond or otherwise ensure full compliance with the
94 provisions of this section in the event such modified
95 program is not carried to completion within a reason-
96 able length of time.

§22-4-10. Limitations; mandamus.

1 The Legislature finds that there are certain areas in
2 the state of West Virginia which are impossible to
3 reclaim either by natural growth or by technological
4 activity and that if surface mining is conducted in these
5 certain areas such operations may naturally cause
6 stream pollution, landslides, the accumulation of
7 stagnant water, flooding, the destruction of land for
8 agricultural purposes, the destruction of aesthetic
9 values, the destruction of recreational areas and future
10 use of the area and surrounding areas, thereby destroy-
11 ing or impairing the health and property rights of
12 others, and in general creating hazards dangerous to life
13 and property so as to constitute an imminent and
14 inordinate peril to the welfare of the state, and that such
15 areas shall not be mined by the surface-mining process.

16 Therefore, authority is hereby vested in the director
17 to delete certain areas from all surface-mining
18 operations.

19 No application for a permit shall be approved by the
20 director if there is found on the basis of the information
21 set forth in the application or from information avail-
22 able to the director and made available to the applicant
23 that the requirements of this article or rules hereafter

24 adopted will not be observed or that there is not
25 probable cause to believe that the proposed method of
26 operation, backfilling, grading or reclamation of the
27 affected area can be carried out consistent with the
28 purpose of this article.

29 If the director finds that the overburden on any part
30 of the area of land described in the application for a
31 permit is such that experience in the state of West
32 Virginia with a similar type of operation upon land with
33 similar overburden shows that one or more of the
34 following conditions cannot feasibly be prevented: (1)
35 Substantial deposition of sediment in stream beds, (2)
36 landslides, or (3) acid-water pollution, the director may
37 delete such part of the land described in the application
38 upon which such overburden exists.

39 If the director finds that the operation will constitute
40 a hazard to a dwelling house, public building, school,
41 church, cemetery, commercial or institutional building,
42 public road, stream, lake or other public property, then
43 he or she shall delete such areas from the permit
44 application before it can be approved.

45 The director shall not give approval to surface mine
46 any area which is within one hundred feet of any public
47 road, stream, lake or other public property, and shall
48 not approve the application for a permit where the
49 surface-mining operation will adversely affect a state,
50 national or interstate park unless adequate screening
51 and other measures approved by the commission are to
52 be utilized and the permit application so provides:
53 *Provided*, That the one-hundred-foot restriction afore-
54 said does not include ways used for ingress and egress
55 to and from the minerals as herein defined and the
56 transportation of the removed minerals, nor does it
57 apply to the dredging and removal of minerals from the
58 streams or watercourses of this state.

59 Whenever the director finds that ongoing surface-
60 mining operations are causing or are likely to cause any
61 of the conditions set forth in the first paragraph of this
62 section, he or she may order immediate cessation of such
63 operations and he or she shall take such other action or

64 make such changes in the permit as he or she may deem
65 necessary to avoid said described conditions.

66 The failure of the director to discharge the mandatory
67 duty imposed by this section is subject to a writ of
68 mandamus, in any court of competent jurisdiction by
69 any private citizen affected thereby.

**§22-4-11. Blasting restriction; formula; filing preplan;
penalties; notice.**

1 Where blasting of overburden or mineral is necessary,
2 such blasting shall be done in accordance with estab-
3 lished principles for preventing vibration damage to
4 residences, buildings and communities. Such blasting is
5 in compliance with provisions of this article if the
6 following measures are followed:

7 (1) The weight in pounds of explosive charge deto-
8 nated at any one time shall conform with the following
9 scaled distance formula: $W = (D/50)(\text{to the second}$
10 $\text{power})$. Where W equals weight in pounds of explosives
11 detonated at any one instant time, then D equals
12 distance in feet from nearest point of blast to nearest
13 residence, building, or structure, other than operation
14 facilities of the mine: *Provided*, That explosive charges
15 are detonated at one time if their detonation occurs
16 within eight milliseconds or less of each other.

17 (2) Where blast sizes would exceed the limits under
18 subdivision (1) of this section, blasts shall be detonated
19 by the use of delay detonators (either electric or
20 nonelectric) to provide detonation times separated by
21 nine milliseconds or more for each section of the blast
22 complying with the scaled distance of the formula.

23 (3) A plan of each operation's methods for compliance
24 with this section (blast delay design) for typical blasts
25 which shall be adhered to in all blasting at each
26 operation, shall be submitted to the director with the
27 application for a permit. It shall be accepted if it meets
28 the scaled distance formula established in subdivision
29 (1) of this section.

30 (4) Records of each blast shall be kept in a log to be
31 maintained for at least three years, which will show for

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.

1 It is the duty of an operator to commence the
2 reclamation of the area of land disturbed by the
3 operator's operation after the beginning of surface
4 mining of that area in accordance with plans previously
5 approved by the director and to complete such reclama-
6 tion within twelve months after the permit has expired,
7 except that such grading, backfilling and water-
8 management practices as are approved in the plans
9 shall be kept current with the operations as defined by
10 rules of the director and no permit or supplement to a
11 permit shall be issued or renewed, if in the discretion
12 of the director, these practices are not current.

§22-4-13. Obligations of the operator.

1 In addition to the method of operation, grading,
2 backfilling and reclamation requirements of this article
3 and rules adopted pursuant thereto, the operator is
4 required to perform the following:

5 (1) Cover the face of the coal and the disturbed area
6 with material suitable to support vegetative cover and
7 of such thickness as may be prescribed by the director,
8 or with a permanent water impoundment.

9 (2) Bury under adequate fill, all materials determined
10 by the director to be acid-producing materials, toxic
11 material or materials constituting a fire hazard.

12 (3) Seal off any breakthrough of acid water caused by
13 the operator: *Provided*, That any breakthrough caused
14 by the operator during the course of the operator's
15 operations shall be sealed immediately and reported
16 immediately to the director. If the breakthrough is one
17 that allows air to enter a mine, the seal shall either
18 prevent any air from entering the mine by way of the
19 breakthrough, or prevent any air from entering the
20 breakthrough while allowing the water to flow from the
21 breakthrough. If the breakthrough is one that allows
22 acid water to escape, the seal shall prevent the acid
23 water from flowing. Seals shall be constructed of stone,
24 brick, block, earth or similar impervious materials
25 which are acid resistant. Any cement or concrete
26 employed in the construction of these seals shall also be
27 of an acid resistant, impervious type.

28 (4) Impound, drain or treat all runoff water so as to
29 reduce soil erosion, damage to agricultural lands and
30 pollution of streams and other waters.

31 In the case of storm water accumulations or any
32 breakthrough of water, adequate treatment shall be
33 undertaken by the operator so as to prevent pollution
34 occurring from the release of such water into the
35 natural drainway or stream. Treatment may include
36 check-dams, settling ponds and chemical or physical
37 treatment. In the case of a breakthrough of water,
38 where it is possible, the water released shall be
39 impounded immediately. All water so impounded shall
40 receive adequate treatment by the operator before it is
41 released into the natural drainway or stream.

42 Storm water or water which escapes, including that
43 which escapes after construction of the seals, and is
44 polluted as defined in this code, or as defined in the rules
45 promulgated under this code, is subject to the require-
46 ments of article eleven of this chapter.

47 (5) Remove or bury all metal, lumber, equipment and
48 other refuse resulting from the operation. No operator
49 shall throw, dump or pile; or permit the throwing,
50 dumping, piling or otherwise placing of any overburden,
51 stones, rocks, coal, mineral, earth, soil, dirt, debris,
52 trees, wood, logs or other materials or substances of any
53 kind or nature beyond or outside the area of land which
54 is under permit and for which bond has been posted; nor
55 shall any operator place any of the foregoing listed
56 materials in such a way that normal erosion or slides
57 brought about by natural physical causes will permit
58 the same to go beyond or outside the area of land which
59 is under permit and for which bond has been posted.

60 The operator shall show on the map, filed with the
61 application for a permit, the percent of slope of original
62 surface within each two-hundred-foot interval along the
63 contour of the operation, the first measurement to be
64 taken at the starting point of the operation. The flagged
65 field measurement shall be made from the estimated
66 crop line or proposed mineral seam down slope to the
67 estimated toe of the outer spoil. All reasonable measures

68 shall be taken so as not to overload the fill bench during
69 the first cut. No overburden material in excess of the
70 first cut shall be placed over the fill bench. With the
71 exception of haulageways and auger-mining operations,
72 trees and brush shall be removed from the upper one
73 half of all fill sections prior to excavation, and no trees
74 or brush removed from the cut section shall be placed
75 therein or thereon.

76 No fill bench shall be produced on slopes of more than
77 sixty-five percent, except for construction of haulage-
78 ways, and such haulageways shall not exceed thirty-five
79 feet in width, with very scattered forty-five-foot passing
80 areas permitted.

81 Lateral drainage ditches connecting to natural or
82 constructed waterways shall be constructed to control
83 water runoff and prevent erosion whenever required by
84 the director. There shall be no depressions that will
85 accumulate water except those the director may specify
86 and approve. The depth and width of natural drainage
87 ditches and any other diversion ditches may vary
88 depending on the length and degree of slope.

89 With the exception of limestone, sandstone and sand,
90 complete backfilling is required, not to exceed the
91 approximate original contour of the land. Such backfil-
92 ling shall eliminate highwalls and spoil peaks. When-
93 ever directed by the director, the operator shall
94 construct, in the final grading, such diversion ditches or
95 terraces as will control the water runoff. Additional
96 restoration work may be required by the director,
97 according to rules adopted by the director.

§22-4-14. Cessation of operation by inspector.

1 Notwithstanding any other provisions of this article,
2 a surface-mining reclamation inspector has authority to
3 order the immediate cessation of any operation where
4 (1) any of the requirements of this article or the rules
5 promulgated pursuant thereto or the orders of the
6 director have not been complied with, or (2) the public
7 welfare or safety calls for the immediate cessation of the
8 operation. Such cessation of operation shall continue
9 until corrective steps have been started by the operator

10 to the satisfaction of the surface-mining reclamation
11 inspector. Operators who believe they are aggrieved by
12 the actions of the surface-mining reclamation inspector
13 may immediately appeal to the director, setting forth
14 reasons why their operations should not be halted. The
15 director shall determine immediately when and if an
16 operation may continue.

§22-4-15. Completion of planting; inspection and evaluation.

1 When the planting of an area has been completed, the
2 operator shall file or cause to be filed a planting report
3 with the director on a form to be prescribed and
4 furnished by the director providing the following
5 information: (1) Identification of the operation; (2) the
6 type of planting or seeding, including mixtures and
7 amounts; (3) the date of planting or seeding; (4) the area
8 of land planted; and (5) such other relevant information
9 as the director may require. All planting reports shall
10 be certified by the operator, or by the party with whom
11 the operator contracted for such planting, as aforesaid.

§22-4-16. Performance bonds.

1 Each operator who makes application for a permit
2 under section six of this article shall, at the time such
3 permit is requested, furnish bond, on a form to be
4 prescribed and furnished by the director, payable to the
5 state of West Virginia and conditioned that the operator
6 shall faithfully perform all of the requirements of this
7 article. The amount of the bond shall be not less than
8 six hundred dollars for each acre or fraction thereof of
9 the land to be disturbed: *Provided*, That the director has
10 the discretion to determine the amount per acre of the
11 bond that is required before a permit is issued, such
12 amount to be based upon the estimated reclamation
13 costs per acre, not to exceed a maximum of one thousand
14 dollars per acre or fraction thereof. The minimum
15 amount of bond furnished shall be ten thousand dollars.
16 Such bond shall be executed by the operator and a
17 corporate surety licensed to do business in the state of
18 West Virginia: *Provided, however*, That in lieu of
19 corporate surety, the operator may elect to deposit with

20 the director cash, or collateral securities or certificates
21 as follows: Bonds of the United States or its possessions,
22 of the federal land banks, or of the homeowners' loan
23 corporation; full faith and credit general obligation
24 bonds of the state of West Virginia, or other states, and
25 of any county, district or municipality of the state of
26 West Virginia or other states; or certificates of deposit
27 in a bank in this state, which certificates shall be in
28 favor of the director. The cash deposit or market value
29 of such securities or certificates shall be equal to or
30 greater than the sum of the bond. The director shall,
31 upon receipt of any such deposit of cash, securities or
32 certificates, immediately place the same with the
33 treasurer of the state of West Virginia whose duty it is
34 to receive and hold the same in the name of the state
35 in trust for the purpose for which such deposit is made.
36 The operator making the deposit is entitled from time
37 to time to receive from the state treasurer, upon the
38 written order of the director, the whole or any portion
39 of any cash, securities or certificates so deposited, upon
40 depositing with the treasurer in lieu thereof, cash or
41 other securities or certificates of the classes herein
42 specified having value equal to or greater than the sum
43 of the bond.

44 It is unlawful for the owner or owners of surface
45 rights or the owner or owners of mineral rights to
46 interfere with the operator in the discharge of the
47 operator's obligation to the state for the reclamation of
48 lands disturbed by the operator. If the owner or owners
49 of the surface rights or the owner or owners of the
50 mineral rights desire another operator or other opera-
51 tors to conduct mining operations on lands disturbed by
52 the operator furnishing bond hereunder, it is the duty
53 of said owner or owners to require the other operator
54 or operators to secure the necessary mining permit and
55 furnish suitable bond as herein provided. The director
56 may then release an equivalent amount of the bond of
57 the operator originally furnishing bond on the disturbed
58 area.

59 The director shall not release that portion of any bond
60 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.

§22-4-19. Noncompliance.

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-

18 pliance or order of suspension within the time limits set
19 therein, the permit may be revoked by order of the
20 director and the performance bond shall then be
21 forfeited. If an agreement satisfactory to the director
22 has not been reached within thirty days after suspension
23 of any permit, any and all suspended permits shall then
24 be declared revoked and the performance bonds with
25 respect thereto forfeited.

26 When any bond is forfeited pursuant to the provisions
27 of this article, the director shall give notice to the
28 attorney general who shall collect the forfeiture without
29 delay.

§22-4-20. Adjudications, findings, etc., to be by written order; contents; notice.

1 Every adjudication, determination or finding by the
2 director affecting the rights, duties or privileges of any
3 person subject to this article shall be made by written
4 order and shall contain a written finding by the director
5 of the facts upon which the adjudication, determination
6 or finding is based. Notice of the making of such order
7 shall be given to the person whose rights, duties or
8 privileges are affected thereby by mailing a true copy
9 thereof to such person by certified mail.

§22-4-21. Appeals to board.

1 Any person claiming to be aggrieved or adversely
2 affected by any rule or order of the director or his or
3 her failure to enter an order may appeal to the surface
4 mine board, pursuant to the provisions of article one,
5 chapter twenty-two-b of this code, for an order vacating
6 or modifying such rule or order, or for such order as
7 the director should have entered.

§22-4-22. Offenses; penalties; prosecutions; treble damages; injunctive relief.

1 (a) Any person who conducts any surface-mining
2 operation, or any part thereof, without a permit or
3 without having furnished the required bond, or who
4 carries on such operation or be a party thereto on land
5 not covered by a permit, or who falsely represents any
6 material fact in an application for a permit or in an

7 application for the renewal of a permit, or who willfully
8 violates any provision of this article, is guilty of a
9 misdemeanor, and, upon conviction thereof, shall be
10 punished by a fine of not less than one hundred nor more
11 than one thousand dollars or by imprisonment not
12 exceeding six months, or by both. Any person who
13 deliberately violates any provision of this article or
14 conducts surface-mining operations without a permit is
15 guilty of a misdemeanor, and, upon conviction thereof,
16 shall be punished by a fine of not less than one thousand
17 nor more than ten thousand dollars or by imprisonment
18 not exceeding six months, or by both. Each day of
19 violation is a separate offense. It is the duty of the
20 director to institute prosecutions for violations of the
21 provisions hereof. Any person convicted under the
22 provisions of this section shall, in addition to any fine
23 imposed, pay to the director for deposit in the surface-
24 mining reclamation fund an amount sufficient to
25 reclaim the area with respect to which such conviction
26 relates. The director shall institute any suit or other
27 legal action necessary for the effective administration of
28 the provisions of this article.

29 (b) In addition to and notwithstanding any other
30 penalties provided by law, any operator who directly
31 causes damage to the property of others as a result of
32 surface mining is liable to them, in an amount not in
33 excess of three times the provable amount of such
34 damage, if and only if such damage occurs before or
35 within one year after such operator has completed all
36 reclamation work with respect to the land on which such
37 surface mining was carried out and all bonds of such
38 operator with respect to such reclamation work are
39 released. Such damages are recoverable in an action at
40 law in any court of competent jurisdiction. The director
41 shall require, in addition to any other bonds and
42 insurance required by other provisions of this article,
43 that any person engaged in the business of surface
44 mining shall file with the director a certificate of
45 insurance, or other security in an amount of not less
46 than ten thousand dollars, to cover possible damage to
47 property for which a recovery may be sought under the
48 provisions of this subsection.

49 (c) Upon application by the director, the attorney
50 general, or the prosecuting attorney of the county in
51 which the major portion of the permit area is located,
52 any court of competent jurisdiction may by injunction
53 compel compliance with and enjoin violations of the
54 provisions of this article. The court or the judge thereof
55 in vacation may issue a preliminary injunction in any
56 case pending a decision on the merits of any application
57 filed.

58 An application for an injunction under the provisions
59 of this section may be filed and injunctive relief granted
60 notwithstanding that all of the administrative remedies
61 provided for in this article have not been pursued or
62 invoked against the person or persons against whom
63 such relief is sought and notwithstanding that the
64 person or persons against whom such relief is sought
65 have not been prosecuted or convicted under the
66 provisions of this article.

67 The judgment of the circuit court upon any applica-
68 tion filed under the provisions of this article is final
69 unless reversed, vacated or modified on appeal to the
70 supreme court of appeals. Any such appeal shall be
71 sought in the manner provided by law for appeals from
72 circuit courts in other civil cases, except that the
73 petition seeking such review must be filed with said
74 supreme court of appeals within thirty days from the
75 date of entry of the judgment of the circuit court.

§22-4-23. Validity and construction of existing surface- mining permits.

1 Any valid surface-mining permit existing on the
2 effective date of this article shall remain in full force
3 and effect until such permit expires under its terms or
4 is otherwise terminated under the provisions of this
5 article. The provisions of this section do not require the
6 regrading or replanting of any area on which such work
7 was satisfactorily performed prior to the effective date
8 of this article.

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-1. Declaration of policy and purpose.

§22-5-2. Definitions.

- §22-5-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.
- §22-5-4. Powers and duties of director; and legal services; rules.
- §22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.
- §22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.
- §22-5-7. Applications for injunctive relief.
- §22-5-8. Emergencies.
- §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.
- §22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.
- §22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.
- §22-5-12. Operating permits required for stationary sources of air pollution.
- §22-5-13. Consolidation of permits.
- §22-5-14. Administrative review of permit actions.
- §22-5-15. Motor vehicle pollution, inspection and maintenance.
- §22-5-16. Small business environmental compliance assistance program, compliance advisory panel.

§22-5-1. Declaration of policy and purpose.

1 It is hereby declared to be the public policy of this
2 state and the purpose of this article to achieve and
3 maintain such levels of air quality as will protect human
4 health and safety, and to the greatest degree practica-
5 ble, prevent injury to plant and animal life and
6 property, foster the comfort and convenience of the
7 people, promote the economic and social development of
8 this state and facilitate the enjoyment of the natural
9 attractions of this state.

10 To these ends it is the purpose of this article to
11 provide for a coordinated statewide program of air
12 pollution prevention, abatement and control; to facilitate
13 cooperation across jurisdictional lines in dealing with
14 problems of air pollution not confined within single
15 jurisdictions; and to provide a framework within which
16 all values may be balanced in the public interest.

17 Further, it is the public policy of this state to fulfill
18 its primary responsibility for assuring air quality
19 pursuant to the "Federal Clean Air Act," as amended.

§22-5-2. Definitions.

1 The terms used in this article are defined as follows:

2 (1) "Air pollutants" means solids, liquids or gases
3 which, if discharged into the air, may result in a
4 statutory air pollution.

5 (2) "Board" means the air quality board continued
6 pursuant to the provisions of article two, chapter
7 twenty-two-b of this code.

8 (3) "Director" means the director of the division of
9 environmental protection or such other person to whom
10 the director has delegated authority or duties pursuant
11 to sections six or eight, article one, chapter twenty-two
12 of this code.

13 (4) "Discharge" means any release, escape or emission
14 of air pollutants into the air.

15 (5) "Person" means any and all persons, natural or
16 artificial, including the state of West Virginia or any
17 other state, the United States of America, any munic-
18 ipal, statutory, public or private corporation organized
19 or existing under the laws of this or any other state or
20 country, and any firm, partnership or association of
21 whatever nature.

22 (6) "Statutory air pollution" means and is limited to
23 the discharge into the air by the act of man of substan-
24 ces (liquid, solid, gaseous, organic or inorganic) in a
25 locality, manner and amount as to be injurious to human
26 health or welfare, animal or plant life, or property, or
27 which would interfere with the enjoyment of life or
28 property.

**§22-5-3. Causing statutory pollution unlawful; article not
to provide persons with additional legal
remedies.**

1 It is unlawful for any person to cause a statutory air
2 pollution, to violate the provisions of this article, to
3 violate any rules promulgated pursuant to this article
4 to operate any facility subject to the permit require-
5 ments of the director without a valid permit, or to
6 knowingly misrepresent to any person in the state of
7 West Virginia that the sale of air pollution control

8 equipment will meet the standards of this article or any
9 rules promulgated pursuant to this article. Nothing
10 contained in this article provides any person with a legal
11 remedy or basis for damages or other relief not
12 otherwise available to such person immediately prior to
13 enactment of this article.

**§22-5-4. Powers and duties of director; and legal services;
rules.**

1 (a) The director is authorized:

2 (1) To develop ways and means for the regulation and
3 control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other
5 agencies of the state, political subdivisions of the state,
6 other states, agencies of the federal government,
7 industries, and with affected groups in furtherance of
8 the declared purposes of this article;

9 (3) To encourage and conduct such studies and
10 research relating to air pollution and its control and
11 abatement as the director may deem advisable and
12 necessary;

13 (4) To promulgate legislative rules in accordance with
14 the provisions of chapter twenty-nine-a of this code not
15 inconsistent with the provisions of this article, relating
16 to the control of air pollution: *Provided*, That no rule of
17 the director shall specify a particular manufacturer of
18 equipment nor a single specific type of construction nor
19 a particular method of compliance except as specifically
20 required by the "Federal Clean Air Act," as amended,
21 nor shall any such rule apply to any aspect of an
22 employer-employee relationship: *Provided, however*,
23 That no legislative rule or program of the director
24 hereafter adopted shall be any more stringent than any
25 federal rule or program except to the limited extent that
26 the director first makes a specific written finding for
27 any such departure that there exists scientifically
28 supportable evidence for such rule or program reflect-
29 ing factors unique to West Virginia or some area
30 thereof;

31 (5) To enter orders requiring compliance with the

32 provisions of this article and the rules lawfully promul-
33 gated hereunder;

34 (6) To consider complaints, subpoena witnesses,
35 administer oaths, make investigations and hold hearings
36 relevant to the promulgation of rules and the entry of
37 compliance orders hereunder;

38 (7) To encourage voluntary cooperation by municipal-
39 ities, counties, industries and others in preserving the
40 purity of the air within the state;

41 (8) To employ personnel, including specialists and
42 consultants, purchase materials and supplies, and enter
43 into contracts necessary, incident or convenient to the
44 accomplishment of the purpose of this article;

45 (9) To enter and inspect any property, premise or
46 place on or at which a source of air pollutants is located
47 or is being constructed, installed or established at any
48 reasonable time for the purpose of ascertaining the state
49 of compliance with this article and rules promulgated
50 under the provisions of this article. No person shall
51 refuse entry or access to any authorized representative
52 of the director who requests entry for purposes of
53 inspection, and who presents appropriate credentials;
54 nor shall any person obstruct, hamper or interfere with
55 any such inspection: *Provided*, That nothing contained
56 in this article eliminates any obligation to follow any
57 process that may be required by law;

58 (10) Upon reasonable evidence of a violation of this
59 article, which presents an imminent and serious hazard
60 to public health, to give notice to the public or to that
61 portion of the public which is in danger by any and all
62 appropriate means;

63 (11) To cooperate with, receive and expend money
64 from the federal government and other sources; and the
65 director may cooperate with any public or private
66 agency or person and receive therefrom and on behalf
67 of the state gifts, donations, and contributions, which
68 shall be deposited to the credit of the "Air Pollution
69 Education and Environment Fund" which is hereby
70 continued in the state treasury. The moneys collected

71 pursuant to this article which are directed to be
72 deposited in the air pollution education and environment
73 fund must be deposited in a separate account in the state
74 treasury and expenditures for purposes set forth in this
75 article are not authorized from collection but are to be
76 made only in accordance with appropriation and in
77 accordance with the provisions of article three, chapter
78 twelve of this code and upon fulfillment of the provisions
79 set forth in article two, chapter five-a of this code.
80 Amounts collected which are found from time to time
81 to exceed the funds needed for the purposes set forth in
82 this article may be transferred to other accounts or
83 funds and redesignated for other purposes by appropri-
84 ation of the Legislature;

85 (12) To represent the state in any and all matters
86 pertaining to plans, procedures and negotiations for
87 interstate compacts in relation to the control of air
88 pollution;

89 (13) To appoint advisory councils from such areas of
90 the state as he or she may determine. The members shall
91 possess some knowledge and interest in matters pertain-
92 ing to the regulation, control and abatement of air
93 pollution. The council may advise and consult with the
94 director about all matters pertaining to the regulation,
95 control and abatement of air pollution within such area;

96 (14) To require any and all persons who are directly
97 or indirectly discharging air pollutants into the air to
98 file with the director such information as the director
99 may require in a form or manner prescribed by him or
100 her for such purpose, including, but not limited to,
101 location, size and height of discharge outlets, processes
102 employed, fuels used and the nature and time periods
103 of duration of discharges. Such information shall be
104 filed with the director, when and in such reasonable
105 time, and in such manner as the director may prescribe;

106 (15) To require the owner or operator of any station-
107 ary source discharging air pollutants to install such
108 monitoring equipment or devices as the director may
109 prescribe and to submit periodic reports on the nature
110 and amount of such discharges to the director;

111 (16) To do all things necessary and convenient to
112 prepare and submit a plan or plans for the implemen-
113 tation, maintenance and enforcement of the "Federal
114 Clean Air Act," as amended: *Provided*, That in prepar-
115 ing and submitting each such plan the director shall
116 establish in such plan that such standard shall be first
117 achieved, maintained and enforced by limiting and
118 controlling emissions of pollutants from commercial and
119 industrial sources and locations and shall only provide
120 in such plans for limiting and controlling emissions of
121 pollutants from private dwellings and the curtilage
122 thereof as a last resort: *Provided, however*, That nothing
123 herein contained affects plans for achievement, mainte-
124 nance and enforcement of motor vehicle emission
125 standards and of standards for fuels used in dwellings;

126 (17) To promulgate legislative rules, in accordance
127 with the provisions of chapter twenty-nine-a of this code,
128 providing for the following:

129 (A) Procedures and requirements for permit applica-
130 tions, transfers and modifications and the review
131 thereof;

132 (B) Imposition of permit application and transfer fees;

133 (C) Establishment of criteria for construction, modi-
134 fication, relocation and operating permits;

135 (D) Imposition of permit fees and of certificate fees:
136 *Provided*, That any person subject to operating permit
137 fees pursuant to section twelve of this article is exempt
138 from imposition of the certificate fee; and

139 (E) Imposition of penalties and interest for the
140 nonpayment of fees.

141 The fees, penalties and interest shall be deposited in
142 a special account in the state treasury designated the
143 "Air Pollution Control Fund", formerly the "Air
144 Pollution Control Commission Fund", which is hereby
145 continued to be appropriated for the sole purpose of
146 paying salaries and expenses of the board, the office of
147 air quality and their employees to carry out the
148 provisions of this article: *Provided*, That the fees,
149 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

10 director determined to make and enter such order.

11 If, after any investigation made by the director, or
12 from any complaint filed with him or her, the director
13 is of the opinion that a permit holder is violating the
14 provisions of this article, or any rules promulgated
15 pursuant thereto, or any order of the director, or any
16 provision of a permit, the director may issue notice of
17 intent to suspend, modify or revoke and reissue such
18 permit. Upon notice of the director's intent to suspend,
19 modify or revoke a permit, the permit holder may
20 request a conference with the director to show cause
21 why the permit should not be suspended, modified or
22 revoked. The request for conference must be received by
23 the director within fifteen days following receipt of
24 notice. After conference or fifteen days after issuance of
25 notice of intent, if no conference is requested, the
26 director may enter an order suspending, modifying or
27 revoking the permit and send notice to the permit
28 holder. Such order is a cease and desist order for
29 purposes of administrative and judicial review and shall
30 contain findings of fact upon which the director
31 determined to make and enter such order. If an appeal
32 of the director's order is filed, the order of the director
33 shall be stayed from the date of issuance pending a final
34 decision of the board.

35 The director shall cause a copy of any such order to
36 be served upon such person by registered or certified
37 mail or by any proper law-enforcement officer.

38 Any person upon whom a copy of such final order has
39 been served may appeal such order to the air quality
40 board pursuant to the provisions of article one, chapter
41 twenty-two-b of this code.

**§22-5-6. Penalties; recovery and disposition; duties of
prosecuting attorneys.**

1 (a) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant
3 to this article or article one, chapter twenty-two-b of this
4 code is subject to a civil penalty not to exceed ten
5 thousand dollars for each day of such violation, which
6 penalty shall be recovered in a civil action brought by

7 the director in the name of the state of West Virginia
8 in the circuit court of any county wherein such person
9 resides or is engaged in the activity complained of or
10 in the circuit court of Kanawha County. The amount of
11 the penalty shall be fixed by the court without a jury:
12 *Provided*, That any such person is not subject to such
13 civil penalties unless such person has been given written
14 notice thereof by the director: *Provided, however*, That
15 for the first such minor violation, if such person corrects
16 the violation within such time as was specified in the
17 notice of violation issued by the director, no such civil
18 penalty may be recovered: *Provided further*, That if such
19 person fails to correct such minor violation or for any
20 serious or subsequent serious or minor violation, such
21 person is subject to civil penalties imposed pursuant to
22 this section from the first day of such violation notwith-
23 standing the date of the issuance or receipt of the notice
24 of violation. The director shall, by rule subject to the
25 provisions of chapter twenty-nine-a of this code, deter-
26 mine the definitions of serious and minor violations. The
27 amount of any such penalty collected by the director
28 shall be deposited in the general revenue of the state
29 treasury according to law.

30 (b) (1) Any person who knowingly misrepresents any
31 material fact in an application, record, report, plan or
32 other document filed or required to be maintained under
33 the provisions of this article or any rules promulgated
34 under this article is guilty of a misdemeanor, and, upon
35 conviction thereof, shall be fined not more than twenty-
36 five thousand dollars or imprisoned in the county jail not
37 more than six months or both fined and imprisoned.

38 (2) Any person who knowingly violates any provision
39 of this article, any permit or any rule or order issued
40 pursuant to this article or article one, chapter twenty-
41 two-b of this code is guilty of a misdemeanor, and, upon
42 conviction thereof, shall be fined not more than twenty-
43 five thousand dollars for each day of such violation or
44 imprisoned in the county jail not more than one year or
45 both fined and imprisoned.

46 (c) Upon a request in writing from the director it is
47 the duty of the attorney general and the prosecuting

48 attorney of the county in which any such action for
49 penalties accruing under this section or section seven of
50 this article may be brought to institute and prosecute
51 all such actions on behalf of the director.

52 (d) For the purpose of this section, violations on
53 separate days are separate offenses.

§22-5-7. Applications for injunctive relief.

1 The director may seek an injunction against any
2 person in violation of any provision of this article or any
3 permit, rule or order issued pursuant to this article or
4 article one, chapter twenty-two-b of this code. In seeking
5 an injunction, it is not necessary for the director to post
6 bond nor to allege or prove at any stage of the proceed-
7 ing that irreparable damage will occur if the injunction
8 is not issued or that the remedy at law is inadequate.
9 An application for injunctive relief brought under this
10 section or for civil penalty brought under section six of
11 this article may be filed and relief granted notwith-
12 standing the fact that all administrative remedies
13 provided in this article have not been exhausted or
14 invoked against the person or persons against whom
15 such relief is sought.

16 In any action brought pursuant to the provisions of
17 section six or of this section, the state, or any agency of
18 the state which prevails, may be awarded costs and
19 reasonable attorney's fees.

§22-5-8. Emergencies.

1 Whenever air pollution conditions in any area of the
2 state become such as, in the opinion of the director, to
3 create an emergency and to require immediate action
4 for the protection of the public health, the director may,
5 with the written approval of the governor, so find and
6 enter such order as it deems necessary to reduce or
7 prevent the emission of air pollutants substantially
8 contributing to such conditions. In any such order the
9 director shall also fix a time, not later than twenty-four
10 hours thereafter, and place for a hearing to be held
11 before it for the purpose of investigating and determin-
12 ing the factors causing or contributing to such condi-

13 tions. A true copy of any such order shall be served upon
14 persons whose interests are directly prejudiced thereby
15 in the same manner as a summons in a civil action may
16 be served, and a true copy of such order shall also be
17 posted on the front door of the courthouse of the county
18 in which the alleged conditions originated. All persons
19 whose interests are prejudiced or affected in any
20 manner by any such order shall have the right to appear
21 in person or by counsel at the hearing and to present
22 evidence relevant to the subject of the hearing. Within
23 twenty-four hours after completion of the hearing the
24 director shall affirm, modify or set aside said order in
25 accordance and consistent with the evidence adduced.
26 Any person aggrieved by such action of the director may
27 thereafter apply by petition to the circuit court of the
28 county for a review of the director's action. The circuit
29 court shall forthwith fix a time for hearing de novo upon
30 the petition and shall, after such hearing, by order
31 entered of record, affirm, modify or set aside, in whole
32 or in part, the order and action of the director. Any
33 person whose interests shall have been substantially
34 affected by the final order of the circuit court may
35 appeal the same to the supreme court of appeals in the
36 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.**

1 Nothing in this article affects or limits the powers or
2 duties heretofore conferred by the provisions of chapter
3 sixteen of this code upon the secretary of the department
4 of health and human resources, the commissioner of the
5 bureau of public health, county health boards, county
6 health officers, municipal health boards, municipal
7 health officers, combined boards of health or any other
8 health agency or political subdivision of this state except
9 insofar as such powers and duties might otherwise apply
10 to the control, reduction or abatement of air pollution.
11 All existing statutes or parts of statutes are, to the
12 extent of their inconsistencies with the provisions of this

13 article and to the extent that they might otherwise apply
14 to the control, reduction or abatement of air pollution,
15 hereby repealed: *Provided*, That no ordinance previously
16 adopted by any municipality relating to the control,
17 reduction or abatement of air pollution is repealed by
18 this article.

§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

1 All air quality data, emission data, permits, com-
2 pliance schedules, orders of the director, board orders
3 and any other information required by a federal
4 implementation program (all for convenience hereinaf-
5 ter referred to in this section as "records, reports, data
6 or information") obtained under this article shall be
7 available to the public, except that upon a showing
8 satisfactory to the director, by any person, that records,
9 reports, data or information or any particular part
10 thereof, to which the director has access under this
11 article if made public, would divulge methods or
12 processes entitled to protection as trade secrets of such
13 person, the director shall consider such records, reports,
14 data or information or such particular portion thereof
15 confidential: *Provided*, That such confidentiality does
16 not apply to the types and amounts of air pollutants
17 discharged and that such records, reports, data or
18 information may be disclosed to other officers, em-
19 ployees or authorized representatives of the state or of
20 the federal environmental protection agency concerned
21 with enforcing this article, the federal Clean Air Act,
22 as amended, or the federal Resource Conservation and
23 Recovery Act, as amended, when relevant to any official
24 proceedings thereunder: *Provided, however*, That such
25 officers, employees or authorized representatives of the
26 state or federal environmental protection agency protect
27 such records, reports, data or information to the same
28 degree required of the director by this section. The
29 director shall promulgate legislative rules regarding the
30 protection of records, reports, data or information, or
31 trade secrets, as required by this section.

32 All requests to inspect or copy documents must state

33 with reasonable specificity the documents or type of
34 documents sought to be inspected or copied. Within five
35 business days of the receipt of such a request, the
36 director or his or her designate shall: (a) Advise the
37 person making such request of the time and place at
38 which the person may inspect and copy the documents;
39 or (b) deny the request, stating in writing the reasons
40 for such denial. For purposes of judicial appeal, a
41 written denial by the director shall be deemed an
42 exhaustion of administrative remedies. Any person
43 whose request for information is denied, in whole or in
44 part, may appeal from such denial by filing with the
45 director a notice of appeal. Such notice shall be filed
46 within thirty days from the date the request for
47 information was denied, and shall be signed by the
48 person whose request was denied or the person's
49 attorney. The appeal shall be taken to the circuit court
50 of Kanawha County, where it shall be heard without a
51 jury. The scope of review is limited to the question of
52 whether the records, reports, data or other information,
53 or any particular part thereof (other than emission
54 data), sought to be inspected or copied, would, if made
55 public, divulge methods or processes entitled to protec-
56 tion as trade secrets. The said court shall make findings
57 of fact and conclusions of law based upon the evidence
58 and testimony. The director, the person whose request
59 was denied, or any other person whose interest has been
60 substantially affected by the final order of the circuit
61 court may appeal to the supreme court of appeals in the
62 manner prescribed by law.

§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.

1 No person shall construct, modify or relocate any
2 stationary source of air pollutants without first obtain-
3 ing a construction, modification or relocation permit as
4 provided in this section.

5 The director shall by rule specify the class or
6 categories of stationary sources to which this section
7 applies. Application for permits shall be made upon
8 such form, in such manner, and within such time as the

9 rule prescribes and shall include such information, as
10 in the judgment of the director, will enable him or her
11 to determine whether such source will be so designed
12 as to operate in conformance with the provisions of this
13 article or any rules of the director.

14 The director shall, within a reasonable time not to
15 exceed twelve months for major sources, as defined by
16 the director, and six months for all other sources after
17 the receipt of a complete application, issue such permit
18 unless he or she determines that the proposed construc-
19 tion, modification or relocation will not be in accordance
20 with this article or rules promulgated thereunder, in
21 which case the director shall issue an order for the
22 prevention of such construction, modification or reloca-
23 tion. For the purposes of this section, a modification is
24 deemed to be any physical change in, or change in the
25 method of operation of, a stationary source which
26 increases the amount of any air pollutant discharged by
27 such source above a de minimis level set by the director.

§22-5-12. Operating permits required for stationary sources of air pollution.

1 No person may operate a stationary source of air
2 pollutants without first obtaining an operating permit
3 as provided in this section. The director shall promul-
4 gate legislative rules, in accordance with chapter
5 twenty-nine-a of this code, which specify classes or
6 categories of stationary sources which are required to
7 obtain an operating permit. The legislative rule shall
8 provide for the form and content of the application
9 procedure including time limitations for obtaining the
10 required permits. Any person who has filed a timely and
11 complete application for a permit or renewal thereof
12 required by this section, and who is abiding by the
13 requirements of this article and the rules promulgated
14 pursuant thereto is in compliance with the requirements
15 of this article and any rule promulgated thereunder
16 until a permit is issued or denied. Any legislative rule
17 promulgated pursuant to the authority granted by this
18 section shall be equivalent to and consistent with rules
19 and regulations adopted by the administrator of United
20 States environmental protection agency pursuant to

21 Title IV and Title V of the Clean Air Act Amendments
22 of 1990, 42 U.S.C. §7651 et seq. and 42 U.S.C. §7661 et
23 seq., respectively: *Provided*, That such legislative rule
24 may deviate from the federal rules and regulations
25 where a deviation is appropriate to implement the policy
26 and purpose of this article taking into account such
27 factors unique to West Virginia.

§22-5-13. Consolidation of permits.

1 For permits required by sections eleven and twelve
2 of this article, the director may incorporate the required
3 permits with an existing permit or consolidate the
4 required permits into a single permit.

§22-5-14. Administrative review of permit actions.

1 Any person whose interest may be affected, including,
2 but not necessarily limited to, the applicant and any
3 person who participated in the public comment process,
4 by a permit issued, modified or denied by the director
5 may appeal such action of the director to the air quality
6 board pursuant to article one, chapter twenty-two-b of
7 this code.

§22-5-15. Motor vehicle pollution, inspection and maintenance.

1 (a) As the state of knowledge and technology relating
2 to the control of emissions from motor vehicles may
3 permit or make appropriate, and in furtherance of the
4 purposes of this article, the director may provide by
5 legislative rule for the control of emissions from motor
6 vehicles. Such legislative rule may prescribe require-
7 ments for the installation and use of equipment designed
8 to reduce or eliminate emissions and for the proper
9 maintenance of such equipment and of vehicles. Any
10 legislative rule pursuant to this section shall be
11 consistent with provisions of federal law, if any, relating
12 to control of emissions from the vehicles concerned. The
13 director shall not require, as a condition precedent to the
14 initial sale of a vehicle or vehicular equipment, the
15 inspection, certification or other approval of any feature
16 or equipment designed for the control of emissions from
17 motor vehicles, if such feature or equipment has been

18 certified, approved, or otherwise authorized pursuant to
19 federal law.

20 (b) Except as permitted or authorized by law or
21 legislative rule, no person shall fail to maintain in good
22 working order or remove, dismantle or otherwise cause
23 to be inoperative any equipment or feature constituting
24 an operational element of the air pollution control
25 system or mechanism of a motor vehicle required by
26 rules of the director to be maintained in or on the
27 vehicle. Any such failure to maintain in good working
28 order or removal, dismantling or causing of inoperabil-
29 ity subjects the owner or operator to suspension or
30 cancellation of the registration for the vehicle by the
31 department of transportation, division of motor vehicles.
32 The vehicle is not thereafter eligible for registration
33 until all parts and equipment constituting operational
34 elements of the motor vehicle have been restored,
35 replaced or repaired and are in good working order.

36 (c) The department of transportation, division of
37 motor vehicles, department of administration, informa-
38 tion and communication services division, and the
39 department of public safety shall make available
40 technical information and records to the director to
41 implement the legislative rule regarding motor vehicle
42 pollution, inspection and maintenance. The director
43 shall promulgate a legislative rule establishing motor
44 vehicle pollution, inspection and maintenance standards
45 and imposing an inspection fee at a rate sufficient to
46 implement the motor vehicle inspection program.

47 (d) The director shall promulgate a legislative rule
48 requiring maintenance of features of equipment in or on
49 motor vehicles for the purpose of controlling emissions
50 therefrom, and no motor vehicle may be issued a
51 division of motor vehicles registration certificate, or the
52 existing registration certificate shall be revoked, unless
53 the motor vehicle has been found to be in compliance
54 with the director's legislative rule.

55 (e) The remedies and penalties provided in this section
56 and section one, article three, chapter seventeen-a of this
57 code, apply to violations hereof, and the provisions of

58 sections six or seven of this article do not apply thereto.

59 (f) As used in this section "motor vehicle" has the same
60 meaning as in chapter seventeen-c of this code.

**§22-5-16. Small business environmental compliance
assistance program, compliance advisory
panel.**

1 The secretary of the department of commerce, labor,
2 and environmental resources shall establish a small
3 business stationary source technical and environmental
4 compliance assistance program which meets the re-
5 quirements of Title V of the Clean Air Act Amendments
6 of 1990, 42 U.S.C. §7661 et seq. A compliance advisory
7 panel composed of seven members appointed as follows
8 shall be created to periodically review the effectiveness
9 and results of this assistance program:

10 (a) Two members who are not owners, nor represen-
11 tatives of owners, of small business stationary sources,
12 selected by the governor to represent the general public;

13 (b) One member selected by the speaker of the House
14 of Delegates who is an owner or who represents owners
15 of small business stationary sources;

16 (c) One member selected by the minority leader of the
17 House of Delegates who is an owner or who represents
18 owners of small business stationary sources;

19 (d) One member selected by the president of the
20 Senate who is an owner or who represents owners of
21 small business stationary sources;

22 (e) One member selected by the minority leader of the
23 Senate who is an owner or who represents owners of
24 small business stationary sources; and

25 (f) One member selected by the director to represent
26 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.

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

3 (a) "Casing" means a string or strings of pipe
4 commonly placed in wells drilled for natural gas or
5 petroleum or both;

6 (b) "Cement" means hydraulic cement properly mixed
7 with water;

8 (c) "Chair" means the chair of the West Virginia
9 shallow gas well review board as provided for in section
10 four, article eight, chapter twenty-two-c of this code;

11 (d) "Coal operator" means any person or persons, firm,
12 partnership, partnership association or corporation that
13 proposes to or does operate a coal mine;

14 (e) "Coal seam" and "workable coal bed" are inter-
15 changeable terms and mean any seam of coal twenty
16 inches or more in thickness, unless a seam of less
17 thickness is being commercially worked, or can in the
18 judgment of the department foreseeably be commer-

19 cially worked and will require protection if wells are
20 drilled through it;

21 (f) "Director" means the director of the division of
22 environmental protection as established in article one of
23 this chapter or such other person to whom the director
24 has delegated authority or duties pursuant to sections
25 six or eight, article one of this chapter.

26 (g) "Deep well" means any well other than a shallow
27 well, drilled and completed in a formation at or below
28 the top of the uppermost member of the "Onondaga
29 Group";

30 (h) "Expanding cement" means any cement approved
31 by the office of oil and gas which expands during the
32 hardening process, including, but not limited to, regular
33 oil field cements with the proper additives;

34 (i) "Facility" means any facility utilized in the oil and
35 gas industry in this state and specifically named or
36 referred to in this article or in article eight or nine of
37 this chapter, other than a well or well site;

38 (j) "Gas" means all natural gas and all other fluid
39 hydrocarbons not defined as oil in this section;

40 (k) "Oil" means natural crude oil or petroleum and
41 other hydrocarbons, regardless of gravity, which are
42 produced at the well in liquid form by ordinary
43 production methods and which are not the result of
44 condensation of gas after it leaves the underground
45 reservoirs;

46 (l) "Owner" when used with reference to any well,
47 shall include any person or persons, firm, partnership,
48 partnership association or corporation that owns,
49 manages, operates, controls or possesses such well as
50 principal, or as lessee or contractor, employee or agent
51 of such principal;

52 (m) "Owner" when used with reference to any coal
53 seam, shall include any person or persons who own, lease
54 or operate such coal seam;

55 (n) "Person" means any natural person, corporation,
56 firm, partnership, partnership association, venture,

57 receiver, trustee, executor, administrator, guardian,
58 fiduciary or other representative of any kind, and
59 includes any government or any political subdivision or
60 any agency thereof;

61 (o) "Plat" means a map, drawing or print showing the
62 location of a well or wells as herein defined;

63 (p) "Review board" means the West Virginia shallow
64 gas well review board as provided for in section four,
65 article eight, chapter twenty-two-c of this code;

66 (q) "Safe mining through of a well" means the mining
67 of coal in a workable coal bed up to a well which
68 penetrates such workable coal bed and through such
69 well so that the casing or plug in the well bore where
70 the well penetrates the workable coal bed is severed;

71 (r) "Shallow well" means any gas well drilled and
72 completed in a formation above the top of the uppermost
73 member of the "Onondaga Group": *Provided*, That in
74 drilling a shallow well the operator may penetrate into
75 the "Onondaga Group" to a reasonable depth, not in
76 excess of twenty feet, in order to allow for logging and
77 completion operations, but in no event may the "Onon-
78 daga Group" formation be otherwise produced, perfo-
79 rated or stimulated in any manner;

80 (s) "Stimulate" means any action taken by a well
81 operator to increase the inherent productivity of an oil
82 or gas well, including, but not limited to, fracturing,
83 shooting or acidizing, but excluding cleaning out,
84 bailing or workover operations;

85 (t) "Waste" means (i) physical waste, as the term is
86 generally understood in the oil and gas industry; (ii) the
87 locating, drilling, equipping, operating or producing of
88 any oil or gas well in a manner that causes, or tends
89 to cause a substantial reduction in the quantity of oil or
90 gas ultimately recoverable from a pool under prudent
91 and proper operations, or that causes or tends to cause
92 a substantial or unnecessary or excessive surface loss of
93 oil or gas; or (iii) the drilling of more deep wells than
94 are reasonably required to recover efficiently and
95 economically the maximum amount of oil and gas from

96 a pool; (iv) substantially inefficient, excessive or
97 improper use, or the substantially unnecessary dissipa-
98 tion of, reservoir energy, it being understood that
99 nothing in this chapter shall be construed to authorize
100 any agency of the state to impose mandatory spacing of
101 shallow wells except for the provisions of section eight,
102 article nine, chapter twenty-two-c of this code and the
103 provisions of article eight, chapter twenty-two-c of this
104 code; (v) inefficient storing of oil or gas: *Provided*, That
105 storage in accordance with a certificate of public
106 convenience issued by the federal energy regulatory
107 commission shall be conclusively presumed to be
108 efficient and (vi) other underground or surface waste in
109 the production or storage of oil, gas or condensate,
110 however caused. Waste does not include gas vented or
111 released from any mine areas as defined in section two,
112 article one, chapter twenty-two-a of this code or from
113 adjacent coal seams which are the subject of a current
114 permit issued under article two of chapter twenty-two-
115 a of this code: *Provided, however*, That nothing in this
116 exclusion is intended to address ownership of the gas;

117 (u) "Well" means any shaft or hole sunk, drilled, bored
118 or dug into the earth or into underground strata for the
119 extraction or injection or placement of any liquid or gas,
120 or any shaft or hole sunk or used in conjunction with
121 such extraction or injection or placement. The term
122 "well" does not include any shaft or hole sunk, drilled,
123 bored or dug into the earth for the sole purpose of core
124 drilling or pumping or extracting therefrom potable,
125 fresh or usable water for household, domestic, indus-
126 trial, agricultural or public use;

127 (v) "Well work" means the drilling, redrilling,
128 deepening, stimulating, pressuring by injection of any
129 fluid, converting from one type of well to another,
130 combining or physically changing to allow the migration
131 of fluid from one formation to another or plugging or
132 replugging of any well;

133 (w) "Well operator" or "operator" means any person
134 or persons, firm, partnership, partnership association or
135 corporation that proposes to or does locate, drill, operate
136 or abandon any well as herein defined;

137 (x) "Pollutant" shall have the same meaning as
138 provided in subsection (17), section three, article eleven,
139 chapter twenty-two of this code; and

140 (y) "Waters of this state" shall have the same meaning
141 as the term "waters" as provided in subsection (23),
142 section three, article eleven, chapter twenty-two of this
143 code.

§22-6-2. Director — Powers and duties generally; division records open to public; inspectors.

1 (a) The director shall have as his or her duty the
2 supervision of the execution and enforcement of matters
3 related to oil and gas set out in this article and in
4 articles eight and nine of this chapter.

5 (b) The director is authorized to enact rules necessary
6 to effectuate the above stated purposes.

7 (c) The director shall have full charge of the oil and
8 gas matters set out in this article and in articles eight
9 and nine of this chapter. In addition to all other powers
10 and duties conferred upon him, the director shall have
11 the power and duty to:

12 (1) Supervise and direct the activities of the office of
13 oil and gas and see that the purposes set forth in
14 subsections (a) and (b) of this section are carried out;

15 (2) Employ a supervising oil and gas inspector and oil
16 and gas inspectors.

17 (3) Supervise and direct such oil and gas inspectors
18 and supervising inspector in the performance of their
19 duties;

20 (4) Suspend for good cause any oil and gas inspector
21 or supervising inspector without compensation for a
22 period not exceeding thirty days in any calendar year;

23 (5) Prepare report forms to be used by oil and gas
24 inspectors or the supervising inspector in making their
25 findings, orders and notices, upon inspections made in
26 accordance with this article and articles seven, eight,
27 nine and ten of this chapter;

28 (6) Employ a hearing officer and such clerks, steno-

29 graphers and other employees, as may be necessary to
30 carry out his duties and the purposes of the office of oil
31 and gas and fix their compensation;

32 (7) Hear and determine applications made by owners,
33 well operators and coal operators for the annulment or
34 revision of orders made by oil and gas inspectors or the
35 supervising inspector, and to make inspections, in
36 accordance with the provisions of this article and
37 articles eight and nine of this chapter;

38 (8) Cause a properly indexed permanent and public
39 record to be kept of all inspections made by the director
40 or by oil and gas inspectors or the supervising inspector;

41 (9) Conduct such research and studies as the director
42 shall deem necessary to aid in protecting the health and
43 safety of persons employed within or at potential or
44 existing oil or gas production fields within this state, to
45 improve drilling and production methods and to provide
46 for the more efficient protection and preservation of oil
47 and gas-bearing rock strata and property used in
48 connection therewith;

49 (10) Collect a permit fee of two hundred fifty dollars
50 for each permit application filed: *Provided*, That no
51 permit application fee shall be required when an
52 application is submitted solely for the plugging or
53 replugging of a well. All application fees required
54 hereunder shall be in addition to any other fees required
55 by the provisions of this article;

56 (11) Perform all other duties which are expressly
57 imposed upon the director by the provisions of this
58 chapter.

59 (12) Perform all duties as the permit issuing authority
60 for the state in all matters pertaining to the exploration,
61 development, production, storage and recovery of this
62 state's oil and gas;

63 (13) Adopt rules with respect to the issuance, denial,
64 retention, suspension or revocation of permits, author-
65 izations and requirements of this chapter, which rules
66 shall assure that the rules, permits and authorizations
67 issued by the director are adequate to satisfy the

68 purposes of this article and articles seven, eight, nine
69 and ten of this chapter particularly with respect to the
70 consolidation of the various state and federal programs
71 which place permitting requirements on the explora-
72 tion, development, production, storage and recovery of
73 this state's oil and gas: *Provided*, That notwithstanding
74 any provisions of this article and articles seven, eight,
75 nine and ten of this chapter to the contrary, the
76 environmental quality board shall have the sole author-
77 ity pursuant to section three, article three, chapter
78 twenty-two-b to promulgate rules setting standards of
79 water quality applicable to waters of the state; and

80 (14) Perform such acts as may be necessary or
81 appropriate to secure to this state the benefits of federal
82 legislation establishing programs relating to the
83 exploration, development, production, storage and
84 recovery of this state's oil and gas, which programs are
85 assumable by the state.

86 (d) The director shall have authority to visit and
87 inspect any well or well site and any other oil or gas
88 facility in this state and may call for the assistance of
89 any oil and gas inspector or inspectors or supervising
90 inspector whenever such assistance is necessary in the
91 inspection of any such well or well site or any other oil
92 or gas facility. Similarly, all oil and gas inspectors and
93 the supervising inspector shall have authority to visit
94 and inspect any well or well site and any other oil or
95 gas facility in this state. Any well operator, coal
96 operator operating coal seams beneath the tract of land,
97 or the coal seam owner or lessee, if any, if said owner
98 or lessee is not yet operating said coal seams beneath
99 said tract of land may request the director to have an
100 immediate inspection made. The operator or owner of
101 every well or well site or any other oil or gas facility
102 shall cooperate with the director, all oil and gas
103 inspectors and the supervising inspector in making
104 inspections or obtaining information.

105 (e) Oil and gas inspectors shall devote their full time
106 and undivided attention to the performance of their
107 duties, and they shall be responsible for the inspection
108 of all wells or well sites or other oil or gas facilities in

109 their respective districts as often as may be required in
110 the performance of their duties.

111 (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 abatement; special inspections; notice of findings and orders.

1 (a) If an oil and gas inspector, upon making an
2 inspection of a well or well site or any other oil or gas
3 facility, finds that any provision of this article is being
4 violated, the inspector shall also find whether or not an
5 imminent danger to persons exists, or whether or not
6 there exists an imminent danger that a fresh water
7 source or supply will be contaminated or lost. If the
8 inspector finds that such imminent danger exists, an
9 order requiring the operator of such well or well site or
10 other oil or gas facility to cease further operations until
11 such imminent danger has been abated shall be issued
12 by the inspector. If the inspector finds that no such
13 imminent danger exists, the inspector shall determine
14 what would be a reasonable period of time within which
15 such violation should be totally abated. Such findings
16 shall contain reference to the provisions of this article
17 which the inspector finds are being violated, and a
18 detailed description of the conditions which cause and
19 constitute such violation.

20 (b) The period of time so found by such oil and gas
21 inspector to be a reasonable period of time shall not
22 exceed seven days. Such period may be extended by
23 such inspector, or by any other oil and gas inspector
24 duly authorized by the director, from time to time, for
25 good cause, but not to exceed a total of thirty days, upon
26 the making of a special inspection to ascertain whether
27 or not such violation has been totally abated: *Provided,*
28 That such thirty-day period may be extended beyond
29 thirty days by such inspectors where abatement is
30 shown to be incapable of accomplishment because of
31 circumstances or conditions beyond the control of the
32 well operator. The director shall cause a special

33 inspection to be made: (A) Whenever an operator of a
34 well or well site or any other oil or gas facility, prior
35 to the expiration of any such period of time, requests the
36 director to cause a special inspection to be made at such
37 well or well site or any other oil or gas facility; and (B)
38 upon expiration of such period of time as originally
39 fixed or as extended, unless the director is satisfied that
40 the violation has been abated. Upon making such special
41 inspection, such oil and gas inspector shall determine
42 whether or not such violation has been totally abated.
43 If the inspector determines that such violation has not
44 been totally abated, the inspector shall determine
45 whether or not such period of time as originally fixed,
46 or as so fixed and extended, should be extended. If the
47 inspector determines that such period of time should be
48 extended, the inspector shall determine what a reason-
49 able extension would be. If the inspector determines that
50 such violation has not been totally abated, and if such
51 period of time as originally fixed, or as so fixed and
52 extended, has then expired, and if the inspector also
53 determines that such period of time should not be
54 further extended, the inspector shall thereupon make an
55 order requiring the operator of such well or well site or
56 other oil or gas facility to cease further operations of
57 such well, well site or facility, as the case may be. Such
58 findings and order shall contain reference to the specific
59 provisions of this article which are being violated.

60 (c) Notice of each finding and order made under this
61 section shall promptly be given to the operator of the
62 well or well site or other oil or gas facility to which it
63 pertains by the person making such finding or order.

64 (d) No order shall be issued under the authority of this
65 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.**

1 (a) Any well operator, complaining coal operator,
2 owner or lessee, if any, aggrieved by findings or an
3 order made by an oil or gas inspector pursuant to section
4 three of this article, may within fifteen days apply to

5 the director for annulment or revision of such order.
6 Upon receipt of such application the director shall make
7 a special inspection of the well, well site or other oil and
8 gas facility affected by such order, or cause two duly
9 authorized oil and gas inspectors, other than the oil and
10 gas inspector who made such order or the supervising
11 inspector and one duly authorized oil and gas inspector
12 other than the oil and gas inspector who made such
13 order, to make such inspection of such well, or well site
14 or other oil or gas facility and to report thereon to them.
15 Upon making such special inspection, or upon receiving
16 the report of such special inspection, as the case may be,
17 the director shall make an order which shall include the
18 director's findings and shall annul, revise or affirm the
19 order of the oil and gas inspector.

20 (b) The director shall cause notice of each finding and
21 order made under this section to be given promptly to
22 the operator of the well, well site or other oil or gas
23 facility to which such findings and order pertain, and
24 the complainant under section three, if any.

25 (c) At any time while an order made pursuant to
26 section three of this article is in effect, the operator of
27 the well, well site or other oil or gas facility affected by
28 such order may apply to the director for annulment or
29 revision of such order. The director shall thereupon
30 proceed to act upon such application in the manner
31 provided in this section.

32 (d) In view of the urgent need for prompt decision of
33 matters submitted to the director under this article, all
34 actions which the director, or oil and gas inspectors or
35 the supervising inspector are required to take under this
36 article, shall be taken as rapidly as practicable,
37 consistent with adequate consideration of the issues
38 involved.

**§22-6-5. Requirements for findings, orders and notices;
posting of findings and orders; judicial re-
view of final orders of director.**

1 (a) All findings and orders made pursuant to section
2 three or four of this article, and all notices required to
3 be given of the making of such findings and orders, shall

4 be in writing. All such findings and orders shall be
5 signed by the person making them, and all such notices
6 shall be signed by the person charged with the duty of
7 giving the notice. All such notices shall contain a copy
8 of the findings and orders referred to therein.

9 (b) Notice of any finding or order required by section
10 three or four of this article to be given to an operator
11 shall be given by causing such notice, addressed to the
12 operator of the well, well site or other oil and/or gas
13 facility to which such finding or order pertains, to be
14 delivered to such operator by causing a copy thereof to
15 be sent by registered mail to the permanent address of
16 such operator as filed with the division and by causing
17 a copy thereof to be posted upon the drilling rig or other
18 equipment at the well, well site or other oil and/or gas
19 facility, as the case may be. The requirement of this
20 article that a notice shall be "addressed to the operator
21 of the well, well site or other oil and/or gas facility to
22 which such finding or order pertains," shall not require
23 that the name of the operator for whom it is intended
24 shall be specifically set out in such address. Addressing
25 such notice to "Operator of ," specifying the well, well
26 site or other oil and/or gas facility sufficiently to identify
27 it, shall satisfy such requirement.

28 (c) Any well operator, complaining coal operator,
29 owner or lessee, if any, adversely affected by a final
30 order issued by the director under section four of this
31 article shall be entitled to judicial review thereof. All
32 of the pertinent provisions of section four, article five,
33 chapter twenty-nine-a of this code shall apply to and
34 govern such judicial review with like effect as if the
35 provisions of said section four were set forth in extenso
36 in this section.

37 (d) The judgment of the circuit court shall be final
38 unless reversed, vacated or modified on appeal to the
39 supreme court of appeals in accordance with the
40 provisions of section one, article six, chapter twenty-
41 nine-a of this code.

42 (e) Legal counsel and services for the director in all
43 appeal proceedings in any circuit court and the supreme

44 court of appeals shall be provided by the attorney
45 general or his or her assistants and in any circuit court
46 by the prosecuting attorney of the county as well, all
47 without additional compensation. The director, with
48 written approval of the attorney general, may employ
49 special counsel to represent the director at any such
50 appeal proceedings.

**§22-6-6. Permit required for well work; permit fee;
application; soil erosion control plan.**

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves
3 any disturbance of land, without first securing from the
4 director a well work permit. An application may
5 propose and a permit may approve two or more
6 activities defined as well work.

7 (b) The application for a well work permit shall be
8 accompanied by applicable bond as prescribed by
9 section twelve, fourteen or twenty-three of this article,
10 and the applicable plat required by section twelve or
11 fourteen of this article.

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

14 (1) The names and addresses of (i) the well operator,
15 (ii) the agent required to be designated under subsection
16 (e) of this section, and (iii) every person whom the
17 applicant must notify under any section of this article
18 together with a certification and evidence that a copy
19 of the application and all other required documentation
20 has been delivered to all such persons;

21 (2) The name and address of every coal operator
22 operating coal seams under the tract of land on which
23 the well is or may be located, and the coal seam owner
24 of record and lessee of record required to be given notice
25 by section twelve, if any, if said owner or lessee is not
26 yet operating said coal seams;

27 (3) The number of the well or such other identification
28 as the director may require;

29 (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

69 or gas well, specifications in accordance with the data
70 requirements of section thirteen of this article;

71 (12) The erosion and sediment control plan required
72 under subsection (d) of this section for applications for
73 permits to drill; and

74 (13) Any other relevant information which the
75 director may require by rule.

76 (d) An erosion and sediment control plan shall
77 accompany each application for a well work permit
78 except for a well work permit to plug or replug any
79 well. Such plan shall contain methods of stabilization
80 and drainage, including a map of the project area
81 indicating the amount of acreage disturbed. The erosion
82 and sediment control plan shall meet the minimum
83 requirements of the West Virginia erosion and sediment
84 control manual as adopted and from time to time
85 amended by the division, in consultation with the several
86 soil conservation districts pursuant to the control
87 program established in this state through section 208 of
88 the federal Water Pollution Control Act Amendments of
89 1972 (33 U.S.C.1288). The erosion and sediment control
90 plan shall become part of the terms and conditions of
91 a well work permit, except for a well work permit to
92 plug or replug any well, which is issued and the
93 provisions of the plan shall be carried out where
94 applicable in the operation. The erosion and sediment
95 control plan shall set out the proposed method of
96 reclamation which shall comply with the requirements
97 of section thirty of this article.

98 (e) The well operator named in such application shall
99 designate the name and address of an agent for such
100 operator who shall be the attorney-in-fact for the
101 operator and who shall be a resident of the state of West
102 Virginia upon whom notices, orders or other commun-
103 ications issued pursuant to this article or article eleven,
104 chapter twenty-two, may be served, and upon whom
105 process may be served. Every well operator required to
106 designate an agent under this section shall within five
107 days after the termination of such designation notify the
108 director of such termination and designate a new agent.

109 (f) The well owner or operator shall install the permit
110 number as issued by the director in a legible and
111 permanent manner to the well upon completion of any
112 permitted work. The dimensions, specifications and
113 manner of installation shall be in accordance with the
114 rules of the director.

115 (g) The director may waive the requirements of this
116 section and sections nine, ten and eleven of this article
117 in any emergency situation, if the director deems such
118 action necessary. In such case the director may issue an
119 emergency permit which would be effective for not more
120 than thirty days, but which would be subject to
121 reissuance by the director.

122 (h) The director shall deny the issuance of a permit
123 if the director determines that the applicant has
124 committed a substantial violation of a previously issued
125 permit, including the erosion and sediment control plan,
126 or a substantial violation of one or more of the rules
127 promulgated hereunder, and has failed to abate or seek
128 review of the violation within the time prescribed by the
129 director pursuant to the provisions of sections three and
130 four of this article and the rules promulgated he-
131 reunder, which time may not be unreasonable: *Provided,*
132 That in the event that the director does find that a
133 substantial violation has occurred and that the operator
134 has failed to abate or seek review of the violation in the
135 time prescribed, the director may suspend the permit
136 on which said violation exists, after which suspension
137 the operator shall forthwith cease all well work being
138 conducted under the permit: *Provided, however,* That the
139 director may reinstate the permit without further
140 notice, at which time the well work may be continued.
141 The director shall make written findings of any such
142 determination and may enforce the same in the circuit
143 courts of this state and the operator may appeal such
144 suspension pursuant to the provisions of section forty of
145 this article. The director shall make a written finding
146 of any such determination.

147 (i) Any person who violates any provision of this
148 section shall be guilty of a misdemeanor, and, upon
149 conviction thereof, shall be fined not more than five

150 thousand dollars, or be imprisoned in the county jail not
151 more than twelve months, or both fined and imprisoned.

**§22-6-7. Water pollution control permits; powers and
duties of the director; penalties.**

1 (a) In addition to a permit for well work, the director,
2 after public notice and an opportunity for public
3 hearings, may either issue a separate permit, general
4 permit or a permit consolidated with the well work
5 permit for the discharge or disposition of any pollutant
6 or combination of pollutants into waters of this state
7 upon condition that such discharge or disposition meets
8 or will meet all applicable state and federal water
9 quality standards and effluent limitations and all other
10 requirements of the director.

11 (b) It shall be unlawful for any person conducting
12 activities which are subject to the requirements of this
13 article, unless that person holds a water pollution
14 control permit therefor from the director, which is in
15 full force and effect to:

16 (1) Allow pollutants or the effluent therefrom,
17 produced by or emanating from any point source, to flow
18 into the water of this state;

19 (2) Make, cause or permit to be made any outlet, or
20 substantially enlarge or add to the load of any existing
21 outlet, for the discharge of pollutants or the effluent
22 therefrom, into the waters of this state;

23 (3) Acquire, construct, install, modify or operate a
24 disposal system or part thereof for the direct or indirect
25 discharge or deposit of treated or untreated pollutants
26 or the effluent therefrom, into the waters of this state,
27 or any extension to or addition to such disposal system;

28 (4) Increase in volume or concentration any pollutants
29 in excess of the discharges or disposition specified or
30 permitted under any existing permit;

31 (5) Extend, modify or add to any point source, the
32 operation of which would cause an increase in the
33 volume or concentration of any pollutants discharging
34 or flowing into the waters of the state;

35 (6) Operate any disposal well for the injection or
36 reinjection underground of any pollutant, including, but
37 not limited to, liquids or gasses, or convert any well into
38 such a disposal well or plug or abandon any such
39 disposal well.

40 (c) Notwithstanding any provision of this article or
41 articles seven, eight, nine or ten of this chapter to the
42 contrary, the director shall have the same powers and
43 duties relating to inspection and enforcement as those
44 granted under article eleven, chapter twenty-two of this
45 code in connection with the issuance of any water
46 pollution control permit or any person required to have
47 such permit.

48 (d) Any person who violates any provision of this
49 section, any order issued under this section or any
50 permit issued pursuant to this section or any rule of the
51 director relating to water pollution or who willfully or
52 negligently violates any provision of this section or any
53 permit issued pursuant to this section or any rule or
54 order of the director relating to water pollution or who
55 fails or refuses to apply for and obtain a permit or who
56 intentionally misrepresents any material fact in an
57 application, record, report, plan or other document files
58 or required to be maintained under this section shall be
59 subject to the same penalties for such violations as are
60 provided for in sections twenty-two and twenty-four,
61 article eleven, chapter twenty-two of this code: *Provided,*
62 That the provisions of section twenty-six, article eleven,
63 chapter twenty-two of this code relating to exceptions to
64 criminal liability shall also apply.

65 All applications for injunction filed pursuant to
66 section twenty-two, article eleven, chapter twenty-two of
67 the code shall take priority on the docket of the circuit
68 court in which pending, and shall take precedence over
69 all other civil cases.

70 (e) Any water pollution control permit issued pursu-
71 ant to this section or any order issued in connection with
72 such permit for the purpose of implementing the
73 "national pollutant discharge elimination system"
74 established under the federal Clean Water Act shall be

75 issued by the chief of the office of water resources of the
76 division in consultation with the chief of the office of oil
77 and gas of the division and shall be appealable to the
78 environmental quality board pursuant to the provisions
79 of section twenty-five, article eleven, chapter twenty-two
80 and section seven, article one, chapter twenty-two-b of
81 this code.

**§22-6-8. Permits not to be on flat well royalty leases;
legislative findings and declarations; permit
requirements.**

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas
3 underlying this state is subject to development pursuant
4 to leases or other continuing contractual agreements
5 wherein the owners of such oil and gas are paid upon
6 a royalty or rental basis known in the industry as the
7 annual flat well royalty basis, in which the royalty is
8 based solely on the existence of a producing well, and
9 thus is not inherently related to the volume of the oil
10 and gas produced or marketed;

11 (2) That continued exploitation of the natural resour-
12 ces of this state in exchange for such wholly inadequate
13 compensation is unfair, oppressive, works an unjust
14 hardship on the owners of the oil and gas in place, and
15 unreasonably deprives the economy of the state of West
16 Virginia of the just benefit of the natural wealth of this
17 state;

18 (3) That a great portion, if not all, of such leases or
19 other continuing contracts based upon or calling for an
20 annual flat well royalty, have been in existence for a
21 great many years and were entered into at a time when
22 the techniques by which oil and gas are currently
23 extracted, produced or marketed, were not known or
24 contemplated by the parties, nor was it contemplated by
25 the parties that oil and gas would be recovered or
26 extracted or produced or marketed from the depths and
27 horizons currently being developed by the well
28 operators;

29 (4) That while being fully cognizant that the provi-

30 sions of section 10, article I of the United States
31 Constitution and of section 4, article III of the Consti-
32 tution of West Virginia, proscribe the enactment of any
33 law impairing the obligation of a contract, the Legisla-
34 ture further finds that it is a valid exercise of the police
35 powers of this state and in the interest of the state of
36 West Virginia and in furtherance of the welfare of its
37 citizens, to discourage as far as constitutionally possible
38 the production and marketing of oil and gas located in
39 this state under the type of leases or other continuing
40 contracts described above.

41 (b) In the light of the foregoing findings, the Legis-
42 ture hereby declares that it is the policy of this state,
43 to the extent possible, to prevent the extraction,
44 production or marketing of oil or gas under a lease or
45 leases or other continuing contract or contracts provid-
46 ing a flat well royalty or any similar provisions for
47 compensation to the owner of the oil and gas in place,
48 which is not inherently related to the volume of oil or
49 gas produced or marketed, and toward these ends, the
50 Legislature further declares that it is the obligation of
51 this state to prohibit the issuance of any permit required
52 by it for the development of oil or gas where the right
53 to develop, extract, produce or market the same is based
54 upon such leases or other continuing contractual
55 agreements.

56 (c) In addition to any requirements contained in this
57 article with respect to the issuance of any permit
58 required for the drilling, redrilling, deepening, fractur-
59 ing, stimulating, pressuring, converting, combining or
60 physically changing to allow the migration of fluid from
61 one formation to another, no such permit shall be
62 hereafter issued unless the lease or leases or other
63 continuing contract or contracts by which the right to
64 extract, produce or market the oil or gas is filed with
65 the application for such permit. In lieu of filing the lease
66 or leases or other continuing contract or contracts, the
67 applicant for a permit described herein may file the
68 following:

69 (1) A brief description of the tract of land including
70 the district and county wherein the tract is located;

71 (2) The identification of all parties to all leases or
72 other continuing contractual agreements by which the
73 right to extract, produce or market the oil or gas is
74 claimed;

75 (3) The book and page number wherein each such
76 lease or contract by which the right to extract, produce
77 or market the oil or gas is recorded; and

78 (4) A brief description of the royalty provisions of each
79 such lease or contract.

80 (d) Unless the provisions of subsection (e) are met, no
81 such permit shall be hereafter issued for the drilling of
82 a new oil or gas well, or for the redrilling, deepening,
83 fracturing, stimulating, pressuring, converting, combin-
84 ing or physically changing to allow the migration of
85 fluid from one formation to another, of an existing oil
86 or gas production well, where or if the right to extract,
87 produce or market the oil or gas is based upon a lease
88 or leases or other continuing contract or contracts
89 providing for flat well royalty or any similar provision
90 for compensation to the owner of the oil or gas in place
91 which is not inherently related to the volume of oil and
92 gas so extracted, produced and marketed.

93 (e) To avoid the permit prohibition of subsection (d),
94 the applicant may file with such application an affidavit
95 which certifies that the affiant is authorized by the
96 owner of the working interest in the well to state that
97 it shall tender to the owner of the oil or gas in place
98 not less than one eighth of the total amount paid to or
99 received by or allowed to the owner of the working
100 interest at the wellhead for the oil or gas so extracted,
101 produced or marketed before deducting the amount to
102 be paid to or set aside for the owner of the oil or gas
103 in place, on all such oil or gas to be extracted, produced
104 or marketed from the well. If such affidavit be filed
105 with such application, then such application for permit
106 shall be treated as if such lease or leases or other
107 continuing contract or contracts comply with the
108 provisions of this section.

109 (f) The owner of the oil or gas in place shall have a
110 cause of action to enforce the owner's rights established

111 by this section.

112 (g) The provisions of this section shall not affect or
113 apply to any lease or leases or other continuing contract
114 or contracts for the underground storage of gas or any
115 well utilized in connection therewith or otherwise
116 subject to the provisions of article nine of this chapter.

117 (h) The director shall enforce this requirement
118 irrespective of when the lease or other continuing
119 contract was executed.

120 (i) The provisions of this section shall not adversely
121 affect any rights to free gas.

§22-6-9. Notice to property owners.

1 (a) No later than the filing date of the application, the
2 applicant for a permit for any well work shall deliver
3 by personal service or by certified mail, return receipt
4 requested, copies of the application, well plat and
5 erosion and sediment control plan required by section
6 six of this article to each of the following persons:

7 (1) The owners of record of the surface of the tract
8 on which the well is, or is to be located; and

9 (2) The owners of record of the surface tract or tracts
10 overlying the oil and gas leasehold being developed by
11 the proposed well work, if such surface tract is to be
12 utilized for roads or other land disturbance as described
13 in the erosion and sediment control plan submitted
14 pursuant to section six of this article.

15 (b) If more than three tenants in common or other co-
16 owners of interests described in subsection (a) of this
17 section hold interests in such lands, the applicant may
18 serve the documents required upon the person described
19 in the records of the sheriff required to be maintained
20 pursuant to section eight, article one, chapter eleven-a
21 of this code, or publish in the county in which the well
22 is located or to be located a Class II legal advertisement
23 as described in section two, article three, chapter fifty-
24 nine of this code, containing such notice and information
25 as the director shall prescribe by rule, with the first
26 publication date being at least ten days prior to the

27 filing of the permit application: *Provided*, That all
28 owners occupying the tracts where the well work is, or
29 is proposed to be located at the filing date of the permit
30 application shall receive actual service of the documents
31 required by subsection (a) of this section.

32 (c) Materials served upon persons described in
33 subsections (a) and (b) of this section shall contain a
34 statement of the methods and time limits for filing
35 comments, who may file comments and the name and
36 address of the director for the purpose of filing
37 comments and obtaining additional information and a
38 statement that such persons may request, at the time of
39 submitting comments, notice of the permit decision and
40 a list of persons qualified to test water as provided in
41 this section.

42 (d) Any person entitled to submit comments shall also
43 be entitled to receive a copy of the permit as issued or
44 a copy of the order denying the permit if such person
45 requests the receipt thereof as a part of the comments
46 concerning said permit application.

47 (e) Persons entitled to notice may contact the district
48 office of the division to ascertain the names and location
49 of water testing laboratories in the area capable and
50 qualified to test water supplies in accordance with
51 standard accepted methods. In compiling such list of
52 names the division shall consult with the state bureau
53 of public health and local health departments.

§22-6-10. Procedure for filing comments; certification of notice.

1 (a) All persons described in subsections (a) and (b),
2 section nine of this article may file comments with the
3 director as to the location or construction of the
4 applicant's proposed well work within fifteen days after
5 the application is filed with the director.

6 (b) Prior to the issuance of any permit for well work,
7 the applicant shall certify to the director that the
8 requirements of section nine of this article have been
9 completed by the applicant. Such certification may be
10 by affidavit of personal service or the return receipt

11 card, or other postal receipt for certified mailing.

§22-6-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

1 The director shall review each application for a well
2 work permit and shall determine whether or not a
3 permit shall be issued.

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

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

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

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

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

31 (4) The proposed well work fails to protect fresh water
32 sources or supplies.

33 The director shall promptly review all comments
34 filed. If after review of the application and all comments

35 received, the application for a well work permit is
36 approved, and no timely objection or comment has been
37 filed with the director or made by the director under
38 the provisions of section fifteen, sixteen or seventeen of
39 this article, the permit shall be issued, with conditions,
40 if any. Nothing in this section shall be construed to
41 supersede the provisions of sections six, twelve, thirteen,
42 fourteen, fifteen, sixteen and seventeen of this article.

43 The director shall mail a copy of the permit as issued
44 or a copy of the order denying a permit to any person
45 who submitted comments to the director concerning said
46 permit and requested such copy.

47 Upon the issuance of any permit pursuant to the
48 provisions of this article, the director shall transmit a
49 copy of such permit to the office of the assessor for the
50 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; per-
formance bonds or securities in lieu thereof;
bond forfeiture.**

1 (a) Before drilling for oil or gas, or before fracturing
2 or stimulating a well on any tract of land, the well
3 operator shall have a plat prepared by a licensed land
4 surveyor or registered engineer showing the district and
5 county in which the tract of land is located, the name
6 and acreage of the same, the names of the owners of
7 adjacent tracts, the proposed or actual location of the
8 well determined by survey, the courses and distances of
9 such location from two permanent points or landmarks
10 on said tract and the number to be given the well and
11 the date of drilling completion of a well when it is
12 proposed that such well be fractured and shall forward
13 by registered or certified mail a copy of the plat to the
14 director. In the event the tract of land on which the said
15 well proposed to be drilled or fractured is located is
16 known to be underlaid with one or more coal seams,
17 copies of the plat shall be forwarded by registered or
18 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.

35 (b) If no objections are made, or are found by the
36 director, to such proposed location or proposed fractur-
37 ing within fifteen days from receipt of such plat and
38 notice by the director, the same shall be filed and
39 become a permanent record of such location or fractur-
40 ing subject to inspection at any time by any interested
41 person, and the director may forthwith issue to the well
42 operator a permit reciting the filing of such plat, that
43 no objections have been made by the coal operators,
44 owners and lessees, if any, or found thereto by the
45 director, and authorizing the well operator to drill at
46 such location, or to fracture the well. Unless the director
47 has objections to such proposed location or proposed
48 fracturing or stimulating, such permit may be issued
49 prior to the expiration of such fifteen-day period upon
50 the obtaining by the well operator of the consent in
51 writing of the coal operator or operators, owners and
52 lessees, if any, to whom copies of the plat and notice
53 shall have been mailed as herein required, and upon
54 presentation of such written consent to the director. The
55 notice above provided for may be given to the coal
56 operator by delivering or mailing it by registered or
57 certified mail as above to any agent or superintendent
58 in actual charge of mines.

59 (c) A permit to drill, or to fracture or stimulate an

60 oil or gas well, shall not be issued unless the application
61 therefor is accompanied by a bond as provided in section
62 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.**

1 Before fracturing any well the well operator shall, by
2 registered or certified mail, forward a notice of
3 intention to fracture such well to the director and to
4 each and every coal operator operating coal seams
5 beneath said tract of land, who has mapped the same
6 and filed such maps with the office of miners' health,
7 safety and training in accordance with chapter twenty-
8 two-a of this code, and the coal seam owner and lessee,
9 if any, if said owner of record or lessee of record has
10 recorded the declaration provided in section thirty-six
11 of this article, and if said owner or lessee is not yet
12 operating said coal seams beneath said tract of land.

13 The notice shall be addressed to the director and to
14 each such coal operator at their respective addresses,
15 shall contain the number of the drilling permit for such
16 well and such other information as may be required by
17 the director to enable the division and the coal operators
18 to locate and identify such well and shall inform them
19 that such notice is being mailed to them, respectively,
20 by registered or certified mail, pursuant to the require-
21 ments of this article. The form for such notice of
22 intention shall be furnished on request by the director.

23 If no objections are made, or are found by the director
24 to such proposed fracturing within fifteen days from
25 receipt of such notice by the director, the same shall be
26 filed and become a permanent record of such fracturing,
27 subject to inspection at any time by any interested
28 person, and the director shall forthwith issue to the well
29 operator a permit reciting the filing of such notice, that
30 no objections have been made by the coal operators, or
31 found thereto by the director, and authorizing the well
32 operator to fracture such well. Unless the director has
33 objections to such proposed fracturing, such permit shall

34 be issued prior to the expiration of such fifteen-day
35 period upon the obtaining by the well operator of the
36 consent in writing of the coal operator or operators,
37 owners or lessees, if any, to whom notice of intention to
38 fracture shall have been mailed as herein required, and
39 upon presentation of such written consent to the
40 director. The notice above provided for may be given to
41 the coal operator by delivering or mailing it by
42 registered or certified mail as above to any agent or
43 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.**

1 (a) Before drilling a well for the introduction of
2 liquids for the purposes provided for in section twenty-
3 five of this article or for the introduction of liquids for
4 the disposal of pollutants or the effluent therefrom on
5 any tract of land, or before converting an existing well
6 for such purposes, the well operator shall have a plat
7 prepared by a registered engineer or licensed land
8 surveyor showing the district and county in which the
9 tract of land is located, the name and acreage of the
10 same, the names of the owners of all adjacent tracts, the
11 proposed or actual location of the well or wells deter-
12 mined by a survey, the courses and distances of such
13 location from two permanent points of land marked on
14 said tract and the number to be given to the well, and
15 shall forward by registered or certified mail the original
16 and one copy of the plat to the director. In addition, the
17 well operator shall provide the following information on
18 the plat or by way of attachment thereto to the director
19 in the manner and form prescribed by the director's
20 rules: (1) The location of all wells, abandoned or
21 otherwise located within the area to be affected; (2)
22 where available, the casing records of all such wells; (3)
23 where available, the drilling log of all such wells; (4) the
24 maximum pressure to be introduced; (5) the geological
25 formation into which such liquid or pressure is to be

26 introduced; (6) a general description of the liquids to be
27 introduced; (7) the location of all water-bearing horizons
28 above and below the geological formation into which
29 such pressure, liquid or waste is to be introduced; and
30 (8) such other information as the director by rule may
31 require.

32 (b) In the event the tract of land on which said well
33 proposed to be drilled or converted for the purposes
34 provided for in this section is located is known to be
35 underlaid with coal seams, copies of the plat and all
36 information required by this section shall be forwarded
37 by the operator by registered or certified mail to each
38 and every coal operator operating coal seams beneath
39 said tract of land, who has mapped the same and filed
40 such maps with the office of miners' health, safety and
41 training in accordance with chapter twenty-two-a of this
42 code, and the coal seam owner of record and lessee of
43 record, if any, if said owner or lessee has recorded the
44 declaration provided in section thirty-six of this article,
45 and if said owner or lessee is not yet operating said
46 seams beneath said tract of land. With each of such
47 plats, there shall be enclosed a notice (form for which
48 shall be furnished on request by the director) addressed
49 to the director and to each such coal operator, owner or
50 lessee, if any, at their respective addresses, informing
51 them that such plat and notice are being mailed to them,
52 respectively, by registered or certified mail, pursuant to
53 the requirements of this section.

54 (c) If no objections are made by any such coal
55 operator, owner or lessee, or the director, such proposed
56 drilling or converting of the well or wells for the
57 purposes provided for in this section within thirty days
58 from the receipt of such plat and notice by the director,
59 the same shall be filed and become a permanent record
60 of such location or well, subject to inspection at any time
61 by any interested person, and the director may after
62 public notice and opportunity to comment, issue such
63 permit authorizing the well operator to drill at such
64 location or convert such existing well or wells for the
65 purposes provided for in this section. The notice above
66 provided for may be given to the coal operator by

67 delivering or mailing it by registered or certified mail
68 as above to any agent or superintendent in actual charge
69 of the mines.

70 (d) A permit to drill a well or wells or convert an
71 existing well or wells for the purposes provided for in
72 this section shall not be issued until all of the bonding
73 provisions required by the provisions of section twelve
74 of this article have been fully complied with and all such
75 bonding provisions shall apply to all wells drilled or
76 converted for the purposes provided for in this section
77 as if such wells had been drilled for the purposes
78 provided for in section twelve of this article, except that
79 such bonds shall be conditioned upon full compliance
80 with all laws and rules relating to the drilling of a well
81 or the converting of an existing well for the purposes
82 provided for in said section twenty-five, or introducing
83 of liquids for the disposal of pollutants including the
84 redrilling, deepening, casing, plugging or abandonment
85 of all such wells.

**§22-6-15. Objections to proposed drilling of deep wells
and oil wells; objections to fracturing; noti-
ces and hearings; agreed locations or condi-
tions; indication of changes on plats, etc.;
issuance of permits.**

1 (a) When a proposed deep well drilling site or oil well
2 drilling site or any site is above a seam or seams of coal,
3 then the coal operator operating said coal seams beneath
4 the tract of land, or the coal seam owner or lessee, if
5 any, if said owner or lessee is not yet operating said coal
6 seams, may within fifteen days from the receipt by the
7 director of the plat and notice required by section twelve
8 of this article, or within fifteen days from the receipt
9 by the director of notice required by section thirteen of
10 this article, file objections in writing (forms for which
11 will be furnished by the director on request) to such
12 proposed drilling or fracturing with the director, setting
13 out therein as definitely as is reasonably possible the
14 ground or grounds on which such objections are based.

15 If any objection is filed, or if any objection is made
16 by the director, the director shall notify the well

17 operator of the character of the objections and by whom
18 made and fix a time and place, not less than fifteen days
19 from the end of said fifteen-day period, at which such
20 objections will be considered of which time and place the
21 well operator and all objecting coal operators, owners or
22 lessees, if any, shall be given at least ten days' written
23 notice by the director, by registered or certified mail,
24 and summoned to appear. At the time and place so fixed
25 the well operator and the objecting coal operators,
26 owners or lessees, if any, or such of them as are present
27 or represented, shall proceed to consider the objections.
28 In the case of proposed drilling, such parties present or
29 represented may agree upon either the location as made
30 or so moved as to satisfy all objections and meet the
31 approval of the director, and any change in the original
32 location so agreed upon and approved by the director
33 shall be indicated on said plat on file with the director,
34 and the distance and direction of the new location from
35 the original location shall be shown, and as so altered,
36 the plat shall be filed and become a permanent record,
37 and in the case of proposed fracturing, such parties
38 present or represented may agree upon conditions under
39 which the well is to be fractured which will protect life
40 and property and which will satisfy all objections and
41 meet the approval of the director, at which time the plat
42 and notice required by section twelve or the notice
43 required by section thirteen, as the case may be, shall
44 be filed and become a permanent record. Whereupon the
45 director shall forthwith issue to the well operator a
46 drilling or fracturing permit, as the case may be,
47 reciting the filing of the plat and notice required by said
48 section twelve, or the notice required by said section
49 thirteen, as the case may be, that at a hearing duly held
50 a location as shown on the plat or the conditions under
51 which the fracturing is to take place for the protection
52 of life and property were agreed upon and approved,
53 and that the well operator is authorized to drill at such
54 location or to fracture at the site shown on such plat,
55 or to fracture the well identified in the notice required
56 by section thirteen, as the case may be.

57 (b) In the event the well operator and the objecting
58 coal operators, owners or lessees, if any, or such as are

59 present or represented at such hearing are unable to
60 agree upon a drilling location, or upon a drilling location
61 that meets the approval of the director, then the director
62 shall proceed to hear the evidence and testimony in
63 accordance with sections one and two, article five,
64 chapter twenty-nine-a of this code, except where such
65 provisions are inconsistent with the article. The director
66 shall take into consideration in arriving at his decision:

67 (1) Whether the drilling location is above or in close
68 proximity to any mine opening or shaft, entry, travel-
69 way, airway, haulageway, drainageway or passageway,
70 or to any proposed extension thereof in any operated or
71 abandoned or operating coal mine or coal mines already
72 surveyed and platted, but not yet being operated;

73 (2) Whether the proposed drilling can reasonably be
74 done through an existing or planned pillar of coal, or
75 in close proximity to an existing well or such pillar of
76 coal, taking into consideration the surface topography;

77 (3) Whether a well can be drilled safely, taking into
78 consideration the dangers from creeps, squeezes or other
79 disturbances due to the extraction of coal; and

80 (4) The extent to which the proposed drilling location
81 unreasonably interferes with the safe recovery of coal,
82 oil and gas.

83 At the close of the hearing or within ten days
84 thereafter the director shall issue an order:

85 (1) Refusing to issue a permit;

86 (2) Issuing a permit for the proposed drilling location;
87 or

88 (3) Issuing a permit for a drilling location different
89 from that requested by the well operator.

90 The order shall state with particularity the reasons
91 for the director's order and shall be mailed by registered
92 or certified mail to the parties present or represented
93 at such hearing. If the director has ruled that a permit
94 will be issued, the director shall issue a permit effective
95 ten days after such order is mailed, except that for good
96 cause shown, the director may stay the issuance of a

97 permit for a period not to exceed thirty days.

98 If a permit is issued, the director shall indicate the
99 new drilling location on the plat on file and shall
100 number and keep an index of and docket each plat and
101 notice received by mail as provided in section twelve of
102 this article, and each notice mailed as provided in
103 section thirteen of this article, entering in such docket
104 the name of the well operator, and the names and
105 addresses of all persons notified, the dates of hearings
106 and all actions taken by the director. The director shall
107 also prepare a record of the proceedings, which record
108 shall include all applications, plats and other documents
109 filed with the director, all notices given and proof of
110 service thereof, all orders issued, all permits issued and
111 a transcript of the hearing. The record prepared by the
112 director shall be open to inspection by the public.

113 (c) In the event the well operator and the objecting
114 coal operators, owners or lessees, if any, or such as are
115 present or represented at such hearing, are unable to
116 agree upon the conditions under which the well is to be
117 fractured as to protect life and property, or upon
118 conditions of fracturing that meet with the approval of
119 the director, then the director shall proceed to hear the
120 evidence and testimony in accordance with sections one
121 and two, article five, chapter twenty-nine-a of this code,
122 except where such provisions are inconsistent with this
123 article.

124 The director shall take into consideration whether the
125 well can be fractured safely, taking into consideration
126 the dangers from creeps, squeezes or other disturbances.

127 At the close of the hearing, or within ten days
128 thereafter, the director shall issue an order stating the
129 conditions under which the well is to be fractured,
130 provided the well can be fractured safely, taking into
131 consideration the dangers from creeps, squeezes or other
132 disturbances. If such fracturing cannot be done safely,
133 the director shall issue an order stating with particu-
134 larity the reasons for refusing to issue a permit.

135 The order shall state with particularity the reasons
136 for the director's order and shall be mailed by registered

137 or certified mail to the parties present or represented
138 at such hearing. If the director has ruled that a permit
139 will be issued, the director shall issue a permit effective
140 ten days after such order is mailed, except that for good
141 cause shown, the director may stay the issuance of a
142 permit for a period not to exceed thirty days.

143 If a permit is issued, the director shall indicate the
144 well to be fractured on the plat on file and shall number
145 and keep an index of and docket each plat and notice
146 received by mail as provided in section twelve of this
147 article, and each notice received by mail as provided in
148 section thirteen of this article, entering in such docket
149 the name of the well operator, the names and addresses
150 of all persons notified, the dates of hearings and all
151 actions taken by the director. The director shall also
152 prepare a record of the proceedings, which record shall
153 include all applications, plats and other documents filed
154 with the director, all notices given and proof of service
155 thereof, all orders issued, all permits issued and a
156 transcript of the hearing. The record prepared by the
157 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.**

1 (a) When a well is proposed to be drilled or converted
2 for the purposes provided for in section fourteen of this
3 article, and is above a seam or seams of coal, then the
4 coal operator operating said coal seams beneath the
5 tract of land, or the coal seam owner or lessee, if any,
6 if said owner or lessee is not yet operating said coal
7 seams, may within fifteen days from the receipt by the
8 director of the plat and notice required by section
9 fourteen of this article, file objections in writing (forms
10 for which will be furnished by the director on request)
11 to such proposed drilling or conversion.

12 (b) In any case wherein a well proposed to be drilled
13 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

56 agree upon conditions under which the conversion is to
57 take place for the protection of life and property or for
58 protection of reasonable standards of purity and quality
59 of the waters of the state. At which time the plat and
60 notice required by section fourteen shall be filed and
61 become a permanent record. Whereupon the director
62 may issue to the well operator a permit to drill or
63 convert, as the case may be, reciting the filing of the
64 plat and notice required by said section fourteen that at
65 a hearing duly held a location as shown on the plat or
66 the conditions under which the conversion is to take
67 place for the protection of life and property and
68 reasonable standards of purity and quality of the waters
69 of the state where agreed upon and approved, and that
70 the well operator is authorized to drill at such location
71 or to convert at the site shown on such plat, as the case
72 may be.

73 (d) (1) In the case the well operator and the objecting
74 coal operators, owners or lessees, if any, and such chief,
75 or such as are present or represented at such hearing
76 are unable to agree upon a drilling location, or upon a
77 drilling location that meets the approval of the director,
78 then the director shall proceed to hear the evidence and
79 testimony in accordance with sections one and two,
80 article five, chapter twenty-nine-a of this code, except
81 where such provisions are inconsistent with this article.
82 The director shall take into consideration upon decision:

83 (A) Whether the drilling location is above or in close
84 proximity to any mine opening or shaft, entry, traveling,
85 air haulage, drainage or passageway, or to any proposed
86 extension thereof, in any operated or abandoned or
87 operating coal mine, or coal mine already surveyed and
88 platted, but not yet being operated;

89 (B) Whether the proposed drilling can reasonably be
90 done through an existing or planned pillar of coal, or
91 in close proximity to an existing well or such pillar of
92 coal, taking into consideration the surface topography;

93 (C) Whether a well can be drilled safely, taking into
94 consideration the dangers from creeps, squeezes or other
95 disturbances, due to the extraction of coal; and

96 (D) The extent to which the proposed drilling location
97 unreasonably interferes with the safe recovery of coal,
98 oil and gas.

99 (2) At the close of the hearing or within ten days
100 thereafter the director shall issue an order:

101 (A) Refusing to issue a permit;

102 (B) Issuing a permit for the proposed drilling location;
103 or

104 (C) Issuing a permit for a drilling location different
105 than that requested by the well operator.

106 The order shall state with particularity the reasons
107 for the director's order and shall be mailed by registered
108 or certified mail to the parties present or represented
109 at such hearing. If the director has ruled that a permit
110 will be issued, the director shall issue a permit effective
111 ten days after such order is mailed: Except that for good
112 cause shown, the director may stay the issuance of a
113 permit for a period not to exceed thirty days.

114 (3) If a permit is issued, the director shall indicate the
115 new drilling location on the plat on file with the director
116 and shall number and keep an index of and docket each
117 plat and notice mailed to the director as provided in
118 section twelve of this article, and each notice mailed to
119 the director as provided in section thirteen of this
120 article, entering in such docket the name of the well
121 operator, and the names and addresses of all persons
122 notified, the dates of hearings and all actions taken by
123 the director, permits issued or refused, the papers filed
124 and a transcript of the hearing. This shall constitute a
125 record of the proceedings before the director and shall
126 be open to inspection by the public.

127 (e)(1) In the case, the well operator and the objecting
128 coal operators, owners or lessees, if any, and such chief,
129 or such as are present or represented at such hearing,
130 are unable to agree upon the conditions under which the
131 well is to be converted as to protect life and property,
132 and the reasonable standards of purity and quality of
133 the waters of the state, or upon conditions of converting
134 that meet with the approval of the director, then the

135 director shall proceed to hear the evidence and testim-
136 ony in accordance with sections one and two, article five,
137 chapter twenty-nine-a of this code, except where such
138 provisions are inconsistent with this article. The director
139 shall take into consideration upon decision:

140 (A) Whether the well can be converted safely, taking
141 into consideration the dangers from creeps, squeezes or
142 other disturbances;

143 (B) Whether the well can be converted, taking into
144 consideration the reasonable standards of the purity and
145 quality of the waters of the state.

146 (2) At the close of the hearing, or within ten days
147 thereafter, the director shall issue an order stating the
148 conditions under which the conversion is to take place,
149 providing the well can be converted safely, taking into
150 consideration the dangers from creeps, squeezes or other
151 disturbances and the reasonable standards of purity and
152 quality of the waters of this state. If such converting
153 cannot be done safely, or if the reasonable standards of
154 purity and quality of such waters will be endangered,
155 the director shall issue an order stating with particu-
156 larity the reasons for refusing to issue a permit.

157 (3) The order shall state with particularity the reasons
158 for the director's order and shall be mailed by registered
159 or certified mail to the parties present or represented
160 at such hearing. If the director has ruled that a permit
161 will be issued, such permit shall become effective ten
162 days after the division has mailed such order: Except
163 for good cause shown, the director may stay the issuance
164 of a permit for a period not to exceed thirty days.

165 (4) If a permit is issued, the director shall indicate the
166 well to be converted on the plat on file with the director,
167 and shall number and keep an index of and docket each
168 plat and notice mailed to the director as provided in
169 section fourteen of this article, entering in such docket
170 the name of the well operator, and the names and
171 addresses of all persons notified, the dates of hearings
172 and all actions taken by the director, permits issued or
173 refused, the papers filed and a transcript of the
174 hearings. This shall constitute a record of the proceed-

175 ings before the director and shall be open to inspection
176 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.

1 When a proposed shallow well drilling site is above
2 a seam or seams of coal, then the owner of any such coal
3 seam may, within fifteen days from the receipt by the
4 director of the plat and notice required by section twelve
5 of this article, file objections in writing (forms for which
6 will be furnished by the director on request) to such
7 proposed drilling with the director, setting out therein
8 as definitely as is reasonably possible the ground or
9 grounds on which such objections are based.

10 If any such objection is filed, or if any objection is
11 made by the director, the director shall forthwith mail,
12 by registered or certified mail, to the chair of the review
13 board, a notice that an objection to the proposed drilling
14 or deepening of a shallow well has been filed with or
15 made by the director, and shall enclose in such notice
16 a copy of all objections and of the application and plat
17 filed with the director in accordance with the provisions
18 of section twelve of this article.

19 Thereafter, no further action shall be taken on such
20 application by the director until an order is received
21 from the review board directing the director to:

22 (a) Refuse a drilling permit; or

23 (b) Issue a drilling permit for the proposed drilling
24 location; or

25 (c) Issue a drilling permit for an alternate drilling
26 location different from that requested by the well
27 operator; or

28 (d) Issue a drilling permit either for the proposed
29 drilling location or for an alternate drilling location
30 different from that requested by the well operator, but
31 not allow the drilling of the well for a period of not more
32 than one year from the date of issuance of such permit.

33 Upon receipt of such board order, the director shall
34 promptly undertake the action directed by the review
35 board, except that the director shall not issue a drilling
36 permit unless all other provisions of this article (except
37 section fifteen) pertaining to the application for and
38 approval of a drilling permit have been complied with.
39 All permits issued by the director pursuant to this
40 section shall be effective ten days after issuance unless
41 the review board orders the director to stay the
42 effectiveness of a permit for a period not to exceed thirty
43 days from the date of issuance.

44 If a permit is issued, the director shall indicate the
45 approved drilling location on the plat filed with the
46 director in accordance with the provisions of section
47 twelve of this article and shall number and keep an
48 index of and docket each plat and notice mailed to the
49 director as provided in section twelve of this article, and
50 each notice mailed to the director as provided in section
51 thirteen of this article, entering in such docket the name
52 of the well operator, and the names and addresses of all
53 persons notified, the dates of conferences, hearings and
54 all other actions taken by the director and the review
55 board. The director shall also prepare a record of the
56 proceedings, which record shall include all applications,
57 plats and other documents filed with the director, all
58 notices given and proof of service thereof, all orders
59 issued, all permits issued and a transcript of the
60 hearing. The record prepared by the director shall be
61 open to inspection by the public.

**§22-6-18. Protective devices — When well penetrates
workable coal bed; when gas is found be-
neath or between workable coal beds.**

1 (a) When a well penetrates one or more workable coal
2 beds, the well operator shall run and cement a string
3 of casing in the hole through the workable coal bed or
4 beds in such a manner as will exclude all oil, gas or gas
5 pressure from the coal bed or beds, except such oil, gas
6 or gas pressure as may be found in such coal bed or
7 beds. Such string of casing shall be run to a point at
8 least thirty feet below the lowest workable coal bed
9 which the well penetrates and shall be circulated and

10 cemented from such point to the surface in such a
11 manner as provided for in reasonable rules promulgated
12 by the director in accordance with the provisions of
13 chapter twenty-nine-a. After any such string of casing
14 has been so run and cemented to the surface, drilling
15 may proceed to the permitted depth.

16 (b) In the event that gas is found beneath a workable
17 coal bed before the hole has been reduced from the size
18 it had at the coal bed, a packer shall be placed below
19 the coal bed, and above the gas horizon, and the gas by
20 this means diverted to the inside of the adjacent string
21 of casing through perforations made in such casing, and
22 through it passed to the surface without contact with the
23 coal bed. Should gas be found between two workable
24 beds of coal, in a hole, of the same diameter from bed
25 to bed, two packers shall be placed, with perforations
26 in the casing between them, permitting the gas to pass
27 to the surface inside the adjacent casing. In either of the
28 cases here specified, the strings of casing shall extend
29 from their seats to the top of the well.

§22-6-19. Same — Continuance during life of well; dry or abandoned wells.

1 In the event that a well becomes productive of natural
2 gas or petroleum, or is drilled for or converted for the
3 introduction of pressure, whether liquid or gas, or for
4 the introduction of liquid for the purposes provided for
5 in section twenty-five of this article or for the disposal
6 of pollutants or the effluent therefrom, all coal-protect-
7 ing strings of casing and all water-protecting strings of
8 casing shall remain in place until the well is plugged
9 or abandoned. During the life of the well the annular
10 spaces between the various strings of casing adjacent to
11 workable beds of coal shall be kept open, and the top
12 ends of all such strings shall be provided with casing
13 heads, or such other suitable devices as will permit the
14 free passage of gas and prevent filling of such annular
15 spaces with dirt or debris.

16 Any well which is completed as a dry hole or which
17 is not in use for a period of twelve consecutive months
18 shall be presumed to have been abandoned and shall

19 promptly be plugged by the operator in accordance with
20 the provisions of this article, unless the operator
21 furnishes satisfactory proof to the director that there is
22 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.**

1 When a well is drilled through the horizon of a coal
2 bed from which the coal has been removed, the hole
3 shall be drilled at least thirty feet below the coal bed,
4 of a size sufficient to permit the placing of a liner which
5 shall start not less than twenty feet beneath the horizon
6 of the coal bed and extend not less than twenty feet
7 above it. Within this liner, which may be welded to the
8 casing to be used, shall be centrally placed the largest
9 sized casing to be used in the well, and the space
10 between the liner and casing shall be filled with cement
11 as they are lowered into the hole. Cement shall be placed
12 in the bottom of the hole to a depth of twenty feet to
13 form a sealed seat for both liner and casing. Following
14 the setting of the liner, drilling shall proceed in the
15 manner provided above. Should it be found necessary to
16 drill through the horizon of two or more workable coal
17 beds from which the coal has been removed, such liner
18 shall be started not less than twenty feet below the
19 lowest such horizon penetrated and shall extend to a
20 point not less than twenty feet above the highest such
21 horizon.

§22-6-21. Same — Installation of fresh water casings.

1 When a permit has been issued for the drilling of an
2 oil or gas well or both, each well operator shall run and
3 permanently cement a string of casing in the hole
4 through the fresh water bearing strata in such a manner
5 and to the extent provided for in rules promulgated by
6 the director in accordance with the provisions of this
7 chapter.

8 No oil or gas well shall be drilled nearer than two
9 hundred feet from an existing water well or dwelling
10 without first obtaining the written consent of the owner
11 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
2 drilling of a well, the well operator shall file with the
3 director an accurate log. Such log shall contain the
4 character, depth and thickness of geological formations
5 encountered, including fresh water, coal seams, mineral
6 beds, brine and oil and gas bearing formations and such
7 other information as the director may require to
8 effectuate the purposes of this chapter.

9 The director may promulgate such reasonable rules
10 in accordance with article three, chapter twenty-nine-a
11 of this code, as he may deem necessary to ensure that
12 the character, depth and thickness of geological forma-
13 tions encountered are accurately logged: *Provided*, That
14 the director shall not require logging by the use of an
15 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
2 abandoned under the provisions of section nineteen of
3 this article shall be plugged and reclaimed in accor-
4 dance with this section and the other provisions of this
5 article and in accordance with the rules promulgated by
6 the director.

7 Prior to the commencement of plugging operations
8 and the abandonment of any well, the well operator shall
9 either (a) notify, by registered or certified mail, the
10 director and the coal operator operating coal seams, the
11 coal seam owner of record or lessee of record, if any, to
12 whom notices are required to be given by section twelve
13 of this article, and the coal operators to whom notices
14 are required to be given by section thirteen of this
15 article, of its intention to plug and abandon any such
16 well (using such form of notice as the director may
17 provide), giving the number of the well and its location
18 and fixing the time at which the work of plugging and
19 filling will be commenced, which time shall be not less
20 than five days after the day on which such notice so

21 mailed is received or in due course should be received
22 by the director, in order that a representative or
23 representatives of the director and such coal operator,
24 owner or lessee, if any, may be present at the plugging
25 and filling of the well: *Provided*, That whether such
26 representatives appear or do not appear, the well
27 operator may proceed at the time fixed to plug and fill
28 the well in the manner hereinafter described, or (b) first
29 obtain the written approval of the director and such coal
30 operator, owner or lessee, if any, or (c) in the event the
31 well to be plugged and abandoned is one on which
32 drilling or reworking operations have been continuously
33 progressing pursuant to authorization granted by the
34 director, first obtain the verbal permission of the
35 director or the director's designated representative to
36 plug and abandon such well, except that the well
37 operator shall, within a reasonable period not to exceed
38 five days after the commencement of such plugging
39 operations, give the written notices required by subdi-
40 vision (a) above.

41 No well may be plugged or abandoned unless prior
42 to the commencement of plugging operations and the
43 abandonment of any well the director is furnished a
44 bond as provided in section twenty-six of this article.

45 When the plugging, filling and reclamation of a well
46 have been completed, an affidavit, in triplicate, shall be
47 made (on a form to be furnished by the director) by two
48 experienced persons who participated in the work, the
49 director or the director's designated representative, in
50 which affidavit shall be set forth the time and manner
51 in which the well was plugged and filled and the land
52 reclaimed. One copy of this affidavit shall be retained
53 by the well operator, another (or true copies of same)
54 shall be mailed to the coal operator or operators, if any,
55 and the third to the director.

§22-6-24. Methods of plugging well.

1 Upon the abandonment or cessation of the operation
2 of any well drilled for natural gas or petroleum, or
3 drilled or converted for the introduction of pressure,
4 whether liquid or gas, or for the introduction of liquid

5 for the purposes provided for in section twenty-five of
6 this article or for the disposal of pollutants or the
7 effluent therefrom the well operator, at the time of such
8 abandonment or cessation, shall fill and plug the well
9 in the following manner:

10 (a) Where the well does not penetrate workable coal
11 beds, it shall either be filled with mud, clay or other
12 nonporous material from the bottom of the well to a
13 point twenty feet above the top of its lowest oil, gas or
14 water-bearing stratum; or a permanent bridge shall be
15 anchored thirty feet below its lowest oil, gas or water-
16 bearing stratum, and from such bridge it shall be filled
17 with mud, clay or other nonporous material to a point
18 twenty feet above such stratum; at this point there shall
19 be placed a plug of cement or other suitable material
20 which will completely seal the hole. Between this sealing
21 plug and a point twenty feet above the next higher oil,
22 gas or water-bearing stratum, the hole shall be filled,
23 in the manner just described; and at such point there
24 shall be placed another plug of cement or other suitable
25 material which will completely seal the hole. In like
26 manner the hole shall be filled and plugged, with
27 reference to each of its oil, gas or water-bearing strata.
28 However, whenever such strata are not widely separated
29 and are free from water, they may be grouped and
30 treated as a single sand, gas or petroleum horizon, and
31 the aforesaid filling and plugging be performed as
32 though there were but one horizon. After the plugging
33 of all oil, gas or water-bearing strata, as aforesaid, a
34 final cement plug shall be placed approximately ten feet
35 below the bottom of the largest casing in the well; from
36 this point to the surface the well shall be filled with
37 mud, clay or other nonporous material. In case any of
38 the oil or gas-bearing strata in a well shall have been
39 shot, thereby creating cavities which cannot readily be
40 filled in the manner above described, the well operator
41 shall follow either of the following methods:

42 (1) Should the stratum which has been shot be the
43 lowest one in the well, there shall be placed, at the
44 nearest suitable point, but not less than twenty feet
45 above the stratum, a plug of cement or other suitable

46 material which will completely seal the hole. In the
47 event, however, that the shooting has been done above
48 one or more oil or gas-bearing strata in the well,
49 plugging in the manner specified shall be done at the
50 nearest suitable point, but not less than twenty feet
51 below and above the stratum shot; or

52 (2) When such cavity shall be in the lowest oil or gas-
53 bearing stratum in the well, a liner shall be placed
54 which shall extend from below the stratum to a suitable
55 point, but not less than twenty feet above the stratum
56 in which shooting has been done. In the event, however,
57 that the shooting has been done above one or more oil
58 or gas-bearing strata in the well, the liner shall be so
59 placed that it will extend not less than twenty feet
60 above, nor less than twenty feet below, the stratum in
61 which shooting has been done. Following the placing of
62 the liner in the manner here specified it shall be
63 compactly filled with cement, mud, clay or other
64 nonporous sealing material.

65 (b) Where the well penetrates one or more workable
66 coal beds and a coal protection string of casing has been
67 circulated and cemented in to the surface, the well shall
68 be filled and securely plugged in the manner provided
69 in subsection (a) of this section, except that expanding
70 cement shall be used instead of regular hydraulic
71 cement, to a point approximately one hundred feet
72 below the bottom of the coal protection string of casing.
73 A one hundred foot plug of expanding cement shall then
74 be placed in the well so that the top of such plug is
75 located at a point just below the coal protection string
76 of casing. After such plug has been securely placed in
77 the well, the coal protection string of casing shall be
78 emptied of liquid from the surface to a point one
79 hundred feet below the lowest workable coal bed or to
80 the bottom of the coal protection string of casing,
81 whichever is shallower. A vent or other device approved
82 by the director shall then be installed on the top of the
83 coal protection string of casing in such a manner that
84 will prevent liquids and solids from entering the well
85 but will permit ready access to the full internal
86 diameter of the coal protection string of casing when
87 required. The coal protection string of casing and the
88 vent or other device approved by the director shall

89 extend, when finally in place, a distance of not less than
90 thirty inches above ground level and shall be perman-
91 ently marked with the well number assigned by the
92 director;

93 (c) Where the well penetrates one or more workable
94 coal beds and a coal protection string of casing has not
95 been circulated and cemented in to the surface, the well
96 shall be filled and securely plugged in the manner
97 provided in subsection (a) of this section to a point fifty
98 feet below the lowest workable coal bed. Thereafter, a
99 plug of cement shall be placed in the well at a point not
100 less than forty feet below the lowest workable coal bed.
101 After the cement plug has been securely placed in the
102 well, the well shall be filled with cement to a point
103 twenty feet above the lowest workable coal bed. From
104 this point the well shall be filled with mud, clay or other
105 nonporous material to a point forty feet beneath the next
106 overlying workable coal bed, if such there be, and the
107 well shall then be filled with cement from this point to
108 a point twenty feet above such workable coal bed, and
109 similarly, in case there are more overlying workable
110 coal beds. After the filling and plugging of the well to
111 a point above the highest workable coal bed, filling and
112 plugging of the well shall continue in the manner
113 provided in subsection (a) of this section to a point fifty
114 feet below the surface, and a plug of cement shall be
115 installed from the point fifty feet below the surface to
116 the surface with a monument installed therein extend-
117 ing thirty inches above ground level;

118 (d) (1) Where the well penetrates one or more
119 workable coal beds and a coal protection string of casing
120 has not been circulated and cemented in to the surface,
121 a coal operator or coal seam owner may request that the
122 well be plugged in the manner provided in subdivision
123 (3) of this subsection rather than by the method provided
124 in subsection (c) of this section. Such request (forms for
125 which shall be provided by the director) must be filed
126 in writing with the director prior to the scheduled
127 plugging of the well, and must include the number of
128 the well to be plugged and the name and address of the
129 well operator. At the time such request is filed with the

130 director, a copy of such request must also be mailed by
131 registered or certified mail to the well operator named
132 in the request.

133 (2) Upon receipt of such request, the director shall
134 issue an order staying the plugging of the well and shall
135 promptly determine the cost of plugging the well in the
136 manner provided in subdivision (3) of this subsection
137 and the cost of plugging the well in the manner provided
138 in subsection (c) of this section. In making such
139 determination, the director shall take into consideration
140 any agreement previously made between the well
141 operator and the coal operator or coal seam owner
142 making the request. If the director determines that the
143 cost of plugging the well in the manner provided in
144 subsection (c) of this section exceeds the cost of plugging
145 the well in the manner provided in subdivision (3) of this
146 subsection, the director shall grant the request of the
147 coal operator or owner and shall issue an order
148 requiring the well operator to plug the well in the
149 manner provided in subdivision (3) of this subsection. If
150 the director determines that the cost of plugging the
151 well in the manner provided in subsection (c) of this
152 section is less than the cost of plugging the well in the
153 manner provided in subdivision (3) of this subsection,
154 the director shall request payment into escrow of the
155 difference between the determined costs by the coal
156 operator or coal seam owner making the request. Upon
157 receipt of satisfactory notice of such payment, or upon
158 receipt of notice that the well operator has waived such
159 payment, the director shall grant the request of the coal
160 operator or coal seam owner and shall issue an order
161 requiring the well operator to plug the well in the
162 manner provided in subdivision (3) of this subsection. If
163 satisfactory notice of payment into escrow, or notice that
164 the well operator has waived such payment, is not
165 received by the director within fifteen days after the
166 request for payment into escrow, the director shall issue
167 an order permitting the plugging of the well in the
168 manner provided in subsection (c) of this section. Copies
169 of all orders issued by the director shall be sent by
170 registered or certified mail to the coal operator or coal
171 seam owner making the request and to the well

172 operator. When the escrow agent has received certifica-
173 tion from the director of the satisfactory completion of
174 the plugging work and the reimbursable extra cost
175 thereof (that is, the difference between the director's
176 determination of plugging cost in the manner provided
177 in subsection (c) of this section and the well operator's
178 actual plugging cost in the manner provided in subdivi-
179 sion (3) of this subsection), the escrow agent shall pay
180 the reimbursable sum to the well operator or the well
181 operator's nominee from the payment into escrow to the
182 extent available. The amount by which the payment into
183 escrow exceeds the reimbursable sum plus the escrow
184 agent's fee, if any, shall be repaid to the coal owner. If
185 the amount paid to the well operator or the well
186 operator's nominee is less than the actual reimbursable
187 sum, the escrow agent shall inform the coal owner, who
188 shall pay the deficiency to the well operator or the well
189 operator's nominee within thirty days. If the coal
190 operator breaches this duty to pay the deficiency, the
191 well operator shall have a right of action and be entitled
192 to recover damages as if for wrongful conversion of
193 personalty, and reasonable attorney fees.

194 (3) Where a request of a coal operator or coal seam
195 owner filed pursuant to subdivision (1) of this subsection
196 has been granted by the director, the well shall be
197 plugged in the manner provided in subsection (a) of this
198 section, except that expanding cement shall be used
199 instead of regular hydraulic cement, to a point approx-
200 imately two hundred feet below the lowest workable coal
201 bed. A one hundred foot plug of expanding cement shall
202 then be placed in the well beginning at the point
203 approximately two hundred feet below the lowest
204 workable coal bed and extending to a point approxi-
205 mately one hundred feet below the lowest workable coal
206 bed. A string of casing with an outside diameter no less
207 than four and one-half inches shall then be run into the
208 well to a point approximately one hundred feet below
209 the lowest workable coal bed and such string of casing
210 shall be circulated and cemented into the surface. The
211 casing shall then be emptied of liquid from a point
212 approximately one hundred feet below the lowest
213 workable coal bed to the surface, and a vent or other

214 device approved by the director shall be installed on the
215 top of the string of casing in such a manner that it will
216 prevent liquids and solids from entering the well but
217 will permit ready access to the full internal diameter of
218 the coal protection string of casing when required. The
219 string of casing and the vent or other device approved
220 by the director shall extend, when finally in place, a
221 distance of no less than thirty inches above ground level
222 and shall be permanently marked with the well number
223 assigned by the director. Notwithstanding the foregoing
224 provisions of this subdivision, if under particular
225 circumstances a different method of plugging is
226 required to obtain the approval of another governmental
227 agency for the safe mining through of said well, the
228 director may approve such different method of plugging
229 if the director finds the same to be as safe for mining
230 through and otherwise adequate to prevent gas or other
231 fluid migration from the oil and gas reservoirs as the
232 method above specified.

233 (e) Any person may apply to the director for an order
234 to clean out and replug a previously plugged well in a
235 manner which will permit the safe mining through of
236 such well. Such application shall be filed with the
237 director and shall contain the well number, a general
238 description of the well location, the name and address
239 of the owner of the surface land upon which the well
240 is located, a copy of or record reference to a deed, lease
241 or other document which entitles the applicant to enter
242 upon the surface land, a description of the methods by
243 which the well was previously plugged, and a descrip-
244 tion of the method by which such applicant proposes to
245 clean out and replug the well. At the time an application
246 is filed with the director, a copy shall be mailed by
247 registered or certified mail to the owner or owners of
248 the land, and the oil and gas lessee of record, if any, of
249 the site upon which the well is located. If no objection
250 to the replugging of the well is filed by any such
251 landowner or oil and gas lessee within thirty days after
252 the filing of the application, and if the director
253 determines that the method proposed for replugging the
254 well will permit the safe mining through of such well,
255 the director shall grant the application by an order

256 authorizing the replugging of the well. Such order shall
257 specify the method by which the well shall be replugged,
258 and copies thereof shall be mailed by certified or
259 registered mail to the applicant and to the owner or
260 owners of the land, and the oil and gas lessee, if any,
261 of the site upon which such well is located. If any such
262 landowner or oil and gas lessee objects to the replugging
263 of the well, the director shall notify the applicant of such
264 objection. Thereafter, the director shall schedule a
265 hearing to consider the objection, which hearing shall
266 be held after notice by registered or certified mail to the
267 objectors and the applicant. After consideration of the
268 evidence presented at the hearing, the director shall
269 issue an order authorizing the replugging of the well if
270 the director determines that replugging of the well will
271 permit the safe mining through of such well. Such order
272 shall specify the manner in which the well shall be
273 replugged and copies thereof shall be sent by registered
274 or certified mail to the applicant and objectors. The
275 director shall issue an order rejecting the application if
276 the director determines that the proposed method for
277 replugging the well will not permit the safe mining
278 through of such well;

279 (f) All persons adversely affected, by a determination
280 or order of the director issued pursuant to the provisions
281 of this section shall be entitled to judicial review in
282 accordance with the provisions of articles five and six,
283 chapter twenty-nine-a of this code.

**§22-6-25. Introducing liquid pressure into producing
strata to recover oil contained therein.**

1 The owner or operator of any well or wells which
2 produce oil or gas may allow such well or wells to
3 remain open for the purpose of introducing water or
4 other liquid pressure into and upon the producing strata
5 for the purpose of recovering the oil contained therein,
6 and may drill additional wells for like purposes,
7 provided that the introduction of such water or other
8 liquid pressure shall be controlled as to volume and
9 pressure and shall be through casing or tubing which
10 shall be so anchored and packed that no water-bearing
11 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.

6 (b) A separate bond as described in subsection (d) of
7 this section may be furnished for a particular oil or gas
8 well, or for a particular well for the introduction of
9 liquids for the purposes provided in section twenty-five
10 of this article. A separate bond as described in subsec-
11 tion (d) of this section shall be furnished for each well
12 drilled or converted for the introduction of liquids for
13 the disposal of pollutants or the effluent therefrom.
14 Every such bond shall be in the sum of ten thousand
15 dollars, payable to the state of West Virginia, condi-
16 tioned on full compliance with all laws, rules relating to
17 the drilling, redrilling, deepening, casing and stimulat-
18 ing of oil and gas wells (or, if applicable, with all laws,
19 rules relating to drilling or converting wells for the
20 introduction of liquids for the purposes provided for in
21 section twenty-five of this article or for the introduction
22 of liquids for the disposal of pollutants or the effluent
23 therefrom) and to the plugging, abandonment and
24 reclamation of wells and for furnishing such reports and
25 information as may be required by the director.

26 (c) When an operator makes or has made application
27 for permits to drill or stimulate a number of oil and gas
28 wells or to drill or convert a number of wells for the
29 introduction of liquids for the purposes provided in
30 section twenty-five of this article, the operator may in
31 lieu of furnishing a separate bond furnish a blanket
32 bond in the sum of fifty thousand dollars, payable to the
33 state of West Virginia, and conditioned as aforesaid in
34 subsection (b) of this section.

35 (d) The form of the bond required by this article shall
36 be approved by the director and may include, at the
37 option of the operator, surety bonding, collateral
38 bonding (including cash and securities) letters of credit,
39 establishment of an escrow account, self-bonding or a
40 combination of these methods. If collateral bonding is
41 used, the operator may elect to deposit cash, or collateral
42 securities or certificates as follows: Bonds of the United
43 States or its possessions, of the federal land bank, or the
44 homeowners' loan corporation; full faith and credit
45 general obligation bonds of the state of West Virginia,
46 or other states, and of any county, district or municipal-
47 ity of the state of West Virginia or other states; or
48 certificates of deposit in a bank in this state, which
49 certificates shall be in favor of the division. The cash
50 deposit or market value of such securities or certificates
51 shall be equal to or greater than the amount of the bond.
52 The director shall, upon receipt of any such deposit of
53 cash, securities or certificates, promptly place the same
54 with the treasurer of the state of West Virginia whose
55 duty it shall be to receive and hold the same in the name
56 of the state in trust for the purpose of which the deposit
57 is made when the permit is issued. The operator shall
58 be entitled to all interest and income earned on the
59 collateral securities filed by such operator. The operator
60 making the deposit shall be entitled from time to time
61 to receive from the state treasurer, upon the written
62 approval of the director, the whole or any portion of any
63 cash, securities or certificates so deposited, upon
64 depositing with the treasurer in lieu thereof, cash or
65 other securities or certificates of the classes herein
66 specified having value equal to or greater than the
67 amount of the bond.

68 (e) When an operator has furnished a separate bond
69 from a corporate bonding or surety company to drill,
70 fracture or stimulate an oil or gas well and the well
71 produces oil or gas or both, its operator may deposit
72 with the director cash from the sale of the oil or gas or
73 both until the total deposited is ten thousand dollars.
74 When the sum of the cash deposited is ten thousand
75 dollars, the separate bond for the well shall be released
76 by the director. Upon receipt of such cash, the director

77 shall immediately deliver the same to the treasurer of
78 the state of West Virginia. The treasurer shall hold such
79 cash in the name of the state in trust for the purpose
80 for which the bond was furnished and the deposit was
81 made. The operator shall be entitled to all interest and
82 income which may be earned on the cash deposited so
83 long as the operator is in full compliance with all laws,
84 rules relating to the drilling, redrilling, deepening,
85 casing, plugging, abandonment and reclamation of the
86 well for which the cash was deposited and so long as the
87 operator has furnished all reports and information as
88 may be required by the director. If the cash realized
89 from the sale of oil or gas or both from the well is not
90 sufficient for the operator to deposit with the director
91 the sum of ten thousand dollars within one year of the
92 day the well started producing, the corporate or surety
93 company which issued the bond on the well may notify
94 the operator and the director of its intent to terminate
95 its liability under its bond. The operator then shall have
96 thirty days to furnish a new bond from a corporate
97 bonding or surety company or collateral securities or
98 other forms of security, as provided in the next
99 preceding paragraph of this section with the director.
100 If a new bond or collateral securities or other forms of
101 security are furnished by the operator, the liability of
102 the corporate bonding or surety company under the
103 original bond shall terminate as to any acts and
104 operations of the operator occurring after the effective
105 date of the new bond or the date the collateral securities
106 or other forms of security are accepted by the treasurer
107 of the state of West Virginia. If the operator does not
108 furnish a new bond or collateral securities or other
109 forms of security, as provided in the next preceding
110 paragraph of this section, with the director, the operator
111 shall immediately plug, fill and reclaim the well in
112 accordance with all of the provisions of law and rules
113 applicable thereto. In such case, the corporate or surety
114 company which issued the original bond shall be liable
115 for any plugging, filling or reclamation not performed
116 in accordance with such laws and rules.

117 (f) Any separate bond furnished for a particular well
118 prior to the effective date of this chapter shall continue

119 to be valid for all work on the well permitting prior to
120 the eleventh day of July, one thousand nine hundred
121 eighty-five; but no permit shall hereafter be issued on
122 such a particular well without a bond complying with
123 the provisions of this section. Any blanket bond fur-
124 nished prior to the eleventh day of July, one thousand
125 nine hundred eighty-five shall be replaced with a new
126 blanket bond conforming to the requirements of this
127 section, at which time the prior bond shall be discharged
128 by operation of law; and if the director determines that
129 any operator has not furnished a new blanket bond, the
130 director shall notify the operator by certified mail,
131 return receipt requested, of the requirement for a new
132 blanket bond; and failure to submit a new blanket bond
133 within sixty days after receipt of the notice from the
134 director shall work a forfeiture under subsection (i) of
135 this section of the blanket bond furnished prior to the
136 eleventh day of July, one thousand nine hundred eighty-
137 five.

138 (g) Any such bond shall remain in force until released
139 by the director and the director shall release the same
140 upon satisfaction that the conditions thereof have been
141 fully performed. Upon the release of any such bond, any
142 cash or collateral securities deposited shall be returned
143 by the director to the operator who deposited same.

144 (h) Whenever the right to operate a well is assigned
145 or otherwise transferred, the assignor or transferor shall
146 notify the department of the name and address of the
147 assignee or transferee by certified mail, return receipt
148 requested, not later than five days after the date of the
149 assignment or transfer. No assignment or transfer by
150 the owner shall relieve the assignor or transferor of the
151 obligations and liabilities unless and until the assignee
152 or transferee files with the department the well name
153 and the permit number of the subject well, the county
154 and district in which the subject well is located, the
155 names and addresses of the assignor or transferor, and
156 assignee or transferee, a copy of the instrument of
157 assignment or transfer accompanied by the applicable
158 bond, cash, collateral security or other forms of security,
159 described in section twelve, fourteen, twenty-three or

160 twenty-six of this article, and the name and address of
161 the assignee's or transferee's designated agent if
162 assignee or transferee would be required to designate
163 such an agent under section six of this article, if
164 assignee or transferee were an applicant for a permit
165 under said section six. Every well operator required to
166 designate an agent under this section shall within five
167 days after the termination of such designation notify the
168 department of such termination and designate a new
169 agent.

170 Upon compliance with the requirements of this
171 section by assignor or transferor and assignee or
172 transferee, the director shall release assignor or
173 transferor from all duties and requirements of this
174 article, and the deputy director shall give written notice
175 of release unto assignor or transferor of any bond and
176 return unto assignor or transferor any cash or collateral
177 securities deposited pursuant to section twelve, fourteen,
178 twenty-three or twenty-six of this article.

179 (i) If any of the requirements of this article or rules
180 promulgated pursuant thereto or the orders of the
181 director have not been complied with within the time
182 limit set by the violation notice as defined in sections
183 three, four and five of this article, the performance bond
184 shall then be forfeited.

185 (j) When any bond is forfeited pursuant to the
186 provisions of this article or rules promulgated pursuant
187 thereto, the director shall give notice to the attorney
188 general who shall collect the forfeiture without delay.

189 (k) All forfeitures shall be deposited in the treasury
190 of the state of West Virginia in the special reclamation
191 fund as defined in section twenty-nine of this article.

**§22-6-27. Cause of action for damages caused by
explosions.**

1 Any person suffering personal injury or property
2 damage due to any explosion caused by any permittee,
3 shall have a cause of action against such permittee for
4 three years after the explosion regardless of when the
5 explosion occurred.

§22-6-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.

1 (a) The director shall exercise supervision over the
2 drilling, casing, plugging, filling and reclamation of all
3 wells and shall have such access to the plans, maps and
4 other records and to the properties of the well operators
5 as may be necessary or proper for this purpose, and,
6 either as the result of its own investigations or pursuant
7 to charges made by any well operator or coal operator,
8 the director may enter, or shall permit any aggrieved
9 person to file before the director, a formal complaint
10 charging any well operator with not drilling or casing,
11 or not plugging or filling, or reclaiming any well in
12 accordance with the provisions of this article, or to the
13 order of the director. True copies of any such complaints
14 shall be served upon or mailed by registered mail to any
15 person so charged, with notice of the time and place of
16 hearing, of which the operator or operators so charged
17 shall be given at least five days' notice. At the time and
18 place fixed for hearing, full opportunity shall be given
19 any person so charged or complaining to be heard and
20 to offer such evidence as desired, and after a full
21 hearing, at which the director may offer in evidence the
22 results of such investigations as the director may have
23 made, the director shall make findings of fact and enter
24 such order as in the director's judgment is just and right
25 and necessary to secure the proper administration of
26 this article, and if the director deems necessary,
27 restraining the well operator from continuing to drill or
28 case any well or from further plugging, filling or
29 reclaiming the same, except under such conditions as
30 the director may impose in order to ensure a strict
31 compliance with the provisions of this article relating to
32 such matters.

33 (b) Except as provided in subsection (c) of this section,
34 any well operator or coal operator adversely affected by
35 a final decision or order of the director, may appeal in
36 the manner prescribed in section four, article five,
37 chapter twenty-nine-a of this code.

38 (c) Any person having an interest which is or may be

39 adversely affected, or who is aggrieved by an order of
40 the director, or by the issuance or denial of a permit,
41 or by the permit's terms and conditions, where the
42 subject to such order, permits or terms and conditions
43 is solid waste, may appeal to the environmental quality
44 board in the same manner as appeals are taken under
45 the solid waste management act, section sixteen, article
46 fifteen of this chapter. For the purpose of this subsection
47 the term solid waste has the same meaning as would be
48 given that term pursuant to section two, article fifteen
49 of this chapter but for the exemption related to waste
50 or material regulated by this chapter, chapter twenty-
51 two-b or chapter twenty-two-c of this code.

**§22-6-29. Operating permit and processing fund; special
reclamation fund; fees.**

1 (a) There is hereby continued within the treasury of
2 the state of West Virginia the special fund known as the
3 oil and gas operating permit and processing fund, and
4 the director shall deposit with the state treasurer to the
5 credit of such special fund all fees collected under the
6 provisions of subdivision ten, subsection (c), section two
7 of this article.

8 The oil and gas operating permit and processing fund
9 shall be administered by the director for the purposes
10 of carrying out the provisions of this chapter.

11 The director shall make an annual report to the
12 governor and to the Legislature on the use of the fund,
13 and shall make a detailed accounting of all expenditures
14 from the oil and gas operating permit and processing
15 fund.

16 (b) In addition to any other fees required by the
17 provisions of this article, every applicant for a permit
18 to drill a well shall, before the permit is issued, pay to
19 the director a special reclamation fee of one hundred
20 dollars for each well to be drilled. Such special
21 reclamation fee shall be paid at the time the application
22 for a drilling permit is filed with the director and the
23 payment of such reclamation fee shall be a condition
24 precedent to the issuance of said permit.

25 There is hereby continued within the treasury of the
26 state of West Virginia the special fund known as the oil
27 and gas reclamation fund, and the director shall deposit
28 with the state treasurer to the credit of such special fund
29 all special reclamation fees collected. The proceeds of
30 any bond forfeited under the provisions of this article
31 shall inure to the benefit of and shall be deposited in
32 such oil and gas reclamation fund.

33 The oil and gas reclamation fund shall be adminis-
34 tered by the director. The director shall cause to be
35 prepared plans for the reclaiming and plugging of
36 abandoned wells which have not been reclaimed or
37 plugged or which have been improperly reclaimed or
38 plugged. The director, as funds become available in the
39 oil and gas reclamation fund, shall reclaim and properly
40 plug wells in accordance with said plans and specifica-
41 tions and in accordance with the provisions of this
42 article relating to the reclaiming and plugging of wells
43 and all rules promulgated thereunder. Such funds may
44 also be utilized for the purchase of abandoned wells,
45 where such purchase is necessary, and for the reclama-
46 tion of such abandoned wells, and for any engineering,
47 administrative and research costs as may be necessary
48 to properly effectuate the reclaiming and plugging of all
49 wells, abandoned or otherwise.

50 The director may avail the division of any federal
51 funds provided on a matching basis that may be made
52 available for the purpose of reclaiming or plugging any
53 wells.

54 The director shall make an annual report to the
55 governor and to the Legislature setting forth the
56 number of wells reclaimed or plugged through the use
57 of the oil and gas reclamation fund provided for herein.
58 Such report shall identify each such reclamation and
59 plugging project, state the number of wells reclaimed
60 or plugged thereby, show the county wherein such wells
61 are located and shall make a detailed accounting of all
62 expenditures from the oil and gas reclamation fund.

63 All wells shall be reclaimed or plugged by contract
64 entered into by the director on a competitive bid basis

65 as provided for under the provisions of article three,
66 chapter five-a of this code and the rules promulgated
67 thereunder.

§22-6-30. Reclamation requirements.

1 The operator of a well shall reclaim the land surface
2 within the area disturbed in siting, drilling, completing
3 or producing the well in accordance with the following
4 requirements:

5 (a) Within six months after the completion of the
6 drilling process, the operator shall fill all the pits for
7 containing muds, cuttings, salt water and oil that are
8 not needed for production purposes, or are not required
9 or allowed by state or federal law or rule and remove
10 all concrete bases, drilling supplies and drilling
11 equipment. Within such period, the operator shall grade
12 or terrace and plant, seed or sod the area disturbed that
13 is not required in production of the well where necessary
14 to bind the soil and prevent substantial erosion and
15 sedimentation. No pit may be used for the ultimate
16 disposal of salt water. Salt water and oil shall be
17 periodically drained or removed, and properly disposed
18 of, from any pit that is retained so the pit is kept
19 reasonably free of salt water and oil.

20 (b) Within six months after a well that has produced
21 oil or gas is plugged, or after the plugging of a dry hole,
22 the operator shall remove all production and storage
23 structures, supplies and equipment, and any oil, salt
24 water and debris, and fill any remaining excavations.
25 Within such period, the operator shall grade or terrace
26 and plant, seed or sod the area disturbed where
27 necessary to bind the soil and prevent substantial
28 erosion and sedimentation.

29 The director may, upon written application by an
30 operator showing reasonable cause, extend the period
31 within which reclamation shall be completed, but not to
32 exceed a further six-month period.

33 If the director refuses to approve a request for
34 extension, the refusal shall be by order.

35 (c) It shall be the duty of an operator to commence

36 the reclamation of the area of land disturbed in siting,
37 drilling, completing or producing the well in accordance
38 with soil erosion and sediment control plans approved
39 by the director or the director's designate.

40 (d) The director shall promulgate rules setting forth
41 requirements for the safe and efficient installation and
42 burying of all production and gathering pipelines where
43 practical and reasonable except that such rules shall not
44 apply to those pipelines regulated by the public service
45 commission.

**§22-6-31. Preventing waste of gas; plan of operation
required for wasting gas in process of
producing oil; rejection thereof.**

1 Natural gas shall not be permitted to waste or escape
2 from any well or pipeline, when it is reasonably possible
3 to prevent such waste, after the owner or operator of
4 such gas, or well, or pipeline, has had a reasonable
5 length of time to shut in such gas in the well, or make
6 the necessary repairs to such well or pipeline to prevent
7 such waste: *Provided*, That (a) if, in the process of
8 drilling a well for oil or gas, or both, gas is found in
9 such well, and the owner or operator thereof desires to
10 continue to search for oil or gas, or both, by drilling
11 deeper in search of lower oil or gas-bearing strata, or
12 (b) if it becomes necessary to make repairs to any well
13 producing gas, commonly known as "cleaning out," and
14 if in either event it is necessary for the gas in such well
15 to escape therefrom during the process of drilling or
16 making repairs, as the case may be, then the owner or
17 operator of such well shall prosecute such drilling or
18 repairs with reasonable diligence, so that the waste of
19 gas from the well shall not continue longer than
20 reasonably necessary, and if, during the progress of such
21 deeper drilling or repairs, any temporary suspension
22 thereof becomes necessary, the owner or operator of
23 such well shall use all reasonable means to shut in the
24 gas and prevent its waste during such temporary
25 suspension: *Provided, however*, That in all cases where
26 both oil and gas are found and produced from the same
27 oil and gas-bearing stratum, and where it is necessary
28 for the gas therefrom to waste in the process of

29 producing the oil, the owner or operator shall use all
30 reasonable diligence to conserve and save from waste so
31 much of such gas as it is reasonably possible to save, but
32 in no case shall such gas from any well be wasted in
33 the process of producing oil therefrom until the owner
34 or operator of such well shall have filed with the
35 director a plan of operation for said well showing,
36 among other things, the gas-oil production ratio involved
37 in such operation, which plan shall govern the operation
38 of said well unless the director shall, within ten days
39 from the date on which such plan is submitted to the
40 director, make a finding that such plan fails, under all
41 the facts and circumstances, to propose the exercise of
42 all reasonable diligence to conserve and save from waste
43 so much of such gas as it is reasonably possible to save,
44 in which event production of oil at such well by the
45 wasting of gas shall cease and desist until a plan of
46 operation is approved by the director. Successive plans
47 of operation may be filed by the owner or operator of
48 any such well with the director.

**§22-6-32. Right of adjacent owner or operator to prevent
waste of gas; recovery of cost.**

1 If the owner or operator of any such well shall neglect
2 or refuse to drill, case and equip, or plug and abandon,
3 or shut in and conserve from waste the gas produced
4 therefrom, as required to be done and performed by the
5 preceding sections of this article, for a period of twenty
6 days after a written notice so to do, which notice may
7 be served personally upon the owner or operator, or may
8 be posted in a conspicuous place at or near the well, it
9 shall be lawful for the owner or operator of any adjacent
10 or neighboring lands or the director to enter upon the
11 premises where such well is situated and properly case
12 and equip such well, or, in case the well is to be
13 abandoned, to properly plug and abandon it, or in case
14 the well is wasting gas, to properly shut it in and make
15 such needed repairs to the well to prevent the waste of
16 gas, in the manner required to be done by the preceding
17 sections of this article; and the reasonable cost and
18 expense incurred by an owner or operator or the
19 director in so doing shall be paid by the owner or

20 operator of such well and may be recovered as debts of
21 like amount are by law recoverable.

22 The director may utilize funds and procedures
23 established pursuant to section twenty-nine of this
24 article for the purposes set out in the section. Amounts
25 recovered by the director pursuant to this section shall
26 be deposited in the oil and gas reclamation fund
27 established pursuant to section twenty-nine of this
28 article.

§22-6-33. Restraining waste.

1 Aside from and in addition to the imposition of any
2 penalties under this article, it shall be the duty of any
3 circuit court in the exercise of its equity jurisdiction to
4 hear and determine any action which may be filed to
5 restrain the waste of natural gas in violation of this
6 article, and to grant relief by injunction or by other
7 decrees or orders, in accordance with the principles and
8 practice in equity. The plaintiff in such action shall have
9 sufficient standing to maintain the same if the plaintiff
10 shall aver and prove that the plaintiff is interested in
11 the lands situated within the distance of one mile from
12 such well, either as an owner of such land, or of the oil
13 or gas, or both, thereunder, in fee simple, or as an owner
14 of leases thereof or of rights therein for the production
15 of oil and gas or either of them or as the director.

§22-6-34. Offenses; penalties.

1 (a) Any person or persons, firm, partnership, partner-
2 ship association or corporation who willfully violates any
3 provision of this article or any rule or order promul-
4 gated hereunder shall be subject to a civil penalty not
5 exceeding two thousand five hundred dollars. Each day
6 a violation continues after notice by the division
7 constitutes a separate offense. The penalty shall be
8 recovered by a civil action brought by the division, in
9 the name of the state, before the circuit court of the
10 county in which the subject well or facility is located.
11 All such civil penalties collected shall be credited to the
12 general fund of the state.

13 (b) Any person or persons, firm, partnership, partner-

14 ship association or corporation willfully violating any of
15 the provisions of this article which prescribe the manner
16 of drilling and casing or plugging and filling any well,
17 or which prescribe the methods of conserving gas from
18 waste, shall be guilty of a misdemeanor, and, upon
19 conviction thereof, shall be punished by a fine not
20 exceeding five thousand dollars, or imprisonment in jail
21 for not exceeding twelve months, or both, in the
22 discretion of the court, and prosecutions under this
23 section may be brought in the name of the state of West
24 Virginia in the court exercising criminal jurisdiction in
25 the county in which the violation of such provisions of
26 the article or terms of such order was committed, and
27 at the instance and upon the relation of any citizens of
28 this state.

**§22-6-35. Civil action for contamination or deprivation of
fresh water source or supply; presumption.**

1 In any action for contamination or deprivation of a
2 fresh water source or supply within one thousand feet
3 of the site of drilling for an oil or gas well, there shall
4 be a rebuttable presumption that such drilling, and such
5 oil or gas well, or either, was the proximate cause of the
6 contamination or deprivation of such fresh water source
7 or supply.

**§22-6-36. Declaration of oil and gas notice by owners and
lessees of coal seams.**

1 For purposes of notification under this article, any
2 owner or lessee of coal seams shall file a declaration of
3 the owner's or lessee's interest in such coal seams with
4 the clerk of the county commission in the county where
5 such coal seams are located. Said clerk shall file and
6 index such declaration in accordance with section two,
7 article one, chapter thirty-nine of this code, and shall
8 index the name of the owner or lessee of such coal seams
9 in the grantor index of the record maintained for the
10 indexing of leases.

11 The declaration shall entitle such owner or lessee to
12 the notices provided in sections twelve, thirteen,
13 fourteen and twenty-three of this article: *Provided*, That
14 the declaring owner shall be the record owner of the coal

15 seam, and the declaring lessee shall be the record lessee
16 with the owner's or lessee's source or sources of title
17 recorded prior to recording such lessee's declaration.

18 The declaration shall be acknowledged by such owner
19 or lessee, and in the case of a lessee, may be a part of
20 the coal lease under which the lessee claims. Such
21 declaration may be in the following language:

22 "DECLARATION OF OIL AND GAS NOTICE"

23 "The undersigned hereby declares:

24 (1) The undersigned is the ('owner' or 'lessee') of one
25 or more coal seams or workable coal beds as those terms
26 are defined in section one of this article.

27 (2) The coal seam(s) or workable coal bed(s) owned or
28 leased partly or wholly by the undersigned lie(s) under
29 the surface of lands described as follows:

30 (Here insert a description legally adequate for a deed,
31 whether by metes and bounds or other locational
32 description, or by title references such as a book and
33 page legally sufficient to stand in lieu of a locational
34 description.)

35 (3) The undersigned desires to be given all notices of
36 oil and gas operations provided by sections twelve,
37 thirteen, fourteen and twenty-three of this article,
38 addressed as follows:

39 (Here insert the name and mailing address of the
40 undersigned owner or lessee.)

41

42 _____
(Signature)

43 (Here insert an acknowledgment legally adequate for
44 a deed)."

45 The benefits of the foregoing declaration shall be
46 personal to the declaring owner or lessee, and not
47 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

2 effect upon the effective date of this article pursuant to
3 the provisions of former article one, chapter twenty-two-
4 b of this code, shall remain in full force and effect as
5 if such rules, orders and permits were adopted by the
6 director established in this chapter but all such rules,
7 orders and permits shall be subject to review by the
8 director to ensure they are consistent with the purposes
9 and policies set forth in this chapter.

§22-6-38. Application of article; exclusions.

1 This article shall not apply to or affect any well work
2 permitted prior to the effective date of this article under
3 former article one, chapter twenty-two-b of this code,
4 unless such well is, after completion, whether such
5 completion is prior to or subsequent to the effective date
6 of this article, deepened subsequent to the effective date
7 of this article through another coal seam to another
8 formation above the top of the uppermost member of the
9 "Onondaga Group" or to a depth of less than six
10 thousand feet, whichever is shallower.

§22-6-39. Injunctive relief.

1 (a) In addition to other remedies, and aside from
2 various penalties provided by law, whenever it appears
3 to the director that any person is violating or threaten-
4 ing to violate any provision of this article, any order or
5 final decision of the director, or any lawful rule
6 promulgated hereunder, the director may apply in the
7 name of the state to the circuit court of the county in
8 which the violations or any part thereof has occurred,
9 is occurring or is about to occur, or the judge thereof
10 in vacation, for an injunction against such persons and
11 any other persons who have been, are or are about to
12 be involved in any practices, acts or admissions so in
13 violation, enjoining such person or persons from any
14 violation or violations. Such application may be made
15 and prosecuted to conclusion, whether or not any
16 violation or violations have resulted or shall result, in
17 prosecution or conviction under the provisions of this
18 article.

19 (b) Upon application by the director, the circuit courts
20 of this state may, by mandatory or prohibitory injunc-

21 tion compel compliance with the provisions of this
22 article, and all orders and final decisions of the director.
23 The court may issue a temporary injunction in any case
24 pending a decision on the merits of any application filed.
25 Any other section of this code to the contrary notwithstanding,
26 the state shall not be required to furnish bond
27 or other undertaking as a prerequisite to obtaining
28 mandatory, prohibitory or temporary injunctive relief
29 under the provisions of this article.

30 (c) The judgment of the circuit court upon application
31 permitted by the provisions of this section, shall be final
32 unless reversed, vacated or modified on appeal to the
33 supreme court of appeals. Any such appeal shall be
34 sought in the manner and within the time provided by
35 law for appeals from circuit courts in other civil actions.

36 (d) The director shall be represented in all such
37 proceedings by the attorney general or the attorney
38 general's assistants or in such proceedings in the circuit
39 courts by the prosecuting attorney of the several
40 counties as well, all without additional compensation.
41 The director, with the written approval of the attorney
42 general, may employ special counsel to represent the
43 director in any such proceedings.

44 (e) If the director shall refuse or fail to apply for an
45 injunction to enjoin a violation or threatened violation
46 of any provision of this article, any order or final
47 decision of the director, or any rules promulgated
48 hereunder, within ten days after receipt of a written
49 request to do so by any well operator, coal operator,
50 operating coal seams beneath the tract of land, or the
51 coal seam owner or lessee, if any, if said owner or lessee
52 is not yet operating said coal seams beneath said tract
53 of land, adversely affected by such violation or threatened
54 violation, the person making such request may
55 apply on their own behalf for an injunction to enjoin
56 such violation or threatened violation in any court in
57 which the director might have brought suit. The
58 director shall be made party defendant in such application
59 in addition to the person or persons violating or
60 threatening to violate any provisions of this article, any
61 final order or decision of the director, or any rule

62 promulgated hereunder. The application shall proceed
63 and injunctive relief may be granted in the same
64 manner as if the application had been made by the
65 director: Except that the court may require a bond or
66 other undertaking from the plaintiff.

**§22-6-40. Appeal from order of issuance or refusal of
permit to drill or fracture; procedure.**

1 Any party to the proceeding under section fifteen of
2 this article or section seven, article eight, chapter
3 twenty-two-c of this code, adversely affected by the
4 issuance of a drilling permit or to the issuance of a
5 fracturing permit or the refusal of the director to grant
6 a drilling permit or fracturing permit is entitled to
7 judicial review thereof. All of the pertinent provisions
8 of section four, article five, chapter twenty-nine-a of this
9 code shall apply to and govern such judicial review with
10 like effect as if the provisions of said section four were
11 set forth in extenso in this section.

12 The judgment of the circuit court shall be final unless
13 reversed, vacated or modified on appeal to the supreme
14 court of appeals in accordance with the provisions of
15 section one, article six, chapter twenty-nine-a of this
16 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.**

1 Any party to the proceedings under section sixteen of
2 this article adversely affected by the order of issuance
3 of a drilling permit or to the issuance of a fracturing
4 permit or the refusal of the director to grant a drilling
5 permit or fracturing permit is entitled to judicial review
6 thereof. All of the pertinent provisions of section four,
7 article five, chapter twenty-nine-a of this code shall
8 apply to and govern such judicial review with like effect
9 as if the provisions of section four were set forth in
10 extenso in this section.

11 The judgment of the circuit court shall be final unless
12 reversed, vacated or modified on appeal to the supreme

13 court of appeals in accordance with the provisions of
14 section one, article six, chapter twenty-nine-a of this code.

**ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPEN-
SATION.**

- §22-7-1. Legislative findings and purpose.
- §22-7-2. Definitions.
- §22-7-3. Compensation of surface owners for drilling operations.
- §22-7-4. Common law right of action preserved; offsets.
- §22-7-5. Notification of claim.
- §22-7-6. Agreement; offer of settlement.
- §22-7-7. Rejection; legal action; arbitration; fees and costs.
- §22-7-8. Application of article.

§22-7-1. Legislative findings and purpose.

1 (a) The Legislature finds the following:

2 (1) Exploration for and development of oil and gas
3 reserves in this state must coexist with the use,
4 agricultural or otherwise, of the surface of certain land
5 and that each constitutes a right equal to the other.

6 (2) Modern methods of extraction of oil and gas
7 require the use of substantially more surface area than
8 the methods commonly in use at the time most mineral
9 estates in this state were severed from the fee tract; and,
10 specifically, the drilling of wells by the rotary drilling
11 method was virtually unknown in this state prior to the
12 year one thousand nine hundred sixty, so that no person
13 severing their oil and gas from their surface land and
14 no person leasing their oil and gas with the right to
15 explore for and develop the same could reasonably have
16 known nor could it have been reasonably contemplated
17 that rotary drilling operations imposed a greater burden
18 on the surface than the cable tool drilling method
19 heretofore employed in this state; and since the year one
20 thousand nine hundred sixty, the use of rotary drilling
21 methods has spread slowly but steadily in this state,
22 with concomitant public awareness of its impact on
23 surface land; and that the public interest requires that
24 the surface owner be entitled to fair compensation for
25 the loss of the use of surface area during the rotary
26 drilling operation, but recognizing the right of the oil
27 and gas operator to conduct rotary drilling operations
28 as allowed by law.

29 (3) Prior to the first day of January, one thousand nine
30 hundred sixty, the rotary method of drilling oil or gas
31 wells was virtually unknown to the surface owners of
32 this state nor was such method reasonably contemplated
33 during the negotiations which occasioned the severance
34 of either oil or gas from the surface.

35 (4) The Legislature further finds and creates a
36 rebuttable presumption that even after the thirty-first
37 day of December, one thousand nine hundred fifty-nine,
38 and prior to the ninth day of June, one thousand nine
39 hundred eighty-three, it was unlikely that any surface
40 owner knew or should have known of the rotary method
41 of drilling oil or gas wells, but, that such knowledge was
42 possible and that the rotary method of drilling oil or gas
43 wells could have, in some instances, been reasonably
44 contemplated by the parties during the negotiations of
45 the severance of the oil and gas from the surface. This
46 presumption against knowledge of the rotary drilling
47 method may be rebutted by a clear preponderance of the
48 evidence showing that the surface owner or the surface
49 owner's predecessor of record did in fact know of the
50 rotary drilling method at the time the owner or the
51 owner's predecessor executed a severance deed or lease
52 of oil and gas and that the owner or owner's predecessor
53 fairly contemplated the rotary drilling method and
54 received compensation for the same.

55 (b) Any surface owner entitled to claim any finding
56 or any presumption which is not rebutted as provided
57 in this section shall be entitled to the compensation and
58 damages of this article.

59 (c) The Legislature declares that the public policy of
60 this state shall be that the compensation and damages
61 provided in this article for surface owners may not be
62 diminished by any provision in a deed, lease or other
63 contract entered into after the ninth day of June, one
64 thousand nine hundred eighty-three.

65 (d) It is the purpose of this article to provide
66 constitutionally permissible protection and compensa-
67 tion to surface owners of lands on which oil and gas
68 wells are drilled from the burden resulting from
69 drilling operations commenced after the ninth day of

70 June, one thousand nine hundred eighty-three. This
71 article is to be interpreted in the light of the legislative
72 intent expressed herein. This article shall be interpreted
73 to benefit surface owners, regardless of whether the oil
74 and gas mineral estate was separated from the surface
75 estate and regardless of who executed the document
76 which gave the oil and gas developer the right to
77 conduct drilling operations on the land. Section four of
78 this article shall be interpreted to benefit all persons.

§22-7-2. Definitions.

1 (a) In this article, unless the context or subject matter
2 otherwise requires:

3 (1) "Agricultural production" means the production of
4 any growing grass or crop attached to the surface of the
5 land, whether or not the grass or crop is to be sold
6 commercially, and the production of any farm animals,
7 whether or not the animals are to be sold commercially;

8 (2) "Drilling operations" means the actual drilling or
9 redrilling of an oil or gas well commenced subsequent
10 to the ninth day of June, one thousand nine hundred
11 eighty-three, and the related preparation of the drilling
12 site and access road, which requires entry, upon the
13 surface estate;

14 (3) "Oil and gas developer" means the person who
15 secures the drilling permit required by article six of this
16 chapter;

17 (4) "Person" means any natural person, corporation,
18 firm, partnership, partnership association, venture,
19 receiver, trustee, executor, administrator, guardian,
20 fiduciary or other representative of any kind, and
21 includes any government or any political subdivision or
22 agency thereof;

23 (5) "Surface estate" means an estate in or ownership
24 of the surface of a particular tract of land overlying the
25 oil or gas leasehold being developed; and

26 (6) "Surface owner" means a person who owns an
27 estate in fee in the surface of land, either solely or as
28 a co-owner.

§22-7-3. Compensation of surface owners for drilling operations.

1 (a) The oil and gas developer shall be obligated to pay
2 the surface owner compensation for:

3 (1) Lost income or expenses incurred as a result of
4 being unable to dedicate land actually occupied by the
5 driller's operation or to which access is prevented by
6 such drilling operation to the uses to which it was
7 dedicated prior to commencement of the activity for
8 which a permit was obtained measured from the date
9 the operator enters upon the land until the date
10 reclamation is completed, (2) the market value of crops
11 destroyed, damaged or prevented from reaching
12 market, (3) any damage to a water supply in use prior
13 to the commencement of the permitted activity, (4) the
14 cost of repair of personal property up to the value of
15 replacement by personal property of like age, wear and
16 quality, and (5) the diminution in value, if any, of the
17 surface lands and other property after completion of the
18 surface disturbance done pursuant to the activity for
19 which the permit was issued determined according to
20 the actual use made thereof by the surface owner
21 immediately prior to the commencement of the permit-
22 ted activity.

23 The amount of damages may be determined by any
24 formula mutually agreeable between the surface owner
25 and the oil and gas developer.

26 (b) Any reservation or assignment of the compensa-
27 tion provided in this section apart from the surface
28 estate except to a tenant of the surface estate is
29 prohibited.

30 (c) In the case of surface lands owned by more than
31 one person as tenants in common, joint tenants or other
32 co-ownership, any claim for compensation under this
33 article shall be for the benefit of all such co-owners. The
34 resolution of a claim for compensation provided in this
35 article shall operate as a bar to the assertion of
36 additional claims under this section arising out of the
37 same drilling operations.

§22-7-4. Common law right of action preserved; offsets.

1 (a) Nothing in section three or elsewhere in this
2 article shall be construed to diminish in any way the
3 common law remedies, including damages, of a surface
4 owner or any other person against the oil and gas
5 developer for the unreasonable, negligent or otherwise
6 wrongful exercise of the contractual right, whether
7 express or implied, to use the surface of the land for the
8 benefit of the developer's mineral interest.

9 (b) An oil and gas developer shall be entitled to offset
10 compensation agreed to be paid or awarded to a surface
11 owner under section three of this article against any
12 damages sought by or awarded to the surface owner
13 through the assertion of common law remedies respect-
14 ing the surface land actually occupied by the same
15 drilling operation.

16 (c) An oil and gas developer shall be entitled to offset
17 damages agreed to be paid or awarded to a surface
18 owner through the assertion of common-law remedies
19 against compensation sought by or awarded to the
20 surface owner under section three of this article
21 respecting the surface land actually occupied by the
22 same drilling operation.

§22-7-5. Notification of claim.

1 Any surface owner, to receive compensation under
2 section three of this article, shall notify the oil and gas
3 developer of the damages sustained by the person within
4 two years after the date that the oil and gas developer
5 files notice that reclamation is commencing under
6 section thirty, article six of this chapter. Such notice
7 shall be given to surface owners by registered or
8 certified mail, return receipt requested, and shall be
9 complete upon mailing. If more than three tenants in
10 common or other co-owners hold interests in such lands,
11 the developer may give such notice to the person
12 described in the records of the sheriff required to be
13 maintained pursuant to section eight, article one,
14 chapter eleven-a of this code or publish in the county in
15 which the well is located or to be located a Class II legal
16 advertisement as described in section two, article three,

17 chapter fifty-nine of this code, containing such notice
18 and information as the director shall prescribe by rule.

§22-7-6. Agreement; offer of settlement.

1 Unless the parties provide otherwise by written
2 agreement, within sixty days after the oil and gas
3 developer received the notification of claim specified in
4 section five of this article, the oil and gas developer shall
5 either make an offer of settlement to the surface owner
6 seeking compensation, or reject the claim. The surface
7 owner may accept or reject any offer so made.

§22-7-7. Rejection; legal action; arbitration; fees and costs.

1 (a) Unless the oil and gas developer has paid the
2 surface owner a negotiated settlement of compensation
3 within sixty days after the date the notification of claim
4 was mailed under section five of this article, the surface
5 owner may, within eighty days after the notification
6 mail date, either (i) bring an action for compensation in
7 the circuit court of the county in which the well is
8 located, or (ii) elect instead, by written notice delivered
9 by personal service or by certified mail, return receipt
10 requested, to the designated agent named by the oil and
11 gas developer under the provisions of section six, article
12 six of this chapter, to have his compensation finally
13 determined by binding arbitration pursuant to article
14 ten, chapter fifty-five of this code.

15 Settlement negotiations, offers and counter-offers
16 between the surface owner and the oil and gas developer
17 shall not be admissible as evidence in any arbitration
18 or judicial proceeding authorized under this article, or
19 in any proceeding resulting from the assertion of
20 common law remedies.

21 (b) The compensation to be awarded to the surface
22 owner shall be determined by a panel of three disinter-
23 ested arbitrators. The first arbitrator shall be chosen by
24 the surface owner in such party's notice of election
25 under this section to the oil and gas developer; the
26 second arbitrator shall be chosen by the oil and gas
27 developer within ten days after receipt of the notice of

28 election; and the third arbitrator shall be chosen jointly
29 by the first two arbitrators within twenty days thereaf-
30 ter. If they are unable to agree upon the third arbitrator
31 within twenty days, then the two arbitrators are hereby
32 empowered to and shall forthwith submit the matter to
33 the court under the provisions of section one, article ten,
34 chapter fifty-five of this code, so that, among other
35 things, the third arbitrator can be chosen by the judge
36 of the circuit court of the county wherein the surface
37 estate lies.

38 (c) The following persons shall be deemed interested
39 and not be appointed as arbitrators: Any person who is
40 personally interested in the land on which rotary
41 drilling is being performed or has been performed, or
42 in any interest or right therein, or in the compensation
43 and any damages to be awarded therefor, or who is
44 related by blood or marriage to any person having such
45 personal interest, or who stands in the relation of
46 guardian and ward, master and servant, principal and
47 agent, or partner, real estate broker, or surety to any
48 person having such personal interest, or who has enmity
49 against or bias in favor of any person who has such
50 personal interest or who is the owner of, or interested
51 in, such land or the oil and gas development thereof. No
52 person shall be deemed interested or incompetent to act
53 as arbitrator by reason of being an inhabitant of the
54 county, district or municipal corporation wherein the
55 land is located, or holding an interest in any other land
56 therein.

57 (d) The panel of arbitrators shall hold hearings and
58 take such testimony and receive such exhibits as shall
59 be necessary to determine the amount of compensation
60 to be paid to the surface owner. However, no award of
61 compensation shall be made to the surface owner unless
62 the panel of arbitrators has first viewed the surface
63 estate in question. A transcript of the evidence may be
64 made but shall not be required.

65 (e) Each party shall pay the compensation of such
66 party's arbitrator and one half of the compensation of
67 the third arbitrator, or such party's own court costs as
68 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.
- §22-8-9. Monthly statements.
- §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,
- 2 or which shall hereafter engage, in the business of
- 3 transporting or storing petroleum, by means of pipeline
- 4 or lines or storage by tanks, shall be subject to the
- 5 provisions of this article and shall conduct such business
- 6 in conformity herewith: *Provided*, That the provisions of
- 7 this article shall be subject to all federal laws regulating
- 8 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
- 2 the purpose of transporting petroleum or other oils or
- 3 liquids by means of pipeline or lines shall be required
- 4 to accept all petroleum offered to it in merchantable
- 5 order in quantities of not less than two thousand gallons
- 6 at the wells where the same is produced, making at its
- 7 own expense all necessary connections with the tanks or
- 8 receptacles containing such petroleum, and to transport
- 9 and deliver the same at any delivery station, within or

10 without the state, on the route of its line of pipes, which
11 may be designated by the owners of the petroleum so
12 offered.

§22-8-3. Oil of 35 degrees Baume at 60 degrees Fahrenheit; inspection, grading and measurement; receipt; deduction for waste.

1 All petroleum of a gravity of thirty-five degrees
2 Baume or under, at a temperature of sixty degrees
3 Fahrenheit, offered for transportation by means of
4 pipeline or lines, shall, before the same is transported,
5 as provided by section two of this article, be inspected,
6 graded and measured at the expense of the pipeline
7 company, and the company accepting the same for
8 transportation shall give to the owner thereof a receipt
9 stating therein the number of barrels or gallons so
10 received, and the grade, gravity and measurement
11 thereof, and within a reasonable time thereafter, upon
12 demand of the owner or the owner's assigns, shall
13 deliver to the owner or the owner's assigns at the point
14 of delivery a like quantity and grade or gravity of
15 petroleum in merchantable condition as specified in
16 such receipt; except that the company may deduct for
17 waste one percent of the amount of petroleum specified
18 in such receipt.

§22-8-4. Oil over 35 degrees Baume at 60 degrees Fahrenheit; inspection and measurement; loss.

1 All petroleum of a gravity exceeding thirty-five
2 degrees Baume, at a temperature of sixty degrees
3 Fahrenheit, offered for transportation by means of
4 pipeline or lines, shall be inspected and measured at the
5 expense of the company transporting the same, before
6 the same is transported. The company accepting the
7 same for transportation shall give to the owner thereof,
8 or to the person in charge of the well or wells from
9 which such petroleum has been produced and run, a
10 ticket signed by its gauger, stating the number of feet
11 and inches of petroleum which were in the tank or
12 receptacle containing the same before the company
13 began to run the contents from such tank, and the

14 number of feet and inches of petroleum which remained
15 in the tank after such run was completed. All deductions
16 made for water, sediment or the like shall be made at
17 the time such petroleum is measured. Within a reason-
18 able time thereafter the company shall, upon demand,
19 deliver from the petroleum in its custody to the owner
20 thereof, or to the owner's assignee, at such delivery
21 station on the route of its line of pipes as the owner or
22 the owner's assignee may elect, a quantity of merchan-
23 table petroleum, equal to the quantity of petroleum run
24 from such tank, or receptacle, which shall be ascer-
25 tained by computation; except that the company
26 transporting such petroleum may deduct for evapora-
27 tion and waste two percent of the amount of petroleum
28 so run, as shown by such run ticket, and except that in
29 case of loss of any petroleum while in the custody of the
30 company caused by fire, lightning, storm or other like
31 unavoidable cause, such loss shall be borne pro rata by
32 all the owners of such petroleum at the time thereof. But
33 the company shall be liable for all petroleum that is lost
34 while in its custody by the bursting of pipes or tanks,
35 or by leakage from pipes or tanks; and it shall also be
36 liable for all petroleum lost from tanks at the wells
37 produced before the same has been received for trans-
38 portation, if such loss be due to faulty connections made
39 to such tanks; and the company shall be liable for all
40 petroleum lost by the overflow of any tanks with which
41 pipeline connections have been made, if such overflow
42 be due to the negligence of such company, and for all
43 the petroleum lost by the overflow of any tanks with
44 which pipeline connections should have been made
45 under the provisions of this article, but were not so made
46 by reason of negligence or delay on the part of the
47 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.**

1 Accepted orders and certificates for petroleum, issued
2 by any company engaged in the business of transporting
3 and storing petroleum in this state by means of pipeline
4 or lines and tanks, shall be negotiable, and may be
5 transferred by indorsement either in blank or to the
6 order of another, and any person to whom such accepted
7 orders and certificates shall be so transferred shall be
8 deemed and taken to be the owner of the petroleum
9 therein specified.

§22-8-7. Same — Further provisions.

1 No receipt, certificate, accepted order or other
2 voucher shall be issued or put in circulation, nor shall
3 any order be accepted or liability incurred for the
4 delivery of any petroleum, crude or refined, unless the
5 amount of such petroleum represented in or by such
6 receipt, certificate, accepted order, or other voucher or
7 liability, shall have been actually received by and shall
8 then be in the tanks and lines, custody and control of
9 the company issuing or putting in circulation such
10 receipt, certificate, accepted order or voucher, or
11 written evidence of liability. No duplicate receipt,
12 certificate, accepted order or other voucher shall be
13 issued or put in circulation, or any liability incurred for
14 any petroleum, crude or refined, while any former
15 liability remains in force, or any former receipt,
16 certificate, accepted order or other voucher shall be
17 outstanding and uncanceled, except such original papers
18 shall have been lost, in which case a duplicate, plainly
19 marked "duplicate" upon the face, and dated and
20 numbered as the lost original was dated and numbered,
21 may be issued. No receipt, voucher, accepted order,
22 certificate or written evidence of liability of such
23 company on which petroleum, crude or refined, has been
24 delivered, shall be reissued, used or put in circulation.
25 No petroleum, crude or refined, for which a receipt,
26 voucher, accepted order, certificate or liability incurred,
27 shall have been issued or put in circulation, shall be
28 delivered, except upon the surrender of the receipt,
29 voucher, order or liability representing such petroleum,
30 except upon affidavit of loss of such instrument made
31 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.

§22-8-9. Monthly statements.

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

12 company, and also by the officer or officers, person or
13 persons, having charge of the books and accounts
14 thereof, which statement shall show in legible and
15 intelligible form the following details of the business: (a)
16 How much petroleum, crude or refined, was in the
17 actual and immediate custody of such company at the
18 beginning and close of the previous month, and where
19 the same was located or held; describing in detail the
20 location and designation of each tank or place of deposit,
21 and the name of its owner; (b) how much petroleum,
22 crude or refined, was received by such company during
23 the previous month; (c) how much petroleum, crude or
24 refined, was delivered by such company during the
25 previous month; (d) for how much petroleum, crude or
26 refined, such company was liable for the delivery or
27 custody of to other corporations, companies or persons
28 at the close of the month; (e) how much of such liability
29 was represented by outstanding receipts or certificates,
30 accepted orders or other vouchers, and how much was
31 represented by credit balances; (f) that all the provisions
32 of this article have been faithfully observed and obeyed
33 during the previous month. The statement so required
34 to be made shall also be sworn to by such officer, agent,
35 person or persons before some officer authorized by law
36 to administer oaths, which shall be in writing, and shall
37 assert the familiarity and acquaintance of the deponent
38 with the business and condition of such company, and
39 with the facts sworn to, and that the statements made
40 in such report are true.

§22-8-10. Statements of amount of oil.

1 All amounts in the statements required by this article,
2 when the petroleum is handled in bulk, shall be given
3 in barrels and hundredths of barrels, reckoning forty-
4 two gallons to each barrel, and when such petroleum is
5 handled in barrels or packages, the number of such
6 barrels or packages shall be given, and such statements
7 shall distinguish between crude and refined petroleum,
8 and give the amount of each. Every company engaged
9 in the business aforesaid shall at all times have in their
10 pipes and tanks an amount of merchantable oil equal to
11 the aggregate of outstanding receipts, certificates,

12 accepted orders, vouchers, acknowledgments, evidences
13 of liability, and credit balances, on the books thereof.

**§22-8-11. Penalty — Wrongful issuance, sale or alteration
of receipts, orders, etc.**

1 Any company, or its officers or agents, who shall
2 make or cause to be made, sign or cause to be signed,
3 issue or cause to be issued, put in circulation or cause
4 to be put in circulation, any receipt, accepted order,
5 certificate, voucher or evidence of liability, or shall sell,
6 transfer or alter the same, or cause such sale, transfer
7 or alteration, contrary to the provisions of this article,
8 or shall do or cause to be done any of the acts prohibited
9 by section seven of this article, or omit to do any of the
10 acts by said section directed, shall be guilty of a
11 misdemeanor, and, upon conviction thereof, shall be
12 fined not exceeding one thousand dollars, and, if the
13 offender be a natural person, imprisoned not less than
14 ten days nor exceeding one year.

**§22-8-12. Same — Dealing in oil without consent of owner
in interest.**

1 Any company, its officers or agents, who shall sell,
2 encumber, transfer or remove, or cause or procure to be
3 sold, transferred or removed from the tanks or pipes of
4 such company, any petroleum, crude or refined, without
5 the written consent of the owner or a majority of the
6 owners in interest thereof, shall be guilty of a misdemea-
7 nor, and, upon conviction thereof, shall be fined one
8 thousand dollars and, if the offender be a natural
9 person, imprisoned in the county jail not less than ninety
10 days nor more than one year.

§22-8-13. Same — Failure to make report and statement.

1 Any company engaged in the business of transporting
2 by pipelines or storing petroleum, crude or refined, and
3 each and every officer or agent of such company, who
4 shall neglect or refuse to make the report and statement
5 required by section nine of this article, within the time
6 and the manner directed by said section, shall forfeit
7 and pay the sum of one thousand dollars, and in addition
8 thereto the sum of five hundred dollars for each day

9 after the tenth day of the month that the report and
10 statement required by said section nine shall remain
11 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.
- §22-9-4. Notice 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.
- §22-9-7. Exemptions.
- §22-9-8. Alternative method.
- §22-9-9. Powers and duties of director.
- §22-9-10. Conferences, hearings and appeals.
- §22-9-11. Enforcement.
- §22-9-12. Penalties.
- §22-9-13. Orders remain in effect.

§22-9-1. Definitions.

1 In this article unless the context otherwise requires:

2 (1) The term "coal mine" means those operations in
3 a coal seam which include the excavated and abandoned
4 portions as well as the places actually being worked; also
5 all underground workings and shafts, slopes, tunnels,
6 and other ways and openings and all such shafts, slopes,
7 tunnels and other openings in the course of being sunk
8 or driven, together with all roads and facilities con-
9 nected with them below the surface.

10 (2) The term "operating coal mine" means (a) a coal
11 mine which is producing coal or has been in production
12 of coal at any time during the twelve months imme-
13 diately preceding the date its status is put in question
14 under this article and any worked out or abandoned coal
15 mine connected underground with or contiguous to such
16 operating coal mine as herein defined and (b) any coal
17 mine to be established or reestablished as an operating
18 coal mine in the future pursuant to section four of this
19 article.

20 (3) The term "outside coal boundaries" when used in

21 conjunction with the term "operating coal mine" means
22 the boundaries of the coal acreage assigned to such coal
23 mine and which can be practicably and reasonably
24 expected to be mined through such coal mine.

25 (4) The term "well" means a borehole drilled or
26 proposed to be drilled within the storage reservoir
27 boundary or reservoir protective area for the purpose of
28 or to be used for producing, extracting or injecting any
29 gas, petroleum or other liquid but excluding boreholes
30 drilled to produce potable water to be used as such.

31 (5) The term "gas" means any gaseous substance.

32 (6) The term "storage reservoir" means that portion
33 of any subterranean sand or rock stratum or strata into
34 which gas is or may be injected for the purpose of
35 storage or for the purpose of testing whether said
36 stratum is suitable for storage.

37 (7) The term "bridge" means an obstruction placed in
38 a well at any specified depth.

39 (8) The term "linear foot" means a unit of measure-
40 ment in a straight line on a horizontal plane.

41 (9) The term "person" means any individual, associ-
42 ation, partnership or corporation.

43 (10) The term "reservoir protective area" means all of
44 that area outside of and surrounding the storage
45 reservoir boundary but within two thousand linear feet
46 thereof.

47 (11) The term "retreat mining" means the removal of
48 such coal, pillars, ribs and stumps as remain after the
49 development mining has been completed in that section
50 of a coal mine.

51 (12) The term "pillar" means a solid block of coal
52 surrounded by either active mine workings or a mined
53 out area.

54 (13) The term "inactivate" means to shut off all flow
55 of gas from a well by means of a temporary plug, or
56 other suitable device or by injecting aquagel or other
57 such equally nonporous material into the well.

58 (14) The term "storage operator" means any person as
59 herein defined who proposes to or does operate a storage
60 reservoir, either as owner or lessee.

61 (15) The term "workable coal seam" has the same
62 meaning as the term "workable coal bed" as set out in
63 section one, article six of this chapter.

64 (16) The terms "owner," "coal operator," "well
65 operator," "plat," "casing," "oil" and "cement" shall have
66 the meanings set out in section one, article six of this
67 chapter.

**§22-9-2. Filing of maps and data by persons operating or
proposing to operate gas storage reservoirs.**

1 (a) Any person who, on the eighth day of June, one
2 thousand nine hundred fifty-five, is injecting gas into or
3 storing gas in a storage reservoir which underlies or is
4 within three thousand linear feet of an operating coal
5 mine which is operating in a coal seam that extends over
6 the storage reservoir or the reservoir protective area
7 shall, within sixty days thereafter, file with the division
8 a copy of a map and certain data in the form and
9 manner provided in this subsection.

10 Any person who, on the eighth day of June, one
11 thousand nine hundred fifty-five, is injecting gas into or
12 storing gas in a storage reservoir which is not at such
13 date under or within three thousand linear feet, but is
14 less than ten thousand linear feet from an operating coal
15 mine which is operating in a coal seam that extends over
16 the storage reservoir or the reservoir protective area,
17 shall file such map and data within such time in excess
18 of sixty days as the director may fix.

19 Any person who, after the eighth day of June, one
20 thousand nine hundred fifty-five, proposes to inject or
21 store gas in a storage reservoir located as above shall
22 file the required map and data with the director not less
23 than six months prior to the starting of actual injection
24 or storage.

25 The map provided for herein shall be prepared by a
26 competent engineer or geologist. It shall show the
27 stratum or strata in which the existing or proposed

28 storage reservoir is or is to be located, the geographic
29 location of the outside boundaries of the said storage
30 reservoir and the reservoir protective area, the location
31 of all known oil or gas wells which have been drilled
32 into or through the storage stratum within the reservoir
33 or within three thousand linear feet thereof, indicating
34 which of these wells have been, or are to be cleaned out
35 and plugged or reconditioned for storage and also
36 indicating the proposed location of all additional wells
37 which are to be drilled within the storage reservoir or
38 within three thousand linear feet thereof.

39 The following information, if available, shall be
40 furnished for all known oil or gas wells which have been
41 drilled into or through the storage stratum within the
42 storage reservoir or within three thousand linear feet
43 thereof; name of the operator, date drilled, total depth,
44 depth of production if the well was productive of oil or
45 gas, the initial rock pressure and volume, the depths at
46 which all coal seams were encountered and a copy of the
47 driller's log or other similar information. At the time of
48 the filing of the aforesaid maps and data such person
49 shall file a detailed statement of what efforts have been
50 made to determine, (1) that the wells shown on said map
51 are accurately located thereon, and (2) that to the best
52 of such person's knowledge the wells are all the oil or
53 gas wells which have ever been drilled into or below the
54 storage stratum within the proposed storage reservoir
55 or within the reservoir protective area. This statement
56 shall also include information as to whether or not the
57 initial injection is for testing purposes, the maximum
58 pressures at which injection and storage of gas is
59 contemplated, and a detailed explanation of the methods
60 to be used or which theretofore have been used in
61 drilling, cleaning out, reconditioning or plugging wells
62 in the storage reservoir or within the reservoir protec-
63 tive area. The map and data required to be filed
64 hereunder shall be amended or supplemented semian-
65 nually in case any material changes have occurred:
66 *Provided*, That the director may require a storage
67 operator to amend or supplement such map or data at
68 more frequent intervals if material changes have
69 occurred justifying such earlier filing.

70 At the time of the filing of the above maps and data,
71 and the filing of amended or supplemental maps or data,
72 the director shall give written notice of said filing to all
73 persons who may be affected under the provisions of this
74 subsection by the storage reservoir described in such
75 maps or data. Such notices shall contain a description
76 of the boundaries of such storage reservoir. When a
77 person operating a coal mine or owning an interest in
78 coal properties which are or may be affected by the
79 storage reservoir, requests in writing a copy of any map
80 or data filed with the director such copy shall be
81 furnished by the storage operator.

82 (b) Any person who, on the eighth day of June, one
83 thousand nine hundred fifty-five, is injecting gas into or
84 storing gas in any other storage reservoir in this state
85 not subject to subsection (a) of this section shall, on or
86 before the first day of July, one thousand nine hundred
87 eighty-three, file with the division a map in the same
88 detail as the map required for a storage reservoir
89 subject to subsection (a) of this section; and, if the initial
90 injection of gas into the storage reservoir by such person
91 or any predecessor occurred after the thirty-first day of
92 December, one thousand nine hundred seventy, data in
93 the same detail as the data required for a storage
94 reservoir shall be filed subject to subsection (a) of this
95 section: *Provided*, That in the case of a storage reservoir
96 the operation of which has been certified by the federal
97 power commission or the federal energy regulatory
98 commission under section seven of the federal Natural
99 Gas Act, the person may, in lieu of the data, submit
100 copies of the application and all amendments and
101 supplements of record in the federal docket, together
102 with the certificate of public convenience and necessity
103 and any amendments thereto.

104 Any person who, after the eighth day of June, one
105 thousand nine hundred fifty-five, proposes to inject or
106 store gas in any other storage reservoir in this state not
107 subject to subsection (a) of this section shall file with the
108 division a map and data in the same detail as the map
109 and data required for a storage reservoir subject to
110 subsection (a) of this section not less than six months

111 prior to the starting of actual injection or storage:
112 *Provided*, That in the case of a storage reservoir the
113 operation of which will be required to be certificated by
114 the federal energy regulatory commission, the person
115 may, in lieu of the data, submit copies of the application
116 and all amendments and supplementals filed in the
117 federal docket, together with the certificate of public
118 convenience and necessity and any amendments thereto,
119 within twenty days after the same have been filed by
120 such person or issued by the federal energy regulatory
121 commission.

122 At the time of the filing of the above maps and data
123 or documents in lieu of data and filing of amended or
124 supplemental maps or data or documents in lieu of data,
125 or upon receipt of an application filed with the federal
126 energy regulatory commission for a new storage
127 reservoir, the director shall give notice of said filing by
128 a Class II legal advertisement in accordance with the
129 provisions of article three, chapter fifty-nine of this code,
130 the publication area for which shall be the county or
131 counties in which the storage reservoir is located. Such
132 legal advertisements shall contain a description of the
133 boundaries of such storage reservoir. The storage
134 operator shall pay for the legal advertisement upon
135 receipt of the invoice therefor from the division. When
136 any person owning an interest in land which is or may
137 be affected by the storage reservoir requests in writing
138 a copy of any map or data or documents in lieu of data
139 filed with the division, such copy shall be furnished by
140 the storage operator.

141 (c) The director shall also intervene in the federal
142 docket, and participate in the proceedings for the
143 purpose of assuring that the certificate of public
144 convenience and necessity issued by the federal energy
145 regulatory commission does not authorize operations or
146 practices in conflict with the provisions of this article.
147 The director may cooperate with the public service
148 commission if the commission also intervenes. The
149 attorney general is hereby directed to provide legal
150 representation to the director to achieve the purposes of
151 this subsection.

152 (d) For all purposes of this article, the outside
153 boundaries of a storage reservoir shall be defined by the
154 location of those wells around the periphery of the
155 storage reservoir which had no gas production when
156 drilled in said storage stratum: *Provided*, That the
157 boundaries as thus defined shall be originally fixed or
158 subsequently changed where, based upon the number
159 and nature of such wells, upon the geological and
160 production knowledge of the storage stratum, its
161 character, permeability, and distribution, and operating
162 experience, it is determined in a conference or hearing
163 under section ten of this article that modification should
164 be made.

§22-9-3. Filing of maps and data by persons operating coal mines.

1 (a) Any person owning or operating a coal mine, who
2 has not already done so pursuant to the former provi-
3 sions of article four, chapter twenty-two-b of this code,
4 shall, within thirty days from the effective date of this
5 article, file with the director a map, prepared by a
6 competent engineer, showing the outside coal boundar-
7 ies of the said operating coal mine, the existing
8 workings and exhausted areas and the relationship of
9 said boundaries to identifiable surface properties and
10 landmarks. Any person who is storing or contemplating
11 the storage of gas in the vicinity of such operating coal
12 mines shall, upon written request, be furnished a copy
13 of the aforesaid map by the coal operator and such
14 person and the director shall thereafter be informed of
15 any boundary changes at the time such changes occur.
16 The director shall keep a record of such information and
17 shall promptly notify both the coal operator and the
18 storage operator if it is found that the coal mine and the
19 storage reservoir are within ten thousand linear feet of
20 each other.

21 (b) Any person owning or operating any coal mine
22 which, on the tenth day of March, one thousand nine
23 hundred fifty-five, is or which thereafter comes within
24 ten thousand linear feet of a storage reservoir, and
25 where the coal seam being operated extends over the
26 storage reservoir or the reservoir protective area, shall

27 within forty-five days after such person has notice from
28 the director of such fact, file with the director and
29 furnish to the person operating such storage reservoir,
30 a map in the form hereinabove provided and showing
31 in addition, the existing and projected excavations and
32 workings of such operating coal mine for the ensuing
33 eighteen-month period, and also the location of any oil
34 or gas wells of which said coal operator has knowledge.
35 Such person owning or operating said coal mine shall
36 each six months thereafter file with the director and
37 furnish to the person operating such storage reservoir
38 a revised map showing any additional excavations and
39 workings, together with the projected excavations and
40 workings for the then ensuing eighteen-month period
41 which may be within ten thousand linear feet of said
42 storage reservoir: *Provided*, That the director may
43 require a coal operator to file such revised map at more
44 frequent intervals if material changes have occurred
45 justifying such earlier filing. Such person owning or
46 operating said coal mine shall also file with the director
47 and furnish the person operating said reservoir prompt
48 notice of any wells which have been cut into, together
49 with all available pertinent information.

§22-9-4. Notice by persons operating coal mines.

1 (a) Any person owning or operating a coal mine on
2 the eighth day of June, one thousand nine hundred fifty-
3 five, and having knowledge that it overlies or is within
4 two thousand linear feet of a gas storage reservoir, shall
5 within thirty days notify the director and the storage
6 operator of such fact unless such notification has already
7 been provided to the director pursuant to the provisions
8 of former article four, chapter twenty-two-b of this code.

9 (b) When any person owning or operating a coal mine
10 hereafter expects that within the ensuing nine-month
11 period such coal mine will be extended to a point which
12 will be within two thousand linear feet of any storage
13 reservoir, such person shall notify the director and the
14 storage operator in writing of such fact.

15 (c) Any person hereafter intending to establish or
16 reestablish an operating coal mine which when estab-

17 lished or reestablished will be over a storage reservoir
18 or within two thousand linear feet of a storage reservoir,
19 or which upon being established or reestablished may
20 within nine months thereafter be expected to be within
21 two thousand linear feet of a storage reservoir, shall
22 notify the director and the storage operator in writing
23 before doing so and such notice shall include the date
24 on which it is intended the operating coal mine will be
25 established or reestablished.

26 Any person who serves such notice of an intention to
27 establish or reestablish an operating coal mine under
28 this subsection, without intending in good faith to
29 establish or reestablish such mine, shall be liable for
30 continuing damages to any storage operator injured by
31 the serving of such improper notice and shall be guilty
32 of a misdemeanor under this article and subject to the
33 same penalties as set forth in section twelve of this
34 article.

§22-9-5. Obligations to be performed by persons operating storage reservoirs.

1 (a) Any person who, on or after June eighth, one
2 thousand nine hundred fifty-five, is operating a storage
3 reservoir which underlies or is within two thousand
4 linear feet of an operating coal mine which is operating
5 in a coal seam that extends over the storage reservoir
6 or the reservoir protective area, shall:

7 (1) Use every known method which is reasonable
8 under the circumstances for discovering and locating all
9 wells which have or may have been drilled into or
10 through the storage stratum in that acreage which is
11 within the outside coal boundaries of such operating coal
12 mine and which overlies the storage reservoir or the
13 reservoir protective area;

14 (2) Plug or recondition, in the manner provided by
15 sections twenty-three and twenty-four, article six of this
16 chapter and subsection (e) of this section, all known
17 wells (except to the extent otherwise provided in
18 subsections (e), (f), (g) and (h) of this section) drilled into
19 or through the storage stratum and which are located
20 within that portion of the acreage of the operating coal

21 mine overlying the storage reservoir or the reservoir
22 protective area: *Provided*, That where objection is raised
23 as to the use of any well as a storage well, and after a
24 conference or hearing in accordance with section ten of
25 this article it is determined, taking into account all the
26 circumstances and conditions, that such well should not
27 be used as a storage well, such well shall be plugged:
28 *Provided, however*, That if, in the opinion of the storage
29 operator, the well to which such objection has been
30 raised may at some future time be used as a storage
31 well, the storage operator may recondition and inacti-
32 vate such well instead of plugging it, if such alternative
33 is approved by the director after taking into account all
34 of the circumstances and conditions.

35 The requirements of subdivision (2) of this subsection
36 shall be deemed to have been fully complied with if, as
37 the operating coal mine is extended, all wells which,
38 from time to time, come within the acreage described
39 in said subdivision (2) are reconditioned or plugged as
40 provided in subsection (e) or (f) of this section and in
41 section twenty-four, article six of this chapter so that by
42 the time the coal mine has reached a point within two
43 thousand linear feet of any such wells, they will have
44 been reconditioned or plugged so as to meet the
45 requirements of said subsection (e) or (f) and of said
46 section twenty-four of article six.

47 (b) Any person operating a storage reservoir referred
48 to in subsection (a) of this section who has not already
49 done so pursuant to the provisions of former article four,
50 chapter twenty-two-b of this code, shall within sixty
51 days after the effective date of this article file with the
52 director and furnish a copy to the person operating the
53 affected operating coal mine, a verified statement
54 setting forth:

55 (1) That the map and any supplemental maps re-
56 quired by subsection (a), section two of this article have
57 been prepared and filed in accordance with section two;

58 (2) A detailed explanation of what the storage
59 operator has done to comply with the requirements of
60 subdivisions (1) and (2), subsection (a) of this section and

61 the results thereof;

62 (3) Such additional efforts, if any, as the storage
63 operator is making and intends to make to locate all oil
64 and gas wells; and

65 (4) Any additional wells that are to be plugged or
66 reconditioned to meet the requirements of subdivision
67 (2), subsection (a) of this section.

68 If such statement is not filed by the storage reservoir
69 operator within the time specified herein, the director
70 shall summarily order such operator to file such
71 statement.

72 (c) Within one hundred twenty days after the receipt
73 of any such statement, the director may, and shall, if so
74 requested by either the storage operator or the coal
75 operator affected, direct that a conference be held in
76 accordance with section ten of this article to determine
77 whether the information as filed indicates that the
78 requirements of section two of this article and of
79 subsection (a) of this section have been fully complied
80 with. At such conference, if any person shall be of the
81 opinion that such requirements have not been fully
82 complied with, the parties shall attempt to agree on
83 what additional things are to be done and the time
84 within which they are to be completed, subject to the
85 approval of the director, to meet the said requirements.

86 If such agreement cannot be reached, the director
87 shall direct that a hearing be held in accordance with
88 section ten of this article. At such hearing the director
89 shall determine whether the requirements of said
90 section two of this article and of subsection (a) of this
91 section have been met and shall issue an order setting
92 forth such determination. If the director shall determine
93 that any of the said requirements have not been met, the
94 order shall specify, in detail, both the extent to which
95 such requirements have not been met, and the things
96 which the storage operator must do to meet such
97 requirements. The order shall grant to the storage
98 operator such time as is reasonably necessary to
99 complete each of the things which such operator is
100 directed to do. If, in carrying out said order, the storage

101 operator encounters conditions which were not known to
102 exist at the time of the hearing and which materially
103 affect the validity of said order or the ability of the
104 storage operator to comply with the order, the storage
105 operator may apply for a rehearing or modification of
106 said order.

107 (d) Whenever, in compliance with subsection (a) of
108 this section, a storage operator, after the filing of the
109 statement provided for in subsection (b) of this section,
110 plugs or reconditions a well, such operator shall so notify
111 the director and the coal operator affected in writing,
112 setting forth such facts as will indicate the manner in
113 which the plugging or reconditioning was done. Upon
114 receipt thereof, the coal operator affected or the director
115 may request a conference or hearing in accordance with
116 section ten of this article.

117 (e) In order to meet the requirements of subsection (a)
118 of this section, wells which are to be plugged shall be
119 plugged in the manner specified in section twenty-four,
120 article six of this chapter. When a well located within
121 the storage reservoir or the reservoir protective area has
122 been plugged prior to the tenth day of March, one
123 thousand nine hundred fifty-five, and on the basis of the
124 data, information and other evidence submitted to the
125 director, it is determined that: (1) Such plugging was
126 done in the manner required in section twenty-four,
127 article six of this chapter; and (2) said plugging is still
128 sufficiently effective to meet the requirements of this
129 article, the obligations imposed by subsection (a) of this
130 section as to plugging said well shall be considered fully
131 satisfied.

132 (f) In order to meet the requirements of subsection (a)
133 of this section, wells which are to be reconditioned shall
134 be cleaned out from the surface through the storage
135 horizon and the following casing strings shall be pulled
136 and replaced with new casing, using the same procedure
137 as is applicable to drilling a new well as provided for
138 in sections eighteen, nineteen and twenty, article six of
139 this chapter: (1) The producing casing; (2) the largest
140 diameter casing passing through the lowest workable
141 coal seam unless such casing extends at least twenty-five

142 feet below the bottom of such coal seam and is deter-
143 mined to be in good physical condition: *Provided*, That
144 the storage operator may, instead of replacing the
145 largest diameter casing, replace the next largest casing
146 string if such casing string extends at least twenty-five
147 feet below the lowest workable coal seam; and (3) such
148 other casing strings which are determined not to be in
149 good physical condition. In the case of wells to be used
150 for gas storage, the annular space between each string
151 of casing, and the annular space behind the largest
152 diameter casing to the extent possible, shall be filled to
153 the surface with cement or aquagel or such equally
154 nonporous material as is approved by the director
155 pursuant to section eight of this article. At least fifteen
156 days prior to the time when a well is to be reconditioned
157 the storage operator shall give notice thereof to the coal
158 operator or owner and to the director setting forth in
159 such notice the manner in which it is planned to
160 recondition such well and any pertinent data known to
161 the storage operator which will indicate the then
162 existing condition of such well. In addition the storage
163 operator shall give the coal operator or owner and such
164 representative of the director as the director shall have
165 designated at least seventy-two hours notice of the time
166 when such reconditioning is to begin. The coal operator
167 or owner shall have the right to file, within ten days
168 after the receipt of the first notice required herein,
169 objections to the plan of reconditioning as submitted by
170 the storage operator. If no such objections are filed or
171 if none is raised by the director within such ten-day
172 period, the storage operator may proceed with the
173 reconditioning in accordance with the plan as submit-
174 ted. If any such objections are filed by the coal operator
175 or owner or are made by the director, the director shall
176 fix a time and place for a conference in accordance with
177 section ten of this article at which conference the well
178 operator and the person who has filed such objections
179 shall endeavor to agree upon a plan of reconditioning
180 which meets the requirements herein and which will
181 satisfy such objections. If no plan is approved at such
182 conference, the director shall direct that a hearing be
183 held in accordance with section ten of this article and,

184 after such hearing, shall by an appropriate order
185 determine whether the plan as submitted meets the
186 requirements set forth herein, or what changes, if any,
187 should be made to meet such requirements. If, in
188 reconditioning a well in accordance with said plan,
189 physical conditions are encountered which justify or
190 necessitate a change in said plan, the storage operator
191 or the coal operator may request that the plan be
192 changed. If the storage operator and the coal operator
193 cannot agree upon such change, the director shall
194 arrange for a conference or hearing in accordance with
195 section ten of this article to determine the matter in the
196 same manner as set forth herein in connection with
197 original objections to said plan. Application may be
198 made to the director in the manner prescribed in section
199 eight of this article for approval of an alternative
200 method of reconditioning a well. When a well located
201 within the storage reservoir or the reservoir protective
202 area has been reconditioned prior to the tenth day of
203 March, one thousand nine hundred fifty-five, or was so
204 drilled and equipped previously and on the basis of the
205 data, information and other evidence submitted to the
206 director, it is determined that: (1) Such reconditioning
207 or previous drilling and equipping was done in the
208 manner required in this subsection, or in a manner
209 approved as an alternative method in accordance with
210 section eight of this article and (2) such reconditioning
211 or previous drilling and equipping is still sufficiently
212 effective to meet the requirements of this article, the
213 obligations imposed by subsection (a) as to recondition-
214 ing said well shall be considered fully satisfied. Where
215 a well requires emergency repairs this subsection shall
216 not be construed to require the storage operator to give
217 the notices specified herein before making such repairs.

218 (g) When a well located within the reservoir protec-
219 tive area is a producing well in a stratum below the
220 storage stratum the obligations imposed by subsection
221 (a) of this section shall not begin until such well ceases
222 to be a producing well.

223 (h) When a well within a storage reservoir or the
224 reservoir protective area penetrates the storage stratum

225 but does not penetrate the coal seam being mined by an
226 operating coal mine the director may, upon application
227 of the operator of such storage reservoir, exempt such
228 well from the requirements of this section. Either party
229 affected may request a conference and hearing with
230 respect to the exemption of any such well in accordance
231 with section ten of this article.

232 (i) In fulfilling the requirements of subdivision (2),
233 subsection (a) of this section with respect to a well
234 within the reservoir protective area, the storage
235 operator shall not be required to plug or recondition
236 such well until he has received from the coal operator
237 written notice that the mine workings will within the
238 period stated in such notice, be within two thousand
239 linear feet of such well. Upon the receipt of such notice
240 the storage operator shall use due diligence to complete
241 the plugging or reconditioning of such well in accor-
242 dance with the requirements of this section and of
243 section twenty-four, article six of this chapter. If the
244 said mine workings do not, within a period of three
245 years after said well has been plugged, come within two
246 thousand linear feet of said well, the coal operator shall
247 reimburse the storage operator for the cost of said
248 plugging, provided such well is still within the reservoir
249 protective area as of that time.

250 (j) When retreat mining approaches a point where
251 within ninety days it is expected that such retreat work
252 will be at the location of the pillar surrounding an active
253 storage well the coal operator shall give written notice
254 of such approach to the storage operator and by
255 agreement said parties shall determine whether it is
256 necessary or advisable to inactivate effectively said well
257 temporarily. The well shall not be reactivated until a
258 reasonable period has elapsed, such reasonable period to
259 be determined by the said parties. In the event that the
260 said parties cannot agree upon either of the foregoing
261 matters, such question shall be submitted to the director
262 for decision in accordance with section ten of this article.
263 The number of wells required to be temporarily
264 inactivated during the retreat period shall not be such
265 as to materially affect the efficient operation of such

266 storage pool. This provision shall not preclude the
267 temporary inactivation of a particular well where the
268 practical effect of inactivating such well is to render the
269 pool temporarily inoperative.

270 (k) The requirements of subsections (a), (l) and (m) of
271 this section shall not apply to the injection of gas into
272 any stratum when the sole purpose of such injection
273 (such purpose being herein referred to as testing) is to
274 determine whether the said stratum is suitable for
275 storage purposes: *Provided*, That such testing shall be
276 conducted only in compliance with the following
277 requirements:

278 (1) The person testing or proposing to test shall
279 comply with all the provisions and requirements of
280 section two of this article and shall verify the statement
281 required to be filed thereby;

282 (2) If any part of the proposed storage reservoir is
283 under or within two thousand linear feet of an operating
284 coal mine which is operating in a coal seam that extends
285 over the proposed storage reservoir or the reservoir
286 protective area, the storage operator shall give at least
287 six months' written notice to the director and to the coal
288 operator of the fact that injection of gas for testing
289 purposes is proposed;

290 (3) The coal operator affected may at any time file
291 objections with the director in accordance with subsec-
292 tion (d), section nine of this article. If any such objections
293 are filed by the coal operator or if the director shall have
294 any objections, the director shall fix a time and place
295 for a conference in accordance with section ten of this
296 article, not more than ten days from the date of the
297 notice to the storage operator, at which conference the
298 storage operator and the person who has filed such
299 objections shall attempt to agree, subject to the approval
300 of the director, on the questions involved. If such
301 agreement cannot be reached at such conference, the
302 director shall direct that a hearing be held in accor-
303 dance with section ten of this article. At such hearing
304 the director shall determine and set forth in an
305 appropriate order the conditions and requirements

306 which the director shall deem necessary or advisable in
307 order to prevent gas from such storage reservoir from
308 entering any operating coal mine. The storage operator
309 shall comply with such conditions and requirements
310 throughout the period of the testing operations. In
311 determining such conditions and requirements the
312 director shall take into account the extent to which the
313 matters referred to in subsection (a) of this section have
314 been performed. If, in carrying out said order, either the
315 storage operator or the coal operator encounters or
316 discovers conditions which were not known to exist at
317 the time of the hearing and which materially affect said
318 order or the ability of the storage operator to comply
319 with the order, either operator may apply for a
320 rehearing or modification of said order;

321 (4) Where, at any time, a proposed storage reservoir
322 being tested comes under or within two thousand linear
323 feet of an operating coal mine either because of the
324 extension of the storage reservoir being tested or
325 because of the extension or establishment or reestablish-
326 ment of the operating coal mine, then and at the time
327 of any such event the requirements of this subsection
328 shall become applicable to such testing.

329 (l) Any person who proposes to establish a storage
330 reservoir under, or within two thousand linear feet of
331 an operating coal mine which is operating in a coal seam
332 that extends over the storage reservoir or the reservoir
333 protective area, shall, prior to establishing such
334 reservoir, in addition to complying with the require-
335 ments of section two of this article and subsection (a) of
336 this section, file the verified statement required by
337 subsection (b) of this section and fully comply with such
338 order or orders, if any, as the director may issue in the
339 manner provided for under subsection (b) or (c) of this
340 section before beginning the operation of such storage
341 reservoir. After the person proposing to operate such
342 storage reservoir shall have complied with such require-
343 ments and shall have thereafter begun to operate such
344 reservoir, such person shall continue to be subject to all
345 of the provisions of this article.

346 (m) When a gas storage reservoir, (l) was in operation

347 on the eighth day of June, one thousand nine hundred
348 fifty-five, and at any time thereafter it is under or
349 within two thousand linear feet of an operating coal
350 mine, or (2) when a gas storage reservoir is put in
351 operation after the eighth day of June, one thousand
352 nine hundred fifty-five, and at any time after such
353 storage operations begin it is under or within two
354 thousand linear feet of an operating coal mine, then and
355 in either such event, the storage operator shall comply
356 with all of the provisions of this section except that the
357 time for filing the verified statement under subsection
358 (b) shall be sixty days after the date stated in the notice
359 filed by the coal operator under subsection (b) or (c),
360 section four of this article as to when the operating coal
361 mine will be at a point within two thousand linear feet
362 of such reservoir: *Provided*, That if the extending of the
363 projected workings or the proposed establishment or
364 reestablishment of the operating coal mine is delayed
365 after the giving of the notice provided in subsections (b)
366 and (c), section four of this article, the coal operator
367 shall give notice of such delay to the director and the
368 director shall, upon the request of the storage operator,
369 extend the time for filing such statement by the
370 additional time which will be required to extend or
371 establish or reestablish such operating coal mine to a
372 point within two thousand linear feet of such reservoir.
373 Such verified statement shall also indicate that the map
374 referred to in subsection (a), section two of this article
375 has been currently amended as of the time of the filing
376 of such statement. The person operating any such
377 storage reservoir shall continue to be subject to all of
378 the provisions of this article.

379 (n) If, in any proceeding under this article, the
380 director shall determine that any operator of a storage
381 reservoir has failed to carry out any lawful order of the
382 director issued under this article, the director shall have
383 authority to require such storage operator to suspend
384 the operation of such reservoir and to withdraw the gas
385 therefrom until such violation is remedied. In such an
386 event the gas shall be withdrawn under the following
387 conditions. The storage operator shall remove the
388 maximum amount of gas which is required by the

389 director to be removed from the storage reservoir that
390 can be withdrawn in accordance with recognized
391 engineering and operating procedures and shall proceed
392 with due diligence insofar as existing facilities used to
393 remove gas from the reservoir will permit.

394 (o) In addition to initial compliance with the other
395 provisions of this article and any lawful orders issued
396 thereunder, it shall be the duty at all times of the person
397 owning or operating any storage reservoir which is
398 subject to the provisions of this article to keep all wells
399 drilled into or through the storage stratum in such
400 condition and to operate the same in such manner as to
401 prevent the escape of gas into any coal mine therefrom,
402 and to operate and maintain such storage reservoir and
403 its facilities in such manner and at such pressures as
404 will prevent gas from escaping from such reservoir or
405 its facilities into any coal mine: *Provided*, That this duty
406 shall not be construed to include the inability to prevent
407 the escape of gas where such escape results from an act
408 of God or an act of any person not under the control of
409 the storage operator other than in connection with any
410 well which the storage operator has failed to locate and
411 to make known to the director: *Provided, however*, That
412 if any escape of gas into a coal mine does result from
413 an act of God or an act of any person not under the
414 control of the storage operator, the storage operator
415 shall be under the duty of taking such action thereafter
416 as is reasonably necessary to prevent further escape of
417 gas into the coal mine.

**§22-9-6. Inspection of facilities and records; reliance on
maps; burden of proof.**

1 (a) In determining whether a particular coal mine or
2 operating coal mine is or will be within any distance
3 material under this article from any storage reservoir,
4 the owner or operator of such coal mine and the storage
5 operator may rely on the most recent map of the storage
6 reservoir or coal mine filed by the other with the
7 director.

8 (b) In any proceeding under this article where the
9 accuracy of any map or data filed by any person

10 pursuant to the requirements of this article is in issue,
11 the person filing the same shall at the request of any
12 party to such proceeding be required to disclose the
13 information and method used in compiling such map
14 and data and such information as is available to such
15 person that might affect the current validity of such
16 map or data. If any material question is raised in such
17 proceeding as to the accuracy of such map or data with
18 respect to any particular matter or matters contained
19 therein, the person filing such map or data shall then
20 have the burden of proving the accuracy of the map or
21 data with respect to such matter or matters.

22 (c) The person operating any storage reservoir
23 affected by the terms of this article shall, at all
24 reasonable times, be permitted to inspect the applicable
25 records and facilities of any coal mine overlying such
26 storage reservoir or the reservoir protective area, and
27 the person operating any such coal mine affected by the
28 terms of this article, shall similarly, at all reasonable
29 times, be permitted to inspect the applicable records
30 and facilities of any such storage reservoir underlying
31 any such coal mine. In the event that either such storage
32 operator or coal operator shall refuse to permit any such
33 inspection of records or facilities, the director shall, on
34 the director's own motion, or on application of the party
35 seeking the inspection after reasonable written notice,
36 and a hearing thereon, if requested by either of the
37 parties affected, make an order providing for such
38 inspection.

§22-9-7. Exemptions.

1 (a) The provisions of this article shall not apply to
2 strip mines and auger mines operating from the surface.

3 (b) Injection of gas for storage purposes in any
4 workable coal seam, whether or not such seam is being
5 or has been mined, shall be prohibited. Nothing in this
6 article shall be construed to prohibit the original
7 extraction of natural gas, crude oil or coal. No storage
8 operator shall have authority to appropriate any coal or
9 coal measure whether or not being mined, or any
10 interest therein.

§22-9-8. Alternative method.

1 (a). Whenever provision is made in this article by
2 reference to this section for using an alternative method
3 or material in carrying out any obligation imposed by
4 the article, the person seeking the authority to use such
5 alternative method or material shall file an application
6 with the director describing such proposed alternative
7 method or material in reasonable detail. Notice of filing
8 of any such application shall be given by registered mail
9 to any coal operator or operators affected. Any such coal
10 operator may within ten days following such notice, file
11 objections to such proposed alternative method or
12 material. If no objections are filed within said ten-day
13 period or if none is raised by the director, the director
14 shall forthwith issue a permit approving such proposed
15 alternative method or material.

16 (b) If any such objections are filed by any coal
17 operator or are raised by the director, the director shall
18 direct that a conference be held in accordance with
19 section ten of this article within the ten days following
20 the filing of such objections. At such conferences the
21 person seeking approval of the alternative method or
22 material and the person who has filed such objections
23 shall attempt to agree on such alternative method or
24 material or any modification thereof, and if such
25 agreement is reached and approved by the director, the
26 director shall forthwith issue a permit approving the
27 alternative method or material. If no such agreement is
28 reached and approved, the director shall direct that a
29 hearing be held in accordance with section ten of this
30 article: *Provided*, That if the alternative method or
31 material involves a new development in technology or
32 technique the director may, before such a hearing is
33 held, grant such affected parties a period not to exceed
34 ninety days to study and evaluate said proposed
35 alternative method or material. Following such hearing,
36 if the director shall find that such proposed alternative
37 method or material will furnish adequate protection to
38 the workable coal seams, the director shall by order
39 approve such alternative method or material; otherwise
40 the director shall deny the said application.

§22-9-9. Powers and duties of director.

1 (a) The director may review the maps and data filed
2 under sections two and three hereof for the purpose of
3 determining the accuracy thereof. Where any material
4 question is raised by any interested storage operator or
5 coal operator or owner as to the accuracy of any such
6 map or data, the director shall hold hearings thereon
7 and shall by an appropriate order require the person
8 filing such map or data to correct the same if they are
9 found to be erroneous.

10 (b) It shall be the duty of the director to receive and
11 keep in a safe place for public inspection any map, data,
12 report, well log, notice or other writing required to be
13 filed with it pursuant to the provisions of this article.
14 The director shall keep such indices of all such infor-
15 mation as will enable any person using the same to
16 readily locate such information either by the identity of
17 the person who filed the same or by the person or
18 persons affected by such filing or by the geographic
19 location of the subject matter by political subdivision.
20 The director shall also keep a docket for public
21 inspection of all proceedings, in which shall be entered
22 the dates of any notices, the names of all persons notified
23 and their addresses, the dates of hearings, conferences
24 and all orders, decrees, decisions, determinations,
25 rulings or other actions issued or taken by the director
26 and such docket shall constitute the record of each and
27 every proceeding before the director.

28 (c) The director shall have authority to make any
29 inspections and investigations of records and facilities
30 which are deemed necessary or desirable to perform the
31 director's functions under this article.

32 (d) Where in any section of this article provision is
33 made for the filing of objections, such objections shall
34 be filed in writing with the director, by the person
35 entitled to file the same or by the director, and shall
36 state as definitely as is reasonably possible the reasons
37 for such objections. The person filing such objections
38 shall send a copy thereof by registered mail to the
39 person or persons affected thereby.

§22-9-10. Conferences, hearings and appeals.

1 (a) The director or any person having a direct interest
2 in the subject matter of this article may at any time
3 request that a conference be held for the purpose of
4 discussing and endeavoring to resolve by mutual
5 agreement any matter arising under the provisions of
6 this article. Prompt notice of any such conference shall
7 be given by the director to all such interested parties.
8 At such conference a representative of the director shall
9 be in attendance, and the director may make such
10 recommendations as are deemed appropriate. Any
11 agreement reached at such conference shall be consist-
12 ent with the requirements of this article and, if
13 approved by such representative of the director, it shall
14 be reduced to writing and shall be effective unless
15 reviewed and rejected by the director within ten days
16 after the close of the conference. The record of any such
17 agreement approved by the director shall be kept on file
18 by the director with copies furnished to the parties. The
19 conference shall be deemed terminated as of the date
20 any party refuses to confer thereafter. Such a conference
21 shall be held in all cases prior to conducting any hearing
22 under this section.

23 (b) Within ten days after termination of the confer-
24 ence provided for in this section at which no approved
25 agreement has been reached or within ten days after the
26 rejection by the director of any agreement approved at
27 any such conference, any person who has a direct
28 interest in the subject matter of the conference may
29 submit the matter or matters, or any part thereof,
30 considered at the conference, to the director for
31 determination at a public hearing. The hearing proce-
32 dure shall be formally commenced by the filing of a
33 petition with the director upon forms prescribed by the
34 director or by specifying in writing the essential
35 elements of the petition, including name and address of
36 the petitioner and of all other persons affected thereby,
37 a clear and concise statement of the facts involved, and
38 a specific statement of the relief sought. The hearing
39 shall thereafter be conducted in accordance with the
40 provisions of article five, chapter twenty-nine-a of this

41 code and with such rules and such provisions as to
42 reasonable notice as the director may prescribe.
43 Consistent with the requirements for reasonable notice
44 all hearings under this article shall be held by the
45 director promptly. All testimony taken at such hearings
46 shall be under oath and shall be reduced to writing by
47 a reporter appointed by the director, and the parties
48 shall be entitled to appear and be heard in person or
49 by attorney. The director may present at such hearing
50 any evidence which is material to the matter under
51 consideration and which has come to the director's
52 attention in any investigation or inspection made
53 pursuant to provisions of this article.

54 (c) After the conclusion of hearings, the director shall
55 make and file the director's findings and order with the
56 director's opinion, if any. A copy of such order shall be
57 served by registered mail upon the person against whom
58 it runs, or such person's attorney of record, and notice
59 thereof shall be given to the other parties to the
60 proceedings, or their attorney of record.

61 (d) The director may, at any time after notice and
62 after opportunity to be heard as provided in this section,
63 rescind or amend any approved agreement or order
64 made by the director. Any order rescinding or amend-
65 ing a prior agreement or order shall, when served upon
66 the person affected, and after notice thereof is given to
67 the other parties to the proceedings, have the same
68 effect as is herein provided for original orders; but no
69 such order shall affect the legality or validity of any acts
70 done by such person in accordance with the prior
71 agreement or order before receipt by such person of the
72 notice of such change.

73 (e) The director shall have power, either personally or
74 by any of the director's authorized representatives, to
75 subpoena witnesses and take testimony, and administer
76 oaths to any witness in any hearing, proceeding or
77 examination instituted before the director or conducted
78 by the director with reference to any matter within the
79 jurisdiction of the director. In all hearings or proceed-
80 ings before the director the evidence of witnesses and
81 the production of documentary evidence may be re-

82 quired at any designated place of hearing; and in case
83 of disobedience to a subpoena or other process the
84 director or any party to the proceedings before the
85 director may invoke the aid of any circuit court in
86 requiring the evidence and testimony of witnesses and
87 the production of such books, records, maps, plats,
88 papers, documents and other writings as the director
89 may deem necessary or proper in and pertinent to any
90 hearing, proceeding or investigation held or had by the
91 director. Such court, in case of the refusal of any such
92 person to obey the subpoena, shall issue an order
93 requiring such person to appear before the director and
94 produce the required documentary evidence, if so
95 ordered, and give evidence touching the matter in
96 question. Any failure to obey such order of the court
97 may be punished by such court as contempt thereof. A
98 claim that any such testimony or evidence may tend to
99 incriminate the person giving the same shall not excuse
100 such witness from testifying, but such witness shall not
101 be prosecuted for any offense concerning which the
102 witness compelled hereunder to testify.

103 (f) With the consent of the director, the testimony of
104 any witness may be taken by deposition at the instance
105 of a party to any hearing before the director at any time
106 after hearing has been formally commenced. The
107 director may, of the director's own motion, order
108 testimony to be taken by deposition at any stage in any
109 hearing, proceeding or investigation pending before the
110 director. Such deposition shall be taken in the manner
111 prescribed by the laws of West Virginia for taking
112 depositions in civil cases in courts of record.

113 (g) Whether or not it be so expressly stated, an appeal
114 from any final order, decision or action by the director
115 in administering the provisions of this article may be
116 taken by any aggrieved person within ten days of notice
117 of such order, decision or action, to the circuit court of
118 the county in which the subject matter of such order,
119 decision or action is located, and in all cases of appeals
120 to the circuit court, that court shall certify its decisions
121 to the director. The circuit court to which the appeal is
122 taken shall hear the appeal without a jury on the record

123 certified by the director. In any such appeal the findings
124 of the director shall, if supported by substantial
125 evidence, be conclusive. If the order of the director is
126 not affirmed, the court may set aside or modify it, in
127 whole or in part, or may remand the proceedings to the
128 director for further disposition in accordance with the
129 order of the court. From all final decisions of the circuit
130 court an appeal shall lie to the supreme court of appeals
131 as is now provided by law in cases in equity, by the
132 director as well as by any other party of record before
133 the circuit court.

134 Any party feeling aggrieved by the final order of the
135 circuit court affecting him, may present his petition in
136 writing to the supreme court of appeals, or to a judge
137 thereof in vacation, within twenty days after the entry
138 of such order, praying for the suspension or modification
139 of such final order. The applicant shall deliver a copy
140 of such petition to the director and to all other parties
141 of record before presenting the same to the court or
142 judge. The court or judge shall fix a time for the hearing
143 on the application, but such hearing shall not be held
144 sooner than seven days after its presentation unless by
145 agreement of the parties, and notice of the time and
146 place of such hearing shall be forthwith given to the
147 director and to all other parties of record. If the court
148 or judge, after such hearing, be of opinion that such
149 final order should be suspended or modified, the court
150 or the judge may require bond, upon such conditions and
151 in such penalty, and impose such terms and conditions
152 upon the petitioner as are just and reasonable. For such
153 hearing the entire record before the circuit court, or a
154 certified copy thereof, shall be filed in the supreme
155 court, and that court, upon such papers, shall promptly
156 decide the matter in controversy as may seem to it to
157 be just and right, and may award costs in each case as
158 to it may seem just and equitable.

§22-9-11. Enforcement.

- 1 (a) The director or any person having a direct interest
- 2 in the subject matter of this article may complain in
- 3 writing setting forth that any person is violating or is
- 4 about to violate, any provisions of this article, or has

5 done, or is about to do, any act, matter or thing therein
6 prohibited or declared to be unlawful, or has failed,
7 omitted, neglected or refused, or is about to fail, omit,
8 neglect or refuse, to perform any duty enjoined upon
9 him by this article. Upon the filing of a complaint
10 against any person, the director shall cause a copy
11 thereof to be served upon such person by registered mail
12 accompanied by a notice from the director setting such
13 complaint for hearing at a time and place specified in
14 such notice. At least five days' notice of such hearing
15 shall be given to the parties affected and such hearing
16 shall be held in accordance with the provisions of section
17 ten of this article. Following such hearing, the director
18 shall, if the director finds that the matter alleged in the
19 complaint is not in violation of this article, dismiss the
20 complaint, but if the director shall find that the
21 complaint is justified, the director shall by appropriate
22 order compel compliance with this article.

23 (b) Whenever the director shall be of the opinion that
24 any person is violating, or is about to violate, any
25 provisions of this article, or has done, or is about to do,
26 any act, matter or thing therein prohibited or declared
27 to be unlawful, or has failed, omitted, neglected or
28 refused, or is about to fail, omit, neglect or refuse, to
29 perform any duty enjoined upon the director by this
30 article, or has failed, omitted, neglected or refused, or
31 is about to fail, omit, neglect or refuse to obey any lawful
32 requirement or order made by the director, or any final
33 judgment, order or decree made by any court pursuant
34 to this article, then and in every such case the director
35 may institute in the circuit court of the county or
36 counties wherein the operation is situated, injunction,
37 mandamus or other appropriate legal proceedings to
38 restrain such violations of the provisions of this article
39 or of orders of the director to enforce obedience
40 therewith. No injunction bond shall be required to be
41 filed in any such proceeding. Such persons or corpora-
42 tions as the court may deem necessary or proper to be
43 joined as parties in order to make its judgment, order
44 or writ effective may be joined as parties. The final
45 judgment in any such action or proceeding shall either
46 dismiss the action or proceeding or direct that the writ

47 of mandamus or injunction or other order, issue or be
48 made permanent as prayed for in the petition or in such
49 modified or other form as will afford appropriate relief.
50 An appeal may be taken as in other civil actions.

51 (c) In addition to the other remedies herein provided,
52 any storage operator or coal operator affected by the
53 provisions of this article may proceed by injunction or
54 other appropriate remedy to restrain violations or
55 threatened violations of the provisions of this article or
56 of orders of the director or the judgments, orders or
57 decrees of any court or to enforce obedience therewith.

58 (d) Each remedy prescribed in this section shall be
59 deemed concurrent or contemporaneous with any other
60 remedy prescribed herein and the existence or exercise
61 of any one such remedy shall not prevent the exercise
62 of any other such remedy.

§22-9-12. Penalties.

1 Any person who shall willfully violate any order of the
2 director issued pursuant to the provisions of this article
3 shall be guilty of a misdemeanor, and, on conviction
4 thereof, shall be punished by a fine not exceeding two
5 thousand dollars, or imprisoned in jail for not exceeding
6 twelve months, or both, in the discretion of the court,
7 and prosecutions under this section may be brought in
8 the name of the state of West Virginia in the court
9 exercising criminal jurisdiction in the county in which
10 the violation of such provisions of the article or terms
11 of such order was committed, and at the instance and
12 upon the relation of any citizen of this state.

§22-9-13. Orders remain in effect.

1 All orders in effect upon the effective date of this
2 article pursuant to the provisions of former article four,
3 chapter twenty-two-b of this code, shall remain in full
4 force and effect as if such orders were adopted by the
5 division established in this chapter but all such orders
6 shall be subject to review by the director to ensure they
7 are consistent with the purposes and policies set forth
8 in this chapter.

- §22-10-1. Short title.
- §22-10-2. Legislative findings; legislative statement of policy and purpose.
- §22-10-3. Definitions.
- §22-10-4. Financial responsibility — Applicability.
- §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.
- §22-10-12. Provisions of article supplemental.

§22-10-1. Short title.

- 1 This article may be cited as “Abandoned Well Act.”

§22-10-2. Legislative findings; legislative statement of policy and purpose.

- 1 (a) The Legislature finds and declares that:

2 (1) Oil and gas have been continuously produced in
3 West Virginia for over one hundred years, during which
4 time operators of wells have been required by the laws
5 of this state to plug wells upon cessation of use;

6 (2) The plugging requirements for certain older oil
7 and gas and other wells may not have been sufficient
8 to protect underground water supplies, to prevent the
9 movement of fluids between geologic horizons, to allow
10 coal operators to mine through such wells safely, nor to
11 allow for enhanced recovery of oil, gas or other mineral
12 resources of this state;

13 (3) Many wells may exist in West Virginia which are
14 abandoned and either not plugged or not properly
15 plugged in a manner to protect underground water
16 supplies, to prevent the movement of fluids between
17 geologic horizons, to allow coal operators to mine
18 through such wells safely, to allow for enhanced
19 recovery of oil, gas and other mineral resources, and
20 generally to protect the environment and mineral
21 resources of this state, as aforesaid;

22 (4) Requirements for financial responsibility to assure
23 plugging of abandoned wells have not been required in

24 this state for older wells, and adequate financial
25 responsibility should be established with respect to all
26 wells;

27 (5) Programs and policies should be implemented to
28 foster, encourage and promote through the fullest
29 practical means the proper plugging of abandoned wells
30 to protect the environment and mineral resources of this
31 state;

32 (6) Criteria should be established with respect to
33 priorities for the expenditure of moneys available for
34 plugging abandoned wells and identifying those aban-
35 doned wells which, as a matter of public policy, should
36 be plugged first; and

37 (7) The plugging of many abandoned wells may be
38 accomplished through the establishment of rights and
39 procedures allowing interested persons to apply for a
40 permit to plug an abandoned well.

41 (b) The Legislature hereby declares that it is in the
42 public interest and it is the public policy of this state,
43 to foster, encourage and promote the proper plugging
44 of all wells at the time of their abandonment to protect
45 the environment and mineral resources of this state.

§22-10-3. Definitions.

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

3 (a) "Abandoned well" means any well which is
4 required to be plugged under the provisions of section
5 nineteen, article six of this chapter and rules promul-
6 gated pursuant thereto.

7 (b) "Director" means for the purpose of this article,
8 the director of the division of environmental protection
9 as established in article one of this chapter or such other
10 person to whom the director may delegate authority or
11 duties pursuant to sections six or eight, article one of
12 this chapter.

13 (c) "Interested party" means, for the purpose of this
14 article, any owner, operator or lessee of the surface, oil,
15 gas, water, coal or other mineral resource under, on,

16 adjacent or in close proximity to any lands upon which
17 an abandoned well exists, and whose lands, rights or
18 interests are or might be affected by such abandoned
19 well.

§22-10-4. Financial responsibility — Applicability.

1 (a) Operators of all wells, not otherwise required to
2 demonstrate financial responsibility through bonding or
3 otherwise in accordance with the provisions of article six
4 of this chapter, shall, no later than the first day of July,
5 one thousand nine hundred ninety-three, demonstrate
6 financial responsibility in accordance with the methods
7 and in the amounts prescribed by this article.

8 (b) If the operator demonstrates to the satisfaction of
9 the director that an unjust hardship to an operator will
10 occur as a result of the financial responsibility require-
11 ments of this article:

12 (1) The director may suspend such financial respon-
13 sibility requirements to a date no later than the first day
14 of July, one thousand nine hundred ninety-five; or

15 (2) The director may authorize an operator to dem-
16 onstrate such financial responsibility by supplying
17 twenty percent of any required amount by no later than
18 the first day of July, one thousand nine hundred ninety-
19 four; forty percent no later than the first day of July,
20 one thousand nine hundred ninety-five; sixty percent no
21 later than the first day of July, one thousand nine
22 hundred ninety-six; eighty percent by the first day of
23 July, one thousand nine hundred ninety-seven; and one
24 hundred percent by the first day of July, one thousand
25 nine hundred ninety-eight.

26 (c) The operator making a demonstration of financial
27 responsibility pursuant to this section shall provide the
28 director with information sufficient to establish the
29 location and identification of the well, any well comple-
30 tion, recompletion and reworking records which may
31 exist and such other information as the director may
32 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.**

1 (a) Within one year of the effective date of this article,
2 the director shall promulgate legislative rules establish-
3 ing a priority system by which available funds from the
4 oil and gas reclamation fund, established pursuant to
5 section twenty-nine, article six of this chapter, will be
6 expended to plug abandoned wells. The rules shall, at
7 a minimum, establish three primary classifications to be
8 as follows:

9 (1) Wells which are an immediate threat to the
10 environment or which may hinder or impede the
11 development of mineral resources of this state so as to
12 require immediate plugging;

13 (2) Wells which are not an immediate threat to the
14 environment or which do not hinder or impede the
15 development of mineral resources of this state but which
16 should be plugged consistent with available resources;
17 and

18 (3) Wells which are not a threat to the environment
19 and which do not hinder or impede the development of
20 mineral resources of this state and for which plugging
21 may be deferred for an indefinite period.

22 (b) Such classifications shall, among other things, take
23 into consideration the following factors, as appropriate:

- 24 (1) The age of the well;
- 25 (2) The length of time the well has been abandoned;
- 26 (3) The casing remaining in the well;
- 27 (4) The presence of any leaks either at the surface or
28 underground;
- 29 (5) The possibility or existence of groundwater
30 contamination;
- 31 (6) Whether the well is located in an area to be
32 developed for enhanced recovery;
- 33 (7) Whether the well hinders or impedes mineral
34 development; and
- 35 (8) Whether the well is located in close proximity to
36 population.

**§22-10-7. Right of interested person to plug, replug and
reclaim abandoned wells.**

1 (a) Upon twenty days' advance written notice, it shall
2 be lawful for any interested person, the operator or the
3 director to enter upon the premises where any aban-
4 doned well is situated and properly plug or replug such
5 abandoned well, and to reclaim any area disturbed by
6 such plugging or replugging in the manner required by
7 article six of this chapter. Such notice shall be served
8 by certified mail, returned receipt requested, or such
9 other manner as is sufficient for service of process in
10 a civil action, upon any owner of the surface of the land
11 upon which such abandoned well exists, upon any oil
12 and gas lessee of record with the director and upon any
13 owner or operator of such abandoned well of record with
14 the director, or in the event there is no such lessee,
15 owner or operator of record with the director, by posting
16 such notice in a conspicuous place at or near such
17 abandoned well. The notice given the surface owner
18 shall include a statement advising the surface owner of
19 the right to repairs or damages as provided in this
20 section and the potential right to take any casing,
21 equipment or other salvage. Such notice shall be on
22 forms approved by the director.

23 (b) Any interested person who plugs a well pursuant
24 to the provisions of this section shall, to the extent
25 damage or disturbance results from such plugging,
26 either repair the damage or disturbance or compensate
27 the surface owner for (i) the reasonable cost of repairing
28 or replacing any water well, (ii) the reasonable value of
29 any crops destroyed, damaged or prevented from
30 reaching market, (iii) the reasonable cost of repair to
31 personal property up to the value of the replacement
32 value of personal property of like age, wear and quality,
33 (iv) lost income or expense incurred, and (v) reasonable
34 costs to reclaim or repair real property including roads.

35 (c) The interested person who is plugging the well
36 pursuant to the provisions of this section, may elect to
37 take any casing, equipment or other salvage which may
38 result from the plugging of such abandoned well by
39 including notice of such election in the written notice
40 mandated by subsection (a) of this section. Should such
41 interested person who is plugging the well not give such
42 notice of election, the surface owner may elect to take
43 any casing, equipment or other salvage which may
44 result from the plugging of such abandoned well by
45 giving written notice of such election to the interested
46 person who is plugging the well at least ten days in
47 advance of such plugging. In the event such notice is
48 given, such interested person who is plugging the well
49 may leave such casing, equipment or salvage at a
50 location which will not adversely affect any reclamation
51 of a disturbed area. In the event the surface owner does
52 not give notice of an election to take such casing,
53 equipment or salvage as provided herein, such inter-
54 ested person who plugs the well shall properly dispose
55 thereof. Nothing in this subsection shall be construed to
56 require or create a duty upon such interested person
57 who plugs the well to protect or pull casing or otherwise
58 take any action or incur any expense to retrieve or
59 protect any casing, equipment or salvageable material:
60 *Provided*, That nothing contained in this section may be
61 construed to relieve the interested person from the
62 responsibility to perform in accordance with the
63 requirements of this article, article six of this chapter,
64 or any condition of the permit.

65 (d) Prior to releasing any bond which is obtained in
66 connection with plugging or replugging an abandoned
67 well under the provisions of this section, the director
68 shall obtain from the interested person who has obtained
69 the bond a copy of a letter that such interested person
70 has sent to the surface owner advising that reclamation
71 has been completed.

72 (e) Where an interested person who intends to plug
73 an abandoned well pursuant to this section is unable to
74 obtain a bond in the full amount required by section
75 twenty-six, article six of this chapter, the director may
76 authorize a bond in a lesser amount; which lesser
77 amount shall be equal or greater than the estimated cost
78 of reclaiming the surface areas disturbed by the
79 plugging operation: *Provided*, That an owner or opera-
80 tor of a well shall comply with the financial responsi-
81 bility provisions of section five of this article and section
82 twenty-six, article six of this chapter.

83 (f) In the event the owner or operator of a well fails
84 or has failed to plug a well in accordance with laws and
85 rules in effect at the time the well is or was first subject
86 to plugging requirements, any interested person who
87 plugs or replugs such well pursuant to the provisions of
88 this section may recover from the owner or operator of
89 such well all reasonable costs incidental to such
90 plugging or replugging, including any compensation
91 provided for in this section. In the event funds from the
92 oil and gas reclamation fund established pursuant to
93 section twenty-nine, article six of this chapter are used
94 to plug or replug such well, the director shall be entitled
95 to recover from the owner or operator of such well any
96 amounts so expended from the fund. Any amounts so
97 recovered by the director shall be deposited in said fund.

§22-10-8. Arbitration; fees and costs.

1 (a) If the interested person who plugs a well and the
2 surface owner are unable to agree as to the adequacy
3 of the repairs performed or the amount of compensation
4 to which the surface owner may be entitled, either party
5 upon written notice to the other may elect to have such
6 issue finally determined by binding arbitration pursu-

7 ant to article ten, chapter fifty-five of this code.

8 (b) The adequacy of the repairs or compensation to
9 which the surface owner may be entitled shall, if such
10 election is made, be determined by a panel of three
11 disinterested arbitrators. The first arbitrator shall be
12 chosen by the party electing to arbitrate in such person's
13 notice of election; the second arbitrator shall be chosen
14 by the other party within ten days after receipt of the
15 notice of election; and the third arbitrator shall be
16 chosen jointly by the first two arbitrators within twenty
17 days thereafter. If they are unable to agree upon the
18 third arbitrator within twenty days, then the two
19 arbitrators are hereby empowered to and shall forth-
20 with submit the matter to the court under the provisions
21 of section one, article ten, chapter fifty-five of this code,
22 so that, among other things, the third arbitrator can be
23 chosen by the judge of the circuit court of the county
24 wherein the surface estate lies.

25 (c) The following persons shall be deemed interested
26 and not be appointed as arbitrators: Any person who is
27 personally interested in the land on which the plugging
28 is being performed or has been performed, or in any
29 interest or right therein, or in the compensation and any
30 damages to be awarded therefor, or who is related by
31 blood or marriage to any person having such personal
32 interest, or who stands in the relation of guardian and
33 ward, master and servant, principal and agent, or
34 partner, real estate broker, or surety to any person
35 having such personal interest, or who has enmity
36 against or bias in favor of any person who has such
37 personal interest or who is the owner of, or interested
38 in, such land or the oil and gas development thereof. No
39 person shall be deemed interested or incompetent to act
40 as arbitrator by reason of being an inhabitant of the
41 county, district or municipal corporation wherein the
42 land is located, or holding an interest in any other land
43 therein.

44 (d) The panel of arbitrators shall hold hearings and
45 take such testimony and receive such exhibits as shall
46 be necessary to determine the required repairs or the
47 amount of compensation to be paid to the surface owner.

48 However, no award requiring repairs or compensation
49 shall be made to the surface owner unless the panel of
50 arbitrators has first viewed the surface estate in
51 question. A transcript of the evidence may be made but
52 shall not be required.

53 (e) Each party shall pay the compensation of such
54 party's own arbitrator and one half of the compensation
55 of the third arbitrator, and such party's own costs.

§22-10-9. Civil penalties.

1 (a) Any person who fails to plug an abandoned well
2 within thirty days, or upon a showing of good cause,
3 within a longer period as determined by the director not
4 to exceed one hundred eighty days, from the date such
5 plugging is ordered by the director, shall be liable for
6 a civil penalty of twenty-five thousand dollars which
7 penalty shall be recovered in a civil action in the circuit
8 court wherein the abandoned well is located.

9 (b) The net proceeds of all civil penalties collected
10 pursuant to subsection (a) of this section shall be
11 deposited into the oil and gas reclamation fund estab-
12 lished pursuant to section twenty-nine, article six of this
13 chapter.

§22-10-10. Rule making; procedure; judicial review.

1 (a) The director shall have the power and authority
2 to promulgate legislative rules, procedural rules and
3 interpretive rules in accordance with the provisions of
4 chapter twenty-nine-a of this code in order to carry out
5 and implement the provisions of this article.

6 (b) Any hearings or proceedings before the director
7 on any matter other than rule making shall be con-
8 ducted and heard by the director or a representative
9 designated by the director and shall be in accordance
10 with the provisions of article five, chapter twenty-nine-
11 a of this code.

12 (c) Any person having an interest which is or may be
13 adversely affected, who is aggrieved by an order of the
14 director issued pursuant to this article, or by the
15 issuance or denial of a permit pursuant to this article

16 or by the permit's terms or conditions, is entitled to
17 judicial review thereof. All of the pertinent provisions
18 of section four, article five, chapter twenty-nine-a of this
19 code shall apply to and govern such judicial review with
20 like effect as if the provisions of said section four were
21 set forth in extenso in this section.

22 (d) The judgment of the circuit court shall be final
23 unless reversed, vacated or modified on appeal to the
24 supreme court of appeals in accordance with the
25 provisions of section one, article six, chapter twenty-
26 nine-a of this code.

§22-10-11. Existing rights and remedies preserved.

1 (a) It is the purpose of this article to provide
2 additional and cumulative remedies to address aban-
3 doned wells in this state and nothing herein contained
4 shall abridge or alter rights of action or remedies now
5 or hereafter existing, nor shall any provisions in this
6 article, or any act done by virtue of this article, be
7 construed as estopping the state, municipalities, public
8 health officers or persons in the exercise of their rights
9 to suppress nuisance or to abate any pollution now or
10 hereafter existing, or to recover damages.

11 (b) An order of the director, the effect of which is to
12 find that an abandoned well exists, or in ordering an
13 abandoned well to be plugged, or any other order, or any
14 violation of any of the provisions of this article shall give
15 rise to no presumptions of law or findings of fact inuring
16 to or for the benefit of persons other than the state of
17 West Virginia.

18 (c) Nothing contained in this article shall be construed
19 to place any duty or responsibility on the landowner,
20 well owner or operator or lessee to plug a well in
21 addition to those set forth in article six of this chapter.

§22-10-12. Provisions of article supplemental.

1 The provisions of this article shall be in addition to
2 and supplement all other provisions of article eight of
3 this chapter and rights with respect to plugging or
4 replugging wells. Nothing in this article shall be
5 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.
- §22-11-19. Emergency orders.
- §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.

- 1 This article may be known and cited as the "Water
- 2 Pollution Control Act."

§22-11-2. Declaration of policy.

- 1 (a) It is declared to be the public policy of the state
- 2 of West Virginia to maintain reasonable standards of

3 purity and quality of the water of the state consistent
4 with (1) public health and public enjoyment thereof; (2)
5 the propagation and protection of animal, bird, fish,
6 aquatic and plant life; and (3) the expansion of employ-
7 ment opportunities, maintenance and expansion of
8 agriculture and the provision of a permanent foundation
9 for healthy industrial development.

10 (b) It is also the public policy of the state of West
11 Virginia that the water resources of this state with
12 respect to the quantity thereof be available for reasona-
13 ble use by all of the citizens of this state.

§22-11-3. Definitions.

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

3 (1) "Activity" or "activities" means any activity or
4 activities for which a permit is required by the
5 provisions of section seven of this article;

6 (2) "Board" means the environmental quality board,
7 provided for in article three, chapter twenty-two-b of
8 this code;

9 (3) "Chief" means the chief of the office of water
10 resources of the division of environmental protection;

11 (4) "Code" means the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended;

13 (5) "Director" means the director of the division of
14 environmental protection or such other person to whom
15 the director has delegated authority or duties pursuant
16 to sections six or eight, article one of this chapter;

17 (6) "Disposal system" means a system for treating or
18 disposing of sewage, industrial wastes or other wastes,
19 or the effluent therefrom, either by surface or under-
20 ground methods, and includes sewer systems, the use of
21 subterranean spaces, treatment works, disposal wells
22 and other systems;

23 (7) "Disposal well" means any well drilled or used for
24 the injection or disposal of treated or untreated sewage,
25 industrial wastes or other wastes into underground
26 strata;

- 27 (8) "Division" means the division of environmental
28 protection;
- 29 (9) "Effluent limitation" means any restriction
30 established on quantities, rates and concentrations of
31 chemical, physical, biological and other constituents
32 which are discharged into the waters of this state;
- 33 (10) "Establishment" means an industrial establish-
34 ment, mill, factory, tannery, paper or pulp mill, mine,
35 colliery, breaker or mineral processing operation,
36 quarry, refinery, well and each and every industry or
37 plant or works in the operation or process of which
38 industrial wastes, sewage or other wastes are produced;
- 39 (11) "Industrial user" means those industries identi-
40 fied in the standard industrial classification manual,
41 United States Bureau of the Budget, 1967, as amended
42 and supplemented, under the category "division d—
43 manufacturing" and other classes of significant waste
44 producers identified under regulations issued by the
45 director or the administrator of the United States
46 environmental protection agency;
- 47 (12) "Industrial wastes" means any liquid, gaseous,
48 solid or other waste substance, or a combination thereof,
49 resulting from or incidental to any process of industry,
50 manufacturing, trade or business, or from or incidental
51 to the development, processing or recovery of any
52 natural resources; and the admixture with such indus-
53 trial wastes of sewage or other wastes, as hereinafter
54 defined, is also "industrial waste" within the meaning
55 of this article;
- 56 (13) "Other wastes" means garbage, refuse, decayed
57 wood, sawdust, shavings, bark and other wood debris
58 and residues resulting from secondary processing; sand,
59 lime, cinders, ashes, offal, night soil, silt, oil, tar,
60 dyestuffs, acids, chemicals, heat or all other materials
61 and substances not sewage or industrial wastes which
62 may cause or might reasonably be expected to cause or
63 to contribute to the pollution of any of the waters of the
64 state;
- 65 (14) "Outlet" means the terminus of a sewer system

66 or the point of emergence of any water-carried sewage,
67 industrial wastes or other wastes, or the effluent
68 therefrom, into any of the waters of this state, and
69 includes a point source;

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

82 (16) "Point source" means any discernible, confined
83 and discrete conveyance, including, but not limited to,
84 any pipe, ditch, channel, tunnel, conduit, well, discrete
85 fissure, container, rolling stock or vessel or other
86 floating craft, from which pollutants are or may be
87 discharged;

88 (17) "Pollutant" means industrial wastes, sewage or
89 other wastes as defined in this section;

90 (18) "Pollution" means the man-made or man-induced
91 alteration of the chemical, physical, biological and
92 radiological integrity of the waters of the state;

93 (19) "Publicly owned treatment works" means any
94 treatment works owned by the state or any political
95 subdivision thereof, any municipality or any other
96 public entity, for the treatment of pollutants;

97 (20) "Sewage" means water-carried human or animal
98 wastes from residences, buildings, industrial establish-
99 ments or other places, together with such groundwater
100 infiltration and surface waters as may be present;

101 (21) "Sewer system" means pipelines or conduits,
102 pumping stations, force mains and all other construc-
103 tions, facilities, devices and appliances appurtenant
104 thereto, used for collecting or conducting sewage,

105 industrial wastes or other wastes to a point of disposal
106 or treatment;

107 (22) "Treatment works" means any plant, facility,
108 means, system, disposal field, lagoon, pumping station,
109 constructed drainage ditch or surface water intercept-
110 ing ditch, diversion ditch above or below the surface of
111 the ground, settling tank or pond, earthen pit, inciner-
112 ator, area devoted to sanitary landfills or other works
113 not specifically mentioned herein, installed for the
114 purpose of treating, neutralizing, stabilizing, holding or
115 disposing of sewage, industrial wastes or other wastes
116 or for the purpose of regulating or controlling the
117 quality and rate of flow thereof;

118 (23) "Water resources", "water" or "waters" means
119 any and all water on or beneath the surface of the
120 ground, whether percolating, standing, diffused or
121 flowing, wholly or partially within this state, or
122 bordering this state and within its jurisdiction, and
123 includes, without limiting the generality of the forego-
124 ing, natural or artificial lakes, rivers, streams, creeks,
125 branches, brooks, ponds (except farm ponds, industrial
126 settling basins and ponds and water treatment facili-
127 ties), impounding reservoirs, springs, wells, water-
128 courses and wetlands; and

129 (24) "Well" means any shaft or hole sunk, drilled,
130 bored or dug into the earth or into underground strata
131 for the extraction or injection or placement of any liquid
132 or gas, or any shaft or hole sunk or used in conjunction
133 with such extraction or injection or placement. The term
134 "well" does not include any shaft or hole sunk, drilled,
135 bored or dug into the earth for the sole purpose of core
136 drilling or pumping or extracting therefrom potable,
137 fresh or usable water for household, domestic, indus-
138 trial, 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
2 director has and may exercise, subject to specific grants
3 of authority to the chief or the board in this article or
4 elsewhere in this code, the following powers and

5 authority and shall perform the following duties:

6 (1) To perform any and all acts necessary to carry out
7 the purposes and requirements of this article and of the
8 "Federal Water Pollution Control Act," as amended,
9 relating to this state's participation in the "National
10 Pollutant Discharge Elimination System" established
11 under that act;

12 (2) To encourage voluntary cooperation by all persons
13 in the conservation, improvement and development of
14 water resources and in controlling and reducing the
15 pollution of the waters of this state, and to advise,
16 consult and cooperate with all persons, all agencies of
17 this state, the federal government or other states, and
18 with interstate agencies in the furtherance of the
19 purposes of this article, and to this end and for the
20 purpose of studies, scientific or other investigations,
21 research, experiments and demonstrations pertaining
22 thereto, the division may receive moneys from such
23 agencies, officers and persons on behalf of the state. The
24 division shall pay all moneys so received into a special
25 fund hereby created in the state treasury, which fund
26 shall be expended under the direction of the director
27 solely for the purpose or purposes for which the grant,
28 gift or contribution was made;

29 (3) To encourage the formulation and execution of
30 plans by cooperative groups or associations of municipal
31 corporations, industries, industrial users, and other
32 users of waters of the state, who, jointly or severally, are
33 or may be the source of pollution of such waters, for the
34 control and reduction of pollution;

35 (4) To encourage, participate in, or conduct or cause
36 to be conducted studies, scientific or other investiga-
37 tions, research, experiments and demonstrations relat-
38 ing to the water resources of the state and water
39 pollution and its causes, control and reduction, and to
40 collect data with respect thereto, all as may be deemed
41 advisable and necessary to carry out the purposes of this
42 article;

43 (5) To study and investigate all problems concerning
44 water flow, water pollution and the control and reduc-

45 tion of pollution of the waters of the state, and to make
46 reports and recommendations with respect thereto;

47 (6) To collect and disseminate information relating to
48 water pollution and the control and reduction thereof;

49 (7) To develop a public education and promotion
50 program to aid and assist in publicizing the need for,
51 and securing support for, pollution control and
52 abatement;

53 (8) To sample ground and surface water with suffi-
54 cient frequency to ascertain the standards of purity or
55 quality from time to time of the waters of the state;

56 (9) To develop programs for the control and reduction
57 of the pollution of the waters of the state;

58 (10) To exercise general supervision over the admin-
59 istration and enforcement of the provisions of this
60 article, and all rules, permits and orders issued
61 pursuant to the provisions of this article and articles one
62 and three, chapter twenty-two-b of this code;

63 (11) In cooperation with the college of engineering at
64 West Virginia University and the schools and depart-
65 ments of engineering at other institutions of higher
66 education operated by this state, to conduct studies,
67 scientific or other investigations, research, experiments
68 and demonstrations in an effort to discover economical
69 and practical methods for the elimination, disposal,
70 control and treatment of sewage, industrial wastes, and
71 other wastes, and the control and reduction of water
72 pollution, and to this end, the director may cooperate
73 with any public or private agency and receive there-
74 from, on behalf of the state, and for deposit in the state
75 treasury, any moneys which such agency may contribute
76 as its part of the expenses thereof, and all gifts,
77 donations or contributions received as aforesaid shall be
78 expended by the director according to the requirements
79 or directions of the donor or contributor without the
80 necessity of an appropriation therefor, except that an
81 accounting thereof shall be made in the fiscal reports
82 of the division;

83 (12) To require the prior submission of plans, speci-

84 fications, and other data relative to, and to inspect the
85 construction and operation of, any activity or activities
86 in connection with the issuance and revocation of such
87 permits as are required by this article or the rules
88 promulgated hereunder or pursuant to article three,
89 chapter twenty-two-b of this code;

90 (13) To require any and all persons directly or
91 indirectly discharging, depositing or disposing of
92 treated or untreated sewage, industrial wastes or other
93 wastes, or the effluent therefrom, into or near any
94 waters of the state or into any underground strata, and
95 any and all persons operating an establishment which
96 produces or which may produce or from which escapes,
97 releases or emanates or may escape, release or emanate
98 treated or untreated sewage, industrial wastes or other
99 wastes, or the effluent therefrom, into or near any
100 waters of the state or into any underground strata, to
101 file with the division such information as the director
102 may require in a form or manner prescribed for such
103 purpose, including, but not limited to, data as to the
104 kind, characteristics, amount and rate of flow of any
105 such discharge, deposit, escape, release or disposition;

106 (14) To adopt, modify, or repeal procedural rules and
107 interpretive rules in accordance with the provisions of
108 chapter twenty-nine-a of this code administering and
109 implementing the powers, duties and responsibilities
110 vested in the director by the provisions of this article;

111 (15) To cooperate with interstate agencies for the
112 purpose of formulating, for submission to the Legisla-
113 ture, interstate compacts and agreements relating to:
114 (A) The control and reduction of water pollution; and (B)
115 the state's share of waters in watercourses bordering the
116 state;

117 (16) To adopt, modify, repeal and enforce rules, in
118 accordance with the provisions of chapter twenty-nine-
119 a of this code: (A) Implementing and making effective
120 the declaration of policy contained in section one of this
121 article and the powers, duties and responsibilities vested
122 in the director and the chief by the provisions of this
123 article and otherwise by law; (B) preventing, controlling

124 and abating pollution; and (C) facilitating the state's
125 participation in the "National Pollutant Discharge
126 Elimination System" pursuant to the "Federal Water
127 Pollution Control Act," as amended: *Provided*, That no
128 rule adopted by the director shall specify the design of
129 equipment, type of construction or particular method
130 which a person shall use to reduce the discharge of a
131 pollutant; and

132 (17) To advise all users of water resources as to the
133 availability of water resources and the most practicable
134 method of water diversion, use, development and
135 conservation.

136 (b) Whenever required to carry out the objectives of
137 this article the director shall require the owner or
138 operator of any point source or establishment to (i)
139 establish and maintain such records, (ii) make such
140 reports, (iii) install, use and maintain such monitoring
141 equipment or methods, (iv) sample such effluents in
142 accordance with such methods, at such locations, at such
143 intervals and in such manner as the director shall
144 prescribe, and (v) provide such other information as the
145 director may reasonably require.

146 (c) The director upon presentation of credentials (i)
147 has a right of entry to, upon or through any premises
148 in which an effluent source is located or in which any
149 records required to be maintained under subsection (b)
150 of this section are located, and (ii) may at reasonable
151 times have access to and copy any records, inspect any
152 monitoring equipment or method required under
153 subsection (b) of this section and sample any streams in
154 the area as well as sample any effluents which the owner
155 or operator of such source is required to sample under
156 subsection (b) of this section. Nothing in this subsection
157 eliminates any obligation to follow any process that may
158 be required by law.

159 (d) The director is hereby authorized and empowered
160 to investigate and ascertain the need and factual basis
161 for the establishment of public service districts as a
162 means of controlling and reducing pollution from
163 unincorporated communities and areas of the state,

164 investigate and ascertain, with the assistance of the
165 public service commission, the financial feasibility and
166 projected financial capability of the future operation of
167 any such public service district or districts, and to
168 present reports and recommendations thereon to the
169 county commissions of the areas concerned, together
170 with a request that such county commissions create a
171 public service district or districts, as therein shown to
172 be needed and required and as provided in article
173 thirteen-a, chapter sixteen of this code. In the event a
174 county commission fails to act to establish a county-wide
175 public service district or districts, the director shall act
176 jointly with the commissioner of the bureau of public
177 health to further investigate and ascertain the financial
178 feasibility and projected financial capability and,
179 subject to the approval of the public service commission,
180 order the county commission to take action to establish
181 such public service district or districts as may be
182 necessary to control, reduce or abate the pollution, and
183 when so ordered the county commission members must
184 act to establish such a county-wide public service
185 district or districts.

186 (e) The director has the authority to enter at all
187 reasonable times upon any private or public property for
188 the purpose of making surveys, examinations, investiga-
189 tions and studies needed in the gathering of facts
190 concerning the water resources of the state and their
191 use, subject to responsibility for any damage to the
192 property entered. Upon entering, and before making
193 any survey, examination, investigation and study, such
194 person shall immediately present himself or herself to
195 the occupant of the property. Upon entering property
196 used in any manufacturing, mining or other commercial
197 enterprise, or by any municipality or governmental
198 agency or subdivision, and before making any survey,
199 examination, investigation and study, such person shall
200 immediately present himself or herself to the person in
201 charge of the operation, and if he or she is not available,
202 to a managerial employee. All persons shall cooperate
203 fully with the person entering such property for such
204 purposes. Upon refusal of the person owning or control-
205 ling such property to permit such entrance or the

206 making of such surveys, examinations, investigations
207 and studies, the director may apply to the circuit court
208 of the county in which such property is located, or to
209 the judge thereof in vacation, for an order permitting
210 such entrance or the making of such surveys, examina-
211 tions, investigations and studies; and jurisdiction is
212 hereby conferred upon such court to enter such order
213 upon a showing that the relief asked is necessary for the
214 proper enforcement of this article: *Provided*, That
215 nothing in this subsection eliminates any obligation to
216 follow any process that may be required by law.

§22-11-5. Water areas beautification; investigations; law enforcement.

1 The division shall maintain a program and practices
2 in the husbandry of waters of the state and the lands
3 immediately adjacent thereto. The director shall make
4 such investigations and surveys, conduct such schools
5 and public meetings and take such other steps as may
6 be expedient in the conservation, beautification, im-
7 provement and use of all such water areas of the state.
8 The director shall cooperate with the division of natural
9 resources' chief law enforcement officer in enforcing the
10 provisions of law prohibiting the disposal of litter in,
11 along and near such water areas.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 All persons affected by rules establishing water
2 quality standards and effluent limitations shall
3 promptly comply therewith: *Provided*, That where
4 necessary and proper, the chief may specify a reasonable
5 time for persons not complying with such standards and
6 limitations to comply therewith, and upon the expiration
7 of any such period of time, the chief shall revoke or
8 modify any permit previously issued which authorized
9 the discharge of treated or untreated sewage, industrial
10 wastes or other wastes into the waters of this state which
11 result in reduction of the quality of such waters below
12 the standards and limitations established therefor by
13 rules of the board or director.

§22-11-7. Cooperation with other governments and agencies.

1 The office of water resources is hereby designated as
2 the water pollution control agency for this state for all
3 purposes of federal legislation and is hereby authorized
4 to take all action necessary or appropriate to secure to
5 this state the benefits of said legislation. In carrying out
6 the purposes of this section, the chief is hereby autho-
7 rized to cooperate with the United States environmental
8 protection agency and other agencies of the federal
9 government, other states, interstate agencies and other
10 interested parties in all matters relating to water
11 pollution, including the development of programs for
12 controlling and reducing water pollution and improving
13 the sanitary conditions of the waters of the state; to
14 apply for and receive, on behalf of this state, funds made
15 available under the aforesaid federal legislation on
16 condition that all moneys received from any federal
17 agency as herein provided shall be paid into the state
18 treasury and shall be expended, under the direction of
19 the director, solely for purposes for which the grants are
20 made; to approve projects for which applications for
21 loans or grants under the federal legislation are made
22 by any municipality (including any city, town, district
23 or other public body created by or pursuant to the laws
24 of this state and having jurisdiction over the disposal of
25 sewage, industrial wastes or other wastes) or agency of
26 this state or by any interstate agency; and to participate
27 through authorized representatives in proceedings
28 under the federal legislation to recommend measures for
29 the abatement of water pollution originating in this
30 state. The governor may give consent on behalf of this
31 state to requests by the administrator of the United
32 States environmental protection agency to the attorney
33 general of the United States for the bringing of actions
34 for the abatement of such pollution. Whenever a federal
35 law requires the approval or recommendation of a state
36 agency or any political subdivision of the state in any
37 matter relating to the water resources of the state, the
38 director, subject to approval of the Legislature, is
39 hereby designated as the sole person to give the approval
40 or recommendation required by the federal law, unless

41 the federal law specifically requires the approval or
42 recommendation of some other state agency or political
43 subdivision of the state.

§22-11-8. Prohibitions; permits required.

1 (a) The chief may, after public notice and opportunity
2 for public hearing, issue a permit for the discharge or
3 disposition of any pollutant or combination of pollutants
4 into waters of this state upon condition that such
5 discharge or disposition meets or will meet all applica-
6 ble state and federal water quality standards and
7 effluent limitations and all other requirements of this
8 article and article three, chapter twenty-two-b of this
9 code.

10 (b) It is unlawful for any person, unless the person
11 holds a permit therefor from the division, which is in
12 full force and effect, to:

13 (1) Allow sewage, industrial wastes or other wastes,
14 or the effluent therefrom, produced by or emanating
15 from any point source, to flow into the waters of this
16 state;

17 (2) Make, cause or permit to be made any outlet, or
18 substantially enlarge or add to the load of any existing
19 outlet, for the discharge of sewage, industrial wastes or
20 other wastes, or the effluent therefrom, into the waters
21 of this state;

22 (3) Acquire, construct, install, modify or operate a
23 disposal system or part thereof for the direct or indirect
24 discharge or deposit of treated or untreated sewage,
25 industrial wastes or other wastes, or the effluent
26 therefrom, into the waters of this state, or any extension
27 to or addition to such disposal system;

28 (4) Increase in volume or concentration any sewage,
29 industrial wastes or other wastes in excess of the
30 discharges or disposition specified or permitted under
31 any existing permit;

32 (5) Extend, modify or add to any point source, the
33 operation of which would cause an increase in the
34 volume or concentration of any sewage, industrial

35 wastes or other wastes discharging or flowing into the
36 waters of the state;

37 (6) Construct, install, modify, open, reopen, operate or
38 abandon any mine, quarry or preparation plant, or
39 dispose of any refuse or industrial wastes or other
40 wastes from any such mine or quarry or preparation
41 plant: *Provided*, That the division's permit is only
42 required wherever the aforementioned activities cause,
43 may cause or might reasonably be expected to cause a
44 discharge into or pollution of waters of the state, except
45 that a permit is required for any preparation plant:
46 *Provided, however*, That unless waived in writing by the
47 chief, every application for a permit to open, reopen or
48 operate any mine, quarry or preparation plant or to
49 dispose of any refuse or industrial wastes or other
50 wastes from any such mine or quarry or preparation
51 plant shall contain a plan for abandonment of such
52 facility or operation, which plan shall comply in all
53 respects to the requirements of this article. Such plan
54 of abandonment is subject to modification or amend-
55 ment upon application by the permit holder to the chief
56 and approval of such modification or amendment by the
57 chief;

58 (7) Operate any disposal well for the injection or
59 reinjection underground of any industrial wastes,
60 including, but not limited to, liquids or gases, or convert
61 any well into such a disposal well or plug or abandon
62 any such disposal well.

63 (c) Where a person has a number of outlets emerging
64 into the waters of this state in close proximity to one
65 another, such outlets may be treated as a unit for the
66 purposes of this section, and only one permit issued for
67 all such outlets.

68 (d) For water pollution control and national pollutant
69 discharge elimination system permits issued for activ-
70 ities regulated by the office of mining and reclamation
71 and the office of oil and gas, the chief of the office of
72 water resources may delegate functions, procedures and
73 activities to the respective chiefs of those offices.
74 Permits for such activities shall be issued under the

75 supervision of and with the signature and approval of
76 the chief of the office of water resources who shall
77 review and approve all procedures, effluent limits and
78 other conditions of such permits.

§22-11-9. Form of application for permit; information required.

1 The chief shall prescribe a form of application for all
2 permits for any activity specified in section eight of this
3 article and, notwithstanding any other provision of law
4 to the contrary, no other discharge permit or discharge
5 authorization from any other state department, agency,
6 commission, board or officer is required for such
7 activity except that which is required from the office of
8 miners' health, safety and training pursuant to section
9 seventy-six, article two, chapter twenty-two-a of this
10 code. All applications must be submitted on a form as
11 prescribed above. An applicant shall furnish all infor-
12 mation reasonably required by any such form, including
13 without limiting the generality of the foregoing, a plan
14 of maintenance and proposed method of operation of the
15 activity or activities. Until all such required information
16 is furnished, an application is not a complete applica-
17 tion. The division shall protect any information (other
18 than effluent data) contained in such permit application
19 form, or other records, reports or plans as confidential
20 upon a showing by any person that such information, if
21 made public, would divulge methods or processes
22 entitled to protection as trade secrets of such person. If,
23 however, the information being considered for confiden-
24 tial treatment is contained in a national pollutant
25 discharge elimination form, the chief or board shall
26 forward such information to the regional administrator
27 of the United States environmental protection agency
28 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.

1 (a) A special revenue fund designated the "Water
2 Quality Management Fund" shall be established in the
3 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

45 hundred dollars. Any such permit issued pursuant to
46 this article is void when the annual permit fee is more
47 than one hundred eighty days past due pursuant to the
48 rules promulgated hereunder.

49 (e) The provisions of this section are not applicable to
50 fees required for permits issued under article three of
51 this chapter.

**§22-11-11. Procedure concerning permits required
under article; transfer of permits; prior
permits.**

1 (a) The chief or his or her duly authorized represen-
2 tatives shall conduct such investigation as is deemed
3 necessary and proper in order to determine whether any
4 such application should be granted or denied. In making
5 such investigation and determination as to any applica-
6 tion pertaining solely to sewage, the chief shall consult
7 with the director of the office of environmental health
8 services of the state bureau of public health, and in
9 making such investigation and determination as to any
10 application pertaining to any activity specified in
11 subdivision (7), subsection (b), section eight of this
12 article, the chief shall consult with the director of the
13 state geological and economic survey and the chief of the
14 office of oil and gas of the division , and all such persons
15 shall cooperate with the chief and assist him or her in
16 carrying out the duties and responsibilities imposed
17 upon him or her under the provisions of this article and
18 the rules of the director and board; such cooperation
19 shall include, but not be limited to, a written recommen-
20 dation approving or disapproving the granting of the
21 permit and the reason or reasons for such recommen-
22 dation, which recommendation and the reason or
23 reasons therefor shall be submitted to the chief within
24 the specified time period prescribed by rules of the
25 director.

26 (b) The division's permit shall be issued upon such
27 reasonable terms and conditions as the chief may direct
28 if (1) the application, together with all supporting
29 information and data and other evidence, establishes
30 that any and all discharges or releases, escapes, deposits

31 and disposition of treated or untreated sewage, indus-
32 trial wastes or other wastes, or the effluent therefrom,
33 resulting from the activity or activities for which the
34 application for a permit was made will not cause
35 pollution of the waters of this state or violate any
36 effluent limitations or any rules of the board or director:
37 *Provided*, That the chief may issue a permit whenever
38 in his or her judgment the water quality standards of
39 the state may be best protected by the institution of a
40 program of phased pollution abatement which under the
41 terms of the permit may temporarily allow a limited
42 degree of pollution of the waters of the state; and (2) in
43 cases wherein it is required, such applicant shall include
44 the name and address of the responsible agent as set
45 forth in subsection (e), section six, article six of this
46 chapter.

47 (c) Each permit issued under this article shall have
48 a fixed term not to exceed five years: *Provided*, That
49 when the applicant, in accordance with agency rules,
50 has made a timely and complete application for permit
51 reissuance, the permit term may be extended by the
52 chief, at his or her discretion. An extension may be
53 granted for a period not to exceed twelve months beyond
54 its expiration date. Successive extensions may be
55 granted for periods not to exceed twelve months if the
56 chief determines additional time is necessary in order
57 to process the application for permit reissuance. Upon
58 expiration of a permit, a new permit may be issued by
59 the chief upon condition that the discharges or releases,
60 escapes, deposits and disposition thereunder meet or will
61 meet all applicable state and federal water quality
62 standards, effluent limitations and all other require-
63 ments of this article.

64 (d) An application for a permit incident to remedial
65 action in accordance with the provisions of section
66 sixteen of this article shall be processed and decided as
67 any other application for a permit required under the
68 provisions of section eight of this article.

69 (e) A complete application for any permit shall be
70 acted upon by the chief, and the division's permit
71 delivered or mailed, or a copy of any order of the chief

72 denying any such application delivered or mailed to the
73 applicant by the chief, within a reasonable time period
74 as prescribed by rules of the director.

75 (f) When it is established that an application for a
76 permit should be denied, the chief shall make and enter
77 an order to that effect, which order shall specify the
78 reasons for such denial, and shall cause a copy of such
79 order to be served on the applicant by registered or
80 certified mail. The chief shall also cause a notice to be
81 served with a copy of such order, which notice shall
82 advise the applicant of the right to appeal to the board
83 by filing a notice of appeal on the form prescribed by
84 the board for such purpose, with the board, in accor-
85 dance with the provisions of, and within the time
86 specified in, section seven, article one, chapter twenty-
87 two-b of this code. However, an applicant may alter the
88 plans and specifications for the proposed activity and
89 submit a new application for any such permit, in which
90 event the procedure hereinbefore outlined with respect
91 to an original application shall apply.

92 (g) A permit is transferable to another person upon
93 proper notification to the chief and in accordance with
94 applicable rules. Such transfer does not become effective
95 until it is reflected in the records of the office of water
96 resources.

97 (h) All permits for the discharge of sewage, industrial
98 wastes or other wastes into any waters of the state issued
99 by the water resources board prior to July one, one
100 thousand nine hundred sixty-four, and all permits
101 heretofore issued under the provisions of former article
102 five-a, chapter twenty of this code, and which have not
103 been heretofore revoked, are subject to review, revoca-
104 tion, suspension, modification and reissuance in accor-
105 dance with the terms and conditions of this article and
106 the rules promulgated thereunder. Any order of revo-
107 cation, suspension or modification made and entered
108 pursuant to this subsection shall be upon at least twenty
109 days' notice and shall specify the reasons for such
110 revocation, suspension or modification and the chief
111 shall cause a copy of such order, together with a copy
112 of a notice of the right to appeal to the board as provided

113 for in section twelve of this article, to be served upon
114 the permit holder as specified in said section twelve.

§22-11-12. Inspections; orders to compel compliance with permits; service of orders.

1 After issuance of the division's permit for any activity
2 the director may make field inspections of the work on
3 the activity, and, after completion thereof, may inspect
4 the completed activity, and, from time to time, may
5 inspect the maintenance and operation of the activity.

6 To compel compliance with the terms and conditions
7 of the division's permit for any activity, the director is
8 hereby authorized, after at least twenty days' notice, to
9 make and enter an order revoking, suspending or
10 modifying, in whole or in part, such permit for cause
11 including, but not limited to, the following:

12 (1) Violation of any term or condition of the permit;

13 (2) Obtaining a permit by misrepresentation, or
14 failure to disclose fully all relevant facts; or

15 (3) Change in any condition that requires either a
16 temporary or permanent reduction or elimination of the
17 permitted discharge, release, escape, deposit or
18 disposition.

19 The director shall cause a copy of any such order to
20 be served by registered or certified mail or by a law-
21 enforcement officer upon the person to whom any such
22 permit was issued. The director shall also cause a notice
23 to be served with a copy of such order, which notice shall
24 advise such person of the right to appeal to the board
25 by filing a notice of appeal on the form prescribed by
26 the board for such purpose, with the board, in accor-
27 dance with the provisions of, and within the time
28 specified in, section seven, article one, chapter twenty-
29 two-b of this code.

§22-11-13. Voluntary water quality monitors; appointment; duties; compensation.

1 The director is hereby authorized to appoint voluntary
2 water quality monitors to serve at the will and pleasure
3 of the director. All such monitors appointed pursuant

4 hereto shall be eighteen years of age or over and shall
5 be bona fide residents of this state.

6 Such monitors are authorized to take water samples
7 of the waters of this state at such times and at such
8 places as the director shall direct and to forward such
9 water samples to the director for analysis.

10 The director is authorized to provide such monitors
11 with such sampling materials and equipment as he or
12 she deems necessary: *Provided*, That such equipment
13 and materials shall at all times remain the property of
14 the state and shall be immediately returned to the
15 director upon his or her direction.

16 Such monitors shall not be construed to be employees
17 of this state for any purpose except that the director is
18 hereby authorized to pay such monitors a fee not to
19 exceed fifty cents for each sample properly taken and
20 forwarded to the director as hereinabove provided.

21 The director shall conduct schools to instruct said
22 monitors in the methods and techniques of water sample
23 taking and issue to said monitors an identification card
24 or certificate showing their appointment and training.

25 Upon a showing that any water sample as herein
26 provided was taken and analyzed in conformity with
27 standard and recognized procedures, such sample and
28 analysis is admissible in any court of this state for the
29 purpose of enforcing the provisions of this article.

**§22-11-14. Information to be filed by certain persons
with division; tests.**

1 Any and all persons directly or indirectly discharging
2 or depositing treated or untreated sewage, industrial
3 wastes, or other wastes, or the effluent therefrom, into
4 or near any waters of the state shall file with the
5 director such information as the director may reasona-
6 bly require on forms prescribed for such purpose,
7 including, but not limited to, data as to the kind,
8 characteristics, amount and rate of flow of such
9 discharge or deposit. If the director has reasonable
10 cause to believe that any establishment is, or may be,
11 polluting the waters of the state, the director may

12 require any person owning, operating or maintaining
13 such establishment to furnish such information as may
14 reasonably be required to ascertain whether such
15 establishment is, or may be causing such pollution, and
16 the director may conduct any test or tests that he or she
17 may deem necessary or useful in making his or her
18 investigation and determination.

§22-11-15. Orders of director to stop or prevent discharges or deposits or take remedial action; service of orders.

1 If the director, on the basis of investigations, inspections and inquiries, determines that any person who does
2 not have a valid permit issued pursuant to the provisions
3 of this article is causing the pollution of any of the
4 waters of the state, or does on occasions cause pollution
5 or is violating any rule or effluent limitation of the
6 board or the director, he or she shall either make and
7 enter an order directing such person to stop such
8 pollution or the violation of the rule or effluent
9 limitation of the board or director, or make and enter
10 an order directing such person to take corrective or
11 remedial action. Such order shall contain findings of
12 fact upon which the director based the determination to
13 make and enter such order. Such order shall also direct
14 such person to apply forthwith for a permit in accordance
15 with the provisions of sections eight, nine and
16 eleven of this article. The director shall fix a time limit
17 for the completion of such action. Whether the director
18 shall make and enter an order to stop such pollution or
19 shall make and enter an order to take remedial action,
20 in either case the person so ordered may elect to cease
21 operations of the establishment deemed to be the source
22 of such discharge or deposits causing pollution, if the
23 pollution referred to in the director's order shall be
24 stopped thereby.
25

26 The director shall cause a copy of any such order to
27 be served by registered or certified mail or by a law-enforcement officer upon such person. The director shall
28 also cause a notice to be served with the copy of such
29 order, which notice shall advise such person of the right
30 to appeal to the board by filing a notice of appeal, on
31

32 the form prescribed by the board for such purpose, with
33 the board, in accordance with the provisions of article
34 one, chapter twenty-two-b of this code.

§22-11-16. Compliance with orders of director.

1 Any person upon whom any order of the director or
2 any order of the board in accordance with the provisions
3 of section fifteen of this article, or article one, chapter
4 twenty-two-b of this code has been served shall fully
5 comply therewith.

6 When such person is ordered to take remedial action
7 and does not elect to cease operation of the establishment
8 deemed to be the source of such pollution, or when such
9 ceasing does not stop the pollution, he or she shall
10 forthwith apply for a permit under and in accordance
11 with the provisions of sections eight, nine and eleven of
12 this article. No such remedial action shall be taken until
13 a permit therefor has been issued; however, receipt of
14 a permit does not in and of itself constitute remedial
15 action.

**§22-11-17. Power of eminent domain; procedures; legis-
lative finding.**

1 (a) When any person who is owner of an establish-
2 ment is ordered by the director to stop or prevent
3 pollution or the violation of the rules of the board or
4 director or to take corrective or remedial action,
5 compliance with which order will require the acquisi-
6 tion, construction or installation of a new treatment
7 works or the extension or modification of or an addition
8 to an existing treatment works, (which acquisition,
9 construction, installation, extension, modification or
10 addition of or to a treatment works pursuant to such
11 order is referred to in this section as "such compliance")
12 such person may exercise the power of eminent domain
13 in the manner provided in chapter fifty-four of this code,
14 to acquire such real property or interests in real
15 property as may be determined by the director to be
16 reasonably necessary for such compliance.

17 (b) Upon application by such person and after twenty
18 days' written notice to all persons whose property may

19 be affected, the director shall make and enter an order
20 determining the specific real property or interests in
21 real property, if any, which are reasonably necessary for
22 such compliance. In any proceeding under this section,
23 the person seeking to exercise the right of eminent
24 domain herein conferred shall establish the need for the
25 amount of land sought to be condemned and that such
26 land is reasonably necessary for the most practical
27 method for such compliance.

28 (c) The right of eminent domain herein conferred does
29 not apply to the taking of any dwelling house or for the
30 taking of any land within five hundred feet of any such
31 dwelling house.

32 (d) The Legislature hereby declares and finds that the
33 taking and use of real property and interests in real
34 property determined to be reasonably necessary for such
35 compliance promotes the health, safety and general
36 welfare of the citizens of this state by reducing and
37 abating pollution in the waters of this state in which the
38 public at large has an interest and otherwise; that such
39 taking and use are necessary to provide and protect a
40 safe, pure and adequate water supply to the municipal-
41 ities and citizens of the state; that because of topo-
42 graphy, patterns of land development and ownership
43 and other factors it is impossible in many cases to effect
44 such compliance without the exercise of the power of
45 eminent domain and that the use of real property or
46 interests in real property to effect such compliance is a
47 public use for which private property may be taken or
48 destroyed.

§22-11-18. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

1 When any person is ordered to take remedial action
2 and does not elect to cease operation of the establishment
3 deemed to be the source of such pollution or when
4 ceasing does not stop the pollution, such person shall
5 immediately upon issuance of the permit required under
6 section sixteen of this article take or begin appropriate
7 steps or proceedings to carry out such remedial action.

8 In any such case it is the duty of each individual
9 offender, each member of a partnership, each member
10 of the governing body of a municipal corporation and
11 each member of the board of directors or other govern-
12 ing body of a private corporation, association or other
13 legal entity whatever, to see that appropriate steps or
14 proceedings to comply with such order are taken or
15 begun immediately. The director may require progress
16 reports, at such time intervals as he or she deems
17 necessary, setting forth the steps taken, the proceedings
18 started and the progress made toward completion of
19 such remedial action. All such remedial action shall be
20 diligently prosecuted to completion.

21 Failure of the governing body of a municipal corpo-
22 ration, or the board of directors or other governing body
23 of any private corporation, association or other legal
24 entity whatever, to provide immediately for the financ-
25 ing and carrying out of such remedial action, as may
26 be necessary to comply with said order, constitutes
27 failure to take or begin appropriate steps or proceedings
28 to comply with such order. If such person is a municipal
29 corporation, the cost of all such remedial action as is
30 necessary to comply with said order shall be paid out
31 of funds on hand available for such purpose, or out of
32 the general funds of such municipal corporation, not
33 otherwise appropriated, and if there is not sufficient
34 funds on hand or unappropriated, then the necessary
35 funds shall be raised by the issuance of bonds. Any
36 direct general obligation bond issue is subject to the
37 approval of the municipal bond commission and the
38 attorney general of the state of West Virginia.

39 If the estimated cost of the remedial action to be taken
40 by a municipal corporation to comply with such order
41 is such that any bond issue necessary to finance such
42 action would not raise the total outstanding bonded
43 indebtedness of such municipal corporation in excess of
44 the constitutional limit imposed upon such indebtedness
45 by the constitution of this state, then and in that event
46 the necessary bonds may be issued as a direct obligation
47 of such municipal corporation, and retired by a general
48 tax levy to be levied against all property within the limit

49 of such municipal corporation listed and assessed for
50 taxation. If the amount of such bonds necessary to be
51 issued would raise the total outstanding bonded in-
52 debtedness of such municipal corporation above said
53 constitutional limitation on such indebtedness, or if such
54 municipal corporation by its governing body shall
55 decide against the issuance of direct obligation bonds,
56 then such municipal corporation shall issue revenue
57 bonds and provide for the retirement thereof in the same
58 manner and subject to the same conditions as provided
59 for the issuance and retirement of bonds in article
60 thirteen, chapter sixteen of this code: *Provided*, That the
61 provisions of section six of said article, allowing
62 objections to be filed with the governing body, and
63 providing that a written protest of thirty percent or
64 more of the owners of real estate requires a four-fifths
65 vote of the governing body for the issuance of said
66 revenue bonds, does not apply to bond issues proposed
67 by any municipal corporation to comply with an order
68 made and entered under the authority of this article,
69 and such objections and submission of written protest is
70 not authorized, nor does the same, if made or had,
71 operate to justify or excuse failure to comply with such
72 order.

73 The funds made available by the issuance of either
74 direct obligation bonds or revenue bonds, as herein
75 provided, does constitute a "sanitary fund," and shall be
76 used for no other purpose than for carrying out such
77 order; no public money so raised shall be expended by
78 any municipal corporation for any purpose enumerated
79 in this article, unless such expenditure and the amount
80 thereof have been approved by the director. The
81 acquisition, construction or installation, use and opera-
82 tion, repair, modification, alteration, extension, equip-
83 ment, custody and maintenance of any disposal system
84 by any municipal corporation, as herein provided, and
85 the rights, powers and duties with respect thereto, of
86 such municipal corporation and the respective officers
87 and departments thereof, whether the same is financed
88 by the issuance of revenue or direct obligation bonds,
89 shall be governed by the provisions of article thirteen,
90 chapter sixteen of this code.

§22-11-19. Emergency orders.

1 Whenever the director finds that any discharge,
2 release, escape, deposit or disposition of treated or
3 untreated sewage, industrial wastes or other wastes into
4 any waters within this state, when considered alone or
5 in conjunction with other discharges, releases, escapes,
6 deposits or dispositions, constitutes a clear, present and
7 immediate danger to the health of the public, or to the
8 fitness of a private or public water supply for drinking
9 purposes, the director may, with the concurrence in
10 writing of the commissioner of the bureau of public
11 health, without notice or hearing, issue an order or
12 orders requiring the immediate cessation or abatement
13 of any such discharge, release, escape, deposit or
14 disposition, and the cessation of any drilling, redrilling,
15 deepening, casing, fracturing, pressuring, operating,
16 plugging, abandoning, converting or combining of any
17 well, or requiring such other action to be taken as the
18 director, with the concurrence aforesaid, deems neces-
19 sary to abate such danger.

20 Notwithstanding the provisions of any other section of
21 this article, any order issued under the provisions of this
22 section is effective immediately and may be served in
23 the same manner as a notice may be served under the
24 provisions of section two, article seven, chapter twenty-
25 nine-a of the code. Any person to whom such order is
26 directed shall comply therewith immediately, but on
27 notice of appeal to the board shall be afforded a hearing
28 as promptly as possible, and not later than ten days after
29 the board receives such notice of appeal. On the basis
30 of such hearing, and within five days thereafter, the
31 board shall make and enter an order continuing the
32 order of the director in effect, revoking it, or modifying
33 it. For the purpose of such appeal and judicial review
34 of the order entered following an appeal hearing, all
35 pertinent provisions of article one, chapter twenty-two-
36 b of this code shall govern.

§22-11-20. Control by state as to pollution; continuing jurisdiction.

1 No right to violate the rules of the board or director

2 or to continue existing pollution of any of the waters of
3 the state exists nor may such right be acquired by virtue
4 of past or future pollution by any person. The right and
5 control of the state in and over the quality of all waters
6 of the state are hereby expressly reserved and reaffirmed.
7 It is recognized that with the passage of time,
8 additional efforts may have to be made by all persons
9 toward control and reduction of the pollution of the
10 waters of the state, irrespective of the fact that such
11 persons may have previously complied with all orders
12 of the director or board. It is also recognized that there
13 should be continuity and stability respecting pollution
14 control measures taken in cooperation with, and with
15 the approval of, the director, or pursuant to orders of
16 the director or board. When a person is complying with
17 the terms and conditions of a permit granted pursuant
18 to the provisions of section eleven of this article or when
19 a person has completed remedial action pursuant to an
20 order of the director or board, additional efforts may be
21 required wherever and whenever the rules of the board
22 or director or effluent limitations are violated or the
23 waters of the state are polluted by such person.

§22-11-21. Appeal to environmental quality board.

1 Any person adversely affected by an order made and
2 entered by the director in accordance with the provisions
3 of this article, or aggrieved by failure or refusal
4 of the chief to act within the specified time as provided
5 in subsection (e) of section eleven of this article on an
6 application for a permit or aggrieved by the terms and
7 conditions of a permit granted under the provisions of
8 this article, may appeal to the environmental quality
9 board, pursuant to the provisions of article one, chapter
10 twenty-two-b of this code.

§22-11-22. Civil penalties and injunctive relief.

1 Any person who violates any provision of any permit
2 issued under or subject to the provisions of this article
3 is subject to a civil penalty not to exceed ten thousand
4 dollars per day of such violation, and any person who
5 violates any provision of this article or of any rule or
6 who violates any standard or order promulgated or

7 made and entered under the provisions of this article or
8 articles one or three, chapter twenty-two-b of this code
9 is subject to a civil penalty not to exceed ten thousand
10 dollars per day of such violation. Any such civil penalty
11 may be imposed and collected only by a civil action
12 instituted by the director in the circuit court of the
13 county in which the violation occurred or is occurring
14 or of the county in which the waters thereof are polluted
15 as the result of such violation.

16 Upon application by the director, the circuit courts of
17 this state or the judges thereof in vacation may by
18 injunction compel compliance with and enjoin violations
19 of the provisions of this article, the rules of the board
20 or director, effluent limitations, the terms and condi-
21 tions of any permit granted under the provisions of this
22 article, or any order of the director or board, and the
23 venue of any such action shall be the county in which
24 the violation or noncompliance exists or is taking place
25 or in any county in which the waters thereof are polluted
26 as the result of such violation or noncompliance. The
27 court or the judge thereof in vacation may issue a
28 temporary or preliminary injunction in any case
29 pending a decision on the merits of any injunctive
30 application filed. Any other section of this code to the
31 contrary notwithstanding, the state is not required to
32 furnish bond as a prerequisite to obtaining injunctive
33 relief under this article. An application for an injunction
34 under the provisions of this section may be filed and
35 injunctive relief granted notwithstanding that all of the
36 administrative remedies provided for in this article have
37 not been pursued or invoked against the person or
38 persons against whom such relief is sought and notwith-
39 standing that the person or persons against whom such
40 relief is sought have not been prosecuted or convicted
41 under the provisions of this article.

42 The judgment of the circuit court upon any applica-
43 tion filed or in any civil action instituted under the
44 provisions of this section is final unless reversed, vacated
45 or modified on appeal to the supreme court of appeals.
46 Any such appeal shall be sought in the manner provided
47 by law for appeals from circuit courts in other civil

48 cases, except that the petition seeking review in any
49 injunctive proceeding must be filed with said supreme
50 court of appeals within ninety days from the date of
51 entry of the judgment of the circuit court.

52 Legal counsel and services for the chief, director or
53 the board in all civil penalty and injunction proceedings
54 in the circuit court and in the supreme court of appeals
55 of this state shall be provided by the attorney general
56 or his or her assistants and by the prosecuting attorneys
57 of the several counties as well, all without additional
58 compensation, or the chief, director or the board, with
59 the written approval of the attorney general, may
60 employ counsel to represent him or her or it in a
61 particular proceeding.

§22-11-23. Priority of actions.

1 All applications under section twenty-two of this
2 article and all proceedings for judicial review under
3 article one, chapter twenty-two-b of this code shall take
4 priority on the docket of the circuit court in which
5 pending, and shall take precedence over all other civil
6 cases. Where such applications and proceedings for
7 judicial review are pending in the same court at the
8 same time, such applications shall take priority on the
9 docket and shall take precedence over proceedings for
10 judicial review.

§22-11-24. Violations; criminal penalties.

1 Any person who causes pollution or who fails or
2 refuses to discharge any duty imposed upon such person
3 by this article or by any rule of the board or director,
4 promulgated pursuant to the provisions and intent of
5 this article or article three, chapter twenty-two-b of this
6 code, or by an order of the director or board, or who
7 fails or refuses to apply for and obtain a permit as
8 required by the provisions of this article, or who fails
9 or refuses to comply with any term or condition of such
10 permit, is guilty of a misdemeanor, and, upon conviction
11 thereof, shall be punished by a fine of not less than one
12 hundred dollars nor more than one thousand dollars, or
13 by imprisonment in the county jail for a period not
14 exceeding six months, or by both such fine and
15 imprisonment.

16 Any person who intentionally misrepresents any
17 material fact in an application, record, report, plan or
18 other document filed or required to be maintained under
19 the provisions of this article or any rules promulgated
20 by the director thereunder is guilty of a misdemeanor,
21 and, upon conviction thereof, shall be punished by a fine
22 of not less than one thousand dollars nor more than ten
23 thousand dollars or by imprisonment in the county jail
24 not exceeding six months or by both such fine and
25 imprisonment.

26 Any person who willfully or negligently violates any
27 provision of any permit issued under or subject to the
28 provisions of this article or who willfully or negligently
29 violates any provision of this article or any rule of the
30 board or director or any effluent limitation or any order
31 of the director or board is guilty of a misdemeanor, and,
32 upon conviction thereof, shall be punished by a fine of
33 not less than two thousand five hundred dollars nor
34 more than twenty-five thousand dollars per day of
35 violation or by imprisonment in the county jail not
36 exceeding one year or by both such fine and
37 imprisonment.

38 Any such person may be prosecuted and convicted
39 under the provisions of this section notwithstanding that
40 none of the administrative remedies provided for in this
41 article have been pursued or invoked against said person
42 and notwithstanding that a civil action for the imposi-
43 tion and collection of a civil penalty or an application
44 for an injunction under the provisions of this article has
45 not been filed against such person.

46 Where a person holding a permit is carrying out a
47 program of pollution abatement or remedial action in
48 compliance with the conditions and terms of such
49 permit, the person is not subject to criminal prosecution
50 for pollution recognized and authorized by such permit.

**§22-11-25. Civil liability; natural resources game fish and
aquatic life fund; use of funds.**

1 If any loss of game fish or aquatic life results from
2 a person's or persons' failure or refusal to discharge any
3 duty imposed upon such person by this article or section

4 seven, article six of this chapter, either the West
5 Virginia division of natural resources or the division of
6 environmental protection, or both jointly may initiate a
7 civil action on behalf of the state of West Virginia to
8 recover from such person or persons causing such loss
9 a sum equal to the cost of replacing such game fish or
10 aquatic life. Any moneys so collected shall be deposited
11 in a special revenue fund entitled "natural resources
12 game fish and aquatic life fund" and shall be expended
13 as hereinafter provided. The fund shall be expended to
14 stock waters of this state with game fish and aquatic
15 life. Where feasible, the director of the division of
16 natural resources shall use any sum collected in
17 accordance with the provisions of this section to stock
18 waters in the area in which the loss resulting in the
19 collection of such sum occurred. Any balance of such
20 sum shall remain in said fund and be expended to stock
21 state-owned and operated fishing lakes and ponds,
22 wherever located in this state, with game fish and
23 aquatic life.

§22-11-26. Exceptions as to criminal liabilities.

1 The criminal liabilities may not be imposed pursuant
2 to section twenty-four of this article for violations
3 resulting from accident or caused by an act of God, war,
4 strike, riot or other catastrophe as to which negligence
5 or willful misconduct on the part of such person was not
6 the proximate cause.

**§22-11-27. Existing rights and remedies preserved;
article for benefit of state only.**

1 It is the purpose of this article to provide additional
2 and cumulative remedies to abate the pollution of the
3 waters of the state and nothing herein contained shall
4 abridge or alter rights of action or remedies now or
5 hereafter existing, nor shall any provisions in this
6 article, or any act done by virtue of this article, be
7 construed as estopping the state, municipalities, public
8 health officers, or persons as riparian owners or
9 otherwise, in the exercise of their rights to suppress
10 nuisances or to abate any pollution now or hereafter
11 existing, or to recover damages.

12 The provisions of this article inure solely to and are
13 for the benefit of the people generally of the state of
14 West Virginia, and this article is not intended to in any
15 way create new, or enlarge existing rights of riparian
16 owners or others. An order of the director or of the
17 board, the effect of which is to find that pollution exists,
18 or that any person is causing pollution, or any other
19 order, or any violation of any of the provisions of this
20 article shall give rise to no presumptions of law or
21 findings of fact inuring to or for the benefit of persons
22 other than the state of West Virginia.

**§22-11-28. Functions, services and reports of director of
the division; obtaining information from
others.**

1 The director shall make surveys and investigations of
2 the water resources of the state and shall maintain an
3 inventory of the water resources of the state and to the
4 extent practicable shall divide the state into watershed
5 drainage areas in making this inventory. The director
6 shall investigate and study the problems of agriculture,
7 industry, conservation, health, water pollution, domestic
8 and commercial uses and allied matters as they relate
9 to the water resources of the state, and shall make and
10 formulate comprehensive plans and recommendations
11 for the further development, improvement, protection,
12 preservation, regulation and use of such water resour-
13 ces, giving proper consideration to the hydrologic cycle
14 in which water moves. The director shall provide to the
15 Legislature a biennial report on the quality of the state's
16 waters, including an evaluation of the information
17 which has been obtained in accordance with the
18 requirements of this section and shall include in this
19 report the plans and recommendations which have been
20 formulated pursuant to the requirements of this section.
21 Where possible the timing and content of this report
22 shall be structured so that it may also be used to fulfill
23 any federal program reporting requirements. The
24 report shall include reasons for such plans and recom-
25 mendations, as well as any changes in the law which are
26 deemed desirable to effectuate such plans and recom-
27 mendations. Such report shall be made available to the

28 public at a reasonable price to be determined by the
29 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.

- §22-12-1. Short title.
- §22-12-2. Legislative findings, public policy and purposes.
- §22-12-3. Definitions.
- §22-12-4. Authority of environmental quality board to promulgate standards of purity and quality.
- §22-12-5. Authority of other agencies; applicability.
- §22-12-6. Lead agency designation; additional powers and duties.
- §22-12-7. Groundwater coordinating committee; creation.
- §22-12-8. Groundwater certification.
- §22-12-9. Groundwater protection fees authorized; director to promulgate rules; dedication of fee proceeds; groundwater protection fund established; groundwater remediation fund established.
- §22-12-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearings.
- §22-12-11. Appeal procedures.
- §22-12-12. Rule-making petition.
- §22-12-13. Existing rights and remedies preserved; effect of compliance.
- §22-12-14. Effective dates of provisions subject to federal approval.

§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 purposes.

- 1 (a) The Legislature finds that:
- 2 (1) West Virginia has relatively pure groundwater

3 resources which are abundant and readily available;

4 (2) Over fifty percent of West Virginia's overall
5 population, and over ninety percent of the state's rural
6 population, depend on groundwater for drinking water;

7 (3) A rural lifestyle has created a quality of life in
8 many parts of West Virginia which is highly valued.
9 Maintaining this lifestyle depends upon protecting
10 groundwater to avoid increased expenses associated
11 with providing treated drinking water supplies to rural
12 households;

13 (4) West Virginia's groundwater resources are geolog-
14 ically complex, with the nature and vulnerability of
15 groundwater aquifers and recharge areas not fully
16 known;

17 (5) Contamination of groundwater is generally much
18 more difficult and expensive to clean up than is the case
19 with surface water;

20 (6) Groundwaters and surface waters can be highly
21 interconnected. The quality of any given groundwater
22 can have a significant impact on the quality of ground-
23 waters and surface waters to which it is hydrologically
24 connected;

25 (7) A diverse array of human activities can adversely
26 impact groundwater, making it necessary to develop
27 regulatory programs that utilize a variety of
28 approaches;

29 (8) Various agencies of state government currently
30 exercise regulatory control over activities which may
31 impact on groundwater. Coordination and streamlining
32 of the regulatory activities of these agencies is necessary
33 to assure that the state's groundwater is maintained and
34 protected through an appropriate groundwater protec-
35 tion program;

36 (9) Disruption of existing state regulatory programs
37 should be avoided to the maximum extent practical;

38 (10) The maintenance and protection of the state's
39 groundwater resources can be achieved consistent with
40 the maintenance and expansion of employment oppor-

41 tunities, agriculture, and industrial development; and

42 (11) A state groundwater management program will
43 provide economic, social, and environmental benefits for
44 the citizens of West Virginia now and in the future.

45 (b) Therefore, the Legislature establishes that it is the
46 public policy of the state of West Virginia to maintain
47 and protect the state's groundwater so as to support the
48 present and future beneficial uses and further to
49 maintain and protect groundwater at existing quality
50 where the existing quality is better than that required
51 to maintain and protect the present and future benefi-
52 cial uses. Such existing quality shall be maintained and
53 protected unless it is established that (1) the measures
54 necessary to preserve existing quality are not techni-
55 cally feasible or economically practical and (2) a change
56 in groundwater quality is justified based upon economic
57 or societal objectives. Such a change shall maintain and
58 protect groundwater quality so as to support the present
59 and future beneficial uses of such groundwater.

60 (c) The purposes of this article are to:

61 (1) Maintain and protect the state's groundwater
62 resources consistent with this article to protect the
63 present and future beneficial uses of the groundwater;

64 (2) Provide for the establishment of a state ground-
65 water management program which will:

66 (i) Define the roles of agencies of the state and
67 political subdivisions with respect to the maintenance
68 and protection of groundwater, and designate a lead
69 agency for groundwater management;

70 (ii) Designate a state agency responsible for establish-
71 ment of groundwater quality standards;

72 (iii) Provide for the establishment of standards of
73 purity and quality for all groundwater;

74 (iv) Provide for the establishment of groundwater
75 protection programs consistent with this article;

76 (v) Establish groundwater protection and ground-
77 water remediation funds;

78 (vi) Provide for the mapping and analysis of the state's
79 groundwater resources and coordination of the agencies
80 involved; and

81 (vii) Provide for public education on groundwater
82 resources and methods for preventing contamination;

83 (3) Provide such enforcement and compliance mech-
84 anisms as will assure the implementation of the state's
85 groundwater management program; and

86 (4) Assure that actions taken to implement this article
87 are consistent with the policies set forth in section two,
88 article eleven of this chapter.

§22-12-3. Definitions.

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

3 (a) "Agency action" means the issuance, renewal or
4 denial of any permit, license or other required agency
5 approval, or any terms or conditions thereof, or any
6 order or other directive issued by the division of
7 environmental protection, bureau of public health,
8 department of agriculture or any other agency of the
9 state or a political subdivision to the extent that such
10 action relates directly to the implementation, adminis-
11 tration or enforcement of this article.

12 (b) "Beneficial uses" means those uses which are
13 protective of human health and welfare and the
14 environment. Pollution of groundwater is not considered
15 a beneficial use.

16 (c) "Board" means the state water resources environ-
17 mental quality board.

18 (d) "Constituent" means any chemical or biological
19 substance found in groundwater due to either natural
20 or man-made conditions.

21 (e) "Director" means the director of the division of
22 environmental protection or such other person to whom
23 the director has delegated authority or duties pursuant
24 to sections six or eight, article one of this chapter.

25 (f) "Groundwater" means the water occurring in the

26 zone of saturation beneath the seasonal high water table,
27 or any perched water zones.

28 (g) "Groundwater certification" means an assurance
29 issued by the director of the division of environmental
30 protection that a permit or other approval issued by a
31 state, county or local government body regarding an
32 activity that affects or is reasonably anticipated to affect
33 groundwater complies with all requirements of this
34 chapter, the legislative rules promulgated pursuant to
35 this chapter in accordance with chapter twenty-nine-a
36 of this code and any other requirements of state law,
37 rules or agreements regarding groundwater.

38 (h) "Person" means any industrial user, public or
39 private corporation, institution, association, firm or
40 company organized or existing under the laws of this or
41 any other state or country; state of West Virginia;
42 governmental agency, including federal facilities;
43 political subdivision; county commission; municipal
44 corporation; industry; sanitary district; public service
45 district; soil conservation district; watershed improve-
46 ment district; partnership; trust; estate; person or
47 individual; group of persons or individuals acting
48 individually or as a group; or any legal entity whatever.

49 (i) "Pollution" means the man-made or man-induced
50 alteration of the chemical, physical, biological or
51 radiological integrity of the groundwater.

52 (j) "Preventative action limit" means a numerical
53 value expressing the concentration of a substance in
54 groundwater that, if exceeded, causes action to be taken
55 to assure that standards of purity and quality of
56 groundwater are not violated.

57 (k) "Water" means any and all water on or beneath
58 the surface of the ground, whether percolating, stand-
59 ing, diffused or flowing, wholly or partially within this
60 state, or bordering this state and within its jurisdiction,
61 and includes without limiting the generality of the
62 foregoing, natural or artificial lakes, rivers, streams,
63 creeks, branches, brooks, ponds (except farm ponds,
64 industrial settling basins and ponds and water treat-
65 ment facilities), impounding reservoirs, springs, wells,

66 watercourses and wetlands.

§22-12-4. Authority of environmental quality board to promulgate standards of purity and quality.

1 (a) The environmental quality board has the sole and
2 exclusive authority to promulgate standards of purity
3 and quality for groundwater of the state and shall
4 promulgate such standards following a public hearing
5 within one year from the effective date of this article,
6 by legislative rules in accordance with the provisions of
7 chapter twenty-nine-a of this code.

8 (b) Such standards shall establish the maximum
9 contaminant levels permitted for groundwater, but in no
10 event shall such standards allow contaminant levels in
11 groundwater to exceed the maximum contaminant
12 levels adopted by the United States Environmental
13 Protection Agency pursuant to the federal Safe Drink-
14 ing Water Act. The board may set standards more
15 restrictive than the maximum contaminant levels where
16 it finds that such standards are necessary to protect
17 drinking water use where scientifically supportable
18 evidence reflects factors unique to West Virginia or
19 some area thereof, or to protect other beneficial uses of
20 the groundwater. For contaminants not regulated by the
21 federal Safe Drinking Water Act, standards for such
22 contaminants shall be established by the board to be no
23 less stringent than may be reasonable and prudent to
24 protect drinking water or any other beneficial use.
25 Where the concentration of a certain constituent exceeds
26 such standards due to natural conditions, the natural
27 concentration is the standard for that constituent.
28 Where the concentration of a certain constituent exceeds
29 such standard due to human-induced contamination, no
30 further contamination by that constituent is allowed,
31 and every reasonable effort shall be made to identify,
32 remove or mitigate the source of such contamination,
33 and to strive where practical to reduce the level of
34 contamination over time to support drinking water use.

35 (c) The standards of purity and quality for groundwater
36 promulgated by the board shall recognize the degree to
37 which groundwater is hydrologically connected with
38 surface water and other groundwater and such stand-
39 ards shall provide protection for such surface water and
40 other groundwater.

41 (d) In the promulgation of such standards the board
42 shall consult with the division of environmental protec-
43 tion, department of agriculture and the bureau of public
44 health, as appropriate.

45 (e) Any groundwater standard of the board that is in
46 effect on the effective date of this article shall remain
47 in effect until modified by the board. Notwithstanding
48 any other provisions of this code to the contrary, the
49 authority of the board to adopt standards of purity and
50 quality for groundwater granted by the provisions of
51 this article is exclusive, and to the extent that any other
52 provisions of this code grant such authority to any
53 person, body, agency or entity other than the board,
54 those other provisions are void.

§22-12-5. Authority of other agencies; applicability.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, no agency of state government or any
3 political subdivision may regulate any facility or
4 activities for the purpose of maintaining and protecting
5 the groundwater except as expressly authorized pursu-
6 ant to this article.

7 (b) To the extent that such agencies have the authority
8 pursuant to any provision of this code, other than this
9 article, to regulate facilities or activities, the division of
10 environmental protection, the department of agricul-
11 ture, the bureau of public health, and such agencies of
12 the state or any political subdivision as may be specif-
13 ically designated by the director with the concurrence
14 of such designated agencies or political subdivisions, as
15 appropriate, are hereby authorized to be groundwater
16 regulatory agencies for purposes of regulating such
17 facilities or activities to satisfy the requirements of this
18 article. In addition, the department of agriculture is
19 hereby authorized to be the groundwater regulatory
20 agency for purposes of regulating the use or application
21 of pesticides and fertilizers. Where the authority to
22 regulate facilities or activities which may adversely
23 impact groundwater is not otherwise assigned to the
24 division of environmental protection, the department of
25 agriculture, the bureau of public health or such other

26 specifically designated agency pursuant to any other
27 provision of this code, the division of environmental
28 protection is hereby authorized to be the groundwater
29 regulatory agency with respect to such unassigned
30 facilities or activities. The division of environmental
31 protection shall cooperate with the department of
32 agriculture and the bureau of public health, as approp-
33 riate, in the regulation of such unassigned facilities or
34 activities.

35 (c) Within one year of the effective date of this article,
36 the department of agriculture, bureau of public health
37 and division of environmental protection shall promul-
38 gate in accordance with the provisions of chapter
39 twenty-nine-a of this code such legislative rules as may
40 be necessary to implement the authority granted them
41 by this article.

42 (d) Groundwater regulatory agencies shall develop
43 groundwater protection practices to prevent ground-
44 water contamination from facilities and activities within
45 their respective jurisdictions consistent with this article.
46 Such practices shall include, but not be limited to,
47 criteria related to facility design, operational manage-
48 ment, closure, remediation and monitoring. Such
49 agencies shall issue such rules, permits, policies,
50 directives or any other appropriate regulatory devices,
51 as necessary, to implement the requirements of this
52 article.

53 (e) Groundwater regulatory agencies shall take such
54 action as may be necessary to assure that facilities or
55 activities within their respective jurisdictions maintain
56 and protect groundwater at existing quality, where the
57 existing quality is better than that required to maintain
58 and protect the standards of purity and quality promul-
59 gated by the board to support the present and future
60 beneficial uses of the state's groundwater.

61 (f) Where a person establishes to the director that (1)
62 the measures necessary to preserve existing quality are
63 not technically feasible or economically practical and (2)
64 a change in groundwater quality is justified based upon
65 economic or societal objectives, the director may allow

66 for a deviation from such existing quality. Upon the
67 director's finding of (1) and (2) above, the director may
68 grant or deny such a deviation for a specific site, activity
69 or facility or for a class of activities or facilities which
70 have impacts which are substantially similar and exist
71 in a defined geographic area. The director's reasons for
72 granting or denying such a deviation shall be set forth
73 in writing and the director has the exclusive authority
74 to determine the terms and conditions of such a
75 deviation. To insure that groundwater standards
76 promulgated by the board are not violated and that the
77 present and future beneficial uses of groundwater are
78 maintained and protected, the director shall evaluate
79 the cumulative impacts of all facilities and activities on
80 the groundwater resources in question prior to any
81 granting of such deviation from existing quality. The
82 director shall consult with the department of agricul-
83 ture and the bureau of public health as appropriate in
84 the implementation of this subsection. The director
85 shall, upon a written request for such information,
86 provide notice of any deviations from existing quality
87 granted pursuant to this subsection.

88 (g) Should the approval required in subsection (f) of
89 this section be granted allowing for a deviation from
90 existing quality, the groundwater regulatory agencies
91 shall take such alternative action as may be necessary
92 to assure that facilities and activities within their
93 respective jurisdictions maintain and protect the
94 standards of purity and quality promulgated by the
95 board to support the present and future beneficial uses
96 for that groundwater. In maintaining and protecting
97 such standards of the board, such agencies shall
98 establish preventative action limits which, once reached,
99 shall require action to control a source of contamination
100 to assure that such standards are not violated. The
101 director shall provide guidelines to the groundwater
102 regulatory agencies with respect to the establishment of
103 such preventative action limits.

104 (h) Subsections (e), (f) and (g) of this section do not
105 apply to coal extraction and earth disturbing activities
106 directly involved in coal extraction that are subject to

107 either or both article three or eleven of this chapter.
108 Such activities are subject to all other provisions of this
109 article.

110 (i) This article is not applicable to groundwater within
111 areas of geologic formations which are site specific to:

112 (1) The production or storage zones of crude oil or
113 natural gas and which are utilized for the exploration,
114 development or production of crude oil or natural gas
115 permitted pursuant to articles six, seven, eight, nine or
116 ten of this chapter; and

117 (2) The injection zones of Class II or III wells
118 permitted pursuant to the statutes and rules governing
119 the underground injection control program.

120 All groundwater outside such areas remain subject to
121 the provisions of this article. Groundwater regulatory
122 agencies have the right to require the submission of data
123 with respect to the nature of the activities subject to this
124 subsection.

125 (j) Those agencies regulating the activities specified
126 in subsections (h) and (i), of this section retain their
127 groundwater regulatory authority as provided for in the
128 relevant statutes and rules governing such activities,
129 other than this article.

130 (k) The director has authority to modify the require-
131 ments of subsection (g) of this section with respect to
132 noncoal mining activities subject to article four of this
133 chapter. Such modification shall assure protection of
134 human health and the environment. Those agencies
135 regulating such noncoal mining activities shall retain
136 their groundwater regulatory authority as provided for
137 in the relevant statutes and rules governing such
138 activities other than this article.

139 (l) If the director proposes a need for a variance for
140 classes of activities which by their nature cannot be
141 conducted in compliance with the requirements of
142 subsection (g) of this section, then the director shall
143 promulgate legislative rules in accordance with chapter
144 twenty-nine-a of this code, following public hearing on
145 the record. The rules so promulgated shall set forth the

146 director's findings to substantiate such need and the
147 criteria by which such variances shall be granted or
148 denied. Should any person petition or request the
149 director to undertake such a determination, that person
150 will give contemporaneous notice of such petition or
151 request by Class I advertisement in a newspaper of
152 general circulation in the area to be affected by the
153 request.

154 (m) All rules, permits, policies, directives and orders
155 of the department of agriculture, the bureau of public
156 health and division of environmental protection, in effect
157 on the effective date of this article and which are
158 consistent with this article shall remain in full force and
159 effect as if they were issued pursuant to this article
160 unless and until modified pursuant to this article.

**§22-12-6. Lead agency designation; additional powers
and duties.**

1 (a) The division of environmental protection is hereby
2 designated to be the lead agency for groundwater and
3 is authorized and shall perform the following additional
4 powers and duties:

5 (1) To maintain the state groundwater management
6 strategy;

7 (2) To develop, as soon as practical, a central ground-
8 water data management system for the purpose of
9 providing information needed to manage the state's
10 groundwater program;

11 (3) To provide a biennial report to the Legislature on
12 the status of the state's groundwater and groundwater
13 management program, including detailed reports from
14 each groundwater regulatory agency;

15 (4) To coordinate with other agencies to develop a
16 uniform groundwater program;

17 (5) To perform any and all acts necessary to obtain
18 the benefits to the state of any federal program related
19 to groundwater;

20 (6) To receive grants, gifts or contributions for
21 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 ative 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-

61 ing to the maintenance and protection of groundwater,
62 and to collect data with respect thereto, all as may be
63 deemed advisable and necessary to carry out the
64 purposes of this article, and to make reports and
65 recommendations with respect thereto;

66 (4) To conduct groundwater sampling, data collection,
67 analyses and evaluation with sufficient frequency so as
68 to ascertain the characteristics and quality of ground-
69 water, and the sufficiency of the groundwater protection
70 programs established pursuant to this article;

71 (5) To develop a public education and promotion
72 program to aid and assist in publicizing the need of and
73 securing support for the maintenance and protection of
74 groundwater.

**§22-12-7. Groundwater coordinating committee;
creation.**

1 (a) The state groundwater coordinating committee is
2 continued. It consists of the commissioner of the bureau
3 of public health, the commissioner of agriculture, the
4 chair of the environmental quality board, the chief of the
5 office of water resources of the division of environmental
6 protection and the director of the division of environ-
7 mental protection who shall serve as its chair.

8 (b) The groundwater coordinating committee shall
9 consult, review and make recommendations on the
10 implementation of this article by each of the ground-
11 water regulatory agencies. Such committee shall
12 require the periodic submittal to it of the groundwater
13 protection programs of each groundwater regulatory
14 agency including all rules, permits, policies, directives
15 and any other regulatory devices employed to imple-
16 ment this article.

17 (c) Upon a review of such programs, the groundwater
18 coordinating committee shall recommend to the director
19 approval of such programs, in whole or in part, and
20 identify in writing any aspect of such programs that are
21 not sufficient to satisfy the requirements of this article
22 and specify a reasonable time period for correcting those
23 portions of the program that are found not to be
24 sufficient.

25 (d) The director may accept the recommendation of
26 the committee, in whole or in part, and identify in
27 writing any additional aspects of such programs that
28 are not sufficient to satisfy the requirements of this
29 article and specify a time period for correcting those
30 portions of the program that are found not to be
31 sufficient.

32 (e) In the biennial report to the Legislature required
33 by this article, the director shall identify all portions of
34 groundwater protection programs which have been
35 determined not to be sufficient to satisfy the require-
36 ments of this article and which have not been adequately
37 addressed within the time period specified by the
38 director.

39 (f) No agency shall modify any aspect of its ground-
40 water protection program as approved by the director
41 without the prior written approval of the director of
42 such modification. This requirement does not relieve
43 such agency of any other requirements of law that may
44 be applicable to such a modification.

45 (g) The groundwater coordinating committee is
46 authorized and empowered to promulgate such legisla-
47 tive rules as may be necessary to implement this section
48 in accordance with the provisions of chapter twenty-
49 nine-a of this code.

§22-12-8. Groundwater certification.

1 (a) To ensure a comprehensive, consistent and unfrag-
2 mented approach to the management and protection of
3 groundwater, including evaluation of the cumulative
4 effects of all activities that have the potential to impact
5 on groundwater, the director shall oversee and coordi-
6 nate the implementation of this article by each of the
7 groundwater regulatory agencies through a ground-
8 water certification program as hereby established.

9 (b) Every state, county or local government body
10 which reviews or issues permits, licenses, registrations,
11 certificates of other forms of approval, or renewal
12 thereof, for activities or practices which may affect
13 groundwater quality shall first submit to the director

14 for review and approval an application for certification.
15 Such application shall include a copy of the approval
16 proposed by such body, including any terms and
17 conditions which have been imposed by it. Upon receipt
18 of this application, the director shall act within thirty
19 days to determine whether to waive or exercise his or
20 her certification powers. If no decision is made or
21 communicated by the director within said thirty day
22 period, groundwater certification is approved. If the
23 director decides to exercise his or her certification
24 powers, he or she may utilize additional time, not to
25 exceed an additional sixty days, to further review the
26 materials submitted or to conduct such investigations as
27 he or she deems necessary.

28 (c) The director may waive, grant, grant with
29 conditions, or deny groundwater certification. Ground-
30 water certification, and all conditions required under
31 such certification, shall become a condition on any
32 permit, approval or renewal thereof, issued by any state,
33 county or local government body. Where appropriate,
34 the director may provide general groundwater certifi-
35 cation for or may waive certification for classes or
36 categories of activities or approvals.

**§22-12-9. Groundwater protection fees authorized; direc-
tor to promulgate rules; dedication of fee
proceeds; groundwater protection fund es-
tablished; groundwater remediation fund
established.**

1 (a) The director of the division of environmental
2 protection shall promulgate legislative rules in accord-
3 ance with the provisions of chapter twenty-nine-a of
4 this code establishing a schedule of groundwater
5 protection fees applicable to persons who own or operate
6 facilities or conduct activities subject to the provisions
7 of this article. The schedule of fees shall be calculated
8 by the director to recover the reasonable and necessary
9 costs of implementing the provisions of this article as it
10 relates to a particular facility or activity. In addition,
11 the fee may include an appropriate assessment of other
12 program costs not otherwise attributable to any partic-
13 ular facility or activity. Such fees in the aggregate shall

14 not exceed one million dollars per year and shall be
15 deposited into the groundwater protection fund estab-
16 lished pursuant to this article: *Provided*, That any
17 unexpended balance in the groundwater protection fund
18 at the end of each fiscal year may, by an act of the
19 Legislature, be transferred to the groundwater remedi-
20 ation fund created by this article: *Provided, however*,
21 That if no action is taken to transfer the unexpended
22 balance to the remediation fund, such moneys shall not
23 be transferred to the general revenue fund, but shall
24 remain in the groundwater protection fund. Such fees
25 imposed by this section are in addition to all other fees
26 and taxes levied by law. The director shall require such
27 fees to be paid at the time of certification pursuant to
28 section eight of this article, or at such more frequent
29 time as the director may deem to be appropriate. The
30 director may withhold certification pursuant to section
31 eight of this article where such fees have not been timely
32 paid.

33 (b) The director of the division of environmental
34 protection shall also promulgate legislative rules in
35 accordance with the provisions of chapter twenty-nine-
36 a of this code establishing a schedule of groundwater
37 remediation fees which in the aggregate shall not exceed
38 two hundred fifty thousand dollars. Such groundwater
39 remediation fees shall be assessed over a time period not
40 to exceed two years from effective date of such rules and
41 shall be deposited into the groundwater remediation
42 fund established pursuant to this article. Such fees shall
43 be assessed against persons who own or operate facilities
44 or conduct activities subject to the provisions of this
45 article in proportion to the groundwater protection fees
46 assessed pursuant to subsection (a) of this section for the
47 year in which such groundwater remediation fees, or
48 any portion thereof, are assessed.

49 (c) The following two special revenue accounts are
50 continued in the state treasury:

51 (1) The "Groundwater Protection Fund", the moneys
52 of which shall be expended by the director in the
53 administration, certification, enforcement, inspection,
54 monitoring, planning, research and other activities of

55 the environmental quality board, division of environ-
56 mental protection, bureau of public health and depart-
57 ment of agriculture in accordance with legislative rules
58 promulgated pursuant to the provisions of chapter
59 twenty-nine-a of this code. The moneys, including the
60 interest thereon, in said fund shall be kept and main-
61 tained by the director and expended without appropri-
62 ation by the Legislature for the purpose of implement-
63 ing the provisions of this article. The director may
64 withhold the payment of any such moneys to any agency
65 whose groundwater protection program has been
66 determined by the director, in consultation with the
67 groundwater coordinating committee, not to be suffi-
68 cient to satisfy the requirements of this article and
69 where such agency has failed to adequately address such
70 determination within the time period specified by the
71 director. At the end of each fiscal year, any unexpended
72 balance of said fund may not be transferred to the
73 general revenue fund, but shall remain in the ground-
74 water protection fund.

75 (2) The "Groundwater Remediation Fund", the
76 moneys of which, to the extent that moneys are avail-
77 able, shall be expended by the director for the purposes
78 of investigation, clean-up and remedial action intended
79 to identify, minimize or mitigate damage to the
80 environment, natural resources, public and private
81 water supplies, surface waters and groundwaters and
82 the public health, safety and general welfare which may
83 result from contamination of groundwater or the related
84 environment. The director or other authorized agency
85 officials are authorized to recover through civil action
86 or cooperative agreements with responsible persons the
87 full amount of any and all groundwater remediation
88 fund moneys expended pursuant to this article. All
89 moneys expended from such fund which are so reco-
90 vered shall be deposited in such fund. The director may
91 expend moneys from said fund and the interest thereon
92 without necessity of appropriation by the Legislature.
93 All civil penalties and assessments of civil administra-
94 tive penalties collected pursuant to this article shall be
95 deposited into the said fund. In addition, said fund may
96 receive proceeds from any gifts, grants, contributions or

97 other moneys accruing to the state which are specifically
98 designated for inclusion in the fund.

§22-12-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearings.

1 (a) Any person who violates any provision of this
2 article, or any permit or agency approval, rule or order
3 issued to implement this article, is subject to civil
4 penalties in accordance with the provisions of section
5 twenty-two, article eleven of this chapter: *Provided*,
6 That such penalties are in lieu of civil penalties which
7 may be imposed under other provisions of this code for
8 the same violation.

9 (b) Any person who willfully or negligently violates
10 any provision of this article, or any provision of a permit
11 or agency approval, rule or order issued to implement
12 this article, is subject to criminal penalties in accordance
13 with the provisions of section twenty-four, article
14 eleven of this chapter: *Provided*, That such penalties are
15 in lieu of other criminal penalties which may be imposed
16 under other provisions of this code for the same
17 violation.

18 (c) Any person who violates any provision of this
19 article, or any permit or rule or order issued to
20 implement this article, is subject to a civil administrative
21 penalty to be levied by the director, the commissioner
22 of agriculture or the commissioner of the bureau
23 of public health, as appropriate, of not more than five
24 thousand dollars for each day of such violation, not to
25 exceed a maximum of twenty thousand dollars. In
26 assessing any such penalty, any such official shall take
27 into account the seriousness of the violation and any
28 good faith efforts to comply with applicable requirements
29 as well as any other appropriate factors as may
30 be established by such official by legislative rules
31 promulgated pursuant to this article and the provisions
32 of chapter twenty-nine-a of this code. No assessment
33 may be levied pursuant to this subsection until after the
34 alleged violator has been notified by such official by

35 certified mail or personal service. The notice shall
36 include a reference to the section of the statute, rule,
37 order or statement of permit conditions that was
38 allegedly violated, a concise statement of the facts
39 alleged to constitute the violation, a statement of the
40 amount of the administrative penalty to be imposed and
41 a statement of the alleged violator's right to an informal
42 hearing. The alleged violator shall have twenty calendar
43 days from receipt of the notice within which to deliver
44 to such official a written request for an informal
45 hearing. If no hearing is requested, the notice becomes
46 a final order after the expiration of the twenty-day
47 period. If a hearing is requested, such official shall
48 inform the alleged violator of the time and place of the
49 hearing. Such official may appoint an assessment officer
50 to conduct the informal hearing who shall make a
51 written recommendation to such official concerning the
52 assessment of a civil administrative penalty. Within
53 thirty days following the informal hearing, such official
54 shall issue and furnish to the violator a written decision,
55 and the reasons therefor, concerning the assessment of
56 a civil administrative penalty. Within thirty days after
57 notification of such official's decision, the alleged
58 violator may request a formal hearing before the board
59 in accordance with the provisions of section eleven of
60 this article. Any administrative civil penalty assessed
61 pursuant to this section is in lieu of any other civil
62 penalty which may be assessed under any provision of
63 this code for the same violation. No combination of
64 assessments against any violator under this section may
65 exceed twenty-five thousand dollars per day of each such
66 violation. All administrative penalties shall be levied in
67 accordance with legislative rules promulgated by such
68 official in accordance with the provisions of chapter
69 twenty-nine-a of this code.

70 (d) The net proceeds of all civil penalties collected
71 pursuant to subsection (a) of this section and all
72 assessments of any civil administrative penalties
73 collected pursuant to subsection (c) of this section shall
74 be deposited into the groundwater remediation fund
75 established pursuant to this article.

76 (e) Any such official may seek an injunction, or may
77 institute a civil action against any person in violation of
78 any provision of this article or any permit, agency
79 approval, rule or order issued to implement this article.
80 In seeking an injunction, it is not necessary for such
81 official to post bond nor to allege or prove at any point
82 in the proceeding that irreparable damage will occur if
83 the injunction is not issued or that the remedy at law
84 is inadequate. An application for injunctive relief or a
85 civil penalty action under this section may be filed and
86 relief granted notwithstanding the fact that all adminis-
87 trative remedies provided for in this article have not
88 been exhausted or invoked against the person or persons
89 against whom such relief is sought.

90 (f) If any such official upon inspection, investigation
91 or through other means observes, discovers or learns of
92 a violation of the provisions of this article, or any permit,
93 order or rules issued to implement the provisions of this
94 article, he or she may issue an order stating with
95 reasonable specificity the nature of the violation and
96 requiring compliance immediately or within a specified
97 time. An order under this section includes, but is not
98 limited to, any or all of the following: Orders implement-
99 ing this article which (1) suspend, revoke or modify
100 permits; (2) require a person to take remedial action; or
101 (3) are cease and desist orders.

102 (g) Any person issued a cease and desist order under
103 subsection (f) of this section may file a notice of request
104 for reconsideration with such official not more than
105 seven days from the issuance of such order and shall
106 have a hearing before such official to contest the terms
107 and conditions of such order within ten days after filing
108 such notice of a request for reconsideration. The filing
109 of a notice of request for reconsideration does not stay
110 or suspend the execution or enforcement of such cease
111 and desist order.

§22-12-11. Appeal procedures.

1 Any person having an interest which is or may be
2 adversely affected, or who is aggrieved by an order of
3 the director or any public official authorized to take or

4 implement an agency action, or by the issuance or denial
5 of a permit issued to implement this article or by such
6 permit's term or conditions, or by the failure or refusal
7 to act within a reasonable time, may appeal to the
8 environmental quality board as provided in article one,
9 chapter twenty-two-b of this code.

§22-12-12. Rule-making petition.

1 Any person may petition the appropriate rule-making
2 agency for rule making on an issue arising under this
3 article. The appropriate rule-making agency, if it
4 believes such issue to merit rule making, may initiate
5 rule making in accordance with the provisions of
6 chapter twenty-nine-a of this code. A decision by the
7 appropriate rule-making agency not to pursue rule
8 making must set forth in writing reasons for refusing
9 to do so. Any person may petition an agency to issue a
10 declaratory ruling pursuant to section one, article four,
11 chapter twenty-nine-a of this code with respect to the
12 applicability to any person, property or state of facts of
13 any rules promulgated by that agency pursuant to this
14 article.

§22-12-13. Existing rights and remedies preserved; effect of compliance.

1 (a) It is the purpose of this article to provide
2 additional and cumulative remedies to address the
3 quality of the groundwater of the state. This article does
4 not alter the authority of any agency with respect to
5 water other than groundwater. Except as expressly
6 stated in this article, it is not the intention of the
7 Legislature in enacting this article to repeal any other
8 provision of this code.

9 (b) Nothing contained in this article abridges or alters
10 rights of action or remedies now or hereafter existing,
11 nor do any provisions in this article, or any act done by
12 virtue of this article, estop the state, municipalities,
13 public health officers or persons as riparian owners or
14 otherwise, in the exercise of their rights to suppress
15 nuisances or to abate any pollution now or hereafter
16 existing, or to recover damages.

17 (c) Where a person is operating a source or conducting
 18 an activity in compliance with the terms and conditions
 19 of a permit, rule, order, directive or other authorization
 20 issued by a groundwater regulatory agency pursuant to
 21 this article, such person is not subject to criminal
 22 prosecution for pollution recognized and authorized by
 23 such permit, rule, order, directive or other authoriza-
 24 tion.

§22-12-14. Effective dates of provisions subject to federal approval.

1 To the extent that this article modifies any powers,
 2 duties, functions and responsibilities of any state agency
 3 that may require approval of one or more federal
 4 agencies or officials in order to avoid disruption of the
 5 federal-state relationship involved in the implementa-
 6 tion of federal regulatory programs by the state, any
 7 such modifications become effective upon a proclama-
 8 tion by the governor stating either that final approval
 9 of such modifications has been given by the appropriate
 10 federal agency or official or that final approval of such
 11 modification is not necessary to avoid disruption of the
 12 federal-state relationship under which such regulatory
 13 programs are implemented.

ARTICLE 13. NATURAL STREAMS PRESERVATION ACT.

- §22-13-1. Short title.
- §22-13-2. Declaration of public policy.
- §22-13-3. Definitions.
- §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.
- §22-13-13. Priority of actions.
- §22-13-14. Violations; criminal penalties.
- §22-13-15. Exceptions as to criminal liabilities.

§22-13-1. Short title.

1 This article may be known and cited as the "Natural
2 Streams Preservation Act."

§22-13-2. Declaration of public policy.

1 In order to assure that an increasing population,
2 accompanied by expanding settlement and growing
3 mechanization, does not impound, flood or divert all
4 streams within the state of West Virginia, leaving no
5 streams designated for preservation and protection in
6 their natural condition, it is hereby declared to be the
7 public policy of this state to secure for the citizens of
8 West Virginia of present and future generations the
9 benefits of an enduring resource of free-flowing streams
10 possessing outstanding scenic, recreational, geological,
11 fish and wildlife, botanical, historical, archeological or
12 other scientific or cultural values.

***§22-13-3. Definitions.**

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

3 (1) "Board" means the environmental quality board;

4 (2) "Director" means the director of the division of
5 environmental protection or such other person to whom
6 the director has delegated authority or duties pursuant
7 to sections six or eight, article one of this chapter;

8 (3) "Free-flowing" means existing or flowing in
9 natural condition without impoundment, by diversion,
10 or flooding of the waterway;

11 (4) "Modification" means the impounding, diverting or
12 flooding of a stream within the natural stream preser-
13 vation system;

14 (5) "Modify" means to impound, divert or flood a
15 stream within the natural stream preservation system;

16 (6) "Permit" means a permit required by section seven
17 of this article;

18 (7) "Person," "persons" or "applicants" means any
19 public or private corporation, institution, association,
20 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.

21 of this or any other state or country; state of West
22 Virginia; governmental agencies; political subdivision;
23 county commission; municipal corporations; industries;
24 sanitary district; public service district; drainage
25 district; soil conservation district; watershed improve-
26 ment district; partnership; trust; estate; person or
27 individual; group of persons or individuals acting
28 individually or as a group; or any other legal entity
29 whatever;

30 (8) "Protected stream" means any stream designated
31 as such in section five of this article, but does not include
32 tributaries or branches unless specifically designated or
33 described in section five of this article;

34 (9) "Stream" means a flowing body of water or a
35 section or portion thereof, including rivers, streams,
36 creeks, branches or small lakes.

§22-13-4. Establishment of natural stream preservation system.

1 For the purpose of implementing the public policy
2 declared in section two of this article, there is hereby
3 established a natural stream preservation system to be
4 composed of streams designated by the Legislature as
5 "protected streams," and these shall be administered for
6 the use and enjoyment of the citizens of West Virginia
7 in such manner as will leave them unimpaired for
8 future use and enjoyment as free-flowing streams, and
9 so as to provide for the protection and the preservation
10 of these streams in their natural character.

§22-13-5. Designation of protected streams.

1 The following streams are hereby designated as
2 protected streams within the natural streams preserva-
3 tion system, namely:

4 (a) Greenbrier River from its confluence with Knapps
5 Creek to its confluence with the New River.

6 (b) Anthony Creek from its headwaters to its conflu-
7 ence with the Greenbrier River.

8 (c) Cranberry River from its headwaters to its
9 confluence with the Gauley River.

10 (d) Birch River from the Cora Brown bridge in
11 Nicholas county to the confluence of the river with the
12 Elk River.

13 (e) New River from its confluence with the Gauley
14 River to its confluence with the Greenbrier River.

§22-13-6. General powers and duties of director with respect to protected streams.

1 (a) In addition to all other powers and duties of the
2 director, as prescribed in this article or elsewhere by
3 law, the director shall exercise supervision over the
4 administration and enforcement of the provisions of this
5 article, and all orders and permits issued pursuant to
6 the provisions of this article.

7 (b) In addition to all other powers and duties of the
8 director, as prescribed in this article or elsewhere by
9 law, the director has authority to promulgate rules, in
10 accordance with the provisions of chapter twenty-nine-
11 a of this code, to implement and make effective the
12 powers, duties and responsibilities vested in the director
13 by the provisions of this article and otherwise by law:
14 *Provided*, That all such rules shall be consistent with the
15 declaration of public policy set forth in section two of
16 this article.

17 (c) The director and duly authorized representatives,
18 have the power and authority to make investigations,
19 inspections and inquiries concerning compliance with
20 the provisions of this article, any order made and
21 entered in accordance with the provisions of this article,
22 any rules promulgated by the director, and with the
23 terms and conditions of any permit issued in accordance
24 with the provisions of section nine of this article. In
25 order to make such investigations, inspections and
26 inquiries, the director and duly authorized representa-
27 tives, have the power and authority to enter at all
28 reasonable times upon any private or public property,
29 subject to responsibility for any damage to the property
30 entered. Upon entering, and before making any inves-
31 tigation, inspection and inquiry, such person shall
32 immediately present himself or herself to the occupant
33 of the property. Upon entering property used in any

34 manufacturing, mining or other commercial enterprise,
35 or by any municipality or governmental agency or a
36 subdivision, and before making any investigation,
37 inspection and inquiry, such person shall immediately
38 present himself or herself to the person in charge of the
39 operation, and if he or she is not available, to a
40 managerial employee. All persons shall cooperate fully
41 with the person entering such property for such
42 purposes. Upon a refusal of the person owning or
43 controlling such property to permit such entrance or the
44 making of such inspections, investigations and inquiries,
45 the director may apply to the circuit court of the county
46 in which such property is located, or to the judge thereof
47 in vacation, for an order permitting such entrance and
48 the making of such inspections, investigations, and
49 inquiries; and jurisdiction is hereby conferred upon such
50 court to enter such order upon a showing that the relief
51 asked is necessary for the proper enforcement of this
52 article. Nothing contained in this section eliminates any
53 obligation to follow any process that may be required
54 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
2 permit therefor has been granted, to modify any
3 protected stream or any part thereof. No permit shall
4 be issued unless the work proposed to be done under
5 such permit: (a) Will not materially alter or affect the
6 free-flowing characteristics of a substantial part of a
7 protected stream or streams; (b) is necessary to prevent
8 an undue hardship; and (c) meets with the approval of
9 the director.

§22-13-8. Application for permit; form of application; information required; fees.

1 The director shall prescribe a form of application for
2 all permits. All applications for permits shall be
3 submitted to the division and shall be on the prescribed
4 form.

5 A permit fee of ten dollars shall accompany the
6 application when filed with the division. The permit fee

7 shall be deposited in the state treasury to the credit of
8 the state general fund.

**§22-13-9. Procedure for issuance or denial of permit;
transfer of permits.**

1 (a) Before issuing a permit, a public hearing shall be
2 held. The director shall consider the application and
3 shall fix a time and place for hearing on such applica-
4 tion. The hearing shall be held in a county in which the
5 proposed modification is to be made and, if the proposed
6 modification is to be made in more than one county, then
7 a separate hearing shall be held in each county in which
8 the proposed modification is to be made. The applicant
9 shall cause a notice of the time and place of such hearing
10 and the purpose thereof to be published as a Class III-
11 0 legal advertisement in compliance with the provisions
12 of article three, chapter fifty-nine of this code, and the
13 publication area for such publication is the county or
14 counties in which the proposed modification is to be
15 made. Publication of the notice shall be completed at
16 least fifteen days before such hearing. The applicant
17 shall also cause to be served, at least fifteen days before
18 such hearings, in the manner provided by law for the
19 service of notice and process, a notice showing the time,
20 place and purpose of such hearing, upon every owner of
21 property, and every person holding a lien thereon,
22 abutting on that portion of the stream on which the
23 modification is to be made, or abutting on any portion
24 of such stream within two miles above or below the
25 proposed modification. The affidavit of publication of
26 such notice shall be filed with the director or his or her
27 duly designated hearing examiner at or before the
28 hearing as a part of the record in the proceedings.

29 (b) At the time and place fixed for the hearings, the
30 director or his or her duly designated hearing examiner
31 shall hear any evidence relating to the proposed
32 modification, the necessity therefor, the effect of such
33 modification on the stream and any and all other
34 matters relevant to the application and the proposed
35 modification. If the director concludes and finds upon
36 the record and evidence in the proceedings that the
37 proposed modification should be permitted, he or she

38 shall proceed to issue the permit: *Provided*, That the
39 director may attach such conditions, qualifications or
40 limitations to such permit as he or she finds appropriate.

41 (c) An application for any such permit shall be acted
42 upon by the director and the division's permit delivered
43 or mailed, or a copy of any order of the director denying
44 any such application mailed as hereinafter specified, as
45 the case may be, to the applicant by the director within
46 forty-five days after the hearings have been completed.

47 (d) When it is established that an application for a
48 permit should be denied, the director shall make and
49 enter an order to that effect, which order shall specify
50 the reasons for such denial, and shall cause a copy of
51 such order to be served on the applicant by registered
52 or certified mail. The director shall also cause a notice
53 to be served with the copy of such order, which notice
54 shall advise the applicant of his or her right to appeal
55 to the board by filing a notice of appeal, on a form
56 prescribed by the board for such purpose, with the
57 board, within the time specified in and in accordance
58 with the provisions of section seven, article one, chapter
59 twenty-two-b of this code. However, an applicant may
60 offer the plans and specifications for the proposed
61 modification and submit a new application for any such
62 permit, in which event the procedure hereinbefore
63 outlined with respect to an original application shall
64 apply.

65 (e) Upon the sale of property which includes an
66 activity for which the division's permit was granted, the
67 permit is transferable to the new owner, but the transfer
68 does not become effective until it is made in the records
69 of the division.

§22-13-10. Inspections; orders to compel compliance with permits; service of order.

1 After issuance of the division's permit for any such
2 modification, the director and duly authorized represen-
3 tatives may make field inspections of the work on the
4 modification, and, after completion thereof, may inspect
5 the completed modification, and, from time to time, may
6 inspect the maintenance and operation of such
7 modification.

8 To compel compliance with the terms and conditions
9 of the division's permit for any such modification and
10 with the plans and specifications therefor and the plan
11 of maintenance and method of operation thereof, the
12 director is hereby authorized after reasonable notice to
13 make and enter an order revoking or suspending such
14 permit and directing the person to whom such permit
15 was issued to stop or suspend any and all work on such
16 activity or, to take affirmative action to correct the
17 deficiencies specified in such order so there will be full
18 compliance with the terms and conditions of such permit
19 and with the plans and specifications therefor, and the
20 plan of maintenance and method of operation thereof.

21 The director shall cause a copy of any such order to
22 be served by registered or certified mail or by a law-
23 enforcement officer upon the person to whom any such
24 permit was issued. The director shall also cause a notice
25 to be served with the copy of such order, which notice
26 shall advise such person of his or her right to appeal to
27 the board by filing a notice of appeal on the form
28 prescribed by the board for such purpose, with the
29 board, within the time specified in and in accordance
30 with the provisions of section seven, article one, chapter
31 twenty-two-b of this code.

§22-13-11. Appeal to environmental quality board.

1 (a) Any person adversely affected by an order made
2 and entered by the director in accordance with the
3 provisions of this article, or aggrieved by failure or
4 refusal of the director to act within the time required
5 by section nine of this article on an application for a
6 permit or aggrieved by the terms and conditions of a
7 permit granted under the provisions of this article, may
8 appeal to the environmental quality board for an order
9 vacating or modifying such order, or for such order,
10 action or terms and conditions as the director should
11 have entered, taken or imposed.

12 (b) Notwithstanding the provisions of section nine,
13 article one, chapter twenty-two-b of this code:

14 (1) Appeals from orders of the board in cases
15 involving an order denying an application for a permit,

16 or approving or modifying the terms and conditions of
17 a permit, shall be filed, within the time specified in said
18 section, in the circuit court of any county in which such
19 modification is proposed to be made.

20 (2) Appeals from orders of the board in cases
21 involving an order revoking or suspending a permit and
22 directing any and all work on such modification to stop,
23 or directing that affirmative action be taken to correct
24 alleged and specified deficiencies concerning any such
25 modification, shall be filed, within the time specified in
26 said section, in the circuit court of any county in which
27 any part of such modification is proposed to be made.

§22-13-12. Actions to abate nuisances; injunctive relief.

1 Whether any violation of the provisions of this article
2 or any final order of the director or the board results
3 in prosecution or conviction or not, any such violation
4 is a nuisance which may be abated upon application by
5 the chief to the circuit court of the county in which such
6 nuisance or any part thereof exists, or to the judge
7 thereof in vacation. Upon application by the director,
8 the circuit courts of this state may by mandatory or
9 prohibitive injunction compel compliance with all final
10 orders of the director or board. Any application for an
11 injunction to compel compliance with any final order of
12 the director or board shall be made to the circuit court
13 of any county in which the modification to which the
14 order relates is proposed to be made, or in which the
15 modification to which the order relates is situate or
16 would be situate upon completion thereof. Upon appli-
17 cation by the director to the circuit court of the county
18 in which a municipal corporation is located, or in which
19 any person resides or does business, or to the judge
20 thereof in vacation, such court may by injunction
21 require the performance of any duty imposed upon such
22 municipal corporation or person by the provisions of this
23 article. The court may issue a temporary injunction in
24 any case pending a decision on the merits of any
25 application filed. In cases of modifications where
26 irreparable damage will result from any delay incident
27 to the administrative procedures set forth in this article,
28 the director may forthwith apply to the circuit court of

29 any county in which the modification is taking place for
30 a temporary injunction. Such court may issue a tempor-
31 ary injunction pending final disposition of the case by
32 the director or the board, in the event an appeal is taken
33 to the board.

34 The judgment of the circuit court upon any applica-
35 tion permitted by the provisions of this section is final
36 unless reversed, vacated or modified on appeal to the
37 supreme court of appeals. Any such appeal shall be
38 sought in a manner provided by law for appeals for
39 circuit courts in other civil cases, except that the
40 petition seeking such review must be filed with said
41 supreme court of appeals within ninety days from the
42 date of entry of the judgment of the circuit court.

43 The director shall be represented in all such proceed-
44 ings by the attorney general or his or her assistant and
45 in such proceedings in the circuit court by the prosecut-
46 ing attorneys of the several counties as well, all without
47 additional compensation.

§22-13-13. Priority of actions.

1 All applications under section twelve of this article
2 and all proceedings for judicial review under article one,
3 chapter twenty-two-b of this code shall take priority on
4 the docket of the circuit court in which pending, and
5 shall take precedence over all other civil cases. Where
6 such applications and proceedings for judicial review
7 are pending at the same time, such applications shall
8 take priority on the docket and shall take precedence
9 over proceedings for judicial review.

§22-13-14. Violations; criminal penalties.

1 Any person who fails or refuses to discharge any duty
2 imposed upon him or her by this article or by any final
3 order of the director or board, or who fails or refuses
4 to apply for and obtain a permit as required by the
5 provisions of this article, is guilty of a misdemeanor,
6 and, upon conviction thereof, shall be punished for a
7 first offense by a fine of not less than twenty-five dollars
8 nor more than one hundred dollars, and for a second
9 offense by a fine of not less than two hundred dollars

10 nor more than five hundred dollars, and for a third
11 offense and each subsequent offense by a fine of not less
12 than five hundred dollars nor more than one thousand
13 dollars or by imprisonment for a period not to exceed
14 six months, or in the discretion of the court by both such
15 fine and imprisonment.

§22-13-15. Exceptions as to criminal liabilities.

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.

- §22-14-1. Short title.
- §22-14-2. Legislative findings; intent and purpose of article.
- §22-14-3. Definition of terms used in article.
- §22-14-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.
- §22-14-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.
- §22-14-6. Plans and specifications for dams to be in charge of registered professional engineer.
- §22-14-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.
- §22-14-8. Content of certificates of approval for dams; revocation or suspension of certificates.
- §22-14-9. Inspections during progress of work on dam.
- §22-14-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.
- §22-14-11. Requirements for dams completed prior to effective date of this section.
- §22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.
- §22-14-13. Offenses and penalties.
- §22-14-14. Enforcement orders; hearings.
- §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.

1 This article shall be known and cited as the “Dam
2 Control and Safety Act”.

§22-14-2. Legislative findings; intent and purpose of article.

1 The Legislature finds that dams may constitute a
2 potential hazard to people and property; therefore, dams
3 in this state must be properly regulated and controlled
4 to protect the health, safety and welfare of people and
5 property in this state. It is the intent of the Legislature
6 by this article to provide for the regulation and
7 supervision of dams in this state to the extent necessary
8 to protect the public health, safety and welfare. The
9 Legislature has ordained this article to fulfill its
10 responsibilities to the people of this state and to protect
11 their lives and private and public property from the
12 danger of a potential or actual dam failure. The
13 Legislature finds and declares that in light of the
14 limited state resources available for the purposes of this
15 article, and in view of the high standards to which the
16 United States soil conservation service designs dams,
17 independent state review of the plans and specifications
18 for dams designed by the soil conservation service and
19 construction oversight should not be required. The
20 Legislature further finds and declares that dams
21 designed and constructed by the soil conservation
22 service but not owned or operated by it should be subject
23 to the same provisions of inspection, after construction
24 and certification by the soil conservation service, as
25 other dams covered by this article, so long as any dam
26 under the soil conservation service program is designed
27 with standards equal to or exceeding state requirements
28 under this article.

§22-14-3. Definition of terms used in article.

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

3 (a) “Alterations” or “repairs” means only those
4 changes in the structure or integrity of a dam which

5 may affect its safety, which determination shall be made
6 by the director.

7 (b) "Application for a certificate of approval" means
8 the request in writing by a person to the director
9 requesting that person be issued a certificate of
10 approval.

11 (c) "Appurtenant works" means any structure or
12 facility which is an adjunct of, or connected, appended
13 or annexed to a dam, including, but not limited to,
14 spillways, a reservoir and its rim, low level outlet works
15 or water conduits such as tunnels, pipelines and
16 penstocks either through the dam or its abutments.

17 (d) "Certificate of approval" means the approval in
18 writing issued by the director to a person who has
19 applied to the director for a certificate of approval
20 which authorizes the person to place, construct, enlarge,
21 alter, repair or remove a dam and specifies the
22 conditions or limitations under which the work is to be
23 performed by that person.

24 (e) "Director" means the director of the division of
25 environmental protection or such other person to whom
26 the director has delegated authority or duties pursuant
27 to sections six or eight, article one of this chapter.

28 (f) "Division" means the division of environmental
29 protection.

30 (g) "Dam" means an artificial barrier or obstruction,
31 including any works appurtenant to it and any reservoir
32 created by it, which is or will be placed, constructed,
33 enlarged, altered or repaired so that it does or will
34 impound or divert water and: (1) Is or will be twenty-
35 five feet or more in height from the natural bed of the
36 stream or watercourse measured at the downstream toe
37 of the barrier and which does or can impound fifteen
38 acre-feet or more of water; or (2) is or will be six feet
39 or more in height from the natural bed of the stream
40 or watercourse measured at the downstream toe of the
41 barrier and which does or can impound fifty acre-feet
42 or more of water: *Provided*, That the term "dam" does
43 not include: (A) Any dam owned by the federal govern-

44 ment; (B) any dam for which the operation and main-
45 tenance thereof is the responsibility of the federal
46 government; (C) farm ponds constructed and used
47 primarily for agricultural purposes, including, but not
48 limited to, livestock watering, irrigation, retention of
49 animal wastes and fish culture, and which have no
50 potential to cause loss of human life in the event of
51 embankment failure; or (D) structures which do not or
52 will not impound water under normal conditions and
53 which have a designed culvert or similar conveyance or
54 such capacity as would be used under a highway at the
55 same location: *Provided, however,* That the director may
56 apply the provisions of section ten of this article for
57 hazardous, nonimpounding structures which are
58 brought to his or her attention.

59 (h) "Enlargement" means any change in or addition
60 to an existing dam which: (1) Raises the height of the
61 dam; (2) raises or may raise the water storage elevation
62 of the water impounded by the dam; (3) increases or may
63 increase the amount of water impounded by the dam;
64 or (4) increases or may increase the watershed area from
65 which water is impounded by the dam.

66 (i) "Person" means any public or private corporation,
67 institution, association, society, firm, organization or
68 company organized or existing under the laws of this or
69 any other state or country; the state of West Virginia;
70 any state governmental agency; any political subdivision
71 of the state or of its counties or municipalities; sanitary
72 district; public service district; drainage district; soil
73 conservation district; watershed improvement district;
74 partnership; trust; estate; person or individual; group of
75 persons or individuals acting individually or as a group;
76 or any other legal entity whatever. The term "person",
77 when used in this article, includes and refers to any
78 authorized agent, lessee or trustee of any of the
79 foregoing or receiver or trustee appointed by any court
80 for any of the foregoing.

81 (j) "Reservoir" means any basin which contains or will
82 contain impounded water.

83 (k) "Soil conservation service" means the soil conser-

84 vation service of the United States department of
85 agriculture or any successor agency.

86 (l) "Water" means any liquid, including any solids or
87 other matter which may be contained therein, which is
88 or may be impounded by a dam.

89 (m) "Water storage elevation" means the maximum
90 elevation that water can reach behind a dam without
91 encroaching on the freeboard approved for the dam
92 under flood conditions.

§22-14-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.

1 The director has the following powers and duties:

2 (a) To control and exercise regulatory jurisdiction
3 over dams as provided for in this article;

4 (b) To review all applications for a certificate of
5 approval for the placement, construction, enlargement,
6 alteration, repair or removal of any dam;

7 (c) To grant, modify, amend, revoke, restrict or refuse
8 to grant any certificate of approval if proper or
9 necessary to protect life and property as provided in this
10 article;

11 (d) To adopt, modify, repeal and enforce rules and
12 issue orders, in such manner as the director may
13 otherwise do, to implement and make effective the
14 powers and duties vested in it by the provisions of this
15 article;

16 (e) To take any lawful action considered necessary for
17 the effective enforcement of the provisions of this article;

18 (f) To establish and charge reasonable fees not to
19 exceed three hundred dollars for the review of applica-
20 tions for certificates of approval and the issuance thereof
21 and for assessment of an annual registration fee not to
22 exceed one hundred dollars for persons holding a
23 certificate of approval for existing dams. The director
24 shall promulgate rules to establish a schedule of
25 application fees and to establish annual registration

26 fees: *Provided*, That no fee shall be assessed for dams
27 designed and constructed by the soil conservation
28 service for soil conservation districts;

29 (g) To employ qualified consultants or additional
30 persons as necessary to review applications for certifi-
31 cates of approval and to recommend whether they
32 should be approved, to inspect dams and to enforce the
33 provisions of this article;

34 (h) To cooperate and coordinate with agencies of the
35 federal government, this state and counties and munic-
36 ipalities of this state to improve, secure, study and
37 enforce dam safety and dam technology within this
38 state;

39 (i) To investigate and inspect dams as is necessary to
40 implement or enforce the provisions of this article and
41 when necessary to enter the public or private property
42 of any dam owner. The director may investigate, inspect
43 or enter private or public property after notifying the
44 dam owner or other person in charge of the dam of an
45 intent to investigate, inspect or enter: *Provided*, That
46 where the owner or person in charge of the dam is not
47 available, the director may investigate, inspect and
48 enter without notice; and

49 (j) To prepare and publish within a reasonable time,
50 criteria to govern the design, construction, repair,
51 inspection and maintenance of proposed dams herein
52 defined, and to review these criteria annually in order
53 to consider improved technology for inclusion in such
54 criteria.

**§22-14-5. Unlawful to place, construct, enlarge, alter,
repair, remove or abandon dam without
certificate of approval; application required
to obtain certificate.**

1 It is unlawful for any person to place, construct,
2 enlarge, alter, repair, remove or abandon any dam
3 under the jurisdiction of the director until he or she has
4 first: (a) Filed an application for a certificate of
5 approval with the division; and (b) obtained from the
6 division a certificate of approval: *Provided*, That routine

7 repairs which do not affect the safety of a dam are not
8 subject to the application and approval requirements. A
9 separate application for a certificate of approval must
10 be submitted by a person for each dam he or she desires
11 to place, construct, enlarge, alter, repair, remove or
12 abandon. One application may be valid for more than
13 one dam involved in a single project or in the formation
14 of a reservoir.

15 Each application for a certificate of approval shall be
16 made in writing on a form prescribed by the director
17 and shall be signed and verified by the applicant. The
18 application shall contain and provide information which
19 may be reasonably required by the director to admin-
20 ister the provisions of this article.

21 In the case of dams designed by the soil conservation
22 service for transfer to any political subdivision, the
23 director shall, within sixty days after receipt of a
24 completed application therefor, issue a certificate of
25 approval without review of the plans and specifications.

**§22-14-6. Plans and specifications for dams to be in
charge of registered professional engineer.**

1 Plans and specifications for the placement, construc-
2 tion, enlargement, alteration, repair or removal of dams
3 shall be in the charge of a registered professional
4 engineer licensed to practice in West Virginia. Any
5 plans or specifications submitted to the division shall
6 bear the seal of a registered professional engineer.

**§22-14-7. Granting or rejecting applications for certifi-
cate of approval by division; publication of
notice of application; hearing upon
application.**

1 Upon receipt of an application for a certificate of
2 approval and the fee required under the provisions of
3 this article, the director shall proceed to consider the
4 application for sufficiency. The director shall approve or
5 disapprove the application within sixty days after
6 receipt.

7 If an application is defective, it shall be returned to
8 the applicant by certified or registered mail, return

9 receipt requested, in order that the applicant may
10 correct any defect: *Provided*, That a defective applica-
11 tion must be returned to the division by the applicant
12 within thirty days after it has been returned to the
13 applicant or it shall be treated as a new application:
14 *Provided, however*, That for good cause shown, the
15 director may extend the thirty-day period.

16 Upon approval by the director of the sufficiency of the
17 application, the applicant shall immediately publish the
18 application as a Class I legal advertisement in com-
19 pliance with the provisions of article three, chapter fifty-
20 nine of this code, and the publication area for the
21 publication is the county in which the proposed dam is
22 to be located or in which the existing dam is located.
23 The notice shall include, but not be limited to, the name
24 and address of the owner of the dam and the location
25 of the dam for which the application was filed.

26 Any person who may be adversely affected by the
27 issuance of a certificate of approval has a right to a
28 hearing before the director if the person demands the
29 hearing in writing within fifteen days of publication of
30 the certificate of approval. The written request for
31 hearing shall include specific objections to the certifi-
32 cate of approval.

33 Upon receipt by the director of the written request
34 for hearing, the director shall immediately set a date for
35 the hearing and shall notify the person or persons
36 demanding a hearing. The hearing shall be held within
37 ten days after receipt of the written request. The
38 director shall hear evidence from all interested parties
39 and shall either: (1) Refuse to issue a certificate of
40 approval; or (2) issue a certificate of approval which
41 shall be subject to terms, conditions and limitations as
42 the director may consider necessary to protect life and
43 property.

44 Unless otherwise extended by the director, a certif-
45 icate of approval is valid for a period of not more than
46 one year.

**§22-14-8. Content of certificates of approval for dams;
revocation or suspension of certificates.**

1 Each certificate of approval issued by the director
2 under the provisions of this article may contain other
3 terms and conditions as the director may prescribe.

4 The director may revoke or suspend any certificate of
5 approval whenever it is determined that the dam for
6 which the certificate was issued constitutes a danger to
7 life and property. If necessary to safeguard life and
8 property, the director may also amend the terms and
9 conditions of any certificate by issuing a new certificate
10 containing the revised terms and conditions.

11 Before any certificate of approval is amended or
12 revoked by the director, the director shall hold a hearing
13 in accordance with the provisions of article five, chapter
14 twenty-nine-a of this code.

15 Any person adversely affected by an order entered
16 following the hearing has the right to appeal to the
17 environmental quality board pursuant to the provisions
18 of article one, chapter twenty-two-b of this code.

§22-14-9. Inspections during progress of work on dam.

1 During the placement, construction, enlargement,
2 repair, alteration or removal of any dam, the director
3 shall, either with the division's own engineers or by
4 consulting engineers or engineering organizations, make
5 periodic inspections for the purpose of ascertaining
6 compliance with the certificate of approval. The director
7 shall require the owner at his or her expense to perform
8 work or tests as necessary and to provide adequate
9 supervision during the placement, construction, enlarge-
10 ment, repair, alteration or removal of a dam: *Provided,*
11 That with respect to dams designed by and constructed
12 under the supervision of the soil conservation service, as
13 to such dams no state inspections are required.

14 If at any time during placement, construction,
15 enlargement, repair, alteration or removal of any dam,
16 the director finds that the work is not being done in
17 accordance with the provisions of the original or revised
18 certificate of approval, the director shall notify the
19 owner by certified or registered mail, return receipt
20 requested, to correct the deficiency, cease and desist

21 work or to show cause as to why the certificate of
22 approval should not be revoked.

23 The notice shall state the reason or reasons why the
24 work is not in accordance with the certificate of
25 approval. The director may order that work on the dam
26 cease until the owner has complied with the notice.

27 If the director finds that amendments, modifications
28 or changes are necessary to ensure the safety of the dam,
29 the director may order the owner to revise his or her
30 plans and specifications. If conditions are revealed
31 which will not permit the placement, construction,
32 enlargement, repair, alteration or removal of the dam
33 in a safe manner, the certificate of approval may be
34 revoked.

35 Immediately upon completion of a new dam or
36 enlargement, repair or alteration of a dam, the owner
37 shall notify the director: *Provided*, That immediately
38 upon completion of a dam constructed under the
39 supervision of the soil conservation service, a certifica-
40 tion of completion shall be sent to the director by the
41 soil conservation service, and a complete set of design
42 documents "as built" plans, and specifications and safety
43 plan of evacuation shall be provided to the director
44 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.**

1 The owner of a dam has the primary responsibility
2 for determining when an emergency involving a dam
3 exists. When the owner of a dam determines an
4 emergency does exist, the owner shall take necessary
5 remedial action and shall notify the director and the
6 owner shall also notify any persons who may be
7 endangered if the dam should fail.

8 The director shall notify any persons, not otherwise
9 notified, who may be endangered if the dam should fail.
10 The director may take any remedial action necessary to
11 protect life and property if: (a) The condition of the dam

12 so endangers life and property that time is not sufficient
13 to permit the issuance and enforcement of an order for
14 the owner to correct the condition; or (b) passing or
15 imminent floods or other conditions threaten the safety
16 of the dam. Remedial actions may include, but are not
17 limited to:

- 18 (1) Taking full charge and control of the dam;
- 19 (2) Lowering the level of water impounded by the dam
20 by releasing such impounded water;
- 21 (3) Completely releasing all water impounded by the
22 dam;
- 23 (4) Performing any necessary remedial or protective
24 work at the site of the dam;
- 25 (5) Taking any other steps necessary to safeguard life
26 and property.

27 Once the director has taken full charge of the dam,
28 the director shall remain in charge and control until in
29 the director's opinion it has been rendered safe or the
30 emergency occasioning the action has ceased and the
31 director concludes that the owner is competent to
32 reassume control of the dam and its operation. The
33 assumption of control of the dam will not relieve the
34 owner of a dam of liability for any negligent act or acts
35 of the owner or the owner's agent or employee.

36 When the director declares that making repairs to the
37 dam or breaching the dam is necessary to safeguard life
38 and property, repairs or breaching shall be started
39 immediately by the owner, or by the director at the
40 owner's expense, if the owner fails to do so. The owner
41 shall notify the director at once of any emergency
42 repairs or breaching the owner proposes to undertake
43 and of work he or she has under way to alleviate the
44 emergency. The proposed repairs, breaching and work
45 shall be made to conform with orders of the director.
46 The director may obtain equipment and personnel for
47 emergency work from any person as is necessary and
48 expedient to accomplish the required work. Any person
49 undertaking work at the request of the division shall be
50 paid by the division and is immune from civil liability

51 under the provisions of section fifteen, article seven,
52 chapter fifty-five of this code.

53 The costs reasonably incurred in any remedial action
54 taken by the director shall be paid out of funds
55 appropriated to the division. All costs incurred by the
56 division shall be promptly repaid by the owner upon
57 request or, if not repaid, the division may recover costs
58 and damages from the owner by appropriate civil
59 action.

**§22-14-11. Requirements for dams completed prior to
effective date of this section.**

1 The director shall give notice to file an application for
2 a certificate of approval to every owner of a dam which
3 was completed prior to the effective date of this section:
4 *Provided*, That no such notice need be given to a person
5 who has applied for and obtained a certificate of
6 approval on or after the first day of July, one thousand
7 nine hundred seventy-three, in accordance with the
8 provisions of the prior enactment of section five of this
9 article. Such notice shall be given by certified or
10 registered mail, return receipt requested, to the owner
11 at his or her last address of record in the office of the
12 county assessor of the county in which the dam is located
13 and such mailing shall constitute service. A separate
14 application for each dam a person owns shall be filed
15 with the director in writing upon forms supplied by him
16 or her and shall include or be accompanied by appropriate
17 information concerning the dam as the director
18 requires.

19 The director shall make inspections of such dams or
20 reservoirs at state expense. The director shall require
21 owners of such dams to perform at their expense such
22 work or tests as may reasonably be required to disclose
23 information sufficient to enable the director to deter-
24 mine whether to issue a certificate of approval or to
25 issue an order directing further work at the owner's
26 expense necessary to safeguard life and property. For
27 this purpose, the director may require an owner to lower
28 the water level of, or to empty, water impounded by the
29 dam adjudged by the director to be unsafe. If, upon

30 inspection or upon completion to the satisfaction of the
31 director of all work that he or she ordered, the director
32 finds that the dam is safe to impound water, a certificate
33 of approval shall be issued.

§22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.

1 Nothing in this article relieves the owner of a dam
2 of the legal duties, obligations or liabilities incident to
3 the ownership or operation of a dam.

§22-14-13. Offenses and penalties.

1 (a) Any person who violates any of the provisions of
2 this article or any certificate of approval, order, rule or
3 requirement of the director or division is guilty of a
4 misdemeanor, and, upon conviction thereof, shall be
5 fined not less than one hundred dollars nor more than
6 one thousand dollars, or imprisoned in the county jail
7 not more than six months, or both fined and imprisoned.

8 (b) Any person who willfully obstructs, hinders or
9 prevents the director or division or its agents or
10 employees from performing the duties imposed on them
11 by the provisions of this article or who willfully resists
12 the exercise of the control and supervision conferred by
13 the provisions of this article upon the director or division
14 or its agents or employees or any owner or any person
15 acting as a director, officer, agent or employee of an
16 owner, or any contractor or agent or employee of a
17 contractor who engages in the placement, construction,
18 enlargement, repair, alteration, maintenance or removal
19 of any dam who knowingly does work or permits work
20 to be executed on the dam without a certificate of
21 approval or in violation of or contrary to any approval
22 as provided for by the provisions of this article; and any
23 inspector, agent or employee of the division who has
24 knowledge of and who fails to notify the director of
25 unapproved modifications to a dam is guilty of a
26 misdemeanor, and, upon conviction thereof, shall be
27 fined not less than one thousand dollars nor more than
28 five thousand dollars, or imprisoned in the county jail
29 not more than one year, or both fined and imprisoned.

§22-14-14. Enforcement orders; hearings.

1 (a) If the director, upon inspection, investigation or
2 through other means observes, discovers or learns of a
3 violation of the provisions of this article, any certificate
4 of approval, notice, order or rules issued or promulgated
5 hereunder, he or she may:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the violation and requiring compliance
8 immediately or within a specified time. An order under
9 this section includes, but is not limited to, any or all of
10 the following: Orders suspending, revoking or amending
11 certificates of approval, orders requiring a person to
12 take remedial action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection
14 (c), section fifteen of this article;

15 (3) Institute a civil action in accordance with subsec-
16 tion (c), section fifteen of this article; or

17 (4) Request the attorney general, or the prosecuting
18 attorney of the county in which the alleged violation
19 occurred, to bring a criminal action in accordance with
20 section twelve of this article.

21 (b) Any person issued a cease and desist order may
22 file a notice of request for reconsideration with the
23 director not more than seven days from the issuance of
24 the order and shall have a hearing before the director
25 contesting the terms and conditions of the order within
26 ten days of the filing of the notice of a request for
27 reconsideration. The filing of a notice of request for
28 reconsideration does not stay or suspend the execution
29 or enforcement of the cease and desist order.

§22-14-15. Civil penalties and injunctive relief.

1 (a) Any person who violates any provision of this
2 article, any certificate of approval or any rule, notice or
3 order issued pursuant to this article is subject to a civil
4 administrative penalty, to be levied by the director, of
5 not more than two hundred dollars for each day of the
6 violation, not to exceed a maximum of four hundred
7 dollars. In assessing any penalty, the director shall take

8 into account the seriousness of the violation and any
9 good faith efforts to comply with applicable require-
10 ments as well as any other appropriate factors as may
11 be established by rules promulgated by the director. No
12 assessment shall be levied pursuant to this subsection
13 until after the alleged violator has been notified by
14 certified mail or personal service. The notice shall
15 include a reference to the section of the statute, rule,
16 notice, order or statement of the certificate of approval's
17 terms that was allegedly violated, a concise statement
18 of the facts alleged to constitute the violation, a
19 statement of the amount of the administrative penalty
20 to be imposed and a statement of the alleged violator's
21 right to an informal hearing. The alleged violator has
22 twenty calendar days from receipt of the notice within
23 which to deliver to the director a written request for an
24 informal hearing. If no hearing is requested, the notice
25 becomes a final order after the expiration date of the
26 twenty-day period. If a hearing is requested, the
27 director shall inform the alleged violator of the time and
28 place of the hearing. Within thirty days following the
29 informal hearing, the director shall issue and furnish to
30 the violator a written decision, and the reasons therefor,
31 concerning the assessment of a civil administrative
32 penalty. The authority to levy an administrative penalty
33 is in addition to all other enforcement provisions of this
34 article and the payment of any assessment does not
35 affect the availability of any other enforcement provi-
36 sion in connection with the violation for which the
37 assessment is levied: *Provided*, That no combination of
38 assessments against a violator shall exceed four hundred
39 dollars per day of each violation: *Provided, however*,
40 That any violation for which the violator has paid a civil
41 administrative penalty assessed under this subsection is
42 not subject to a separate civil penalty action under this
43 article to the extent of the amount of the civil adminis-
44 trative penalty paid. Civil administrative penalties shall
45 be levied in accordance with the rules promulgated
46 under the authority of section four of this article. The
47 net proceeds of assessments collected pursuant to this
48 subsection shall be deposited in the dam safety fund
49 established pursuant to section seventeen of this article.

50 Any person adversely affected by the assessment of a
51 civil administrative penalty has the right to appeal to
52 the environmental quality board pursuant to the
53 provisions of article one, chapter twenty-two-b of this
54 code.

55 (b) No assessment levied pursuant to subsection (a) of
56 this section is due and payable until the procedures for
57 review of the assessment as set out in said subsection
58 have been completed.

59 (c) The director may seek an injunction, or may
60 institute a civil action against any person in violation of
61 any provisions of this article or any certificate of
62 approval, rule, notice or order issued pursuant to this
63 article. In seeking an injunction, it is not necessary for
64 the director to post bond or to allege or prove at any
65 stage of the proceeding that irreparable damage will
66 occur if the injunction is not issued or that the remedy
67 at law is inadequate. An application for injunctive relief
68 or a civil penalty action under this section may be filed
69 and relief granted notwithstanding the fact that all
70 administrative remedies provided for in this article have
71 not been exhausted or invoked against the person or
72 persons against whom the relief is sought.

73 (d) Upon request of the director, the attorney general
74 or the prosecuting attorney of the county in which the
75 violation occurs, shall assist the director in any civil
76 action under this section.

77 (e) In any action brought pursuant to the provisions
78 of this section, the state or any agency of the state which
79 prevails, may be awarded costs and reasonable attor-
80 ney's fees.

§22-14-16. Schedule of application fees established.

1 The director shall promulgate rules in accordance
2 with the provisions of section four of this article, to
3 establish a schedule of application fees for which the
4 appropriate fee shall be submitted by the applicant to
5 the division together with the application for a certifi-
6 cate of approval filed pursuant to this article. The
7 schedule of application fees shall be designed to

8 establish reasonable categories of certificate application
9 fees based upon the complexity of the permit application
10 review process required by the director pursuant to the
11 provisions of this article and the rules promulgated
12 under this article. The director shall not process any
13 certificate application pursuant to this article until the
14 certificate application fee has been received.

§22-14-17. Schedule of annual registration fees established.

1 The director shall promulgate rules in accordance
2 with the provisions of section four of this article, to
3 establish a schedule of annual registration fees which
4 shall be assessed annually upon each person holding a
5 certificate of approval issued pursuant to this article.
6 Each person holding a certificate of approval shall pay
7 the prescribed annual registration fee to the division
8 pursuant to the rules promulgated under this article.
9 The schedule of annual registration fees shall be
10 designed to establish reasonable categories of annual
11 registration fees, including, but not limited to, the size
12 of the dam and its classification. Any certificate of
13 approval issued pursuant to this article becomes void
14 without notification to the person holding a certificate
15 of approval when the annual registration fee is more
16 than one hundred eighty days past due pursuant to the
17 rules promulgated under this section.

§22-14-18. Continuation of dam safety fund; components of fund.

1 (a) The special fund designated "The Dam Safety
2 Fund" hereinafter referred to as "the fund" shall be
3 continued.

4 (b) All certificate application fees and annual regis-
5 tration fee assessments, any interest or surcharge
6 assessed and collected by the division, interest accruing
7 on investments and deposits of the fund, and any other
8 moneys designated by the division shall be paid into the
9 fund. Accrual of funds shall not exceed three hundred
10 thousand dollars per year, exclusive of application fees.
11 The division shall expend the proceeds of the fund for
12 the review of applications, inspection of dams, payment

- 13 costs of remedial emergency actions and enforcement of
14 the provisions of this article.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

- §22-15-1. Purpose and legislative findings.
§22-15-2. Definitions.
§22-15-3. Special provision for wood waste.
§22-15-4. Authority of commissioner of bureau of public health.
§22-15-5. Powers and duties; rules and rule making.
§22-15-6. Fee for filing a certificate of site approval.
§22-15-7. Special provision for residential solid waste disposal.
§22-15-8. Limit on the size of solid waste facilities.
§22-15-9. Exemption for solid waste facility handling in excess of thirty thousand tons per month.
§22-15-10. Prohibitions; permits required; priority of disposal.
§22-15-11. Solid waste assessment fee; penalties.
§22-15-12. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.
§22-15-13. Pre-siting notice.
§22-15-14. Limitations on permits; encouragement of recycling.
§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.
§22-15-16. Appeal procedures.
§22-15-17. Limited extension of solid waste facility closure deadline.
§22-15-18. Condition on receiving permit.
§22-15-19. Municipal and commercial solid waste incineration and backhauling prohibited; exceptions.
§22-15-20. Sewage sludge management.

§22-15-1. Purpose and legislative findings.

- 1 (a) The purpose of this article is to establish a
2 comprehensive program of controlling all phases of solid
3 waste management.
- 4 (b) The Legislature finds that uncontrolled, inade-
5 quately controlled and improper collection, transporta-
6 tion, processing and disposal of solid waste (1) is a public
7 nuisance and a clear and present danger to people; (2)
8 provides harborage and breeding places for disease-
9 carrying, injurious insects, rodents and other pests
10 harmful to the public health, safety and welfare; (3)
11 constitutes a danger to livestock and domestic animals;
12 (4) decreases the value of private and public property,
13 causes pollution, blight and deterioration of the natural
14 beauty and resources of the state and has adverse
15 economic and social effects on the state and its citizens;
16 (5) results in the squandering of valuable nonrenewable
17 and nonreplenishable resources contained in solid waste;

18 (6) that resource recovery and recycling reduces the
19 need for landfills and extends their life; and that (7)
20 proper disposal, resource recovery or recycling of solid
21 waste is for the general welfare of the citizens of this
22 state.

23 (c) The Legislature further finds that disposal in West
24 Virginia of solid waste from unknown origins threatens
25 the environment and the public health, safety and
26 welfare, and therefore, it is in the interest of the public
27 to identify the type, amount and origin of solid waste
28 accepted for disposal at West Virginia solid waste
29 facilities.

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

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

47 (f) The Legislature further finds that incineration
48 technologies present potentially significant health and
49 environmental problems.

50 (g) The Legislature further finds that there is a need
51 for efforts to continue to evaluate the viability of future
52 incineration technologies that are both environmentally
53 sound and economically feasible.

***§22-15-2. Definitions.**

1 Unless the context clearly requires a different
2 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.

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

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

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

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

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

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

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

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

38 (7) "Commercial recycler" means any person, corpo-
39 ration or business entity whose operation involves the
40 mechanical separation of materials for the purpose of

41 reselling or recycling at least seventy percent by weight
42 of the materials coming into the commercial recycling
43 facility.

44 (8) "Commercial solid waste facility" means any solid
45 waste facility which accepts solid waste generated by
46 sources other than the owner or operator of the facility
47 and does not include an approved solid waste facility
48 owned and operated by a person for the sole purpose of
49 disposing of solid wastes created by that person or such
50 person and other persons on a cost-sharing or nonprofit
51 basis and does not include land upon which reused or
52 recycled materials are legitimately applied for structu-
53 ral fill, road base, mine reclamation and similar
54 applications.

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

58 (10) "Composting facility" means any solid waste
59 facility processing solid waste by composting, including
60 sludge composting, organic waste or yard waste com-
61 posting, but does not include a facility for composting
62 solid waste that is located at the site where the waste
63 was generated.

64 (11) "Director" means the director of the division of
65 environmental protection or such other person to whom
66 the director has delegated authority or duties pursuant
67 to sections six or eight, article one of this chapter.

68 (12) "Division" means the division of environmental
69 protection.

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

75 (14) "Incineration technologies" means any technology
76 that uses controlled flame combustion to thermally
77 break down solid waste, including refuse-derived fuel,
78 to an ash residue that contains little or no combustible
79 materials, regardless of whether the purpose is process-

80 ing, disposal, electric or steam generation or any other
81 method by which solid waste is incinerated.

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

86 (16) "Landfill" means any solid waste facility for the
87 disposal of solid waste on land. Such facility is situated,
88 for purposes of this article, in the county where the
89 majority of the spatial area of such facility is located.

90 (17) "Materials recovery facility" means any solid
91 waste facility at which source-separated materials or
92 materials recovered through a mixed waste processing
93 facility are manually or mechanically shredded or
94 separated for purposes of reuse and recycling, but does
95 not include a composting facility.

96 (18) "Mixed solid waste" means solid waste from
97 which materials sought to be reused or recycled have not
98 been source-separated from general solid waste.

99 (19) "Mixed waste processing facility" means any solid
100 waste facility at which materials are recovered from
101 mixed solid waste through manual or mechanical means
102 for purposes of reuse, recycling or composting.

103 (20) "Municipal solid waste incineration" means the
104 burning of any solid waste collected by any municipal
105 or residential solid waste disposal company.

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

110 (22) "Person" or "persons" mean any industrial user,
111 public or private corporation, institution, association,
112 firm or company organized or existing under the laws
113 of this or any other state or country; state of West
114 Virginia; governmental agency, including federal
115 facilities; political subdivision; county commission;
116 municipal corporation; industry; sanitary district;
117 public service district; drainage district; soil conserva-

118 tion district; watershed improvement district; partner-
119 ship; trust; estate; person or individual; group of persons
120 or individuals acting individually or as a group; or any
121 legal entity whatever.

122 (23) "Recycling facility" means any solid waste facility
123 for the purpose of recycling at which neither land
124 disposal nor biological, chemical or thermal transforma-
125 tion of solid waste occurs: *Provided*, That mixed waste
126 recovery facilities, sludge processing facilities and
127 composting facilities are not considered recycling
128 facilities nor considered to be reusing or recycling solid
129 waste within the meaning of this article, article four,
130 chapter twenty-two-c and article eleven, chapter twenty
131 of this code.

132 (24) "Sewage sludge" means solid, semisolid or liquid
133 residue generated during the treatment of domestic
134 sewage in a treatment works. Sewage sludge includes,
135 but is not limited to, domestic septage, scum or solids
136 removed in primary, secondary or advanced wastewater
137 treatment processes and a material derived from sewage
138 sludge. "Sewage sludge" does not include ash generated
139 during the firing of sewage sludge in a sewage sludge
140 incinerator.

141 (25) "Sewage sludge processing facility" is a solid
142 waste facility that processes sewage sludge for land
143 application, incineration or disposal at an approved
144 landfill. Such processes include, but are not limited to,
145 composting, lime stabilization, thermophilic digestion
146 and anaerobic digestion.

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

152 (27) "Solid waste" means any garbage, paper, litter,
153 refuse, cans, bottles, waste processed for the express
154 purpose of incineration; sludge from a waste treatment
155 plant; water supply treatment plant or air pollution
156 control facility; and other discarded materials, including
157 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 (28) "Solid waste disposal" means the practice of
182 disposing of solid waste including placing, depositing,
183 dumping or throwing or causing any solid waste to be
184 placed, deposited, dumped or thrown.

185 (29) "Solid waste disposal shed" means the geographi-
186 cal area which the solid waste management board
187 designates and files in the state register pursuant to
188 section nine, article three, chapter twenty-two-c of this
189 code.

190 (30) "Solid waste facility" means any system, facility,
191 land, contiguous land, improvements on the land,
192 structures or other appurtenances or methods used for
193 processing, recycling or disposing of solid waste,
194 including landfills, transfer stations, materials recovery
195 facilities, mixed waste processing facilities, sewage
196 sludge processing facilities, composting facilities and
197 other such facilities not herein specified, but not
198 including land upon which sewage sludge is applied in

199 accordance with subsection (b), section twenty of this
200 article. Such facility shall be deemed to be situated, for
201 purposes of this article, in the county where the majority
202 of the spatial area of such facility is located: *Provided*,
203 That a salvage yard, licensed and regulated pursuant to
204 the terms of article twenty-three, chapter seventeen of
205 this code, is not a solid waste facility.

206 (31) "Source-separated materials" means materials
207 separated from general solid waste at the point of origin
208 for the purpose of reuse and recycling but does not mean
209 sewage sludge.

§22-15-3. Special provision for wood waste.

1 (a) The purpose of this section is to allow for the
2 combustion of wood waste without a solid waste facility
3 permit and to allow facilities to use wood waste as an
4 alternative fuel.

5 (b) "Wood waste" means wood residues from logging
6 operations, sawmills, wood product manufacturing,
7 furniture making operations, recycling of wood products
8 and other industrial processes, but does not include
9 wood waste which contains hazardous constituents,
10 including copper chromium arsenate, which would
11 cause such wood waste to be regulated pursuant to
12 article eighteen of this chapter.

13 (c) For purposes of section two of this article and
14 section two, article four, chapter twenty-two-c of this
15 code:

16 (1) Wood waste is not "solid waste" unless disposed of
17 at a solid waste facility or an open dump;

18 (2) Wood waste is a material which may be used as
19 an effective substitute for commercial products or raw
20 material feedstock.

21 (d) The use of incineration technologies in an energy
22 recovery incinerator for the purposes of combusting
23 wood waste is not prohibited and no solid waste facility
24 permit is required. The provisions of this section do not
25 allow the combustion of wood waste without a source
26 permit from the director if such permit is required by
27 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 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.

§22-15-5. Powers and duties; rules and rule making.

1 In addition to all other powers, duties, responsibilities
2 and authority granted and assigned to the director 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

27 installation, establishment, modification, operation or
28 closure of a solid waste facility: *Provided*, That the
29 director may deny the issuance of a permit on the basis
30 of information in the application or from other sources
31 including public comment, if the solid waste facility is
32 likely to cause adverse impacts on the environment. The
33 director may also prohibit the installation or establish-
34 ment of specific types and sizes of solid waste facilities
35 in a specified geographical area of the state based on
36 the above cited factor and may delete such geographical
37 area from consideration for that type and size solid
38 waste facility.

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

47 (1) Has demonstrated, either by his or her police
48 record or by his or her record as a permittee under
49 articles eleven through nineteen of this chapter or
50 chapter twenty of this code, a lack of respect for law and
51 order, generally, or for the laws and rules governing the
52 disposal of solid wastes;

53 (2) Has misrepresented a material fact in applying to
54 the director for a permit;

55 (3) Has been convicted of a felony or other crime
56 involving moral turpitude;

57 (4) Has exhibited a pattern of violating environmental
58 laws in any state or the United States or combination
59 thereof; or

60 (5) Has had any permit revoked under the environ-
61 mental laws of any state or the United States.

62 (d) The director or any authorized representative,
63 employee or agent of the division may, at reasonable
64 times, enter onto any approved solid waste facility, open
65 dump or property where solid waste is present for the

66 purpose of making an inspection or investigation of solid
67 waste disposal.

68 (e) The director or any authorized representative,
69 employee or agent of the division may, at reasonable
70 times, enter any approved solid waste facility, open
71 dump or property where solid waste is present and take
72 samples of the waste, soils, air or water or may, upon
73 issuance of an order, require any person to take and
74 analyze samples of such waste, soil, air or water.

75 (f) The director may also perform or require a person,
76 by order, to perform any and all acts necessary to carry
77 out the provisions of this article or the rules promul-
78 gated thereunder.

79 (g) The director or his or her authorized representa-
80 tive, employee or agent shall make periodic inspections
81 at every approved solid waste facility to effectively
82 implement and enforce the requirements of this article
83 or its rules and may, in coordination with the commis-
84 sioner of the division of highways, conduct at weigh
85 stations or any other adequate site or facility inspections
86 of solid waste in transit.

87 (h) The director shall require and set the amount of
88 performance bonds for persons engaged in the practice
89 of solid waste disposal in this state, pursuant to section
90 twelve of this article.

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

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

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

104 (A) The permit applicant;

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

110 (C) Parties related to the applicant by blood, marriage
111 or business association, including the relationship to the
112 applicant.

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

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

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

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

128 (B) For corporations, the principal shareholders;

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

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

139 (5) If the applicant or an officer, principal share-
140 holder, general or limited partner or other related party

141 to the applicant, has a beneficial interest in, or otherwise
142 manages or controls another person or municipality
143 engaged in the business of solid waste collection,
144 transportation, storage, processing, treatment or dispo-
145 sal, the application shall contain the following
146 information:

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

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

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

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

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

174 (1) A description of notices of violation, including the
175 date, location, nature and disposition of the violation,
176 that were sent by the division to the applicant or a
177 related party, concerning any environmental law, rule,
178 or order of the division, or a condition of a permit or
179 license. In lieu of a description the applicant may

180 provide a copy of notices of violation.

181 (2) A description of administrative orders, civil
182 penalty assessments and bond forfeiture actions by the
183 division, and civil penalty actions adjudicated by the
184 state, against the applicant or a related party concern-
185 ing any environmental law, rule, or order of the division,
186 or a condition of a permit or license. The description
187 shall include the date, location, nature and disposition
188 of the actions. In lieu of a description, the applicant may
189 provide a copy of the orders, assessments and actions.

190 (3) A description of a summary, misdemeanor or
191 felony conviction, a plea of guilty or plea of no contest
192 that has been obtained in this state against the applicant
193 or a related party under any environmental law or rule
194 concerning the storage, collection, treatment, transpor-
195 tation, processing or disposal of solid waste. The
196 description shall include the date, location, nature and
197 disposition of the actions.

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

204 (5) A description of a consent order, consent adjudi-
205 cation, consent decree or settlement agreement involv-
206 ing the applicant or a related party concerning any
207 environmental law or rule in which the division, other
208 governmental agencies, the United States Environmen-
209 tal Protection Agency, or a county health department
210 was a party. The description shall include the date,
211 location, nature and disposition of the action. In lieu of
212 a description, the applicant may provide a copy of the
213 order, adjudication, a decree or agreement.

214 (6) For facilities and activities identified under
215 paragraph (1) of this subdivision, a statement of whether
216 the facility or activity was the subject of an administra-
217 tive order, consent agreement, consent adjudication,
218 consent order, settlement agreement, court order, civil
219 penalty, bond forfeiture proceeding, criminal conviction,

220 guilty or no contest plea to a criminal charge or permit
221 or license suspension or revocation under the act or the
222 environmental protection acts. If the facilities or
223 activities were subject to these actions, the applicant
224 shall state the date, location, nature and disposition of
225 the violation. In lieu of a description, the applicant may
226 provide a copy of the appropriate document. The
227 application shall also state whether the division has
228 denied a permit application filed by the applicant or a
229 related party, based on compliance status.

230 (7) When the applicant is a corporation, a list of the
231 principal shareholders that have also been principal
232 shareholders of other corporations which have committed
233 violations of any environmental law or rule. The list
234 shall include the date, location, nature and disposition
235 of the violation, and shall explain the relationship
236 between the principal shareholder and both the appli-
237 cant and the other corporation.

238 (8) A description of a misdemeanor or felony conviction,
239 a plea of guilty and a plea of no contest, by the
240 applicant or a related party for violations outside of this
241 state of any environmental protection laws or regulations.
242 The description shall include the date of the
243 convictions or pleas, and the date, location and nature
244 of the offense.

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

256 (l) All of the information provided by the applicant
257 pursuant to this section is not confidential and is
258 disclosable pursuant to the provisions of chapter twenty-
259 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-
2 five dollars payable upon the filing of the application
3 therefor with the county, county solid waste authority
4 or regional solid waste authority, as the case may be.

§22-15-7. Special provision for residential solid waste disposal.

1 All commercial and public solid waste facilities shall
2 establish and publish a yearly schedule providing for
3 one day per month on which a person not in the business
4 of hauling or disposing of solid waste, who is a resident
5 of the wasteland in which the facility is located, may
6 dispose of an amount of residential solid waste up to one
7 pick-up truckload or its equivalent, free of all charges
8 and fees.

§22-15-8. Limit on the size of solid waste facilities.

1 (a) On and after the first day of October, one thousand
2 nine hundred ninety-one, it is unlawful to operate any
3 commercial solid waste facility that handles between ten
4 thousand and thirty thousand tons of solid waste per
5 month, except as provided in section nine of this article
6 and sections twenty-six, twenty-seven and twenty-eight,
7 article four, chapter twenty-two-c of this code.

8 (b) Except as provided in section nine of this article,
9 the maximum quantity of solid waste which may
10 lawfully be handled at any commercial solid waste
11 facility is thirty thousand tons per month.

§22-15-9. Exemption for solid waste facility handling in excess of thirty thousand tons per month.

1 (a) Notwithstanding any provision in this article,
2 article four, chapter twenty-two-c, article two, chapter
3 twenty-four of this code, any other section of this code,
4 or any prior enactment of the code to the contrary, and
5 notwithstanding any defects in or challenges to any
6 actions which were or are required to be performed in
7 satisfaction of the following criteria, any person who on
8 the first day of October, one thousand nine hundred
9 ninety-one, has:

10 (1) Obtained site approval for a commercial solid
11 waste facility from a county or regional solid waste
12 authority or county commission pursuant to a prior
13 enactment of this code, or has otherwise satisfied the
14 requirements of subsection (a), section twenty-five,
15 article four, chapter twenty-two-c of this code;

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

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

25 (4) An application for a permit for a commercial solid
26 waste facility pending with the division of environmen-
27 tal protection, or is operating under a permit or
28 compliance order, is permitted to handle in excess of the
29 limitation established in section eight of this article up
30 to fifty thousand tons of solid waste per month at a
31 commercial solid waste facility so long as the person
32 complies with the provisions of this section.

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

44 (1) Such referendum will be to determine whether it
45 is the will of the voters of the county that a commercial
46 solid waste facility be permitted to handle more than the
47 limitation established in section eight of this article not
48 to exceed fifty thousand tons per month. Any such
49 election shall be held at the voting precincts established

50 for holding primary or general elections. All of the
51 provisions of the general election laws, when not in
52 conflict with the provisions of this article, apply to
53 voting and elections hereunder, insofar as practicable.

54 (2) The ballot, or the ballot labels where voting
55 machines are used, shall have printed thereon substan-
56 tially the following:

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

61 For the facility

62 Against the facility

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

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

74 (c) If a person submits to a referendum in accordance
75 with this section, all approvals, certificates, and permits
76 granted and all actions undertaken by a regional or
77 county solid waste authority or county commission with
78 regard to the person's commercial solid waste facility
79 within the county under this article or article four,
80 chapter twenty-two-c, or previously enacted sections of
81 articles five-f and nine, chapter twenty of this code are
82 valid, complete and in full compliance with all the
83 requirements of law and any defects contained in such
84 approvals, certificates, permits or actions are cured and
85 such defects may not be invoked to invalidate any such
86 approval, certificate, permit or action.

87 (d) Notwithstanding any provision of this code to the
88 contrary, any person described in subsection (a) of this

89 section who complies with the referendum requirement
90 of this section and complies with the permitting
91 requirements of the division provided in section ten of
92 this article, shall not be required to comply with the
93 requirements of sections twenty-five, twenty-six, twenty-
94 seven and twenty-eight, article four, chapter twenty-
95 two-c of this code: *Provided*, That such person is entitled
96 to receive a certificate of need pursuant to the provisions
97 of subsection (a), section one-c, article two, chapter
98 twenty-four of this code to handle the tonnage level
99 authorized pursuant to subsection (a) of this section.

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

§22-15-10. Prohibitions; permits required; priority of disposal.

1 (a) Open dumps are prohibited and it is unlawful for
2 any person to create, contribute to or operate an open
3 dump or for any landowner to allow an open dump to
4 exist on the landowner's property unless that open dump
5 is under a compliance schedule approved by the
6 director. Such compliance schedule shall contain an
7 enforceable sequence of actions leading to compliance
8 and shall not exceed two years. Open dumps operated
9 prior to the first day of April, one thousand nine
10 hundred eighty-eight, by a landowner or tenant for the
11 disposal of solid waste generated by the landowner or
12 tenant at his or her residence or farm are not a violation
13 of this section if such open dump did not constitute a
14 violation of law on the first day of January, one thousand
15 nine hundred eighty-eight, and unauthorized dumps
16 which were created by unknown persons do not consti-

17 tute a violation of this section: *Provided*, That no person
18 shall contribute additional solid waste to any such dump
19 after the first day of April, one thousand nine hundred
20 eighty-eight, except that the owners of the land on which
21 unauthorized dumps have been or are being made are
22 not liable for such unauthorized dumping unless such
23 landowners refuse to cooperate with the division in
24 stopping such unauthorized dumping.

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

33 (c) Any permit issued under this article shall be
34 issued in compliance with the requirements of this
35 article, its rules and article eleven of this chapter and
36 the rules promulgated thereunder, so that only a single
37 permit is required of a solid waste facility under these
38 two articles. Each permit issued under this article shall
39 have a fixed term not to exceed five years: *Provided*,
40 That the director may administratively extend a permit
41 beyond its five-year term if the approved solid waste
42 facility is in compliance with this article, its rules and
43 article eleven of this chapter and the rules promulgated
44 thereunder: *Provided, however*, That such administra-
45 tive extension may not be for more than one year. Upon
46 expiration of a permit, renewal permits may be issued
47 in compliance with rules promulgated by the director.

48 (d) For existing solid waste facilities which formerly
49 held division of health permits which expired by law
50 and for which complete permit applications for new
51 permits pursuant to this article were submitted as
52 required by law, the division may enter an administra-
53 tive order to govern solid waste activities at such
54 facilities, which may include a compliance schedule,
55 consistent with the requirements of the division's solid
56 waste management rules, to be effective until final
57 action is taken to issue or deny a permit for such facility

58 pursuant to this article, or until further order of the
59 division.

60 (e) No person may dispose in the state of any solid
61 waste, whether such waste originates in state or out of
62 state, in a manner which endangers the environment or
63 the public health, safety or welfare as determined by the
64 director: *Provided*, That the carcasses of dead animals
65 may be disposed of in any solid waste facility or in any
66 other manner as provided for in this code. Upon request
67 by the director, the commissioner of the bureau of public
68 health shall provide technical advice concerning the
69 disposal of solid waste or carcasses of dead animals
70 within the state.

71 (f) A commercial solid waste facility shall first ensure
72 that the disposal needs of the wasteshed in which it is
73 located are met. If one or more local solid waste
74 authorities in the wasteshed in which the facility is
75 located determine that the present or future disposal
76 needs of the wasteshed are not being, or will not be, met
77 by the commercial solid waste facility, such authorities
78 may apply to the director or to modify the applicable
79 permit. The director, in consultation with the solid
80 waste management board, may then modify the appli-
81 cable permit in order to reduce the total monthly
82 tonnage of out of wasteshed waste the facility is
83 permitted to accept by an amount that shall not exceed
84 the total monthly tonnage necessary to ensure the
85 disposal needs of the wasteshed in which the facility is
86 located.

87 (g) In addition to all the requirements of this article
88 and the rules promulgated hereunder, a permit to
89 construct a new commercial solid waste facility or to
90 expand the spatial area of an existing facility, not
91 otherwise allowed by an existing permit, may not be
92 issued unless the public service commission has granted
93 a certificate of need, as provided in section one-c, article
94 two, chapter twenty-four of this code. If the director
95 approves a permit or permit modification, the certificate
96 of need shall become a part of the permit and all
97 conditions contained in the certificate of need shall be
98 conditions of the permit and may be enforced by the

99 division in accordance with the provisions of this article.

100 (h) The director shall promulgate legislative rules
101 pursuant to article three, chapter twenty-nine-a of this
102 code which reflect the purposes as set forth in this
103 section.

§22-15-11. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby imposed upon the disposal of solid waste at any
3 solid waste disposal facility in this state in the amount
4 of one dollar and seventy-five cents per ton or part
5 thereof of solid waste. The fee imposed by this section
6 is in addition to all other fees and taxes levied by law
7 and shall be added to and constitute part of any other
8 fee charged by the operator or owner of the solid waste
9 disposal facility.

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

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

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

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

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

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

45 (6) Whenever the owner of a solid waste disposal
46 facility leases the solid waste facility to an operator, the
47 operator is primarily liable for collection and remittance
48 of the fee imposed by this section and the owner is
49 secondarily liable for remittance of the fee imposed by
50 this section. However, if the operator fails, in whole or
51 in part, to discharge his or her obligations under this
52 section, the owner and the operator of the solid waste
53 facility are jointly and severally responsible and liable
54 for compliance with the provisions of this section.

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

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

70 (c) *Regulated motor carriers.* — The fee imposed by
71 this section and section twenty-two, article five, chapter
72 seven of this code is considered a necessary and

73 reasonable cost for motor carriers of solid waste subject
74 to the jurisdiction of the public service commission
75 under chapter twenty-four-a of this code. Notwithstand-
76 ing any provision of law to the contrary, upon the filing
77 of a petition by an affected motor carrier, the public
78 service commission shall, within fourteen days, reflect
79 the cost of said fee in said motor carrier's rates for solid
80 waste removal service. In calculating the amount of said
81 fee to said motor carrier, the commission shall use the
82 national average of pounds of waste generated per
83 person per day as determined by the United States
84 Environmental Protection Agency.

85 (d) *Definition of solid waste disposal facility.* — For
86 purposes of this section, the term "solid waste disposal
87 facility" means any approved solid waste facility or open
88 dump in this state, and includes a transfer station when
89 the solid waste collected at the transfer station is not
90 finally disposed of at a solid waste disposal facility
91 within this state that collects the fee imposed by this
92 section. Nothing herein authorizes in any way the
93 creation or operation of or contribution to an open dump.

94 (e) *Exemptions.* — The following transactions are
95 exempt from the fee imposed by this section:

96 (1) Disposal of solid waste at a solid waste disposal
97 facility by the person who owns, operates or leases the
98 solid waste disposal facility if the facility is used
99 exclusively to dispose of waste originally produced by
100 such person in such person's regular business or
101 personal activities or by persons utilizing the facility on
102 a cost-sharing or nonprofit basis;

103 (2) Reuse or recycling of any solid waste;

104 (3) Disposal of residential solid waste by an individual
105 not in the business of hauling or disposing of solid waste
106 on such days and times as designated by the director is
107 exempt from the solid waste assessment fee; and

108 (4) Disposal of solid waste at a solid waste disposal
109 facility by a commercial recycler which disposes of
110 thirty percent or less of the total waste it processes for
111 recycling. In order to qualify for this exemption each

112 commercial recycler must keep accurate records of
113 incoming and outgoing waste by weight. Such records
114 must be made available to the appropriate inspectors
115 from the division , upon request.

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

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

131 (h) *Dedication of proceeds.* — The net proceeds of the
132 fee collected by the tax commissioner pursuant to this
133 section shall be deposited at least monthly in an account
134 designated by the director. The director shall allocate
135 twenty-five cents for each ton of solid waste disposed of
136 in this state upon which the fee imposed by this section
137 is collected and shall deposit the total amount so
138 allocated into the “Solid Waste Reclamation and
139 Environmental Response Fund” to be expended for the
140 purposes hereinafter specified. The first one million
141 dollars of the net proceeds of the fee imposed by this
142 section collected in each fiscal year shall be deposited
143 in the “Solid Waste Enforcement Fund” and expended
144 for the purposes hereinafter specified. The next two
145 hundred fifty thousand dollars of the net proceeds of the
146 fee imposed by this section collected in each fiscal year
147 shall be deposited in the “Solid Waste Management
148 Board Reserve Fund”, and expended for the purposes
149 hereinafter specified: *Provided*, That in any year in
150 which the water development authority determines that
151 the solid waste management board reserve fund is
152 adequate to defer any contingent liability of the fund

153 the water development authority shall so certify to the
154 director and the director shall then cause no less than
155 fifty thousand dollars nor more than two hundred fifty
156 thousand dollars to be deposited to the fund: *Provided,*
157 *however,* That in any year in which the water develop-
158 ment authority determines that the solid waste manage-
159 ment board reserve fund is inadequate to defer any
160 contingent liability of the fund, the water development
161 authority shall so certify to the director and the director
162 shall then cause not less than two hundred fifty
163 thousand dollars nor more than five hundred thousand
164 dollars to be deposited in the fund: *Provided further,*
165 That if a facility owned or operated by the state of West
166 Virginia is denied site approval by a county or regional
167 solid waste authority, and if such denial contributes, in
168 whole or in part, to a default, or drawing upon a reserve
169 fund, on any indebtedness issued or approved by the
170 solid waste management board, then in that event the
171 solid waste management board or its fiscal agent may
172 withhold all or any part of any funds which would
173 otherwise be directed to such county or regional
174 authority and shall deposit such withheld funds in the
175 appropriate reserve fund. The director shall allocate the
176 remainder, if any, of said net proceeds among the
177 following three special revenue accounts for the purpose
178 of maintaining a reasonable balance in each special
179 revenue account, which are hereby continued in the
180 state treasury:

181 (1) The "Solid Waste Enforcement Fund" which shall
182 be expended by the director for administration, inspec-
183 tion, enforcement and permitting activities established
184 pursuant to this article;

185 (2) The "Solid Waste Management Board Reserve
186 Fund" which shall be exclusively dedicated to providing
187 a reserve fund for the issuance and security of solid
188 waste disposal revenue bonds issued by the solid waste
189 management board pursuant to article three, chapter
190 twenty-two-c of this code;

191 (3) The "Solid Waste Reclamation and Environmental
192 Response Fund" which may be expended by the director

193 for the purposes of reclamation, cleanup and remedial
194 actions intended to minimize or mitigate damage to the
195 environment, natural resources, public water supplies,
196 water resources and the public health, safety and
197 welfare which may result from open dumps or solid
198 waste not disposed of in a proper or lawful manner.

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

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

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

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

**§22-15-12. Performance bonds; amount and method of
bonding; bonding requirements; period of
bond liability.**

1 (a) After a solid waste permit application has been
2 approved pursuant to this article, or once operations
3 have commenced pursuant to a compliance order, but
4 before a permit has been issued, each operator of a
5 commercial solid waste facility shall furnish bond, on a
6 form to be prescribed and furnished by the director,
7 payable to the state of West Virginia and conditioned
8 upon the operator faithfully performing all of the
9 requirements of this article, rules promulgated here-
10 under and the permit: *Provided*, That the director has
11 the discretion to waive the requirement of a bond from
12 the operator of a commercial solid waste facility, other
13 than a Class A facility, which is operating under a
14 compliance order. The amount of the bond required is
15 one thousand dollars per acre and may include an
16 additional amount determined by the director based

17 upon the total estimated cost to the state of completing
18 final closure according to the permit granted to such
19 facility and such measures as are necessary to prevent
20 adverse effects upon the environment; such measures
21 include, but are not limited to, satisfactory monitoring,
22 post-closure care and remedial measures: *Provided,*
23 *however,* That the amount of the bond shall not exceed
24 eight thousand dollars per acre. All permits shall be
25 bonded for at least ten thousand dollars. The bond shall
26 cover either (1) the entire area to be used for the disposal
27 of solid waste, or (2) that increment of land within the
28 permit area upon which the operator will initiate and
29 conduct commercial solid waste facility operations
30 within the initial term of the permit pursuant to
31 legislative rules promulgated by the director pursuant
32 to chapter twenty-nine-a of this code. If the operator
33 chooses to use incremental bonding, as succeeding
34 increments of commercial solid waste facility operations
35 are to be initiated and conducted within the permit area,
36 the operator shall file with the director an additional
37 bond or bonds to cover such increments in accordance
38 with this section: *Provided further,* That once the
39 operator has chosen to proceed with bonding either the
40 entire area to be used for the disposal of solid waste or
41 with incremental bonding, the operator shall continue
42 bonding in that manner for the term of the permit.

43 (b) The period of liability for performance bond
44 coverage shall commence with issuance of a permit and
45 continue for the full term of the permit and for a period
46 of up to thirty full years after final closure of the permit
47 site: *Provided,* That any further time period necessary
48 to achieve compliance with the requirements in the
49 closure plan of the permit is considered an additional
50 liability period.

51 (c) The form of the performance bond shall be
52 approved by the director and may include, at the option
53 of the director, surety bonding, collateral bonding
54 (including cash and securities), establishment of an
55 escrow account, letters of credit, performance bonding
56 fund participation (as established by the director), self-
57 bonding or a combination of these methods.

58 If collateral bonding is used, the operator may elect
59 to deposit cash, or collateral securities or certificates as
60 follows: Bonds of the United States or its possessions, of
61 the federal land bank, or of the homeowners' loan
62 corporation; full faith and credit general obligation
63 bonds of the state of West Virginia, or other states, and
64 of any county, district or municipality of the state of
65 West Virginia or other states; or certificates of deposit
66 in a bank in this state, which certificates shall be in
67 favor of the division. The cash deposit or market value
68 of such securities or certificates shall be equal to or
69 greater than the sum of the bond. The director shall,
70 upon receipt of any such deposit of cash, securities or
71 certificates, promptly place the same with the treasurer
72 of the state of West Virginia whose duty it is to receive
73 and hold the same in the name of the state in trust for
74 the purpose for which the deposit is made when the
75 permit is issued. The operator making the deposit is
76 entitled from time to time to receive from the state
77 treasurer, upon the written approval of the director, the
78 whole or any portion of any cash, securities or certifi-
79 cates so deposited, upon depositing with the treasurer
80 in lieu thereof, cash or other securities or certificates of
81 the classes herein specified having value equal to or
82 greater than the sum of the bond.

83 (d) Within twelve months prior to the expiration of the
84 thirty-year period following final closure, the division
85 will conduct a final inspection of the facility. The
86 purpose of the inspection is to determine compliance
87 with this article, the division's rules, the terms and
88 conditions of the permit, orders of the division and the
89 terms and conditions of the bond. Based upon this
90 determination, the division will either forfeit the bond
91 prior to the expiration of the thirty-year period follow-
92 ing final closure, or release the bond at the expiration
93 of the thirty-year period following final closure. Bond
94 release requirements shall be provided in rules promul-
95 gated by the director.

96 (e) If the operator of a commercial solid waste facility
97 abandons the operation of a solid waste disposal facility
98 for which a permit is required by this article or if the
99 permittee fails or refuses to comply with the require-

100 ments of this article in any respect for which liability
101 has been charged on the bond, the director shall declare
102 the bond forfeited and shall certify the same to the
103 attorney general who shall proceed to enforce and collect
104 the amount of liability forfeited thereon, and where the
105 operation has deposited cash or securities as collateral
106 in lieu of corporate surety, the director shall declare said
107 collateral forfeited and shall direct the state treasurer
108 to pay said funds into a waste management fund to be
109 used by the director to effect proper closure and to
110 defray the cost of administering this article. Should any
111 corporate surety fail to promptly pay, in full, forfeited
112 bond, it is disqualified from writing any further surety
113 bonds under this article.

§22-15-13. Pre-siting notice.

1 Any person investigating an area for the purpose of
2 siting a commercial solid waste facility where no
3 current solid waste permit exists, in order to determine
4 a feasible, approximate location, shall prior to filing an
5 application for a solid waste permit publish a Class II
6 legal advertisement in a qualified newspaper serving
7 the county where the proposed site is to be located. Such
8 notice shall inform the public of the location, nature and
9 other details of the proposed activity as prescribed in
10 rules promulgated by the director. Within five days of
11 such publication such person shall file with the director
12 a pre-siting notice, which shall be made in writing on
13 forms prescribed by the director and shall be signed and
14 verified by the applicant. Such notice shall contain a
15 certification of publication from a qualified newspaper,
16 description of the area, the period of investigative
17 review, a United States geological survey topographic
18 map and a map showing the location of property
19 boundaries of the area proposed for siting and other
20 such information as required by rules promulgated
21 pursuant to this section. The director shall hold a public
22 hearing on the pre-siting notice in the area potentially
23 affected. The director shall define pre-siting activities
24 by promulgating legislative rules pursuant to chapter
25 twenty-nine-a of this code. The pre-siting notice, as
26 prescribed by the director, shall also be filed with the
27 county or regional solid waste authority, established

28 pursuant to article four, chapter twenty-two-c of this
29 code, according to the county or region in which the
30 proposed site is located within five days of the publica-
31 tion of the notice.

§22-15-14. Limitations on permits; encouragement of recycling.

1 (a) The director shall by rules promulgated in
2 accordance with chapter twenty-nine-a of this code
3 establish standards and criteria applicable to commer-
4 cial solid waste facilities for the visual screening of such
5 facilities from any interstate highway, turnpike, federal
6 and state primary highway or scenic parkway. The
7 director shall not issue a permit under this article to
8 install, establish, construct or operate any commercial
9 solid waste facility without proper visual screening from
10 any interstate highway, turnpike, federal or state
11 primary highway or scenic parkway.

12 (b) The director shall give substantial deference and
13 consideration to the county or regional litter and solid
14 waste control plan approved pursuant to article four,
15 chapter twenty-two-c of this code and to the comprehen-
16 sive county plan adopted by the county commission
17 pursuant to article twenty-four, chapter eight of this
18 code in the issuance or the renewal of any permit under
19 this article: *Provided*, That the authority and discretion
20 of the director under this article is not diminished or
21 modified by this subsection.

22 (c) The director is authorized and directed to promul-
23 gate legislative rules pursuant to chapter twenty-nine-
24 a of this code encouraging each commercial solid waste
25 facility and each person, partnership, corporation and
26 governmental agency engaged in the commercial
27 collection, transportation, processing and disposal of
28 solid waste to recycle paper, glass, plastic and alumi-
29 num materials and such other solid wastes as the
30 director may specify.

31 (d) The director is authorized and directed to promul-
32 gate legislative rules pursuant to chapter twenty-nine-
33 a of this code encouraging each person, partnership,
34 corporation and governmental agency subscribing to

35 solid waste collection services to segregate paper, glass,
36 plastic and aluminum material, and such other solid
37 waste material as the director may specify, prior to
38 collection of such wastes at their source for purposes of
39 recycling.

40 (e) Under no condition shall transloading solid waste
41 materials be permitted within a municipality except
42 those facilities owned or operated on behalf of the
43 municipality in which the facility is located.

**§22-15-15. Orders, inspections and enforcement; civil and
criminal penalties.**

1 (a) If the director, upon inspection or investigation by
2 duly authorized representatives or through other means
3 observes, discovers or learns of a violation of this article,
4 its rules, article eleven of this chapter or its rules, or
5 any permit or order issued under this article, he or she
6 shall:

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

14 (2) Seek an injunction in accordance with subsection
15 (e) of this section;

16 (3) Institute a civil action in accordance with subsec-
17 tion (e) of this section; or

18 (4) Request the attorney general, or the prosecuting
19 attorney of the county wherein the alleged violation
20 occurred, to bring an appropriate action, either civil or
21 criminal in accordance with subsection (b) of this
22 section.

23 (b) Any person who willfully or negligently violates
24 the provisions of this article, any permit or any rule or
25 order issued pursuant to this article is subject to the
26 same criminal penalties as set forth in section twenty-
27 four, article eleven of this chapter.

28 (c) Any person who violates any provision of this
29 article, any permit or any rule or order issued pursuant
30 to this article is subject to a civil administrative penalty,
31 to be levied by the director, of not more than five
32 thousand dollars for each day of such violation, not to
33 exceed a maximum of twenty thousand dollars.

34 (1) In assessing any such penalty, the director shall
35 take into account the seriousness of the violation and any
36 good faith efforts to comply with the applicable
37 requirements as well as any other appropriate factors
38 as may be established by the director by rules promul-
39 gated pursuant to this article and article three, chapter
40 twenty-nine-a of this code. No assessment shall be levied
41 pursuant to this subsection until after the alleged
42 violator has been notified by certified mail or personal
43 service. The notice shall include a reference to the
44 section of the statute, rule, order or statement of permit
45 conditions that was allegedly violated, a concise state-
46 ment of the facts alleged to constitute the violation, a
47 statement of the amount of the administrative penalty
48 to be imposed and a statement of the alleged violator's
49 right to an informal hearing. The alleged violator has
50 twenty calendar days from receipt of the notice within
51 which to deliver to the director a written request for an
52 informal hearing. If no hearing is requested, the notice
53 becomes a final order after the expiration of the twenty-
54 day period. If a hearing is requested, the director shall
55 inform the alleged violator of the time and place of the
56 hearing. The director may appoint an assessment officer
57 to conduct the informal hearing and then make a
58 written recommendation to the director concerning the
59 assessment of a civil administrative penalty. Within
60 thirty days following the informal hearing, the director
61 shall issue and furnish to the alleged violator a written
62 decision, and the reasons therefor, concerning the
63 assessment of a civil administrative penalty. Within
64 thirty days after notification of the director's decision,
65 the alleged violator may request a formal hearing before
66 the environmental quality board in accordance with the
67 provisions of section sixteen of this article. The authority
68 to levy a civil administrative penalty is in addition to
69 all other enforcement provisions of this article and the

70 payment of any assessment does not affect the availa-
71 bility of any other enforcement provision in connection
72 with the violation for which the assessment is levied:
73 *Provided*, That no combination of assessments against a
74 violator under this section shall exceed twenty-five
75 thousand dollars for each day of such violation: *Pro-*
76 *vided, however*, That any violation for which the violator
77 has paid a civil administrative penalty assessed under
78 this section shall not be the subject of a separate civil
79 penalty action under this article to the extent of the
80 amount of the civil administrative penalty paid. All
81 administrative penalties shall be levied in accordance
82 with rules issued pursuant to subsection (a), section five
83 of this article. The net proceeds of assessments collected
84 pursuant to this subsection shall be deposited in the solid
85 waste reclamation and environmental response fund
86 established in subdivision (3), subsection (h), section
87 eleven of this article.

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

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

99 (e) The director may seek an injunction, or may
100 institute a civil action against any person in violation of
101 any provisions of this article or any permit, rule or order
102 issued pursuant to this article. In seeking an injunction,
103 it is not necessary for the director to post bond nor to
104 allege or prove at any stage of the proceeding that
105 irreparable damage will occur if the injunction is not
106 issued or that the remedy at law is inadequate. An
107 application for injunctive relief or a civil penalty action
108 under this section may be filed and relief granted
109 notwithstanding the fact that all administrative reme-
110 dies provided for in this article have not been exhausted

111 or invoked against the person or persons against whom
112 such relief is sought.

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

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

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

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

126 (2) Offering, conferring or agreeing to confer any
127 benefit to induce any other person to violate the
128 provisions of this chapter, or of any other law relating
129 to the collection, transportation, treatment, storage, or
130 disposal of solid waste, or of any rule adopted pursuant
131 thereto;

132 (3) Coercing a customer by violence or economic
133 reprisal or the threat thereof to utilize the services of
134 any permittee; or

135 (4) Preventing, without authorization of the division,
136 any permittee from disposing of solid waste at a licensed
137 treatment, storage or disposal facility.

§22-15-16. Appeal procedures.

1 Any person having an interest which is or may be
2 adversely affected, or who is aggrieved by an order of
3 the director, or by the issuance or denial of a permit or
4 by the permit's terms or conditions, may appeal to the
5 environmental quality board as provided in article one,
6 chapter twenty-two-b of this code.

***§22-15-17. Limited extension of solid waste facility closure deadline.**

1 (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.

2 deadline up to the thirtieth day of September, one
3 thousand nine hundred ninety-four, to a solid waste
4 facility required under the terms of an extension
5 granted pursuant to this subsection to close by the
6 thirtieth day of June, one thousand nine hundred ninety-
7 three, or required by solid waste management rules to
8 close by the thirtieth day of September, one thousand
9 nine hundred ninety-three, provided that the solid waste
10 facility:

11 (1) Has a solid waste facility permit, or by the first
12 day of March, one thousand nine hundred ninety-three,
13 had an application to obtain a permit pending before the
14 division for the construction of a landfill in accordance
15 with title forty-seven, series thirty-eight, solid waste
16 management rules; and

17 (2) Has a certificate of need or had an application
18 pending therefor, from the public service commission;
19 and

20 (3) Has been determined by the director to pose no
21 significant hazard to public health, safety or the
22 environment; and

23 (4) Has entered into a compliance schedule with the
24 division to be in full compliance, no later than the
25 thirtieth day of September, one thousand nine hundred
26 ninety-four, with title forty-seven, series thirty-eight,
27 solid waste management rules or to be in full com-
28 pliance, no later than the thirtieth day of September,
29 one thousand nine hundred ninety-four, with preclosure
30 provisions of title forty-seven, series thirty-eight, solid
31 waste management rules: *Provided*, That no such
32 extension of closure deadline shall extend beyond the
33 thirty-first day of March, one thousand nine hundred
34 ninety-four, for any landfill in a county in which there
35 is also located a commercial solid waste landfill which
36 has installed a composite liner system in accordance
37 with the requirements of the solid waste management
38 rules.

39 (b) Any solid waste facility seeking to extend its
40 closure deadline until the thirtieth day of September,
41 one thousand nine hundred ninety-four, shall submit to

42 the director, no later than the thirtieth day of April, one
43 thousand nine hundred ninety-three, an application
44 sufficient to demonstrate compliance with the require-
45 ments of subsection (a) of this section. The director shall
46 grant or deny any application within thirty days of
47 receipt thereof: *Provided*, That as a condition precedent
48 for granting such closure extension, a solid waste
49 facility must enter into an agreement with the director
50 that the solid waste facility shall, no later than the
51 thirtieth day of September, one thousand nine hundred
52 ninety-three, complete and submit to the director an
53 analysis of the facility's specific requirements and cost
54 to comply with the applicable design criteria, ground-
55 water monitoring provisions of title forty-seven, series
56 thirty-eight, solid waste management rules and the
57 corrective action, financial assurance and closure and
58 post-closure care provisions of Subtitle (d) of the federal
59 Resource Conservation and Recovery Act, 42 U.S.C.
60 6941-6949.

61 (c) Any party who is aggrieved by an order of the
62 director regarding the grant or denial of an extension
63 of the closure deadline for a solid waste facility pursuant
64 to this section may obtain judicial review thereof in the
65 same manner as provided in section four, article five,
66 chapter twenty-nine-a of this code, which provisions
67 shall apply to and govern such review with like effect
68 as if the provisions of said section were set forth in
69 extenso in this section, except that the petition shall be
70 filed, within the time specified in section four, article
71 five, chapter twenty-nine-a of this code, in the circuit
72 court of the county where such facility exists: *Provided*,
73 That the court shall not in any manner permit the
74 continued acceptance of solid waste at the facility
75 pending review of the decision of the director of the
76 division.

77 (d) The judgment of the circuit court shall be final
78 unless reversed, vacated or modified on appeal to the
79 supreme court of appeals, in accordance with the
80 provisions of section one, article six, chapter twenty-
81 nine-a of this code, except that notwithstanding the
82 provisions of said section, the petition seeking such

83 review must be filed with said supreme court of appeals
84 within thirty days from the date of entry of the
85 judgment of the circuit court.

86 (e) Notwithstanding any other provision of this article,
87 the director, upon receipt of a request for an extension,
88 shall grant an extension of the closure deadline up to
89 the thirtieth day of September, one thousand nine
90 hundred ninety-four, to any solid waste facility required
91 to close on the thirty-first day of March, one thousand
92 nine hundred ninety-three, or the thirtieth day of
93 September, one thousand nine hundred ninety-three,
94 which is owned by a solid waste authority or owned by
95 a municipality and which accepts at least thirty percent
96 of its waste from within the county in which it is located
97 and which has not been determined by the director to
98 pose a significant risk to human health and safety or
99 cause substantial harm to the environment and which
100 could not be granted an extension up to the thirtieth day
101 of September, one thousand nine hundred ninety-four,
102 pursuant to the terms of subsections (a) and (b) of this
103 section if:

104 (1) The cost of transporting the waste is prohibitive;
105 or

106 (2) The cost of disposing of waste in other solid waste
107 facilities within the wasteshed would increase.

108 (f) Notwithstanding any other provision of this article,
109 the director shall grant an extension of the closure
110 deadline up to the thirtieth day of September, one
111 thousand nine hundred ninety-four, to any solid waste
112 landfill which, on or before the first day of March, one
113 thousand nine hundred ninety-three, has entered into a
114 compliance schedule with the director for the construc-
115 tion of a transfer station or to any solid waste landfill
116 which on the first day of March, one thousand nine
117 hundred ninety-three, is already in the process of
118 constructing a solid waste transfer station and applies
119 by the first day of April, one thousand nine hundred
120 ninety-three, to enter into with the director, a com-
121 pliance schedule for the completion of the transfer
122 station: *Provided*, That upon the completion of the

123 transfer station and commencement of operations of the
124 transfer station, such landfill shall cease accepting solid
125 waste for disposal.

§22-15-18. Condition on receiving permit.

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

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

**§22-15-19. Municipal and commercial solid waste incin-
eration and backhauling prohibited;
exceptions.**

1 (a) Notwithstanding any other provision of this code
2 to the contrary, it is unlawful to install, establish or
3 construct a new municipal or commercial solid waste
4 facility utilizing incineration technology for the purpose
5 of solid waste incineration: *Provided*, That such prohi-
6 bition does not include the development of pilot projects
7 which may include tire or tire material incineration,
8 designed to analyze the efficiency and environmental
9 impacts of incineration technologies: *Provided, however*,
10 That any pilot project proposing to incinerate solid
11 waste must comply with regulatory requirements for
12 solid waste facilities established in this chapter and
13 shall demonstrate with particularity to the division that
14 it has the financial and technical ability to comply with

15 all rules applicable to solid waste facilities utilizing
16 incineration technologies. The division shall require a
17 surety bond, deposit or similar instrument in an amount
18 sufficient to cover the costs of potential future environ-
19 mental harm at the site.

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

§22-15-20. Sewage sludge management.

1 (a) The division shall develop and implement a
2 comprehensive program for the regulation and manage-
3 ment of sewage sludge. The division is authorized to
4 require permits for all facilities and activities which
5 generate, process or dispose of sewage sludge by
6 whatever means, including, but not limited to, land
7 application, composting, mixed waste composting,
8 incineration or any other method of handling sewage
9 sludge within the state.

10 (b) The director shall promulgate rules necessary for
11 the efficient and orderly regulation of sewage sludge no
12 later than ninety days after the effective date of this
13 article. The Legislature finds and declares that condi-
14 tions warranting a rule to be promulgated as an
15 emergency rule do exist and that the promulgation of
16 the initial rule required by this section should be
17 accorded emergency status. All rules, whether emer-
18 gency or not, promulgated pursuant to this section shall
19 assure, at a minimum, the following:

20 (1) That entities either producing sewage sludge
21 within the state or importing sewage sludge into the
22 state are required to report to the division the following:

23 (i) The specific source of the sewage sludge;

24 (ii) The amount of sewage sludge actually generated
25 or imported;

26 (iii) The content of heavy metals, pathogens, toxins or
27 vectors present in the sewage sludge; and

28 (iv) Each location that the sewage sludge is stored,
29 land applied or otherwise disposed of; the amount so

30 stored, land applied or otherwise disposed of; and the
31 capacity of that location to accept sewage sludge;

32 (2) That the division engage in reasonable and
33 periodic monitoring of all sewage sludge related
34 activities and to monitor data supplied by sewage sludge
35 producers or importers to ensure compliance with state
36 and federal regulations;

37 (3) That representatives of the division have the
38 ability to enter onto any land application site for the
39 purposes of inspecting and analyzing the effects of
40 sewage sludge application on that site;

41 (4) That no permit for the processing or disposal of
42 sewage sludge will be issued until there is an accurate
43 finding that it has been adequately tested and shown not
44 to contain heavy metals, pathogens, toxins or vectors in
45 excess of regulatory standards;

46 (5) That the director may require a surety bond,
47 deposit or similar instrument in an amount sufficient to
48 cover the costs of future environmental remediation
49 from producers and importers of sewage sludge;

50 (6) That no person or entity be allowed to apply
51 sewage sludge to land in a manner that will result in
52 exceeding the maximum soil concentration for all
53 pollutants, including, but not limited to, arsenic,
54 cadmium, chromium, copper, lead, mercury, molybde-
55 num, nickel, selenium and zinc;

56 (7) That no land, except a solid waste facility, be
57 allowed to accept or store so much sewage sludge as to
58 exceed the agronomic rate or a rate of fifteen dry tons
59 per acre per year, whichever is less: *Provided*, That up
60 to twenty-five dry tons per acre per year may be applied
61 in the reclamation of surface mine land;

62 (8) That information relating to the disposal of sewage
63 sludge is available to affected communities;

64 (9) That all sewage sludge processing facilities contain
65 sufficient design specifications to protect ground and
66 surface waters;

67 (10) That regulation of composting facilities varies

68 according to types and quantities of materials handled;

69 (11) That only living or dead plant tissues are used
70 as bulking agents in sewage sludge processing facilities;
71 and

72 (12) That a fee, to be paid by the producer or
73 importer, be levied and imposed on the land application
74 of sewage sludge, to be collected at a per ton rate,
75 sufficient to cover the costs of the sewage sludge
76 management program. Fees collected pursuant to the
77 terms of this subsection shall be deposited in the special
78 revenue fund designated the "water quality manage-
79 ment fund" established under the provisions of section
80 ten, article eleven of this chapter. The fee schedule shall
81 vary according to the volume of materials handled and
82 the contaminant level of the sewage sludge and shall be
83 subject to the provisions of article three, chapter twenty-
84 nine-a of this code.

85 (c) For those publicly owned treatment works (POTW)
86 which produce sewage sludge and are regulated by the
87 division pursuant to an NPDES permit required under
88 article eleven of this chapter, a sewage sludge process-
89 ing permit shall be a part of the existing water pollution
90 control permit and shall include a sewage sludge
91 management plan approved by the director.

92 (d) On and after the tenth day of April, one thousand
93 nine hundred ninety-three, any facility seeking to land
94 apply, compost, incinerate or recycle sewage sludge
95 shall first apply for and obtain a permit from the
96 division. No such permit may be issued until the rule
97 provided for in subsection (b) of this section is effective.

98 (e) All sewage sludge placed in, or upon, or used by
99 a solid waste facility or processed or handled, pursuant
100 to a permit issued by the division, shall be subject to the
101 same tipping and other fees levied by this chapter on
102 the disposal of solid waste and shall be included in said
103 facility's total tonnage, subject to the limitations
104 established in this article and the provisions of article
105 four, chapter twenty-two-c: *Provided*, That no land
106 within a solid waste facility, but outside a landfill
107 disposal cell, be allowed to accept the permanent

108 application of so much sewage sludge as to exceed the
109 agronomic rate or a rate of fifteen dry tons per acre per
110 year, whichever is less: *Provided, however,* That no such
111 fees, excepting assessment fees provided for in subdivi-
112 sion (12), subsection (b) of this section shall be levied
113 upon the application of sewage sludge to land outside a
114 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.
- §22-16-9. Solid waste closure revenue bonds lawful investments.
- §22-16-10. Limitation on assistance.
- §22-16-11. Application for closure assistance.
- §22-16-12. Closure cost assistance fund.
- §22-16-13. Promulgation of rules by director.
- §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
3 that must be closed because they cannot be operated in
4 an environmentally sound manner;

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

9 As long as these landfills remain open, the threat of

10 continuing harm to the environment and the health and
11 safety of the citizens of West Virginia exists, and the
12 cost to remediate their adverse effects will continue to
13 grow;

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

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

20 Therefore, it is the purpose of this article to provide
21 an assistance program that will be available to permit-
22 tees of landfills that will facilitate the closure of these
23 landfills in a timely and environmentally sound manner.

§22-16-2. Definitions.

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

3 (1) "Commercial recycler" means any person, corpo-
4 ration or business entity whose operation involves the
5 mechanical separation of materials for the purpose of
6 reselling or recycling at least seventy percent by weight
7 of the materials coming into the commercial recycling
8 facility;

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

16 (3) "Director" means the director of the division of
17 environmental protection or such other person to whom
18 the director has delegated duties or authority pursuant
19 to sections six or eight, article one of this chapter;

20 (4) "Landfill" means any solid waste facility for the
21 disposal of solid waste on land, and also means any
22 system, facility, land, contiguous land, improvements on
23 the land, structures or other appurtenances or methods

24 used for processing, recycling or disposing of solid
25 waste, including landfills, transfer stations, resource
26 recovery facilities and other such facilities not herein
27 specified. Such facility is situated, for purposes of this
28 article, in the county where the majority of the spatial
29 area of such facility is located;

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

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

35 The definitions provided in section two, article fifteen
36 of this chapter, to the extent they are applicable, apply
37 in this article.

§22-16-3. Commercial solid waste landfill closure assistance program.

1 (a) There is established within the division of environ-
2 mental protection the commercial solid waste landfill
3 closure assistance program. The purpose of the program
4 is to provide assistance for the closure of landfills which
5 are required to cease operations pursuant to the closure
6 deadlines provided for in this chapter.

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

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

17 (2) Construction of all closure-related structures
18 necessary to provide sufficient leachate management,
19 sediment and erosion control, gas management, ground-
20 water monitoring and final cover and cap, all to meet
21 the closure-related requirements of article fifteen of this
22 chapter and rules promulgated pursuant thereto; and

23 (3) All surface water and groundwater monitoring
24 activities required pursuant to articles eleven and
25 fifteen of this chapter and applicable rules promulgated
26 thereunder.

27 (c) To the extent that there are funds available in the
28 fund established in section twelve of this article or
29 subdivision (3), subsection (h), section eleven, article
30 fifteen of this chapter, the director may take remedial
31 actions necessary to protect the groundwater and
32 surface water, other natural resources and the health
33 and safety of the citizens of this state.

§22-16-4. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 in the amount of three dollars and fifty cents per ton
5 or like ratio on any part thereof of solid waste, except
6 as provided in subsection (e) of this section: *Provided,*
7 That any solid waste disposal facility may deduct from
8 this assessment fee an amount, not to exceed the fee,
9 equal to the amount that such facility is required by the
10 public service commission to set aside for the purpose
11 of closure of that portion of the facility required to close
12 by article fifteen of this chapter. The fee imposed by this
13 section is in addition to all other fees and taxes levied
14 by law and shall be added to and constitute part of any
15 other fee charged by the operator or owner of the solid
16 waste disposal facility.

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

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

26 (2) The operator shall remit the fee imposed by this
27 section to the tax commissioner on or before the fifteenth

28 day of the month next succeeding the month in which
29 the fee accrued. Upon remittance of the fee, the operator
30 shall file returns on forms and in the manner prescribed
31 by the tax commissioner.

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

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

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

53 (6) Whenever the owner of a solid waste disposal
54 facility leases the solid waste facility to an operator, the
55 operator is primarily liable for collection and remittance
56 of the fee imposed by this section and the owner is
57 secondarily liable for remittance of the fee imposed by
58 this section. However, if the operator fails, in whole or
59 in part, to discharge his or her obligations under this
60 section, the owner and the operator of the solid waste
61 facility are jointly and severally responsible and liable
62 for compliance with the provisions of this section.

63 (7) If the operator or owner responsible for collecting
64 the fee imposed by this section is an association or
65 corporation, the officers thereof are liable, jointly and
66 severally, for any default on the part of the association
67 or corporation, and payment of the fee and any additions

68 to tax, penalties and interest imposed by article ten,
69 chapter eleven of this code may be enforced against
70 them as against the association or corporation which
71 they represent.

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

78 (c) *Regulated motor carriers.* — The fee imposed by
79 this section is a necessary and reasonable cost for motor
80 carriers of solid waste subject to the jurisdiction of the
81 public service commission under chapter twenty-four-a
82 of this code. Notwithstanding any provision of law to the
83 contrary, upon the filing of a petition by an affected
84 motor carrier, the public service commission shall,
85 within fourteen days, reflect the cost of said fee in said
86 motor carrier's rates for solid waste removal service. In
87 calculating the amount of said fee to said motor carrier,
88 the commission shall use the national average of pounds
89 of waste generated per person per day as determined by
90 the United States Environmental Protection Agency.

91 (d) *Definitions.* — For purposes of this section, the
92 term "solid waste disposal facility" means any approved
93 solid waste facility or open dump in this state, and
94 includes a transfer station when the solid waste collected
95 at the transfer station is not finally disposed of at a solid
96 waste facility within this state that collects the fee
97 imposed by this section. Nothing in this section autho-
98 rizes in any way the creation or operation of or
99 contribution to an open dump.

100 (e) *Exemptions.* — The following transactions are
101 exempt from the fee imposed by this section:

102 (1) Disposal of solid waste at a solid waste disposal
103 facility by the person who owns, operates or leases the
104 solid waste disposal facility if the facility is used
105 exclusively to dispose of waste originally produced by
106 such person in such person's regular business or

107 personal activities or by persons utilizing the facility on
108 a cost-sharing or nonprofit basis;

109 (2) Reuse or recycling of any solid waste;

110 (3) Disposal of residential solid waste by an individual
111 not in the business of hauling or disposing of solid waste
112 on such days and times as designated by the director as
113 exempt from the solid waste assessment fee; and

114 (4) Disposal of solid waste at a solid waste disposal
115 facility by a commercial recycler which disposes of
116 thirty percent or less of the total waste it processes for
117 recycling. In order to qualify for this exemption each
118 commercial recycler must keep accurate records of
119 incoming and outgoing waste by weight. Such records
120 must be made available to the appropriate inspectors
121 from the division, upon request.

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

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

137 (h) *Dedication of proceeds.* — Fifty percent of the
138 proceeds of the fee collected pursuant to this article in
139 excess of thirty thousand tons per month from any
140 landfill which is permitted to accept in excess of thirty
141 thousand tons per month pursuant to section nine,
142 article fifteen of this chapter shall be remitted, at least
143 monthly, to the county commission in the county in
144 which the landfill is located. The remainder of the
145 proceeds of the fee collected pursuant to this section
146 shall be deposited in the closure cost assistance fund

147 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.

1 The solid waste management board is hereby empow-
2 147 150 155 160 165 170 175 180 185 190 195 200 205 210 215 220 225 230 235 240 245 250 255 260 265 270 275 280 285 290 295 300 305 310 315 320 325 330 335 340 345 350
3 147 150 155 160 165 170 175 180 185 190 195 200 205 210 215 220 225 230 235 240 245 250 255 260 265 270 275 280 285 290 295 300 305 310 315 320 325 330 335 340 345 350
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35 147 150 155 160 165 170 175 180 185 190 195 200 205 210 215 220 225 230 235 240 245 250 255 260 265 270 275 280 285 290 295 300 305 310 315 320 325 330 335 340 345 350
of one hundred fifty million dollars.

14 The board may, from time to time, issue renewal
15 notes, issue bonds to pay such notes and whenever it
16 deems refunding expedient, refund any bonds by the
17 issuance of solid waste closure revenue refunding bonds
18 of the state. Except as may otherwise be expressly
19 provided in this article or by the board, every issue of
20 its bonds or notes are obligations of the board payable
21 out of the revenues and reserves created for such
22 purposes by the board, which are pledged for such
23 payment, without preference or priority of the first
24 bonds issued, subject only to any agreements with the
25 holders of particular bonds or notes pledging any
26 particular revenues. Such pledge is valid and binding
27 from the time the pledge is made and the revenue so
28 pledged and thereafter received by the board is
29 immediately subject to the lien of such pledge without
30 any physical delivery thereof or further act and the lien
31 of any such pledge is valid and binding as against all
32 parties having claims of any kind in tort, contract or
33 otherwise against the board irrespective of whether such
34 parties have notice thereof. All such bonds and notes
35 shall have all the qualities of negotiable instruments.

36 The bonds and notes shall be authorized by resolution
37 of the board, shall bear such dates and shall mature at
38 such times, in the case of any such note or any renewals
39 thereof not exceeding five years from the date of issue
40 of such original note, and in the case of any such bond
41 not exceeding fifty years from the date of issue, as such
42 resolution may provide. The bonds and notes shall bear
43 interest at such rate, be in such denominations, be in
44 such form, either coupon or registered, carry such
45 registration privileges, be payable in such medium of
46 payment, at such place and be subject to such terms of
47 redemption as the board may authorize. The board may
48 sell such bonds and notes at public or private sale, at
49 the price the board determines. The bonds and notes
50 shall be executed by the chair and vice chair of the
51 board, both of whom may use facsimile signatures. The
52 official seal of the board or a facsimile thereof shall be
53 affixed thereto or printed thereon and attested, manu-
54 ally or by facsimile signature, by the secretary-treasurer
55 of the board, and any coupons attached thereto shall
56 bear the signature or facsimile signature of the chair of
57 the board. In case any officer whose signature, or a
58 facsimile of whose signature, appears on any bonds,
59 notes or coupons ceases to be such officer before delivery
60 of such bonds or notes, such signature or facsimile is
61 nevertheless sufficient for all purposes the same as if he
62 or she had remained in office until such delivery and,
63 in case the seal of the board has been changed after a
64 facsimile has been imprinted on such bonds or notes,
65 such facsimile seal will continue to be sufficient for all
66 purposes.

67 Any resolution authorizing any bonds or notes or any
68 issue thereof may contain provisions (subject to such
69 agreements with bondholders or noteholders as may
70 then exist, which provisions shall be a part of the
71 contract with the holders thereof) as to pledging all or
72 any part of the revenues of the board to secure the
73 payment of the bonds or notes or of any issue thereof;
74 the use and disposition of revenues of the board; a
75 covenant to fix, alter and collect rentals, fees, service
76 charges and other charges so that pledged revenues will
77 be sufficient to pay the cost of projects as provided in

78 this article, related to closure activities, pay principal
79 of and interest on bonds or notes secured by the pledge
80 of such revenues and provide such reserves as may be
81 required by the applicable resolution; the setting aside
82 of reserve funds, sinking funds or replacement and
83 improvement funds and the regulation and disposition
84 thereof; the crediting of the proceeds of the sale of bonds
85 or notes to and among the funds referred to or provided
86 for in the resolution authorizing the issuance of the
87 bonds or notes; the use, lease, sale or other disposition
88 of any solid waste disposal project or any other assets
89 of the board; limitations on the purpose to which the
90 proceeds of sale of bonds or notes may be applied and
91 pledging such proceeds to secure the payment of the
92 bonds or notes or of any issue thereof; agreement of the
93 board to do all things necessary for the authorization,
94 issuance and sale of bonds in such amounts as may be
95 necessary for the timely retirement of notes issued in
96 anticipation of the issuance of bonds; limitations on the
97 issuance of additional bonds or notes; the terms upon
98 which additional bonds or notes may be issued and
99 secured; the refunding of outstanding bonds or notes; the
100 procedure, if any, by which the terms of any contract
101 with bondholders or noteholders may be amended or
102 abrogated, the holders of which must consent thereto,
103 and the manner in which such consent may be given;
104 limitations on the amount of moneys to be expended by
105 the board for operating, administrative or other
106 expenses of the board; and any other matters, of like or
107 different character, which in any way affect the security
108 or protection of the bonds or notes.

109 In the event that the sum of all reserves pledged to
110 the payment of such bonds or notes are less than the
111 minimum reserve requirements established in any
112 resolution or resolutions authorizing the issuance of such
113 bonds or notes, the chair of the board shall certify, on
114 or before the first day of December of each year, the
115 amount of such deficiency to the governor of the state,
116 for inclusion, if the governor shall so elect, of the amount
117 of such deficiency in the budget to be submitted to the
118 next session of the Legislature for appropriation to the
119 board to be pledged for payment of such bonds or notes:

120 *Provided*, That the Legislature is not required to make
121 any appropriation so requested, and the amount of such
122 deficiencies does not constitute a debt or liability of the
123 state.

124 Neither the members of the board nor any person
125 executing the bonds or notes are liable personally on the
126 bonds or notes or be subject to any personal liability or
127 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 pro-
ceeds; application of surplus.**

1 (a) Before issuing any revenue bonds in accordance
2 with the provisions of this article, the solid waste
3 management board shall consult with and be advised by
4 the West Virginia water development authority as to the
5 feasibility and necessity of the proposed issuance of
6 revenue bonds.

7 (b) Prior to issuing revenue bonds under the provi-
8 sions of this article, the board shall enter into agree-
9 ments satisfactory to the West Virginia water develop-
10 ment authority with regard to the selection of all
11 consultants, advisors and other experts to be employed
12 in connection with the issuance of such bonds and the
13 fees and expenses to be charged by such persons, and
14 to establish any necessary reserve funds and replace-
15 ment and improvement funds, all such funds to be
16 administered by the water development authority, and,
17 so long as any such bonds remain outstanding, to
18 establish and maintain a sinking fund or funds to retire
19 such bonds and pay the interest thereon as the same may
20 become due. The amounts in any such sinking fund, as
21 and when so set apart by the board, shall be remitted
22 to the West Virginia water development authority at
23 least thirty days previous to the time interest or
24 principal payments become due, to be retained and paid
25 out by the water development authority, as agent for the
26 board, in a manner consistent with the provisions of this
27 article and with the resolution pursuant to which the
28 bonds have been issued. The water development author-

29 ity shall act as fiscal agent for the administration of any
30 sinking fund and reserve fund established under each
31 resolution authorizing the issuance of revenue bonds
32 pursuant to the provisions of this article, and shall invest
33 all funds not required for immediate disbursement in
34 the same manner as funds are invested pursuant to the
35 provisions of section fifteen, article one, chapter twenty-
36 two-c of this code.

37 (c) Notwithstanding any other provision of this article
38 to the contrary, no revenue bonds shall be issued, nor
39 the proceeds thereof expended or distributed, pursuant
40 to the provisions of this article, without the prior
41 approval of the water development authority.

42 (d) If the proceeds of revenue bonds issued for any
43 solid waste landfill closure project exceed the cost
44 thereof, the surplus shall be paid into the fund herein
45 provided for the payment of principal and interest upon
46 such bonds. Such fund may be used by the fiscal agent
47 for the purchase or redemption of any of the outstanding
48 bonds payable from such fund at the market price, but
49 not at a price exceeding the price at which any of such
50 bonds are in the same year redeemable, as fixed by the
51 board in its said resolution, and all bonds redeemed or
52 purchased shall forthwith be canceled, and shall not
53 again be issued.

§22-16-7. Legal remedies of bondholders.

1 Any holder of solid waste disposal revenue bonds
2 issued under the authority of this article or any of the
3 coupons appertaining thereto, except to the extent the
4 rights given by this article may be restricted by the
5 applicable resolution, may by civil action, mandamus or
6 other proceeding, protect and enforce any rights
7 granted under the laws of this state or granted under
8 this article, by the resolution authorizing the issuance
9 of such bonds, and may enforce and compel the perfor-
10 mance of all duties required by this article, or by the
11 resolution, to be performed by the board or any officer
12 or employee thereof, including the fixing, charging and
13 collecting of sufficient rentals, fees, service charges or
14 other charges.

§22-16-8. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

1 Solid waste closure revenue bonds and notes and solid
2 waste closure revenue refunding bonds issued under
3 authority of this article and any coupons in connection
4 therewith are not a debt or a pledge of the faith and
5 credit or taxing power of this state or of any county,
6 municipality or any other political subdivision of this
7 state, and the holders or owners thereof have no right
8 to have taxes levied by the Legislature or taxing
9 authority of any county, municipality or any other
10 political subdivision of this state for the payment of the
11 principal thereof or interest thereon, but such bonds and
12 notes are payable solely from the revenues and funds
13 pledged for their payment as authorized by this article
14 unless the notes are issued in anticipation of the issuance
15 of bonds or the bonds are refunded by refunding bonds
16 issued under authority of this article, which bonds or
17 refunding bonds are payable solely from revenues and
18 funds pledged for their payment as authorized by this
19 article. All such bonds and notes shall contain on the
20 face thereof a statement to the effect that the bonds or
21 notes, as to both principal and interest, are not debts of
22 the state or any county, municipality or political
23 subdivision thereof, but are payable solely from re-
24 venues and funds pledged for their payment.

25 All expenses incurred in carrying out the provisions
26 of this article are payable solely from funds provided
27 under authority of this article. This article does not
28 authorize the board to incur indebtedness or liability on
29 behalf of or payable by the state or any county,
30 municipality or political subdivision thereof.

§22-16-9. Solid waste closure revenue bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code notwithstanding, all solid
3 waste closure revenue bonds issued pursuant to this
4 article are lawful investments for the West Virginia
5 state board of investments and are also lawful invest-

6 ments for financial institutions as defined in section two,
7 article one, chapter thirty-one-a of this code, and for
8 insurance companies.

***§22-16-10. Limitation on assistance.**

1 The director may provide closure assistance only to
2 permittees who meet the following requirements:

3 (1) The permittee of a landfill that does not have a
4 liner and ceases accepting solid waste on or before the
5 thirtieth day of November, one thousand nine hundred
6 ninety-one, except for those landfills allowed to accept
7 solid waste pursuant to the provisions of section
8 seventeen, article fifteen of this chapter and ceases
9 accepting solid waste on or before the extension deadline
10 as determined by the director; or the permittee of a
11 landfill that has only a single liner and ceases accepting
12 solid waste on or before the thirtieth day of September,
13 one thousand nine hundred ninety-three;

14 (2) The permittee of the landfill must demonstrate to
15 the satisfaction of the director that it does not have the
16 financial resources on hand or the ability to generate the
17 amounts needed to comply, in a timely manner, with the
18 closure requirements provided in article fifteen of this
19 chapter and any rules promulgated pursuant thereto;
20 and

21 (3) The permittee must maintain a permit for the
22 landfill pursuant to the provisions of section ten, article
23 fifteen of this chapter and maintain the full amount of
24 the bond required to be submitted pursuant to section
25 twelve, article fifteen of this chapter.

§22-16-11. Application for closure assistance.

1 (a) The director shall provide an application and
2 application procedure for all permittees of solid waste
3 landfills desiring to receive closure assistance under this
4 article. At a minimum the procedure shall require that:

5 (1) The permittee of a landfill that does not have a
6 liner system must submit its application no later than
7 the fifteenth day of September, one thousand nine
8 hundred ninety-two, except the permittee of a landfill

*Clerk's Note: §22-16-10 should be read as amended by §20-5N-5, S. B. 1021, p. 2646.

9 that has been allowed to accept solid waste pursuant to
10 the provisions of section seventeen, article fifteen of this
11 chapter must submit its application no later than the
12 eleven months following the expiration of the extension;
13 and

14 (2) The permittee of a landfill that has only a single
15 liner system must submit its application no later than
16 eleven months following the date of closure of the
17 landfill.

18 (b) The director shall, within a reasonable time after
19 receipt of a complete application, notify the applicant of
20 the acceptance or rejection of the application. If the
21 application is rejected the notice shall contain the
22 reasons for the rejection.

***§22-16-12. Closure cost assistance fund.**

1 (a) The "Closure Cost Assistance Fund" is continued
2 as a special revenue account in the state treasury. The
3 fund shall operate as a special fund whereby all deposits
4 and payments thereto do not expire to the general
5 revenue fund, but remain in such account and be
6 available for expenditure in the succeeding fiscal year.
7 Separate subaccounts may be established within the
8 special account for the purpose of identification of
9 various revenue resources and payment of specific
10 obligations.

11 (b) Interest earned on any money in the fund shall be
12 deposited to the credit of the fund.

13 (c) The fund consists of the following:

14 (1) Moneys collected and deposited in the state
15 treasury which are specifically designated by acts of the
16 Legislature for inclusion in the fund, including moneys
17 collected and deposited into the fund pursuant to section
18 four of this article;

19 (2) Contributions, grants and gifts from any source,
20 both public and private, which may be used by the
21 director for any project or projects;

22 (3) Amounts repaid by permittees pursuant to section
23 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.

24 (4) All interest earned on investments made by the
25 state from moneys deposited in this fund.

26 (d) The solid waste management board, upon written
27 approval of the director, has the authority to pledge all
28 or such part of the revenues paid into the closure cost
29 assistance fund as may be needed to meet the require-
30 ments of any revenue bond issue or issues of the solid
31 waste management board authorized by this article,
32 including the payment of principal of, interest and
33 redemption premium, if any, on such revenue bonds and
34 the establishing and maintaining of a reserve fund or
35 funds for the payment of the principal of, interest and
36 redemption premium, if any, on such revenue bond issue
37 or issues when other moneys pledged may be insufficient
38 therefor. Any pledge of moneys in the closure cost
39 assistance fund for revenue bonds shall be a prior and
40 superior charge on such fund over the use of any of the
41 moneys in such fund to pay for the cost of any project
42 on a cash basis. Expenditures from the fund, other than
43 for the retirement of revenue bonds, may only be made
44 in accordance with the provisions of this article.

45 (e) The amounts deposited in the fund may be
46 expended only on the cost of projects as provided for in
47 sections three and fifteen of this article and the amounts
48 may be expended for payment of bonds and notes issued
49 pursuant to section five of this article: *Provided*, That
50 no more than one percent of the annual deposits to such
51 fund may be used for administrative purposes.

§22-16-13. Promulgation of rules by director.

1 The director shall promulgate rules that are neces-
2 sary for the efficient and orderly implementation and
3 administration of this article.

§22-16-14. Liability of owner or operator.

1 Nothing in this article relieves the owner, operator or
2 permittee of a landfill of the legal duties, obligations or
3 liabilities incident to the ownership or operation of a
4 landfill, except that the performance by the director of
5 any of the activities set forth in subsection (b), section
6 three of this article relieves the operator from the

7 requirement to perform such activities.

**§22-16-15. Procedures for handling remedial actions;
payment of costs of remedial actions to be
paid by owner or operator.**

1 When the director, in performing activities pursuant
2 to this article determines action, not set forth in
3 subsection (b), section three of this article, is necessary
4 to prevent or remediate any adverse effects of the
5 landfill he or she shall notify the permittee and make
6 and enter an order directing the permittee to take
7 corrective or remedial action. The order shall contain
8 findings of fact upon which the director based his or her
9 determination to make and enter such order. The
10 director shall fix a time limit for the completion of such
11 action.

12 The director shall cause a copy of any such order to
13 be served by registered or certified mail or by a law-
14 enforcement officer upon such person.

15 If the corrective action is not taken within the time
16 limit or the permittee notifies the director that it is
17 unable to comply with the order, the director may
18 expend amounts, as provided herein, to make the
19 remediation.

20 The costs reasonably incurred in any remedial action
21 taken by the director as provided in this article may be
22 paid for initially by amounts available to the director
23 in the fund created in subdivision (3), subsection (h),
24 section eleven, article fifteen of this chapter or, to the
25 extent funds are available, from the fund created in
26 section twelve of this article, and such sums so ex-
27 pended, if not promptly repaid by the permittee upon
28 request of the director, may be recovered from the
29 permittee by appropriate civil action to be initiated by
30 the attorney general upon request of the director. All
31 funds so recovered shall be deposited in the fund from
32 which said funds were expended.

§22-16-16. Right of entry.

1 The director or his or her duly authorized represen-
2 tatives have the right, upon presentation of proper

3 identification, to enter upon any property for the
4 purpose of conducting studies or exploratory work to
5 determine the existence of adverse effects of a landfill,
6 to determine the feasibility of the remediation or
7 prevention of such adverse effects and to perform the
8 activities set forth in sections three and fifteen of this
9 article. Such entry is as an exercise of the police power
10 of the state for the protection of public health, safety and
11 general welfare and is not an act of condemnation of
12 property or trespass thereon. Nothing contained in this
13 section eliminates any obligation to follow any process
14 that may be required by law.

§22-16-17. Authority of director to accept grants and gifts.

1 The director has the authority, on behalf of the
2 division of environmental protection, to accept for
3 deposit in the closure cost assistance fund established in
4 section twelve of this article, all gifts, grants, property,
5 funds, security interest, money, materials, labor,
6 supplies or services from the United States of America
7 or from any governmental unit or any person, firm or
8 corporation, and to carry out the terms or provisions of,
9 or make agreements with respect to, or pledge, any gifts
10 or grants, and to do any and all things necessary, useful,
11 desirable or convenient in connection with the procur-
12 ing, acceptance or disposition of gifts or grants.

§22-16-18. Management and control of project.

1 (a) The director shall manage and control all projects,
2 and may make and enter into all contracts or agree-
3 ments necessary and incidental to the performance of
4 the duties imposed under this article.

5 (b) On or before the thirty-first day of December, one
6 thousand nine hundred ninety-two, the director, in
7 consultation with the public service commission, shall
8 complete a statewide closure plan, a comprehensive
9 analysis of the total costs of closure anticipated under
10 such statewide closure plan, and a proposal for imple-
11 mentation of closure assistance funding. The director, in
12 consultation with the public service commission, shall
13 prepare and issue a report which shall include the

14 following:

15 (1) An identification of specific landfills expected to
16 be closed during the three-year period next following
17 the completion of the plan;

18 (2) An estimate of the projected closure costs asso-
19 ciated with each such identified landfill, including such
20 engineering and technical analysis as may be necessary
21 to provide a reasonable estimate;

22 (3) The extent to which closure assistance will be
23 needed for each such specific landfill; and

24 (4) An assessment of the order of priority which
25 should be established for closure of landfills and all
26 moneys potentially available therefor.

27 The plan and report required pursuant to the provi-
28 sions of this section shall be submitted to the Legislature
29 for its approval or rejection by a concurrent resolution.

ARTICLE 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.
- §22-17-5. Powers and duties of director; integration with other acts.
- §22-17-6. Promulgation of rules and standards by director.
- §22-17-7. Underground storage tank advisory committee; purpose.
- §22-17-8. Notification requirements.
- §22-17-9. Registration requirements; undertaking activities without registration.
- §22-17-10. Financial responsibility.
- §22-17-11. Performance standards for new underground storage tanks.
- §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.

1 This article may be known and cited as the “Under-
2 ground Storage Tank Act.”

§22-17-2. Declaration of policy and purpose.

1 The Legislature recognizes that large quantities of
2 petroleum and hazardous substances are stored in
3 underground storage tanks within the state of West
4 Virginia and that emergency situations involving these
5 substances can and will arise which may present a
6 hazard to human health, safety or the environment. The
7 Legislature also recognizes that some of these substan-
8 ces have been stored in underground storage tanks in
9 the state in a manner insufficient to protect human
10 health, safety or the environment. The Legislature
11 further recognizes that the federal government has
12 enacted Subtitle I of the federal Resource Conservation
13 and Recovery Act of 1976, as amended, which provides
14 for a federal program to remove the threat and remedy
15 the effects of releases from leaking underground storage
16 tanks and authorizes federal assistance to respond to
17 releases of petroleum from underground storage tanks.
18 The Legislature declares that the state of West Virginia
19 desires to produce revenue for matching the federal
20 assistance provided under the federal act; to create a
21 program to control the installation, operation and
22 abandonment of underground storage tanks and to
23 provide for corrective action to remedy releases of
24 regulated substances from these tanks. Therefore, the
25 Legislature hereby enacts the West Virginia under-
26 ground storage tank act to create an underground
27 storage tank program and to assume regulatory pri-
28 macy for such federal programs in this state.

§22-17-3. Definitions.

1 (a) “Change in status” means causing an underground
2 storage tank to be no longer in use or a change in the
3 reported uses, contents or ownership of an underground
4 storage tank.

5 (b) “Director” means the director of the West Virginia

6 division of environmental protection or or such other
7 person to whom the director has delegated authority or
8 duties pursuant to sections six or eight, article one of
9 this chapter.

10 (c) "Nonoperational storage tank" means an under-
11 ground storage tank in which regulated substances will
12 not be deposited or from which regulated substances
13 will not be dispensed after the eighth day of November,
14 one thousand nine hundred eighty-four.

15 (d) "Operator" means any person in control of, or
16 having responsibility for, the daily operation of an
17 underground storage tank.

18 (e) "Owner" means:

19 (1) In the case of an underground storage tank in use
20 on the eighth day of November, one thousand nine
21 hundred eighty-four, or brought into use after that date,
22 a person who owns an underground storage tank used
23 for the storage, use or dispensing of a regulated
24 substance.

25 (2) In the case of an underground storage tank in use
26 before the eighth day of November, one thousand nine
27 hundred eighty-four, but no longer in use on that date,
28 a person who owned such a tank immediately before the
29 discontinuation of its use.

30 (f) "Person" means any individual, trust, firm, joint
31 stock company, corporation (including government
32 corporations), partnership, association, state, municipal-
33 ity, commission, political subdivision of a state, inter-
34 state body, consortium, joint venture, commercial entity
35 and the United States government.

36 (g) "Petroleum" means petroleum, including crude oil
37 or any fraction thereof which is liquid at a temperature
38 of sixty degrees Fahrenheit and a pressure of fourteen
39 and seven-tenths pounds per square inch absolute.

40 (h) "Regulated substance" means:

41 (1) Any substance defined in section 101 (14) of the
42 Comprehensive Environmental Response, Compensation
43 and Liability Act of 1980, but not including any

44 substance regulated as a hazardous waste under
45 Subtitle C of the federal Resource Conservation and
46 Recovery Act of 1976, as amended; or

47 (2) Petroleum.

48 (i) "Release" means any spilling, leaking, emitting,
49 discharging, escaping, leaching or disposing from an
50 underground storage tank into groundwater, surface
51 water or subsurface soils.

52 (j) "Subtitle I" means Subtitle I of the federal
53 Resource Conservation and Recovery Act of 1976, as
54 amended.

55 (k) "Underground storage tank" means one tank or a
56 combination of tanks, and the underground pipes
57 connected thereto, which is used to contain an accum-
58 ulation of regulated substances and the volume of which,
59 including the volume of the underground pipes con-
60 nected thereto, is ten percent or more beneath the
61 surface of the ground, but does not include:

62 (1) Farm or residential tanks with a capacity of eleven
63 hundred gallons or less and used for storing motor fuel
64 for noncommercial purposes;

65 (2) Tanks used for storing heating oil for consumptive
66 use on the premises where stored;

67 (3) Septic tanks;

68 (4) A pipeline facility, including gathering lines,
69 regulated under the Natural Gas Pipeline Safety Act of
70 1968, or the Hazardous Liquid Pipeline Safety Act of
71 1968, or an intrastate pipeline facility regulated under
72 state laws comparable to the provisions of either of those
73 acts;

74 (5) Surface impoundments, pits, ponds or lagoons;

75 (6) Storm water or wastewater collection systems;

76 (7) Flow-through process tanks;

77 (8) Liquid traps or associated gathering lines directly
78 related to oil or gas production and gathering opera-
79 tions; or

80 (9) Storage tanks situated in an underground area
81 such as a basement, cellar, mineworking, drift, shaft or
82 tunnel, if the storage tank is situated upon or above the
83 surface of the floor.

84 The term "underground storage tank" does not
85 include any pipes connected to any tank which is
86 described in subparagraphs (1) through (9).

§22-17-4. Designation of division of environmental protection as the state underground storage tank program lead agency.

1 The division of environmental protection is hereby
2 designated as the state underground storage tank
3 program lead agency for purposes of Subtitle I and is
4 hereby authorized to take all actions necessary or
5 appropriate to secure to this state the benefits of said
6 legislation. In carrying out the purposes of this article,
7 the director is hereby authorized to cooperate with the
8 United States environmental protection agency, other
9 agencies of the federal government, agencies of this
10 state or other states, and other interested persons in all
11 matters relating to underground storage tank regula-
12 tion.

§22-17-5. Powers and duties of director; integration with other acts.

1 (a) In addition to all other powers and duties pres-
2 cribed in this article or otherwise by law, and unless
3 otherwise specifically set forth in this article, the
4 director shall perform any and all acts necessary to
5 carry out the purposes and requirements of Subtitle I.

6 (b) The director shall cooperate with and may receive
7 and expend money from the federal government or other
8 source.

9 (c) The director may enter into any agreements,
10 including reimbursement for services rendered, con-
11 tracts and cooperative arrangements under such terms
12 and conditions as he or she deems appropriate, with
13 other state agencies, educational institutions or other
14 organizations and individuals as necessary to implement
15 the provisions of this article.

§22-17-6. Promulgation of rules and standards by director.

1 (a) The director has overall responsibility for the
2 promulgation of rules under this article. In promulgat-
3 ing and revising such rules the director shall comply
4 with the provisions of chapter twenty-nine-a of this code.
5 Such rules shall be no more stringent than the rules and
6 regulations promulgated by the United States environ-
7 mental protection agency pursuant to Subtitle I.

8 (b) The director shall promulgate rules applicable to
9 owners or operators of underground storage tanks or
10 other affected persons, as appropriate, as follows:

11 (1) A requirement for a yearly registration fee for
12 underground storage tanks;

13 (2) A requirement that an owner or operator register
14 with the director each underground storage tank after
15 the effective date of the rules and that an owner or
16 operator report annually on changes in status of any
17 underground storage tank;

18 (3) Such release detection, prevention and correction
19 rules applicable to underground storage tanks as may
20 be necessary to protect human health and the
21 environment;

22 (4) Requirements for maintaining a leak detection
23 system, inventory control systems together with tank
24 testing, or a comparable system or method designed to
25 identify releases from underground storage tanks in a
26 manner consistent with the protection of human health
27 and the environment;

28 (5) Requirements for maintaining records of any
29 monitoring or leak detection system or inventory control
30 system or tank testing system;

31 (6) Rules for procedures and amount of fees to be
32 assessed for the underground storage tank administra-
33 tive fund, the leaking underground storage tank
34 response fund and the underground storage tank
35 insurance fund established pursuant to this article,
36 which shall include a capitalization fee to be assessed

37 against all owners or operators of underground tanks to
38 be used for initial establishment of the underground
39 storage tank insurance fund;

40 (7) Procedures for making expenditures from the
41 underground storage tank administrative fund, the
42 leaking underground storage tank response fund and
43 the underground storage tank insurance fund;

44 (8) Acceptable methods by which an owner or
45 operator may demonstrate financial responsibility;

46 (9) Requirements for reporting of releases and
47 corrective action taken in response to a release;

48 (10) Requirements for taking corrective action in
49 response to a release from an underground storage tank;

50 (11) Requirements for the closure of tanks to prevent
51 future releases of regulated substances to the
52 environment;

53 (12) Requirements for certification of installation,
54 removal, retrofit, testing and inspection of underground
55 storage tanks and leak detection systems by a registered
56 professional engineer or other qualified person;

57 (13) Requirements for public participation in the
58 enforcement of the state underground storage tank
59 program;

60 (14) Procedures establishing when and how the
61 director determines if information obtained by any
62 agency under this article is confidential;

63 (15) Standards of performance for new underground
64 storage tanks; or

65 (16) Any other rules or standards necessary and
66 appropriate for the effective implementation and
67 administration of this article.

**§22-17-7. Underground storage tank advisory committee;
purpose.**

1 The underground storage tank advisory committee is
2 continued. The committee is composed of seven
3 members, which shall include a member of the West

4 Virginia petroleum council, a member of the West
5 Virginia service station dealers association, a member
6 of the West Virginia petroleum marketers association,
7 the director, a member of the West Virginia manufactur-
8 ers association, the West Virginia insurance commis-
9 sioner, and a representative from the citizenry-at-large
10 who is appointed by the governor.

11 The committee is advisory to the director and the
12 division of environmental protection regarding the
13 expenditure of funds from the leaking underground
14 storage tank response fund and the underground storage
15 tank insurance fund created by this article. The director
16 shall deliver to the committee annually a report on
17 expenditures made from each fund. The committee shall
18 consider any matter brought before it by the director
19 or any member of the committee and may consider any
20 matter referred to it by a person not a member of the
21 committee. At the conclusion of its consideration of any
22 proposal, the committee shall make its recommendation
23 to the director. The director is not bound by any
24 recommendations of the committee. The committee may
25 also formulate general or long-range plans for improve-
26 ments in the administration of the funds for the
27 consideration of the director.

28 By the second Wednesday of January of each year the
29 committee shall prepare and deliver to the director and
30 to the Legislature a report of all matters it considered,
31 recommendations it made and plans it formulated
32 during the preceding calendar year. The report shall
33 include any recommendation it may have for changes in
34 the law which would be necessary to implement any of
35 its administrative recommendations.

§22-17-8. Notification requirements.

1 (a) Underground storage tank owners shall notify the
2 director of any underground storage tank brought into
3 use on or after the tenth day of June, one thousand nine
4 hundred eighty-eight, within thirty days of such use, on
5 a form prescribed by the director. The notice shall
6 specify the date of tank installation, tank location, type
7 of construction, size and age of such tank and the type

8 of regulated substance to be stored therein. If, at the
9 time this information is required to be submitted, the
10 director has not prepared the form required by this
11 section, the owner shall nevertheless submit the infor-
12 mation in writing to the director.

13 (b) A person who sells a tank intended to be used as
14 an underground storage tank shall reasonably notify the
15 owner or operator of such tank of the owner's notifica-
16 tion requirements of this section.

17 (c) A new owner of any underground storage tank
18 shall notify the director in writing of the transfer of
19 ownership of any underground storage tank. The new
20 owner upon the effective date of such transfer becomes
21 subject to all provisions of this article. The director may
22 prescribe by rule the appropriate form and timing for
23 such notification.

**§22-17-9. Registration requirements; undertaking activi-
ties without registration.**

1 (a) No person may operate any underground storage
2 tank for the purpose of storing any regulated substance
3 identified or listed under this article without registering
4 with the director and paying a registration fee for such
5 underground storage tank.

6 (b) No person may install any underground storage
7 tank after the effective date of this article without first
8 registering said tank in a form and manner prescribed
9 by the director.

§22-17-10. Financial responsibility.

1 The director shall promulgate rules, as provided in
2 section six of this article, containing requirements for
3 maintaining evidence of financial responsibility as
4 deemed necessary and desirable for taking reasonable
5 corrective action and for compensating third parties for
6 bodily injury and property damage caused by sudden
7 and nonsudden accidental releases arising from operat-
8 ing an underground storage tank. Such means of
9 financial responsibility may include, but not be limited
10 to, insurance, guarantee, surety bond, letter of credit,
11 proof of assets or qualification as a self-insurer. 11

12 promulgating rules under this section, the director is
13 authorized to specify policy or other contractual terms,
14 conditions or defenses which are necessary or are
15 unacceptable in establishing such evidence of financial
16 responsibility in order to effectuate the purposes of this
17 article.

§22-17-11. Performance standards for new underground storage tanks.

1 (a) The director shall promulgate performance
2 standards for new underground storage tanks as
3 provided in section six of this article. The performance
4 standards for new underground storage tanks shall
5 include, but not be limited to, design, construction,
6 installation, release detection and compatibility
7 standards.

8 (b) New underground storage tank construction
9 standards must include at least the following
10 requirements:

11 (1) That an underground storage tank will prevent
12 releases of regulated substances stored therein, which
13 may occur as a result of corrosion or structural failure,
14 for the operational life of the tank;

15 (2) That an underground storage tank will be cathod-
16 ically protected against corrosion, constructed of
17 noncorrosive material, steel clad with a noncorrosive
18 material or designed in a manner to prevent the release
19 or threatened release of stored regulated substances;
20 and

21 (3) That materials used in the construction or lining
22 of an underground storage tank are compatible with the
23 regulated substances to be stored therein.

§22-17-12. Confidentiality.

1 (a) Any records, reports or information obtained from
2 any persons under this article shall be available to the
3 public, except that upon a showing satisfactory to the
4 director by any person that records, reports or informa-
5 tion, or a particular part thereof, to which the director
6 or any officer, employee, or representative thereof has

7 access under this section, if made public, would divulge
8 information entitled to protection under section 1905 of
9 title 18 of the United States Code, such information or
10 particular portion thereof is confidential in accordance
11 with the purposes of this section, except that such
12 record, report, document or information may be dis-
13 closed to other officers, employees, or authorized
14 representatives of this state implementing the provisions
15 of this article.

16 (b) Any person who knowingly and willfully divulges
17 or discloses any information entitled to protection under
18 this section is guilty of a misdemeanor, and, upon
19 conviction thereof, shall be fined not more than five
20 thousand dollars, or imprisoned in the county jail for not
21 more than one year, or both fined and imprisoned.

22 (c) In submitting data under this article, a person
23 required to provide such data may designate the data
24 which he or she believes is entitled to protection under
25 this section and submit such designated data separately
26 from other data submitted under this article. A
27 designation under this subsection shall be made in
28 writing and in such manner as the director may
29 prescribe.

§22-17-13. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the
2 development of any rule, conducting any study, taking
3 any corrective action or enforcing the provisions of this
4 article, any owner or operator of an underground
5 storage tank shall, upon request of the director, furnish
6 information relating to such tanks, their associated
7 equipment and contents, conduct reasonable monitoring
8 or testing, permit the director or his or her authorized
9 representative at all reasonable times to have access to,
10 and to copy all records relating to such tanks and permit
11 the director or his or her authorized representative to
12 have access to the underground storage tank for
13 corrective action.

14 (b) For the purposes of developing or assisting in the
15 development of any rule, conducting any study, taking
16 corrective action or enforcing the provisions of t ~

17 article, the director or his or her authorized represen-
18 tative may:

19 (1) Enter at reasonable times any establishment or
20 other place where an underground storage tank is
21 located;

22 (2) Inspect and obtain samples from any person of any
23 regulated substances contained in such tank;

24 (3) Conduct monitoring or testing of the tanks,
25 associated equipment, contents or surrounding soils, air,
26 surface, water or groundwater; and

27 (4) Take corrective action as specified in this article.

28 Each such inspection shall be commenced and
29 completed with reasonable promptness.

**§22-17-14. Corrective action for underground petroleum
storage tanks.**

1 (a) Prior to the effective date of rules promulgated
2 pursuant to subdivision (9) or (10), subsection (b), section
3 six of this article, the director is authorized to:

4 (1) Require the owner or operator of an underground
5 storage tank to undertake corrective action with respect
6 to any release of petroleum from said tank when the
7 director determines that such corrective action shall be
8 done properly and promptly by the owner or operator
9 if, in the judgment of the director, such action is
10 necessary to protect human health and the environment;
11 or

12 (2) Undertake corrective action with respect to any
13 release of petroleum into the environment from an
14 underground storage tank if, in the judgment of the
15 director, such action is necessary to protect human
16 health and the environment.

17 The corrective action undertaken or required under
18 this subsection shall be such as may be necessary to
19 protect human health and the environment. The director
20 shall use funds in the leaking underground storage tank
21 response fund established pursuant to this article for
22 payment of costs incurred for corrective action taken

23 under subparagraph (2) of this subsection in the manner
24 set forth in subsection (e), section twenty-one of this
25 article. The director shall give priority in undertaking
26 corrective actions under this subsection, and in issuing
27 orders requiring owners or operators to undertake such
28 actions, to releases of petroleum from underground
29 storage tanks which pose the greatest threat to human
30 health and the environment and where the director
31 cannot identify a solvent owner or operator of the tank
32 who will undertake action properly.

33 (b) Following the effective date of rules promulgated
34 under subdivision (9) or (10), subsection (b), section six
35 of this article, all actions or orders of the director
36 described in subsection (a) of this section shall be in
37 conformity with such rules. Following such effective
38 date the director may undertake corrective action with
39 respect to any release of petroleum into the environment
40 from an underground storage tank only if, in the
41 judgment of the director, such action is necessary to
42 protect human health and environment and one or more
43 of the following situations exists:

44 (1) If no person can be found within ninety days, or
45 such shorter period as may be necessary to protect
46 human health and the environment, who is an owner or
47 operator of the tank concerned, subject to such correc-
48 tive action rules and capable of carrying out such
49 corrective action properly.

50 (2) A situation exists which requires prompt action by
51 the director under this subsection to protect human
52 health and the environment.

53 (3) Corrective action costs at a facility exceed the
54 amount of coverage required pursuant to the provisions
55 of section ten of this article and, considering the class
56 or category of underground storage tank from which the
57 release occurred, expenditures from the leaking under-
58 ground storage tank response fund are necessary to
59 assure an effective corrective action.

60 (4) The owner or operator of the tank has failed or
61 refused to comply with an order of the director under
62 this section or of the environmental quality board.

63 article one, chapter twenty-two-b of this code to comply
64 with the corrective action rules.

65 (c) The director is authorized to draw upon the
66 leaking underground storage tank response fund in
67 order to take action under subdivision (1) or (2),
68 subsection (b) of this section if the director has made
69 diligent good faith efforts to determine the identity of
70 the party or parties responsible for the release or
71 threatened release and:

72 (1) He or she is unable to determine the identity of
73 the responsible party or parties in a manner consistent
74 with the need to take timely corrective action; or

75 (2) The party or parties determined by the director
76 to be responsible for the release or threatened release
77 have been informed in writing of the director's deter-
78 mination and have been requested by the director to
79 take appropriate corrective action but are unable or
80 unwilling to take such action in a timely manner.

81 (d) The written notice to a responsible party must
82 inform the responsible party that if that party is
83 subsequently found liable for releases pursuant to
84 subsection (a) or (b) of this section, he or she will be
85 required to reimburse the leaking underground storage
86 tank response fund for the costs of the investigation,
87 information gathering and corrective action taken by
88 the director.

89 (e) If the director determines that immediate response
90 to an imminent threat to public health and welfare or
91 the environment is necessary to avoid substantial injury
92 or damage to persons, property or resources, corrective
93 action may be taken pursuant to subsections (a) and (b)
94 of this section without the prior written notice required
95 by subdivision (2), subsection (c) of this section. In such
96 a case the director must give subsequent written notice
97 to the responsible party within fifteen days after the
98 action is taken describing the circumstances which
99 required the action to be taken without prior notice.

100 (f) As used in this section, the term "owner" does not
101 include any person who, without participating in the

102 management of an underground storage tank and
103 otherwise not engaged in petroleum production, refining
104 or marketing, holds indicia of ownership primarily to
105 protect the person's security interest in the tank.

**§22-17-15. Administrative orders; injunctive relief;
requests for reconsideration.**

1 (a) Whenever on the basis of any information, the
2 director determines that any person is in violation of any
3 requirement of this article, he or she may issue an order
4 stating with reasonable specificity the nature of the
5 violation and requiring compliance within a reasonable
6 specified time period or the director may commence a
7 civil action in the circuit court of the county in which
8 the violation occurred or in the circuit court of Kanawha
9 County for appropriate relief, including a temporary or
10 permanent injunction. The director may, except as
11 provided in subsection (b) of this section, stay any order
12 he or she issues upon application, until the order is
13 reviewed by the environmental quality board.

14 (b) Any person issued an order may file a notice of
15 request for reconsideration with the director not more
16 than seven days from the issuance of such order. The
17 notice of request for reconsideration shall identify the
18 order to be reconsidered and shall set forth in detail the
19 reasons for which reconsideration is requested. The
20 director shall grant or deny the request for reconsider-
21 ation within twenty days of the filing of the notice of
22 request of reconsideration.

§22-17-16. Civil penalties.

1 (a) Any violator who fails to comply with an order of
2 the director issued under subsection (a), section fifteen
3 of this article within the time specified in the order is
4 liable for a civil penalty of not more than twenty-five
5 thousand dollars for each day of continued
6 noncompliance.

7 (b) Any owner who knowingly fails to register or
8 knowingly submits false information pursuant to this
9 article is liable for a civil penalty not to exceed ten
10 thousand dollars for each tank which is not registered

11 or for which false information is submitted.

12 (c) Any owner or operator of an underground storage
13 tank who fails to comply with any requirement or
14 standard promulgated by the director under section six
15 of this article is subject to a civil penalty not to exceed
16 ten thousand dollars for each tank for each day of
17 violation.

§22-17-17. Public participation.

1 Any adversely affected person may intervene in any
2 civil or administrative proceeding under this article
3 when such person claims an interest relating to the
4 property or transaction which is the subject of the action
5 and such person is so situated that the disposition of the
6 action may as a practical matter impair or impede his
7 or her ability to protect that interest.

§22-17-18. Appeal to environmental quality board.

1 Any person aggrieved or adversely affected by an
2 order of the director made and entered in accordance
3 with the provisions of this article may appeal to the
4 environmental quality board, pursuant to the provisions
5 of article one, chapter twenty-two-b of this code.

§22-17-19. Disclosures required in deeds and leases.

1 (a) The grantor in any deed or other instrument of
2 conveyance or any lessor in any lease or other instru-
3 ment whereby any real property is let for a period of
4 time shall disclose in such deed, lease or other instru-
5 ment the fact that such property, or the substrata of
6 such property whether or not the grantor or lessor is at
7 time of such conveyance or lease the owner of such
8 substrata, contains an underground storage tank. The
9 provisions of this subsection only apply to those grantors
10 or lessors who owned or had an interest in the real
11 property when the same or the substrata thereof
12 contained an underground storage tank which was
13 being actively used for storing any regulated substance
14 or who have actual knowledge or reason to believe that
15 such real property or the substrata thereof contains an
16 underground storage tank.

17 (b) Any lessee of real estate or of any substratum
18 underlying said real estate who intends to install an
19 underground storage tank in the leased real estate or
20 any substratum underlying the same shall disclose in
21 writing at the time of such lease, or within thirty days
22 prior to such installation, such fact to the lessor of such
23 real estate or substratum. Such disclosure shall describe
24 the proposed location upon said property where the tank
25 is to be located and all other information required by
26 the director.

**§22-17-20. Appropriation of funds; underground storage
tank administrative fund.**

1 (a) The director shall collect annual registration fees
2 from owners of underground storage tanks. The regis-
3 tration fee collected under this section shall not exceed
4 twenty-five dollars per tank per year. All such registra-
5 tion fees and the net proceeds of all fines, penalties and
6 forfeitures collected under this article including accrued
7 interest shall be paid into the state treasury into a
8 special fund designated "the underground storage tank
9 administrative fund" to be used to defray the cost of
10 administering this article in accordance with rules
11 promulgated pursuant to section six of this article.

12 (b) The total fee assessed shall be sufficient to assure
13 a balance in the fund of not to exceed four hundred
14 thousand dollars at the beginning of each year.

15 (c) Any amount received pursuant to subsection (a) of
16 this section which exceeds the annual balance required
17 in subsection (b) of this section shall be deposited into
18 the leaking underground storage tank response fund
19 established pursuant to this article to be used for the
20 purposes set forth therein.

21 (d) The net proceeds of all fines, penalties and
22 forfeitures collected under this article shall be approp-
23 riated as directed by article XII, section 5 of the
24 constitution of West Virginia. For the purposes of this
25 section, the net proceeds of such fines, penalties and
26 forfeitures are the proceeds remaining after deducting
27 therefrom those sums appropriated by the Legislature
28 for defraying the cost of administering this article. In

29 making the appropriation for defraying the cost of
30 administering this article, the Legislature shall first
31 take into account the sums included in such special fund
32 prior to deducting such additional sums as may be
33 needed from the fines, penalties and forfeitures collected
34 pursuant to this article. At the end of each fiscal year
35 any unexpended balance of such collected fines, penal-
36 ties, forfeitures and registration fees shall not be
37 transferred to the general revenue fund but shall
38 remain in the fund.

§22-17-21. Leaking underground storage tank response fund.

1 (a) Each underground petroleum storage tank owner
2 within this state shall pay an annual fee, if assessed by
3 the director, to establish a fund to assure adequate
4 response to leaking underground petroleum storage
5 tanks. The fees assessed pursuant to this section shall
6 not exceed twenty-five dollars per tank per year. The
7 proceeds of such assessment shall be paid into the state
8 treasury into a special fund designated "the leaking
9 underground storage tank response fund," which is
10 hereby continued.

11 (b) Each owner of an underground petroleum storage
12 tank subject to a fee assessment under subsection (a) of
13 this section shall pay a fee based on the number of
14 underground petroleum storage tanks he or she owns.
15 The director shall vary the fees annually to a level
16 necessary to produce a fund of at least seven hundred
17 fifty thousand dollars at the beginning of each calendar
18 year taking into account those amounts deposited in the
19 fund pursuant to subsection (c), section twenty of this
20 article. In no event shall the fees assessed in this section
21 be set to produce revenues exceeding two hundred fifty
22 thousand dollars in any year.

23 (c) When the unobligated balance of the leaking
24 underground storage tank response fund exceeds one
25 million dollars at the end of a calendar year, fee
26 assessment under this section shall cease until such time
27 as the unobligated balance at the end of any year is less
28 than seven hundred fifty thousand dollars.

29 (d) At the end of each fiscal year, any unexpended
30 balance including accrued interest of such collected fees
31 shall not be transferred to the general revenue fund but
32 shall remain in the fund.

33 (e) The director is authorized to enter into agreements
34 and contracts and to expend the moneys in the fund for
35 the following purposes:

36 (1) Responding to underground petroleum storage
37 tank releases when, based on readily available informa-
38 tion, the director determines that immediate action may
39 prevent or mitigate significant risk of harm to human
40 health, safety or the environment from regulated
41 substances in situations for which no federal funds are
42 immediately available for such response, cleanup or
43 containment: *Provided*, That the director shall apply for
44 and diligently pursue available federal funds for such
45 releases at the earliest possible time.

46 (2) Reimbursing any person for reasonable cleanup
47 costs incurred with the authorization of the director in
48 responding to an underground petroleum storage tank
49 release.

50 (3) Reimbursing any person for reasonable costs
51 incurred with the authorization of the director respond-
52 ing to perceived, potential or threatened releases from
53 underground petroleum storage tanks where response
54 activities do not indicate that any release has occurred.

55 (4) Financing the nonfederal share of the cleanup and
56 site reclamation activities pursuant to Subtitle I of the
57 federal Resource Conservation and Recovery Act, as
58 amended, as well as future operation and maintenance
59 costs for these sites: *Provided*, That no portion of the
60 moneys in the leaking underground storage tank
61 response fund shall be used for defraying the costs of
62 administering this article.

63 (5) Financing the nonfederal share of costs incurred
64 in compensating third parties, including payment of
65 judgments, for bodily injury and property damage,
66 caused by release of petroleum into the environment
67 from an underground storage tank.

§22-17-22. Underground storage tank insurance fund.

1 (a) The director may establish an underground
2 storage tank insurance fund for the purpose of satisfying
3 the financial responsibility requirements established
4 pursuant to section ten of this article. In addition to the
5 capitalization fee to be assessed against all owners or
6 operators of underground storage tanks provided by
7 subdivision (6), subsection (b), section six of this article,
8 the director shall promulgate rules establishing an
9 annual financial responsibility assessment to be assessed
10 on and paid by owners or operators of underground
11 storage tanks who are unable to obtain insurance or
12 otherwise meet the financial responsibility requirements
13 established pursuant to section ten of this article. Such
14 assessments shall be paid into the state treasury into a
15 special fund designated "the underground storage tank
16 insurance fund".

17 (b) At the end of each fiscal year, any unexpended
18 balance of such assessment shall not be transferred to
19 the general revenue fund but shall remain in the
20 underground storage tank insurance fund.

§22-17-23. Duplicative enforcement prohibited.

1 No enforcement proceeding brought pursuant to this
2 article may be duplicated by an enforcement proceeding
3 subsequently commenced under some other article of
4 this code with respect to the same transaction or event
5 unless such subsequent proceeding involves the violation
6 of a permit or permitting requirement of such other
7 article.

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

- §22-18-1. Short title.
- §22-18-2. Declaration of policy.
- §22-18-3. Definitions.
- §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.
- §22-18-6. Promulgation of rules by director.
- §22-18-7. Authority and jurisdiction of other state agencies.
- §22-18-8. Permit process; undertaking activities without a permit.
- §22-18-9. Corrective action.

- §22-18-10. Public participation in permit process.
- §22-18-11. Transition program for existing facilities.
- §22-18-12. Confidential information.
- §22-18-13. Inspections; right of entry; sampling; reports and analyses; subpoenas.
- §22-18-14. Monitoring, analysis and testing.
- §22-18-15. Enforcement orders; hearings.
- §22-18-16. Criminal penalties.
- §22-18-17. Civil penalties and injunctive relief.
- §22-18-18. Imminent and substantial hazards; orders; penalties; hearings.
- §22-18-19. Citizen suits; petitions for rule making; intervention.
- §22-18-20. Appeal to environmental quality board.
- §22-18-21. Disclosures required in deeds and leases.
- §22-18-22. Appropriation of funds; hazardous waste management fund.
- §22-18-23. State program to be consistent with and equivalent to federal program.
- §22-18-24. Duplication of enforcement prohibited.
- §22-18-25. Financial responsibility provisions.

§22-18-1. Short title.

- 1 This article may be known and cited as the "Hazard-
- 2 ous Waste Management Act."

§22-18-2. Declaration of policy.

- 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.

20 (b) Therefore, it is hereby declared that the purposes
21 of this article are:

22 (1) To protect the public health and safety and the
23 environment from the effects of the improper, inade-
24 quate or unsound management of hazardous wastes;

25 (2) To establish a program of regulation over the
26 storage, transportation, treatment and disposal of
27 hazardous wastes;

28 (3) To assure the safe and adequate management of
29 hazardous wastes within this state; and

30 (4) To assume regulatory primacy through Subtitle C
31 of the Resource Conservation and Recovery Act.

§22-18-3. Definitions.

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

3 (1) "Director" means the director of the division of
4 environmental protection or such other person to whom
5 the director has delegated authority or duties pursuant
6 to sections six or eight, article one of this chapter;

7 (2) "Disposal" means the discharge, deposit, injection,
8 dumping, spilling, leaking or placing of any hazardous
9 waste into or on any land or water so that such
10 hazardous waste or any constituent thereof may enter
11 the environment or be emitted into the air, or dis-
12 charged into any waters, including groundwaters;

13 (3) "Division" means the division of environmental
14 protection;

15 (4) "Generation" means the act or process of producing
16 hazardous waste materials;

17 (5) "Hazardous and Solid Waste Amendments of 1984"
18 means the federal Hazardous and Solid Waste Amend-
19 ments of 1984 (P.L. 98-616) amending the Resource
20 Conservation and Recovery Act;

21 (6) "Hazardous waste" means a waste or combination
22 of wastes, which because of its quantity, concentration
23 or physical, chemical or infectious characteristics, may:

24 (A) Cause, or significantly contribute to, an increase in
25 mortality or an increase in serious irreversible, or
26 incapacitating reversible, illness; or (B) pose a substan-
27 tial present or potential hazard to human health or the
28 environment when improperly treated, stored, trans-
29 ported, disposed of or otherwise managed;

30 (7) "Hazardous waste fuel" means fuel produced from
31 any hazardous waste identified or listed pursuant to
32 subdivision (2), subsection (a), section six of this article,
33 or produced from any hazardous waste identified or
34 listed pursuant to section six;

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

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

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

49 (11) "Person" means any individual, trust, firm, joint
50 stock company, public, private or government corpora-
51 tion, partnership, association, state or federal agency,
52 the United States government, this state or any other
53 state, municipality, county commission or any other
54 political subdivision of a state or any interstate body;

55 (12) "Resource Conservation and Recovery Act" means
56 the federal Resource Conservation and Recovery Act of
57 1976, 90 Stat. 2806, as amended;

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

62 (14) "Subtitle C" means Subtitle C of the Resource
63 Conservation and Recovery Act;

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

74 (16) "Waste" means any garbage, refuse, sludge from
75 a waste treatment plant, water supply treatment plant
76 or air pollution control facility and other discarded
77 material including solid, liquid, semisolid or contained
78 gaseous material resulting from industrial, commercial,
79 mining and agricultural operations and from commun-
80 ity activities, but does not include solid or dissolved
81 material in domestic sewage, or solid or dissolved
82 materials in irrigation return flows or industrial
83 discharges which are point sources subject to permits
84 under Section 402 of the federal Water Pollution Control
85 Act, as amended, or source, special nuclear or by-
86 product material as defined by the federal Atomic
87 Energy Act of 1954, as amended.

§22-18-4. Designation of division of environmental protection as the state hazardous waste management lead agency.

1 The division of environmental protection is hereby
2 designated as the hazardous waste management lead
3 agency for this state for purposes of Subtitle C of the
4 Resource Conservation and Recovery Act, and is hereby
5 authorized to take all action necessary or appropriate to
6 secure to this state the benefits of said legislation. In
7 carrying out the purposes of this article, the director is
8 hereby authorized to cooperate with the federal environ-
9 mental protection agency and other agencies of the
10 federal government, this state and other states and other
11 interested persons in all matters relating to hazardous

12 waste management.

§22-18-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

1 (a) In addition to all other powers and duties pres-
2 cribed in this article or otherwise by law, and unless
3 otherwise specifically set forth in this article, the
4 director shall perform any and all acts necessary to
5 carry out the purposes and requirements of Subtitle C
6 of the Resource Conservation and Recovery Act.

7 (b) The director shall integrate all provisions of this
8 article for purposes of administration and enforcement
9 and shall avoid duplication to the maximum extent
10 practicable, with the appropriate provisions of: The
11 public health laws in chapter sixteen of this code; article
12 sixteen-a, chapter nineteen of this code; this chapter;
13 and chapters twenty-two-b and twenty-two-c of this
14 code.

15 (c) The director may enter into any agreements,
16 including reimbursement for services rendered, con-
17 tracts or cooperative arrangements, under such terms
18 and conditions as he or she deems appropriate, with
19 other state agencies, educational institutions or other
20 organizations and individuals as necessary to implement
21 the provisions of this article.

22 (d) The director shall cooperate with and may receive
23 and expend money from the federal government and
24 other sources.

25 (e) The director shall (1) encourage, participate in and
26 conduct an ongoing investigation and analysis of
27 methods, incentives, technologies of source reduction,
28 reuse, recycling or recovery of potentially hazardous
29 waste and a strategy for encouraging the utilization or
30 reduction of hazardous waste, and (2) investigate the
31 feasibility of operating an information clearinghouse for
32 hazardous wastes.

33 (f) The director shall provide for the continuing
34 education and training of appropriate division personnel
35 in matters of hazardous waste management.

§22-18-6. Promulgation of rules by director.

1 (a) The director has overall responsibility for the
2 promulgation of rules under this article. The director
3 shall promulgate the following rules, in consultation
4 with the department of health and human resources, the
5 office of emergency services, the public service commis-
6 sion, the state fire marshal, the department of public
7 safety, the division of highways, the department of
8 agriculture, and the environmental quality board. In
9 promulgating and revising such rules, the director shall
10 comply with the provisions of chapter twenty-nine-a of
11 this code, shall avoid duplication to the maximum extent
12 practicable with the appropriate provisions of the acts
13 and laws set out in subsection (b), section five of this
14 article and shall be consistent with but no more
15 expansive in coverage nor more stringent in effect than
16 the rules and regulations promulgated by the federal
17 environmental protection agency pursuant to the
18 Resource Conservation and Recovery Act:

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

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

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

40 accordance with Section 3001 (b)(2) of the Resource
41 Conservation and Recovery Act:

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

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

48 (iii) Cement kiln dust waste; and

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

52 (B) Owners and operators of disposal sites for wastes
53 listed in paragraph (A) of this subdivision may be
54 required by the director through rule prescribed under
55 authority of this section:

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

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

65 (3) Rules establishing such standards applicable to
66 generators of hazardous waste identified or listed under
67 this article as may be necessary to protect public health
68 and safety and the environment, which standards shall
69 establish requirements respecting: (A) Record-keeping
70 practices that accurately identify the quantities of such
71 hazardous waste generated, the constituents thereof
72 which are significant in quantity or in potential harm
73 to public health or the environment and the disposition
74 of such wastes; (B) labeling practices for any containers
75 used for the storage, transport or disposal of such
76 hazardous waste such as will identify accurately such
77 waste; (C) use of appropriate containers for su

78 hazardous waste; (D) furnishing of information on the
79 general chemical composition of such hazardous wastes
80 to persons transporting, treating, storing or disposing of
81 such wastes; (E) use of a manifest system and any other
82 reasonable means necessary to assure that all such
83 hazardous waste generated is designated for treatment,
84 storage or disposal in, and arrives at treatment, storage
85 or disposal facilities (other than facilities on the
86 premises where the waste is generated) with respect to
87 which permits have been issued which are required: (i)
88 By this article or any rule required by this article to be
89 promulgated; (ii) by Subtitle C of the Resource Conser-
90 vation and Recovery Act; (iii) by the laws of any other
91 state which has an authorized hazardous waste program
92 pursuant to Section 3006 of the Resource Conservation
93 and Recovery Act; or (iv) by Title I of the federal Marine
94 Protection, Research and Sanctuaries Act; and (F) the
95 submission of reports to the director at such times as
96 the director deems necessary setting out the quantities
97 of hazardous wastes identified or listed under this
98 article that the generator has generated during a
99 particular time period, and the disposition of all such
100 hazardous waste;

101 (4) Rules establishing such performance standards
102 applicable to owners and operators of facilities for the
103 treatment, storage or disposal of hazardous waste
104 identified or listed under this article as may be
105 necessary to protect public health and safety and the
106 environment, which standards shall, where appropriate,
107 distinguish in such standards between requirements
108 appropriate for new facilities and for facilities in
109 existence on the date of promulgation of such rules and
110 shall include, but need not be limited to, requirements
111 respecting: (A) Maintaining records of all hazardous
112 wastes identified or listed under this article which are
113 treated, stored or disposed of, as the case may be, and
114 the manner in which such wastes were treated, stored
115 or disposed of; (B) satisfactory reporting, monitoring
116 and inspection and compliance with the manifest system
117 referred to in subdivision (3) of subsection (a) of this
118 section; (C) treatment, storage or disposal of all such
119 waste received by the facility pursuant to such operating

120 methods, techniques and practices as may be satisfac-
121 tory to the director; (D) the location, design and
122 construction of such hazardous waste treatment, dispo-
123 sal or storage facilities; (E) contingency plans for
124 effective action to minimize unanticipated damage from
125 any treatment, storage or disposal of any such hazardous
126 waste; (F) the maintenance of operation of such facilities
127 and requiring such additional qualifications as to
128 ownership, continuity of operation, training for person-
129 nel and financial responsibility as may be necessary or
130 desirable; however, no private entity may be precluded
131 by reason of criteria established under this subsection
132 from the ownership or operation of facilities providing
133 hazardous waste treatment, storage or disposal services
134 where such entity can provide assurances of financial
135 responsibility and continuity of operation consistent
136 with the degree and duration of risks associated with the
137 treatment, storage or disposal of specified hazardous
138 waste; and (G) compliance with the requirements of
139 section eight of this article respecting permits for
140 treatment, storage or disposal;

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

144 (6) Rules for the establishment and maintenance of
145 records; the making of reports; the taking of samples
146 and the performing of tests and analyses; the installing,
147 calibrating, operating and maintaining of monitoring
148 equipment or methods; and the providing of any other
149 information as may be necessary to achieve the purposes
150 of this article;

151 (7) Rules establishing standards and procedures for
152 the certification of personnel at hazardous waste
153 treatment, storage or disposal facilities or sites;

154 (8) Rules for public participation in the implementa-
155 tion of this article;

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

159 (10) Rules establishing procedures and requirements
160 for the submission and approval of a plan, applicable to
161 owners or operators of hazardous waste storage,
162 treatment and disposal facilities, as necessary or
163 desirable for closure of the facility, post-closure moni-
164 toring and maintenance, sudden and accidental occur-
165 rences and nonsudden and accidental occurrences;

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

169 (12) Rules, including exemptions and variances, as
170 appropriate: (A) Establishing standards and prohibi-
171 tions relating to the management of hazardous waste by
172 land disposal methods; (B) establishing standards and
173 prohibitions relating to the land disposal of liquid
174 hazardous wastes or free liquids contained in hazardous
175 wastes and any other liquids which are not hazardous
176 wastes; (C) establishing standards applicable to produc-
177 ers, distributors or marketers of hazardous waste fuels;
178 and (D) as are otherwise necessary to allow the state to
179 assume primacy for the administration of the federal
180 hazardous waste management program under the
181 Resource Conservation and Recovery Act and in partic-
182 ular, the Hazardous and Solid Waste Amendments of
183 1984: *Provided*, That such rules authorized by this
184 subdivision shall be consistent with but no more
185 expansive in coverage nor more stringent in effect than
186 rules and regulations promulgated by the federal
187 environmental protection agency under Subtitle C;

188 (13) Rules: (A) Establishing air pollution performance
189 standards and permit requirements and procedures as
190 may be necessary to comply with the requirements of
191 this article and in accordance with the provisions of
192 article five of this chapter. Such permits shall be in
193 addition to those permits required by section eight of
194 this article;

195 (B) For the monitoring and control of air emissions
196 at hazardous waste treatment storage and disposal
197 facilities, including, but not limited to, open tanks,
198 surface impoundments and landfills, as may be neces-

199 sary to protect human health and the environment; and

200 (C) Establishing standards applicable to the owners
201 and operators of facilities which burn, for purposes of
202 energy recovery, any fuel produced from any hazardous
203 waste identified or listed pursuant to subdivision (2),
204 subsection (a) of this section or which is produced from
205 any hazardous waste identified or listed pursuant to
206 subdivision (2), subsection (a) of this section and any
207 other material, as may be necessary to protect human
208 health and the environment: *Provided*, That such
209 legislative rules shall be consistent with Subtitle C.

210 Any person aggrieved or adversely affected by an
211 order of the director made and entered to implement or
212 enforce the rules required by this subdivision or by the
213 failure or refusal of said director to act within a
214 reasonable time on an application for a permit or by the
215 issuance or denial of or by the terms and conditions of
216 a permit granted under the provisions of the rules
217 required by this subdivision, may appeal to the air
218 quality board in accordance with the procedure set forth
219 in article one, chapter twenty-two-b of this code, and
220 orders made and entered by said board are subject to
221 judicial review in accordance with the procedures set
222 forth in article one, chapter twenty-two-b of this code,
223 except that as to cases involving an order granting or
224 denying an application for a permit, revoking or
225 suspending a permit or approving or modifying the
226 terms and conditions of a permit or the failure to act
227 within a reasonable time on an application for a permit,
228 the petition for judicial review shall be filed in the
229 circuit court of Kanawha County.

230 (14) Rules developing performance standards and
231 other requirements under this section as may be
232 necessary to protect public health and the environment
233 from any hazard associated with the management of
234 used oil and recycled oil. The director shall ensure that
235 such rules do not discourage the recovery or recycling
236 of used oil. For these purposes, "used oil" shall mean any
237 oil that has been refined from crude oil, or any synthetic
238 oil, that has been used and as a result of such use is
239 contaminated by physical or chemical impurities.

240 (15) Such other rules as are necessary to effectuate
241 the purposes of this article.

242 (b) The rules required by this article to be promul-
243 gated shall be reviewed and, where necessary, revised
244 not less frequently than every three years. Additionally,
245 the rules required to be promulgated by this article
246 shall be revised, as necessary, within two years of the
247 effective date of any amendment of the Resource
248 Conservation and Recovery Act and within six months
249 of the effective date of any adoption or revision of rules
250 required to be promulgated by the Resource Conserva-
251 tion and Recovery Act.

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

§22-18-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of the division of highways, in
2 consultation with the director, and avoiding inconsisten-
3 cies with and avoiding duplication to the maximum
4 extent practicable with legislative rules required to be
5 promulgated pursuant to this article by the director or
6 any other rule-making authority, and in accordance
7 with the provisions of chapter twenty-nine-a of this code,
8 shall promulgate, as necessary, legislative rules govern-
9 ing the transportation of hazardous wastes by vehicle
10 upon the roads and highways of this state. Such
11 legislative rules shall be consistent with applicable rules
12 issued by the federal department of transportation and
13 consistent with this article: *Provided*, That such
14 legislative rules apply to the interstate transportation of
15 hazardous waste within the boundaries of this state, as
16 well as the intrastate transportation of such waste.

17 In lieu of those enforcement and inspection powers
18 conferred upon the commissioner of the division of
19 highways elsewhere by law with respect to the transpor-
20 tation of hazardous waste, the commissioner of the
21 division of highways has the same enforcement and

22 inspection powers as those granted to the director, or
23 authorized representative or agent, or any authorized
24 employee or agent of the division, as the case may be,
25 under sections twelve, thirteen, fourteen, fifteen,
26 sixteen, seventeen and eighteen of this article. The
27 limitations of this subsection do not affect in any way
28 the powers of the division of highways with respect to
29 weight enforcement.

30 (b) The public service commission, in consultation
31 with the director, and avoiding inconsistencies with and
32 avoiding duplication to the maximum extent practicable
33 with rules required to be promulgated pursuant to this
34 article by the director or any other rule-making
35 authority, and in accordance with the provisions of
36 chapter twenty-nine-a of this code, shall promulgate, as
37 necessary, rules governing the transportation of hazard-
38 ous wastes by railroad in this state. Such rules shall be
39 consistent with applicable rules and regulations issued
40 by the federal department of transportation and
41 consistent with this article: *Provided*, That such rules
42 apply to the interstate transportation of hazardous waste
43 within the boundaries of this state, as well as the
44 intrastate transportation of such waste.

45 In lieu of those enforcement and inspection powers
46 conferred upon the public service commission elsewhere
47 by law with respect to the transportation of hazardous
48 waste, the public service commission has the same
49 enforcement and inspection powers as those granted to
50 the director or authorized representative or agent or any
51 authorized employee or agent of the division, as the case
52 may be, under sections twelve, thirteen, fourteen,
53 fifteen, sixteen, seventeen and eighteen of this article.

54 (c) The rules required to be promulgated pursuant to
55 subsections (a) and (b) of this section apply equally to
56 those persons transporting hazardous wastes generated
57 by others and to those transporting hazardous wastes
58 they have generated themselves or combinations thereof.
59 Such rules shall establish such standards, applicable to
60 transporters of hazardous waste identified or listed
61 under this article, as may be necessary to protect public
62 health, safety and the environment. Such stand

63 shall include, but need not be limited to, requirements
64 respecting (A) record keeping concerning such hazard-
65 ous waste transported, and its source and destination;
66 (B) transportation of such waste only if properly labeled;
67 (C) compliance with the manifest system referred to in
68 subdivision (3), subsection (a), section six of this article;
69 and (D) transportation of all such hazardous waste only
70 to the hazardous waste treatment, storage or disposal
71 facilities which the shipper designates on the manifest
72 form to be a facility holding a permit issued under: (1)
73 This article or any rule required by this article to be
74 promulgated; (2) Subtitle C; (3) the laws of any other
75 state which has an authorized hazardous waste program
76 pursuant to section 3006 of the Resource Conservation
77 and Recovery Act; or (4) Title I of the Federal Marine
78 Protection, Research and Sanctuaries Act.

79 (d) The secretary of the department of health and
80 human resources, in consultation with the director, and
81 avoiding inconsistencies with and avoiding duplication
82 to the maximum extent practicable with legislative
83 rules required to be promulgated pursuant to this
84 article by the director or any other rule-making
85 authority, shall promulgate rules pursuant to article
86 five-j, chapter twenty of this code. The secretary of the
87 department of health and human resources shall have
88 the same enforcement and inspection powers as those
89 granted to the director or agent or any authorized
90 employee or agent of the division, as the case may be,
91 under sections twelve, thirteen, fourteen, fifteen,
92 sixteen, seventeen and eighteen of this article, and in
93 addition thereto, the department of health and human
94 resources shall have those inspection and enforcement
95 powers with respect to hazardous waste with infectious
96 characteristics as provided for in article five-j, chapter
97 twenty of this code.

98 (e) The environmental quality board, in consultation
99 with the director, and in accordance with the provisions
100 of chapter twenty-nine-a of this code, shall, as necessary,
101 promulgate water quality standards governing dis-
102 charges into the waters of this state of hazardous waste
103 resulting from the treatment, storage or disposal of

104 hazardous waste as may be required by this article. The
105 standards shall be consistent with this article.

106 (f) All legislative rules promulgated pursuant to this
107 section shall be consistent with rules and regulations
108 promulgated by the federal environmental protection
109 agency pursuant to the resource conservation and
110 recovery act.

111 (g) The director shall submit written comments to the
112 legislative rule-making review committee regarding all
113 legislative rules promulgated pursuant to this article.

**§22-18-8. Permit process; undertaking activities without
a permit.**

1 (a) No person may own, construct, modify, operate or
2 close any facility or site for the treatment, storage or
3 disposal of hazardous waste identified or listed under
4 this article, nor shall any person store, treat or dispose
5 of any such hazardous waste without first obtaining a
6 permit from the director for such facility, site or activity
7 and all other permits as required by law. Such permit
8 shall be issued, after public notice and opportunity for
9 public hearing, upon such reasonable terms and condi-
10 tions as the director may direct if the application,
11 together with all supporting information and data and
12 other evidence establishes that the construction, modi-
13 fication, operation or closure, as the case may be, of the
14 hazardous waste facility, site or activity will not violate
15 any provisions of this article or any of the rules
16 promulgated by the director as required by this article:
17 *Provided*, That in issuing the permits required by this
18 subsection, the director shall not regulate those aspects
19 of a hazardous waste treatment, storage or disposal
20 facility which are the subject of the permitting or
21 licensing requirements of: (1) Section seven of this
22 article, and which need not be regulated in order for the
23 director to perform his or her duties under this article;
24 or (2) subdivision (13), subsection (a), section six of this
25 article, which need not be regulated under any other
26 provision of this article.

27 (b) The director shall prescribe a form of application
28 for all permits issued by the director.

29 (c) The director may require a plan for the closure of
30 such facility or site to be submitted along with an
31 application for a permit which plan for closure shall
32 comply in all respects with the requirements of this
33 article and any rules promulgated hereunder. Such plan
34 of closure is subject to modification upon application by
35 the permit holder to the director and approval of such
36 modification by the director.

37 (d) An environmental analysis shall be submitted with
38 the permit application for all hazardous waste treat-
39 ment, storage or disposal facilities which are major
40 facilities as that term may be defined by rules promul-
41 gated by the director: *Provided*, That facilities in
42 existence on the nineteenth day of November, one
43 thousand nine hundred eighty, need not comply with
44 this subsection. Such environmental analysis shall
45 contain information of the type, quality and detail that
46 will permit adequate consideration of the environmen-
47 tal, technical and economic factors involved in the
48 establishment and operation of such facilities:

49 (1) The portion of the applicant's environmental
50 analysis dealing with environmental assessments shall
51 contain, but not be limited to:

52 (A) The potential impact of the method and route of
53 transportation of hazardous waste to the site and the
54 potential impact of the establishment and operation of
55 such facilities on air and water quality, existing land
56 use, transportation and natural resources in the area
57 affected by such facilities;

58 (B) A description of the expected effect of such
59 facilities; and

60 (C) Recommendations for minimizing any adverse
61 impact.

62 (2) The portion of the applicant's environmental
63 analysis dealing with technical and economic assess-
64 ments shall contain, but not be limited to:

65 (A) Detailed descriptions of the proposed site and
66 facility, including site location and boundaries and
67 facility purpose, type, size, capacity and location on the

68 site and estimates of the cost and charges to be made
69 for material accepted, if any;

70 (B) Provisions for managing the site following
71 cessation of operation of the facility; and

72 (C) Qualifications of owner and operation, including
73 a description of the applicant's prior experience in
74 hazardous waste management operations.

75 (e) Any person undertaking, without a permit, any of
76 the activities for which a permit is required under this
77 section or under section seven of this article, or any
78 person violating any term or condition under which a
79 permit has been issued pursuant to this section or
80 pursuant to section seven of this article, is subject to the
81 enforcement procedures of this article.

82 (f) Notwithstanding any provision to the contrary in
83 subsections (a) through (e) of this section or section seven
84 of this article, any surface coal mining and reclamation
85 operation that has a permit covering any coal mining
86 wastes or overburden which has been issued or approved
87 under article three of this chapter, shall be considered
88 to have all necessary permits issued pursuant to this
89 article with respect to the treatment, storage or disposal
90 of such wastes or overburden. Rules promulgated under
91 this article are not applicable to treatment, storage or
92 disposal of coal mining wastes and overburden which
93 are covered by such a permit.

§22-18-9. Corrective action.

1 (a) All permits issued after the date the state is
2 delegated authority by the federal environmental
3 protection agency to administer the portion of the
4 federal hazardous waste program covered under the
5 Hazardous and Solid Waste Amendments of 1984 shall
6 contain conditions requiring corrective action for all
7 releases of hazardous waste or constituents from any
8 solid waste management unit at a treatment, storage or
9 disposal facility seeking a permit under this article
10 regardless of the time at which waste was placed in such
11 unit. Permits issued under this article shall contain
12 schedules of compliance for such corrective action

13 (where such corrective action cannot be completed prior
14 to issuance of the permit) and assurances of financial
15 responsibility for completing such corrective action.

16 (b) The director shall amend the standards under
17 subdivision (4), subsection (a), section six of this article,
18 regarding corrective action required at facilities for the
19 treatment, storage or disposal of hazardous waste listed
20 or identified in rules promulgated pursuant to subdivi-
21 sion (2), subsection (a), section six of this article, to
22 require that corrective action be taken beyond the
23 facility boundary where necessary to protect human
24 health and the environment unless the owner or operator
25 of the facility concerned demonstrates to the satisfaction
26 of the director that, despite the owner or operator's best
27 efforts, the owner or operator was unable to obtain the
28 necessary permission to undertake such action. Such
29 rules shall take effect immediately upon promulgation,
30 and shall apply to:

31 (1) All facilities operating under permits issued under
32 subdivision (4), subsection (a), section six of this article;
33 and

34 (2) All landfills, surface impoundments and waste pile
35 units (including any new units, replacement of existing
36 units or lateral expansions of existing units) which
37 receive hazardous waste after the twenty-sixth day of
38 July, one thousand nine hundred eighty-two. Pending
39 promulgation of such rules the director shall issue
40 corrective action orders for facilities referred to in
41 subdivisions (1) and (2) above on a case-by-case basis
42 consistent with the purposes of this subsection.

§22-18-10. Public participation in permit process.

1 Before the issuing of a permit to any person with
2 respect to any facility for the treatment, storage or
3 disposal of hazardous waste under sections seven or
4 eight of this article, the director or other permit issuing
5 authority shall:

6 (a) Cause to be published as a Class I-O legal
7 advertisement in a newspaper of general circulation,
8 and the publication area is the county wherein the real

9 estate or greater portion thereof is situate, and broad-
10 cast over local radio stations notice of the director's or
11 other permit issuing authority's intention to issue such
12 permit; and

13 (b) Transmit written notice of the director's or other
14 permit issuing authority's intention to issue such permit
15 to each unit of local government having jurisdiction over
16 the area in which such facility is proposed to be located
17 and to each state agency having any authority under
18 state law with respect to the construction or operation
19 of such facility.

20 If within forty-five days the director or other permit
21 issuing authority receives written notice of opposition to
22 the director's or other permit issuing authority's
23 intention to issue such permit and a request for a
24 hearing, or if the director or other permit issuing
25 authority determines on his or her own initiative, to
26 have a hearing he or she shall hold an informal public
27 hearing (including an opportunity for presentation of
28 written and oral views) on whether he or she should
29 issue a permit for the proposed facility. Whenever
30 possible the director or other permit issuing authority
31 shall schedule such hearing at a location convenient to
32 the nearest population center to such proposed facility
33 and give notice in the aforementioned manner of the
34 date, time and subject matter of such hearing.

§22-18-11. Transition program for existing facilities.

1 Any person who owns or operates a facility required
2 to have any permit under this article, which facility was
3 in existence on the ninth day of July, one thousand nine
4 hundred eighty-one, shall be treated as having been
5 issued such permit until such time as final administra-
6 tive disposition is made with respect to an application
7 for such permit: *Provided*, That on said date such
8 facility is operating and continues to operate in com-
9 pliance with the interim status requirement of the
10 federal environmental protection agency established
11 pursuant to section 3005 of the federal Solid Waste
12 Disposal Act, as amended, if applicable, and in such a
13 manner as will not cause or create a substantial risk of

14 a health hazard or public nuisance or a significant
15 adverse effect upon the environment: *Provided, however,*
16 That the owner or operator of such facility shall make
17 a timely and complete application for such permit in
18 accordance with rules promulgated pursuant to this
19 article specifying procedures and requirements for
20 obtaining such permit.

§22-18-12. Confidential information.

1 Information obtained by any agency under this article
2 shall be available to the public unless the director
3 certifies such information to be confidential. The
4 director may make such certification where any person
5 shows, to the satisfaction of the director, that the
6 information or parts thereof, if made public, would
7 divulge methods, processes or activities entitled to
8 protection as trade secrets. Nothing in this section may
9 be construed as limiting the disclosure of information by
10 the division to any officer, employee or authorized
11 representative of the state or federal government
12 concerned with effecting the purposes of this article.

13 Any person who knowingly and willfully divulges or
14 discloses any information entitled to protection under
15 this section is guilty of a misdemeanor, and, upon
16 conviction thereof, shall be fined not more than five
17 thousand dollars, or imprisoned in the county jail for not
18 more than six months, or both fined and imprisoned.

**§22-18-13. Inspections; right of entry; sampling; reports
and analyses; subpoenas.**

1 (a) The director or any authorized representative,
2 employee or agent of the division, upon the presentation
3 of proper credentials and at reasonable times, may enter
4 any building, property, premises, place, vehicle or
5 permitted facility where hazardous wastes are or have
6 been generated, treated, stored, transported or disposed
7 of for the purpose of making an investigation with
8 reasonable promptness to ascertain the compliance by
9 any person with the provisions of this article or the rules
10 promulgated by the director or permits issued by the
11 director hereunder. Nothing contained in this section
12 eliminates any obligation to follow any process that may

13 be required by law.

14 (b) The director or his or her authorized representa-
15 tive, employee or agent shall make periodic inspections
16 at every permitted facility as necessary to effectively
17 implement and enforce the requirements of this article
18 or the rules promulgated by the director or permits
19 issued by the director hereunder. After an inspection is
20 made, a report shall be prepared and filed with the
21 director and a copy of such inspection report shall be
22 promptly furnished to the person in charge of such
23 building, property, premises, place, vehicle or facility.
24 Such inspection reports shall be available to the public
25 in accordance with the provisions of article one, chapter
26 twenty-nine-b of this code.

27 (c) Whenever the director has cause to believe that
28 any person is in violation of any provision of this article,
29 any condition of a permit issued by the director, any
30 order or any rule promulgated by the director under
31 this article, he or she shall immediately order an
32 inspection of the building, property, premises, place,
33 vehicle or permitted facility at which the alleged
34 violation is occurring.

35 (d) The director or any authorized representative,
36 employee or agent of the division may, upon presenta-
37 tion of proper credentials and at reasonable times, enter
38 any establishment, building, property, premises, vehicle
39 or other place maintained by any person where hazard-
40 ous wastes are being or have been generated, trans-
41 ported, stored, treated or disposed of to inspect and take
42 samples of wastes, soils, air, surface water and ground-
43 water and samples of any containers or labelings for
44 such wastes. In taking such samples, the division may
45 utilize such sampling methods as it determines to be
46 necessary, including, but not limited to, soil borings and
47 monitoring wells. If the representative, employee or
48 agent obtains any such samples, prior to leaving the
49 premises, he or she shall give to the owner, operator or
50 agent in charge a receipt describing the sample
51 obtained and, if requested, a portion of each such sample
52 equal in volume or weight to the portion retained. The
53 division shall promptly provide a copy of any analysis

54 made to the owner, operator or agent in charge.

55 (e) Upon presentation of proper credentials and at
56 reasonable times, the director or any authorized
57 representative, employee or agent of the division shall
58 be given access to all records relating to the generation,
59 transportation, storage, treatment or disposal of hazard-
60 ous wastes in the possession of any person who gener-
61 ates, stores, treats, transports, disposes of, or otherwise
62 handles or has handled such waste, the director or an
63 authorized representative, employee or agent shall be
64 furnished with copies of all such records or given the
65 records for the purpose of making copies. If the director,
66 upon inspection, investigation or through other means,
67 observes or learns of a violation or probable violation of
68 this article, he or she is authorized to issue subpoenas
69 and subpoenas duces tecum and to order the attendance
70 and testimony of witnesses and to compel the production
71 of any books, papers, documents, manifests and other
72 physical evidence pertinent to such investigation or
73 inspection.

§22-18-14. Monitoring, analysis and testing.

1 (a) If the director determines, upon receipt of any
2 information, that (1) the presence of any hazardous
3 waste at a facility or site at which hazardous waste is,
4 or has been, stored, treated or disposed of, or (2) the
5 release of any such waste from such facility or site may
6 present a substantial hazard to human health or the
7 environment, he or she may issue an order requiring the
8 owner or operator of such facility or site to conduct such
9 monitoring, testing, analysis and reporting with respect
10 to such facility or site as the director deems reasonable
11 to ascertain the nature and extent of such hazard.

12 (b) In the case of any facility or site not in operation
13 at the time a determination is made under subsection
14 (a) of this section with respect to the facility or site, if
15 the director finds that the owner of such facility or site
16 could not reasonably be expected to have actual
17 knowledge of the presence of hazardous waste at such
18 facility or site and of its potential for release, he or she
19 may issue an order requiring the most recent previous

20 owner or operator of such facility or site who could
21 reasonably be expected to have such actual knowledge
22 to carry out the actions referred to in subsection (a) of
23 this section.

24 (c) An order under subsection (a) or (b) of this section
25 shall require the person to whom such order is issued
26 to submit to the director within thirty days from the
27 issuance of such order a proposal for carrying out the
28 required monitoring, testing, analysis and reporting.
29 The director may, after providing such person with an
30 opportunity to confer with the director respecting such
31 proposal, require such person to carry out such moni-
32 toring, testing, analysis and reporting in accordance
33 with such proposal, and such modifications in such
34 proposal as the director deems reasonable to ascertain
35 the nature and extent of the hazard.

36 (d) The following duties shall be carried out by the
37 director:

38 (1) If the director determines that no owner or
39 operator referred to in subsection (a) or (b) of this
40 section is able to conduct monitoring, testing, analysis
41 or reporting satisfactory to the director, if the director
42 deems any such action carried out by an owner or
43 operator to be unsatisfactory or if the director cannot
44 initially determine that there is an owner or operator
45 referred to in subsection (a) or (b) of this section who
46 is able to conduct such monitoring, testing, analysis or
47 reporting, he or she may conduct monitoring, testing or
48 analysis (or any combination thereof) which he or she
49 deems reasonable to ascertain the nature and extent of
50 the hazard associated with the site concerned, or
51 authorize a state or local authority or other person to
52 carry out any such action, and require, by order, the
53 owner or operator referred to in subsection (a) or (b) of
54 this section to reimburse the director or other authority
55 or person for the costs of such activity.

56 (2) No order may be issued under this subsection
57 requiring reimbursement of the costs of any action
58 carried out by the director which confirms the res-
59 of the order issued under subsection (a) or ()
60 section.

61 (e) If the monitoring, testing, analysis and reporting
62 conducted pursuant to this section indicates that a
63 potential hazard to human health or the environment
64 may or does exist, the director may issue an appropriate
65 order requiring that the hazard or risk of hazard be
66 eliminated.

67 (f) The director may commence a civil action against
68 any person who fails or refuses to comply with any order
69 issued under this section. Such action shall be brought
70 in the circuit court in which the defendant is located,
71 resides or is doing business. Such court has jurisdiction
72 to require compliance with such order and to assess a
73 civil penalty of not to exceed five thousand dollars for
74 each day during which such failure or refusal occurs.

§22-18-15. Enforcement orders; hearings.

1 (a) If the director, upon inspection, investigation or
2 through other means observes, discovers or learns of a
3 violation of the provisions of this article, any permit,
4 order or rules issued or promulgated hereunder, he or
5 she may:

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

13 (2) Seek an injunction in accordance with subsection
14 (c) of section seventeen of this article;

15 (3) Institute a civil action in accordance with subsec-
16 tion (c) of section seventeen of this article; or

17 (4) Request the attorney general, or the prosecuting
18 attorney of the county in which the alleged violation
19 occurred, to bring a criminal action in accordance with
20 section sixteen of this article.

21 (b) Any person issued a cease and desist order may
22 file a notice of request for reconsideration with the
23 director not more than seven days from the issuance of
24 such order and shall have a hearing before the director

25 contesting the terms and conditions of such order within
26 ten days of the filing of such notice of a request for
27 reconsideration. The filing of a notice of request for
28 reconsideration does not stay or suspend the execution
29 or enforcement of such cease and desist order.

§22-18-16. Criminal penalties.

1 (a) Any person who knowingly (1) transports any
2 hazardous waste identified or listed under this article
3 to a facility which does not have a permit required by
4 this article, Section 3005 of the Federal Solid Waste
5 Disposal Act, as amended, the laws of any other state
6 which has an authorized hazardous waste program
7 pursuant to Section 3006 of the federal Solid Waste
8 Disposal Act, as amended, or Title I of the federal
9 Marine Protection, Research and Sanctuaries Act; (2)
10 treats, stores or disposes of any such hazardous waste
11 either (A) without having obtained a permit required by
12 this article, or by Title I of the federal Marine Protec-
13 tion, Research and Sanctuaries Act, or by Section 3005
14 or 3006 of the federal Solid Waste Disposal Act, as
15 amended, or (B) in knowing violation of a material
16 condition or requirement of such permit, is guilty of a
17 felony, and, upon conviction thereof, shall be fined not
18 to exceed fifty thousand dollars for each day of violation
19 or confined in the penitentiary not less than one nor
20 more than two years, or both such fine and imprison-
21 ment or, in the discretion of the court, be confined in
22 jail not more than one year in addition to the above fine.

23 (b) Any person who knowingly (1) makes any false
24 material statement or representation in any application,
25 label, manifest, record, report, permit or other docu-
26 ment filed, maintained or used for purposes of com-
27 pliance with this article; or (2) generates, stores, treats,
28 transports, disposes of or otherwise handles any hazard-
29 ous waste identified or listed under this article (whether
30 such activity took place before or takes place after the
31 effective date of this article) and who knowingly
32 destroys, alters or conceals any record required to be
33 maintained under rules promulgated by the director
34 pursuant to this article, is guilty of a misdemeanor, and,
35 upon conviction thereof, shall be fined not to exceed

36 twenty-five thousand dollars, or sentenced to imprison-
37 ment for a period not to exceed one year, or both fined
38 and sentenced to imprisonment for each violation.

39 (c) Any person convicted of a second or subsequent
40 violation of subsections (a) and (b) of this section, is
41 guilty of a felony, and, upon such conviction, shall be
42 confined in the penitentiary not less than one nor more
43 than three years, or fined not more than fifty thousand
44 dollars for each day of violation, or both such fine and
45 imprisonment.

46 (d) Any person who knowingly transports, treats,
47 stores or disposes of any hazardous waste identified or
48 listed pursuant to this article in violation of subsection
49 (a) of this section, or having applied for a permit
50 pursuant to subdivision (13), subsection (a), section six
51 or sections seven and eight of this article, and knowingly
52 either (1) fails to include in a permit application any
53 material information required pursuant to this article,
54 or rules promulgated hereunder, or (2) fails to comply
55 with applicable interim status requirements as provided
56 in section eleven of this article and who thereby exhibits
57 an unjustified and inexcusable disregard for human life
58 or the safety of others and he or she thereby places
59 another person in imminent danger of death or serious
60 bodily injury, is guilty of a felony, and, upon conviction
61 thereof, shall be fined not more than two hundred fifty
62 thousand dollars or imprisoned not less than one year
63 nor more than four years or both such fine and
64 imprisonment.

65 (e) As used in subsection (d) of this section, the term
66 "serious bodily injury" means:

67 (1) Bodily injury which involves a substantial risk of
68 death;

69 (2) Unconsciousness;

70 (3) Extreme physical pain;

71 (4) Protracted and obvious disfigurement; or

72 (5) Protracted loss or impairment of the function of
73 a bodily member, organ or mental faculty.

§22-18-17. Civil penalties and injunctive relief.

1 (a) (1) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant
3 to this article is subject to a civil administrative penalty,
4 to be levied by the director, of not more than seventy-
5 five hundred dollars for each day of such violation, not
6 to exceed a maximum of twenty-two thousand five
7 hundred dollars. In assessing any such penalty, the
8 director shall take into account the seriousness of the
9 violation and any good faith efforts to comply with
10 applicable requirements as well as any other appropri-
11 ate factors as may be established by the director by
12 rules promulgated pursuant to this article and article
13 three, chapter twenty-nine-a of this code. No assessment
14 shall be levied pursuant to this subsection until after the
15 alleged violator has been notified by certified mail or
16 personal service. The notice shall include a reference to
17 the section of the statute, rule, order or statement of
18 permit conditions that was allegedly violated, a concise
19 statement of the facts alleged to constitute the violation,
20 a statement of the amount of the administrative penalty
21 to be imposed and a statement of the alleged violator's
22 right to an informal hearing. The alleged violator has
23 twenty calendar days from receipt of the notice within
24 which to deliver to the director a written request for an
25 informal hearing. If no hearing is requested, the notice
26 becomes a final order after the expiration of the twenty-
27 day period. If a hearing is requested, the director shall
28 inform the alleged violator of the time and place of the
29 hearing. The director may appoint an assessment officer
30 to conduct the informal hearing and then make a
31 written recommendation to the director concerning the
32 assessment of a civil administrative penalty. Within
33 thirty days following the informal hearing, the director
34 shall issue and furnish to the violator a written decision,
35 and the reasons therefor, concerning the assessment of
36 a civil administrative penalty. Within thirty days after
37 notification of the director's decision, the alleged violator
38 may request a formal hearing before the environmental
39 quality board in accordance with the provisions of
40 article one, chapter twenty-two-b of this code. The
41 authority to levy an administrative penalty is in addition

42 to all other enforcement provisions of this article and the
43 payment of any assessment does not affect the availa-
44 bility of any other enforcement provision in connection
45 with the violation for which the assessment is levied:
46 *Provided*, That no combination of assessments against a
47 violator under this section shall exceed twenty-five
48 thousand dollars per day of each such violation:
49 *Provided, however*, That any violation for which the
50 violator has paid a civil administrative penalty assessed
51 under this section shall not be the subject of a separate
52 civil penalty action under this article to the extent of the
53 amount of the civil administrative penalty paid. All
54 administrative penalties shall be levied in accordance
55 with rules issued pursuant to subsection (a) of section
56 six of this article. The net proceeds of assessments
57 collected pursuant to this subsection shall be deposited
58 in the hazardous waste emergency response fund
59 established pursuant to section three, article nineteen of
60 this chapter.

61 (2) No assessment levied pursuant to subdivision (1),
62 subsection (a) above becomes due and payable until the
63 procedures for review of such assessment as set out in
64 said subsection have been completed.

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

72 (c) The director may seek an injunction, or may
73 institute a civil action against any person in violation of
74 any provisions of this article or any permit, rule or order
75 issued pursuant to this article. In seeking an injunction,
76 it is not necessary for the director to post bond nor to
77 allege or prove at any stage of the proceeding that
78 irreparable damage will occur if the injunction is not
79 issued or that the remedy at law is inadequate. An
80 application for injunctive relief or a civil penalty action
81 under this section may be filed and relief granted
82 notwithstanding the fact that all administrative reme-

83 dies provided for in this article have not been exhausted
84 or invoked against the person or persons against whom
85 such relief is sought.

86 (d) Upon request of the director, the attorney general,
87 or the prosecuting attorney of the county in which the
88 violation occurs, shall assist the director in any civil
89 action under this section.

90 (e) In any action brought pursuant to the provisions
91 of this section, the state, or any agency of the state which
92 prevails, may be awarded costs and reasonable attor-
93 ney's fees.

**§22-18-18. Imminent and substantial hazards; orders;
penalties; hearings.**

1 (a) Notwithstanding any provision of this article to the
2 contrary, the director, upon receipt of information, or
3 upon observation or discovery that the handling,
4 storage, transportation, treatment or disposal of any
5 hazardous waste may present an imminent and substan-
6 tial endangerment to public health, safety or the
7 environment, may:

8 (1) Request the attorney general or the appropriate
9 prosecuting attorney to commence an action in the
10 circuit court of the county in which the hazardous
11 condition exists to immediately restrain any person
12 contributing to such handling, storage, transportation,
13 treatment or disposal to stop such handling, storage,
14 transportation, treatment or disposal or to take such
15 other action as may be necessary; or

16 (2) Take other action under this section including, but
17 not limited to, issuing such orders as may be necessary
18 to protect public health and the environment.

19 (b) Any person who willfully violates, or fails or
20 refuses to comply with, any order of the director under
21 subsection (a) of this section may, in an action brought
22 in the appropriate circuit court to enforce such orders,
23 be fined not more than five thousand dollars for each
24 day in which such violation occurs or such failure to
25 comply continues.

§22-18-19. Citizen suits; petitions for rule making; intervention.

1 (a) Any person may commence a civil action on his
2 or her own behalf against any person who is alleged to
3 be in violation of any provision of this article or any
4 condition of a permit issued or rules promulgated
5 hereunder, except that no action may be commenced
6 under this section prior to sixty days after the plaintiff
7 has given notice to the appropriate enforcement, permit
8 issuing or rule-making authority and to the person
9 against whom the action will be commenced, or if the
10 state has commenced and is diligently prosecuting a
11 civil or criminal action pursuant to this article:
12 *Provided*, That such person may commence a civil action
13 immediately upon notification in the case of an action
14 under subsection (b) of this section. Such actions may
15 be brought in the circuit court in the county in which
16 the alleged violation occurs or in the circuit court of
17 Kanawha County.

18 (b) Any person may commence a civil action against
19 the appropriate enforcement, permit issuing or rule-
20 making authority where there is alleged a failure of
21 such authority to perform any nondiscretionary duty or
22 act under this article. Such actions may be brought only
23 in the circuit court of Kanawha County.

24 (c) Any person may petition the appropriate rule-
25 making authority for rule-making on an issue arising
26 under this article. The appropriate rule-making author-
27 ity, if it believes such issue to merit rule making, may
28 commence any studies and investigations necessary to
29 issue rules. A decision by the appropriate rule-making
30 authority not to pursue rule making must be set forth
31 in writing with substantial reasons for refusing to do so.

32 (d) Nothing in this article restricts any rights of any
33 person or class of persons under statute or common law.

34 (e) In issuing any final order in any action brought
35 pursuant to this section any court with jurisdiction may
36 award costs of litigation, including reasonable attorney's
37 fees and expert witnesses fees, to any party whenever
38 the court determines such award to be appropriate.

39 (f) Any enforcement, permit issuing or rule-making
40 authority may intervene as a matter of right in any suit
41 brought under this section.

42 (g) Any person may intervene as a matter of right in
43 any civil action or administrative action instituted under
44 this article.

45 (h) Notwithstanding any provision of this article to the
46 contrary, any person may maintain an action to enjoin
47 a nuisance against any permit holder or other person
48 subject to the provisions of this article and may seek
49 damages in said action, all to the same extent and for
50 all intents and purposes as if this article were not
51 enacted, if such person maintaining such action and
52 seeking such damages would otherwise have standing to
53 maintain such action and be entitled to damages by any
54 other rule of law.

§22-18-20. Appeal to environmental quality board.

1 Any person aggrieved or adversely affected by an
2 order of the director made and entered in accordance
3 with the provisions of this article, or by the failure or
4 refusal of the director to act within a reasonable time
5 on an application for a permit or by the issuance or
6 denial of or by the terms and conditions of a permit
7 granted by the director under the provisions of this
8 article, may appeal to the environmental quality board,
9 in accordance with the provisions of article one, chapter
10 twenty-two-b of this code.

§22-18-21. Disclosures required in deeds and leases.

1 (a) The grantor in any deed or other instrument of
2 conveyance or any lessor in any lease or other instru-
3 ment whereby any real property is let for a period of
4 time shall disclose in such deed, lease or other instru-
5 ment the fact that such property or the subsurface of
6 such property, (whether or not the grantor or lessor is
7 at the time of such conveyance or lease the owner of such
8 subsurface) was used for the storage, treatment or
9 disposal of hazardous waste. The provisions of this
10 subsection only apply to those grantors or lessors who
11 owned or had an interest in the real property when the

12 same or the subsurface thereof was used for the purpose
13 of storage, treatment or disposal of hazardous waste or
14 who have actual knowledge that such real property or
15 the subsurface thereof was used for such purpose or
16 purposes at any time prior thereto.

17 (b) Any grantee of real estate or of any substrata
18 underlying said real estate or any lessee for a term who
19 intends to use the real estate conveyed or let or any
20 substrata underlying the same for the purpose of
21 storing, treating or disposing of hazardous waste shall
22 disclose in writing at the time of such conveyance or
23 lease or within thirty days prior thereto such fact to the
24 grantor or lessor of such real estate or substrata. Such
25 disclosure shall describe the proposed location upon said
26 property of the site to be used for the storage, treatment
27 or disposal of hazardous waste, the identity of such
28 waste, the proposed method of storage, treatment or
29 disposal to be used with respect to such waste and any
30 and all other information required by rules of the
31 director.

**§22-18-22. Appropriation of funds; hazardous waste
management fund.**

1 The net proceeds of all fines, penalties and forfeitures
2 collected under this article shall be appropriated as
3 directed by article XII, section 5 of the constitution of
4 West Virginia. For the purposes of this section, the net
5 proceeds of such fines, penalties and forfeitures shall be
6 deemed the proceeds remaining after deducting there-
7 from those sums appropriated by the Legislature for
8 defraying the cost of administering this article. All
9 permit application fees collected under this article shall
10 be paid into the state treasury into a special fund
11 designated "The Hazardous Waste Management Fund."
12 In making the appropriation for defraying the cost of
13 administering this article, the Legislature shall first
14 take into account the sums included in such special fund
15 prior to deducting such additional sums as may be
16 needed from the fines, penalties and forfeitures collected
17 pursuant to this article.

§22-18-23. State program to be consistent with and equivalent to federal program.

1 The program for the management of hazardous waste
2 pursuant to this article shall be equivalent to and
3 consistent with the federal program established pursu-
4 ant to Subtitle C of the federal Solid Waste Disposal Act,
5 as amended.

§22-18-24. Duplication of enforcement prohibited.

1 No enforcement proceeding brought pursuant to this
2 article may be duplicated by an enforcement proceeding
3 subsequently commenced under some other article of
4 this code with respect to the same transaction or event
5 unless such subsequent proceeding involves the violation
6 of a permit or permitting requirement of such other
7 article.

§22-18-25. Financial responsibility provisions.

1 (1) Financial responsibility required by subdivision
2 (4), subsection (a), section six of this article may be
3 established in accordance with rules promulgated by the
4 director by any one, or any combination, of the follow-
5 ing: Insurance, guarantee, surety bond, letter of credit
6 or qualification as a self-insurer. In promulgating
7 requirements under this section, the director is autho-
8 rized to specify policy or other contractual terms,
9 conditions or defenses which are necessary or are
10 unacceptable in establishing such evidence of financial
11 responsibility in order to effectuate the purposes of this
12 article.

13 (2) In any case where the owner or operator is in
14 bankruptcy reorganization, or arrangement pursuant to
15 the federal bankruptcy code or where (with reasonable
16 diligence) jurisdiction in any state court or any federal
17 court cannot be obtained over an owner or operator
18 likely to be solvent at the time of judgment, any claim
19 arising from conduct for which evidence of financial
20 responsibility must be provided under this section may
21 be asserted directly against the guarantor providing
22 such evidence of financial responsibility. In the case of
23 any action pursuant to this subsection, such guarantor

24 is entitled to invoke all rights and defenses which would
 25 have been available to the owner or operator if any
 26 action had been brought against the owner or operator
 27 by the claimant and which would have been available
 28 to the guarantor if an action had been brought against
 29 the guarantor by the owner or operator.

30 (3) The total liability of any guarantor is limited to
 31 the aggregate amount which the guarantor has provided
 32 as evidence of financial responsibility to the owner or
 33 operator under this article. Nothing in this subsection
 34 limits any other state or federal statutory contractual or
 35 common law liability of a guarantor to its owner or
 36 operator including, but not limited to, the liability of
 37 such guarantor for bad faith either in negotiating or in
 38 failing to negotiate the settlement of any claim. Nothing
 39 in this subsection diminishes the liability of any person
 40 under section 107 or 111 of the Comprehensive Envir-
 41 onmental Response Compensation and Liability Act of
 42 1980 or other applicable law.

43 (4) For the purposes of this section, the term "guaran-
 44 tor" means any person other than the owner or operator
 45 who provides evidence of financial responsibility for an
 46 owner or operator under this section.

ARTICLE 19. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.

- §22-19-1. Findings; purpose.
- §22-19-2. Definitions.
- §22-19-3. Hazardous waste emergency response fund; components of fund.
- §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.
- §22-19-6. State hazardous waste contingency plan.

§22-19-1. Findings; purpose.

1 The Legislature recognizes that large quantities of
 2 hazardous waste are generated within the state, and
 3 that emergency situations involving hazardous waste
 4 can and will arise which may present a hazard to human
 5 health, safety or the environment. The Legislature also
 6 recognizes that some hazardous waste has been stored,

7 treated or disposed of at sites in the state in a manner
8 insufficient to protect human health, safety or the
9 environment. The Legislature further recognizes that
10 the federal government has enacted the Comprehensive
11 Environmental Response, Compensation and Liability
12 Act of 1980, which provides for federal assistance to
13 respond to hazardous substance emergencies and to
14 remove and remedy the threat of damage to the public
15 health or welfare or to the environment, and declares
16 that West Virginia desires to produce revenue for
17 matching the federal assistance provided under the
18 federal act. Therefore, the Legislature hereby creates a
19 hazardous waste emergency fund to provide state funds
20 for responding to hazardous waste emergencies, match-
21 ing federal financial assistance for restoring hazardous
22 waste sites and other costs or expenses incurred in the
23 administration of this article.

§22-19-2. Definitions.

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

3 (1) "Cleanup" means such actions as may be necessary
4 to monitor, assess and evaluate the threat of release of
5 hazardous waste, the containment, collection, control,
6 identification, treatment, dispersal, removal or disposal
7 of hazardous waste or other such actions as may be
8 necessary to respond to hazardous waste emergencies or
9 to prevent, minimize or mitigate damage to the public
10 health, safety, welfare or to the environment, and
11 includes, where necessary, replacement of existing, or
12 provision of alternative, drinking water supplies that
13 have been contaminated with hazardous waste as a
14 result of an emergency;

15 (2) "Cleanup costs" means all costs incurred by the
16 director, or with the approval of the director, by any
17 state agency or person participating in the cleanup of
18 a hazardous waste emergency or remedial action;

19 (3) "Generator" means any person, corporation,
20 partnership, association or other legal entity, by site
21 location, whose act or process produces hazardous waste
22 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 All other terms have the meaning as prescribed in the
27 rules promulgated by the director pursuant to the
28 provisions of section six, article eighteen of this chapter.

**§22-19-3. Hazardous waste emergency response fund;
components of fund.**

1 (a) The special fund designated "The Hazardous
2 Waste Emergency Response Fund," hereinafter referred
3 to as "the fund," shall be continued in the state treasury.

4 (b) All generator fee assessments, any interest or
5 surcharge assessed and collected by the director,
6 interest accruing on investments and deposits of the
7 fund, and any other moneys designated shall be paid
8 into the fund.

**§22-19-4. Fee assessments; tonnage fees; due dates of
payments; interest on unpaid fees.**

1 (a) Each generator of hazardous waste within this
2 state shall pay an annual fee based upon the amount of
3 hazardous waste generated as reported to the director
4 by the generator on a fee assessment form prescribed
5 by the director submitted pursuant to article eighteen
6 of this chapter. The director shall establish a fee
7 schedule according to the following: Full assessment for
8 generated hazardous waste disposed or treated off-site;
9 ninety percent of the full assessment for generated
10 hazardous waste either treated or disposed on-site;
11 seventy-five percent of the full assessment for generated
12 hazardous waste treated off-site so that such waste is
13 rendered nonhazardous; and twenty-five percent of the
14 full assessment for generated hazardous waste treated
15 on-site so that such waste is rendered nonhazardous:
16 *Provided*, That the generator fee assessment does not
17 apply to the following: (1) Those wastes listed in
18 paragraph (A), subdivision two, subsection (a), section
19 six, article eighteen of this chapter; (2) sludge from any
20 publicly owned treatment works in the state; (3) any
21 discharge to waters of the state of hazardous waste

22 pursuant to a valid water pollution control permit issued
23 under federal or state law; (4) any hazardous wastes
24 beneficially used or reused or legitimately recycled or
25 reclaimed; (5) hazardous wastes which are created or
26 retrieved pursuant to an emergency or remedial action
27 plan; (6) hazardous wastes whose sole characteristic as
28 a hazardous waste is based on corrosivity and which are
29 subjected to on-site elementary neutralization in con-
30 tainers or tanks.

31 (b) Each generator of hazardous waste within the
32 state subject to a fee assessment under subsection (a) of
33 this section shall pay a fee based on its annual tonnage
34 of generated hazardous waste. Any unexpended balance
35 of such collected fees shall not be transferred to the
36 general revenue fund, but shall remain in the fund. The
37 director shall vary the fees annually to a level necessary
38 to produce a fund of at least one million dollars at the
39 beginning of each calendar year, but in no event shall
40 the fees established be set to produce revenue exceeding
41 five hundred thousand dollars in any year. When the
42 fund's unobligated balance exceeds one million five
43 hundred thousand dollars at the end of the calendar
44 year, generator assessments under this article shall
45 cease until such time as the fund's unobligated balance
46 at the end of any year is less than one million dollars.

47 (c) Generator fee assessments are due and payable to
48 the division of environmental protection on the fifteenth
49 day of January of each year. Such payments shall be
50 accompanied by information in such form as the
51 director may prescribe.

52 (d) If the fees or any portion thereof are not paid by
53 the date prescribed, interest accrues upon the unpaid
54 amount at the rate of ten percent per annum from the
55 date due until payment is actually made. Such interest
56 payments shall be deposited in the fund. If any gener-
57 ator fails to pay the fees imposed before April one of the
58 year in which they are due, there is imposed in addition
59 to the fee and interest determined to be owed a
60 surcharge equivalent to the total amount of the fee
61 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.

1 (a) The director shall collect all fees assessed pursuant
2 to this article and administer the fund. The fee schedule
3 shall be published in the state register by the first day
4 of August of each year. Each generator who filed the
5 fee assessment form prescribed by the director shall be
6 notified and provided with a copy of the fee schedule by
7 certified mail. In the event the fee schedule is not
8 published by the first day of August, the date prescribed
9 for payment in section four of this article shall be
10 advanced by the same number of days that the publi-
11 cation of the fee schedule is delayed. The interest and
12 surcharge provisions of section four of this article shall
13 be similarly advanced.

14 (b) The director is authorized to enter into agreements
15 and contracts and to expend the moneys in the fund for
16 the following purposes:

17 (1) Responding to hazardous waste emergencies when,
18 based on readily available information, the director
19 determines that immediate action may prevent or
20 mitigate significant risk of harm to human health,
21 safety or the environment from hazardous wastes in
22 situations for which no federal funds are immediately
23 available for such response cleanup or containment:
24 *Provided*, That the director shall apply for and dili-
25 gently pursue available federal funds for such emergen-
26 cies at the earliest possible time: *Provided, however*,
27 That funds shall not be expended under this subsection
28 to cleanup or contain off-site releases of hazardous waste
29 which are classified as such only as a result of such
30 releases;

31 (2) Reimbursing any person for reasonable cleanup
32 costs incurred with the authorization of the director in
33 responding to a hazardous waste emergency pursuant to
34 authorization of the director;

35 (3) Financing the nonfederal share of the cleanup and
36 site reclamation activities pursuant to the federal

37 Comprehensive Environmental Response, Compensation
38 and Liability Act of 1980, as well as future operation
39 and maintenance costs for these sites; and

40 (4) Financing any and all preparations necessary for
41 responding to hazardous waste activities and emergen-
42 cies within the state, including, but not limited to, the
43 purchase or lease of hazardous waste emergency
44 response equipment: *Provided*, That after the fifteenth
45 of January, one thousand nine hundred eighty-seven, no
46 funds shall be expended under this subdivision unless
47 the fund is greater than one million dollars and any
48 expenditure will not reduce the fund below one million
49 dollars.

50 (c) Prior to making expenditures from the fund
51 pursuant to subdivision (1), (2) or (3), subsection (b) of
52 this section, the director will make reasonable efforts to
53 secure agreements to pay the costs of cleanup and
54 remedial actions from owners or operators of sites or
55 other responsible persons.

56 (d) The director is authorized to promulgate and
57 revise rules in compliance with chapter twenty-nine-a of
58 this code to implement and effectuate the powers, duties
59 and responsibilities vested in him or her under this
60 article. Prior to the assessment of any fees under this
61 article, the director shall promulgate rules which
62 account for the mixture of hazardous and nonhazardous
63 constituents in the hazardous waste which is generated.
64 The director shall not assess a fee on the nonhazardous
65 portion, including, but not limited to, the weight of
66 water.

67 (e) The director is authorized to recover through civil
68 action or cooperative agreements with responsible
69 persons the full amount of any funds expended for
70 purposes enumerated in subdivision (1), (2) or (3),
71 subsection (b) of this section. All moneys expended from
72 the fund which are so recovered shall be deposited in
73 the fund. Any civil action instituted pursuant to this
74 subsection may be brought in either Kanawha County
75 or the county in which the hazardous waste emergency
76 occurs or the county in which remedial action is taken.

77 (f) The director is authorized to institute a civil action
78 against any generator for failure to pay any fee assessed
79 pursuant to this article. Any action instituted against a
80 generator pursuant to this subsection may be brought
81 in either Kanawha County or the county in which the
82 generator does business. The generator shall pay all
83 attorney fees and costs of such action if the director
84 prevails.

85 (g) Upon request by the director, the attorney general
86 or prosecuting attorney for the county in which an
87 action was brought shall assist the director in any civil
88 action instituted pursuant to this section and any
89 proceedings relating thereto.

90 (h) The director is authorized to enter into contracts
91 or cooperative agreements with the federal government
92 to secure to the state the benefits of funding for action
93 taken pursuant to the requirements of the federal
94 Comprehensive Environmental Response, Compensation
95 and Liability Act of 1980.

96 (i) The director is authorized to accept gifts, dona-
97 tions, contributions, bequests or devises of money,
98 security or property for deposit in the fund.

99 (j) The director is authorized to invest the fund to earn
100 a reasonable rate of return on the unexpended balance.

§22-19-6. State hazardous waste contingency plan.

1 The director shall promulgate rules in compliance
2 with chapter twenty-nine-a of this code, establishing a
3 state hazardous waste contingency plan which shall set
4 forth procedures and standards for responding to
5 hazardous waste emergencies, for conducting remedial
6 cleanup and maintenance of hazardous waste sites and
7 for making expenditures from the fund after the date
8 of promulgation of the plan. The plan shall include:

9 (a) Methods for discovering, reporting and investigat-
10 ing sites at which hazardous waste may present
11 significant risk of harm to the public health and safety
12 or to the environment;

13 (b) Methods and criteria for establishing priority

14 responses and for determining the appropriate extent of
15 cleanup, containment and other measures authorized by
16 this article;

17 (c) Appropriate roles for governmental, interstate and
18 nongovernmental entities in effectuating the plan;

19 (d) Methods for identifying, procuring, maintaining,
20 and storing hazardous waste response equipment and
21 supplies; and

22 (e) Methods to identify the most appropriate and cost-
23 effective emergency and remedial actions in view of the
24 relative risk or danger presented by each case or event.

ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary; continuation of position.

1 The director of the division of environmental protec-
2 tion shall appoint a person to serve as the environmental
3 advocate within the division of environmental protec-
4 tion, and shall adopt and promulgate rules in accor-
5 dance with the provisions of article three, chapter
6 twenty-nine-a of this code governing and controlling the
7 qualifications, powers and duties of the person to be
8 appointed to the position of environmental advocate. The
9 environmental advocate shall serve at the will and
10 pleasure of the director, who shall also set the salary of
11 the environmental advocate. All funding for the office
12 of environmental advocate shall be from existing funds
13 of the division of environmental protection. The director
14 shall provide an office and secretarial and support staff
15 as needed. The position of environmental advocate shall
16 continue to exist until the first day of July, one thousand
17 nine hundred ninety-seven, to allow for the completion
18 of a preliminary performance review pursuant to article
19 ten, chapter four of this code.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

Article

1. Office of Miners' Health, Safety and Training; Administration; Enforcement.

2. **Underground Mines.**
3. **Underground Clay Mine.**
4. **Open-pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines.**
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.**
9. **Mine Inspectors' Examining Board.**
10. **Emergency Medical Personnel.**

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-1-2. Definitions.
- §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-1-7. Savings provisions.
- §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-1-15. Findings, orders and notices.
- §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-1-19. Judicial review.
- §22A-1-20. Injunctions.
- §22A-1-21. Penalties.
- §22A-1-22. Discrimination.
- §22A-1-23. Records and reports.

- §22A-1-24. Mine foreman examiner for mine foremen-fire bosses and assistant mine foremen-fire bosses; salary.
- §22A-1-25. Duties of mine foreman examiner.
- §22A-1-26. Place and time for examinations.
- §22A-1-27. Preparation of examinations; notice of intention to take examination; investigation of applicants.
- §22A-1-28. Certificates of qualification heretofore granted.
- §22A-1-29. Mine foreman examiner to certify successful applicants to director.
- §22A-1-30. Record of examination.
- §22A-1-31. Withdrawal of certification.
- §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-1-37. Certification of surface-mine foremen.
- §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.

1 (a) The office of miners' health, safety and training
2 is continued and is a separate office within the depart-
3 ment of commerce, labor and environmental resources.
4 The office shall be administered, in accordance with the
5 provisions of this article, under the supervision and
6 direction of the director of the office of miners' health,
7 safety and training.

8 (b) The division of health, safety and training shall
9 have as its purpose the supervision of the execution and
10 enforcement of the provisions of this chapter and, in
11 carrying out the aforesaid purposes, it shall give prime
12 consideration to the protection of the safety and health
13 of persons employed within or at the mines of this state.
14 In addition, the division shall, consistent with the
15 aforesaid prime consideration, protect and preserve
16 mining property and property used in connection
17 therewith.

§22A-1-2. Definitions.

1 Unless the context in which used clearly requires a

2 different meaning, the following definitions apply to this
3 chapter:

4 (a) *General.*

5 (1) Accident: The term "accident" means any mine
6 explosion, mine ignition, mine fire, or mine inundation,
7 or injury to, or death of any person.

8 (2) Agent: The term "agent" means any person
9 charged with responsibility for the operation of all or
10 a part of a mine or the supervision of the miners in a
11 mine.

12 (3) Approved: The term "approved" means in strict
13 compliance with mining law, or, in the absence of law,
14 accepted by a recognized standardizing body or organ-
15 ization whose approval is generally recognized as
16 authoritative on the subject.

17 (4) Face equipment: The term "face equipment"
18 means mobile or portable mining machinery having
19 electric motors or accessory equipment normally
20 installed or operated in by the last open crosscut in an
21 entry or room.

22 (5) Imminent danger: The term "imminent danger"
23 means the existence of any condition or practice in a coal
24 mine which could reasonably be expected to cause death
25 or serious physical harm before such condition or
26 practice can be abated.

27 (6) Mine: The term "mine" includes the shafts, slopes,
28 drifts or inclines connected with, or intended in the
29 future to be connected with, excavations penetrating
30 coal seams or strata, which excavations are ventilated
31 by one general air current or divisions thereof, and
32 connected by one general system of mine haulage over
33 which coal may be delivered to one or more points
34 outside the mine, and the surface structures or equip-
35 ment connected or associated therewith which contrib-
36 ute directly or indirectly to the mining, preparation or
37 handling of coal, or construction thereof.

38 (7) Miner: The term "miner" means any individual
39 working in a coal mine.

40 (8) Operator: The term "operator" means any firm,
41 corporation, partnership or individual operating any
42 coal mine or part thereof, or engaged in the construction
43 of any facility associated with a coal mine.

44 (9) Permissible: The term "permissible" means any
45 equipment, device or explosive that has been approved
46 as permissible by the federal mine safety and health
47 administration and/or the United States Bureau of
48 Mines and meets all requirements, restrictions, excep-
49 tions, limitations and conditions attached to such
50 classification by that agency or the bureau.

51 (10) Person: The term "person" means any individual,
52 partnership, association, corporation, firm, subsidiary of
53 a corporation or other organization.

54 (11) Work of preparing the coal: The term "work of
55 preparing the coal" means the breaking, crushing,
56 sizing, cleaning, washing, drying, mixing, storing and
57 loading of bituminous coal or lignite, and such other
58 work of preparing such coal as is usually done by the
59 operator of the coal mine.

60 (b) *Office of miners' health, safety and training.*

61 (1) Board of appeals: The term "board of appeals"
62 means as provided for in article five of this chapter.

63 (2) Director: The term "director" means the director
64 of the office of miners' health, safety and training
65 provided for in section three of this article.

66 (3) Mine inspector: The term "mine inspector" means
67 a state mine inspector provided for in section eight of
68 this article.

69 (4) Mine inspectors' examining board: The term "mine
70 inspectors' examining board" shall mean the mine
71 inspectors' examining board provided for in article nine
72 of this chapter.

73 (5) Office: The term "office" means, when referring to
74 a specific office, the office of miners' health, safety and
75 training provided for in this article. The term "office."

76 when used generically, includes any office, board,
77 agency, unit, organizational entity or component thereof.

78 (c) *Mine areas.*

79 (1) Abandoned workings: The term "abandoned
80 workings" means excavation, either caved or sealed, that
81 is deserted and in which further mining is not intended,
82 or open workings which are ventilated and not inspected
83 regularly.

84 (2) Active workings: The term "active workings"
85 means all places in a mine that are ventilated and
86 inspected regularly.

87 (3) Drift: The term "drift" means a horizontal or
88 approximately horizontal opening through the strata or
89 in a coal seam and used for the same purposes as a shaft.

90 (4) Excavations and workings: The term "excavations
91 and workings" means any or all parts of a mine
92 excavated or being excavated, including shafts, slopes,
93 drifts, tunnels, entries, rooms and working places,
94 whether abandoned or in use.

95 (5) Inactive workings: The term "inactive workings"
96 includes all portions of a mine in which operations have
97 been suspended for an indefinite period, but have not
98 been abandoned.

99 (6) Mechanical working section: The term "mechanical
100 working section" means an area of a mine (A) in
101 which coal is loaded mechanically, (B) which is com-
102 prised of a number of working places that are generally
103 contiguous, and (C) which is of such size to permit
104 necessary supervision during shift operation, including
105 pre-shift and on-shift examinations and tests required
106 by law.

107 (7) Panel: The term "panel" means workings that are
108 or have been developed off of submain entries which do
109 not exceed three thousand feet in length.

110 (8) Return air: The term "return air" means a volume
111 of air that has passed through and ventilated all the

112 working places in a mine section.

113 (9) Shaft: The term "shaft" means a vertical opening
114 through the strata that is or may be used for the purpose
115 of ventilation, drainage, and the hoisting and transpor-
116 tation of individuals and material, in connection with
117 the mining of coal.

118 (10) Slope: The term "slope" means a plane or incline
119 roadway, usually driven to a coal seam from the surface
120 and used for the same purposes as a shaft.

121 (11) Working face: The term "working face" means
122 any place in a coal mine in which work of extracting
123 coal from its natural deposit in the earth is performed
124 during the mining cycle.

125 (12) Working place: The term "working place" means
126 the area of a coal mine inby the last open crosscut.

127 (13) Working section: The term "working section"
128 means all areas of the coal mine from the loading point
129 of the section to and including the working faces.

130 (14) Working unit: The term "working unit" means an
131 area of a mine in which coal is mined with a set of
132 production equipment; a conventional mining unit by a
133 single loading machine; a continuous mining unit by a
134 single continuous mining machine, which is comprised
135 of a number of working places.

136 (d) *Mine personnel.*

137 (1) Assistant mine foreman: The term "assistant mine
138 foreman" means a certified person designated to assist
139 the mine foreman in the supervision of a portion or the
140 whole of a mine or of the persons employed therein.

141 (2) Certified electrician: The term "certified electri-
142 cian" means any person who is qualified as a mine
143 electrician and who has passed an examination given by
144 the office, or has at least three years of experience in
145 performing electrical work underground in a coal mine,
146 in the surface work areas of an underground coal mine,
147 in a surface coal mine, in a noncoal mine, in the mine

148 equipment manufacturing industry, or in any other
149 industry using or manufacturing similar equipment,
150 and has satisfactorily completed a coal mine electrical
151 training program approved by the office.

152 (3) Certified person: The term "certified person,"
153 when used to designate the kind of person to whom the
154 performance of a duty in connection with the operation
155 of a mine shall be assigned, means a person who is
156 qualified under the provisions of this law to perform
157 such duty.

158 (4) Interested persons: The term "interested persons"
159 includes the operator, members of any mine safety
160 committee at the mine affected and other duly autho-
161 rized representatives of the mine workers and the office.

162 (5) Mine foreman: The term "mine foreman" means
163 the certified person whom the operator or superintend-
164 ent shall place in charge of the inside workings of the
165 mine and of the persons employed therein.

166 (6) Qualified person: The term "qualified person"
167 means a person who has completed an examination and
168 is considered qualified on record by the office.

169 (7) Shot firer: The term "shot firer" means any person
170 having had at least two years of practical experience in
171 coal mines, who has a knowledge of ventilation, mine
172 roof and timbering, and who has demonstrated his or
173 her knowledge of mine gases, the use of a flame safety
174 lamp, and other approved detecting devices by exami-
175 nation and certification given him or her by the office.

176 (8) Superintendent: The term "superintendent" means
177 the person who has, on behalf of the operator, immediate
178 supervision of one or more mines.

179 (9) Supervisor: The term "supervisor" means a
180 superintendent, mine foreman, assistant mine foreman,
181 or any person specifically designated by the superin-
182 tendent or mine foreman to supervise work or employees
183 and who is acting pursuant to such specific designation
184 and instructions.

185 (e) *Electrical.*

186 (1) Armored cable: The term "armored cable" means
187 a cable provided with a wrapping of metal, usually steel
188 wires or tapes, primarily for the purpose of mechanical
189 protection.

190 (2) Borehole cable: The term "borehole cable" means
191 a cable designed for vertical suspension in a borehole or
192 shaft and used for power circuits in the mine.

193 (3) Branch circuit: The term "branch circuit" means
194 any circuit, alternating current or direct current,
195 connected to and leading from the main power lines.

196 (4) Cable: The term "cable" means a standard
197 conductor (single conductor cable) or a combination of
198 conductors insulated from one another (multiple conduc-
199 tor cable).

200 (5) Circuit breaker: The term "circuit breaker" means
201 a device for interrupting a circuit between separable
202 contacts under normal or abnormal conditions.

203 (6) Delta connected: The term "delta connected"
204 means a power system in which the windings or
205 transformers or a.c. generators are connected to form a
206 triangular phase relationship, and with phase conduc-
207 tors connected to each point of the triangle.

208 (7) Effectively grounded: The term "effectively
209 grounded" is an expression which means grounded
210 through a grounding connection of sufficiently low
211 impedance (inherent or intentionally added or both) so
212 that fault grounds which may occur cannot build up
213 voltages in excess of limits established for apparatus,
214 circuits or systems so grounded.

215 (8) Flame-resistant cable, portable: The term "flame-
216 resistant cable, portable" means a portable flame-
217 resistant cable that has passed the flame tests of the
218 Federal Mine Safety and Health Administration.

219 (9) Ground or grounding conductor (mining): The
220 term "ground or grounding conductor (mining)," also

221 referred to as a safety ground conductor, safety ground
222 and frame ground, means a metallic conductor used to
223 connect the metal frame or enclosure of any equipment,
224 device or wiring system with a mine track or other
225 effective grounding medium.

226 (10) Grounded (earthed): The term "grounded
227 (earthed)" means that the system, circuit or apparatus
228 referred to is provided with a ground.

229 (11) High voltage: The term "high voltage" means
230 voltages of more than one thousand volts.

231 (12) Lightning arrestor: The term "lightning arrestor"
232 means a protective device for limiting surge voltage on
233 equipment by discharging or by passing surge current;
234 it prevents continued flow of follow current to ground
235 and is capable of repeating these functions as specified.

236 (13) Low voltage: The term "low voltage" means up
237 to and including six hundred sixty volts.

238 (14) Medium voltage: The term "medium voltage"
239 means voltages from six hundred sixty-one to one
240 thousand volts.

241 (15) Mine power center or distribution center: The
242 term "mine power center or distribution center" means
243 a combined transformer or distribution unit, complete
244 within a metal enclosure from which one or more low-
245 voltage power circuits are taken.

246 (16) Neutral (derived): The term "neutral (derived)"
247 means a neutral point or connection established by the
248 addition of a "zig-zag" or grounding transformer to a
249 normally underground power system.

250 (17) Neutral point: The term "neutral point" means
251 the connection point of transformer or generator
252 windings from which the voltage to ground is nominally
253 zero, and is the point generally used for system
254 groundings in wye-connected a.c. power system.

255 (18) Portable (trailing) cable: The term "portable
256 (trailing) cable" means a flexible cable or cord used for

257 connecting mobile, portable or stationary equipment in
258 mines to a trolley system or other external source of
259 electric energy where permanent mine wiring is
260 prohibited or is impracticable.

261 (19) Wye-connected: The term "wye-connected" means
262 a power system connection in which one end of each
263 phase windings or transformers or a.c. generators are
264 connected together to form a neutral point, and a
265 neutral conductor may or may not be connected to the
266 neutral point, and the neutral point may or may not be
267 grounded.

268 (20) Zig-zag transformer (grounding transformer):
269 The term "zig-zag transformer (grounding trans-
270 former)" means a transformer intended primarily to
271 provide a neutral point for grounding purposes.

**§22A-1-3. Director of the office of miners' health, safety
and training.**

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

8 (b) The director is the chief executive officer of the
9 office. Subject to provisions of law, he or she shall
10 organize the office into such offices, sections, agencies
11 and other units of activity as may be found by the
12 director to be desirable for the orderly, efficient and
13 economical administration of the office. The director
14 may appoint such other employees needed for the
15 operation of the office and may prescribe their powers
16 and duties and fix their compensation within amounts
17 appropriated therefor.

18 (c) The director shall be appointed by the governor,
19 by and with the advice and consent of the Senate, and
20 shall serve at the will and pleasure of the governor.
21 *Provided*, That, in lieu of appointing a director

22 governor may order the secretary to directly exercise
23 the powers of the director. The secretary shall designate
24 the order in which other officials of the office shall act
25 for and perform the functions of the secretary or the
26 director during the absence or disability of both the
27 secretary or the director or in the event of vacancies in
28 both of those offices.

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

52 (e) The director shall receive an annual salary of
53 sixty-five thousand dollars and shall be allowed and paid
54 necessary expenses incident to the performance of his or
55 her official duties. Prior to the assumption of his or her
56 official duties, the director shall take the oath required
57 of public officials prescribed by section 5, article IV
58 of the constitution of West Virginia and shall execute
59 a bond, with surety approved by the governor, in the
60 penal sum of ten thousand dollars, which executed oath
61 and bond shall be filed in the office of the secretary of

62 state. Premiums on the bond shall be paid from office
63 funds.

**§22A-1-4. Powers and duties of the director of the office
of miners' health, safety and training.**

1 (a) The director of the office of miners' health, safety
2 and training is hereby empowered and it is his or her
3 duty to administer and enforce such provisions of this
4 chapter relating to health and safety inspections and
5 enforcement and training in surface and underground
6 coal mines, underground clay mines, open pit mines,
7 cement manufacturing plants and underground limes-
8 tone and sandstone mines.

9 (b) The director of the office of miners' health, safety
10 and training has full charge of the division. The director
11 has the power and duty to:

12 (1) Supervise and direct the execution and enforce-
13 ment of the provisions of this article.

14 (2) Employ such assistants, clerks, stenographers and
15 other employees as may be necessary to fully and
16 effectively carry out his or her responsibilities and fix
17 their compensation, except as otherwise provided in this
18 article.

19 (3) Assign mine inspectors to divisions or districts in
20 accordance with the provisions of section eight of this
21 article as may be necessary to fully and effectively carry
22 out the provisions of this law, including the training of
23 inspectors for the specialized requirements of surface
24 mining, shaft and slope sinking and surface installations
25 and to supervise and direct such mine inspectors in the
26 performance of their duties.

27 (4) Suspend, for good cause, any such mine inspector
28 without compensation for a period not exceeding thirty
29 days in any calendar year.

30 (5) Prepare report forms to be used by mine inspec-
31 tors in making their findings, orders and notices, upon
32 inspections made in accordance with this article.

33 (6) Hear and determine applications made by mine
34 operators for the annulment or revision of orders made

35 by mine inspectors, and to make inspections of mines,
36 in accordance with the provisions of this article.

37 (7) Cause a properly indexed permanent and public
38 record to be kept of all inspections made by himself or
39 by mine inspectors.

40 (8) Make annually a full and complete written report
41 of the administration of the office to the governor and
42 the Legislature of the state for the year ending the
43 thirtieth day of June. The report shall include the
44 number of visits and inspections of mines in the state
45 by mine inspectors, the quantity of coal, coke and other
46 minerals (excluding oil and gas) produced in the state,
47 the number of individuals employed, number of mines
48 in operation, statistics with regard to health and safety
49 of persons working in the mines including the causes of
50 injuries and deaths, improvements made, prosecutions,
51 the total funds of the office from all sources identifying
52 each source of such funds, the expenditures of the office,
53 the surplus or deficit of the office at the beginning and
54 end of the year, the amount of fines collected, the
55 amount of fines imposed, the value of fines pending, the
56 number and type of violations found, the amount of fines
57 imposed, levied and turned over for collection, the total
58 amount of fines levied but not paid during the prior
59 year, the titles and salaries of all inspectors and other
60 officials of the office, the number of inspections made
61 by each inspector, the number and type of violations
62 found by each inspector: *Provided*, That no inspector is
63 identified by name in this report. Such reports shall be
64 filed with the governor and the Legislature on or before
65 the thirty-first day of December of the same year for
66 which it was made, and shall upon proper authority be
67 printed and distributed to interested persons.

68 (9) Call or subpoena witnesses, for the purpose of
69 conducting hearings into mine fires, mine explosions or
70 any mine accident; to administer oaths and to require
71 production of any books, papers, records or other
72 documents relevant or material to any hearing, inves-
73 tigation or examination of any mine permitted by this
74 chapter. Any witness so called or subpoenaed shall
75 receive forty dollars per diem and shall receive mileage

76 at the rate of fifteen cents for each mile actually
77 traveled, which shall be paid out of the state treasury
78 upon a requisition upon the state auditor, properly
79 certified by such witness.

80 (10) Institute civil actions for relief, including
81 permanent or temporary injunctions, restraining orders,
82 or any other appropriate action in the appropriate
83 federal or state court whenever any operator or the
84 operator's agent violates or fails or refuses to comply
85 with any lawful order, notice or decision issued by the
86 director or his or her representative.

87 (11) Perform all other duties which are expressly
88 imposed upon him or her by the provisions of this
89 chapter.

90 (12) Make all records of the office open for inspection
91 of interested persons and the public.

**§22A-1-5. Offices continued in the office of miners'
health, safety and training.**

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

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

5 (2) The coal mine safety and technical review commit-
6 tee established pursuant to article six of this chapter;

7 (3) The board of miner training, education and
8 certification established pursuant to article seven of this
9 chapter;

10 (4) The mine inspectors' examining board established
11 pursuant to article nine of this chapter; and

12 (5) The board of appeals provided for pursuant to the
13 provisions of article five of this chapter.

14 (b) Nothing in this article may authorize the director
15 or the secretary of the department of commerce, labor
16 and environmental resources to alter, discontinue or
17 abolish any office, board or commission or the functions
18 thereof, which are established by statute.

§22A-1-6. Director's authority to promulgate rules.

1 The director has the power and authority to propose
2 or promulgate rules to organize the office and to carry
3 out and implement the provisions of this chapter
4 relating to health and safety inspections and enforce-
5 ment. All rules in effect on the effective date of this
6 article which pertain to the provisions of this chapter
7 as they relate to health and safety inspection and
8 enforcement shall remain in effect until changed or
9 superseded by the director, or as appropriate. Except
10 when specifically exempted by the provisions of this
11 chapter, all rules or changes thereto shall be proposed
12 or promulgated by the director in accordance with the
13 provisions of chapter twenty-nine-a of this code.

§22A-1-7. Savings provisions.

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

§22A-1-8. Mine inspectors; districts and divisions; employment; tenure; oath; bond.

1 Notwithstanding any other provisions of law, mine
2 inspectors shall be selected, serve and be removed as in
3 this article provided.

4 The director shall divide the state into not more than
5 forty-five mining districts and not more than five
6 mining divisions, so as to equalize, as far as practical,
7 the work of each inspector. The director may assign

8 inspectors to districts, designate and assign not more
9 than one inspector-at-large to each division and one
10 assistant inspector-at-large. The director shall designate
11 the places of abode of inspectors at points convenient to
12 the mines of their respective districts, and, in the case
13 of inspectors and assistant inspectors-at-large, their
14 respective divisions.

15 Except as in the next preceding paragraph provided,
16 all mine inspectors appointed after the mine inspectors'
17 examining board has certified to the director an
18 adequate register of qualified eligible candidates in
19 accordance with section eleven of this article, so long as
20 such register contains the names of at least three
21 qualified eligible candidates, shall be appointed from
22 the names on such register. Each original appointment
23 shall be made by the director for a probationary period
24 of not more than one year.

25 The director shall make each appointment from
26 among the three qualified eligible candidates on the
27 register having the highest grades: *Provided*, That the
28 director may, for good cause, at least thirty days prior
29 to making an appointment, strike any name from the
30 register. Upon striking any name from the register, the
31 director shall immediately notify in writing each
32 member of the mine inspectors' examining board of the
33 action, together with a detailed statement of the reasons
34 therefor. Thereafter, the mine inspectors' examining
35 board, after hearing, if it finds that the action of the
36 director was arbitrary or unreasonable, may order the
37 name of any candidate so stricken from the register to
38 be reinstated thereon. Such reinstatement is effective
39 from the date of removal from the register.

40 Any candidate passed over for appointment for three
41 years shall be automatically stricken from the register.

42 After having served for a probationary period of one
43 year to the satisfaction of the director, a mine inspector
44 has permanent tenure, subject only to dismissal for
45 cause in accordance with the provisions of section twelve
46 of this article. No mine inspector, while in office, shall
47 be directly or indirectly interested as owner, lessor,

48 operator, stockholder, superintendent or engineer of any
49 coal mine. Before entering upon the discharge of the
50 duties as a mine inspector, he or she shall take the oath
51 of office prescribed by section 5, article IV of the
52 constitution of West Virginia and shall execute a bond
53 in the penalty of two thousand dollars, with security to
54 be approved by the director, conditioned upon the
55 faithful discharge of his or her duties, a certificate of
56 which oath and bond shall be filed in the office of the
57 secretary of state.

58 The district inspectors, inspectors-at-large and
59 assistant inspectors-at-large, together with the director,
60 shall make all inspections authorized by this article and
61 article two of this chapter and shall perform such other
62 duties as are imposed upon mine inspectors by this
63 article and articles two, four and eight of this chapter.

**§22A-1-9. Mine safety instructors; qualifications; employ-
ment; compensation; tenure; oath; bond.**

1 The office shall employ eleven or more mine safety
2 instructors. To be eligible for employment as a mine
3 safety instructor, the applicant shall be (1) a citizen of
4 West Virginia, in good health, not less than twenty-five
5 years of age, and of good character, reputation and
6 temperate habits, and (2) a person who has had at least
7 five years' experience in first aid and mine rescue work
8 and who has had practical experience with dangerous
9 gases found in coal mines, and who has a practical
10 knowledge of mines, mining methods, mine ventilation,
11 sound safety practices and applicable mining laws.

12 In order to qualify for appointment as a mine safety
13 instructor, an eligible applicant shall submit to a
14 written and oral examination, given by the mine
15 inspectors' examining board. The examination shall
16 relate to the duties to be performed by a safety
17 instructor and may, subject to the approval of the mine
18 inspectors' examining board, be prepared by the
19 director.

20 If the board finds after investigation and examination
21 that the applicant (1) is eligible for appointment, and (2)
22 has passed all oral and written examinations with a

23 grade of at least eighty percent, the board shall add such
24 applicant's name and grade to a register of qualified
25 eligible candidates and certify its action to the director.
26 The director may then appoint one of the candidates
27 from the three having the highest grades.

28 The salary for a mine safety instructor shall be not
29 less than twenty-one thousand six hundred seventy-two
30 dollars per year, and shall be fixed by the director, who
31 shall take into consideration ability, performance of
32 duty and experience. Such instructor shall devote all of
33 his or her time to the duties of the office. No reimburse-
34 ment for traveling expenses shall be made except on
35 an itemized accounting for such expenses submitted by
36 the instructor, who shall verify upon oath that such
37 expenses were actually incurred in the discharge of his
38 or her official duties.

39 Except as expressly provided in this section to the
40 contrary, all provisions of this article relating to the
41 eligibility, qualification, appointment, tenure and
42 removal of mine inspectors are applicable to mine safety
43 instructors.

**§22A-1-10. Mine inspectors may be appointed to fill
vacancy in division.**

1 Notwithstanding any other provisions of law, if a
2 vacancy occurs in any appointive position within the
3 office, any mine inspector having permanent tenure, if
4 qualified, may be appointed to such appointive position
5 by the director.

**§22A-1-11. Employment of electrical inspectors; qualifi-
cations; salary and expenses; tenure; oath;
bond.**

1 The office shall employ five or more electrical
2 inspectors. To be eligible for employment as an electri-
3 cal inspector, the applicant shall be: (1) A citizen and
4 resident of West Virginia, in good health, not less than
5 twenty-five years of age, and of good character,
6 reputation and of temperate habits; and (2) a person who
7 has had seven years' practical electrical experience in
8 coal mines, or a degree in electrical engineering *from*

9 an accredited electrical engineering school and one
10 year's practical experience in underground coal mining.

11 In order to qualify for appointment as a mine
12 electrical inspector, an eligible applicant shall submit to
13 a written and oral examination given by the mine
14 inspectors' examining board. The examination shall
15 relate to the duties to be performed by an electrical
16 inspector. If the board finds after investigation and
17 examination that the applicant (1) is eligible for
18 appointment and (2) has passed all oral and written
19 examinations with a grade of at least ninety percent, the
20 board shall add such applicant's name and grade to a
21 register of qualified eligible candidates and certify its
22 action to the director. The director may then appoint one
23 of the candidates from the three having the highest
24 grade.

25 The salary of a mine electrical inspector shall be not
26 less than thirty thousand four hundred eighty dollars
27 per year, and shall be fixed by the director, who shall
28 take into consideration ability, performance of duty and
29 experience. No reimbursement for traveling expenses
30 shall be made except on an itemized accounting for such
31 expense submitted by the electrical inspector, who shall
32 verify upon oath that such expenses were actually
33 incurred in the discharge of his or her official duties.

34 Mine electrical inspectors, before entering upon the
35 discharge of their duties, shall take and subscribe to the
36 oath and shall execute a bond in the same penal sum,
37 with surety approved by the director, all as is required
38 by this article in the case of mine inspectors.

39 Except as expressly provided in this section to the
40 contrary, all provisions of this article relating to the
41 eligibility, qualifications, appointment, tenure and
42 removal of mine inspectors are applicable to mine
43 electrical inspectors.

**§22A-1-12. Eligibility for appointment as mine inspector;
qualifications; salary and expenses;
removal.**

1 (a) No person is eligible for appointment as a mine

2 inspector unless, at the time of his or her probationary
3 appointment, he or she (1) is a citizen of West Virginia,
4 in good health, not less than twenty-four years of age,
5 and of good character, reputation and temperate habits;
6 (2) has had at least six years' practical experience in coal
7 mines, at least three years of which, immediately
8 preceding his or her original appointment, shall have
9 been in mines of this state: *Provided*, That graduation
10 from any accredited college of mining engineering shall
11 be considered the equivalent of two years' practical
12 experience; (3) has had practical experience with
13 dangerous gases found in coal mines; and (4) has a good
14 theoretical and practical knowledge of mines, mining
15 methods, mine ventilation, sound safety practices and
16 applicable mining laws.

17 (b) In order to qualify for appointment as a mine
18 inspector, an eligible applicant shall submit to a written
19 and oral examination by the mine inspectors' examining
20 board and furnish such evidence of good health,
21 character and other facts establishing eligibility as the
22 board may require. If the board finds after investigation
23 and examination that an applicant: (1) Is eligible for
24 appointment and (2) has passed all written and oral
25 examinations, with a grade of at least eighty percent,
26 the board shall add such applicant's name and grade to
27 the register of qualified eligible candidates and certify
28 its action to the director. No candidate's name shall
29 remain in the register for more than three years without
30 requalifying.

31 (c) Salaries of district inspectors shall not be less than
32 twenty-eight thousand fifty-six dollars per year; assist-
33 ant inspector-at-large, not less than thirty thousand one
34 hundred eight dollars per year; inspectors-at-large, not
35 less than thirty-one thousand five hundred seventy-two
36 dollars per year, and they shall receive mileage at the
37 rate of not less than twenty cents for each mile actually
38 traveled in the discharge of their official duties in a
39 privately owned vehicle. Within the limits provided by
40 law, the salary of each inspector shall be fixed by the
41 director, subject to the approval of the mine inspectors'
42 examining board. In fixing salaries of mine inspectors

43 the director shall consider ability, performance of duty
44 and experience. No reimbursement for traveling
45 expenses shall be made except on an itemized account
46 of such expenses submitted by the inspector, who shall
47 verify upon oath, that such expenses were actually
48 incurred in the discharge of his or her official duties.
49 Every inspector shall be afforded compensatory time or
50 compensation of at least his or her regular rate for all
51 time in excess of forty-two hours per week.

52 (d) Any mine inspector who has fulfilled the require-
53 ments of this section with respect to employment and
54 who has served satisfactorily as a mine inspector for a
55 minimum period of one year and who has terminated
56 his or her employment as a mine inspector, upon
57 successfully passing a physical examination, may be
58 reinstated as a mine inspector within two years after
59 terminating his or her employment with the approval
60 of the examining board and the director.

61 (e) A mine inspector, after having received a perman-
62 ent appointment, shall be removed from office only for
63 physical or mental impairment, incompetency, neglect
64 of duty, drunkenness, malfeasance in office or other
65 good cause.

66 Proceedings for the removal of a mine inspector may
67 be initiated by the director whenever there is reasonable
68 cause to believe that adequate cause exists, warranting
69 removal. Such a proceeding shall be initiated by a
70 verified petition, filed with the board by the director,
71 setting forth with particularity the facts alleged. Not
72 less than twenty reputable citizens, who are operators
73 or employees in mines in the state, may petition the
74 director for the removal of a mine inspector. If such
75 petition is verified by at least one of the petitioners,
76 based on actual knowledge of the affiant and alleged
77 facts, which, if true, warrant the removal of the
78 inspector, the director shall cause an investigation of the
79 facts to be made. If, after such investigation, the
80 director finds that there is substantial evidence, which,
81 if true, warrants removal of the inspector, the director
82 shall file a petition with the board requesting removal
83 of the inspector.

84 On receipt of a petition by the director seeking
85 removal of a mine inspector, the board shall promptly
86 notify the inspector to appear before it at a time and
87 place designated in said notice, which time shall be not
88 less than fifteen days thereafter. There shall be attached
89 to the copy of the notice served upon the inspector a copy
90 of the petition filed with the board.

91 At the time and place designated in said notice, the
92 board shall hear all evidence offered in support of the
93 petition and on behalf of the inspector. Each witness
94 shall be sworn, and a transcript shall be made of all
95 evidence taken and proceedings had at any such
96 hearing. No continuance shall be granted except for
97 good cause shown. The chair of the board and the
98 director have power to administer oaths and subpoena
99 witnesses.

100 Any mine inspector who willfully refuses or fails to
101 appear before the board, or having appeared, refuses to
102 answer under oath any relevant question on the ground
103 that the testimony or answer might incriminate him or
104 her or refuses to waive immunity from prosecution on
105 account of any relevant matter about which the inspec-
106 tor may be asked to testify at any such hearing before
107 the board, shall forfeit his or her position.

108 If, after hearing, the board finds that the inspector
109 should be removed, it shall enter an order to that effect.
110 The decision of the board is final and is not subject to
111 judicial review.

**§22A-1-13. Eligibility for appointment as surface mine
inspector; qualifications; salary and ex-
penses; removal.**

1 In order to qualify for an appointment as a surface
2 mine inspector, under the provisions of this article, an
3 eligible applicant shall have had at least five years'
4 practical experience in surface mines, at least one year
5 of which, immediately preceding his or her original
6 appointment, shall have been in surface mines in this
7 state, and submit to a written and oral examination
8 given by the mine inspectors' examining board. The
9 examination shall relate to the duties to be performed

10 by a surface mine inspector and may, subject to the
11 approval of the mine inspectors' examining board, be
12 prepared by the director.

13 If the board finds after investigation and examination
14 that the applicant (1) is eligible for appointment, and (2)
15 has passed all oral and written examinations with a
16 grade of at least eighty percent, the board shall add such
17 applicant's name and grade to a register of qualified
18 eligible candidates and certify its action to the director.
19 The director may then appoint one of the candidates
20 from the three having the highest grades.

21 All such appointees shall be citizens of West Virginia,
22 in good health, not less than twenty-five years of age,
23 of good character and reputation and temperate in
24 habits. No person is eligible for permanent appointment
25 as a surface mine inspector until he or she has served
26 in a probationary status for a period of one year to the
27 satisfaction of the director.

28 In the performance of duties devolving upon surface
29 mine inspectors, they shall be responsible to the
30 director.

31 The salary of the surface mine inspector supervisor
32 shall be not less than twenty-four thousand four hundred
33 eighty dollars per year. Salaries of surface mine
34 inspectors shall be not less than twenty-one thousand
35 seven hundred eighty dollars per year. In the discharge
36 of their official duties in privately owned vehicles,
37 surface mine inspectors and the surface mine inspector
38 supervisor shall receive mileage at the rate of not less
39 than twenty cents per mile.

40 A surface mine inspector, after having received a
41 permanent appointment, shall be removed from office
42 only for physical or mental impairment, incompetency,
43 neglect of duty, drunkenness, malfeasance in office, or
44 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.**

1 The director, or his or her authorized representative,
2 has authority to visit, enter, and examine any mine,
3 whether underground or on the surface, and may call
4 for the assistance of any district mine inspector or
5 inspectors whenever such assistance is necessary in the
6 examination of any mine. The operator of every coal
7 mine shall furnish the director or his or her authorized
8 representative proper facilities for entering such mine
9 and making examination or obtaining information.

10 If miners or one of their authorized representatives,
11 have reason to believe, at any time, that dangerous
12 conditions are existing or that the law is not being
13 complied with, they may request the director to have an
14 immediate investigation made.

15 Mine inspectors shall devote their full time and
16 undivided attention to the performance of their duties,
17 and they shall examine all of the mines in their
18 respective districts at least four times annually, and as
19 often, in addition thereto, as the director may direct, or
20 the necessities of the case or the condition of the mine
21 or mines may require, with no advance notice of
22 inspection provided to any person, and they shall make
23 a personal examination of each working face and all
24 entrances to abandoned parts of the mine where gas is
25 known to liberate, for the purpose of determining
26 whether an imminent danger, referred to in section
27 fifteen of this article, exists in any such mine, or
28 whether any provision of article two of this chapter is
29 being violated or has been violated within the past forty-
30 eight hours in any such mine.

31 In addition to the other duties imposed by this article
32 and article two of this chapter, it is the duty of each
33 inspector to note each violation he or she finds and issue
34 a finding, order, or notice, as appropriate for each
35 violation so noted. During the investigation of any
36 accident, any violation may be noted whether or not the
37 inspector actually observes the violation and whether or
38 not the violation exists at the time the inspector notes
39 the violation, so long as the inspector has clear and
40 convincing evidence the violation has occurred or is
41 occurring.

42 The mine inspector shall visit the scene of each fatal
43 accident occurring in any mine within his or her district
44 and shall make an examination into the particular facts
45 of such accident; make a report to the director, setting
46 forth the results of such examination, including the
47 condition of the mine and the cause or causes of such
48 fatal accident, if known, and all such reports shall be
49 made available to the interested parties, upon written
50 requests.

51 At the commencement of any inspection of a coal mine
52 by an authorized representative of the director, the
53 authorized representative of the miners at the mine at
54 the time of such inspection shall be given an opportunity
55 to accompany the authorized representative of the
56 director on such inspection.

§22A-1-15. Findings, orders and notices.

1 (a) If, upon any inspection of a coal mine, an autho-
2 rized representative of the director finds that an
3 imminent danger exists, such representative shall
4 determine the area throughout which such danger
5 exists, and thereupon shall issue forthwith an order
6 requiring the operator of the mine or the operator's
7 agent to cause immediately all persons, except those
8 referred to in subdivisions (1), (2), (3) and (4), subsection
9 (c) of this section, to be withdrawn from and to be
10 prohibited from entering such area until an authorized
11 representative of the director determines that such
12 imminent danger no longer exists.

13 All employees on the inside and outside of a mine who
14 are idled as a result of the posting of a withdrawal order
15 by a mine inspector shall be compensated by the
16 operator at their regular rates of pay for the period they
17 are idled, but not more than the balance of such shift.
18 If such order is not terminated prior to the next working
19 shift, all such employees on that shift who are idled by
20 such order are entitled to full compensation by the
21 operator at their regular rates of pay for the period they
22 are idled, but for not more than four hours of such shift.

23 (b) If, upon any inspection of a coal mine, an
24 authorized representative of the director finds that there

25 has been a violation of the law, but the violation has not
26 created an imminent danger, he or she shall issue a
27 notice to the operator or the operator's agent, fixing a
28 reasonable time for the abatement of the violation. If,
29 upon the expiration of the period of time, as originally
30 fixed or subsequently extended, an authorized represen-
31 tative of the director finds that the violation has not been
32 totally abated, and if the director also finds that the
33 period of time should not be further extended, the
34 director shall find the extent of the area affected by the
35 violation and shall promptly issue an order requiring
36 the operator of such mine or the operator's agent to
37 cause immediately all persons, except those referred to
38 in subdivisions (1), (2), (3) and (4), subsection (c) of this
39 section, to be withdrawn from, and to be prohibited
40 from entering such area until an authorized represen-
41 tative of the director determines that the violation has
42 been abated.

43 (c) The following persons are not required to be
44 withdrawn from or prohibited from entering any area
45 of the coal mine subject to an order issued under this
46 section:

47 (1) Any person whose presence in such area is
48 necessary, in the judgment of the operator or an
49 authorized representative of the director, to eliminate
50 the condition described in the order;

51 (2) Any public official whose official duties require
52 him or her to enter such area;

53 (3) Any representative of the miners in such mine who
54 is, in the judgment of the operator or an authorized
55 representative of the director, qualified to make coal
56 mine examinations or who is accompanied by such a
57 person and whose presence in such area is necessary for
58 the investigation of the conditions described in the
59 order; and

60 (4) Any consultant to any of the foregoing.

61 (d) Notices and orders issued pursuant to this section
62 shall contain a detailed description of the conditions or
63 practices which cause and constitute an imminent

64 danger or a violation of any mandatory health or safety
65 standard and, where appropriate, a description of the
66 area of the coal mine from which persons must be
67 withdrawn and prohibited from entering.

68 (e) Each notice or order issued under this section shall
69 be given promptly to the operator of the coal mine or
70 the operator's agent by an authorized representative of
71 the director issuing such notice or order, and all such
72 notices and orders shall be in writing and shall be
73 signed by such representative and posted on the bulletin
74 board at the mine.

75 (f) A notice or order issued pursuant to this section
76 may be modified or terminated by an authorized
77 representative of the director.

78 (g) Each finding, order and notice made under this
79 section shall promptly be given to the operator of the
80 mine to which it pertains by the person making such
81 finding, order or notice.

**§22A-1-16. Powers and duties of electrical inspectors as
to inspections, findings and orders; reports
of electrical inspectors.**

1 In order that the electrical inspector may properly
2 perform the duties required of him or her, he or she
3 shall devote his or her whole time and attention to the
4 duties of the office, and the inspector has the right to
5 enter any coal mine for the purpose of inspecting
6 electrical equipment, and if he or she finds during an
7 inspection any defects in the electrical equipment which
8 are covered by law and may be detrimental to the lives
9 or health of the workmen, the inspector has the
10 authority to order the operator, in writing, to remedy
11 such defects within a prescribed time, and to prohibit
12 the continued operation of such electrical equipment
13 after such time, unless such defects have been corrected.

14 The electrical inspector shall examine each mine in
15 his or her division at least once each year or as often
16 as the director may deem necessary.

17 It is the duty of the electrical inspector, after
18 completing the examination of a mine, to prepare a

19 report describing his or her findings in said mine in a
20 manner and form designated by the director. The
21 original report shall be forwarded to the operator or the
22 operator's representative whose duty it is to post it in
23 some conspicuous place open to examination by any
24 interested person or persons. The report shall show the
25 date of inspection, a list of equipment, and any other
26 information that the director may deem necessary.

§22A-1-17. Review of orders and notices by the director.

1 (a) (1) An operator, issued an order pursuant to the
2 provisions of section fifteen of this article, or any
3 representative of miners in any mine affected by such
4 order or by any modification or termination of such
5 order, may apply to the director for review of the order
6 within thirty days of receipt thereof or within thirty
7 days of its modification or termination. An operator,
8 issued a notice pursuant to subsection (b), section fifteen
9 of this article, or any representative of miners in any
10 mine affected by such notice, may, if the operator
11 believes that the period of the time fixed in such notice
12 for the abatement of the violation is unreasonable, apply
13 to the director for review of the notice within thirty days
14 of the receipt thereof. The applicant shall send a copy
15 of such application to the representative of miners in the
16 affected mine, or the operator, as appropriate. Upon
17 receipt of such application, the director shall cause such
18 investigation to be made as the director deems appropriate.
19 Such investigation shall provide an opportunity
20 for a public hearing, at the request of the operator or
21 the representative of miners in such mine, to enable the
22 operator and the representative of miners in such mine
23 to present information relating to the issuance and
24 continuance of such order or the modification or
25 termination thereof or to the time fixed in such notice.
26 The filing of an application for review under this law
27 does not operate as a stay of any order or notice.

28 (2) The operator and the representative of the miners
29 shall be given written notice of the time and place of
30 the hearing at least five days prior to the hearing.

31 (b) Upon receiving the report of such investigation,

32 the director shall make findings of fact, and issue a
33 written decision, incorporating therein an order vacat-
34 ing, affirming, modifying or terminating the order, or
35 the modification or termination of such order, or the
36 notice complained of and incorporate findings therein.

37 (c) In view of the urgent need for prompt decision of
38 matters submitted to the director under this law, all
39 actions which the director takes under this section shall
40 be taken as promptly as practicable, consistent with
41 adequate consideration of the issues involved.

42 (d) Pending completion of the investigation required
43 by this section, the applicant may file with the director
44 a written request that the director grant temporary
45 relief from any modification or termination of any order,
46 or from any order issued under section fifteen of this
47 article, except an order issued under section sixteen of
48 this article, together with a detailed statement giving
49 reasons for granting such relief. The director may grant
50 such relief, under such conditions as he or she may
51 prescribe, if:

52 (1) A hearing has been held in which all parties were
53 given an opportunity to be heard;

54 (2) The applicant shows that there is substantial
55 likelihood that the findings of the director will be
56 favorable to the applicant; and

57 (3) Such relief will not adversely affect the health and
58 safety of miners in the coal mine.

59 No temporary relief shall be granted in the case of
60 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.**

1 (a) At each coal mine there shall be maintained an
2 office with a conspicuous sign designating it as the office
3 of the mine, and a bulletin board at such office or at
4 some conspicuous place near an entrance of the mine,
5 in such manner that notices, orders and decisions
6 required by this law or rule to be posted on the mine

7 bulletin board may be posted thereon, be easily visible
8 to all persons desiring to read them, and be protected
9 against damage by weather and against unauthorized
10 removal. A copy of any notice, order or decision required
11 by this law to be given to an operator shall be delivered
12 to the office of the affected mine, and a copy shall be
13 immediately posted on the bulletin board of such mine
14 by the operator or the operator's agent.

15 (b) The director shall cause a copy of any notice, order
16 or decision required by this law to be given to an
17 operator to be mailed immediately to a representative
18 of the miners. Such notice, order or decision shall be
19 available for public inspection.

20 (c) In order to ensure prompt compliance with any
21 notice, order or decision issued under this law, the
22 authorized representative of the director may deliver
23 such notice, order or decision to an agent of the operator
24 and such agent shall immediately take appropriate
25 measures to ensure compliance with such notice, order
26 or decision.

27 (d) Each operator of a coal mine shall file with the
28 director the name and address of such mine and the
29 name and address of the person who controls or operates
30 the mine. Any revisions in such names or addresses shall
31 be promptly filed with the director. Each operator of a
32 coal mine shall designate a responsible official at such
33 mine as the principal officer in charge of health and
34 safety at such mine, and such official shall receive a
35 copy of any notice, order or decision issued under this
36 law affecting such mine. In any case, where the coal
37 mine is subject to the control of any person not directly
38 involved in the daily operations of the coal mine, there
39 shall be filed with the director the name and address
40 of such person and the name and address of a principal
41 official of such person who has overall responsibility for
42 the conduct of an effective health and safety program
43 at any coal mine subject to the control of such person
44 and such official shall receive a copy of any notice, order
45 or decision issued affecting any such mine. The mere
46 designation of a health and safety official under this
47 subsection does not make such official subject to

48 penalty under this law.

§22A-1-19. Judicial review.

1 (a) Any order or decision issued by the director under
2 this law, except an order or decision under section
3 fifteen of this article is subject to judicial review by the
4 circuit court of the county in which the mine affected
5 is located or the circuit court of Kanawha County upon
6 the filing in such court or with the judge thereof in
7 vacation of a petition by any person aggrieved by the
8 order or decision praying that the order or decision be
9 modified or set aside, in whole or in part, except that
10 the court shall not consider such petition unless such
11 person has exhausted the administrative remedies
12 available under this law and files within thirty days
13 from date of such order or decision.

14 (b) The party making such appeal shall forthwith
15 send a copy of such petition for appeal, by registered
16 mail, to the other party. Upon receipt of such petition
17 for appeal, the director shall promptly certify and file
18 in such court a complete transcript of the record upon
19 which the order or decision complained of was issued.
20 The court shall hear such petition on the record made
21 before the director. The findings of the director, if
22 supported by substantial evidence on the record consi-
23 dered as a whole, shall be conclusive. The court may
24 affirm, vacate or modify any order or decision or may
25 remand the proceedings to the director for such further
26 action as it may direct.

27 (c) In the case of a proceeding to review any order or
28 decision issued by the director under this law, except an
29 order or decision pertaining to an order issued under
30 subsection (a), section fifteen of this article or an order
31 or decision pertaining to a notice issued under subsec-
32 tion (b), section fifteen of this article, the court may,
33 under such conditions as it may prescribe, grant such
34 temporary relief as it deems appropriate pending final
35 determination of the proceedings if:

36 (A) All parties to the proceeding have been notified
37 and given an opportunity to be heard on a request for
38 temporary relief;

39 (B) The person requesting such relief shows that there
40 is a substantial likelihood that the person will prevail
41 on the merits of the final determination of the proceed-
42 ing; and

43 (C) Such relief will not adversely affect the health and
44 safety of miners in the coal mine.

45 (d) The judgment of the court is subject to review only
46 by the supreme court of appeals of West Virginia upon
47 a writ of certiorari filed in such court within sixty days
48 from the entry of the order and decision of the circuit
49 court upon such appeal from the director.

50 (e) The commencement of a proceeding under this
51 section shall not, unless specifically ordered by the
52 court, operate as a stay of the order or decision of the
53 director.

54 (f) Subject to the direction and control of the attorney
55 general, attorneys appointed for the director may
56 appear for and represent the director in any proceeding
57 instituted under this section.

§22A-1-20. Injunctions.

1 The director may institute a civil action for relief,
2 including a permanent or temporary injunction, res-
3 training order, or any other appropriate order in the
4 circuit court of the county in which the mine is located
5 or the circuit court of Kanawha County, whenever the
6 operator or the operator's agent (a) violates or fails or
7 refuses to comply with any order or decision issued
8 under this law, or (b) interferes with, hinders or delays
9 the director or his or her authorized representative in
10 carrying out the provisions of this law, or (c) refuses to
11 admit such representatives to the mine, or (d) refuses
12 to permit the inspection of the mine, or the investigation
13 of an accident or occupational disease occurring in, or
14 connected with, such mine, or (e) refuses to furnish any
15 information or report requested by the director in
16 furtherance of the provisions of this law, or (f) refuses
17 to permit access to, and copying of, such records as the
18 director determines necessary in carrying out the
19 provisions of this law. Each court shall have jurisdiction

20 to provide such relief as may be appropriate. Except as
21 otherwise provided herein, any relief granted by the
22 court to enforce an order under clause (a) of this section
23 shall continue in effect until the completion or final
24 termination of all proceedings for review of such order
25 under this law, unless, prior thereto, the circuit court
26 granting such relief sets it aside or modifies it. In any
27 action instituted under this section to enforce an order
28 or decision issued by the director after a public hearing,
29 the findings of the director, if supported by substantial
30 evidence on the record considered as a whole, shall be
31 conclusive.

§22A-1-21. Penalties.

1 (a) (1) Any operator of a coal mine in which a violation
2 occurs of any health or safety rule or who violates any
3 other provisions of this law shall be assessed a civil
4 penalty by the director under subdivision (3) of this
5 subsection, which penalty shall be not more than three
6 thousand dollars, for each such violation. Each such
7 violation shall constitute a separate offense. In determin-
8 ing the amount of the penalty, the director shall consider
9 the operator's history of previous violations, the appro-
10 priateness of such penalty to the size of the business of
11 the operator charged, the gravity of the violation and the
12 demonstrated good faith of the operator charged in
13 attempting to achieve rapid compliance after notifica-
14 tion of a violation. Not later than the thirtieth day of
15 June, one thousand nine hundred ninety-three, the
16 director shall promulgate as a rule the procedure for
17 assessing such civil penalties in effect as of the fifteenth
18 day of January, one thousand nine hundred ninety-three,
19 without regard to the provisions of chapter twenty-nine-
20 a of this code: *Provided*, That any revisions to such rules
21 after this date shall be promulgated as in the case of
22 legislative rules in accordance with the provisions of
23 chapter twenty-nine-a of this code.

24 (2) Any miner who knowingly violates any health or
25 safety provision of this chapter or health or safety rule
26 promulgated pursuant to this chapter is subject to a civil
27 penalty assessed by the director under subdivision (3) of
28 this subsection which penalty shall not be more than two

29 hundred fifty dollars for each occurrence of such
30 violation.

31 (3) A civil penalty shall be assessed by the director
32 only after the person charged with a violation under this
33 chapter or rule promulgated pursuant to this chapter
34 has been given an opportunity for a public hearing and
35 the director has determined, by a decision incorporating
36 the director's findings of fact therein, that a violation
37 did occur, and the amount of the penalty which is
38 warranted, and incorporating, when appropriate, an
39 order therein requiring that the penalty be paid. Any
40 hearing under this section shall be of record.

41 (4) If the person against whom a civil penalty is
42 assessed fails to pay the penalty within the time
43 prescribed in such order, the director may file a petition
44 for enforcement of such order in any appropriate circuit
45 court. The petition shall designate the person against
46 whom the order is sought to be enforced as the
47 respondent. A copy of the petition shall forthwith be sent
48 by certified mail, return receipt requested, to the
49 respondent and to the representative of the miners at the
50 affected mine or the operator, as the case may be, and
51 thereupon the director shall certify and file in such
52 court the record upon which such order sought to be
53 enforced was issued. The court shall have jurisdiction to
54 enter a judgment enforcing, modifying, and enforcing as
55 so modified, or setting aside, in whole or in part, the
56 order and decision of the director or it may remand the
57 proceedings to the director for such further action as it
58 may direct. The court shall consider and determine de
59 novo all relevant issues, except issues of fact which were
60 or could have been litigated in review proceedings
61 before a circuit court under section twenty of this
62 article, and upon the request of the respondent, such
63 issues of fact which are in dispute shall be submitted
64 to a jury. On the basis of the jury's findings the court
65 shall determine the amount of the penalty to be imposed.
66 Subject to the direction and control of the attorney
67 general, attorneys appointed for the director may
68 appear for and represent the director in any action to
69 enforce an order assessing civil penalties under this

70 subdivision.

71 (b) Any operator who knowingly violates a health or
72 safety provision of this chapter or health or safety rule
73 promulgated pursuant to this chapter, or knowingly
74 violates or fails or refuses to comply with any order
75 issued under section fifteen of this article, or any order
76 incorporated in a final decision issued under this article,
77 except an order incorporated in a decision under
78 subsection (a) of this section or subsection (b), section
79 twenty-two of this article, shall be assessed a civil
80 penalty by the director under subdivision (3), subsection
81 (a) of this section, of not more than five thousand dollars,
82 and for a second or subsequent violation assessed a civil
83 penalty of not more than ten thousand dollars.

84 (c) Whenever a corporate operator knowingly violates
85 a health or safety provision of this chapter or health or
86 safety rules promulgated pursuant to this chapter, or
87 knowingly violates or fails or refuses to comply with any
88 order issued under this law or any order incorporated
89 in a final decision issued under this law, except an order
90 incorporated in a decision issued under subsection (a) of
91 this section or subsection (b), section twenty-two of this
92 article, any director, officer or agent of such corporation
93 who knowingly authorized, ordered or carried out such
94 violation, failure or refusal, is subject to the same civil
95 penalties that may be imposed upon a person under
96 subsections (a) and (b) of this section.

97 (d) Whoever knowingly makes any false statement,
98 representation or certification in any application,
99 record, report, plan or other document filed or required
100 to be maintained pursuant to this law or any order or
101 decision issued under this law, is guilty of a misdemea-
102 nor, and, upon conviction thereof, shall be fined not
103 more than five thousand dollars or imprisoned in the
104 county jail not more than six months, or both fined and
105 imprisoned. The conviction of any person under this
106 subsection shall result in the revocation of any certifi-
107 cations held by the person under this chapter which
108 certified or authorized the person to direct other persons
109 in coal mining by operation of law and bars the person
110 from being issued any such license under this chapter,

111 except a miner's certification, for a period of not less
112 than one year or for such longer period as may be
113 determined by the director.

114 (e) Whoever willfully distributes, sells, offers for sale,
115 introduces or delivers in commerce any equipment for
116 use in a coal mine, including, but not limited to,
117 components and accessories of such equipment, who
118 willfully misrepresents such equipment as complying
119 with the provisions of this law, or with any specification
120 or rule of the director applicable to such equipment, and
121 which does not so comply, is guilty of a misdemeanor,
122 and, upon conviction thereof, shall be subject to the same
123 fine and imprisonment that may be imposed upon a
124 person under subsection (d) of this section.

125 (f) There is hereby created under the treasury of the
126 state of West Virginia a special health, safety and
127 training fund. All civil penalty assessments collected
128 under section twenty-one of this article shall be collected
129 by the director and deposited with the treasurer of the
130 state of West Virginia to the credit of the special health,
131 safety and training fund. The fund shall be used by the
132 director who is authorized to expend the moneys in the
133 fund for the administration of this chapter.

§22A-1-22. Discrimination.

1 (a) No person shall discharge or in any other way
2 discriminate against or cause to be discharged or
3 discriminated against any miner or any authorized
4 representative of miners by reason of the fact that the
5 person believes or knows that such miner or represen-
6 tative (1) has notified the director, his or her authorized
7 representative, or an operator, directly or indirectly, of
8 any alleged violation or danger, (2) has filed, instituted
9 or caused to be filed or instituted any proceeding under
10 this law, (3) has testified or is about to testify in any
11 proceeding resulting from the administration or en-
12 forcement of the provisions of this law. No miner or
13 representative shall be discharged or in any other way
14 discriminated against or caused to be discriminated
15 against because a miner or representative has done (1)
16 (2) or (3) above.

17 (b) Any miner or a representative of miners who
18 believes that he or she has been discharged or otherwise
19 discriminated against, or any miner who has not been
20 compensated by an operator for lost time due to the
21 posting of a withdrawal order, may, within thirty days
22 after such violation occurs, apply to the appeals board
23 for a review of such alleged discharge, discrimination
24 or failure to compensate. A copy of the application shall
25 be sent to such person who shall be the respondent.
26 Upon receipt of such application, the appeals board shall
27 cause such investigation to be made as it deems
28 appropriate. Such investigation shall provide an oppor-
29 tunity for a public hearing at the request of any party
30 to enable the parties to present information relating to
31 such violation. The parties shall be given written notice
32 of the time and place of the hearing at least five days
33 prior to the hearing. Mailing of the notice of hearing to
34 the charged party at the party's last address of record
35 as reflected in the records of the office is adequate notice
36 to the charged party. Such notice shall be by certified
37 mail, return receipt requested. Any such hearing shall
38 be of record. Upon receiving the report of such inves-
39 tigation, the board shall make findings of fact. If it finds
40 that such violation did occur, it shall issue a decision
41 within forty-five days, incorporating an order therein,
42 requiring the person committing such violation to take
43 such affirmative action to abate the violation as the
44 board deems appropriate, including, but not limited to,
45 the rehiring or reinstatement of the miner or represen-
46 tative of miners to his or her former position with back
47 pay, and also pay compensation for the idle time as a
48 result of a withdrawal order. If it finds that there was
49 no such violation, it shall issue an order denying the
50 application. Such order shall incorporate the board's
51 finding therein. If the proceedings under this section
52 relative to discharge are not completed within forty-five
53 days of the date of discharge due to delay caused by the
54 operator, the miner shall be automatically reinstated
55 until the final determination. If such proceedings are
56 not completed within forty-five days of the date of
57 discharge due to delay caused by the board, then the
58 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.

§22A-1-25. Duties of mine foreman examiner.

1 The duties of the mine foreman examiner are

2 (a) Prepare and conduct examinations of mine
3 foremen, assistant mine foremen and fire bosses;

4 (b) Prepare and certify to the director a register of
5 all persons who successfully completed the examination
6 with a passing grade of eighty percent.

§22A-1-26. Place and time for examinations.

1 The director shall determine the location where the
2 mine foreman examiner shall meet for the purpose of
3 holding examinations, and at least two weeks' notice of
4 the time and place where the examinations are to be
5 held shall be given.

6 The examinations shall be given at any location where
7 there are at least five men to be tested, and adequate
8 facilities to conduct such examination. The office of the
9 secretary to the mine foreman examiner shall be located
10 in the capitol complex in Charleston. All records
11 pertaining to the examinations shall be kept at such
12 office.

§22A-1-27. Preparation of examinations; notice of intention to take examination; investigation of applicants.

1 The mine foreman examiner shall, with the approval
2 of the director, prepare, and from time to time, modify
3 examinations to be administered applicants for certification as mine foremen and fire bosses.

5 All persons who desire to appear for examination
6 shall notify the mine foreman examiner of their
7 intentions to appear, if possible, not less than ten days
8 prior to the date set for the examination. The mine
9 foreman examiner shall inquire into the character and
10 qualifications of the applicants who present themselves
11 for examination.

§22A-1-28. Certificates of qualification heretofore granted.

1 Certificates of qualification of service heretofore
2 granted shall have equal value with certificates of
3 qualifications granted under this law.

§22A-1-29. Mine foreman examiner to certify successful applicants to director.

1 The mine foreman examiner shall certify to the
2 director, on a form furnished by the director, every
3 person whose examination shall disclose the person's
4 fitness for the duties of mine foreman, assistant mine
5 foreman, and fire boss, as above classified, and the
6 director shall prepare certificates of qualification for the
7 successful applicants and send them to the mine
8 foreman examiner for distribution.

§22A-1-30. Record of examination.

1 The mine foreman examiner shall send to the director
2 the answers and all other papers of the applicants,
3 together with the tally sheets and a list of the questions
4 and answers as prepared by the mine foreman examiner
5 which shall be filed in the office as public documents.

§22A-1-31. Withdrawal of certification.

1 (a) *Charge of breach of duty.* — A mine inspector or
2 the director may charge a mine foreman, assistant mine
3 foreman, fire boss or any other certified person with
4 neglect or failure to perform any duty mandated
5 pursuant to this article or article two of this chapter.
6 The charge shall state the name of the person charged,
7 the duty or duties he or she is alleged to have violated,
8 the approximate date and place so far as is known of
9 the violation of duty, the capacity of the person making
10 the charge, and shall be verified on the basis of
11 information and belief or personal knowledge. The
12 charge is initiated by filing it with the director or with
13 the board of appeals. A copy of any charge filed with
14 the board of appeals or any member thereof, shall be
15 transmitted promptly to the director. The director shall
16 maintain a file of each charge and of all related
17 documents which shall be open to the public.

18 (b) *Evaluation of charge by board of appeals.* — Within
19 twenty days after receipt of the charge the board shall
20 evaluate the charge and determine whether or not a
21 violation of duty has been stated. In making such a
22 determination the board shall evaluate all c

23 submitted to it by all persons to determine as nearly as
24 possible the substance of the charge and if the board of
25 appeals is unable to determine the substance of the
26 charge it may request the director to investigate the
27 charge. Upon request, the director shall cause the
28 charge to be investigated and report the results of the
29 investigation to the board of appeals within ten days of
30 the director's receipt of the charge. If the board
31 determines that probable cause exists to support the
32 allegation that the person charged has violated his or
33 her duty, the board by the end of the twenty-day period
34 shall set a date for hearing which date shall be within
35 eighty days of the filing of the charge. Notice of the
36 hearing or notice of denial of the hearing for failure to
37 state a charge and a copy of the charge shall be mailed
38 by certified mail, return receipt requested, to the
39 charging party, the charged party, the director, the
40 representative of the miner or miners affected and to
41 any interested person of record. Thereafter the board
42 shall maintain the file of the charge which shall contain
43 all documents, testimony and other matters filed which
44 shall be open for public inspection.

45 (c) *Hearing.* — The board of appeals shall hold a
46 hearing, may appoint a hearing examiner to take
47 evidence and report to the board of appeals within the
48 time allotted, may direct or authorize taking of oral
49 depositions under oath by any participant, or adopt any
50 other method for the gathering of sworn evidence which
51 affords the charging party, the charged party, the
52 director and any interested party of record due process
53 of law and a fair opportunity to present and make a
54 record of evidence. Any member of the board shall have
55 the power to administer oaths. The board may subpoena
56 witnesses and require production of any books, papers,
57 records or other documents relevant or material to the
58 inquiry. The board shall consider all evidence offered in
59 support of the charge and on behalf of the persons so
60 charged at the time and place designated in the notice.
61 Each witness shall be sworn and a transcript shall be
62 made of all evidence presented in any such hearing. No
63 continuance shall be granted except for good cause
64 shown.

65 At the conclusion of the hearing the board shall
66 proceed to determine the case upon consideration of all
67 the evidence offered and shall render a decision
68 containing its findings of fact and conclusions of law. If
69 the board finds by a preponderance of the evidence that
70 the certificate or certificates of the charged person
71 should be suspended or revoked, as hereinafter pro-
72 vided, it shall enter an order to that effect. No renewal
73 of the certificate shall be granted except as herein
74 provided.

75 (d) *Failure to cooperate.* — Any person charged who
76 without just cause refuses or fails to appear before the
77 board or cooperate in the investigation or gathering of
78 evidence shall forfeit his or her certificate or certificates
79 for a period to be determined by the board, not to exceed
80 five years, and such certificate or certificates may not
81 be renewed except upon a successful completion of the
82 examination prescribed by the law for mine foremen,
83 assistant mine foremen, fire bosses or other certified
84 persons.

85 (e) *Penalties.* — The board may suspend or revoke the
86 certificate or certificates of a charged party for a
87 minimum of thirty days or more including an indefinite
88 period or may revoke permanently the certificate or
89 certificates of the charged party, as it sees fit, subject
90 to the prescribed penalties and monetary fines imposed
91 elsewhere in this chapter.

92 (f) *Integrity of penalties imposed.* — No person whose
93 certification is suspended or revoked under this provi-
94 sion can perform any duties under any other certifica-
95 tion issued under this chapter, during the period of the
96 suspension imposed herein.

97 (g) Any party adversely affected by a final order or
98 decision issued by the board hereunder is entitled to
99 judicial review thereof pursuant to section four, article
100 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.**

1 Any person whose license, certificate or similar
2 authority to perform any supervisory or fire boss duties
3 in another state has been suspended or revoked by that
4 state cannot be certified under any provision of this
5 chapter during the period of such suspension or
6 revocation in the other state.

§22A-1-33. Mine rescue stations; equipment.

1 The director is hereby authorized to purchase, equip
2 and operate for the use of said office such mine rescue
3 stations and equipment as he or she may deem neces-
4 sary.

§22A-1-34. Mine rescue crews.

1 The director is hereby authorized to have trained and
2 employed at the rescue stations, operated by the office
3 within the state, such rescue crews as he or she may
4 deem necessary. Each member of a rescue crew shall
5 devote four hours each month for training purposes and
6 shall be available at all times to assist in rescue work
7 at explosions and mine fires. Regular members shall
8 receive for such services the sum of thirty-two dollars
9 per month, and captains shall receive thirty-five dollars
10 per month, payable on requisition approved by the
11 director. The director may remove any member of a
12 rescue crew at any time.

§22A-1-35. Mine rescue teams.

1 (a) It is the responsibility of the operator to provide
2 mine rescue coverage at each active underground mine.

3 (b) Mine rescue coverage may be provided by:

4 (1) Establishing at least two mine rescue teams which
5 are available at all times when miners are underground;
6 or

7 (2) Entering into an arrangement for mine rescue
8 services which assures that at least two mine rescue
9 teams are available at all times when miners are
10 underground.

11 (c) As used in this section, mine rescue teams shall
12 be considered available where teams are capable of

13 presenting themselves at the mine site(s) within a
14 reasonable time after notification of an occurrence
15 which might require their services. Rescue team
16 members will be considered available even though
17 performing regular work duties or while in an off-duty
18 capacity. The requirement that mine rescue teams be
19 available does not apply when teams are participating
20 in mine rescue contests or providing rescue services to
21 another mine.

22 (d) In the event of a fire, explosion or recovery
23 operations in or about any mine, the director is hereby
24 authorized to assign any mine rescue team to said mine
25 to protect and preserve life and property. The director
26 may also assign mine rescue and recovery work to
27 inspectors, instructors or other qualified employees of
28 the office as he or she deems necessary.

29 (e) The ground travel time between any mine rescue
30 station and any mine served by that station shall not
31 exceed two hours. To ensure adequate rescue coverage
32 for all underground mines, no mine rescue station may
33 provide coverage for more than seventy mines within
34 the two-hour ground travel limit as defined in this
35 subsection.

36 (f) Each mine rescue team shall consist of five
37 members and one alternate, who are fully qualified,
38 trained and equipped for providing emergency mine
39 rescue service. Each mine rescue team shall be trained
40 by a state certified mine rescue instructor.

41 (g) Each member of a mine rescue team must have
42 been employed in an underground mine for a minimum
43 of one year. For the purpose of mine rescue work only,
44 miners who are employed on the surface but work
45 regularly underground meet the experience require-
46 ment. The underground experience requirement is
47 waived for those members of a mine rescue team on the
48 effective date of this statute.

49 (h) An applicant for initial mine rescue training must
50 not have reached his or her fiftieth birthday, and shall
51 pass, on at least an annual basis, a physical examination
52 by a licensed physician certifying his or her fitness to

53 perform mine rescue work. A record that such exam-
54 ination was taken, together with pertinent data relating
55 thereto, shall be kept on file by the operator and a copy
56 shall be furnished to the director.

57 (i) Upon completion of the initial training, all mine
58 rescue team members shall receive at least forty hours
59 of refresher training annually. This training shall be
60 given at least four hours each month, or for a period of
61 eight hours every two months, and shall include:

62 (1) Sessions underground at least once every six
63 months;

64 (2) The wearing and use of a breathing apparatus by
65 team members for a period of at least two hours, while
66 under oxygen, once every two months;

67 (3) Where applicable, the use, care, capabilities and
68 limitations of auxiliary mine rescue equipment, or a
69 different breathing apparatus;

70 (4) Mine map training and ventilation procedures.

71 (j) When engaged in rescue work required by an
72 explosion, fire or other emergency at a mine, all
73 members of mine rescue teams assigned to rescue
74 operations shall, during the period of their rescue work,
75 be employees of the operator of the mine where the
76 emergency exists, and shall be compensated by the
77 operator at the rate established in the area for such
78 work. In no case shall this rate be less than the
79 prevailing wage rate in the industry for the most skilled
80 class of inside mine labor. During the period of their
81 emergency employment, members of mine rescue teams
82 shall be protected by the workers' compensation
83 subscription of such emergency employer.

84 (k) During the recovery work and prior to entering
85 any mine at the start of each shift, all rescue or recovery
86 teams shall be properly informed of existing conditions
87 and work to be performed by the designated company
88 official in charge.

89 (1) For every two teams performing rescue or
90 recovery work underground, one six-member team shall

91 be stationed at the mine portal.

92 (2) Each rescue or recovery team performing work
93 with a breathing apparatus shall be provided with a
94 backup team of equal number, stationed at each fresh
95 air base.

96 (3) Two-way communication and a lifeline or its
97 equivalent shall be provided at each fresh air base for
98 all mine rescue or recovery teams and no mine rescue
99 team member shall advance more than one thousand
100 feet in by the fresh air base: *Provided*, That if a life may
101 possibly be saved and existing conditions do not create
102 an unreasonable hazard to mine rescue team members,
103 the rescue team may advance a distance agreed upon by
104 those persons directing the mine rescue or recovery
105 operations: *Provided, however*, That a lifeline or its
106 equivalent shall be provided in each fresh air base for
107 all mine rescue or recovery teams.

108 (4) A rescue or recovery team shall immediately
109 return to the fresh air base when the atmospheric
110 pressure of any member's breathing apparatus depletes
111 to sixty atmospheres, or its equivalent.

112 (1) Mine rescue stations shall provide a centralized
113 storage location for rescue equipment. This storage
114 location may be either at the mine site, affiliated mines
115 or a separate mine rescue structure. All mine rescue
116 teams shall be guided by the mine rescue apparatus and
117 auxiliary equipment manual. Each mine rescue station
118 shall be provided with at least the following equipment:

119 (1) Twelve self-contained oxygen breathing appara-
120 tuses, each with a minimum of two hours capacity, and
121 any necessary equipment for testing such breathing
122 apparatuses;

123 (2) A portable supply of liquid air, liquid oxygen,
124 pressurized oxygen, oxygen generating or carbon
125 dioxide absorbent chemicals, as applicable to the
126 supplied breathing apparatuses and sufficient to sustain
127 each team for six hours while using the breathing
128 apparatuses during rescue operations;

129 (3) One extra, fully charged, oxygen bottle for each

130 self-contained compressed oxygen breathing apparatus,
131 as required under subdivision (1) of this subsection;

132 (4) One oxygen pump or a cascading system, compat-
133 ible with the supplied breathing apparatuses;

134 (5) Twelve permissible cap lamps and a charging
135 rack;

136 (6) Two gas detectors appropriate for each type of gas
137 which may be encountered at the mines served;

138 (7) Two oxygen indicators or two flame safety lamps;

139 (8) One portable mine rescue communication system
140 or a sound-powered communication system. The wires
141 or cable to the communication system shall be of
142 sufficient tensile strength to be used as a manual
143 communication system. The communication system shall
144 be at least one thousand feet in length; and

145 (9) Necessary spare parts and tools for repairing the
146 breathing apparatuses and communication system, as
147 presently prescribed by the manufacturer.

148 (m) Mine rescue apparatuses and equipment shall be
149 maintained in a manner that will ensure readiness for
150 immediate use. A person trained in the use and care of
151 breathing apparatuses shall inspect and test the
152 apparatuses at intervals not exceeding thirty days and
153 shall certify by signature and date that the inspections
154 and tests were done. When the inspection indicates that
155 a corrective action is necessary, the corrective action
156 shall be made and recorded by said person. The
157 certification and corrective action records shall be
158 maintained at the mine rescue station for a period of one
159 year and made available on request to an authorized
160 representative of the director.

161 (n) Authorized representatives of the director have the
162 right of entry to inspect any designated mine rescue
163 station.

164 (o) When an authorized representative finds a viola-
165 tion of any of the mine rescue requirements, the
166 representative shall take appropriate corrective action
167 in accordance with section fifteen of this article.

168 (p) Operators affiliated with a station issued an order
169 by an authorized representative will be notified of that
170 order and that their mine rescue program is invalid.
171 The operators shall have twenty-four hours to submit to
172 the director a revised mine rescue program.

173 (q) Every operator of an underground mine shall
174 develop and adopt a mine rescue program for submis-
175 sion to the director within thirty days of the effective
176 date of this statute: *Provided*, That a new program need
177 only be submitted when conditions exist as defined in
178 subsection (p) of this section, or when information
179 contained within the program has changed.

180 (r) A copy of the mine rescue program shall be posted
181 at the mine and kept on file at the operator's mine
182 rescue station or rescue station affiliate and the state
183 regional office where the mine is located. A copy of the
184 mine emergency notification plan filed pursuant to 30
185 CFR §49.9(a) will satisfy the requirements of subsection
186 (q) of this section if submitted to the director.

187 (s) The operator shall immediately notify the director
188 of any changed conditions materially affecting the
189 information submitted in the mine rescue program.

§22A-1-36. Mandatory safety programs; penalties.

1 (a) The director, in consultation with the state board
2 of coal mine health and safety, shall promulgate rules
3 in accordance with chapter twenty-nine-a of this code,
4 detailing the requirements for mine safety programs to
5 be established by coal operators, as provided in subsec-
6 tion (b) of this section. The rules may require different
7 types of safety programs to be developed, depending
8 upon the output of the particular mine, the number of
9 employees of the particular mine, the location of the
10 particular mine, the physical features of the particular
11 mine or any other factor deemed relevant by the
12 director.

13 (b) Within six months of the date when the rules
14 required in subsection (a), above, become final, each
15 operator shall develop and submit to the director a
16 comprehensive mine safety program for each mine, in

17 accordance with such rules. Each employee of the mine
18 shall be afforded an opportunity to review and submit
19 comments to the director regarding the modification or
20 revision of such program, prior to submission of such
21 program to the director. Upon submission of such
22 program the director has ninety days to approve, reject
23 or modify such program. If the program is rejected, the
24 director shall give the operator a reasonable time to
25 correct and resubmit such program. Each program
26 which is approved shall be reviewed, at least annually,
27 by the director. An up-to-date copy of each program
28 shall be placed on file in the office and further copies
29 shall be made available to the miners of each mine and
30 their representatives. Each operator shall undertake all
31 efforts necessary to assure total compliance with the
32 appropriate safety program at each mine and shall fully
33 implement all portions of such program.

34 (c) Any person violating any provision of this section
35 is guilty of a misdemeanor, and, upon conviction thereof,
36 shall be fined not less than one hundred nor more than
37 one thousand dollars, or imprisoned in the county jail
38 for not more than six months, or both fined and
39 imprisoned.

§22A-1-37. Certification of surface-mine foremen.

1 (a) In every surface mine, regulated under the
2 provisions of article three or four, chapter twenty-two
3 of this code, where five or more persons are employed
4 in a period of twenty-four hours, the operator shall
5 employ at least one person certified in accordance with
6 the provisions of article seven of this chapter as a mine
7 foreman. Each applicant for certification as a mine
8 foreman shall, at the time of issuance of a certificate of
9 competency: (1) Be a resident or employed in a mine in
10 this state; (2) have had at least three years' experience
11 in surface mining, which shall include at least eighteen
12 months' experience on or at a working section of a
13 surface mine, or be a graduate of the school of mines
14 at West Virginia University or of another accredited
15 mining engineering school and have had at least two
16 years' practical experience in a surface mine, which
17 shall include at least eighteen months' experience on or

18 at a working section of a surface mine; and (3) have
19 demonstrated knowledge of mine safety, first aid, safety
20 appliances, emergency procedures relative to all equip-
21 ment, state and federal mining laws and regulations and
22 other subjects, by completing such training, education
23 and examinations as may be required under article
24 seven of this chapter.

25 (b) In surface mines in which the operations are so
26 extensive that the duties devolving upon the mine
27 foreman cannot be discharged by one person, one or
28 more assistant mine foreman may be designated. Such
29 persons shall act under the instruction of the mine
30 foreman who shall be responsible for their conduct in
31 the discharge of their duties. Each assistant so desig-
32 nated shall be certified under the provisions of article
33 seven of this chapter. Each applicant for certification as
34 assistant mine foreman shall, at the time of issuance of
35 a certificate of competency, possess all of the qualifica-
36 tions required of a mine foreman: *Provided*, That at the
37 time of certification the person is required to have at
38 least two years' experience in surface mining, which
39 shall include eighteen months on or at a working section
40 of a surface mine or be a graduate of the school of mines
41 at West Virginia University or of another accredited
42 mining engineering school and have had twelve months'
43 practical experience in a surface mine, all of which shall
44 have been on or at a working section.

45 (c) The director shall promulgate such rules as may
46 be necessary to carry out the provisions of this section.

**§22A-1-38. Applicability and enforcement of laws safe-
guarding life and property; rules; author-
ity of director regarding enforcing safety
laws.**

1 All provisions of this chapter intended to safeguard
2 life and property shall extend to all surface-mining
3 operations, regulated under articles three and four,
4 chapter twenty-two of this code, insofar as such laws are
5 applicable thereto. The director shall promulgate
6 reasonable rules in accordance with the provisions of
7 chapter twenty-nine-a of this code to protect the safety

8 of those employed in and around surface mines. The
 9 enforcement of all laws and rules relating to the safety
 10 of those employed in and around surface mines is hereby
 11 vested in the director and shall be enforced according
 12 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-2-3. Fans.
- §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.**

1 The mapping of all coal mines shall be supervised by
2 a competent engineer or land surveyor. The work of
3 such engineer or land surveyor shall be supervised by
4 either a civil engineer or a mining engineer certified by
5 the board of registration for professional engineers,
6 which exists by authority of section four, article
7 thirteen, chapter thirty of this code, or a licensed land
8 surveyor approved by the board of examiners of land
9 surveyors as provided by section three, article thirteen-
10 a of said chapter thirty. To each map supervised by the
11 engineer or land surveyor there shall be affixed thereto
12 the seal of a certified or professional engineer or
13 licensed land surveyor, which shall be identical to the
14 design authorized by the board of registration for
15 professional engineers, as provided in section sixteen,
16 article thirteen of said chapter thirty or board of
17 examiners of land surveyors as provided by section
18 eleven, article thirteen-a of said chapter thirty. Every
19 map certified shall have the professional engineer's or
20 land surveyor's signature and certificate, in addition to
21 his or her seal, in the following form:

22 "I, the undersigned, hereby certify that this map is
23 correct and shows all the information, to the best of my
24 knowledge and belief, required by the laws of this State,
25 and covers the period ending

26 P. E.
27 (Either Civil or Mining Engineer
28 or Land Surveyor)."

29 The operator of every underground coal mine shall
30 make, or cause to be made, an accurate map of such
31 mine, on a scale of not less than one hundred, and not
32 more than five hundred feet to the inch. The map of such
33 mine shall show:

- 34 (1) Name and address of the mine;
35 (2) The scale and orientation of the map;
36 (3) The property or boundary lines of the mine;
37 (4) The shafts, slopes, drifts, tunnels, entries, rooms,
38 crosscuts and all other excavations and auger and strip
39 mined areas of the coalbed being mined;

- 40 (5) All drill holes that penetrate the coalbed being
41 mined;
- 42 (6) Dip of the coalbed;
- 43 (7) The outcrop of the coalbed within the bounds of
44 the property assigned to the mine;
- 45 (8) The elevations of tops and bottoms of shafts and
46 slopes, and the floor at the entrance to drift and tunnel
47 openings;
- 48 (9) The elevation of the floor at intervals of not more
49 than two hundred feet in:
- 50 (a) At least one entry of each working section, and
51 main and cross entries;
- 52 (b) The last line of open crosscuts of each working
53 section, and main and cross entries before such sections
54 and main and cross entries are abandoned; and
- 55 (c) Rooms advancing toward or adjacent to property
56 or boundary lines or adjacent mines;
- 57 (10) Contour lines passing through whole number
58 elevations of the coalbed being mined, the spacing of
59 such lines not to exceed ten-foot elevation levels, except
60 that a broader spacing of contour lines may be approved
61 for steeply pitching coalbeds by the person authorized
62 so to do under the federal act; and contour lines may
63 be placed on overlays or tracings attached to mine maps;
- 64 (11) As far as practicable the outline of existing and
65 extracted pillars;
- 66 (12) Entries and air courses with the direction of
67 airflow indicated by arrows;
- 68 (13) The location of all surface mine ventilation fans,
69 which location may be designated on the mine map by
70 symbols;
- 71 (14) Escapeways;
- 72 (15) The known underground workings in the same
73 coalbed on the adjoining properties within one thousand
74 feet of such mine workings and projections;

- 75 (16) The location of any body of water dammed in the
76 mine or held back in any portion of the mine, but such
77 bodies of water may be shown on overlays or tracings
78 attached to the mine maps used to show contour lines,
79 as provided under subdivision (10) of this section;
- 80 (17) The elevation of any body of water dammed in
81 the mine or held back in any portion of the mine;
- 82 (18) The abandoned portion or portions of the mine;
- 83 (19) The location and description of at least two
84 permanent base line points coordinated with the
85 underground and surface mine traverses, and the
86 location and description of at least two permanent
87 elevation bench marks used in connection with establish-
88 ing or referencing mine elevation surveys;
- 89 (20) Mines above or below;
- 90 (21) Water pools above;
- 91 (22) The location of the principal streams and bodies
92 of water on the surface;
- 93 (23) Either producing or abandoned oil and gas wells
94 located within five hundred feet of such mine and any
95 underground area of such mine;
- 96 (24) The location of all high pressure pipelines, high
97 voltage power lines and principal roads;
- 98 (25) The location of railroad tracks and public
99 highways leading to the mine, and mine buildings of a
100 permanent nature with identifying names shown;
- 101 (26) Where the overburden is less than one hundred
102 feet, occupied dwellings; and
- 103 (27) Such other information as may be required under
104 the federal act or by the office of miners' health, safety
105 and training.
- 106 The operator of every underground coal mine shall
107 extend, or cause to be extended, on or before the first
108 day of March and on or before the first day of Sep-
109 tember of each year, such mine map thereof to accu-
110 rately show the progress of the workings as of the first

111 day of July and the first day of January of each year.
112 Such map shall be kept up to date by temporary
113 notations, which shall include:

114 (1) The location of each working face of each working
115 place;

116 (2) Pillars mined or other such second mining;

117 (3) Permanent ventilation controls constructed or
118 removed, such as seals, overcasts, undercasts, regulators
119 and permanent stoppings, and the direction of air
120 currents indicated; and

121 (4) Escapeways designated by means of symbols.

122 Such map shall be revised and supplemented at
123 intervals prescribed under the federal act on the basis
124 of a survey made or certified by such engineer or
125 surveyor, and shall be kept by the operator in a fireproof
126 repository located in an area on the surface chosen by
127 the operator to minimize the danger of destruction by
128 fire or other hazard.

129 Such map and any revision and supplement thereof
130 shall be available for inspection by a federal mine
131 inspector, by mine health and safety instructors, by
132 miners in the mine and their representatives and by
133 operators of adjacent coal mines and by persons owning,
134 leasing or residing on surface areas of such mines or
135 areas adjacent to such mines, and a copy of such map
136 and any revision and supplement thereof shall be
137 promptly filed with the office of miners' health, safety
138 and training. The operator shall also furnish to persons
139 expressly entitled thereto under the federal act, upon
140 request, one or more copies of such maps and any
141 revision and supplement thereof. Such map or revision
142 and supplement thereof shall be kept confidential and
143 its contents shall not be divulged to any other person,
144 except to the extent necessary to carry out the provisions
145 of the federal act and this chapter and in connection
146 with the functions and responsibilities of the secretary
147 of housing and urban development.

148 Surveying calculations and mapping of underground
149 coal mines which were or are opened or reopened after

150 the first of July, one thousand nine hundred sixty-nine,
151 shall be done by the rectangular coordinate traversing
152 method and meridians carried through and tied between
153 at least two parallel entries of each development panel
154 and panels or workings adjacent to mine boundaries or
155 abandoned workings. These surveys shall originate from
156 at least three permanent survey monuments on the
157 surface of the mine property. The monuments shall be
158 clearly referenced and described in the operator's
159 records. Elevations shall be tied to either the United
160 States geological survey or the United States coast and
161 geodetic survey bench mark system, be clearly refer-
162 enced and described on such map.

163 Underground coal mines operating on the first of
164 July, one thousand nine hundred sixty-nine, and not
165 using the rectangular coordinate traversing method
166 shall, within two years of such date, convert to this
167 procedure for surveying calculations and mapping.
168 Meridians shall be carried through and tied between at
169 least two parallel entries of each development panel and
170 panels or workings adjacent to mine boundaries or
171 abandoned workings. These surveys shall originate from
172 at least three permanent survey monuments on the
173 surface of the mine property. The monuments shall be
174 clearly referenced and described in the coal mine
175 operator's records. Elevations shall be tied to either the
176 United States geological survey or the United States
177 coast and geodetic survey bench mark system, be clearly
178 referenced and described on such map.

179 The operator of such underground coal mine shall, by
180 reasonable proof, demonstrate to the director or to any
181 federal mine inspector concerned, at any time, that a
182 diligent search was made for all existing and available
183 maps and survey data for the workings on the adjoining
184 properties. The operator shall further be able to show
185 proof to the director or to any federal mine inspector
186 concerned, that a suitable method was used to insure
187 accuracy in the methods used in transposing other
188 workings to the map of such mine.

189 There shall be an archive of underground coal mine
190 maps maintained at the office of the director. The

191 archive shall:

192 (1) Be secured in a fireproof and burglarproof vault;

193 (2) Have an appropriate map identification system;
194 and

195 (3) Have adequate map microfilming facilities.

196 Whenever an operator permanently closes or aban-
197 dons an underground coal mine, or temporarily closes
198 an underground coal mine for a period of more than
199 ninety days, he or she shall promptly notify the office
200 of miners' health, safety and training and the federal
201 mine inspector of the district in which such mine is
202 located of such closure. Within sixty days of the
203 permanent closure or abandonment of an underground
204 coal mine, or, when an underground coal mine is
205 temporarily closed, upon the expiration of a period of
206 ninety days from the date of closure, the operator shall
207 file with the office of miners' health, safety and training
208 and such federal mine inspector a copy of the mine map
209 revised and supplemented to the date of the closure.
210 Such copy of the mine map shall be certified by a
211 certified or professional engineer or licensed surveyor as
212 aforesaid and shall be available for public inspection.

213 Any person having a map or surveying data of any
214 worked out or abandoned underground coal mine shall
215 make such map or data available to the office of miners'
216 health, safety and training to copy or reproduce such
217 material.

218 Any person who fails or refuses to discharge any duty
219 imposed upon him or her by this section is guilty of a
220 misdemeanor, and, upon conviction thereof, shall be
221 fined not less than five hundred dollars nor more than
222 one thousand dollars.

VENTILATION

§22A-2-2. Plan of ventilation; approval by director of the office of miners' health, safety and training.

1 Every operator of a coal mine, before making any new
2 or additional openings, shall submit to the director, for
3 his or her information and approval, a general plan

4 showing the proposed system of ventilation and ventilat-
5 ing equipment of the openings, with their location and
6 relative positions to adjacent developments; no such new
7 or additional openings shall be made until approved by
8 the director. The operator shall deliver to the miners'
9 representative employed by the operator at the mine a
10 copy of the operator's proposed annual ventilation plan
11 at least ten days prior to the date of submission. The
12 miners' representative shall be afforded the opportunity
13 to submit written comments to the operator prior to
14 such submission; in addition the miners' representative
15 may submit written comments to the director. The
16 director shall promptly approve any such plans submit-
17 ted, if the proposed system of ventilation and ventilating
18 equipment meet the requirements of this article.

§22A-2-3. Fans.

1 (a) The ventilation of mines, the systems for which
2 extend for more than two hundred feet underground
3 and which are opened after the effective date of this
4 article, shall be produced by a mechanically operated
5 fan or mechanically operated fans. Ventilation by means
6 of a furnace is prohibited in any mine. The fan or fans
7 shall be kept in continuous operation, unless written
8 permission to do otherwise be granted by the director.
9 In case of interruption to a ventilating fan or its
10 machinery whereby the ventilation of the mine is
11 interrupted, immediate action shall be taken by the
12 mine operator or the operator's management personnel,
13 in all mines, to cut off the power and withdraw the men
14 from the face regions or other areas of the mine affected.
15 If ventilation is restored in fifteen minutes, the face
16 regions and other places in the affected areas where gas
17 (methane) is likely to accumulate, shall be reexamined
18 by a certified person; and if found free of explosive gas,
19 power may be restored and work resumed. If ventilation
20 is not restored in fifteen minutes, all underground
21 employees shall be removed from the mine, all power
22 shall be cut off in a timely manner, and the under-
23 ground employees shall not return until ventilation is
24 restored and the mine examined by certified persons,
25 mine examiners or other persons holding a certificate

26 to make preshift examination.

27 (b) All main fans installed after the effective date of
28 this article shall be located on the surface in fireproof
29 housings offset not less than fifteen feet from the nearest
30 side of the mine opening, equipped with fireproof air
31 ducts, provided with explosion doors or a weak wall, and
32 operated from an independent power circuit. In lieu of
33 the requirements for the location of fans and pressure-
34 relief facilities, a fan may be directly in front of, or over
35 a mine opening: *Provided*, That such opening is not in
36 direct line with possible forces coming out of the mine
37 if an explosion occurs: *Provided, however*, That there is
38 another opening having a weak-wall stopping or
39 explosion doors that would be in direct line with forces
40 coming out of the mine. All main fans shall be provided
41 with pressure-recording gauges or water gauges. A
42 daily inspection shall be made of all main fans and
43 machinery connected therewith by a certified electrician
44 and a record kept of the same in a book prescribed for
45 this purpose or by adequate facilities provided to
46 permanently record the performance of the main fans
47 and to give warning of an interruption to a fan.

48 (c) Auxiliary fans and tubing shall be permitted to be
49 used in lieu of or in conjunction with line brattice to
50 provide adequate ventilation to the working faces:
51 *Provided*, That auxiliary fans be so located and operated
52 to avoid recirculation of air at any time. Auxiliary fans
53 shall be approved and maintained as permissible.

54 (d) If the auxiliary fan is stopped or fails, the
55 electrical equipment in the place shall be stopped and
56 the power disconnected at the power source until
57 ventilation in the working place is restored. During such
58 stoppage, the ventilation shall be by means of the
59 primary air current conducted into the place in a
60 manner to prevent accumulation of methane.

61 (e) In places where auxiliary fans and tubing are
62 used, the ventilation between shifts, weekends and idle
63 shifts shall be provided to face areas with line brattice
64 or the equivalent to prevent accumulation of methane.

65 (f) The director may require that when continuous

66 mine equipment is being used, all face ventilating
67 systems using auxiliary fans and tubing shall be
68 provided with machine-mounted diffuser fans, and such
69 fans shall be continuously operated during mining
70 operations.

71 (g) In the event of a fire or explosion in any coal mine,
72 the ventilating fan or fans shall not intentionally be
73 started, stopped, speed increased or decreased or the
74 direction of the air current changed without the
75 approval of the general mine foreman, and, if he or she
76 is not immediately available, a representative of the
77 office of miners' health, safety and training. A duly
78 authorized representative of the employees should be
79 consulted if practical under the circumstances.

MINE FOREMAN

§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.

1 (a) In every underground mine where five or more
2 persons are employed in a period of twenty-four hours,
3 the operator shall employ at least one person certified
4 in accordance with the provisions of article seven of this
5 chapter as a mine foreman-fire boss. Each applicant for
6 certification as a mine foreman-fire boss shall, at the
7 time he or she is issued a certificate of competency: (1)
8 Be a resident or employed in a mine in this state; (2)
9 have had at least five years' experience in the under-
10 ground working, ventilation and drainage of a coal
11 mine, which shall include at least eighteen months'
12 experience on or at a working section of an underground
13 mine or be a graduate of the school of mines at West
14 Virginia University or of another accredited mining
15 engineering school or be a graduate of an accredited
16 engineering school with a bachelor's degree in mining
17 engineering technology, electrical, mechanical or civil
18 engineering; and have had at least two years' practical
19 experience in an underground mine, which shall include
20 at least eighteen months' experience on or at a working
21 section of an underground mine; or be a graduate of an
22 accredited college or university with an associate degree
23 in mining, electrical, mining engineering technology.

24 mechanical engineering or civil engineering and have
25 had at least four years' practical experience in an
26 underground mine, which shall include at least eighteen
27 months' experience on or at a working section of an
28 underground mine; and (3) have demonstrated his or her
29 knowledge of dangerous mine gases and their detection,
30 mine safety, first aid, safety appliances, state and
31 federal mining laws and regulations and other subjects
32 by completing such training, education and examina-
33 tions as may be required of him or her under article
34 seven of this chapter.

35 (b) In mines in which the operations are so extensive
36 that the duties devolving upon the mine foreman-fire
37 boss cannot be discharged by one man, one or more
38 assistant mine foremen-fire bosses may be designated.
39 Such persons shall act under the instruction of the mine
40 foreman-fire boss, who shall be responsible for their
41 conduct in the discharge of their duties. Each assistant
42 so designated shall be certified under the provisions of
43 article seven of this chapter. Each applicant for
44 certification as assistant mine foreman-fire boss shall, at
45 the time he or she is issued a certificate of competency,
46 possess all of the qualifications required of a mine
47 foreman-fire boss: *Provided*, That he or she shall at the
48 time he or she is certified be required to have at least
49 three years' experience in the underground working,
50 ventilation and drainage of coal mines, which shall
51 include eighteen months on or at a working section of
52 an underground mine or be a graduate of the school of
53 mines at West Virginia University or of another
54 accredited mining engineering school or be a graduate
55 of an accredited engineering school with a bachelor's
56 degree in mining engineering technology, electrical,
57 mechanical or civil engineering; and have had twelve
58 months' practical experience in an underground mine,
59 all of which shall have been on or at a working section
60 or be a graduate of an accredited college or university
61 with an associate degree in mining, electrical, mining
62 engineering technology, mechanical or civil engineering
63 and have had at least two years' practical experience in
64 an underground mine, which shall include at least
65 eighteen months' experience on or at a working section

66 of an underground mine.

67 (c) Until the first day of January, one thousand nine
68 hundred seventy-seven, in mines in which the operations
69 are so extensive that all the duties devolving upon the
70 mine foreman-fire boss cannot be discharged by one
71 person, competent persons having had at least three
72 years' experience in coal mines may be designated as
73 assistants, who shall act under the mine foreman-fire
74 boss' instructions and the mine foreman-fire boss is
75 responsible for their conduct in the discharge of their
76 duties under such designation.

77 (d) Any person holding a mine foreman's certificate
78 issued by any other state may act in the capacity of mine
79 foreman-fire boss in any mine in this state until the next
80 regular mine foreman-fire boss' examination held by the
81 office of miners' health, safety and training, but not to
82 exceed a maximum of ninety days.

83 (e) After the first day of July, one thousand nine
84 hundred seventy-four, all duties heretofore performed
85 by persons certified as mine foreman, assistant mine
86 foreman or fire boss shall be performed by persons
87 certified as underground mine foreman-fire boss or an
88 assistant underground mine foreman-fire boss.

89 After the first day of July, one thousand nine hundred
90 seventy-four, every certificate heretofore issued to an
91 assistant mine foreman or fire boss shall be deemed to
92 be of equal value to a certificate issued hereafter to an
93 assistant mine foreman-fire boss, and every certificate
94 heretofore issued to a mine foreman shall be deemed to
95 be of equal value to a certificate issued hereafter to a
96 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
2 prescribe and establish a course of instruction in mine
3 safety and particularly in dangers incident to such

4 employment in mines and in mining laws and rules,
5 which course of instruction shall be successfully
6 completed within twelve weeks after any person is first
7 employed as a miner. It is further the duty and
8 responsibility of the office of miners' health, safety and
9 training to see that such course is given to all persons
10 as above provided after their first being employed in
11 any mine in this state.

12 It is the duty of the mine foreman or the assistant
13 mine foreman of every coal mine in this state to see that
14 every person employed to work in such mine is, before
15 beginning work therein, instructed in the particular
16 danger incident to his or her work in such mine, and
17 furnished a copy of the mining laws and rules of such
18 mine. It is the duty of every mine operator who employs
19 apprentices, as that term is used in sections three and
20 four, article eight of this chapter to ensure that the
21 apprentices are effectively supervised with regard to
22 safety practices and to instruct apprentices in safe
23 mining practices. Every apprentice shall work under
24 the direction of the mine foreman or his or her assistant
25 mine foreman and they are responsible for his or her
26 safety. The mine foreman or assistant mine foreman
27 may delegate the supervision of an apprentice to an
28 experienced miner, but the foreman and his or her
29 assistant mine foreman remain responsible for the
30 apprentice. During the first ninety days of employment
31 in a mine, the apprentice shall work within sight and
32 sound of the mine foreman, assistant mine foreman, or
33 an experienced miner, and in such a location that the
34 mine foreman, assistant mine foreman or experienced
35 miner can effectively respond to cries for help of the
36 apprentice. Such location shall be on the same side of
37 any belt, conveyor or mining equipment.

38 Persons whose duties require them to use a flame
39 safety lamp or other approved methane detectors shall
40 be examined at least annually as to their competence by
41 a qualified official from the office of miners' health,
42 safety and training and a record of such examination
43 shall be kept by the operator and the office. Flame
44 safety lamps and other approved methane detectors

45 shall be given proper maintenance and shall be tested
46 before each working shift. Each operator shall provide
47 for the proper maintenance and care of the permissible
48 flame safety lamp or any other approved device for
49 detecting methane and oxygen deficiency by a person
50 trained in such maintenance, and, before each shift, care
51 shall be taken to ensure that such lamp or other device
52 is in a permissible condition.

§22A-2-23. Authority of fire boss to perform other duties.

1 Notwithstanding any other provision in this article
2 contained, any person who holds a certificate issued by
3 the office of miners' health, safety and training certifi-
4 ing his or her competency to act as fire boss may
5 perform the duties of a fire boss and any other duties,
6 statutory or otherwise, for which he or she is qualified,
7 in the same mine or section and on the same day or shift.

ROOF—FACE—RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

1 (a) Each operator shall undertake to carry out on a
2 continuing basis a program to improve the roof control
3 system of each coal mine and the means and measures
4 to accomplish such system. The roof and ribs of all
5 active underground roadways, travelways and working
6 places shall be supported or otherwise controlled
7 adequately to protect persons from falls of the roof or
8 ribs. A roof control plan and revisions thereof suitable
9 to the roof conditions and mining systems of each coal
10 mine and approved by the director shall be adopted and
11 set out in printed form before new operations. The safety
12 committee of the miners of each mine where such
13 committee exists shall be afforded the opportunity to
14 review and submit comments and recommendations to
15 the director and operator concerning the development,
16 modification or revision of such roof control plans. The
17 plan shall show the type of support and spacing
18 approved by the director. Such plan shall be reviewed
19 periodically, at least every six months by the director,
20 taking into consideration any falls of roof or rib or
21 inadequacy of support of roof or ribs. A copy of the plan

22 shall be furnished to the director or his or her autho-
23 rized representative and shall be available to the miners
24 and their representatives.

25 (b) The operator, in accordance with the approved
26 plan, shall provide at or near each working face and at
27 such other locations in the coal mine, as the director may
28 prescribe, an ample supply of suitable materials of
29 proper size with which to secure the roof thereof of all
30 working places in a safe manner. Safety posts, jacks, or
31 other approved devices shall be used to protect the
32 workmen when roof material is being taken down,
33 crossbars are being installed, roof bolt holes are being
34 drilled, roof bolts are being installed and in such other
35 circumstances as may be appropriate. Loose roof and
36 overhanging or loose faces and ribs shall be taken down
37 or supported. When overhangs or brows occur along rib
38 lines they shall be promptly removed. All sections shall
39 be maintained as near as possible on center. Except in
40 the case of recovery work, supports knocked out shall
41 be replaced promptly. Apprentice miners shall not be
42 permitted to set temporary supports on a working
43 section without the direct immediate supervision of a
44 certified miner.

45 (c) The operator of a mine has primary responsibility
46 to prevent injuries and deaths resulting from working
47 under unsupported roof. Every operator shall require
48 that no person may proceed beyond the last permanent
49 support unless adequate temporary support is provided
50 or temporary support is not required under an approved
51 roof control plan and absence of such support will not
52 pose a hazard to the miners.

53 (d) The immediate supervisor of any area in which
54 unsupported roof is located shall not direct or knowingly
55 permit any person to proceed beyond the last permanent
56 support unless adequate temporary support is provided
57 or temporary support is not required under an approved
58 roof control plan and absence of such support will not
59 pose a hazard to the miners.

60 (e) No miner shall proceed beyond the last permanent
61 support in violation of a direct or standing order of an

62 operator, a foreman or an assistant foreman, unless
63 adequate temporary support is provided or temporary
64 support is not required under an approved roof control
65 plan and absence of such support will not pose a hazard
66 to the miner.

67 (f) The immediate supervisor of each miner who will
68 be engaged in any activity involving the securing of roof
69 or rib during a shift shall, at the onset of any such shift,
70 orally review those parts of the roof control plan
71 relevant to the type of mining and roof control to be
72 pursued by such miner. The time and parts of the plan
73 reviewed shall be recorded in a log book kept for such
74 purpose. Each log book entry so recorded shall be signed
75 by such immediate supervisor making such entry.

76 (g) Any action taken against a miner due, in whole
77 or in part, to his or her refusal to work under unsup-
78 ported roof, where such work would constitute a
79 violation of this section, is prohibited as an act of
80 discrimination pursuant to section twenty-two, article
81 one of this chapter. Upon a finding of discrimination by
82 the appeals board pursuant to subsection (b), section
83 twenty-two, article one of this chapter, the miner shall
84 be awarded by the appeals board all reliefs available
85 pursuant to subsections (b) and (c), section twenty-two,
86 article one of this chapter.

§22A-2-33. Preparation of shots; blasting practices.

1 (a) Only a certified "shot firer" designated by mine
2 management shall be permitted to handle explosives
3 and do blasting. Only electric detonators of proper
4 strength fired with permissible shot firing units shall be
5 used except under special permits as hereinafter
6 provided, and drillholes shall be stemmed with at least
7 twenty-four inches of incombustible material, or at least
8 one half of the length of the hole shall be stemmed if
9 the hole is less than four feet in depth, unless other
10 permissible stemming devices or methods are used.
11 Drillholes shall not be drilled beyond the limits of the
12 cut, and as far as practicable, cuttings and dust shall
13 be cleaned from the holes before the charge is inserted.
14 Charges of explosives exceeding one and one-half

15 pounds, but not exceeding three pounds, shall be used
16 only if drillholes are six feet or more in depth. Ample
17 warning shall be given before shots are fired, and care
18 shall be taken to determine that all persons are in the
19 clear before firing. Miners shall be removed from
20 adjoining places and other places when there is danger
21 of shots blowing through. No shots shall be fired in any
22 place known to liberate explosive gas, until such place
23 has been properly examined by a competent person who
24 is designated by mine management for that purpose,
25 and no shots shall be fired in any place where gas is
26 detected with a permissible flame safety lamp until such
27 gas has been removed by means of ventilation. After
28 firing any shot, or shots, the person firing the same shall
29 not return to the working face until the smoke has been
30 cleared away and then he shall make a careful exam-
31 ination of the working face before leaving the place or
32 before performing any other work in the place.

33 (b) Multiple shooting in coal or rock or both is
34 authorized only under permit issued by the director.
35 Permission to shoot more than ten shots simultaneously
36 may be granted by the director only after consultation
37 with interested persons, and such shooting will be
38 performed by special methods and under precautions
39 prescribed by the director. All multiple shooting in
40 bottom or roof rock shall be performed in intake air,
41 except by special permit from the director, after
42 consultation with interested persons, as heretofore
43 provided. Multiple blasting of more than ten shots
44 performed under any permit granted by the director
45 under this section shall be done only on noncoal-
46 producing shifts or idle days, except as may be provided
47 as a condition of the permit granted.

48 (c) Regular or short-interval delay detonators may be
49 used for blasting purposes with written permission from
50 the director. Regular delay detonators shall not be used
51 for blasting coal, but may be used for grading above or
52 below coal seams and during shaft, slope, tunnel work
53 and in faults or wants. Where short-interval delay
54 detonators are permitted by said director to be used, the
55 shot firing circuit must be tested with a blasting

56 galvanometer before firing, and the leg wires connected
57 in series. No instantaneous, regular, or zero-delay
58 detonators are to be fired in conjunction with short-
59 interval delay detonators. The delay interval between
60 dependent rows must not be less than twenty-five
61 milliseconds or more than one hundred milliseconds,
62 and the entire series of any one round shall not provide
63 a delay of more than five hundred milliseconds between
64 the first and last shot. The total number of charged holes
65 to be fired during any one round must not exceed the
66 limit permitted by the director. Misfires must be tested
67 with a blasting galvanometer before removing.

68 (d) Electrical equipment shall not be operated in the
69 face areas, and only work in connection with timbering
70 and general safety shall be performed while boreholes
71 are being charged. Shots shall be fired promptly after
72 charging. Mudcaps (adobes) or any other unconfined
73 shots shall not be permitted in any coal mine. No solid
74 shooting shall be permitted without written permission
75 of the office.

76 (e) Blasting cables shall be well insulated and shall
77 be as long as may be necessary to permit persons
78 authorized to fire shots to get in a safe place out of the
79 line of fire. The cable, when new, shall be at least one
80 hundred twenty-five feet in length and never less than
81 one hundred feet. Shooting cables shall be kept away
82 from power wires and all other sources of electric
83 current, connected to the leg wires by the person who
84 fires the shot, staggered as to length or well separated
85 at the detonator leg wires, and shunted at the battery
86 until ready to connect to the blasting unit.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

1 (a) The operator of every coal mine worked by shaft
2 shall provide and maintain a metal tube, telephone or
3 other approved means of communication from the top
4 to the bottom and intermediate landings of such shafts,
5 suitably adapted to the free passage of sound, through
6 which conversation may be held between persons at the

7 top and at the bottom of the shaft; a standard means of
8 signaling; an approved safety catch, bridle chains,
9 automatic stopping device, or automatic overwind; a
10 sufficient cover overhead on every cage used for
11 lowering or hoisting persons; an approved safety gate at
12 the top of the shaft; and an adequate brake on the drum
13 of every machine used to lower or hoist persons in such
14 shaft. Such operator shall have the machinery used for
15 lowering and hoisting persons into or out of the mine
16 kept in safe condition, equipped with a reliable indica-
17 tor, and inspected once in each twenty-four hours by a
18 qualified electrician. Where a hoisting engineer is
19 required, he or she shall be readily available at all times
20 when men are in the mine. He or she shall operate the
21 empty cage up and down the shaft at least one round
22 trip at the beginning of each shift, and after the hoist
23 has been idle for one hour or more before hoisting or
24 lowering men; there shall be cut out around the side of
25 the hoisting shaft or driven through the solid strata at
26 the bottom thereof, a traveling way, not less than five
27 feet high and three feet wide to enable a person to pass
28 the shaft in going from one side of it to the other without
29 passing over or under the cage or other hoisting
30 apparatus. Positive stop blocks or derails shall be placed
31 near the top and at all intermediate landings of slopes
32 and surface inclines and at approaches to all shaft
33 landings. A waiting station with sufficient room, ample
34 clearance from moving equipment, and adequate
35 seating facilities shall be provided where men are
36 required to wait for man trips or man cages, and the
37 miners shall remain in such station until the man trip
38 or man cage is available.

39 (b) No operator of any coal mine worked by shaft,
40 slope or incline, shall place in charge of any engine or
41 drum used for lowering or hoisting persons employed in
42 such mine any but competent and sober engineers or
43 drum runners; and no engineer or drum runner in
44 charge of such machinery shall allow any person, except
45 such as may be designated for this purpose by the
46 operator, to interfere with any part of the machinery;
47 and no person shall interfere with any part of the
48 machinery; and no person shall interfere with or

49 intimidate the engineer or drum runner in the discharge
50 of his or her duties. Where the mine is operated or
51 worked by shaft or slope, a minimum space of two and
52 one-half square feet per person shall be available for
53 each person on any cage or car where men are trans-
54 ported. In no instance shall more than twenty miners be
55 transported on a cage or car without the approval of the
56 director. No person shall ride on a loaded cage or car
57 in any shaft, slope, or incline: *Provided*, That this does
58 not prevent any trip rider from riding in the perfor-
59 mance of his or her authorized duties. No engineer is
60 required for automatically operated cages, elevators, or
61 platforms. Cages and elevators shall have an emergency
62 power source unless provided with other escapeway
63 facilities.

64 (c) Each automatic elevator shall be provided with a
65 telephone or other effective communication system by
66 which aid or assistance can be obtained promptly.

67 (d) A "stop" switch shall be provided in the automatic
68 elevator compartment that will permit the elevator to
69 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-
2 lations, all general mine structures, enclosures and other
3 facilities, including custom coal preparation facilities
4 shall be maintained in good condition. In unusually
5 dusty locations, electric motors, switches and controls
6 shall be of dust-tight construction, or enclosed with
7 reasonable dust-tight housings or enclosures. Openings
8 in surface installations through which men or material
9 may fall shall be protected by railings, barriers, covers
10 or other protective devices. Illumination sufficient to
11 provide safe working conditions shall be provided in and
12 on all surface structures, paths, walkways, switch
13 panels, loading and dumping sites, working areas and
14 parking areas. Materials shall be stored and/or stacked
15 in a manner to prevent stumbling or falling. Com-
16 pressed and liquid gas cylinders shall be secured in a
17 safe manner. Adequate ventilation shall be provided in

18 tipples and preparation plants. Coal dust in or around
19 tipples or cleaning plants shall not be permitted to exist
20 or accumulate in dangerous amounts.

21 (2) Machinery guards — Gears, sprockets, chains,
22 drive head, tail and takeup pulleys, flywheels, couplings,
23 shafts, sawblades, fan inlets and similar exposed moving
24 machine parts with which persons may come in contact
25 shall be guarded adequately. Except when testing is
26 necessary, machinery guards shall be secured in place
27 while being operated. Belt rollers shall not be cleaned
28 while belts are in motion.

29 (3) Fire protection — Where cutting or welding is
30 performed at any location, a means of prompt extin-
31 guishment of any fire accidentally started shall be
32 provided. Adequate fire-fighting facilities, required by
33 the office of miners' health, safety and training, shall be
34 provided on all floors. At least two exits shall be
35 provided for every floor of tipples and cleaning plants
36 constructed after the effective date of this section. Signs
37 warning against smoking and open flames shall be
38 posted so they can be readily seen in areas or places
39 where fire or explosion hazards exist. Smoking or an
40 open flame in or about surface structures shall be
41 restricted to locations where it will not cause fire or an
42 explosion.

43 (4) Repairs of machinery — Machinery shall not be
44 lubricated or repaired while in motion, except where
45 safe remote lubricating devices are used. Machinery
46 shall not be started until the person lubricating or
47 repairing it has given a clear signal. Means and methods
48 shall be provided to assure that structures and the
49 immediate area surrounding the same shall be reason-
50 ably free of coal dust accumulations. Where repairs are
51 made to tipples, or cleaning plants, proper scaffolding
52 and proper overhead protection shall be provided for
53 workmen when necessary. Where overhead repair work
54 is being performed at surface installations, adequate
55 protection shall be provided for all persons working or
56 passing below.

57 (5) Stairs, platforms, etc. — Stairways, elevated

58 platforms and runways shall be equipped with hand-
59 rails. Railroad car trimmer platforms are exempted
60 from such requirements. Where required, elevated
61 platforms and stairways shall be provided with toe-
62 boards. They shall be kept clear of refuse and ice and
63 maintained in good condition.

64 (6) Belts, etc. — Drive belts shall not be shifted while
65 in motion unless such machines are provided with
66 mechanical shifters. Belt dressing shall not be applied
67 while in motion. Belts, chains and ropes shall not be
68 guided into power-driven moving pulleys, sprockets or
69 drums with the hand except with equipment especially
70 designed for hand feeding.

71 (7) Conveyors and crossovers — When the entire
72 length of a conveyor is visible from the starting switch,
73 the operator shall visually check to make certain that
74 all persons are in the clear before starting the conveyor.
75 When the entire length of the conveyor is not visible
76 from the starting switch, a positive audible or visible
77 warning system shall be installed and operated to warn
78 persons when the conveyor will be started. Crossovers
79 shall be provided where necessary to cross conveyors.
80 All crossovers shall be of substantial construction, with
81 rails, and maintained in good condition. Moving convey-
82 ors shall be crossed only at designated crossover points.
83 A positive audible or visible warning system shall be
84 installed and operated to warn persons that a conveyor
85 or other tipple equipment is to be started. Pulleys of
86 conveyors shall not be cleaned manually while the
87 conveyor is in operation. Guards, nets or other suitable
88 protection shall be provided where tramways pass over
89 roadways, walkways or buildings. Where it is required
90 to cross under a belt, adequate means shall be taken to
91 prohibit a person from making contact with a moving
92 part.

93 (8) Ladders — All ladders shall be securely fastened.
94 Permanent ladders more than ten feet in height shall
95 be provided with backguards. Ladders shall be of
96 substantial construction and maintained in good condi-
97 tion. Wooden ladders shall not be painted. Fixed ladders
98 shall not incline backward at any point unless equipped

99 with backguards. Fixed ladders shall be anchored
100 securely and installed with at least three inches of toe
101 clearance. Side rails of fixed ladders shall project at
102 least three feet above landings, or substantial handholds
103 shall be provided above the landing. No person shall be
104 permitted to work off of the top step of any ladder.
105 Metal ladders shall not be used with electrical work,
106 where there is danger of the ladder coming into contact
107 with power lines or an electrical conductor. The
108 maximum length of a step ladder shall be twenty feet
109 and an extension ladder sixty feet.

110 (9) Hoisting — Hitches and slings used to hoist
111 materials shall be suitable for handling the type of
112 material being hoisted. Persons shall stay clear of
113 hoisted loads. Tag lines shall be attached to hoisted
114 materials that require steadying or guidance. A hoist
115 shall not lift loads greater than the rated capacity of the
116 hoist being used.

117 (10) Railroad track construction and maintenance—

118 (a) All parts of the track haulage road under the
119 ownership or control of the operator shall be strictly
120 constructed and maintained. Rails shall be secured at all
121 points by means of plates or welds. When plates are
122 used, plates conforming with the weight of the rail shall
123 be installed and broken plates shall be replaced
124 immediately. Appropriate bolts shall be inserted and
125 maintained in all bolt holes. The appropriate number of
126 bolts conforming with the appropriate rail plate for the
127 weight of the rail shall be inserted, tightly secured, and
128 maintained.

129 (b) All points shall be installed and maintained so as
130 to prevent bad connections. Varying weights of rail shall
131 not be joined without proper adapters. Tracks shall be
132 blocked and leveled and so maintained so as to prevent
133 high and low joints.

134 (c) Tracks shall be gauged so as to conform with the
135 track mounted equipment. Curves shall not be con-
136 structed so sharp as to put significant pressure on the
137 tracks of the track-mounted equipment.

138 (d) Severely worn or damaged rails and ties shall be
139 replaced immediately.

140 (e) When mining operations are performed within any
141 twenty-four hour period, operations shall be inspected at
142 least every twenty-four hours to assure safe operation
143 and compliance with the law and rules. The results of
144 which inspection shall be recorded.

145 (f) Personnel who are required frequently and
146 regularly to travel on belts or chain conveyors extended
147 to heights of more than ten feet shall be provided with
148 adequate space and protection in order that they may
149 work safely. Permanent ladders extending more than
150 ten feet shall be provided with back guards. Walkways
151 around thickeners that are less than four feet above the
152 walkway shall be adequately guarded. Employees
153 required to work over thickener shall wear a safety
154 harness adequately secured, unless walkways or other
155 suitable safety devices are provided.

§22A-2-54. Duties of persons subject to article; rules and regulations of operators.

1 (a) It shall be the duty of the operator, mine foreman,
2 supervisors, mine examiners, and other officials to
3 comply with and to see that others comply with the
4 provisions of this article.

5 (b) It shall be the duty of all employees and check-
6 weighmen to comply with this article and to cooperate
7 with management and the office of miners' health,
8 safety and training in carrying out the provisions hereof.

9 (c) Reasonable rules of an operator for the protection
10 of employees and preservation of property that are in
11 harmony with the provisions of this article and other
12 applicable laws shall be complied with. They shall be
13 printed on cardboard or in book form in the English
14 language and posted at some conspicuous place about
15 the mine or mines, and given to each employee upon
16 request.

§22A-2-66. Explosion or accident; notice; investigation by office of miners' health, safety and training.

1 Whenever, by reason of any explosion or other
2 accident in or about any coal mine or the machinery
3 connected therewith, loss of life, or serious personal
4 injury occurs, it is the duty of the superintendent of the
5 mine, and in his or her absence, the mine foreman in
6 charge of the mine, to give immediate notice to the
7 director and the inspector of the district, stating the
8 particulars of such accident. If anyone is killed, the
9 inspector shall immediately go to the scene of such
10 accident and make such recommendations and render
11 such assistance as he or she may deem necessary for the
12 future safety of the men, and investigate the cause of
13 such explosion or accident and make a record thereof
14 which he or she shall preserve with the other records
15 in his or her office, the cost of such records to be paid
16 by the office of miners' health, safety and training, and
17 a copy shall be furnished to the operator and other
18 interested parties. To enable him or her to make such
19 investigation, he or she has the power to compel the
20 attendance of witnesses and to administer oaths or
21 affirmations. The director has the right to appear and
22 testify and to offer any testimony that may be relevant
23 to the questions and to cross-examine witnesses.

**§22A-2-68. Preservation of evidence following accident
or disaster.**

1 Following a mine accident resulting in the death of
2 one or more persons and following any mine disaster,
3 the evidence surrounding such occurrence shall not be
4 disturbed after recovery of bodies or injured persons
5 until an investigation by the office of miners' health,
6 safety and training has been completed.

§22A-2-70. Shafts and slopes.

1 (a) *When mine examiner to be employed; qualifications.*
2 — During the sinking of a shaft or the driving of a slope
3 to a coal bed or while engaged in underground construc-
4 tion work, or relating thereto, the operator shall assign
5 a mine examiner to such project areas. Such mine
6 examiner shall have a certificate of competency valid
7 only for the type of work stipulated thereon and issued
8 to him or her by the office of miners' health, safety and

9 training after he or she has passed an examination given
10 by the office of miners' health, safety and training. He
11 or she shall, at the time he or she takes the examination,
12 have a minimum of five years' experience in shaft
13 sinking, slope driving and underground construction;
14 moreover, he or she shall be able to detect methane with
15 a flame safety lamp and have a thorough knowledge of
16 the ventilation of shafts, slopes, and mines, and the
17 machinery connected therewith, and finally, he or she
18 shall be a person of good moral character with temper-
19 ate habits.

20 (b) *Mine examiner or certified person acting as such;*
21 *duties generally; records open for inspection.* — In all
22 shafts and slopes within three hours immediately
23 preceding the beginning of a work shift and before any
24 workmen in such shift, other than those who may be
25 designated to make the examinations, enter the under-
26 ground areas of such shafts or slopes, a certified
27 foreman or mine examiner, designated by the operator
28 of such shaft or slope to do so, shall make an examina-
29 tion of such areas. Each person designated to make such
30 examinations shall make tests with a permissible flame
31 safety lamp for accumulations of methane and oxygen
32 deficiency, and examine sides of shafts and ribs and roof
33 of all slopes. Should he or she find a condition which he
34 or she considers dangerous to persons, he or she shall
35 place a conspicuous danger sign at all entrances to such
36 places. He or she shall record the results of his or her
37 examination with ink or indelible pencil in a book
38 prescribed by the director, kept at a place on the surface
39 designated by mine management. All records as
40 prescribed herein shall be open for inspection by
41 interested persons.

42 (c) *Approvals and permits.* — An approval shall be
43 obtained from the office before work is started. A
44 permit shall be obtained from the office (1) to stop fan
45 when miners are in shafts or slopes; (2) to use electrical
46 machinery in shafts or slopes; (3) to use electric lights
47 in shafts or slopes; (4) to use welders, torches and like
48 equipment in shafts or slopes; (5) to hoist more than four
49 miners at one time in buckets or cars; (6) to shoot *more*

50 than fifteen shots in one series.

51 (d) *Records.* — The foreman in charge on each shift
52 shall keep a daily report of conditions and practices. The
53 foreman in charge on each shift shall read and counter-
54 sign the reports of the previous shift. Unsatisfactory
55 conditions and practices reported shall be repeated on
56 daily reports until corrected. Hoists, buckets, cars, ropes
57 and appliances thereto shall be examined by a qualified
58 person before the start of each shift and a written record
59 kept. Deaths from accidents or previous injuries shall be
60 reported immediately by wire to the office of the
61 director and to the district mine inspector or the
62 inspector-at-large. A written report of all injuries and
63 deaths shall be mailed to the office of miners' health,
64 safety and training and district mine inspector
65 promptly. Immediate notice shall be given the office of
66 the director, the district mine inspector and the
67 inspector-at-large in the event of an ignition of gas, or
68 serious accident to miners or equipment. All permits
69 and approvals must be available for inspection by all
70 interested persons.

71 (e) *General.* — The foreman on shift shall have at least
72 five years' experience in shafts or slopes. New employees
73 shall be instructed in the dangers and rules incident to
74 their work. Conspicuous bulletin boards and warning
75 signs shall be maintained. Unauthorized persons shall
76 not be permitted around shafts or slopes. First-aid
77 material shall be maintained at the operation as
78 required by section fifty-nine of this article. The scene
79 of a fatal accident shall be left unchanged until an
80 investigation is made by all interested persons. All
81 employees and others around the operation shall wear
82 hard-toe shoes and hard-top hats. Goggles or other eye
83 protection shall be worn when cutting, welding or
84 striking where particles may fly. Gears, belts and
85 revolving parts of machinery shall be properly guarded.
86 Hand tools shall be in good condition. Sides of shafts,
87 ribs and roof of all slopes shall be closely observed for
88 loose and dangerous conditions. Loose brows, ribs and
89 top in slopes shall be taken down or supported; loose ribs
90 in shafts shall be scaled. Miners shall be hoisted and

91 lowered under power in shafts and slopes. All hoists
 92 must have two positive breaking devices. At least three
 93 wraps of rope shall remain on the hoist drum at all
 94 times. Wire ropes shall not be less than three-fourths
 95 inches in diameter, and of a design to prevent excessive
 96 spinning or turning when hoisting.

97 When heavy materials are hoisted, a large rope shall
 98 be used if necessary. A hoisting engineer shall be in
 99 constant attendance while men are in shaft. Head
 100 frames shall be constructed substantially. Noise from
 101 machinery shall not interfere with signals. The standard
 102 signal code, whistle or bell shall be used for hoisting:

103 One signal Hoist

104 One signal Stop

105 Two signals Lower

106 Three signals Man cage

107 One signal from hoisting engineer Miners board cage

108 Hoist signals shall be posted in front of the hoisting
 109 engineer. The shaft opening shall be enclosed by a fence
 110 five feet high. Buckets shall not be loaded within six
 111 inches of the top rim. Buckets shall have a positive lock
 112 on the handle or bale to prevent bucket from crumpling
 113 while being hoisted. Positive coupling devices shall be
 114 used on buckets or cars (hooks with safety catches or
 115 threaded clevis). Emergency devices for escape shall be
 116 provided while shafts are under construction. Miners
 117 shall not ride on or work from rims of buckets. Buckets
 118 or cars shall not be lowered without a signal from
 119 working area. Only sober and competent engineers shall
 120 be permitted to operate hoists. No intoxicating liquors
 121 or intoxicated persons shall be permitted in or around
 122 any shaft, slope or machinery. Lattice type platforms
 123 shall be used.

124 (f) *Explosives.* — Explosives and blasting caps being
 125 taken into or removed from the operation shall be
 126 transported and kept in approved nonconducting
 127 receptacles (unopened cartons or cases are permissible).
 128 Explosives shall not be primed until ready to be inserted

129 into holes. Handling of explosives and loading of holes
130 shall be under the strict supervision of a qualified
131 person or shotfirer. No more explosives or caps than are
132 required to shoot one round shall be taken into shafts.
133 Adobe, mudcapped or unconfined shots shall not be
134 fired. Holes shall be stemmed tightly and full into the
135 mouth. Blasting caps shall be inserted in line with the
136 explosive. Leg wires of blasting caps and buss wires
137 shall be kept shunted until connected. Shooting cables
138 shall be shunted at firing devices and before connecting
139 to leg wires. Only approved shooting devices shall be
140 used. Shots shall be fired promptly after the round of
141 holes are charged. Warnings shall be given before shots
142 are fired by shouting "Fire" three times slowly after
143 those notified have withdrawn. The blasting circuit shall
144 be wired in series or parallel series. All shooting circuits
145 shall be tested with a galvanometer by a qualified
146 person before shooting. A careful examination for
147 misfires shall be made after each shot. Persons shall not
148 return to the face until smoke and dust have cleared
149 away. The shooting cable shall be adequately insulated
150 and have a substantial covering; be connected by the
151 person firing the shot; and be kept away from power
152 circuits. Misfires shall be removed by firing separate
153 holes or by washing; shall not be drilled out; and shall
154 be removed under supervision of a foreman or qualified
155 person. Separate magazines for the storage of explosives
156 and detonators shall be located not less than three
157 hundred feet from openings or other structures. Mag-
158 azines for the storage of explosives and detonators shall
159 be separated at least fifty feet. Magazines shall be
160 located behind barricades. The outside of magazines
161 shall be constructed of incombustible material. Rubbish
162 and combustible material shall not be permitted to
163 accumulate around or in magazine. Warning signs, to
164 be seen in all directions, shall be posted near magazines.

165 (g) *Electrical*. — Power cables installed in slopes shall
166 be placed in conduit away from the belt as far as
167 possible. Surface transformers shall be elevated at least
168 eight feet from the ground or enclosed by a fence six
169 feet high, grounded if metal; shall be properly
170 grounded; shall be installed so that they will not present

171 a fire hazard; and shall be guarded by sufficient danger
172 signs.

173 Electric equipment shall be in good condition, clean
174 and orderly; shall be equipped with guards around
175 moving parts; and shall be grounded with effective
176 frame grounds on motors and control boxes.

177 All electric wires shall be installed and supported on
178 insulators. All electric equipment shall be protected by
179 dual element fuse or circuit breakers.

180 (h) *Ventilation.* — Ventilating fans shall be offset
181 from portal at least fifteen feet; shall be installed so that
182 the ventilating current is not contaminated by dust,
183 smoke or gases; shall be effectively frame grounded; and
184 shall be provided with fire extinguishers.

185 All shafts and slopes shall be ventilated adequately
186 and continuously with fresh air. Air tubing shall deliver
187 not less than nine thousand feet per minute at the
188 working area or as much more as the inspector may
189 require.

190 (i) *Gases.* — A foreman shall be in attendance at all
191 times in shafts and slopes who has passed an examina-
192 tion given by the office as to his or her competency in
193 the use of flame safety lamps.

194 An examination shall be made before and after
195 shooting by the foreman on shift. The foreman shall
196 have no superior in the performance of his or her duties.
197 A lighted flame safety lamp or other approved detector
198 shall be carried at all times by the foreman when in the
199 working area and weekly gas analysis made. In all
200 shafts and slopes within three hours immediately
201 preceding the beginning of a work shift and before any
202 workmen in such shift, other than those who may be
203 designated to make the examinations, enter the under-
204 ground areas of such shafts or slopes, a certified mine
205 foreman or mine examiner designated by the operator
206 of such shaft or slope to do so, shall make an examina-
207 tion of such area. Evidence of official examination shall
208 be left at the face by marking date and initials.

209 Gases should be removed under the supervision of

210 foreman in charge. Smoking shall not be permitted
211 inside of shafts or slopes.

212 (j) *Drilling.* — Dust allaying or dust collecting devices
213 shall be used while drilling.

214 (k) *Lights to be used in shafts.* — Only approved
215 electric cap lights shall be used in shafts. Other lights
216 shall be of explosive-proof type. Lights shall be sus-
217 pended in shafts by cable or chain other than the power
218 conductor. In slopes, lights must be substantially
219 installed. Power cables shall be of an approved type.
220 Power cables shall not be taut from shaft collar to light.
221 Power cables shall be in good condition and free of
222 improper splices. Lights shall be suspended not less than
223 twenty feet above where miners are working. Lights
224 shall be removed from shaft and power cut off when
225 shooting. In slopes, lights must be removed a safe
226 distance when shots are fired. Lights shall not be
227 replaced in shafts or slopes until examination has been
228 made for gas by the mine examiner and found clear.
229 Front of light shall be protected by a substantial metal
230 type guard. Lights shall be protected from falling
231 objects from above by a metal hood. The lighting circuit
232 shall be properly fused. Electric lights shall not be used
233 in gaseous atmospheres. A lighted flame safety lamp or
234 approved detector shall be kept for use at the face while
235 miners are at work.

§22A-2-72. Long wall and short wall mining.

1 (a) The Legislature finds that new methods of
2 extracting coal known as long wall or short wall mining
3 are being used in this state. The board of coal mine
4 health and safety shall investigate or cause to be
5 investigated the technology, procedures and techniques
6 used in such mining methods and shall promulgate by
7 the first day of January, one thousand nine hundred
8 eighty-one, and continuously update the same, rules
9 governing long wall and short wall mining, which rules
10 shall have as their paramount objective, the health and
11 safety of the persons involved in such operations, and
12 which said rules shall include, but not be limited to, the
13 certification of personnel involved in such operation.

14 (b) The director may modify the application of any
15 provision of this section to a mine if the director
16 determines that an alternative method of achieving the
17 result of such provision exists which will at all times
18 guarantee no less than the same measure of protection
19 afforded the miners of such mine by such provision, or
20 that the application of such provision to such mine will
21 result in a diminution of the health of, or safety to, the
22 miners in such mine. The director shall give notice to
23 the operator and the representative of miners in the
24 affected mine, as appropriate, and shall cause such
25 investigation to be made as he or she deems appropriate.
26 Such investigation shall provide an opportunity for a
27 hearing, at the request of such operator or representa-
28 tive or other interested party, to enable the operator and
29 the representative of miners in such mine or other
30 interested party to present information relating to the
31 modification of such provision. The director shall issue
32 a decision incorporating his or her findings of fact
33 therein, and send a copy thereof to the operator and the
34 representative of the miners, as appropriate. Any such
35 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.

1 The board of coal mine health and safety shall
2 investigate or cause to be investigated the technology,
3 procedures and techniques used in the construction of
4 shafts, slopes, surface facilities, and the safety hazards,
5 attendant therewith, and shall promulgate rules govern-
6 ing the construction of shafts and slopes; and shall
7 promulgate by the first day of January, one thousand
8 nine hundred eighty-one, rules governing the construc-
9 tion of surface facilities.

10 The board of coal mine health and safety shall
11 continuously update such rules governing the construc-
12 tion of shafts, slopes and surface facilities, which rules
13 shall have as their paramount concern the health and
14 safety of the persons involved in such operations.

15 such rules shall include, but not be limited to, the
16 certification of all supervisors, the certification and
17 training of hoist operators and shaft workers, the
18 certification of blasters and approval of plans. The
19 provisions of such rules may be enforced against
20 operators and construction companies in accord with the
21 provisions of article one of this chapter. For purposes
22 of this chapter, a construction company is an operator.

§22A-2-74. Control of respirable dust.

1 Each operator shall maintain the concentration of
2 respirable dust in the mine atmosphere during each
3 shift to which miners in active workings of such mine
4 are exposed below such level as the board may establish.
5 The board may promulgate rules governing respirable
6 dust, including, but not limited to, dust standards,
7 sampling procedures, sampling devices, equipment and
8 sample analysis by using the data gathered by the
9 federal mine safety and health administration and, or
10 the federal bureau of mines.

11 Any operator found to be in violation of such stand-
12 ards shall bring itself into compliance with such
13 standards and rules of the board or the director may
14 thereafter order such operator to discontinue such
15 operation.

§22A-2-75. Coal operators — Procedure before operating near oil and gas wells.

1 (a) Before a coal operator conducts underground
2 mining operations within five hundred feet of any well,
3 including the driving of an entry or passageway, or the
4 removal of coal or other material, the coal operator shall
5 file with the office of miners' health, safety and training
6 and forward to the well operator by certified mail,
7 return receipt requested, its mining maps and plans
8 (which it is required to prepare, file and update to and
9 with the regulatory authority) for the area within five
10 hundred feet of the well, together with a notice, on a
11 form furnished by the director, informing them that the
12 mining maps and plans are being filed or mailed
13 pursuant to the requirements of this section.

14 Once these mining maps and plans are filed with the
15 office, the coal operator may proceed with its under-
16 ground mining operations in the manner and as
17 projected on such plans or maps, but shall not remove,
18 without the consent of the director, any coal or other
19 material or cut any passageway nearer than two
20 hundred feet of any completed well or well that is being
21 drilled. The coal operator shall, at least every six months
22 while mining within the five hundred foot area, update
23 its mining maps and plans and file the same with the
24 director and the well operator.

25 (b) Application may be made at any time to the
26 director by a coal operator for leave to conduct under-
27 ground mining operations within two hundred feet of
28 any well or to mine through any well, by petition, duly
29 verified, showing the location of the well, the workings
30 adjacent to the well and the mining operations contem-
31 plated within two hundred feet of the well or through
32 such well, and praying the approval of the same by the
33 director and naming the well operator as a respondent.
34 The coal operator shall file such petition with the
35 director and mail a true copy to the well operator by
36 certified mail, return receipt requested.

37 The petition shall notify the well operator that it may
38 answer the petition within five days after receipt, and
39 that in default of an answer the director may approve
40 the proposed operations as requested if it be shown by
41 the petitioner or otherwise to the satisfaction of the
42 director that such operations are in accordance with the
43 law and with the provisions of this article. If the well
44 operator files an answer which requests a hearing, one
45 shall be held within ten days of such answer and the
46 director shall fix a time and date and give both the coal
47 operator and well operator five days' written notice of
48 the same by certified mail, return receipt requested. At
49 the hearing, the well operator and coal operator, as well
50 as the director, shall be permitted to offer any compe-
51 tent and relevant evidence. Upon conclusion of the
52 hearing, the director shall grant the request of the coal
53 operator or refuse to grant the same, or make such a
54 decision with respect to such proposed mine-

55 operation as in its judgment is just and reasonable under
56 all circumstances and in accordance with law and the
57 provisions of this article: *Provided*, That a grant by the
58 director of a request to mine through a well shall
59 require an acceptable test to be conducted by the coal
60 operator establishing that such mining through can be
61 done safely.

62 If a hearing is not requested by the well operator or
63 if the well operator gives, in writing, its consent to the
64 coal operator to mine within closer than two hundred
65 feet of the specified well, the director shall grant the
66 request of the coal operator within five days after the
67 petition's original five day answer period if the director
68 determines that such operations are just, reasonable and
69 in accordance with law and the provisions of this article.

70 The director shall docket and keep a record of all such
71 proceedings. From any such final decision or order of
72 the director, either the well operator or coal operator,
73 or both, may, within ten days, appeal to the circuit court
74 of the county in which the well subject to said petition
75 is located. The procedure in the circuit court shall be
76 substantially as provided in section four, article five,
77 chapter twenty-nine-a of this code, with the director
78 being named as a respondent. From any final order or
79 decree of the circuit court, an appeal may be taken to
80 the supreme court of appeals as heretofore provided.

81 A copy of the document or documents evidencing the
82 action of the director with respect to such petition shall
83 promptly be filed with the chief of the office of oil and
84 gas of the division of environmental protection.

85 (c) Before a coal operator conducts surface or strip
86 mining operations as defined in this chapter, within two
87 hundred feet of any well, including the removal of coal
88 and other material, the operator shall file with the
89 director and furnish to the well operator by certified
90 mail, return receipt requested, its mining maps and
91 plans (which it is required to prepare, file and update
92 to and with the regulatory authority) for the area within
93 two hundred feet of the well, together with a notice, on
94 a form furnished by the director, informing them that

95 the mining maps and plans are being filed or mailed
96 pursuant to the requirements of this section, and
97 representing that the planned operations will not
98 unreasonably interfere with access to or operation of the
99 well and will not damage the well. In addition, the coal
100 operator shall furnish the well operator with evidence
101 that it has in force public liability insurance, with at
102 least the minimum coverage required by article three,
103 chapter twenty-two of this code, and the rules promul-
104 gated thereto and thereunder.

105 Once these mining maps and plans are filed with the
106 director, the coal operator may proceed with its surface
107 or strip mining operations in the manner and as
108 projected on such plans or maps, so long as such surface
109 mining operations do not unreasonably interfere with
110 access to, or operation of, the well or do not damage the
111 well.

112 (d) The filing of petitions and notices with the director
113 as herein provided may be complied with by mailing
114 such petition or notice to the director by certified mail,
115 return receipt requested.

§22A-2-76. Reopening old or abandoned mines.

1 No person, without first giving to the director ten
2 days' written notice thereof, shall reopen for any
3 purposes any old or abandoned mine wherein water or
4 mine seepage has collected or become impounded or
5 exists in such manner or quantity that upon the opening
6 of such mine, such water or seepage may drain into any
7 stream or watercourse.

8 Such notice shall state clearly the name or names of
9 the owner or owners of the mine proposed to be opened,
10 its exact location, and the time of the proposed opening
11 thereof.

12 Upon receipt of such notice, the director shall have
13 his or her representative present at the mine at the time
14 designated in the notice for such opening, who has full
15 supervision of the work of opening such mine with full
16 authority to direct the work in such manner as to him
17 or her seems proper and necessary to prevent the

18 of mine water or seepage from such mine in such
19 manner or quantity as will kill or be harmful to the fish
20 in any stream or watercourse into which such mine
21 water seepage may flow directly or indirectly.

§22A-2-77. Monthly report by operator of mine; exception as to certain inactive mines.

1 On or before the end of each calendar month, the
2 operator of each mine, regulated under the provisions
3 of this chapter or article three or four, chapter twenty-
4 two of this code, shall file with the director a report with
5 respect thereto covering the next preceding calendar
6 month which shall reflect the number of accidents
7 which have occurred at each such mine, the number of
8 persons employed, the days worked and the actual raw
9 tonnage mined. Such report shall be made upon forms
10 furnished by the director. Other provisions of this
11 section to the contrary notwithstanding, no such report
12 shall be required with respect to any mine on approved
13 inactive status if no employees were present at such
14 mine at any time during the next preceding calendar
15 month.

§22A-2-78. Examinations to determine compliance with permits.

1 Whenever permits are issued by the office of miners'
2 health, safety and training, frequent examinations shall
3 be made by the mine inspector during the tenure of the
4 permit to determine that the requirements and limita-
5 tions 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.

1 In this article the term "mine" includes the shafts,
2 slopes, drifts or inclines connected with excavations
3 penetrating clay seams or strata, which excavations are
4 ventilated by one general air current or division thereof,
5 and the surface structures or equipment connected

6 therewith which contribute directly or indirectly to the
7 underground mining of clay.

**§22A-3-2. Clay mine foreman; when to be employed;
qualifications; assistants.**

1 In every underground clay mine where five or more
2 persons are employed in a period of twenty-four hours,
3 the operator shall employ a mine foreman who shall be
4 a competent and practical person holding a certificate
5 of competence for said position issued to him or her by
6 the office of miners' health, safety and training after an
7 examination by such office. In order to receive a
8 certificate of competence qualifying a foreman in an
9 underground clay mine, the applicant shall take an
10 examination prescribed by the director of the office of
11 miners' health, safety and training, be a citizen of this
12 state, of good moral character and temperate habits,
13 having had at least three years' experience in the
14 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
2 training may from time to time promulgate reasonable
3 rules for the protection of the health and safety of the
4 persons working in or about underground clay mines,
5 to the extent the same are not more onerous or restric-
6 tive than the laws of this state intended to safeguard the
7 life and health of persons working in underground coal
8 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
2 different meaning as used in this article:

3 (a) "Open-pit mine" means an excavation worked from
4 the surface and open to daylight.

5 (b) "Underground mine" means subterranean work-
6 ings for the purpose of obtaining a desired material or
7 materials.

8 (c) "Sand" means waterworn sandstone fragments
9 transported and deposited by water.

10 (d) "Gravel" means an occurrence of waterworn
11 pebbles.

12 (e) "Sandstone" means a compacted or cemented
13 sediment composed chiefly of quartz grains.

14 (f) "Limestone" means a sedimentary rock composed
15 mostly of calcium carbonate.

16 (g) "Clay" means a natural material of mostly small
17 fragments of hydrous aluminum silicates and possessing
18 plastic properties.

19 (h) "Shale" means a laminated sedimentary rock
20 composed chiefly of small particles of a clay grade.

21 (i) "Iron ore" means a mineral or minerals, and
22 gangue which when treated will yield iron at a profit.

23 (j) "Manganese ore" means a metalliferous mineral
24 which when treated will yield manganese at a profit.

§22A-4-2. Applicability of mining laws.

1 All provisions of the mining laws of this state
2 intended for the protection of the health and safety of
3 persons employed within or at any coal mine and for the
4 protection of any coal mining property extend to all
5 open-pit mines and any property used in connection
6 therewith for the mining of underground limestone and
7 sandstone mines, insofar as such laws are applicable
8 thereto.

§22A-4-3. Rules.

1 The director of the office of miners' health, safety and
2 training shall promulgate reasonable rules, in accor-
3 dance with and confined to the provisions of chapter
4 twenty-nine-a of this code, for the effective administra-

5 tion of this article.

§22A-4-4. Monthly report by operator.

1 The operator of such mine shall, on or before the end
2 of each calendar month, file with the director of the
3 office of miners' health, safety and training a report
4 covering the preceding calendar month on forms
5 furnished by the director. Such reports shall state the
6 number of accidents which have occurred, the number
7 of persons employed, the days worked and the actual
8 tonnage mined.

§22A-4-5. Inspectors.

1 The director of the office of miners' health, safety and
2 training shall divide the state into not more than two
3 mining districts and assign one inspector to each
4 district. Such inspector shall be a citizen of West
5 Virginia, in good health, of good character and reputa-
6 tion, temperate in habits, having a minimum of five
7 years of practical experience in such mining operations
8 and who at the time of appointment is not more than
9 fifty-five years of age. To qualify for appointment as
10 such an inspector, an eligible applicant shall submit to
11 a written and oral examination by the mine inspectors'
12 examining board and furnish such evidence of good
13 health, character and other facts establishing eligibility
14 as the board may require. If the board finds after
15 investigation and examination that an applicant: (1) Is
16 eligible for appointment and (2) has passed all written
17 and oral examinations, with a grade of at least ninety
18 percent, the board shall add such applicant's name and
19 grade to the register of qualified eligible candidates and
20 certify its action to the director of the office of miners'
21 health, safety and training. No candidate's name shall
22 remain in the register for more than three years without
23 requalifying.

24 Such inspector shall have the same tenure accorded
25 a mine inspector, as provided in subsection (e), section
26 twelve, article one of this chapter and shall be paid not
27 less than fifteen thousand dollars per year. Such
28 inspector shall also receive reimbursement for traveling
29 expenses at the rate of not less than fifteen cents for

30 each mile actually traveled in the discharge of their
31 duties in a privately owned vehicle. Such inspector shall
32 also be reimbursed for any expense incurred in main-
33 taining an office in his or her home, which office is used
34 in the discharge of official duties: *Provided*, That such
35 reimbursement shall not exceed two hundred forty
36 dollars per annum.

§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-5-2. Powers transferred to the 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

21 any books, papers, records or other documents relevant
22 or material to the appeal inquiry.

23 The chair shall subpoena any witness requested by a
24 party to a hearing to testify or produce books, records
25 or documents. Any witness responding to a subpoena so
26 issued shall receive a daily witness fee to be paid out
27 of the state treasury upon a requisition of the state
28 auditor equivalent to the rate of pay under the wage
29 agreement currently in effect plus all reasonable
30 expenses for meals, lodging and travel at the rate
31 applicable to state employees. Any full payments as
32 hereinbefore specified shall be in full and exclusive
33 payment for meals, lodging, actual travel and similar
34 expenses and shall be made in lieu of any lost wages
35 occasioned by such appearance in connection with any
36 hearing conducted by the board.

37 Each member of the board shall be paid the same
38 compensation and expense reimbursement as is paid to
39 members of the Legislature for their interim duties as
40 recommended by the citizens legislative compensation
41 commission and authorized by law for each day or
42 portion thereof engaged in the discharge of official
43 duties. No reimbursement for expenses shall be made
44 except upon an itemized account, properly certified by
45 such members of the board. All reimbursement for
46 expenses shall be paid out of the state treasury upon a
47 requisition upon the state auditor.

48 Board members, before performing any duty, shall
49 take and subscribe to the oath required by section 5,
50 article IV of the constitution of West Virginia.

§22A-5-2. Powers transferred to the board of appeals.

1 (a) There are hereby transferred to the board of
2 appeals all functions of the director of the office of
3 miners' health, safety and training relating to the
4 review of orders and notices as set forth in section
5 seventeen, article one of this chapter.

6 (b) There are hereby transferred to the board of
7 appeals all functions of the director of the office of
8 miners' health, safety and training relating to the

9 review of penalty assessments as set forth in subdivision
 10 (3), subsection (a), section twenty-one, article one of this
 11 chapter.

12 (c) Judicial review of decisions by the board of appeals
 13 shall be available and conducted in the same fashion as
 14 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-6-8. Effect of rules.

§22A-6-9. Reports.

§22A-6-10. Compensation and expenses of board members.

§22A-6-1. Declaration of legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) The Legislature concurs with the congressional
 3 declaration made in the "Federal Coal Mine Health and
 4 Safety Act of 1969" that "the first priority and concern
 5 of all in the coal mining industry must be the health and
 6 safety of its most precious resource — the miner";

7 (2) Coal mining is highly specialized, technical and
 8 complex and it requires frequent review, refinement
 9 and improvement of standards to protect the health and
 10 safety of miners;

11 (3) During each session of the Legislature, coal mine
 12 health and safety standards are proposed which require
 13 knowledge and comprehension of scientific and techni-
 14 cal data related to coal mining;

15 (4) The formulation of appropriate rules and practices
 16 to improve health and safety and provide increased

17 protection of miners can be accomplished more effec-
18 tively by persons who have experience and competence
19 in coal mining and coal mine health and safety.

20 (b) In view of the foregoing findings, it is the purpose
21 of this article to:

22 (1) Continue the board of coal mine health and safety;

23 (2) Require such board to continue as standard rules
24 the coal mine health and safety provisions of this code;

25 (3) Compel the board to review such standard rules
26 and, when deemed appropriate to improve or enhance
27 coal mine health and safety, to revise the same or
28 develop and promulgate new rules dealing with coal
29 mine health and safety; and

30 (4) Authorize such board to conduct such other
31 activities as it deems necessary to implement the
32 provisions of this chapter.

§22A-6-2. Definitions.

1 Unless the context in which a word or phrase appears
2 clearly requires a different meaning, the words and
3 phrases defined in section two, article one of this chapter
4 have, when used in this article, the meaning therein
5 assigned to them. For the purpose of this article "board"
6 means the board of coal mine health and safety
7 continued by section three of this article.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) The board of coal mine health and safety, hereto-
2 fore established, is continued as provided by this article.
3 The board consists of seven members who are residents
4 of this state, and who are appointed as hereinafter
5 specified in this section:

6 (1) The governor shall appoint one member to
7 represent the viewpoint of those operators in this state
8 whose individual aggregate production exceeds one
9 million tons annually and one member to represent the
10 viewpoint of those operators in this state whose individ-

11 ual aggregate production is less than one million tons
12 annually, which tonnage includes tonnage produced by
13 affiliated, parent and subsidiary companies and tonnage
14 produced by companies which have a common director
15 or directors, shareholder or shareholders, owner or
16 owners. When such members are to be appointed, the
17 governor may request from the major trade association
18 representing operators in this state a list of three
19 nominees for each such position on the board. All such
20 nominees shall be persons with special experience and
21 competence in coal mine health and safety. There shall
22 be submitted with such list a summary of the qualifi-
23 cations of each nominee. If the full lists of nominees are
24 submitted in accordance with the provisions of this
25 subdivision, the governor shall make the appointments
26 from the persons so nominated. For purposes of this
27 subdivision, the major trade association representing
28 operators in this state is that association which repres-
29 ents operators accounting for over one half of the coal
30 produced in mines in this state in the year prior to the
31 year in which the appointment is to be made.

32 (2) The governor shall appoint two members who can
33 reasonably be expected to represent the viewpoint of the
34 working miners of this state. If the major employee
35 organization representing coal miners in this state is
36 divided into administrative districts, such members
37 shall not be from the same administrative district. The
38 highest ranking official within the major employee
39 organization representing coal miners within this state
40 shall, upon request by the governor, submit a list of
41 three nominees for each such position on the board:
42 *Provided*, That if the major employee organization
43 representing coal miners in this state is divided into
44 administrative districts, and if there are two vacancies
45 to be filled in accordance with the provisions of this
46 subdivision, not more than two persons on each list of
47 three nominees shall be from the same administrative
48 district and at least three districts shall be represented
49 on the two lists submitted, and if there is one vacancy
50 to be filled, no names shall be submitted of persons from
51 the same administrative district already represented on
52 the board. Said nominees shall have a background in

53 coal mine health and safety, and shall at the time of
54 their appointment be employed in a position which
55 involves the protection of health and safety of miners.
56 There shall be submitted with such list a summary of
57 the qualifications of each nominee. If the full lists of
58 nominees are submitted in accordance with the provi-
59 sions of this subdivision, the governor shall make
60 appointments from the persons so nominated.

61 (3) The governor shall appoint one public member
62 who is professionally qualified in the field of occupa-
63 tional health and safety and who is (A) an employee of
64 the institute of labor studies at West Virginia University
65 or (B) a person who is engaged in or who has broad
66 experience in occupational health and safety from the
67 perspective of the worker. Such nominee shall have
68 technical experience in occupational health and safety
69 or education and experience in such field: *Provided*,
70 That the nominee shall not have been, prior to appoint-
71 ment to the board, employed by a mining or industrial
72 business entity in a managerial or supervisory position,
73 or shall not have been employed by the major employee
74 organization representing coal miners in this state, or
75 shall not have been a miner.

76 (4) The governor shall appoint one public member
77 who is professionally qualified in the field of occupa-
78 tional health and safety and who has a degree in
79 engineering or industrial safety and a minimum of five
80 years' experience in the field of industrial safety
81 engaged in constructing, designing, developing or
82 administering safety programs: *Provided*, That the
83 nominee has not been, prior to appointment to the board,
84 employed by a mining business entity in a managerial
85 or supervisory position or has not been employed by the
86 major employee organization representing coal miners
87 in this state, or has not been a miner.

88 (5) All appointments made by the governor under the
89 provisions of subdivisions (1), (2), (3) and (4) of this
90 subsection shall be with the advice and consent of the
91 Senate.

92 (6) The seventh member of the board is the secretary

93 of the department of commerce, labor and environmen-
94 tal resources, or his or her designee, who serves as chair
95 of the board. The director shall furnish to the board such
96 secretarial, clerical, technical, research and other
97 services as are necessary to the conduct of the business
98 of the board, not otherwise furnished by the board.

99 (b) Members serving on the board on the effective
100 date of this article may continue to serve until the
101 expiration of their terms. Thereafter, members shall be
102 nominated and appointed in the manner provided for in
103 this section and shall serve for a term of three years.
104 Members are eligible for reappointment.

105 (c) The governor shall appoint a health and safety
106 administrator in accordance with the provisions of
107 section six of this article, who shall certify all official
108 records of the board. The health and safety administra-
109 tor shall be a full-time officer of the board of coal mine
110 health and safety with the duties provided for in section
111 six of this article. The health and safety administrator
112 shall have such education and experience as the
113 governor deems necessary to properly investigate areas
114 of concern to the board in the development of rules
115 governing mine health and safety. The governor shall
116 appoint as health and safety administrator a person who
117 has an independent and impartial viewpoint on issues
118 involving mine safety. The health and safety adminis-
119 trator shall be a person who has not been, during the
120 two years immediately preceding appointment, and is
121 not during his or her term, an officer, trustee, director,
122 substantial shareholder or employee of any coal opera-
123 tor, or an employee or officer of an employee organiza-
124 tion, or a spouse of any such person. The health and
125 safety administrator shall have the expertise to draft
126 proposed rules and shall prepare such rules as are
127 required by this code and on such other areas as will
128 improve coal mine health and safety.

129 (d) The board shall meet at least once during each
130 calendar month, or more often as may be necessary, and
131 at other times upon the call of the chair, or upon the
132 request of any three members of the board. Under the
133 direction of the board, the health and safety administra-

134 tor shall prepare an agenda for each board meeting
135 giving priority to the promulgation of rules as may be
136 required from time to time by this code, and as may be
137 required to improve coal mine health and safety. The
138 health and safety administrator shall provide each
139 member of the board with notice of the meeting and the
140 agenda as far in advance of the meeting as practical,
141 but in any event, at least five days prior thereto. No
142 meeting of the board shall be conducted unless said
143 notice and agenda are given to the board members at
144 least five days in advance, as provided herein, except in
145 cases of emergency, as declared by the chair, in which
146 event members shall be notified of the board meeting
147 and the agenda in a manner to be determined by the
148 chair: *Provided*, That upon agreement of a majority of
149 the quorum present, any scheduled meeting may be
150 ordered recessed to another day certain without further
151 notice of additional agenda.

152 When proposed rules are to be finally adopted by the
153 board, copies of such proposed rules shall be delivered
154 to members not less than five days before the meeting
155 at which such action is to be taken. If not so delivered,
156 any final adoption or rejection of rules shall be consi-
157 dered on the second day of a meeting of the board held
158 on two consecutive days, except that by the concurrence
159 of at least four members of the board, the board may
160 suspend this rule of procedure and proceed immediately
161 to the consideration of final adoption or rejection of
162 rules. When a member fails to appear at three consec-
163 utive meetings of the board or at one half of the
164 meetings held during a one-year period, the health and
165 safety administrator shall notify the member and the
166 governor of such fact. Such member shall be removed
167 by the governor unless good cause for absences is shown.

168 (e) Whenever a vacancy on the board occurs, nomina-
169 tions and appointments shall be made in the manner
170 prescribed in this section: *Provided*, That in the case of
171 an appointment to fill a vacancy, nominations of three
172 persons for each such vacancy shall be requested by and
173 submitted to the governor within thirty days after the
174 vacancy occurs by the major trade association or major

175 employee organization, if any, which nominated the
176 person whose seat on the board is vacant. The vacancy
177 shall be filled by the governor within thirty days of his
178 receipt of the list of nominations.

179 (f) A quorum of the board is five members which shall
180 include the secretary of the department of commerce,
181 labor and environmental resources, at least one member
182 representing the viewpoint of operators and at least one
183 member representing the viewpoint of the working
184 miners, and the board may act officially by a majority
185 of those members who are present.

§22A-6-4. Board powers and duties.

1 (a) The board shall adopt as standard rules the "coal
2 mine health and safety provisions of this chapter." Such
3 standard rules and any other rules shall be adopted by
4 the board without regard to the provisions of chapter
5 twenty-nine-a of this code. The board of coal mine health
6 and safety shall devote its time toward promulgating
7 rules in those areas specifically directed by this chapter
8 and those necessary to prevent fatal accidents and
9 injuries.

10 (b) The board shall review such standard rules and,
11 when deemed appropriate to improve or enhance coal
12 mine health and safety, revise the same or develop and
13 promulgate new rules dealing with coal mine health and
14 safety.

15 (c) The board shall develop, promulgate and revise, as
16 may be appropriate, rules as are necessary and proper
17 to effectuate the purposes of article two of this chapter
18 and to prevent the circumvention and evasion thereof,
19 all without regard to the provisions of chapter twenty-
20 nine-a of this code:

21 (1) Upon consideration of the latest available scientific
22 data in the field, the technical feasibility of standards,
23 and experience gained under this and other safety
24 statutes, such rules may expand protections afforded by
25 this chapter notwithstanding specific language therein,
26 and such rules may deal with subject areas not covered
27 by this chapter to the end of affording the maximum

28 possible protection to the health and safety of miners.

29 (2) No rules promulgated by the board shall reduce
30 or compromise the level of safety or protection afforded
31 miners below the level of safety or protection afforded
32 by this chapter.

33 (3) Any miner or representative of any miner, or any
34 coal operator has the power to petition the circuit court
35 of Kanawha County for a determination as to whether
36 any rule promulgated or revised reduces the protection
37 afforded miners below that provided by this chapter, or
38 is otherwise contrary to law: *Provided*, That any rule
39 properly promulgated by the board pursuant to the
40 terms and conditions of this chapter creates a rebuttable
41 presumption that said rule does not reduce the protec-
42 tion afforded miners below that provided by this
43 chapter.

44 (4) The director shall cause proposed rules and a
45 notice thereof to be posted as provided in section
46 eighteen, article one of this chapter. The director shall
47 deliver a copy of such proposed rules and accompanying
48 notice to each operator affected. A copy of such proposed
49 rules shall be provided to any individual by the
50 director's request. The notice of proposed rules shall
51 contain a summary in plain language explaining the
52 effect of the proposed rules.

53 (5) The board shall afford interested persons a period
54 of not less than thirty days after releasing proposed
55 rules to submit written data or comments. The board
56 may, upon the expiration of such period and after
57 consideration of all relevant matters presented, promul-
58 gate such rules with such modifications as it may deem
59 appropriate.

60 (6) On or before the last day of any period fixed for
61 the submission of written data or comments under
62 subdivision (5) of this section, any interested person may
63 file with the board written objections to a proposed rule,
64 stating the grounds therefor and requesting a public
65 hearing on such objections. As soon as practicable after
66 the period for filing such objections has expired, the
67 board shall release a notice specifying the proposed

68 rules to which objections have been filed and a hearing
69 requested.

70 (7) Promptly after any such notice is released by the
71 board under subdivision (6) of this section, the board
72 shall issue notice of, and hold a public hearing for the
73 purpose of receiving relevant evidence. Within sixty
74 days after completion of the hearings, the board shall
75 make findings of fact which shall be public, and may
76 promulgate such rules with such modifications as it
77 deems appropriate. In the event the board determines
78 that a proposed rule should not be promulgated or
79 should be modified, it shall within a reasonable time
80 publish the reasons for its determination.

81 (8) All rules promulgated by the board shall be
82 published in the state register and continue in effect
83 until modified or superseded in accordance with the
84 provisions of this chapter.

85 (d) To carry out its duties and responsibilities, the
86 board is authorized to employ such personnel, including
87 legal counsel, experts and consultants, as it deems
88 necessary. In addition, the board, within the appropri-
89 ations provided for by the Legislature, may conduct or
90 contract for research and studies and is entitled to the
91 use of the services, facilities and personnel of any
92 agency, institution, school, college or university of this
93 state.

94 (e) The director shall within sixty days of a coal
95 mining fatality or fatalities provide the board with all
96 available reports regarding such fatality or fatalities.

97 The board shall review all such reports, receive any
98 additional information, and may, on its own initiative,
99 ascertain the cause or causes of such coal mining fatality
100 or fatalities. Within one hundred twenty days of such
101 review of each such fatality, the board shall promulgate
102 such rules as are necessary to prevent the recurrence of
103 such fatality, unless a majority of the quorum present
104 determines that no rules can assist in the prevention of
105 the specific type of fatality. Likewise, the board shall
106 annually, not later than the first day of July, review the
107 major causes of coal mining injuries during the previous

108 calendar year, reviewing the causes in detail, and shall
109 promulgate such rules as may be necessary to prevent
110 the recurrence of such injuries.

111 Further, the board shall, on or before the tenth day
112 of January of each year, submit a report to the governor,
113 president of the Senate and speaker of the House, which
114 report shall include, but is not limited to:

115 (1) The number of fatalities during the previous
116 calendar year, the apparent reason for each fatality as
117 determined by the office of miners' health, safety and
118 training and the action, if any, taken by the board to
119 prevent such fatality;

120 (2) Any rules promulgated by the board during the
121 last year;

122 (3) What rules the board intends to promulgate
123 during the current calendar year;

124 (4) Any problem the board is having in its effort to
125 promulgate rules to enhance health and safety in the
126 mining industry;

127 (5) Recommendations, if any, for the enactment,
128 repeal or amendment of any statute which would cause
129 the enhancement of health and safety in the mining
130 industry;

131 (6) Any other information the board deems
132 appropriate;

133 (7) In addition to the report by the board, as herein
134 contained, each individual member of said board has
135 right to submit a separate report, setting forth any
136 views contrary to the report of the board, and the
137 separate report, if any, shall be appended to the report
138 of the board and be considered a part thereof.

**§22A-6-5. Preliminary procedures for promulgation of
rules.**

1 (a) Prior to the posting of proposed rules as provided
2 for in subsection (c), section four of this article, the
3 board shall observe the preliminary procedure for the
4 development of rules set forth in this section:

5 (1) During a board meeting or at any time when the
6 board is not meeting, any board member may suggest
7 to the health and safety administrator, or such admin-
8 istrator on his or her own initiative may develop,
9 subjects for investigation and possible regulation;

10 (2) Upon receipt of a suggestion for investigation, the
11 health and safety administrator shall prepare a report,
12 to be given at the next scheduled board meeting, of the
13 technical evidence available which relates to such
14 suggestion, the staff time required to develop the subject
15 matter, the legal authority of the board to act on the
16 subject matter, including a description of findings of
17 fact and conclusions of law which will be necessary to
18 support any proposed rules;

19 (3) The board shall by majority vote of those members
20 who are present determine whether the health and
21 safety administrator shall prepare a draft rule concern-
22 ing the suggested subject matter;

23 (4) After reviewing the draft rule, the board shall
24 determine whether the proposed rules should be posted
25 and made available for comment as provided for in
26 section four of this article;

27 (5) The board shall receive and consider those
28 comments to the proposed rules as provided for in
29 section four of this article;

30 (6) The board shall direct the health and safety
31 administrator to prepare for the next scheduled board
32 meeting findings of fact and conclusions of law for the
33 proposed rules, which may incorporate comments
34 received and technical evidence developed, and which
35 are consistent with section four of this article;

36 (7) The board shall adopt or reject or modify the
37 proposed findings of fact and conclusions of law; and

38 (8) The board shall make a final adoption or rejection
39 of the rules.

40 (b) By the concurrence of at least four members of the
41 board, the board may dispense with the procedure set
42 out in (a) above or any other procedural rule established,

43 except that the board shall in all instances when
44 adopting rules prepare findings of fact and conclusions
45 of law consistent with this section and section four of
46 this article.

47 (c) Without undue delay, the board shall adopt an
48 order of business for the conduct of meetings which will
49 promote the orderly and efficient consideration of
50 proposed rules in accordance with the provisions of this
51 section.

§22A-6-6. Health and safety administrator; qualifications; duties; employees; compensation.

1 (a) The governor shall appoint the health and safety
2 administrator of the board for a term of employment of
3 one year. The health and safety administrator shall be
4 entitled to have his or her contract of employment
5 renewed on an annual basis except where such renewal
6 is denied for cause: *Provided*, That the governor has the
7 power at any time to remove the health and safety
8 administrator for misfeasance, malfeasance or nonfea-
9 sance: *Provided, however*, That the board has the power
10 to remove the health and safety administrator without
11 cause upon the concurrence of five members of the
12 board.

13 (b) The health and safety administrator shall work at
14 the direction of the board, independently of the director
15 of the office of miners' health, safety and training and
16 has such authority and shall perform such duties as may
17 be required or necessary to effectuate this article.

18 (c) In addition to the health and safety administrator,
19 there shall be such other research employees hired by
20 the health and safety administrator as the board
21 determines to be necessary. The health and safety
22 administrator shall provide supervision and direction to
23 the other research employees of the board in the
24 performance of their duties.

25 (d) The employees of the board shall be compensated
26 at rates determined by the board. The salary of the
27 health and safety administrator shall be fixed by the
28 governor: *Provided*, That the salary of the health and

29 safety administrator shall not be reduced during his or
30 her annual term of employment or upon the renewal of
31 his or her contract for an additional term. Such salary
32 shall be fixed for any renewed term at least ninety days
33 before the commencement thereof.

34 (e) Appropriations for the salaries of the health and
35 safety administrator and any other employees of the
36 board and for necessary office and operating expenses
37 shall be made to a budget account hereby established
38 for those purposes in the general revenue fund. Such
39 account shall be separate from any accounts or appro-
40 priations for the office of miners' health, safety and
41 training.

42 (f) The health and safety administrator shall review
43 all coal mining fatalities and major causes of injuries as
44 mandated by section four of this article. An analysis of
45 such fatalities and major causes of injuries shall be
46 prepared for consideration by the board within ninety
47 days of the occurrence of the accident.

48 (g) At the direction of the board, the administrator
49 shall also conduct an annual study of occupational health
50 issues relating to employment in and around coal mines
51 of this state and submit a report to the board with
52 findings and proposals to address the issues raised in
53 such study. The administrator is responsible for
54 preparing the annual reports required by subsection (e),
55 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.

1 (a) There is hereby continued the state coal mine
2 safety and technical review committee. The purposes of
3 this committee are to:

4 (1) Assist the board of coal mine health and safety in
5 the development of technical data relating to mine
6 safety issues, including related mining technology;

7 (2) Provide suggestions and technical data to the
8 board and propose rules with general mining industry
9 application;

10 (3) Accept and consider petitions submitted by
11 individual mine operators or miners seeking site-specific
12 rule making pertaining to individual mines and make
13 recommendations to the board concerning such rule-
14 making; and

15 (4) Provide a forum for the resolution of technical
16 issues encountered by the board.

17 (b) The committee shall consist of two members who
18 shall be residents of this state, and who shall be
19 appointed as hereinafter specified in this section:

20 (1) The governor shall appoint one member to
21 represent the viewpoint of the coal operators in this state
22 from a list containing one or more nominees submitted
23 by the major trade association representing coal
24 operators in this state within thirty days of submission
25 of such nominee or nominees.

26 (2) The governor shall appoint one member to
27 represent the viewpoint of the working miners of this
28 state from a list containing one or more nominees
29 submitted by the highest ranking official within the
30 major employee organization representing coal mines
31 within this state within thirty days of submission of the
32 nominee or the nominees.

33 (3) The members appointed in accordance with the
34 provisions of subdivisions (1) and (2) of this subsection
35 shall be initially appointed to serve a term of three
36 years. The members serving on the effective date of this
37 article may continue to serve until their terms expire.

38 (4) The members appointed in accordance with the
39 provisions of subdivisions (1) and (2) of this subsection
40 may be, but are not required to be, members of the
41 board of coal mine health and safety, and shall be
42 compensated on a per diem basis in the same amount
43 as provided in section ten of this article, plus a
44 reasonable expenses.

45 (c) The committee shall meet at least once during each
46 calendar month, or more often as may be necessary.

47 (d) A quorum of the committee shall require both
48 members, and the committee may only act officially by
49 a quorum.

50 (e) The committee may review any matter relative to
51 mine safety and mining technology, and may pursue
52 development and resolution of issues related thereto.
53 The committee may make recommendations to the
54 board for the promulgation of rules with general mining
55 industry application. Upon receipt of a unanimous
56 recommendation for rule making from the committee
57 and only thereon, the board may adopt or reject such
58 rule, without modification except as approved by the
59 committee: *Provided*, That any adopted rule shall not
60 reduce or compromise the level of safety or protection
61 below the level of safety or protection afforded by
62 applicable statutes and rules. When so promulgated,
63 such rules shall be effective, notwithstanding the
64 provisions of applicable statutes.

65 (f) (1) Upon application of a coal mine operator, or on
66 its own motion, the committee has the authority to
67 accept requests for site-specific rule making on a mine-
68 by-mine basis, and make unanimous recommendations
69 to the board for site-specific rules thereon. The commit-
70 tee has authority to approve a request if it concludes
71 that the request does not reduce or compromise the level
72 of safety or protection afforded miners below the level
73 of safety or protection afforded by any applicable
74 statutes or rules. Upon receipt of a request for site-
75 specific rule making, the committee may conduct an
76 investigation of the conditions in the specific mine in
77 question, which investigation shall include consultation
78 with the mine operator and authorized representatives
79 of the miners. Such authorized representatives of the
80 miners shall include any person designated by the
81 employees at the mine, persons employed by an em-
82 ployee organization representing one or more miners at
83 the mine, or a person designated as a representative by
84 one or more persons at the mine.

85 (2) If the committee determines to recommend a
86 request made pursuant to subdivision (1) of this
87 subsection, the committee shall provide the results of its
88 investigation to the board of coal mine health and safety
89 along with recommendations for the development of the
90 site-specific rules applicable to the individual mine,
91 which recommendations may include a written proposal
92 containing draft rules.

93 (3) Within thirty days of receipt of the committee's
94 recommendation, the board shall adopt or reject,
95 without modification, except as approved by the
96 committee, the committee's recommendation to promul-
97 gate site-specific rules applicable to an individual mine
98 adopting such site-specific rules only if it determines
99 that the application of the requested rule to such mine
100 will not reduce or compromise the level of safety or
101 protection afforded miners below that level of safety or
102 protection afforded by any applicable statutes. When so
103 promulgated, such rules shall be effective notwithstand-
104 ing the provisions of applicable statutes.

105 (g) The board shall consider all rules proposed by the
106 coal mine safety and technical review committee and
107 adopt or reject, without modification, except as ap-
108 proved by the committee, such rules, dispensing with
109 the preliminary procedures set forth in subdivisions (1)
110 through (7), subsection (a), section five; and, in addition,
111 with respect to site-specific rules also dispensing with
112 the procedures set forth in subdivisions (4) through (8),
113 subsection (c), section four of this article.

114 (h) In performing its functions, the committee has
115 access to the services of the coal mine health and safety
116 administrator appointed under section six of this article.
117 The director shall make clerical support and assistance
118 available in order that the committee can carry out its
119 duties. Upon the request of both members of the
120 committee, the health and safety administrator shall
121 draft proposed rules and reports or make investigations.

122 (i) The powers and duties provided for in this section
123 for the committee are not intended to replace or
124 precondition the authority of the board of coal mine

125 health and safety to act in accordance with sections one
126 through six and eight through ten of this article.

127 (j) Appropriations for the funding of the committee
128 and to effectuate this section shall be made to a budget
129 account hereby established for that purpose in the
130 general revenue fund. Such account shall be separate
131 from any accounts or appropriations for the office of
132 miners' health, safety and training.

§22A-6-8. Effect of rules.

1 The standard rules and any rules promulgated by the
2 board have the same force and effect of law as if enacted
3 by the Legislature as a part of article two of this chapter
4 and any violation of any such rule is a violation of law
5 or of a health or safety standard within the meaning of
6 this chapter.

§22A-6-9. Reports.

1 Prior to each regular session of the Legislature, the
2 board shall submit to the Legislature an annual report
3 upon the subject matter of this article, the progress
4 concerning the achievement of its purpose and any other
5 relevant information, including any recommendations it
6 deems appropriate.

§22A-6-10. Compensation and expenses of board members.

1 Each member of the board not otherwise employed by
2 the state shall be paid the same compensation, and each
3 member of the board shall be paid the expense reim-
4 bursement, as is paid to members of the Legislature for
5 their interim duties as recommended by the citizens
6 legislative compensation commission and authorized by
7 law for each day or portion thereof engaged in the
8 discharge of official duties. In the event the expenses are
9 paid by a third party, the member shall not be
10 reimbursed by the state. The reimbursement shall be
11 paid out of the state treasury upon a requisition upon
12 the state auditor, properly certified by the office of
13 miners' health, safety and training. No employer shall
14 prohibit a member of the board from exercising leave
15 of absence from his or her place of employment in order

16 to attend a meeting of the board or a meeting of a
17 subcommittee of the board, or to prepare for a meeting
18 of the board, any contract of employment to the contrary
19 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:

2 (a) The continued prosperity of the coal industry is of
3 primary importance to the state of West Virginia;

4 (b) The highest priority and concern of this Legisla-
5 ture and all in the coal mining industry must be the
6 health and safety of the industry's most valuable
7 resource — the miner;

8 (c) A high priority must also be given to increasing
9 the productivity and competitiveness of the mines in this
10 state;

11 (d) An inordinate number of miners, working on both
12 the surface in surface mining and in and at under-
13 ground mines, are injured during the first few months
14 of their experience in a mine;

15 (e) These injuries result in the loss of life and serious
16 injury to miners and are an impediment to the future
17 growth of West Virginia's coal industry;

18 (f) Injuries can be avoided through proper miner
19 training, education and certification;

20 (g) Mining is a technical occupation with various

21 specialties requiring individualized training and educa-
22 tion; and

23 (h) It is the general purpose of this article to:

24 (1) Require adequate training, education and mean-
25 ingful certification of all persons employed in coal
26 mines;

27 (2) Establish a board of miner training, education and
28 certification and empower it to require certain training
29 and education of all prospective miners and miners
30 certified by the state;

31 (3) Authorize a stipend for prospective miners
32 enrolled in this state's miner training, education and
33 certification program;

34 (4) Direct the director of the office of miners' health,
35 safety and training to apply and implement the stand-
36 ards set by the board of miner training, education and
37 certification by establishing programs for miner and
38 prospective miner education and training; and

39 (5) Provide for a program of continuing miner
40 education for all categories of certified miners.

§22A-7-3. Definitions.

1 Unless the context in which a word or phrase appears
2 clearly requires a different meaning, the words defined
3 in section two, article one of this chapter have when used
4 in this article the meaning therein assigned to them.
5 These words include, but are not limited to, the
6 following: Office, director, mine inspector, operator,
7 miner, shotfirer and certified electrician.

8 "Board" means the board of miner training, education
9 and certification established by section four of this
10 article.

11 "Mine" means any mine, including a "surface mine,"
12 as that term is defined in section three, article three,
13 chapter twenty-two of this code, and in section two,
14 article four of said chapter; and a "mine" as that term
15 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.

1 (a) There is hereby continued a board of miner
2 training, education and certification, which consists of
3 seven members, who are selected in the following
4 manner:

5 (1) One member shall be appointed by the governor
6 to represent the viewpoint of surface mine operators in
7 this state. When such member is to be appointed, the
8 governor shall request from the major association
9 representing surface coal operators in this state a list
10 of three nominees to the board. The governor shall select
11 from said nominees one person to serve on the board.
12 For purposes of this subsection, the major association
13 representing the surface coal operators in this state is
14 that association, if any, which represents surface mine
15 operators accounting for over one half of the coal
16 produced in surface mines in this state in the year prior
17 to that year in which the appointment is made.

18 (2) Two members shall be appointed by the governor
19 to represent the interests of the underground operators
20 of this state. When said members are to be appointed,
21 the governor shall request from the major association
22 representing the underground coal operators in this
23 state a list of six nominees to the board. The governor
24 shall select from said nominees two persons to serve on
25 the board. For purposes of this subsection, the major
26 association representing the underground operators in
27 this state is that association, if any, which represents
28 underground operators accounting for over one half of
29 the coal produced in underground mines in this state in
30 the year prior to that year in which the appointments
31 are made.

32 (3) Three members shall be appointed by the governor
33 who can reasonably be expected to represent the
34 interests of the working miners in this state. If the
35 major employee organization representing coal miners
36 in this state is divided into administrative districts, the
37 employee organization of each district shall, in

38 request by the governor, submit a list of three nominees
39 for membership on the board. If such major employee
40 organization is not so divided into administrative
41 districts, such employee organization shall, upon request
42 by the governor, submit a list of twelve nominees for
43 membership on the board. The governor shall make
44 such appointments from the persons so nominated:
45 *Provided*, That in the event nominations are made by
46 administrative districts, not more than one member
47 shall be appointed from the nominees of any one district
48 unless there are less than three such districts in this
49 state.

50 (4) The seventh member of the board, who serves as
51 chair, shall be the director of the office of miners' health,
52 safety and training.

53 (5) All appointments made by the governor under this
54 section shall be with the advice and consent of the
55 Senate: *Provided*, That persons so appointed while the
56 Senate of this state is not in session are permitted to
57 serve up to one year in an acting capacity, or until the
58 next session of the Legislature, whichever is less.

59 (b) The board shall be appointed by the governor.
60 Members serving on the effective date of this article
61 may continue on the board until their terms expire.
62 Appointed members serve for a term of three years. The
63 board shall meet at the call of the chair, at the call of
64 the director, or upon the request of any two members
65 of the board: *Provided*, That no meeting of the board for
66 any purpose shall be conducted unless the board
67 members are notified at least five days in advance of a
68 proposed meeting. In cases of an emergency, members
69 may be notified of a board meeting by the most
70 appropriate means of communication available.

71 (c) Whenever a vacancy on the board occurs, appoint-
72 ments shall be made in the manner prescribed in this
73 section: *Provided*, That in the case of an appointment to
74 fill a vacancy nominations shall be submitted to the
75 governor within thirty days after the vacancy occurs.
76 The vacancy shall be filled by the governor within thirty
77 days of receipt of the list of nominations.

78 (d) Each appointed member of the board shall be paid
79 the same compensation, and each member of the board
80 shall be paid the expense reimbursement, as is paid to
81 members of the Legislature for their interim duties as
82 recommended by the citizens legislative compensation
83 commission and authorized by law for each day or
84 portion thereof engaged in the discharge of official
85 duties. Any such amounts shall be paid out of the state
86 treasury upon a requisition upon the state auditor,
87 properly certified by such members of the board.

88 (e) A quorum of the board is four members. The board
89 may act officially by a majority of those members who
90 are present.

91 (f) The chair of the board shall be a nonvoting
92 member: *Provided*, That in cases of a tie, the chair shall
93 cast the deciding vote on the issue or issues under
94 consideration.

95 (g) The director of the office of miners' health, safety
96 and training shall select a member of the office's staff
97 to serve as the secretary to the board and the secretary
98 shall be present or send an authorized representative to
99 all meetings of the board.

§22A-7-5. Board powers and duties.

1 (a) The board shall establish criteria and standards
2 for a program of education, training and examination
3 to be required of all prospective miners and miners
4 prior to their certification in any of the various miner
5 specialties requiring certification, under this article or
6 any other provision of this code. Such specialties include,
7 but are not limited to, underground miner, surface
8 miner, apprentice, underground mine foreman-fire boss,
9 assistant underground mine foreman-fire boss, shotfirer,
10 mine electrician and belt examiner. Notwithstanding
11 the provisions of this section the director may by rule
12 further subdivide the classification for certification.

13 (b) The board may require certification in other miner
14 occupational specialties: *Provided*, That no new specialty
15 may be created by the board unless certification in a
16 new specialty is made desirable by action of the federal

17 government requiring certification in a specialty not
18 enumerated in this code.

19 (c) The board may establish criteria and standards for
20 a program of preemployment education and training to
21 be required of miners working on the surface at
22 underground mines who are not certified under the
23 provisions of this article or any other provision of this
24 code.

25 (d) The board shall set minimum standards for a
26 program of continuing education and training of
27 certified persons and other miners on an annual basis.
28 Prior to issuing said standards, the board shall conduct
29 public hearings at which the parties who may be
30 affected by its actions may be heard. Such education and
31 training shall be provided in a manner determined by
32 the director to be sufficient to meet the standards
33 established by the board.

34 (e) The board may, in conjunction with any state, local
35 or federal agency or any other person or institution,
36 provide for the payment of a stipend to prospective
37 miners enrolled in one or more of the programs of miner
38 education, training and certification provided for in this
39 article or any other provision of this code.

40 (f) The board may also, from time to time, conduct
41 such hearings and other oversight activities as may be
42 required to ensure full implementation of programs
43 established by it.

44 (g) Nothing in this article empowers the board to
45 revoke or suspend any certificate issued by the director
46 of the office of miners' health, safety and training.

47 (h) The board may, upon its own motion or whenever
48 requested to do so by the director, deem two certificates
49 issued by this state to be of equal value or deem training
50 provided or required by federal agencies to be sufficient
51 to meet training and education requirements set by it,
52 the director, or by the provisions of this code.

§22A-7-6. Duties of the director and office.

1 The director shall be empowered to promulgate,

2 pursuant to chapter twenty-nine-a of this code, such
3 reasonable rules as are necessary to establish a program
4 to implement the provisions of this article. Such
5 program shall include, but not be limited to, implemen-
6 tation of a program of instruction in each of the miner
7 occupational specialties and the conduct of examinations
8 to test each applicant's knowledge and understanding of
9 the training and instruction which he or she is required
10 to have prior to the receipt of a certificate.

11 The director is authorized and directed to utilize state
12 mine inspectors, mine safety instructors, the state mine
13 foreman examiner, private and public institutions of
14 education and such other persons as may be available
15 in implementing the program of instruction and
16 examinations.

17 The director may, at any time, make such recommen-
18 dations or supply such information to the board as he
19 or she may deem appropriate.

20 The director is authorized and directed to utilize such
21 state and federal moneys and personnel as may be
22 available to the office for educational and training
23 purposes in the implementation of the provisions of this
24 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.**

1 Except as hereinafter provided, no person shall w

2 or be employed for the purpose of performing normal
3 duties as a surface or underground miner in any mine
4 in this state unless the person holds at the time he or
5 she performs such duties a certificate of competency and
6 qualification or a permit of apprenticeship issued under
7 the provisions of this article.

§22A-8-2. Definitions.

1 For purposes of this article the term "surface miner"
2 means a person employed at a "surface mine," as that
3 term is defined in section three, article three, chapter
4 twenty-two of this code, and in section two, article four
5 of said chapter.

6 For purposes of this article, the term "underground
7 miner" means an underground worker in a bituminous
8 coal mine, except as hereinafter provided.

9 For purposes of this article, the term "board of miner
10 training, education and certification" means that board
11 established in article seven of this chapter.

§22A-8-3. Permit of apprenticeship-underground miner.

1 A permit of apprenticeship-underground miner shall
2 be issued by the director to any person who has
3 demonstrated by examination a knowledge of the
4 subjects and skills pertaining to employment in under-
5 ground mines, including, but not limited to, general
6 safety, first aid, miner and operator rights and respon-
7 sibilities, general principles of electricity, general
8 mining hazards, roof control, ventilation, mine health
9 and sanitation, mine mapping, state and federal mining
10 laws and regulations and such other subjects as may be
11 required by the board of miner training, education and
12 certification: *Provided*, That each applicant for said
13 permit shall complete a program of education and
14 training of at least eighty hours, which shall be
15 determined by the board of miner training, education
16 and certification and provided for and implemented by
17 the director: *Provided, however*, That if a sufficient
18 number of qualified applicants having successfully
19 completed the state training program provided by the
20 office of miners' health, safety and training are not

21 available, the operator may request approval from the
22 director to conduct the operator's own preemployment
23 training program so long as such training adequately
24 covers the minimum criteria determined by the board
25 and such trainees shall be eligible for the same
26 certification as provided for trainees undergoing
27 training provided by the state.

§22A-8-4. Permit of apprenticeship-surface miner.

1 A permit of apprenticeship-surface miner shall be
2 issued by the director to any person who has demon-
3 strated by examination a knowledge of the subjects and
4 skills pertaining to employment in the surface mining
5 industry, including, but not limited to, general safety,
6 first aid, miner and operator rights and responsibilities,
7 general principles of electricity, health and sanitation,
8 heavy equipment safety, high walls and spoil banks,
9 haulage, welding safety, tippie safety, state and federal
10 mining laws and regulations and such other subjects as
11 may be required by the board of miner training,
12 education and certification: *Provided*, That each appli-
13 cant for said permit shall complete a program of
14 education and training of at least forty hours, which
15 program shall be determined by the board of miner
16 training, education and certification and provided for
17 and implemented by the director: *Provided, however*,
18 That if a sufficient number of qualified applicants
19 having successfully completed the state training pro-
20 vided by the office of miners' health, safety and training
21 are not available, the operator may request approval
22 from the director to conduct the operator's own preem-
23 ployment training program so long as such training
24 adequately covers the minimum criteria determined by
25 the board and such trainees shall be eligible for the
26 same certification as provided for trainees undergoing
27 training provided by the state.

§22A-8-5. Supervision of apprentices.

1 Each holder of a permit of apprenticeship shall be
2 known as an apprentice. Any miner holding a certificate
3 of competency and qualification may have one person
4 working with him or her, and under his or her super-

5 vision and direction, as an apprentice, for the purpose
6 of learning and being instructed in the duties and
7 calling of mining. Any mine foreman or fire boss or
8 assistant mine foreman or fire boss may have three
9 persons working with him or her under his or her
10 supervision and direction, as apprentices, for the
11 purpose of learning and being instructed in the duties
12 and calling of mining: *Provided*, That a mine foreman,
13 assistant mine foreman or fire boss supervising apprentices
14 in an area where no coal is being produced or which
15 is outby the working section may have as many as five
16 apprentices under his or her supervision and direction,
17 as apprentices, for the purpose of learning and being
18 instructed in the duties and calling of mining or where
19 the operator is using a production section under
20 program for training of apprentice miners, approved by
21 the board of miner training, education and certification.

22 Every apprentice working at a surface mine shall be
23 at all times under the supervision and control of at least
24 one person who holds a certificate of competency and
25 qualification.

26 In all cases, it is the duty of every mine operator who
27 employs apprentices to ensure that such persons are
28 effectively supervised and to instruct such persons in
29 safe mining practices. Each apprentice shall wear a red
30 hat which identifies the apprentice as such while
31 employed at or near a mine. No person shall be
32 employed as an apprentice for a period in excess of eight
33 months, except that in the event of illness or injury, time
34 extensions shall be permitted as established by the
35 director of the office of miners' health, safety and
36 training.

**§22A-8-6. Certificate of competency and qualification —
Underground or surface miner.**

1 A certificate of competency and qualification as an
2 underground miner or as surface miner shall be issued
3 by the director to any person who has at least six
4 months' total experience as an apprentice and demon-
5 strated his or her competence as a miner by successful
6 completion of an examination given by the director or

7 his or her representative in a manner and place to be
8 determined by the board of miner training, education
9 and certification: *Provided*, That all examinations shall
10 be conducted in the English language and shall be of
11 a practical nature, so as to determine the competency
12 and qualifications of the applicant to engage in the
13 mining of coal with reasonable safety to the applicant
14 and fellow employees: *Provided, however*, That notice of
15 the time and place of such examination shall be given
16 to management at the mine, to the local union thereat
17 if there is a local union, and notice shall also be posted
18 at the place or places in the vicinity of the mine where
19 notices to employees are ordinarily posted. Examina-
20 tions shall also be held at such times and places, and
21 after such notice, as the board finds necessary to enable
22 all applicants for certificates to have an opportunity to
23 qualify for certification.

§22A-8-7. Refusal to issue certificate; appeal.

1 If the director or the director's representative finds
2 that an applicant is not qualified and competent, the
3 director shall so notify the applicant not more than ten
4 days after the date of examination.

5 Any applicant aggrieved by an action of the director
6 in failing or refusing to issue a certificate of qualifica-
7 tion and competency may, within ten days' notice of the
8 action complained of, appeal to the director who shall
9 promptly give the applicant a hearing and either affirm
10 the action or take such action as should have been taken.

§22A-8-8. Limitations of article.

1 All persons possessing certificates of qualification
2 heretofore issued by the department of mines of this
3 state, or by the division of mines and minerals, or
4 hereafter by the office of miners' health, safety and
5 training entitling them to act as mine foreman-fire
6 bosses, or assistant mine foreman-fire bosses, are
7 eligible to engage at any time as miners in the mines
8 of this state. Supervisory and technically trained
9 employees of the operator, whose work contributes only
10 indirectly to mine operations, are not required to possess
11 a miners' certificate.

12 Notwithstanding the provisions of this article, every
13 person working as a surface miner in this state on or
14 before the first day of July, one thousand nine hundred
15 seventy-four, shall, upon application to the director, be
16 issued a certificate of competency and qualification.

§22A-8-9. Violations; penalties.

1 Any person who knowingly works in or at a mine
2 without a certificate issued under the provision of this
3 article, any person who knowingly employs an uncerti-
4 fied miner to work in or at a coal mine in this state,
5 or, any operator who fails to insure the supervision of
6 miners holding a certificate of apprenticeship as
7 provided for in section five of this article, is guilty of
8 a misdemeanor, and, upon conviction thereof, shall be
9 fined not less than fifty dollars nor more than five
10 hundred dollars.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

§22A-9-1. Mine inspectors' examining board.

1 The mine inspectors' examining board is continued. It
2 consists of five members who, except for the public
3 representative on such board, shall be appointed by the
4 governor, by and with the advice and consent of the
5 Senate. Members so appointed may be removed only for
6 the same causes and in like manner as elective state
7 officers. One of the members of the board shall be a
8 representative of the public, who shall be the director
9 of the school of mines at West Virginia University. Two
10 members of the board shall be persons who by reason
11 of previous training and experience may reasonably be
12 said to represent the viewpoint of coal mine operators
13 and two members shall be persons who by reason of
14 previous training and experience may reasonably be
15 said to represent the viewpoint of coal mine workers.

16 The director of the office of miners' health, safety and
17 training is an ex officio member of the board and shall
18 serve as secretary of the board, without additional
19 compensation; but the director has no right to vote with
20 respect to any matter before the board.

21 The members of the board, except the public repre-

22 sentative, shall be appointed for overlapping terms of
23 eight years, except that the original appointments shall
24 be for terms of two, four, six and eight years, respec-
25 tively. Any member whose term expires may be
26 reappointed by the governor. Members serving on the
27 effective date of this article may continue to serve until
28 their terms expire.

29 Each member of the board shall be paid the same
30 compensation, and each member of the board shall be
31 paid the expense reimbursement, as is paid to members
32 of the Legislature for their interim duties as recom-
33 mended by the citizens legislative compensation com-
34 mission and authorized by law for each day or portion
35 thereof engaged in the discharge of official duties. Any
36 such amounts shall be paid out of the state treasury
37 upon a requisition upon the state auditor, properly
38 certified by such members of the board.

39 The public member is chair of the board. Members
40 of the board, before performing any duty, shall take and
41 subscribe to the oath required by section 5, article IV
42 of the constitution of West Virginia.

43 The mine inspectors' examining board shall meet at
44 such times and places as shall be designated by the
45 chair. It is the duty of the chair to call a meeting of the
46 board on the written request of three members or the
47 director of the office of miners' health, safety and
48 training. Notice of each meeting shall be given in
49 writing to each member by the secretary at least five
50 days in advance of the meeting. Three members is a
51 quorum for the transaction of business.

52 In addition to other duties expressly set forth
53 elsewhere in this article, the board shall:

54 (1) Establish, and from time to time revise, forms of
55 application for employment as mine inspectors and
56 forms for written examinations to test the qualifications
57 of candidates for that position;

58 (2) Adopt and promulgate reasonable rules relating to
59 the examination, qualification and certification of
60 candidates for appointment as mine inspectors,

61 hearing for removal of inspectors, required to be held
62 by section twelve, article one of this chapter. All of such
63 rules shall be printed and a copy thereof furnished by
64 the secretary of the board to any person upon request;

65 (3) Conduct, after public notice of the time and place
66 thereof, examinations of candidates for appointment as
67 mine inspector. By unanimous agreement of all
68 members of the board, one or more members of the
69 board or an employee of the office of miners' health,
70 safety and training may be designated to give a
71 candidate the written portion of the examination;

72 (4) Prepare and certify to the director of the office of
73 miners' health, safety and training a register of
74 qualified eligible candidates for appointment as mine
75 inspectors. The register shall list all qualified eligible
76 candidates in the order of their grades, the candidate
77 with the highest grade appearing at the top of the list.
78 After each meeting of the board held to examine such
79 candidates, and at least annually, the board shall
80 prepare and submit to the director of the office of
81 miners' health, safety and training a revised and
82 corrected register of qualified eligible candidates for
83 appointment as mine inspector, deleting from such
84 revised register all persons (a) who are no longer
85 residents of West Virginia, (b) who have allowed a
86 calendar year to expire without, in writing, indicating
87 their continued availability for such appointment, (c)
88 who have been passed over for appointment for three
89 years, (d) who have become ineligible for appointment
90 since the board originally certified that such person was
91 qualified and eligible for appointment as mine inspec-
92 tor, or (e) who, in the judgment of at least four members
93 of the board, should be removed from the register for
94 good cause;

95 (5) Cause the secretary of the board to keep and
96 preserve the written examination papers, manuscripts,
97 grading sheets, and other papers of all applicants for
98 appointment as mine inspector for such period of time
99 as may be established by the board. Specimens of the
100 examinations given, together with the correct solution
101 of each question, shall be preserved permanently by the

102 secretary of the board;

103 (6) Issue a letter or written notice of qualification to
104 each successful eligible candidate;

105 (7) Hear and determine proceedings for the removal
106 of mine inspectors in accordance with the provisions of
107 this article;

108 (8) Hear and determine appeals of mine inspectors
109 from suspension orders made by the director pursuant
110 to the provisions of section four, article one of this
111 chapter: *Provided*, That an aggrieved inspector, in order
112 to appeal from any order of suspension, shall file such
113 appeal in writing with the mine inspectors' examining
114 board not later than ten days after receipt of notice of
115 suspension. On such appeal the board shall affirm the
116 act of the director unless it be satisfied from a clear
117 preponderance of the evidence that the director has
118 acted arbitrarily;

119 (9) Make an annual report to the governor and the
120 director concerning the administration of mine inspec-
121 tion personnel in the state service, making such
122 recommendations as the board considers to be in the
123 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.

1 (a) Emergency medical services personnel shall be
2 employed on each shift at every mine that: (1) Employs
3 more than ten employees and (2) more than eight
4 persons are present on the shift. Said emergency
5 medical services personnel shall be employed at their
6 regular duties at a central location, or when more than
7 one such person is required pursuant to subsection (b)
8 or (c) at locations, convenient from quick response to
9 emergencies; and further shall have available to them
10 at all times such equipment as shall be prescribed by
11 the director of the office of miners' health, safety and
12 training, in consultation with the commissioner of
13 bureau of public health.

14 (b) After the first day of July, one thousand nine
15 hundred eighty-five, emergency medical services per-
16 sonnel shall be defined as a person who is certified as
17 an emergency medical technician-mining, emergency
18 medical technician, emergency medical technician-
19 ambulance, emergency medical technician-interme-
20 diate, mobile intensive care paramedic, emergency
21 medical technician-paramedic as defined in section
22 three, article four-c, chapter sixteen of this code, or
23 physician assistant as defined in section sixteen, article
24 three, chapter thirty of this code. At least one emer-
25 gency medical services personnel shall be employed at
26 a mine for every fifty employees or any part thereof who
27 are engaged at any time, in the extraction, production
28 or preparation of coal.

29 (c) A training course designed specifically for certi-
30 fication of emergency medical technician-mining, shall
31 be developed at the earliest practicable time by the
32 commissioner of the bureau of public health in consul-
33 tation with the board of miner training, education and
34 certification. The training course for initial certification
35 as an emergency medical technician-mining shall not be
36 less than sixty hours, which shall include, but is not
37 limited to, mast trouser application, basic life support
38 skills and emergency room observation or other equival-
39 ent practical exposure to emergencies as prescribed by
40 the commissioner of the bureau of public health.

41 (d) The maintenance of a valid emergency medical
42 technician-mining certificate may be accomplished
43 without taking a three year recertification examination:
44 *Provided,* That such emergency medical technician-
45 mining personnel completes an eight hour annual
46 retraining and testing program prescribed by the
47 commissioner of the bureau of public health in consul-
48 tation with the board of miner training, education and
49 certification.

50 (e) All emergency medical services personnel cur-
51 rently certified as emergency medical service attendants
52 or emergency medical technicians shall receive certifi-
53 cation as emergency medical technicians without
54 further training and examination for the remainder of

55 their three-year certification period; such emergency
56 medical service attendant or emergency medical tech-
57 nician may upon expiration of such certification become
58 certified as an emergency medical technician-mining
59 upon completion of the eight hour retraining program
60 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
2 employee within six months of the date of employment
3 with the opportunity for first-aid training as prescribed
4 by the director of the office of miners' health, safety and
5 training unless such employee has previously received
6 such training. Each coal mine employee shall be
7 required to take refresher first-aid training of not less
8 than five hours within each twenty-four months of
9 employment. The employee shall be paid regular wages,
10 or overtime pay if applicable, for all periods of first-aid
11 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-1-8. General provisions governing discovery.
§22B-1-9. General provisions for judicial review.
§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
2 the purpose of this chapter to provide fair, efficient and
3 equitable treatment of appeals of environmental en-

4 enforcement and permit actions to the boards set forth
5 herein.

6 It is also the intent of the Legislature to consolidate
7 and combine the legal, technical and support personnel
8 of the three boards, to provide for consistent appellate
9 processes and to maintain continuity of the boards'
10 functions and membership. The boards shall share
11 physical facilities, hearing rooms, technical and support
12 staff and general overhead. In addition, it is the policy
13 of this state to retain and maintain adequate funding
14 and sufficient support personnel to ensure knowledge-
15 able and informed decisions.

16 It is the policy of this state that administrative
17 hearings and appeals be conducted in a quasi-judicial
18 manner providing for discovery and case management.
19 The appellate functions of the several environmental
20 boards should be accomplished with similar procedural
21 rules designed to assure expeditious and equitable
22 hearings and decisions. Further, there shall be a central
23 depository for appellate information and the filing of
24 appeals. It is also the policy of this state that the rule-
25 making authority set forth in this chapter be imple-
26 mented in an efficient manner consistent with the public
27 policy of this state.

28 Furthermore, it is the intent of the Legislature that
29 all actions taken pursuant to this chapter assure
30 implementation of the policies set forth in this chapter
31 and chapter twenty-two of this code.

§22B-1-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this chapter the following terms
3 have the meanings ascribed to them:

4 (1) "Board" or "boards" means the applicable board
5 continued pursuant to the provisions of this chapter,
6 including the air quality board, the environmental
7 quality board and the surface mine board;

8 (2) "Chief" means the chief of the office of water
9 resources or the chief of the office of waste management
10 or the chief of the office of air quality or the chief of

11 the office of oil and gas or the chief of the office of
12 mining and reclamation or any other person who has
13 been delegated authority by the director, all of the
14 division of environmental protection, as the case may be;

15 (3) "Director" means the director of the division of
16 environmental protection or the director's designated
17 representative;

18 (4) "Division" means the division of environmental
19 protection of the department of commerce, labor and
20 environmental resources;

21 (5) "Member" means an individual appointed to one
22 of the boards or the ex officio members of the air quality
23 board; and

24 (6) "Person" or "persons" means any public or private
25 corporation, institution, association, firm or company
26 organized or existing under the laws of this or any other
27 state or country; the state of West Virginia; governmen-
28 tal agency; political subdivision; county commission;
29 municipal corporation; industry; sanitary district;
30 public service district; drainage district; soil conserva-
31 tion district; watershed improvement district; partner-
32 ship; trust; estate; person or individual; group of persons
33 or individuals acting individually or as a group; or any
34 other legal entity whatever.

§22B-1-3. General administration.

1 (a) The chairs of the boards shall exercise the
2 following powers, authorities and duties:

3 (1) To provide for the management of facilities and
4 personnel of the boards;

5 (2) To employ, terminate and compensate support
6 staff for the boards and to fix the compensation of that
7 staff, which shall be paid out of the state treasury, upon
8 the requisition of moneys appropriated for such pur-
9 poses, or from joint funds as the chairs may expend;

10 (3) To the extent permitted by and consistent with
11 federal or state law, to consolidate, combine or contrib-
12 ute funds of the boards to maintain the central physical
13 facilities and technical and support personnel;

14 (4) To the extent permitted by and consistent with
15 federal or state law, to consolidate or combine any
16 functions of the boards;

17 (5) To secure funding with the assistance of the chairs
18 from whatever source permissible by law;

19 (6) To secure office space, purchase materials and
20 supplies, and enter into contracts necessary, incident or
21 convenient to the accomplishment of the purposes of this
22 chapter;

23 (7) To expend funds in the name of any of the boards;

24 (8) To consult with the secretary of the department
25 of commerce, labor and environmental resources, or the
26 successor agency or office, or the director of the division
27 of environmental protection who shall cooperate with
28 the chairs in order to effectuate the powers, authorities
29 and duties set forth in this section;

30 (9) To hire individuals, as may be necessary, to serve
31 as hearing examiners for the boards; and

32 (10) To provide for an individual to serve as the clerk
33 to the boards.

34 (b) The clerk to the boards has the following duties,
35 to be exercised in consultation with the chairs:

36 (1) To schedule meetings and hearings and enter all
37 orders properly acted upon;

38 (2) To receive and send all papers, proceedings,
39 notices, motions and filings;

40 (3) To the maximum extent practicable, and with the
41 cooperation of the staff and hearing examiners, to assist
42 the boards in the case management of appeals and
43 proceedings;

44 (4) To maintain records of all proceedings of the
45 boards which shall be entered in a permanent record,
46 properly indexed, and the same shall be carefully
47 preserved for each board. Copies of orders entered by
48 the boards, as well as copies of papers or documents
49 filed with it, shall be maintained in a central location;

50 (5) To direct and fulfill information requests subject
51 to chapter twenty-nine-b of this code and subject to
52 applicable confidentiality rules set forth in the statutes
53 and rules; and

54 (6) To perform such other duty or function as may be
55 directed by the chairs to carry out the purpose of this
56 chapter.

57 (c) The boards shall establish procedural rules in
58 accordance with the provisions of chapter twenty-nine-
59 a of this code for the regulation of the conduct of all
60 proceedings before the boards. To the maximum extent
61 practicable, the procedural rules will be identical for
62 each board. The procedural rules of the boards shall be
63 contained in a single set of rules for filing with the
64 secretary of state.

§22B-1-4. General provisions applicable to all boards and board members.

1 (a) Each member of a board, other than an ex officio
2 member, shall be paid the same compensation and
3 expense reimbursement as is paid to members of the
4 Legislature for their interim duties as recommended by
5 the citizens legislative compensation commission and
6 authorized by law for each day or portion thereof
7 engaged in the discharge of official duties.

8 (b) At its first meeting in each fiscal year each board
9 shall elect from its membership a chair and vice chair
10 to act during such fiscal year. The chair shall preside
11 over the meetings and hearings of the board. The vice
12 chair shall assume the chair's duties in the absence of
13 the chair. All of the meetings shall be general meetings
14 for the consideration of any and all matters which may
15 properly come before the board.

16 (c) For the environmental quality board and the air
17 quality board, a majority of each board is a quorum for
18 the transaction of business and an affirmative vote of a
19 majority of the board members present is required for
20 any motion to carry or decision of the board to be
21 effective. For the surface mine board four members is
22 a quorum and no action of the board is valid unless it

23 has the concurrence of at least four members. For all
24 boards, in the event of a tie vote on the ultimate decision
25 which is the subject of an appeal before the board, the
26 decision of the chief or the director, as the case may be,
27 shall be affirmed. Each board shall meet at such times
28 and places as it may determine and shall meet on call
29 of its chair. It is the duty of the chair to call a meeting
30 of the board within thirty days on the written request
31 of three members thereof.

32 (d) In all cases where the filing of documents, papers,
33 motions and notices with the board is required or a
34 condition precedent to board action, filing with the clerk
35 constitutes filing with the board.

§22B-1-5. General powers and duties of boards.

1 In addition to all other powers and duties of the air
2 quality board, environmental quality board and surface
3 mine board as prescribed in this chapter or elsewhere
4 by law, the boards created or continued pursuant to the
5 provisions of this chapter have and may exercise the
6 following powers and authority and shall perform the
7 following duties:

8 (1) To consider appeals, subpoena witnesses, admin-
9 ister oaths, make investigations and hold hearings
10 relevant to matters properly pending before a board;

11 (2) On any matter properly pending before it when-
12 ever the parties achieve agreement that a person will
13 cease and desist in any act resulting in the discharge
14 or emission of pollutants or do any act to reduce or
15 eliminate such discharge or emission, or do any act to
16 achieve compliance with this chapter or chapter twenty-
17 two or rules promulgated thereunder or do any act to
18 resolve an issue pending before a board, such agree-
19 ment, upon approval of the board, shall be embodied in
20 an order and entered as, and has the same effect as, an
21 order entered after a hearing as provided in section
22 seven of this article;

23 (3) To enter and inspect any property, premise or
24 place on or at which a source or activity is located or
25 is being constructed, installed or established at any

26 reasonable time for the purpose of ascertaining the state
27 of compliance with this chapter or chapter twenty-two
28 and the rules promulgated thereunder: *Provided, That*
29 nothing contained in this section eliminates any obliga-
30 tion to follow any process that may be required by law;
31 and

32 (4) To perform any and all acts within the appropriate
33 jurisdiction of each board to secure for the benefit of the
34 state participation in appropriate federally delegated
35 programs.

§22B-1-6. General procedural provisions applicable to all boards.

1 (a) Any appeal hearing brought pursuant to this
2 chapter shall be conducted by a quorum of the board,
3 but the parties may by stipulation agree to take evidence
4 before any one or more members of the board or a
5 hearing examiner employed by the board. For the
6 purpose of conducting such appeal hearing, any member
7 of a board and the clerk has the power and authority
8 to issue subpoenas and subpoenas duces tecum in the
9 name of the board, in accordance with the provisions of
10 section one, article five, chapter twenty-nine-a of this
11 code. All subpoenas and subpoenas duces tecum shall be
12 issued and served within the time and for the fees and
13 shall be enforced, as specified in section one, article five
14 of said chapter twenty-nine-a, and all of the provisions
15 of said section one dealing with subpoenas and subpo-
16 enas duces tecum apply to subpoenas and subpoenas
17 duces tecum issued for the purpose of an appeal hearing
18 hereunder.

19 (b) In case of disobedience or neglect of any subpoena
20 or subpoena duces tecum served on any person, or the
21 refusal of any witness to testify to any matter regarding
22 which he or she may be lawfully interrogated, the
23 circuit court of the county in which the disobedience,
24 neglect or refusal occurs, on application of the board or
25 any member thereof, shall compel obedience by attach-
26 ment proceedings for contempt as in the case of
27 disobedience of the requirements of a subpoena or
28 subpoena duces tecum issued from the court of a refusal

29 to testify therein.

30 (c) In accordance with the provisions of section one,
31 article five of said chapter twenty-nine-a, all of the
32 testimony at any hearing held by a board shall be
33 recorded by stenographic notes and characters or by
34 mechanical or electronic means. If requested by any
35 party to an appeal, the hearing and any testimony
36 offered shall be transcribed in which event the cost of
37 transcribing shall be paid by the party requesting the
38 transcript. The record shall include all of the testimony
39 and other evidence and the rulings on the admissibility
40 of evidence, but any party may at the time object to the
41 admission of any evidence and except to the rulings of
42 the board thereon, and if the board refuses to admit
43 evidence the party offering the same may make a
44 proffer thereof, and the proffer shall be made a part of
45 the record of the hearing.

46 (d) All of the pertinent provisions of article five,
47 chapter twenty-nine-a of this code, apply to and govern
48 the hearing on appeal authorized by the provisions of
49 this section and the administrative procedures in
50 connection with and following such hearing, with like
51 effect as if the provisions of said article five were set
52 forth in extenso in this section, except as specifically
53 provided herein.

§22B-1-7. Appeals to boards.

1 (a) The provisions of this section are applicable to all
2 appeals to the boards, with the modifications or
3 exceptions set forth in this section.

4 (b) Any person authorized by statute to seek review
5 of an order, permit or official action of the chief of air
6 quality, the chief of water resources, the chief of waste
7 management, the chief of mining and reclamation, the
8 chief of oil and gas, or the director may appeal to the
9 air quality board, the environmental quality board or
10 the surface mine board, as appropriate, in accordance
11 with this section. The person so appealing shall be
12 known as the appellant and the appropriate chief or the
13 director shall be known as the appellee.

14 (c) An appeal filed with a board by a person subject
15 to an order, permit or official action shall be perfected
16 by filing a notice of appeal with the board within thirty
17 days after the date upon which such order, permit or
18 official action was received by such person as demon-
19 strated by the date of receipt of registered or certified
20 mail or of personal service. For parties entitled to
21 appeal other than the person subject to such order,
22 permit or official action, an appeal shall be perfected by
23 filing a notice of appeal with the board within thirty
24 days after the date upon which service was complete.
25 For purposes of this subsection, service is complete upon
26 tendering a copy to the designated agent or to the
27 individual who, based upon reasonable inquiry, appears
28 to be in charge of the facility or activity involved, or to
29 the permittee; or by tendering a copy by registered or
30 certified mail, return receipt requested to the last
31 known address of the person on record with the agency.
32 Service is not incomplete by refusal to accept. Notice of
33 appeal must be filed in a form prescribed by the rule
34 of the board for such purpose. Persons entitled to appeal
35 may also file a notice of appeal related to the failure or
36 refusal of the appropriate chief or the director to act
37 within a specified time on an application for a permit;
38 such notice of appeal shall be filed within a reasonable
39 time.

40 (d) The filing of the notice of appeal does not stay or
41 suspend the effectiveness or execution of the order,
42 permit or official action appealed from, except that the
43 filing of a notice of appeal regarding a notice of intent
44 to suspend, modify or revoke and reissue a permit,
45 issued pursuant to the provisions of section five, article
46 five, chapter twenty-two of this code, does stay the notice
47 of intent from the date of issuance pending a final
48 decision of the board. If it appears to the appropriate
49 chief, the director or the board that an unjust hardship
50 to the appellant will result from the execution or
51 implementation of a chief's or director's order, permit
52 or official action pending determination of the appeal,
53 the appropriate chief, the director or the board, as the
54 case may be, may grant a stay or suspension of such
55 order, permit or official action and fix its terms. A

56 decision shall be made on any request for a stay within
57 five days of the date of receipt of the request for stay.
58 The notice of appeal shall set forth the terms and
59 conditions of the order, permit or official action
60 complained of and the grounds upon which the appeal
61 is based. A copy of the notice of appeal shall be filed
62 by the board with the appropriate chief or director
63 within seven days after the notice of appeal is filed with
64 the board.

65 (e) Within fourteen days after receipt of a copy of the
66 notice of appeal, the appropriate chief or the director as
67 the case may be, shall prepare and certify to the board
68 a complete record of the proceedings out of which the
69 appeal arises including all documents and correspon-
70 dence in the applicable files relating to the matter in
71 question. With the consent of the board and upon such
72 terms and conditions as the board may prescribe, any
73 person affected by the matter pending before the board
74 may by petition intervene as a party appellant or
75 appellee. In any appeal brought by a third party, the
76 permittee or regulated entity shall be granted interve-
77 nor status as a matter of right where issuance of a
78 permit or permit status is the subject of the appeal. The
79 board shall hear the appeal de novo, and evidence may
80 be offered on behalf of the appellant, appellee and by
81 any intervenors. The board may visit the site of the
82 activity or proposed activity which is the subject of the
83 hearing and take such additional evidence as it consid-
84 ers necessary: *Provided*, That all parties and intervenors
85 are given notice of the visit and are given an opportunity
86 to accompany the board. The appeal hearing shall be
87 held at such location as may be approved by the board
88 including Kanawha County, the county wherein the
89 source, activity or facility involved is located or such
90 other location as may be agreed to among the parties.

91 (f) Any such hearing shall be held within thirty days
92 after the date upon which the board received the timely
93 notice of appeal, unless there is a postponement or
94 continuance. The board may postpone or continue any
95 hearing upon its own motion, or upon application of the
96 appellant, the appellee or any intervenors for good cause

97 shown. The chief or the director, as appropriate, may
98 be represented by counsel. If so represented they shall
99 be represented by the attorney general or with the prior
100 written approval of the attorney general may employ
101 counsel who shall be a special assistant attorney general.
102 At any such hearing the appellant and any intervenor
103 may represent themselves or be represented by an
104 attorney-at-law admitted to practice before the supreme
105 court of appeals.

106 (g) After such hearing and consideration of all the
107 testimony, evidence and record in the case:

108 (1) The environmental quality board or the air quality
109 board, as the case may be, shall make and enter a
110 written order affirming, modifying or vacating the
111 order, permit or official action of the chief or director,
112 or shall make and enter such order as the chief or
113 director should have entered, or shall make and enter
114 an order approving or modifying the terms and condi-
115 tions of any permit issued; and

116 (2) The surface mine board shall make and enter a
117 written order affirming the decision appealed from if
118 the board finds that the decision was lawful and
119 reasonable, or if the board finds that the decision was
120 not supported by substantial evidence in the record
121 considered as a whole, it shall make and enter a written
122 order reversing or modifying the decision of the
123 director.

124 (h) In appeals of an order, permit or official action
125 taken pursuant to articles three, six, eleven, twelve,
126 thirteen, fifteen, chapter twenty-two of this code, the
127 environmental quality board established in article three
128 of this chapter, shall take into consideration, in deter-
129 mining its course of action in accordance with subsec-
130 tion (g) of this section, not only the factors which the
131 appropriate chief or the director was authorized to
132 consider in issuing an order, in granting or denying a
133 permit, in fixing the terms and conditions of any permit,
134 or in taking other official action, but also the economic
135 feasibility of treating or controlling, or both, the
136 discharge of solid waste, sewage, industrial wastes or

137 other wastes involved.

138 (i) An order of a board shall be accompanied by
139 findings of fact and conclusions of law as specified in
140 section three, article five, chapter twenty-nine-a of this
141 code, and a copy of such order and accompanying
142 findings and conclusions shall be served upon the
143 appellant, and any intervenors, and their attorneys of
144 record, if any, and upon the appellee in person or by
145 registered or certified mail.

146 (j) The board shall also cause a notice to be served
147 with the copy of such order, which notice shall advise
148 the appellant, the appellee and any intervenors of their
149 right to judicial review, in accordance with the provi-
150 sions of this chapter. The order of the board shall be
151 final unless vacated or modified upon judicial review
152 thereof in accordance with the provisions of this chapter.

§22B-1-8. General provisions governing discovery.

1 (a) Parties to a hearing may petition a board to obtain
2 discovery regarding any matter, not privileged, which
3 is relevant to the subject matter involved in the pending
4 hearing, subject to the procedural rules of the boards
5 and the limitations contained herein.

6 (b) The following limited discovery may be com-
7 menced and obtained by any party to the hearing
8 without leave of a board:

9 (1) Requests for disclosure of the identity of each
10 person expected to be called as a witness at the hearing
11 and, at a minimum, a statement setting forth with
12 specificity the facts alleged, the anticipated testimony
13 and the identity of any documents relied upon in support
14 of the anticipated testimony of each witness and whether
15 that witness will be called as an expert; and

16 (2) Requests to identify with reasonable particularity
17 the issues which are the subject of the hearing.

18 (c) Any party may object to a request or manner of
19 discovery authorized by this section provided the
20 objection sets forth with particularity the grounds for
21 the objection. A party may move the board to rule on

22 the propriety of the discovery or objection and request
23 the board to enter an order as the board deems
24 appropriate.

25 (d) Any party may seek, by motion, a protective order
26 from the discovery sought by another party and, if
27 required, the board may protect a party from unwar-
28 ranted discovery. Upon motion of a party or upon a
29 board's own motion, the board may enter such protective
30 order limiting discovery, which order shall not be
31 inconsistent with the standards for protective orders set
32 forth in the West Virginia rules of civil procedure.

33 (e) Upon motion of a party or upon a board's own
34 motion, the board may authorize or order any additional
35 discovery as may be appropriate or necessary to identify
36 or refine the issues which are the subject of the hearing.
37 Upon agreement of the parties, or upon order of a board,
38 the board may authorize or order the taking of the
39 deposition of any witness with information or knowledge
40 relevant to the subject matter of the hearing which
41 deposition may be noticed by subpoena or subpoena
42 duces tecum.

43 (f) Upon motion of a party or upon a board's own
44 motion, a board may hold a prehearing conference, as
45 soon as practicable after the commencement of an
46 appeal, which conference shall be for purposes of
47 promoting a fair, efficient and expeditious hearing
48 process. Following the conference, the board may enter
49 an order or take such other action as may be appropriate
50 with respect to discovery issues.

51 (g) For purposes of this section, in all cases where the
52 board is authorized or empowered to issue orders, a
53 member of the board, with the concurrence of a majority
54 of the board, may act on behalf of the board, the board
55 may act itself or through its clerk or hearing examiner,
56 as such person is authorized to do so by the board.

57 (h) Every request for discovery or response or
58 objection thereto made by a party shall be signed in the
59 same manner as is provided for in Rule 26 of the West
60 Virginia rules of civil procedure.

§22B-1-9. General provisions for judicial review.

1 (a) Any person or a chief or the director, as the case
2 may be, adversely affected by an order made and
3 entered by a board after an appeal hearing, held in
4 accordance with the provisions of this chapter, is
5 entitled to judicial review thereof. All of the provisions
6 of section four, article five, chapter twenty-nine-a of this
7 code apply to and govern the review with like effect as
8 if the provisions of said section four were set forth in
9 extenso in this section, with the modifications or
10 exceptions set forth in this chapter.

11 (b) The judgment of the circuit court is final unless
12 reversed, vacated or modified on appeal to the supreme
13 court of appeals, in accordance with the provisions of
14 section one, article six, chapter twenty-nine-a of this
15 code, except that notwithstanding the provisions of said
16 section one the petition seeking such review shall be
17 filed with said supreme court of appeals within ninety
18 days from the date of entry of the judgment of the
19 circuit court.

20 (c) Legal counsel and services for a chief or the
21 director in all appeal proceedings in the circuit court
22 and in the supreme court of appeals of this state shall
23 be provided by the attorney general or his or her
24 assistants or by the prosecuting attorney of the county
25 in which the appeal is taken, all without additional
26 compensation, or with the prior written approval of the
27 attorney general, a chief or the director may employ
28 legal counsel.

§22B-1-10. Confidentiality.

1 With respect to any information obtained in the
2 course of an appeal, all members of boards and all
3 personnel employed thereby shall maintain confidential-
4 ity to the same extent required of the chief or director.

§22B-1-11. Conflict of interest.

1 In addition to the specific conflict of interest provi-
2 sions set forth in this chapter, any member who has any
3 financial interest in the outcome of a decision of the
4 board shall not vote or act on any matter which shall

5 directly affect the member's personal interests.

§22B-1-12. Savings provisions.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds, author-
3 izations and privileges which have been issued, made,
4 granted or allowed to become effective by a board in the
5 performance of functions which are affected by the
6 enactment of this chapter, and which are in effect on
7 the date this chapter becomes effective, shall continue
8 in effect according to their terms until modified,
9 terminated, superseded, set aside or revoked in accor-
10 dance with the law.

11 (b) The provisions of this chapter do not affect any
12 appeals, proceedings, including notices of proposed rule
13 making, or any application for any license, permit,
14 certificate or financial assistance pending on the
15 effective date of this chapter, before any of the boards.
16 Orders shall be issued in such proceedings, appeals shall
17 be taken therefrom, and payments shall be made
18 pursuant to such orders, as if this chapter had not been
19 enacted; and orders issued in any such proceedings shall
20 continue in effect until modified, terminated, super-
21 seded or revoked by the board within which jurisdiction
22 to do so is vested, by a court of competent jurisdiction
23 or by operation of law. Nothing in this subsection
24 prohibits the discontinuance or modification of any such
25 proceeding under the same terms and conditions and to
26 the same extent that the proceeding could have been
27 discontinued or modified if this chapter had not been
28 enacted.

29 (c) Orders and actions of a board in the exercise of
30 functions amended by under this chapter are subject to
31 judicial review to the same extent and in the same
32 manner as if such orders and actions had been by a
33 board exercising such functions immediately preceding
34 the enactment of this chapter.

ARTICLE 2. AIR QUALITY BOARD.

§22B-2-1. Air quality board; composition; appointment and te
members; vacancies.

§22B-2-2. Authority to receive money.

§22B-2-3. Judicial review of air quality board orders.

§22B-2-1. Air quality board; composition; appointment and terms of members; vacancies.

1 (a) On and after the effective date of this article, the
2 "air pollution control commission," heretofore created,
3 shall continue in existence and hereafter shall be known
4 as the "air quality board."

5 (b) The board shall be composed of seven members,
6 including the commissioner of the bureau of public
7 health and the commissioner of agriculture, or their
8 designees, both of whom are members ex officio, and
9 five other members, who shall be appointed by the
10 governor with the advice and consent of the Senate.
11 Each appointed member of the board who is serving in
12 such capacity on the effective date of this article shall
13 continue to serve on the board until his or her term ends
14 or he or she resigns or is otherwise unable to serve. As
15 each such member's term ends, or that member is
16 unable to serve, a qualified successor shall be appointed
17 by the governor with the advice and consent of the
18 Senate. Two of the members shall be representative of
19 industries engaged in business in this state, and three
20 of the members shall be representative of the public at
21 large.

22 (c) The appointed members of the board shall be
23 appointed for overlapping terms of five years, except
24 that the original appointments shall be for terms of one,
25 two, three, four and five years, respectively. Any
26 member whose term expires may be reappointed by the
27 governor. In the event a board member is unable to
28 complete the term, the governor shall appoint a person
29 with similar qualification to complete the term. The
30 successor of any board member appointed pursuant to
31 this article must possess the qualification as prescribed
32 herein. Each vacancy occurring in the office of a
33 member of the board shall be filled by appointment
34 within sixty days after such vacancy occurs.

§22B-2-2. Authority to receive money.

1 In addition to all other powers and duties of the air

2 quality board, as prescribed in this chapter or elsewhere
3 by law, the board has and may exercise the power and
4 authority to receive any money as a result of the
5 resolution of any case on appeal which shall be deposited
6 in the state treasury to the credit of the office of air
7 pollution education and environment fund provided for
8 in section four, article five, chapter twenty-two of this
9 code.

§22B-2-3. Judicial review of air quality board orders.

1 All of the provisions of section nine, article one of this
2 chapter apply to and govern such review with like effect
3 as if the provisions of said section nine were set forth
4 in extenso in this section, with the following modifica-
5 tions or exceptions:

6 (1) As to cases involving an order denying an
7 application for a permit, or approving or modifying the
8 terms and conditions of a permit, the petition for review
9 shall be filed in the circuit court of Kanawha County;
10 and

11 (2) As to all other cases, the petition shall be filed, in
12 the circuit court of the county wherein the alleged
13 statutory air pollution complained of originated or in
14 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.

§22B-3-2. Authority of board; additional definitions.

§22B-3-3. Judicial review.

§22B-3-4. Environmental quality board rule-making authority.

**§22B-3-1. Environmental quality board; composition and
organization; appointment, qualifications,
terms, vacancies.**

1 (a) On and after the effective date of this article, the
2 "water resources board," heretofore created, shall
3 continue in existence and hereafter shall be known as
4 the "environmental quality board."

5 (b) The board shall be composed of five members who
6 shall be appointed by the governor with the advice and
7 consent of the Senate. Not more than three members of

8 the board shall be of the same political party. Each
9 appointed member of the board who is serving in such
10 capacity on the effective date of this article shall
11 continue to serve on the board until his or her term ends
12 or he or she resigns or is otherwise unable to serve. As
13 each member's term ends, or that member is unable to
14 serve, a qualified successor shall be appointed by the
15 governor with the advice and consent of the Senate.
16 Individuals appointed to the board shall be persons who
17 by reason of previous training and experience are
18 knowledgeable in the husbandry of the state's water
19 resources and with at least one member with experience
20 in industrial pollution control.

21 (c) No member of the board shall receive or, during
22 the two years next preceding the member of the board's
23 appointment, shall have received a significant portion of
24 the member of the board's income directly or indirectly
25 from a national pollutant discharge elimination system
26 permit holder or an applicant for a permit issued under
27 any of the provisions of article eleven, chapter twenty-
28 two of this code. For the purposes of this subsection: (1)
29 The term "significant portion of the member of the
30 board's income" means ten percent of gross personal
31 income for a calendar year, except that it means fifty
32 percent of gross personal income for a calendar year if
33 the recipient is over sixty years of age and is receiving
34 such portion pursuant to retirement, a pension or
35 similar arrangement; (2) the term "income" includes
36 retirement benefits, consultant fees and stock dividends;
37 (3) income is not received "directly or indirectly" from
38 "permit holders" or "applicants for a permit" where it
39 is derived from mutual-fund payments or from other
40 diversified investments with respect to which the
41 recipient does not know the identity of the primary
42 sources of income; and (4) the terms "permit holders"
43 and "applicants for a permit" do not include any
44 university or college operated by this state or political
45 subdivision of this state.

46 (d) The members of the board shall be appointed for
47 overlapping terms of five years, except that the original
48 appointments shall be for terms of one, two, three, four

49 and five years, respectively. Any member whose term
50 expires may be reappointed by the governor. In the
51 event a board member is unable to complete the term,
52 the governor shall appoint a person with similar
53 qualification to complete the term. The successor of any
54 board member appointed pursuant to this article must
55 possess the qualification as prescribed herein. Each
56 vacancy occurring in the office of a member of the board
57 shall be filled by appointment within sixty days after
58 such vacancy occurs.

§22B-3-2. Authority of board; additional definitions.

1 (a) In addition to all other powers and duties of the
2 environmental quality board, as prescribed in this
3 chapter or elsewhere by law, the board has and may
4 exercise the powers and authorities:

5 (1) To receive any money as a result of the resolution
6 of any case on appeal which shall be deposited in the
7 state treasury to the credit of the water quality
8 management fund created pursuant to section ten,
9 article eleven, chapter twenty-two of this code;

10 (2) To advise, consult and cooperate with other
11 agencies of the state, political subdivisions of the state,
12 other states, agencies of the federal government,
13 industries and with affected groups and take such other
14 action as may be appropriate in regard to its rule-
15 making authority; and

16 (3) To encourage and conduct such studies and
17 research relating to pollution control and abatement as
18 a board may deem advisable and necessary in regard
19 to its rule-making authority.

20 (b) All the terms defined in section two, article eleven,
21 chapter twenty-two of this code, are applicable to this
22 article and have the meanings ascribed to them therein.

§22B-3-3. Judicial review.

1 All of the provisions of section nine, article one of this
2 chapter apply to and govern such review with like effect
3 as if the provisions of said section nine were set forth
4 in extenso in this section, with the following modifica-

5 tions or exceptions:

6 (1) As to cases involving an order denying an
7 application for a permit, or approving or modifying the
8 terms and conditions of a permit, the petition shall be
9 filed in the circuit court of Kanawha County;

10 (2) As to cases involving an order revoking or
11 suspending a permit, the petition shall be filed in the
12 circuit court of Kanawha County; and

13 (3) As to cases involving an order directing that any
14 and all discharges or deposits of solid waste, sewage,
15 industrial wastes or other wastes, or the effluent
16 therefrom, determined to be causing pollution be
17 stopped or prevented or else that remedial action be
18 taken, the petition shall be filed in the circuit court of
19 the county in which the establishment is located or in
20 which the pollution occurs.

**§22B-3-4. Environmental quality board rule-making
authority.**

1 (a) In order to carry out the purposes of this chapter
2 and chapter twenty-two of this code, the board shall
3 promulgate legislative rules setting standards of water
4 quality applicable to both the surface waters and
5 groundwaters of this state. Standards of quality with
6 respect to surface waters shall be such as to protect the
7 public health and welfare, wildlife, fish and aquatic life,
8 and the present and prospective future uses of such
9 waters for domestic, agricultural, industrial, recrea-
10 tional, scenic and other legitimate beneficial uses
11 thereof.

12 (b) No rule of the board may specify the design of
13 equipment, type of construction or particular method
14 which a person shall use to reduce the discharge of a
15 pollutant.

16 (c) The board shall promulgate such legislative rules
17 in accordance with the provisions of article three,
18 chapter twenty-nine-a of this code and the declaration
19 of policy set forth in section two, article eleven, chapter
20 twenty-two of this code.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-1. Appointment and organization of surface mine board.

§22B-4-2. Authority to receive money.

§22B-4-3. Judicial review.

§22B-4-1. Appointment and organization of surface mine board.

1 (a) On and after the effective date of this article, the
2 "reclamation board of review," heretofore created, shall
3 continue in existence and hereafter shall be known as
4 the "surface mine board."

5 (b) The board shall be composed of seven members
6 who shall be appointed by the governor with the advice
7 and consent of the Senate. Not more than four members
8 of the board shall be of the same political party. Each
9 appointed member of the board who is serving in such
10 capacity on the effective date of this article shall
11 continue to serve on the board until his or her term ends
12 or he or she resigns or is otherwise unable to serve. As
13 each member's term ends, or that member is unable to
14 serve, a qualified successor shall be appointed by the
15 governor with the advice and consent of the Senate. One
16 of the appointees to such board shall be a person who,
17 by reason of previous vocation, employment or affilia-
18 tions, can be classed as one capable and experienced in
19 coal mining. One of the appointees to such board shall
20 be a person who, by reason of training and experience,
21 can be classed as one capable and experienced in the
22 practice of agriculture. One of the appointees to such
23 board shall be a person who by reason of training and
24 experience, can be classed as one capable and expe-
25 rienced in modern forestry practices. One of the
26 appointees to such board shall be a person who, by
27 reason of training and experience, can be classed as one
28 capable and experienced in engineering. One of the
29 appointees to such board shall be a person who, by
30 reason of training and experience, can be classed as one
31 capable and experienced in water pollution control or
32 water conservation problems. One of the appointees to
33 such board shall be a person with significant experience
34 in the advocacy of environmental protection. One of the
35 appointees to such board shall be a person who repres-

36 ents the general public interest.

37 (c) During his or her tenure on the board, no member.
38 shall receive significant direct or indirect financial
39 compensation from or exercise any control over any
40 person or entity which holds or has held, within the two
41 years next preceding the member's appointment, a
42 permit to conduct activity regulated by the division,
43 under the provisions of article three or four, chapter
44 twenty-two of this code, or any similar agency of any
45 other state or of the federal government: *Provided*, That
46 the member classed as experienced in coal mining, the
47 member classed as experienced in engineering, and the
48 member classed as experienced in water pollution
49 control or water conservation problems may receive
50 significant financial compensation from regulated
51 entities for professional services or regular employment
52 so long as the professional or employment relationship
53 is disclosed to the board. No member shall participate
54 in any matter before the board related to a regulated
55 entity from which the member receives or has received,
56 within the preceding two years direct or indirect
57 financial compensation. For purposes of this section,
58 "significant direct or indirect financial compensation"
59 means twenty percent of gross income for a calendar
60 year received by the member, any member of his or her
61 immediate family or the member's primary employer.

62 (d) The members of the board shall be appointed for
63 terms of the same duration as their predecessor under
64 the original appointment of two members appointed to
65 serve a term of two years; two members appointed to
66 serve a term of three years; two members to serve a
67 term of four years; and one member to serve a term of
68 five years. Any member whose term expires may be
69 reappointed by the governor. In the event a board
70 member is unable to complete the term, the governor
71 shall appoint a person with similar qualification to
72 complete the term. The successor of any board member
73 appointed pursuant to this article must possess the
74 qualification as prescribed herein. Each vacancy
75 occurring in the office of a member of the board shall
76 be filled by appointment within sixty days after such

77 vacancy occurs.

§22B-4-2. Authority to receive money.

1 In addition to all other powers and duties of the
2 surface mine board, as prescribed in this chapter or
3 elsewhere by law, the board shall have and may exercise
4 the power and authority to receive any money as a result
5 of the resolution of any case on appeal which shall be
6 deposited to the credit of the special reclamation fund
7 created pursuant to section eleven, article three, chapter
8 twenty-two of this code.

§22B-4-3. Judicial review.

1 All of the provisions of section nine, article one of this
2 chapter apply to and govern such review with like effect
3 as if the provisions of said section nine were set forth
4 in extenso in this section, except the petition shall be
5 filed in the circuit court of Kanawha County or the
6 county in which the surface-mining operation is located.

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

Article

1. Water Development Authority.
2. Water Pollution Control Revolving Fund Act.
3. Solid Waste Management Board.
4. County and Regional Solid Waste Authorities.
5. Commercial Hazardous Waste Management Facility Siting Board.
6. Hazardous Waste Facility Siting Approval.
7. Oil and Gas Inspectors' Examining Board.
8. Shallow Gas Well Review Board.
9. Oil and Gas Conservation.
10. Interstate Mining Compact.
11. Interstate Commission on the Potomac River Basin.
12. Ohio River Valley Water Sanitation Commission.

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 expenses; 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
- 2 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
- 2 state of West Virginia and a responsibility of the state
- 3 of West Virginia, through the establishment, funding,

4 operation and maintenance of water development
5 projects, to maintain, preserve, protect, conserve and in
6 all instances possible to improve the purity and quality
7 of water within the state in order to: (1) Protect and
8 improve public health; (2) assure the fullest use and
9 enjoyment of such water by the public; (3) provide
10 suitable environment for the propagation and protection
11 of animal, bird, fish, aquatic and plant life, all of which
12 are essential to the health and well-being of the public;
13 and (4) provide water of the necessary quality and in the
14 amount needed for the development, maintenance and
15 expansion of, and to attract service industries and
16 businesses, agriculture, mining, manufacturing and
17 other types of businesses and industries.

18 To assist in the preservation, protection, improvement
19 and management of the purity and quality of the waters
20 of this state, to prevent or abate pollution of water
21 resources and to promote the health and welfare of
22 citizens of this state, it is the purpose and intent of the
23 Legislature in enacting this article to provide for the
24 necessary, dependable, effective and efficient purifica-
25 tion of water; the disposal of liquid and solid wastes
26 harmful to the public health and safety removed from
27 such water; to improve water and stream quality; and
28 to assist and cooperate with governmental agencies in
29 achieving all of the purposes set forth in this section.

30 The Legislature finds and hereby declares that the
31 responsibility of the state as outlined above cannot be
32 effectively met without the establishment, funding,
33 operation and maintenance of water development
34 projects as provided for in this article.

§22C-1-3. Definitions.

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

3 (1) "Authority" means the water development author-
4 ity provided for in section four of this article, the duties,
5 powers, responsibilities and functions of which are
6 specified in this article.

7 (2) "Beneficial use" means a use of water by a person

8 or by the general public that is consistent with the
9 public interest, health and welfare in utilizing the water
10 resources of this state, including, but not limited to,
11 domestic, agricultural, irrigation, industrial, manufact-
12 turing, mining, power, public, sanitary, fish and
13 wildlife, state, county, municipal, navigational, recrea-
14 tional, aesthetic and scenic use.

15 (3) "Board" means the water development authority
16 board provided for in section four of this article, which
17 shall manage and control the water development
18 authority.

19 (4) "Bond" or "water development revenue bond"
20 means a revenue bond or note issued by the water
21 development authority to effect the intents and purposes
22 of this article.

23 (5) "Construction" includes reconstruction, enlarge-
24 ment, improvement and providing furnishings or
25 equipment.

26 (6) "Cost" means, as applied to water development
27 projects, the cost of their acquisition and construction;
28 the cost of acquisition of all land, rights-of-way, property
29 rights, easements, franchise rights and interests re-
30 quired by the authority for such acquisition and
31 construction; the cost of demolishing or removing any
32 buildings or structures on land so acquired, including
33 the cost of acquiring any lands to which such buildings
34 or structures may be moved; the cost of acquiring or
35 constructing and equipping a principal office and
36 suboffices of the authority; the cost of diverting
37 highways, interchange of highways; access roads to
38 private property, including the cost of land or easements
39 therefor; the cost of all machinery, furnishings, and
40 equipment; all financing charges, and interest prior to
41 and during construction and for no more than eighteen
42 months after completion of construction; the cost of all
43 engineering services and all expenses of research and
44 development with respect to public water or wastewater
45 facilities; the cost of all legal services and expenses; the
46 cost of all plans, specifications, surveys and estimates of
47 cost and revenues; all working capital and other

48 expenses necessary or incident to determining the
49 feasibility or practicability of acquiring or constructing
50 any such project; all administrative expenses and such
51 other expenses as may be necessary or incident to the
52 acquisition or construction of the project; the financing
53 of such acquisition or construction, including the
54 amount authorized in the resolution of the authority
55 providing for the issuance of water development revenue
56 bonds to be paid into any special funds from the
57 proceeds of such bonds; and the financing of the placing
58 of any such project in operation. Any obligation or
59 expenses incurred by any governmental agency, with
60 the approval of the authority, for surveys, borings,
61 preparation of plans and specifications and other
62 engineering services in connection with the acquisition
63 or construction of a project are a part of the cost of such
64 project and shall be reimbursed out of the proceeds of
65 loans or water development revenue bonds as authorized
66 by the provisions of this article.

67 (7) "Establishment" means an industrial establish-
68 ment, mill, factory, tannery, paper or pulp mill, mine,
69 colliery, breaker or mineral processing operation,
70 quarry, refinery, well and each and every industry or
71 plant or works or activity in the operation or process of
72 which industrial wastes or other wastes are produced.

73 (8) "Governmental agency" means the state govern-
74 ment or any agency, department, division or unit
75 thereof; counties; municipalities; watershed improve-
76 ment districts; soil conservation districts; sanitary
77 districts; public service districts; drainage districts;
78 regional governmental authorities and any other
79 governmental agency, entity, political subdivision,
80 public corporation or agency having the authority to
81 acquire, construct or operate public water or waste-
82 water facilities; the United States government or any
83 agency, department, division or unit thereof; and any
84 agency, commission or authority established pursuant to
85 an interstate compact or agreement.

86 (9) "Industrial wastes" means any liquid, gaseous,
87 solid or other waste substance, or any combination
88 thereof, resulting from or incidental to any process of

89 industry, manufacturing, trade or business, or from or
90 incidental to the development, processing or recovery of
91 any natural resources; and the admixture with such
92 industrial wastes of sewage or other wastes, as defined
93 in this section, are also industrial wastes.

94 (10) "Other wastes" means garbage, refuse, decayed
95 wood, sawdust, shavings, bark and other wood debris
96 and residues, sand, lime, cinders, ashes, offal, night soil,
97 silt, oil, tar, dyestuffs, acids, chemicals, and all other
98 materials or substances not sewage or industrial wastes
99 which may cause or might reasonably be expected to
100 cause or to contribute to the pollution of any of the
101 waters of this state.

102 (11) "Owner" includes all persons, copartnerships or
103 governmental agencies having any title or interest in
104 any property rights, easements and interests authorized
105 to be acquired by this article.

106 (12) "Person" means any public or private corporation,
107 institution, association, firm or company organized or
108 existing under the laws of this or any other state or
109 country; the United States or the state of West Virginia;
110 any federal or state governmental agency; political
111 subdivision; county commission; municipality; industry;
112 sanitary district; public service district; drainage
113 district; soil conservation district; watershed improve-
114 ment district; partnership; trust; estate; person or
115 individual; group of persons or individuals acting
116 individually or as a group or any other legal entity
117 whatever.

118 (13) "Pollution" means (a) the discharge, release,
119 escape, deposit or disposition, directly or indirectly, of
120 treated or untreated sewage, industrial wastes, or other
121 wastes, of whatever kind or character, in or near any
122 waters of the state, in such condition, manner or
123 quantity, as does, will, or is likely to (1) contaminate or
124 substantially contribute to the contamination of any of
125 such waters, or (2) alter or substantially contribute to
126 the alteration of the physical, chemical or biological
127 properties of any of such waters, if such contamination
128 or alteration, or the resulting contamination or altera-

129 tion where a person only contributes thereto, is to such
130 an extent as to make any of such waters (i) directly or
131 indirectly harmful, detrimental or injurious to the
132 public health, safety and welfare, or (ii) directly or
133 indirectly detrimental to existing animal, bird, fish,
134 aquatic or plant life, or (iii) unsuitable for present or
135 future domestic, commercial, industrial, agricultural,
136 recreational, scenic or other legitimate uses; and also
137 means (b) the discharge, release, escape, deposit, or
138 disposition, directly or indirectly, of treated or untreated
139 sewage, industrial wastes or other wastes, of whatever
140 kind or character, in or near any waters of the state in
141 such condition, manner or quantity, as does, will, or is
142 likely to reduce the quality of the waters of the state
143 below the standards established therefor by the United
144 States or any department, agency, board or commission
145 of this state authorized to establish such standards.

146 (14) "Project" or "water development project" means
147 any public water or wastewater facility, the acquisition
148 or construction of which is authorized, in whole or in
149 part, by the water development authority or the
150 acquisition or construction of which is financed, in whole
151 or in part, from funds made available by grant or loan
152 by, or through, the authority as provided in this article,
153 including facilities, the acquisition or construction of
154 which is authorized, in whole or in part, by the water
155 development authority or the acquisition or construction
156 of which is financed, in whole or in part, from funds
157 made available by grant or loan by, or through, the
158 authority as provided in this article, including all
159 buildings and facilities which the authority deems
160 necessary for the operation of the project, together with
161 all property, rights, easements and interest which may
162 be required for the operation of the project, but
163 excluding all buildings and facilities used to produce
164 electricity other than electricity for consumption by the
165 authority in the operation and maintenance of the
166 project.

167 (15) "Public roads" mean all public highways, roads
168 and streets in this state, whether maintained by the
169 state, county, municipality or other political subdivision.

170 (16) "Public utility facilities" means public utility
171 plants or installations and includes tracks, pipes, mains,
172 conduits, cables, wires, towers, poles and other equip-
173 ment and appliances of any public utility.

174 (17) "Revenue" means any money or thing of value
175 collected by, or paid to, the water development authority
176 as rent, use or service fee or charge for use of, or in
177 connection with, any water development project, or as
178 principal of or interest, charges or other fees on loans,
179 or any other collections on loans made by the water
180 development authority to governmental agencies to
181 finance, in whole or in part, the acquisition or construc-
182 tion of any water development project or projects, or
183 other money or property which is received and may be
184 expended for or pledged as revenues pursuant to this
185 article.

186 (18) "Sewage" means water-carried human or animal
187 wastes from residences, buildings, industrial establish-
188 ments or other places, together with such groundwater
189 infiltration and surface waters as may be present.

190 (19) "Water resources," "water" or "waters" means
191 any and all water on or beneath the surface of the
192 ground, whether percolating, standing, diffused or
193 flowing, wholly or partially within this state, or
194 bordering this state and within its jurisdiction, and
195 includes, without limiting the generality of the forego-
196 ing, natural or artificial lakes, rivers, streams, creeks,
197 branches, brooks, ponds (except farm ponds, industrial
198 settling basins and ponds and water treatment facili-
199 ties), impounding reservoirs, springs, wells and
200 watercourses.

201 (20) "Wastewater" means any water containing
202 sewage, industrial wastes, or other wastes or contami-
203 nants derived from the prior use of such water, and
204 includes, without limiting the generality of the forego-
205 ing, surface water of the type storm sewers are designed
206 to collect and dispose of.

207 (21) "Wastewater facilities" means facilities for the
208 purpose of treating, neutralizing, disposing of, stabiliz-
209 ing, cooling, segregating or holding wastewater, includ-

210 ing, without limiting the generality of the foregoing,
211 facilities for the treatment and disposal of sewage,
212 industrial wastes, or other wastes, waste water, and the
213 residue thereof; facilities for the temporary or perman-
214 ent impoundment of wastewater, both surface and
215 underground; and sanitary sewers or other collection
216 systems, whether on the surface or underground,
217 designed to transport wastewater together with the
218 equipment and furnishings thereof and their appurte-
219 nances and systems, whether on the surface or under-
220 ground, including force mains and pumping facilities
221 therefor.

222 (22) "Water facility" means all facilities, land and
223 equipment used for the collection of water, both surface
224 and underground, transportation of water, treatment of
225 water and distribution of water all for the purpose of
226 providing potable, sanitary water suitable for human
227 consumption and use.

**§22C-1-4. Water development authority; water develop-
ment board; organization of authority and
board; appointment of board members;
their term of office, compensation and
expenses; director of authority.**

1 The water development authority is continued. The
2 authority is a governmental instrumentality of the state
3 and a body corporate. The exercise by the authority of
4 the powers conferred by this article and the carrying out
5 of its purposes and duties are essential governmental
6 functions and for a public purpose.

7 The authority is controlled, managed and operated by
8 the seven-member board known as the water develop-
9 ment board. The director of the division of environmen-
10 tal protection, and the commissioner of the bureau of
11 public health and the state officer or employee who in
12 the judgment of the governor is most responsible for
13 economic or community development are members ex
14 officio of the board. The governor shall designate
15 annually the member who is the state officer or
16 employee most responsible for economic or community
17 development. The other four members of the board are

18 appointed by the governor, by and with the advice and
19 consent of the Senate, for terms of two, three, four and
20 six years, respectively. The successor of each such
21 appointed member shall be appointed for a term of six
22 years in the same manner the original appointments
23 were made, except that any person appointed to fill a
24 vacancy occurring prior to the expiration of the term for
25 which his or her predecessor was appointed shall be
26 appointed only for the remainder of such term. Each
27 board member serves until the appointment and
28 qualification of his or her successor. No more than two
29 of the appointed board members shall at any one time
30 belong to the same political party. Appointed board
31 members may be reappointed to serve additional terms.

32 All members of the board shall be citizens of the state.
33 Each appointed member of the board, before entering
34 upon his or her duties, shall comply with the require-
35 ments of article one, chapter six of this code and give
36 bond in the sum of twenty-five thousand dollars in the
37 manner provided in article two, chapter six of this code.
38 The governor may remove any board member for cause
39 as provided in article six, chapter six of this code.

40 Annually the board shall elect one of its appointed
41 members as chair and another as vice-chair, and shall
42 appoint a secretary-treasurer, who need not be a
43 member of the board. Four members of the board is a
44 quorum and the affirmative vote of four members is
45 necessary for any action taken by vote of the board. No
46 vacancy in the membership of the board impairs the
47 rights of a quorum by such vote to exercise all the rights
48 and perform all the duties of the board and the
49 authority. The person appointed as secretary-treasurer,
50 including a board member if he or she is so appointed,
51 shall give bond in the sum of fifty thousand dollars in
52 the manner provided in article two, chapter six of this
53 code.

54 The director of the division of environmental protec-
55 tion, the commissioner of the bureau of public health
56 and the state officer or employee most responsible for
57 economic or community development shall not receive
58 any compensation for serving as board members. Each

59 of the four appointed members of the board shall be paid
60 the same compensation, and each member of the board
61 shall be paid the expense reimbursement, as is paid to
62 members of the Legislature for their interim duties as
63 recommended by the citizens legislative compensation
64 commission and authorized by law for each day or
65 portion thereof engaged in the discharge of official
66 duties. All such expenses incurred by the board are
67 payable solely from funds of the authority or from funds
68 appropriated for such purpose by the Legislature and
69 no liability or obligation shall be incurred by the
70 authority beyond the extent to which moneys are
71 available from funds of the authority or from such
72 appropriations.

73 There shall also be a director of the authority
74 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.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the water development authority may initiate,
4 acquire, construct, maintain, repair and operate water
5 development projects or cause the same to be operated
6 pursuant to a lease, sublease or agreement with any
7 person or governmental agency; may make loans and
8 grants to governmental agencies for the acquisition or
9 construction of water development projects by such
10 governmental agencies, which loans may include
11 amounts to refinance debt issued for existing water
12 development projects of the governmental agency when
13 such refinancing is in conjunction with a loan for a new
14 water development project: *Provided*, That the amount
15 of the refinancing may not exceed fifty percent of the
16 loan to the governmental agency; and may issue water
17 development revenue bonds of this state, payable solely
18 from revenues, to pay the cost of, or finance, in whole
19 or in part, by loans to governmental agencies, such
20 projects. A water development project shall not be
21 undertaken unless it has been determined by the

22 authority to be consistent with any applicable compre-
23 hensive plan of water management approved by the
24 director of the division of environmental protection or
25 in the process of preparation by such director and to be
26 consistent with the standards set by the state environ-
27 mental quality board, for the waters of the state affected
28 thereby. Any resolution of the authority providing for
29 acquiring or constructing such projects or for making
30 a loan or grant for such projects shall include a finding
31 by the authority that such determinations have been
32 made. A loan agreement shall be entered into between
33 the authority and each governmental agency to which
34 a loan is made for the acquisition or construction of a
35 water development project, which loan agreement shall
36 include without limitation the following provisions:

37 (1) The cost of such project, the amount of the loan,
38 the terms of repayment of such loan and the security
39 therefor, which may include, in addition to the pledge
40 of all revenues from such project after a reasonable
41 allowance for operation and maintenance expenses, a
42 deed of trust or other appropriate security instrument
43 creating a lien on such project;

44 (2) The specific purposes for which the proceeds of the
45 loan shall be expended including the refinancing of
46 existing water development project debt as provided
47 above, the procedures as to the disbursement of loan
48 proceeds and the duties and obligations imposed upon
49 the governmental agency in regard to the construction
50 or acquisition of the project;

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

60 (4) The agreement of the governmental agency to
61 comply with all applicable laws, rules and regulations

62 issued by the authority or other state, federal and local
63 bodies in regard to the construction, operation, mainte-
64 nance and use of the project.

§22C-1-6. Powers, duties and responsibilities of authority generally.

1 The water development authority, has and may
2 exercise all powers necessary or appropriate to carry out
3 and effectuate its corporate purpose. The authority has
4 the power and capacity to:

5 (1) Adopt, and from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its
7 affairs and the conduct of its business and rules to
8 implement and make effective its powers and duties,
9 such rules to be promulgated in accordance with the
10 provisions of chapter twenty-nine-a of this code.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary,
13 regional suboffices at locations properly designated or
14 provided.

15 (4) Sue and be sued in its own name and plead and
16 be impleaded in its own name, and particularly to
17 enforce the obligations and covenants made under
18 sections nine, ten and sixteen of this article. Any actions
19 against the authority shall be brought in the circuit
20 court of Kanawha County in which the principal office
21 of the authority shall be located.

22 (5) Make loans and grants to governmental agencies
23 for the acquisition or construction of water development
24 projects by any such governmental agency and, in
25 accordance with the provisions of chapter twenty-nine-
26 a of this code, adopt rules and procedures for making
27 such loans and grants.

28 (6) Acquire, construct, reconstruct, enlarge, improve,
29 furnish, equip, maintain, repair, operate, lease or rent
30 to, or contract for operation by a governmental agency
31 or person, water development projects, and, in accor-
32 dance with the provisions of chapter twenty-nine-a of
33 this code, adopt rules for the use of such projects.

34 (7) Make available the use or services of any water
35 development project to one or more persons, one or more
36 governmental agencies, or any combination thereof.

37 (8) Issue water development revenue bonds and notes
38 and water development revenue refunding bonds of the
39 state, payable solely from revenues as provided in
40 section nine of this article unless the bonds are refunded
41 by refunding bonds, for the purpose of paying all or any
42 part of the cost of, or financing by loans to governmental
43 agencies, one or more water development projects or
44 parts thereof.

45 (9) Acquire by gift or purchase, hold and dispose of
46 real and personal property in the exercise of its powers
47 and the performance of its duties as set forth in this
48 article.

49 (10) Acquire in the name of the state, by purchase or
50 otherwise, on such terms and in such manner as it
51 deems proper, or by the exercise of the right of eminent
52 domain in the manner provided in chapter fifty-four of
53 this code, such public or private lands, or parts thereof
54 or rights therein, rights-of-way, property, rights,
55 easements and interests it deems necessary for carrying
56 out the provisions of this article, but excluding the
57 acquisition by the exercise of the right of eminent
58 domain of any public water or wastewater facilities
59 operated under permits issued pursuant to the provi-
60 sions of article eleven, chapter twenty-two of this code
61 and owned by any person or governmental agency, and
62 compensation shall be paid for public or private lands
63 so taken.

64 (11) Make and enter into all contracts and agreements
65 and execute all instruments necessary or incidental to
66 the performance of its duties and the execution of its
67 powers. When the cost under any such contract or
68 agreement, other than compensation for personal
69 services, involves an expenditure of more than two
70 thousand dollars, the authority shall make a written
71 contract with the lowest responsible bidder after public
72 notice published as a Class II legal advertisement in
73 compliance with the provisions of article three, chapter

74 fifty-nine of this code, the publication area for such
75 publication to be the county wherein the work is to be
76 performed or which is affected by the contract, which
77 notice shall state the general character of the work and
78 the general character of the materials to be furnished,
79 the place where plans and specifications therefor may
80 be examined and the time and place of receiving bids,
81 but a contract or lease for the operation of a water
82 development project constructed and owned by the
83 authority or an agreement for cooperation in the
84 acquisition or construction of a water development
85 project pursuant to section sixteen of this article is not
86 subject to the foregoing requirements and the authority
87 may enter into such contract or lease or such agreement
88 pursuant to negotiation and upon such terms and
89 conditions and for such period as it finds to be reason-
90 able and proper under the circumstances and in the
91 best interests of proper operation or of efficient
92 acquisition or construction of such project. The authority
93 may reject any and all bids. A bond with good and
94 sufficient surety, approved by the authority, is required
95 of all contractors in an amount equal to at least fifty
96 percent of the contract price, conditioned upon the
97 faithful performance of the contract.

98 (12) Employ managers, superintendents and other
99 employees, who are covered by the state civil service
100 system, and retain or contract with consulting engi-
101 neers, financial consultants, accounting experts, archi-
102 tects, attorneys and such other consultants and inde-
103 pendent contractors as are necessary in its judgment to
104 carry out the provisions of this article, and fix the
105 compensation or fees thereof. All expenses thereof are
106 payable solely from the proceeds of water development
107 revenue bonds or notes issued by the authority, from
108 revenues and from funds appropriated for such purpose
109 by the Legislature.

110 (13) Receive and accept from any federal agency,
111 subject to the approval of the governor, grants for or in
112 aid of the construction of any water development project
113 or for research and development with respect to public
114 water or wastewater facilities and receive and accept

115 aid or contributions from any source of money, property,
116 labor or other things of value, to be held, used and
117 applied only for the purposes for which such grants and
118 contributions are made.

119 (14) Engage in research and development with
120 respect to public water or wastewater facilities.

121 (15) Purchase property coverage and liability insu-
122 rance for any water development project and for the
123 principal office and suboffices of the authority, insu-
124 rance protecting the authority and its officers and
125 employees against liability, if any, for damage to
126 property or injury to or death of persons arising from
127 its operations and any other insurance the authority may
128 agree to provide under any resolution authorizing the
129 issuance of water development revenue bonds or in any
130 trust agreement securing the same.

131 (16) Charge, alter and collect rentals and other
132 charges for the use or services of any water development
133 project as provided in this article, and charge and
134 collect reasonable interest, fees and charges in connec-
135 tion with the making and servicing of loans to govern-
136 mental agencies in the furtherance of the purposes of
137 this article.

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

142 (18) Do all acts necessary and proper to carry out the
143 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 re-
quire governmental agencies to enforce
their rights.**

1 In order to ensure that the public purposes to be
2 served by the authority may be properly carried out and
3 in order to assure the timely payment to the authority
4 of all sums due and owing under loan agreements with
5 governmental agencies, as referred to in section five of

6 this article, notwithstanding any provision to the
7 contrary elsewhere contained in this code, in event of
8 any default by a governmental agency under such a loan
9 agreement, the authority has, and may, at its option,
10 exercise the following rights and remedies in addition
11 to the rights and remedies conferred by law or pursuant
12 to said loan agreement:

13 (1) The authority may directly impose, in its own
14 name and for its own benefit service charges determined
15 by it to be necessary under the circumstances upon all
16 users of the water development project to be acquired
17 or constructed pursuant to such loan agreement, and
18 proceed directly to enforce and collect such service
19 charges, together with all necessary costs of such
20 enforcement and collection.

21 (2) The authority may exercise, in its own name or in
22 the name of and as agent for the governmental agency,
23 all of the rights, authority, powers and remedies of the
24 governmental agency with respect to the water devel-
25 opment project or which may be conferred upon the
26 governmental agency by statute, rule, regulation or
27 judicial decision, including, without limitation, all rights
28 and remedies with respect to users of such water
29 development project.

30 (3) The authority may, by civil action, mandamus or
31 other judicial or administrative proceeding, compel
32 performance by such governmental agency of all of the
33 terms and conditions of such loan agreement including,
34 without limitation, the adjustment and increase of
35 service charges as required to repay the loan or
36 otherwise satisfy the terms of such loan agreement, the
37 enforcement and collection of such service charges and
38 the enforcement by such governmental agency of all
39 rights and remedies conferred by statute, rule, regula-
40 tion or judicial decision.

**§22C-1-8. Expenditure of funds for study and engineer-
ing of proposed projects.**

1 With the approval and the consent of the board, either
2 the director of the division of environmental protection
3 or the commissioner of the bureau of public health, or

4 both of them, shall expend, out of any funds available
5 for the purpose, such moneys as are necessary for the
6 study of any proposed water development project and
7 may use its engineering and other forces, including
8 consulting engineers and sanitary engineers, for the
9 purpose of effecting such study. All such expenses
10 incurred by the director or commissioner prior to the
11 issuance of water development revenue bonds or notes
12 under this article shall be paid by the director or
13 commissioner and charged to the appropriate water
14 development project and the director and commissioner
15 shall keep proper records and accounts, showing the
16 amounts so charged. Upon the sale of water develop-
17 ment revenue bonds or notes for a water development
18 project, the funds so expended by the director or
19 commissioner, with the approval of the authority, in
20 connection with such project, shall be repaid to the
21 division of environmental protection or bureau of public
22 health from the proceeds of such bonds or notes.

**§22C-1-9. Authority empowered to issue water develop-
ment revenue bonds, renewal notes and
refunding bonds; requirements and manner
of such issuance.**

1 The authority is hereby empowered to issue from time
2 to time water development revenue bonds and notes of
3 the state in such principal amounts as the authority
4 deems necessary to pay the cost of or finance, in whole
5 or in part, by loans to governmental agencies, one or
6 more water development projects, but the aggregate
7 amount of all issues of bonds and notes outstanding at
8 one time for all projects authorized hereunder shall not
9 exceed that amount capable of being serviced by
10 revenues received from such projects.

11 The authority may, from time to time, issue renewal
12 notes, issue bonds to pay such notes and whenever it
13 deems refunding expedient, refund any bonds by the
14 issuance of water development revenue refunding bonds
15 by the state pursuant to the provisions of section twenty
16 of this article. Except as may otherwise be expressly
17 provided in this article or by the authority, every issue
18 of its bonds or notes are obligations of the authority

19 payable out of the revenues and reserves created for
20 such purposes by the authority, which are pledged for
21 such payment, without preference or priority of the first
22 bonds issued, subject only to any agreements with the
23 holders of particular bonds or notes pledging any
24 particular revenues. Such pledge is valid and binding
25 from the time the pledge is made and the revenues so
26 pledged and thereafter received by the authority are
27 immediately subject to the lien of such pledge without
28 any physical delivery thereof or further act and the lien
29 of any such pledge is valid and binding as against all
30 parties having claims of any kind in tort, contract or
31 otherwise against the authority irrespective of whether
32 such parties have notice thereof.

33 All such bonds and notes shall have and are hereby
34 declared to have all the qualities of negotiable
35 instruments.

36 The bonds and notes shall be authorized by resolution
37 of the authority, bear such date and mature at such
38 time, in the case of any such note or any renewals
39 thereof not exceeding five years from the date of issue
40 of such original note, and in the case of any such bond
41 not exceeding fifty years from the date of issue, as such
42 resolution may provide. The bonds and notes shall bear
43 interest at such rate, be in such denominations, be in
44 such form, either coupon or registered, carry such
45 registration privileges, be payable in such medium of
46 payment, at such place and be subject to such terms of
47 redemption as the authority may authorize. The bonds
48 and notes of the authority may be sold by the authority,
49 at public or private sale, at or not less than the price
50 the authority determines. The bonds and notes shall be
51 executed by the chair and vice-chair of the authority,
52 both of whom may use facsimile signatures. The official
53 seal of the authority or a facsimile thereof shall be
54 affixed thereto or printed thereon and attested, manu-
55 ally or by facsimile signature, by the secretary-treasurer
56 of the authority, and any coupons attached thereto shall
57 bear the signature or facsimile signature of the chair of
58 the authority. In case any officer whose signature, or a
59 facsimile of whose signature, appears on any bonds,

60 notes or coupons ceases to be such officer before delivery
61 of such bonds or notes, such signature or facsimile is
62 nevertheless sufficient for all purposes the same as if he
63 or she had remained in office until such delivery and
64 in case the seal of the authority has been changed after
65 a facsimile has been imprinted on such bonds or notes
66 such facsimile seal will continue to be sufficient for all
67 purposes.

68 Any resolution authorizing any bonds or notes or any
69 issue thereof may contain provisions (subject to such
70 agreements with bondholders or noteholders as may
71 then exist, which provisions shall be a part of the
72 contract with the holders thereof) as to pledging all or
73 any part of the revenues of the authority to secure the
74 payment of the bonds or notes or of any issue thereof;
75 the use and disposition of revenues of the authority; a
76 covenant to fix, alter and collect rentals and other
77 charges so that pledged revenues will be sufficient to
78 pay the costs of operation, maintenance and repairs, pay
79 principal of and interest on bonds or notes secured by
80 the pledge of such revenues and provide such reserves
81 as may be required by the applicable resolution or trust
82 agreement; the setting aside of reserve funds, sinking
83 funds or replacement and improvement funds and the
84 regulation and disposition thereof; the crediting of the
85 proceeds of the sale of bonds or notes to and among the
86 funds referred to or provided for in the resolution
87 authorizing the issuance of the bonds or notes; the use,
88 lease, sale or other disposition of any water development
89 project or any other assets of the authority; limitations
90 on the purpose to which the proceeds of sale of bonds
91 or notes may be applied and pledging such proceeds to
92 secure the payment of the bonds or notes or of any issue
93 thereof; notes issued in anticipation of the issuance of
94 bonds, the agreement of the authority to do all things
95 necessary for the authorization, issuance and sale of
96 such bonds in such amounts as may be necessary for the
97 timely retirement of such notes; limitations on the
98 issuance of additional bonds or notes; the terms upon
99 which additional bonds or notes may be issued and
100 secured; the refunding of outstanding bonds or notes; the
101 procedure, if any, by which the terms of any contract

102 with bondholders or noteholders may be amended or
103 abrogated, the amount of bonds or notes the holders of
104 which must consent thereto and the manner in which
105 such consent may be given; limitations on the amount
106 of moneys to be expended by the authority for operating,
107 administrative or other expenses of the authority;
108 securing any bonds or notes by a trust agreement; and
109 any other matters, of like or different character, which
110 in any way affect the security or protection of the bonds
111 or notes.

112 In the event that the sum of all reserves pledged to
113 the payment of such bonds or notes are less than the
114 minimum reserve requirements established in any
115 resolution or resolutions authorizing the issuance of such
116 bonds or notes, the chair of the authority shall certify,
117 on or before the first day of December of each year, the
118 amount of such deficiency to the governor of the state,
119 for inclusion, if the governor shall so elect, of the amount
120 of such deficiency in the budget to be submitted to the
121 next session of the Legislature for appropriation to the
122 authority to be pledged for payment of such bonds or
123 notes: *Provided*, That the Legislature is not required to
124 make any appropriation so requested, and the amount
125 of such deficiencies is not a debt or liability of the state.

126 Neither the members of the authority nor any person
127 executing the bonds or notes are liable personally on the
128 bonds or notes or be subject to any personal liability or
129 accountability by reason of the issuance thereof.

§22C-1-10. Trustee for bondholders; contents of trust agreement.

1 In the discretion of the authority, any water develop-
2 ment revenue bonds or notes or water development
3 revenue refunding bonds issued by the authority under
4 this article may be secured by a trust agreement
5 between the authority and a corporate trustee, which
6 trustee may be any trust company or banking institution
7 having the powers of a trust company within or without
8 this state.

9 Any such trust agreement may pledge or assign
10 revenues of the authority to be received, but shall not

11 convey or mortgage any water development project or
12 any part thereof. Any such trust agreement or any
13 resolution providing for the issuance of such bonds or
14 notes may contain such provisions for protecting and
15 enforcing the rights and remedies of the bondholders or
16 noteholders as are reasonable and proper and not in
17 violation of law, including the provisions contained in
18 section nine of this article and covenants setting forth
19 the duties of the authority in relation to the acquisition
20 of property, the construction, improvement, maintenance,
21 repair, operation and insurance of the water
22 development project the cost of which is paid, in whole
23 or in part, from the proceeds of such bonds or notes, the
24 rentals or other charges to be imposed for the use or
25 services of any water development project, provisions
26 with regard to the payment of the principal of and
27 interest, charges and fees on loans made to governmental
28 agencies from the proceeds of such bonds or notes,
29 the custody, safeguarding, and application of all moneys
30 and provisions for the employment of consulting
31 engineers in connection with the construction or
32 operation of such water development project. Any
33 banking institution or trust company incorporated
34 under the laws of this state which may act as depository
35 of the proceeds of bonds or notes or of revenues shall
36 furnish such indemnifying bonds or pledge such
37 securities as are required by the authority. Any such
38 trust agreement may set forth the rights and remedies
39 of the bondholders and noteholders and of the trustee
40 and may restrict individual rights of action by bond-
41 holders and noteholders as customarily provided in trust
42 agreements or trust indentures securing similar bonds.
43 Such trust agreement may contain such other provisions
44 as the authority deems reasonable and proper for the
45 security of the bondholders or noteholders. All expenses
46 incurred in carrying out the provisions of any such trust
47 agreement may be treated as a part of the cost of the
48 operation of the water development project. Any such
49 trust agreement or resolution authorizing the issuance
50 of water development revenue bonds may provide the
51 method whereby the general administrative overhead
52 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; reimbursements.

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.

1 Water development revenue bonds and notes and
2 water development revenue refunding bonds issued
3 under authority of this article and any coupons in
4 connection therewith are not a debt or a pledge of the
5 faith and credit or taxing power of this state or of any
6 county, municipality or any other political subdivision
7 of this state, and the holders or owners thereof have no
8 right to have taxes levied by the Legislature or taxing
9 authority of any county, municipality or any other
10 political subdivision of this state for the payment of the
11 principal thereof or interest thereon, but such bonds and
12 notes are payable solely from the revenues and funds
13 pledged for their payment as authorized by this article
14 unless the notes are issued in anticipation of the issuance
15 of bonds or the bonds are refunded by refunding bonds
16 issued under authority of this article, which bonds or
17 refunding bonds are payable solely from revenues and
18 funds pledged for their payment as authorized by this
19 article. All such bonds and notes shall contain on the
20 face thereof a statement to the effect that the bonds or
21 notes, as to both principal and interest, are not debts of
22 the state or any county, municipality or political
23 subdivision thereof, but are payable solely from re-
24 venues and funds pledged for their payment.

25 All expenses incurred in carrying out the provisions
26 of this article are payable solely from funds provided
27 under authority of this article. This article does not
28 authorize the authority to incur indebtedness or liability
29 on behalf of or payable by the state or any county,
30 municipality or political subdivision thereof.

§22C-1-14. Use of funds by authority; restrictions thereon.

1 All moneys, properties and assets acquired by the
2 authority, whether as proceeds from the sale of water
3 development revenue bonds or as revenues or otherwise,
4 shall be held by it in trust for the purposes of carrying
5 out its powers and duties, and shall be used and reused

6 in accordance with the purposes and provisions of this
7 article. Such moneys shall at no time be commingled
8 with other public funds. Such moneys, except as
9 otherwise provided in any resolution authorizing the
10 issuance of water development revenue bonds or in any
11 trust agreement securing the same, or except when
12 invested pursuant to section fifteen of this article, shall
13 be kept in appropriate depositories and secured as
14 provided and required by law. The resolution authoriz-
15 ing the issuance of such bonds of any issue or the trust
16 agreement securing such bonds shall provide that any
17 officer to whom, or any banking institution or trust
18 company to which, such moneys are paid shall act as
19 trustee of such moneys and hold and apply them for the
20 purposes hereof, subject to the conditions this article and
21 such resolution or trust agreement provide.

§22C-1-15. Investment of funds by authority.

1 The authority is hereby authorized and empowered to
2 invest any funds not needed for immediate disbursement
3 in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of
7 indebtedness issued by any of the following agencies:
8 Banks for cooperatives; federal intermediate credit
9 banks; federal home loan bank system; Export-Import
10 Bank of the United States; federal land banks; the
11 Federal National Mortgage Association or the Govern-
12 ment National Mortgage Association;

13 (3) Public housing bonds issued by public agencies or
14 municipalities and fully secured as to the payment of
15 both principal and interest by a pledge of annual
16 contributions under an annual contributions contract or
17 contracts with the United States of America; or
18 temporary notes issued by public agencies or municipal-
19 ities or preliminary loan notes issued by public agencies
20 or municipalities, in each case, fully secured as to the
21 payment of both principal and interest by a requisition
22 or payment agreement with the United States of
23 America;

24 (4) Certificates of deposit secured by obligations of the
25 United States of America;

26 (5) Direct obligations of or obligations guaranteed by
27 the state of West Virginia;

28 (6) Direct and general obligations of any other state
29 within the territorial United States, to the payment of
30 the principal of and interest on which the full faith and
31 credit of such state is pledged: *Provided*, That at the
32 time of their purchase, such obligations are rated in
33 either of the two highest rating categories by a
34 nationally recognized bond-rating agency; and

35 (7) Any fixed interest bond, note or debenture of any
36 corporations organized and operating within the United
37 States: *Provided*, That such corporation shall have a
38 minimum net worth of fifteen million dollars and its
39 securities or its parent corporation's securities are listed
40 on one or more of the national stock exchanges:
41 *Provided, however*, That (i) such corporation has earned
42 a profit in eight of the preceding ten fiscal years as
43 reflected in its statements, and (ii) such corporation has
44 not defaulted in the payment of principal or interest on
45 any of its outstanding funded indebtedness during its
46 preceding ten fiscal years, and (iii) the bonds, notes or
47 debentures of such corporation to be purchased are
48 rated "AA" or the equivalent thereof or better than
49 "AA" or the equivalent thereof at least two or more
50 nationally recognized rating services such as Standard
51 and Poor's, Dun & Bradstreet or Moody's.

**§22C-1-16. Rentals and other revenues from water
development projects owned by the au-
thority; contracts and leases of the author-
ity; cooperation of other governmental
agencies; bonds of such agencies.**

1 This section applies to any water development project
2 or projects which are owned, in whole or in part, by the
3 authority. The authority may charge, alter and collect
4 rentals or other charges for the use or services of any
5 water development project, and contract in the manner
6 provided by this section with one or more persons, one
7 or more governmental agencies, or any combination

8 thereof, desiring the use or services thereof, and fix the
9 terms, conditions, rentals or other charges for such use
10 or services. Such rentals or other charges are not subject
11 to supervision or regulation by any other authority,
12 department, commission, board, bureau or agency of the
13 state, and such contract may provide for acquisition by
14 such person or governmental agency of all or any part
15 of such water development project for such considera-
16 tion payable over the period of the contract or otherwise
17 as the authority in its sole discretion determines to be
18 appropriate, but subject to the provisions of any
19 resolution authorizing the issuance of water develop-
20 ment revenue bonds or notes or water development
21 revenue refunding bonds of the authority or any trust
22 agreement securing the same. Any governmental
23 agency which has power to construct, operate and
24 maintain public water or wastewater facilities may
25 enter into a contract or lease with the authority whereby
26 the use or services of any water development project of
27 the authority will be made available to such governmen-
28 tal agency and pay for such use or services such rentals
29 or other charges as may be agreed to by such govern-
30 mental agency and the authority.

31 Any governmental agency or agencies or combination
32 thereof may cooperate with the authority in the acqui-
33 sition or construction of a water development project
34 and shall enter into such agreements with the authority
35 as are necessary, with a view to effective cooperative
36 action and safeguarding of the respective interests of the
37 parties thereto, which agreements shall provide for such
38 contributions by the parties thereto in such proportion
39 as may be agreed upon and such other terms as may
40 be mutually satisfactory to the parties, including,
41 without limitation, the authorization of the construction
42 of the project by one of the parties acting as agent for
43 all of the parties and the ownership and control of the
44 project by the authority to the extent necessary or
45 appropriate for purposes of the issuance of water
46 development revenue bonds by the authority. Any
47 governmental agency may provide such contribution as
48 is required under such agreements by the appropriation
49 of money or, if authorized by a favorable vote of the

50 electors to issue bonds or notes or levy taxes or
51 assessments and issue notes or bonds in anticipation of
52 the collection thereof, by the issuance of bonds or notes
53 or by the levying of taxes or assessments and the
54 issuance of bonds or notes in anticipation of the
55 collection thereof, and by the payment of such appropri-
56 ated money or the proceeds of such bonds or notes to
57 the authority pursuant to such agreements.

58 Any governmental agency, pursuant to a favorable
59 vote of the electors in an election held for the purpose
60 of issuing bonds to provide funds to acquire, construct
61 or equip, or provide real estate and interests in real
62 estate for a public water or wastewater facility, whether
63 or not the governmental agency at the time of such an
64 election had the authority to pay the proceeds from such
65 bonds or notes issued in anticipation thereof to the
66 authority as provided in this section, may issue such
67 bonds or notes in anticipation of the issuance thereof and
68 pay the proceeds thereof to the authority in accordance
69 with an agreement between such governmental agency
70 and the authority: *Provided*, That the legislative
71 authority of the governmental agency finds and deter-
72 mines that the water development project to be acquired
73 or constructed by the authority in cooperation with such
74 governmental agency will serve the same public purpose
75 and meet substantially the same public need as the
76 facility otherwise proposed to be acquired or constructed
77 by the governmental agency with the proceeds of such
78 bonds or notes.

**§22C-1-17. Maintenance, operation and repair of pro-
jects; reports by authority to governor and
Legislature.**

1 Each water development project, when constructed
2 and placed in operation, shall be maintained and kept
3 in good condition and repair by the authority or if owned
4 by a governmental agency, by such governmental
5 agency, or the authority or such governmental agency
6 shall cause the same to be maintained and kept in good
7 condition and repair. Each such project owned by the
8 authority shall be operated by such operating employees
9 as the authority employs or pursuant to a contract or

10 lease with a governmental agency or person. All public
11 or private property damaged or destroyed in carrying
12 out the provisions of this article and in the exercise of
13 the powers granted hereunder with regard to any
14 project shall be restored or repaired and placed in its
15 original condition, as nearly as practicable, or adequate
16 compensation made therefor out of funds provided in
17 accordance with the provisions of this article.

18 As soon as possible after the close of each fiscal year,
19 the authority shall make an annual report of its
20 activities for the preceding fiscal year to the governor
21 and the Legislature. Each such report shall set forth a
22 complete operating and financial statement covering the
23 authority's operations during the preceding fiscal year.
24 The authority shall cause an audit of its books and
25 accounts to be made at least once each fiscal year by
26 certified public accountants and the cost thereof may be
27 treated as a part of the cost of construction or of
28 operations of its projects.

§22C-1-18. Water development bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstand-
3 ing, all water development revenue bonds issued
4 pursuant to this article are lawful investments for the
5 West Virginia state board of investments and are also
6 lawful investments for banking institutions, societies for
7 savings, building and loan associations, savings and loan
8 associations, deposit guarantee associations, trust
9 companies, insurance companies, including domestic for
10 life and domestic not for life insurance companies.

§22C-1-19. Purchase and cancellation of notes or bonds.

1 The authority, subject to such agreements with
2 noteholders or bondholders as may then exist, has the
3 power, out of any funds available therefor, to purchase
4 notes or bonds of the authority.

5 If the notes or bonds are then redeemable, the price
6 of such purchase shall not exceed the redemption price
7 then applicable plus accrued interest to the next interest
8 payment date thereon. If the notes or bonds are not then

9 redeemable, the price of such purchase shall not exceed
10 the redemption price applicable on the first date after
11 such purchase upon which the notes or bonds become
12 subject to redemption plus accrued interest to such date.
13 Upon such purchase such notes or bonds shall be
14 canceled.

§22C-1-20. Refunding bonds.

1 Any bonds issued hereunder and at any time out-
2 standing may at any time and from time to time be
3 refunded by the authority by the issuance of its
4 refunding bonds in such amount as it may deem
5 necessary to refund the principal of the bonds so to be
6 refunded, together with any unpaid interest thereon; to
7 provide additional funds for the purposes of the
8 authority; and any premiums and commissions neces-
9 sary to be paid in connection therewith. Any such
10 refunding may be effected whether the bonds to be
11 refunded have matured or thereafter mature, either by
12 sale of the refunding bonds and the application of the
13 proceeds thereof for the redemption of the bonds to be
14 refunded thereby, or by exchange of the refunding
15 bonds for the bonds to be refunded thereby: *Provided,*
16 That the holders of any bonds so to be refunded shall
17 not be compelled without their consent to surrender
18 their bonds for payment or exchange prior to the date
19 on which they are payable or, if they are called for
20 redemption, prior to the date on which they are by their
21 terms subject to redemption. Any refunding bonds
22 issued under the authority of this article are payable
23 from the revenues out of which the bonds to be refunded
24 thereby were payable, or from other moneys or the
25 principal of and interest on or other investment yield
26 from, investments or proceeds of bonds or other
27 applicable funds and moneys, including investments of
28 proceeds of any refunding bonds, and are subject to the
29 provisions contained in section nine of this article and
30 shall be secured in accordance with the provisions of
31 sections nine and ten of this article.

§22C-1-21. Exemption from taxation.

1 The exercise of the powers granted to the authority

2 by this article will be in all respects for the benefit of
3 the people of the state, for the improvement of their
4 health, safety, convenience and welfare and for the
5 enhancement of their residential, agricultural, recrea-
6 tional, economic, commercial and industrial opportuni-
7 ties and is a public purpose. As the operation and
8 maintenance of water development projects are essential
9 governmental functions, the authority is not required to
10 pay any taxes or assessments upon any water development
11 project or upon any property acquired or used by the
12 authority or upon the income therefrom. Such bonds and
13 notes and all interest and income thereon are exempt
14 from all taxation by this state, or any county, munici-
15 pality, political subdivision or agency thereof, except
16 inheritance taxes.

**§22C-1-22. Acquisition of property by authority —
Acquisition by purchase; governmental
agencies authorized to convey, etc.,
property.**

1 The authority may acquire by purchase, whenever it
2 deems such purchase expedient, any land, property,
3 rights, rights-of-way, franchises, easements and other
4 interests in lands it deems necessary or convenient for
5 the construction and operation of any water develop-
6 ment project upon such terms and at such prices it
7 considers reasonable and can be agreed upon between
8 the authority and the owner thereof, and take title
9 thereto in the name of the state.

10 All governmental agencies, notwithstanding any
11 contrary provision of law, may lease, lend, grant or
12 convey to the authority, at its request, upon such terms
13 as the proper authorities of such governmental agencies
14 deem reasonable and fair and without the necessity for
15 an advertisement, auction, order of court or other action
16 or formality, other than the regular and formal action
17 of the governmental agency concerned, any real prop-
18 erty or interests therein, including improvements
19 thereto or personal property which is necessary or
20 convenient to the effectuation of the authorized purposes
21 of the authority, including public roads and other real

22 property or interests therein, including improvements
23 thereto or personal property already devoted to public
24 use.

**§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.**

1 The authority may acquire, pursuant to subdivision
2 (10), section six of this article, any land, rights, rights-
3 of-way, franchises, easements or other property neces-
4 sary or proper for the construction or the efficient
5 operation of any water development project.

6 This section does not authorize the authority to take
7 or disturb property or facilities belonging to any public
8 utility or to a common carrier, which property or
9 facilities are required for the proper and convenient
10 operation of such public utility or common carrier,
11 unless provision is made for the restoration, relocation
12 or duplication of such property or facilities elsewhere at
13 the sole cost of the authority.

14 When the authority finds it necessary to change the
15 location of any portion of any public road, state highway,
16 railroad or public utility facility in connection with the
17 construction of a water development project, it shall
18 cause the same to be reconstructed at such location as
19 the unit or division of government having jurisdiction
20 over such road, highway, railroad or public utility
21 facility deems most favorable. Such construction shall
22 be of substantially the same type and in as good
23 condition as the original road, highway, railroad or
24 public utility facility. The cost of such reconstruction,
25 relocation or removal and any damage incurred in
26 changing the location of any such road, highway,
27 railroad or public utility facility shall be paid by the
28 authority as a part of the cost of such water development
29 project.

30 When the authority finds it necessary that any public
31 highway or portion thereof be vacated by reason of the
32 acquisition or construction of a water development

33 project, the authority shall request the commissioner of
34 the division of highways, in writing, to vacate such
35 highway or portion thereof if the highway or portion
36 thereof to be vacated is part of the state road system,
37 or, if the highway or portion thereof to be vacated is
38 under the jurisdiction of a county or a municipality, the
39 authority shall request the governing body of such
40 county or municipality to vacate such public road or
41 portion thereof. The authority shall pay to the commis-
42 sioner of the division of highways or to the county or
43 municipality, as the case may be, as part of the cost of
44 such water development project, any amounts required
45 to be deposited with any court in connection with
46 proceedings for the determination of compensation and
47 damages and all amounts of compensation and damages
48 finally determined to be payable as a result of such
49 vacation.

50 The authority may make reasonable rules for the
51 installation, construction, maintenance, repair, renewal,
52 relocation and removal of railroad or public utility
53 facilities in, on, over or under any water development
54 project. Whenever the authority determines that it is
55 necessary that any such facilities installed or con-
56 structed in, on, over or under property of the authority
57 pursuant to such rules be relocated, the railroad or
58 public utility owning or operating such facilities shall
59 relocate or remove them in accordance with the order
60 of the authority. The cost and expenses of such reloca-
61 tion or removal, including the cost of installing such
62 facilities in a new location, the cost of any lands or any
63 rights or interests in lands and the cost of any other
64 rights acquired to accomplish such relocation or
65 removal, may be paid by the authority as a part of the
66 cost of such water development project. In case of any
67 such relocation or removal of facilities, the railroad or
68 public utility owning or operating them, and its
69 successors or assigns, may maintain and operate such
70 facilities, with the necessary appurtenances in the new
71 location in, on, over or under the property of the
72 authority for as long a period and upon the same terms
73 as it had the right to maintain and operate such
74 facilities in their former location.

§22C-1-24. Financial interest in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall
2 be financially interested, directly or indirectly, in any
3 contract of any person with the authority, or in the sale
4 of any property, real or personal, to or from the
5 authority. This section does not apply to contracts or
6 purchases of property, real or personal, between the
7 authority and any governmental agency. If any officer,
8 member or employee of the authority has such financial
9 interest in a contract or sale of property prohibited
10 hereby, he or she is guilty of a misdemeanor, and, upon
11 conviction thereof, shall be fined not more than one
12 thousand dollars, or imprisoned in the county jail not
13 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
2 public and the records of the authority shall be open to
3 public inspection at all reasonable times, except as
4 otherwise provided in this section. All final actions of
5 the authority shall be journalized and such journal shall
6 also be open to the inspection of the public at all
7 reasonable times. Any records or information relating
8 to secret processes or secret methods of manufacture or
9 production which may be obtained by the authority or
10 other persons acting under authority of this article are
11 confidential and shall not be disclosed.

§22C-1-26. Liberal construction of article.

1 The provisions of this article are hereby declared to
2 be remedial and shall be liberally construed to effectuate
3 its purposes and intents.

§22C-1-27. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes
2 issued by the authority shall not exceed two hundred
3 million dollars outstanding at any one time: *Provided,*
4 That in computing the total amount of bonds and notes
5 which may at any one time be outstanding, the principal
6 amount of any outstanding bonds or notes refunded or

7 to be refunded either by application of the proceeds of
8 the sale of any refunding bonds or notes of the authority
9 or by exchange for any such refunding bonds or notes,
10 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-2-8. Conflicting provisions.

§22C-2-1. Definitions.

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

3 (a) "Authority" means the water development author-
4 ity provided for in section four, article one of this
5 chapter.

6 (b) "Cost" as applied to any project financed under the
7 provisions of this article means the total of all costs
8 incurred by a local government that are reasonable and
9 necessary for carrying out all works and undertakings
10 necessary or incident to the accomplishment of any
11 project including:

12 (1) Developmental, planning and feasibility studies,
13 surveys, plans and specifications;

14 (2) Architectural, engineering, financial, legal or
15 other special services;

16 (3) Acquisition of land and any buildings and im-
17 provements thereon, including the discharge of any
18 obligations of the sellers of such land, buildings or
19 improvements;

20 (4) Site preparation and development, including
21 demolition or removal of existing structures, construc-

22 tion and reconstruction, labor, materials, machinery and
23 equipment;

24 (5) The reasonable costs of financing incurred by the
25 local government in the course of the development of the
26 project, carrying charges incurred before placing the
27 project in service, interest on funds borrowed to finance
28 the project to a date subsequent to the estimated date
29 the project is to be placed in service, necessary expenses
30 incurred in connection with placing the project in
31 service, and the funding of accounts and reserves which
32 the authority may require; and

33 (6) Other items that the division of environmental
34 protection determines to be reasonable and necessary.

35 (c) "Fund" means the state water pollution control
36 revolving fund provided for in this article as it may be
37 expanded or modified from time to time pursuant to the
38 clean water act, as amended, the federal safe drinking
39 water act, as amended or by the executive order of the
40 governor issued to comply with federal laws relating
41 thereto.

42 (d) "Instrumentality" means the division of environ-
43 mental protection or the agency designated by an order
44 of the governor as having the primary responsibility for
45 administering the fund pursuant to the federal clean
46 water act, as amended, and the federal safe drinking
47 water act, as amended, or other federal laws.

48 (e) "Local government" means any county, city, town,
49 municipal corporation, authority, district, public service
50 district, commission or political subdivision in West
51 Virginia.

52 (f) "Project" means any public water or wastewater
53 treatment facility located or to be located in or outside
54 this state by a local government and includes:

55 (1) Sewage and wastewater collection, treatment and
56 disposal facilities;

57 (2) Public water transportation, treatment and
58 distribution facilities;

59 (3) Drainage facilities and projects;

60 (4) Administrative, maintenance, storage and labor-
61 atory facilities related to the facilities delineated in
62 subdivisions (1), (2) and (3) of this subsection;

63 (5) Interests in land related to the facilities delineated
64 in subdivisions (1), (2), (3) and (4) of this subsection; and

65 (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.

1 The division of environmental protection shall act as
2 the instrumentality that is empowered to enter into
3 capitalization agreements with the United States
4 environmental protection agency, to accept capitaliza-
5 tion grant awards made under the federal clean water
6 act, as amended, the safe drinking water act, as
7 amended, and other federal laws and to otherwise
8 manage the fund provided for in this article in accor-
9 dance 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.

1 (a) Under the direction of the division of environmen-
2 tal protection, the water development authority shall
3 establish, administer and manage a permanent and
4 perpetual fund, to be known as the "West Virginia
5 Water Pollution Control Revolving Fund." The fund
6 shall be comprised of moneys appropriated to said fund
7 by the Legislature, moneys allocated to the state by the
8 federal government expressly for the purposes of
9 establishing and maintaining a state water pollution
10 control revolving fund, all receipts from loans made
11 from the fund to local governments, all income from the
12 investment of moneys held in the fund, and all other
13 sums designated for deposits to the fund from any
14 source, public or private. Moneys in the fund shall be
15 used solely to make loans to local governments to finance
16 or refinance the costs of a project: *Provided, That*

17 moneys in the fund shall be utilized to defray the costs
18 incurred by the authority and the division of environ-
19 mental protection in administering the provisions of this
20 article: *Provided, however,* That moneys in the fund shall
21 be used to make grants for projects to the extent allowed
22 or authorized by federal law.

23 (b) The director of the division of environmental
24 protection, in consultation with the authority, shall
25 promulgate rules in accordance with the provisions of
26 chapter twenty-nine-a of this code, to:

27 (1) Govern the disbursement of moneys from the fund;
28 and

29 (2) Establish a state water pollution control revolving
30 fund program to direct the distribution of grants or
31 loans from the fund to particular local governments and
32 establish the interest rates and repayment terms of such
33 loans.

34 (c) In order to carry out the administration and
35 management of the fund, the authority is authorized to
36 employ officers, employees, agents, advisers and consul-
37 tants, including attorneys, financial advisers, engineers,
38 other technical advisers and public accountants and,
39 notwithstanding any provisions of this code to the
40 contrary, to determine their duties and compensation
41 without the approval of any other agency or
42 instrumentality.

43 (d) The authority shall promulgate rules in accor-
44 dance with the provisions of chapter twenty-nine-a of
45 this code to govern the pledge of loans to secure bonds
46 of the authority.

47 (e) All moneys belonging to the fund shall be kept in
48 appropriate depositories and secured in conformance
49 with this code. Disbursements from the fund shall be
50 authorized for payment by the director of the authority
51 or the director's designee. Any depository or officer of
52 such depository to which moneys of the fund are paid
53 shall act as trustee of such moneys and shall hold and
54 apply them solely for the purposes for which said
55 moneys are provided under this article. Moneys in the

56 fund shall not be commingled with other money of the
57 authority. If not needed for immediate use or disburse-
58 ment, moneys in the fund may be invested or reinvested
59 by the authority in obligations or securities which are
60 considered lawful investments for public funds under
61 this code.

§22C-2-4. Annual audit.

1 The authority shall cause an audit of its books and
2 accounts to be made at least once each fiscal year by
3 certified public accountants, and the cost thereof may
4 be defrayed as a part of the cost of construction of a
5 project or as an administrative expense under the
6 provisions of subsection (a), section three of this article.

§22C-2-5. Collection of money due to the fund.

1 In order to ensure the timely payment of all sums due
2 and owing to the fund under a revolving fund loan
3 agreement between the state and a local government,
4 and notwithstanding any provisions of this code to the
5 contrary, the authority has and may, at its option,
6 exercise the following rights and remedies in the event
7 of any default by a local government under such a loan
8 agreement:

9 (a) The authority may directly impose, in its own
10 name and for its own benefit, service charges upon all
11 users of a project funded by a loan distributed to a local
12 government pursuant to this article, and may proceed
13 directly to enforce and collect such service charges,
14 together with all necessary costs of such enforcement
15 and collection.

16 (b) The authority may exercise, in its own name or
17 in the name of and as the agent for a particular local
18 government, all of the rights, powers and remedies of
19 the local government with respect to the project or
20 which may be conferred upon the local government by
21 statute, rule, regulation or judicial decision, including
22 all rights and remedies with respect to users of the
23 project funded by the loan distributed to that local
24 government pursuant to this article.

25 (c) The authority may, by civil action, mandamus or

26 other judicial or administrative proceeding, compel
27 performance by a local government of all of the terms
28 and conditions of the loan agreement between the state
29 and that local government including:

30 (1) The adjustment of service charges as required to
31 repay the loan or otherwise satisfy the terms of the loan
32 agreement;

33 (2) The enforcement and collection of service charges;
34 and

35 (3) The enforcement by the local government of all
36 rights and remedies conferred by statute, rule, regula-
37 tion or judicial decision.

38 The rights and remedies enumerated in this section
39 are in addition to rights and remedies conferred upon
40 the authority by law or pursuant to the loan agreement.

**§22C-2-6. State construction grants program established;
special fund.**

1 (a) The director of the division of environmental
2 protection shall promulgate rules in accordance with the
3 provisions of chapter twenty-nine-a of this code to
4 establish a state construction grants program that is
5 designed to complement and supplement the state water
6 pollution control revolving fund program established
7 pursuant to subsection (b), section three of this article.

8 (b) The special fund designated "The West Virginia
9 Construction Grants Fund" established in the state
10 treasury is continued. The special fund shall be com-
11 prised of moneys appropriated to said fund by the
12 Legislature, assessments on existing wastewater treat-
13 ment facilities, and all other sums designated for deposit
14 to the special fund from any source, public or private:
15 *Provided*, That such assessments shall be made and
16 collected in accordance with fee schedules to be
17 established by legislative rules promulgated by the
18 director of the division of environmental protection, in
19 accordance with chapter twenty-nine-a of this code.
20 Moneys in the special fund shall be used solely for the
21 state construction grants program established under
22 subsection (a) of this section: *Provided, however*, That

23 moneys in the special fund may be utilized to defray the
24 costs incurred by the division of environmental protec-
25 tion in administering the provisions of this section.

§22C-2-7. Environmental review of funded projects.

1 (a) The division of environmental protection shall
2 conduct an environmental review on each project funded
3 under this article. The director of the division of
4 environmental protection shall promulgate rules in
5 accordance with the provisions of chapter twenty-nine-
6 a of this code to implement the environmental review
7 of funded projects: *Provided*, That said rules shall be
8 consistent with the rules and regulations promulgated
9 by the United States environmental protection agency
10 pursuant to the federal clean water act, as amended.

11 (b) The director of the division of environmental
12 protection is authorized to direct a local government, or
13 its agent, to implement all measures that, in the
14 judgment of the director, are necessary in order to
15 mitigate or prevent adverse impacts to the public
16 health, safety or welfare or to the environment that may
17 result from a project funded under this article. The
18 director is further authorized to require all projects to
19 comply with all other appropriate federal laws and
20 regulations that are required of such projects under the
21 federal clean water act, as amended.

§22C-2-8. Conflicting provisions.

1 The provisions of this article shall be liberally
2 construed to the end that its beneficial purposes may be
3 effectuated. Insofar as the provisions of this article are
4 inconsistent with the provisions of any other general,
5 special or local law, the provisions of this article are
6 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
- 2 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
- 2 controlled and improper collection and disposal of solid

3 waste (1) is a public nuisance and a clear and present
4 danger to people; (2) provides harborage and breeding
5 places for disease-carrying, injurious insects, rodents
6 and other pests harmful to the public health, safety and
7 welfare; (3) constitutes a danger to livestock and
8 domestic animals; (4) decreases the value of private and
9 public property, causes pollution, blight and deteriora-
10 tion of the natural beauty and resources of the state and
11 has adverse economic and social effects on the state and
12 its citizens; and (5) results in the squandering of
13 valuable nonrenewable and nonreplenishable resources
14 contained in solid waste.

15 Further, the Legislature finds that governmental
16 agencies in the state and the private sector do not have
17 the financial and other resources needed to provide for
18 the proper collection and disposal of solid waste; that
19 solid waste disposal sheds and projects must be estab-
20 lished on a relatively large scale to be economically
21 feasible and stable; and that proper solid waste collec-
22 tion and disposal at the lowest minimum cost can only
23 be achieved through comprehensive solid waste
24 management.

25 It is declared to be the public policy and a responsi-
26 bility of this state to assist efforts of governmental
27 agencies and the private sector to provide for the proper
28 collection, disposal and recycling of solid waste and to
29 solve and prevent the problems set forth in this article.
30 It is the purpose and intent of the Legislature in
31 enacting this article to provide for the necessary,
32 dependable, effective and efficient collection, disposal
33 and recycling of solid waste and to assist and cooperate
34 with governmental agencies and the private sector in
35 achieving all the purposes set forth in this article, and
36 to encourage the recycling or extraction of recoverable
37 resources from such solid waste.

38 The Legislature finds that the public policy and
39 responsibility of the state as set forth in this section
40 cannot be effectively attained without the funding,
41 establishment, operation and maintenance of solid waste
42 disposal projects as provided in this article.

§22C-3-3. Definitions.

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

3 (1) "Board" means the solid waste management board
4 provided for in section four of this article, the duties,
5 powers, responsibilities and functions of which are
6 specified in this article.

7 (2) "Bond" or "solid waste disposal revenue bond"
8 means a revenue bond or note issued by the solid waste
9 management board, previously known as the West
10 Virginia resource recovery — solid waste disposal
11 authority, to effect the intents and purposes of this
12 article.

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

16 (4) "Cost" means, as applied to solid waste disposal
17 projects, the cost of their acquisition and construction;
18 the cost of acquisition of all land, rights-of-way,
19 property, rights, easements, franchise rights and
20 interests required by the board for such acquisition and
21 construction; the cost of demolishing or removing any
22 buildings or structures on land so acquired, including
23 the cost of acquiring any land to which such buildings
24 or structures may be moved; the cost of diverting
25 highways, interchange of highways and access roads to
26 private property, including the cost of land or easements
27 therefor; the cost of all machinery, furnishings and
28 equipment; all financing charges and interest prior to
29 and during construction and for no more than eighteen
30 months after completion of construction; the cost of all
31 engineering services and all expenses of research and
32 development with respect to solid waste facilities; the
33 cost of all legal services and expenses; the cost of all
34 plans, specifications, surveys and estimates of cost and
35 revenues; all working capital and other expenses
36 necessary or incident to determining the feasibility or
37 practicability of acquiring or constructing any such
38 project; all administrative expenses and such other
39 expenses as may be necessary or incident to the

40 acquisition or construction of the project; the financing
41 of such acquisition or construction, including the
42 amount authorized in the resolution of the board
43 providing for the issuance of solid waste disposal
44 revenue bonds to be paid into any special funds from the
45 proceeds of such bonds; and the financing of the placing
46 of any such project in operation. Any obligation or
47 expenses incurred by any governmental agency, with
48 the approval of the board, for surveys, borings, prepara-
49 tion of plans and specifications and other engineering
50 services in connection with the acquisition or construc-
51 tion of a project are a part of the cost of such project
52 and shall be reimbursed out of the proceeds of loans or
53 solid waste disposal revenue bonds as authorized by the
54 provisions of this article.

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

68 (6) "Industrial waste" means any solid waste sub-
69 stance resulting from or incidental to any process of
70 industry, manufacturing, trade or business, or from or
71 incidental to the development, processing or recovery of
72 any natural resource.

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

77 (8) "Person" means any public or private corporation,
78 institution, association, firm or company organized or
79 existing under the laws of this or any other state or

80 country; the United States or the state of West Virginia;
81 governmental agency; political subdivision; county
82 commission; municipality; industry; sanitary district;
83 public service district; drainage district; soil conserva-
84 tion district; solid waste disposal shed district; partner-
85 ship; trust; estate; individual; group of individuals
86 acting individually or as a group; or any other legal
87 entity.

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

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

104 (11) "Solid waste" means any garbage, paper, litter,
105 refuse, cans, bottles, waste processed for the express
106 purpose of incineration, sludge from a waste treatment
107 plant, water supply treatment plant or air pollution
108 control facility, other discarded material, including
109 offensive or unsightly matter, solid, liquid, semisolid or
110 contained liquid or gaseous material resulting from
111 industrial, commercial, mining or community activities
112 but does not include solid or dissolved material in
113 sewage, or solid or dissolved materials in irrigation
114 return flows or industrial discharges which are point
115 sources and have permits under article eleven, chapter
116 twenty-two of this code, or source, special nuclear or by-
117 product material as defined by the Atomic Energy Act
118 of 1954, as amended, including any nuclear or by-
119 product material considered by federal standards to be
120 below regulatory concern, or a hazardous waste either

121 identified or listed under article eighteen, chapter
122 twenty-two, or refuse, slurry, overburden or other waste
123 or material resulting from coal-fired electric power or
124 steam generation, the exploration, development, produc-
125 tion, storage and recovery of coal, oil and gas, and other
126 mineral resources placed or disposed of at a facility
127 which is regulated under articles two, three, four, six,
128 seven, eight, nine or ten, chapter twenty-two or chapter
129 twenty-two-a of this code, so long as such placement or
130 disposal is in conformance with a permit issued
131 pursuant to said chapters. "Solid waste" does not include
132 materials which are recycled by being used or reused
133 in an industrial process to make a product, as effective
134 substitutes for commercial products, or are returned to
135 the original process as a substitute for raw material
136 feedstock.

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

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

158 (14) "Solid waste disposal shed" or "shed" means a
159 geographical area which the solid waste management
160 board designates as provided in section nine of this
161 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.

1 The solid waste management board is a governmental
2 instrumentality of the state and a body corporate. The
3 exercise by the board of the powers conferred on it by
4 this article and the carrying out of its purposes and
5 duties are essential governmental functions and are for
6 a public purpose.

7 The board is composed of seven members. The
8 secretary of the department of health and human
9 resources and the director of the division of environmen-
10 tal protection, or their designees, are members ex officio
11 of the board. The other five members of the board are
12 appointed by the governor, by and with the advice and
13 consent of the Senate, for terms of one, two, three, four
14 and five years, respectively. Two appointees shall be
15 persons having at least three years of professional
16 experience in solid waste management, civil engineering
17 or regional planning and three appointees shall be
18 representatives of the general public. The successor of
19 each such appointed member shall be appointed for a
20 term of five years in the same manner the original
21 appointments were made and so that the representation
22 on the board as set forth in this section is preserved,
23 except that any person appointed to fill a vacancy
24 occurring prior to the expiration of the term for which
25 his or her predecessor was appointed shall be appointed
26 only for the remainder of such term. Each board
27 member serves until the appointment and qualification
28 of his or her successor.

29 No more than three of the appointed board members
30 may at any one time be from the same congressional
31 district or belong to the same political party. No
32 appointed board member may be an officer or employee
33 of the United States or this state. Appointed board
34 members may be reappointed to serve additional terms.
35 All members of the board shall be citizens of the state.
36 Each appointed member of the board, before entering
37 upon his or her duties, shall comply with the require-

38 ments of article one, chapter six of this code and give
39 bond in the sum of twenty-five thousand dollars.
40 Appointed members may be removed from the board
41 only for the same causes as elective state officers may
42 be removed.

43 Annually the board shall elect one of its appointed
44 members as chair, another as vice chair and appoint a
45 secretary-treasurer, who need not be a member of the
46 board. Four members of the board are a quorum and
47 the affirmative vote of four members is necessary for
48 any action taken by vote of the board. No vacancy in the
49 membership of the board impairs the rights of a quorum
50 by such vote to exercise all the rights and perform all
51 the duties of the board. The person appointed as
52 secretary-treasurer shall give bond in the sum of fifty
53 thousand dollars. If a board member is appointed as
54 secretary-treasurer, he or she shall give bond in the sum
55 of twenty-five thousand dollars in addition to the bond
56 required in the preceding paragraph.

57 The ex officio members of the board shall not receive
58 any compensation for serving as a board member. Each
59 of the five appointed members of the board shall be paid
60 the same compensation, and each member of the board
61 shall be paid the expense reimbursement, as is paid to
62 members of the Legislature for their interim duties as
63 recommended by the citizens legislative compensation
64 commission and authorized by law for each day or
65 portion thereof engaged in the discharge of official
66 duties. All such compensation and expenses incurred by
67 board members are payable solely from funds of the
68 board or from funds appropriated for such purpose by
69 the Legislature and no liability or obligation shall be
70 incurred by the board beyond the extent to which
71 moneys are available from funds of the board or from
72 such appropriation.

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

76 The board shall appoint a director as its chief
77 executive officer. The director shall have successfully

78 completed an undergraduate education and, in addition,
79 shall have two years of professional experience in solid
80 waste management, civil engineering, public adminis-
81 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.**

1 To accomplish the public policy and purpose and to
2 meet the responsibility of the state as set forth in this
3 article, the solid waste management board shall desig-
4 nate and establish solid waste disposal sheds and it may
5 initiate, acquire, construct, maintain, repair and operate
6 solid waste disposal projects or cause the same to be
7 operated pursuant to a lease, sublease or agreement
8 with any person or governmental agency; may make
9 loans and grants to persons and to governmental
10 agencies for the acquisition or construction of solid
11 waste disposal projects by such persons and governmen-
12 tal agencies; and may issue solid waste disposal revenue
13 bonds of this state, payable solely from revenues, to pay
14 the cost of, or finance, in whole or in part, by loans to
15 governmental agencies, such projects. A solid waste
16 disposal project shall not be undertaken unless the board
17 determines that the project is consistent with federal
18 law, with its solid waste disposal shed plan, with the
19 standards set by the state environmental quality board
20 and the director of the division of environmental
21 protection for any waters of the state which may be
22 affected thereby, with the air quality standards set by
23 the said director and with health standards set by the
24 bureau of public health. Any resolution of the board
25 providing for acquiring or constructing such projects or
26 for making a loan or grant for such projects shall
27 include a finding by the board that such determinations
28 have been made. A loan agreement shall be entered into
29 between the board and each governmental agency to
30 which a loan is made for the acquisition or construction
31 of a solid waste disposal project, which loan agreement
32 shall include without limitation the following provisions:

33 (1) The cost of such project, the amount of the loan,

34 the terms of repayment of such loan and the security
35 therefor, which may include, in addition to the pledge
36 of all revenues from such project after a reasonable
37 allowance for operation and maintenance expenses, a
38 deed of trust or other appropriate security instrument
39 creating a lien on such project;

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

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

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

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

60 The board shall comply with all of the provisions of
61 federal law and of article fifteen, chapter twenty-two of
62 this code and any rules promulgated thereunder which
63 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
2 powers necessary or appropriate to carry out and
3 effectuate its corporate purpose. The board may:

4 (1) Adopt, and from time to time, amend and repeal
5 bylaws necessary and proper for the regulation of its
6 affairs and the conduct of its business, and rules,
7 promulgated pursuant to the provisions of chapter

8 twenty-nine-a of this code, to implement and make
9 effective its powers and duties.

10 (2) Adopt an official seal.

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

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

20 (5) Make loans and grants to persons and to govern-
21 mental agencies for the acquisition or construction of
22 solid waste disposal projects and adopt rules and
23 procedures for making such loans and grants.

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

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

34 (8) Issue solid waste disposal revenue bonds and notes
35 and solid waste disposal revenue refunding bonds of the
36 state, payable solely from revenues as provided in
37 section ten of this article, unless the bonds are refunded
38 by refunding bond, for the purpose of paying all or any
39 part of the cost of acquiring, constructing, reconstruct-
40 ing, enlarging, improving, furnishing, equipping, or
41 repairing solid waste disposal projects, or making loans
42 to persons or to governmental agencies for the acquisi-
43 tion, design or construction of solid waste disposal
44 projects or parts thereof.

45 (9) Acquire by gift or purchase, hold and dispose of

46 real and personal property in the exercise of its powers
47 and the performance of its duties as set forth in this
48 article.

49 (10) Acquire in the name of the state, by purchase or
50 otherwise, on such terms and in such manner as it
51 deems proper, or by the exercise of the right of eminent
52 domain in the manner provided in chapter fifty-four of
53 this code, such public or private lands, or parts thereof
54 or rights therein, rights-of-way, property, rights,
55 easements and interests it deems necessary for carrying
56 out the provisions of this article, but excluding the
57 acquisition by the exercise of the right of eminent
58 domain of any solid waste facility operated under
59 permits issued pursuant to the provisions of article
60 fifteen, chapter twenty-two of this code and owned by
61 any person or governmental agency. This article does
62 not authorize the board to take or disturb property or
63 facilities belonging to any public utility or to a common
64 carrier, which property or facilities are required for the
65 proper and convenient operation of such public utility
66 or common carrier, unless provision is made for the
67 restoration, relocation or duplication of such property or
68 facilities elsewhere at the sole cost of the board.

69 (11) Make and enter into all contracts and agreements
70 and execute all instruments necessary or incidental to
71 the performance of its duties and the execution of its
72 powers. When the cost under any such contract or
73 agreement, other than compensation for personal
74 services, involves an expenditure of more than two
75 thousand dollars, the board shall make a written
76 contract with the lowest responsible bidder after public
77 notice published as a Class II legal advertisement in
78 compliance with the provisions of article three, chapter
79 fifty-nine of this code, the publication area for such
80 publication to be the county wherein the work is to be
81 performed or which is affected by the contract, which
82 notice shall state the general character of the work and
83 the general character of the materials to be furnished,
84 the place where plans and specifications therefor may
85 be examined and the time and place of receiving bids.
86 A contract or lease for the operation of a solid waste

87 disposal project constructed and owned by the board or
88 an agreement for cooperation in the acquisition or
89 construction of a solid waste disposal project pursuant
90 to section sixteen of this article is not subject to the
91 foregoing requirements and the board may enter into
92 such contract or lease or such agreement pursuant to
93 negotiation and upon such terms and conditions and for
94 such period as it finds to be reasonable and proper
95 under the circumstances and in the best interests of
96 proper operation or of efficient acquisition or construc-
97 tion of such project. The board may reject any and all
98 bids. A bond with good and sufficient surety, approved
99 by the board, is required of all contractors in an amount
100 equal to at least fifty percent of the contract price,
101 conditioned upon the faithful performance of the
102 contract.

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

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

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

126 (15) Purchase fire and extended coverage and liability
127 insurance for any solid waste disposal project and for

128 the principal office and suboffices of the board, insu-
129 rance protecting the board and its officers and em-
130 ployees against liability, if any, for damage to property
131 or injury to or death of persons arising from its
132 operations and any other insurance the board may agree
133 to provide under any resolution authorizing the issuance
134 of solid waste disposal revenue bonds.

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

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

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

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

1 On or before the first day of January, one thousand
2 nine hundred ninety-three, the solid waste management
3 board shall prepare an overall state plan for the proper
4 management of solid waste: *Provided*, That such plan
5 shall be consistent with the findings and purposes of
6 article four of this chapter, article fifteen of chapter
7 twenty-two and article eleven of chapter twenty of this
8 code: *Provided, however*, That such plan shall incorpo-
9 rate the county or regional plans developed pursuant to
10 sections eight and twenty-four, article four of this
11 chapter, as amended: *Provided further*, That such plan
12 shall be updated every two years following its initial
13 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.

1 In order to ensure that the public purposes to be
2 served by the board may be properly carried out and
3 in order to assure the timely payment to the board of
4 all sums due and owing under loan agreements with
5 governmental agencies, as referred to in section five of
6 this article, notwithstanding any provision to the
7 contrary elsewhere contained in this code, in event of
8 any default by a governmental agency under such a loan
9 agreement, the board has, and may, at its option,
10 exercise the following rights and remedies in addition
11 to the rights and remedies conferred by law or pursuant
12 to said loan agreement:

13 (1) The board may directly impose, in its own name
14 and for its own benefit, service charges determined by
15 it to be necessary under the circumstances upon all
16 users of the solid waste disposal project to be acquired
17 or constructed pursuant to such loan agreement, and
18 proceed directly to enforce and collect such service
19 charges, together with all necessary costs of such
20 enforcement and collection.

21 (2) The board may exercise, in its own name or in the
22 name of and as agent for the governmental agency, all
23 of the rights, authority, powers and remedies of the
24 governmental agency with respect to the solid waste
25 disposal project or which may be conferred upon the
26 governmental agency by statute, rule, regulation or
27 judicial decision, including, without limitation, all rights
28 and remedies with respect to users of such solid waste
29 disposal project.

30 (3) The board may, by civil action, mandamus or other
31 judicial or administrative proceeding, compel perfor-
32 mance by such governmental agency of all of the terms
33 and conditions of such loan agreement including,
34 without limitation, the adjustment and increase of
35 service charges as required to repay the loan or
36 otherwise satisfy the terms of such loan agreement, the
37 enforcement and collection of such service charges and
38 the enforcement by such governmental agency of all
39 rights and remedies conferred by statute, rule, regula-
40 tion or judicial decision.

§22C-3-9. Development and designation of solid waste disposal sheds by board.

1 The board shall maintain the division of the state into
2 geographical areas for solid waste management which
3 shall be known as solid waste disposal sheds. The board
4 may, from time to time, modify the boundaries of such
5 sheds in a manner consistent with the provisions of this
6 section. Before it modifies the sheds, the board shall
7 consult with the affected municipalities and county or
8 regional solid waste authorities and obtain and evaluate
9 their opinions as to how many sheds there should be and
10 where their boundaries should be located. The board
11 shall then cause feasibility and cost studies to be made
12 in order for it to designate the solid waste disposal sheds
13 within each of which the most dependable, effective,
14 efficient and economical solid waste disposal projects
15 may be established. The sheds shall not overlap and
16 shall cover the entire state.

17 The board shall designate the sheds so that:

18 (1) The goal of providing solid waste collection and
19 disposal service to each household, business and industry
20 in the state can reasonably be achieved.

21 (2) The total cost of solid waste collection and disposal
22 and the cost of solid waste collection and disposal within
23 each shed and per person can be kept as low as possible.

24 (3) Solid waste collection and disposal service,
25 facilities and projects can be integrated in the most
26 feasible, dependable, effective, efficient and economical
27 manner.

28 (4) No county is located in more than one shed:
29 *Provided*, That the board may divide a county among
30 two or more sheds upon request of the appropriate
31 county or regional solid waste authority.

32 The board, in modifying the boundaries of solid waste
33 disposal sheds, is exempt from the provisions of c.
34 twenty-nine-a.

§22C-3-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

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

17 The board may, from time to time, issue renewal
18 notes, issue bonds to pay such notes and whenever it
19 deems refunding expedient, refund any bonds by the
20 issuance of solid waste disposal revenue refunding bonds
21 of the state. Except as may otherwise be expressly
22 provided in this article or by the board, every issue of
23 its bonds or notes are obligations of the board payable
24 out of the revenues and reserves created for such
25 purposes by the board, which are pledged for such
26 payment, without preference or priority of the first
27 bonds issued, subject only to any agreements with the
28 holders of particular bonds or notes pledging any
29 particular revenues. Such pledge is valid and binding
30 from the time the pledge is made and the revenue so
31 pledged and thereafter received by the board is
32 immediately subject to the lien of such pledge without
33 any physical delivery thereof or further act and the lien
34 of any such pledge is valid and binding as against all
35 parties having claims of any kind in tort, contract or
36 otherwise against the board irrespective of whether such
37 parties have notice thereof. All such bonds and notes

38 shall have all the qualities of negotiable instruments.

39 The bonds and notes shall be authorized by resolution
40 of the board, bear such dates and mature at such times,
41 in the case of any such note or any renewals thereof not
42 exceeding five years from the date of issue of such
43 original note, and in the case of any such bond not
44 exceeding fifty years from the date of issue, as such
45 resolution may provide. The bonds and notes shall bear
46 interest at such rate, be in such denominations, be in
47 such form, either coupon or registered, carry such
48 registration privileges, be payable in such medium of
49 payment, at such place and be subject to such terms of
50 redemption as the board may authorize. The board may
51 sell such bonds and notes at public or private sale, at
52 the price the board determines. The bonds and notes
53 shall be executed by the chair and vice chair of the
54 board, both of whom may use facsimile signatures. The
55 official seal of the board or a facsimile thereof shall be
56 affixed thereto or printed thereon and attested, manu-
57 ally or by facsimile signature, by the secretary-treasurer
58 of the board, and any coupons attached thereto shall
59 bear the signature or facsimile signature of the chair of
60 the board. In case any officer whose signature, or a
61 facsimile of whose signature, appears on any bonds,
62 notes or coupons ceases to be such officer before delivery
63 of such bonds or notes, such signature or facsimile is
64 nevertheless sufficient for all purposes the same as if he
65 or she had remained in office until such delivery and,
66 in case the seal of the board has been changed after a
67 facsimile has been imprinted on such bonds or notes,
68 such facsimile seal will continue to be sufficient for all
69 purposes.

70 Any resolution authorizing any bonds or notes or any
71 issue thereof may contain provisions (subject to such
72 agreements with bondholders or noteholders as may
73 then exist, which provisions shall be a part of the
74 contract with the holders thereof) as to pledging all or
75 any part of the revenues of the board to secure the
76 payment of the bonds or notes or of any issue thereof;
77 the use and disposition of revenues of the board; a
78 covenant to fix, alter and collect rentals, fees, service

79 charges and other charges so that pledged revenues will
80 be sufficient to pay the costs of operation, maintenance
81 and repairs, pay principal of and interest on bonds or
82 notes secured by the pledge of such revenues and
83 provide such reserves as may be required by the
84 applicable resolution; the setting aside of reserve funds,
85 sinking funds or replacement and improvement funds
86 and the regulation and disposition thereof; the crediting
87 of the proceeds of the sale of bonds or notes to and
88 among the funds referred to or provided for in the
89 resolution authorizing the issuance of the bonds or notes;
90 the use, lease, sale or other disposition of any solid waste
91 disposal project or any other assets of the board;
92 limitations on the purpose to which the proceeds of sale
93 of bonds or notes may be applied and pledging such
94 proceeds to secure the payment of the bonds or notes or
95 of any issue thereof; agreement of the board to do all
96 things necessary for the authorization, issuance and sale
97 of bonds in such amounts as may be necessary for the
98 timely retirement of notes issued in anticipation of the
99 issuance of bonds; limitations on the issuance of
100 additional bonds or notes; the terms upon which
101 additional bonds or notes may be issued and secured; the
102 refunding of outstanding bonds or notes; the procedure,
103 if any, by which the terms of any contract with
104 bondholders or noteholders may be amended or abro-
105 gated, the holders of which must consent thereto, and
106 the manner in which such consent may be given;
107 limitations on the amount of moneys to be expended by
108 the board for operating, administrative or other
109 expenses of the board; and any other matters, of like or
110 different character, which in any way affect the security
111 or protection of the bonds or notes.

112 In the event that the sum of all reserves pledged to
113 the payment of such bonds or notes is less than the
114 minimum reserve requirements established in any
115 resolution or resolutions authorizing the issuance of such
116 bonds or notes, the chair of the board shall certify, on
117 or before the first day of December of each year, the
118 amount of such deficiency to the governor of the state,
119 for inclusion, if the governor shall so elect, of the amount
120 of such deficiency in the budget to be submitted to the

121 next session of the Legislature for appropriation to the
122 board to be pledged for payment of such bonds or notes:
123 *Provided*, That the Legislature is not required to make
124 any appropriation so requested, and the amount of such
125 deficiencies is not a debt or liability of the state.

126 Neither the members of the board nor any person
127 executing the bonds or notes are liable personally on the
128 bonds or notes or are subject to any personal liability
129 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.**

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

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

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

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

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

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

22 (b) Prior to issuing revenue bonds under the provi-
23 sions of this article, the board shall enter into agree-
24 ments satisfactory to the water development authority
25 with regard to the selection of all consultants, advisors

26 and other experts to be employed in connection with the
27 issuance of such bonds and the fees and expenses to be
28 charged by such persons, and to establish any necessary
29 reserve funds and replacement and improvement funds,
30 all such funds to be administered by the water devel-
31 opment authority, and, so long as any such bonds remain
32 outstanding, to establish and maintain a sinking fund or
33 funds to retire such bonds and pay the interest thereon
34 as the same may become due. The amounts in any such
35 sinking fund, as and when so set apart by the board,
36 shall be remitted to the water development authority at
37 least thirty days previous to the time interest or
38 principal payments become due, to be retained and paid
39 out by the water development authority, as agent for the
40 board, in a manner consistent with the provisions of this
41 article and with the resolution pursuant to which the
42 bonds have been issued. The water development author-
43 ity shall act as fiscal agent for the administration of any
44 sinking fund and reserve fund established under each
45 resolution authorizing the issuance of revenue bonds
46 pursuant to the provisions of this article, and shall invest
47 all funds not required for immediate disbursement in
48 the same manner as funds are invested pursuant to the
49 provisions of section fifteen, article one of this chapter.

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

57 (1) To pay the cost of acquiring, constructing,
58 reconstructing, enlarging, improving, furnishing,
59 equipping or repairing solid waste disposal projects;

60 (2) To make loans to persons or to governmental
61 agencies for the acquisition, design and construction of
62 solid waste disposal projects, taking such collateral
63 security for any such loans as may be approved by the
64 water development authority; and

65 (3) To pay the costs and expenses incidental to or

66 necessary for the issuance of such bonds.

67 (d) If the proceeds of revenue bonds issued for any
68 solid waste disposal project exceed the cost thereof, the
69 surplus shall be paid into the fund herein provided for
70 the payment of principal and interest upon such bonds.
71 Such fund may be used by the fiscal agent for the
72 purchase or redemption of any of the outstanding bonds
73 payable from such fund at the market price, but not at
74 a price exceeding the price at which any of such bonds
75 is in the same year redeemable, as fixed by the board
76 in its said resolution, and all bonds redeemed or
77 purchased shall forthwith be canceled, and shall not
78 again be issued.

§22C-3-12. Legal remedies of bondholders.

1 Any holder of solid waste disposal revenue bonds
2 issued under the authority of this article or any of the
3 coupons appertaining thereto, except to the extent the
4 rights given by this article may be restricted by the
5 applicable resolution, may by civil action, mandamus or
6 other proceeding, protect and enforce any rights
7 granted under the laws of this state or granted under
8 this article, by the resolution authorizing the issuance
9 of such bonds, and may enforce and compel the perform-
10 mance of all duties required by this article, or by the
11 resolution, to be performed by the board or any officer
12 or employee thereof, including the fixing, charging and
13 collecting of sufficient rentals, fees, service charges or
14 other charges.

**§22C-3-13. Bonds and notes not debt of state, county,
municipality or of any political subdivision;
expenses incurred pursuant to article.**

1 Solid waste disposal revenue bonds and notes and
2 solid waste disposal revenue refunding bonds issued
3 under authority of this article and any coupons in
4 connection therewith are not a debt or a pledge of the
5 faith and credit or taxing power of this state or of any
6 county, municipality or any other political subdivision
7 of this state, and the holders or owners thereof have no
8 right to have taxes levied by the Legislature or taxing
9 authority of any county, municipality or any other

10 political subdivision of this state for the payment of the
11 principal thereof or interest thereon, but such bonds and
12 notes are payable solely from the revenues and funds
13 pledged for their payment as authorized by this article
14 unless the notes are issued in anticipation of the issuance
15 of bonds or the bonds are refunded by refunding bonds
16 issued under authority of this article, which bonds or
17 refunding bonds are payable solely from revenues and
18 funds pledged for their payment as authorized by this
19 article. All such bonds and notes shall contain on the
20 face thereof a statement to the effect that the bonds or
21 notes, as to both principal and interest, are not debts of
22 the state or any county, municipality or political
23 subdivision thereof, but are payable solely from re-
24 venues and funds pledged for their payment.

25 All expenses incurred in carrying out the provisions
26 of this article are payable solely from funds provided
27 under authority of this article. This article does not
28 authorize the board to incur indebtedness or liability on
29 behalf of or payable by the state or any county,
30 municipality or political subdivision thereof.

**§22C-3-14. Use of funds, properties, etc., by board;
restrictions thereon.**

1 All moneys, properties and assets acquired by the
2 board, whether as proceeds from the sale of solid waste
3 disposal revenue bonds or as revenues or otherwise, shall
4 be held by it in trust for the purposes of carrying out
5 its powers and duties, and shall be used and reused in
6 accordance with the purposes and provisions of this
7 article. Such moneys shall at no time be commingled
8 with other public funds. Such moneys, except as
9 otherwise provided in any resolution authorizing the
10 issuance of solid waste disposal revenue bonds or except
11 when invested, shall be kept in appropriate depositories
12 and secured as provided and required by law. The
13 resolution authorizing the issuance of such bonds of any
14 issue shall provide that any officer to whom such moneys
15 are paid shall act as trustee of such moneys and hold
16 and apply them for the purposes hereof, subject to the
17 conditions this article and such resolution provide.

§22C-3-15. Audit of funds disbursed by the board and recipients thereof.

1 Beginning in the fiscal year ending the thirtieth day
2 of June, one thousand nine hundred ninety-two, and
3 every second fiscal year thereafter, the Legislature shall
4 cause to be performed a post audit and a performance
5 audit for the intervening two-year period of the
6 recipients of any grant or loan provided by the solid
7 waste management board. The audit shall cover the
8 disbursement of such loans or grants provided pursuant
9 to section thirty, article four of this chapter, the use of
10 such loans or grants by the recipient as well as all other
11 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.

1 This section applies to any solid waste disposal project
2 or projects which are owned, in whole or in part, by the
3 board.

4 The board may charge, alter and collect rentals, fees,
5 service charges or other charges for the use or services
6 of any solid waste disposal project, and contract in the
7 manner provided by this section with one or more
8 persons, one or more governmental agencies, or any
9 combination thereof, desiring the use or services thereof,
10 and fix the terms, conditions, rentals, fees, service
11 charges or other charges for such use or services. Such
12 rentals, fees, service charges or other charges are not
13 subject to supervision or regulation by any other
14 authority, department, commission, board, bureau or
15 agency of the state, and such contract may provide for
16 acquisition by such person or governmental agency of
17 all or any part of such solid waste disposal project for
18 such consideration payable over the period of the
19 contract or otherwise as the board in its sole discretion
20 determines to be appropriate, but subject to the
21 provisions of any resolution authorizing the issuance of
22 solid waste disposal revenue bonds or notes or solid

23 waste disposal revenue refunding bonds of the board.
24 Any governmental agency which has power to construct,
25 operate and maintain solid waste disposal facilities may
26 enter into a contract or lease with the board whereby
27 the use or services of any solid waste disposal project
28 of the board will be made available to such government-
29 tal agency and pay for such use or services such rentals,
30 fees, service charges or other charges as may be agreed
31 to by such governmental agency and the board.

32 Any governmental agency or agencies or combination
33 thereof may cooperate with the board in the acquisition
34 or construction of a solid waste disposal project and shall
35 enter into such agreements with the board as are
36 necessary, with a view to effective cooperative action
37 and safeguarding of the respective interests of the
38 parties thereto, which agreements shall provide for such
39 contributions by the parties thereto in such proportion
40 as may be agreed upon and such other terms as may
41 be mutually satisfactory to the parties, including,
42 without limitation, the authorization of the construction
43 of the project by one of the parties acting as agent for
44 all of the parties and the ownership and control of the
45 project by the board to the extent necessary or approp-
46 riate for purposes of the issuance of solid waste disposal
47 revenue bonds by the board. Any governmental agency
48 may provide such contribution as is required under such
49 agreements by the appropriation of money or, if
50 authorized by a favorable vote of the electors to issue
51 bonds or notes or levy taxes or assessments and issue
52 notes or bonds in anticipation of the collection thereof,
53 by the issuance of bonds or notes or by the levying of
54 taxes or assessments and the issuance of bonds or notes
55 in anticipation of the collection thereof, and by the
56 payment of such appropriated money or the proceeds of
57 such bonds or notes to the board pursuant to such
58 agreements.

59 Any governmental agency, pursuant to a favorable
60 vote of the electors in an election held for the purpose
61 of issuing bonds to provide funds to acquire, construct
62 or equip, or provide real estate and interests in real
63 estate for a solid waste disposal project, whether or not

64 the governmental agency at the time of such election
65 had the board to pay the proceeds from such bonds or
66 notes issued in anticipation thereof to the board as
67 provided in this section, may issue such bonds or notes
68 in anticipation of the issuance thereof and pay the
69 proceeds thereof to the board in accordance with an
70 agreement between such governmental agency and the
71 board: *Provided*, That the legislative board of the
72 governmental agency finds and determines that the
73 solid waste disposal project to be acquired or con-
74 structed by the board in cooperation with such govern-
75 mental agency will serve the same public purpose and
76 meet substantially the same public need as the project
77 otherwise proposed to be acquired or constructed by the
78 governmental agency with the proceeds of such bonds
79 or notes.

§22C-3-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.

1 Each solid waste development project, when con-
2 structed and placed in operation, shall be maintained
3 and kept in good condition and repair by the board or
4 if owned by a governmental agency, by such governmen-
5 tal agency, or the board or such governmental agency
6 shall cause the same to be maintained and kept in good
7 condition and repair. Each such project owned by the
8 board shall be operated by such operating employees as
9 the board employs or pursuant to a contract or lease
10 with a governmental agency or person. All public or
11 private property damaged or destroyed in carrying out
12 the provisions of this article and in the exercise of the
13 powers granted hereunder with regard to any project
14 shall be restored or repaired and placed in its original
15 condition, as nearly as practicable, or adequate compen-
16 sation made therefor out of funds provided in accor-
17 dance with the provisions of this article.

18 As soon as possible after the close of each fiscal year,
19 the board shall make an annual report of its activities
20 for the preceding fiscal year to the governor and the
21 Legislature. Each such report shall set forth a complete
22 operating and financial statement covering the board's

23 operations during the preceding fiscal year. The board
24 shall cause an audit of its books and accounts to be made
25 at least once each fiscal year by certified public
26 accountants and the cost thereof may be treated as a
27 part of the cost of construction or of operation of its
28 projects. A report of the audit shall be submitted to the
29 governor and the Legislature.

§22C-3-18. Solid waste disposal revenue bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code notwithstanding, all solid
3 waste disposal revenue bonds issued pursuant to this
4 article are lawful investments for the West Virginia
5 state board of investments and are also lawful invest-
6 ments for financial institutions as defined in section two,
7 article one, chapter thirty-one-a of this code, and for
8 insurance companies.

§22C-3-19. Exemption from taxation.

1 The board is not required to pay any taxes or
2 assessments upon any solid waste disposal project or
3 upon any property acquired or used by the board or
4 upon the income therefrom. Bonds and notes issued by
5 the board and all interest and income thereon are
6 exempt from all taxation by this state, or any county,
7 municipality, political subdivision or agency thereof,
8 except inheritance taxes.

§22C-3-20. Governmental agencies authorized to convey property.

1 All governmental agencies, notwithstanding any
2 provision of law to the contrary, may lease, lend, grant
3 or convey to the board, at its request, upon such terms
4 as the proper authorities of such governmental agencies
5 deem reasonable and fair and without the necessity for
6 an advertisement, auction, order of court or other action
7 or formality, other than the regular and formal action
8 of the governmental agency concerned, any real prop-
9 erty or interests therein, including improvements
10 thereto or personal property which is necessary or
11 convenient to the effectuation of the authorized purposes

12 of the board, including public roads and other real
13 property or interests therein, including improvements
14 thereto or personal property already devoted to public
15 use.

**§22C-3-21. Financial interest in contracts, projects, etc.,
prohibited; gratuities prohibited; penalty.**

1 No officer, member or employee of the board may be
2 financially interested, directly or indirectly, in any
3 contract of any person with the board, or in the sale of
4 any property, real or personal, to or by the board. This
5 section does not apply to contracts or purchases of
6 property, real or personal, between the board and any
7 governmental agency.

8 No officer, member or employee of the board may
9 have or acquire any financial interest, either direct or
10 indirect, in any project or activity of the board or in any
11 services or material to be used or furnished in connec-
12 tion with any project or activity of the board. If an
13 officer, member or employee of the board has any such
14 interest at the time he or she becomes an officer,
15 member or employee of the board, he or she shall
16 disclose and divest himself or herself of it. Failure to do
17 so is cause for dismissal from the position he or she holds
18 with the authority.

19 This section does not apply in instances where a
20 member of the board who is a contract solid waste
21 hauler either seeks or has a financial interest, direct or
22 indirect, in any project or activity of the board or in any
23 services or material to be used or furnished in connec-
24 tion with any project or activity of the board: *Provided,*
25 That that member shall fully disclose orally and in
26 writing to the board the nature and extent of any
27 interest, prior to any vote by the board which involves
28 his or her interest, withdraw from any deliberation or
29 discussion by the board of matters involving his or her
30 interest, and refrain from voting on any matter which
31 directly or indirectly affects him or her.

32 No officer, member or employee of the board may
33 accept a gratuity from any person doing business with
34 the board or from any person for the purpose of gaining

35 favor with the board.

36 Any officer, member or employee of the board who
37 has any financial interest prohibited by this section or
38 who fails to comply with its provisions is guilty of a
39 misdemeanor, and, upon conviction thereof, shall be
40 fined not more than one thousand dollars, or imprisoned
41 in the county jail not more than one year, or both fined
42 and imprisoned.

§22C-3-22. Conduct of proceedings of board.

1 The board shall comply with all of the requirements
2 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.

1 Solid waste collectors and haulers who are "common
2 carriers by motor vehicle," as defined in section two,
3 article one, chapter twenty-four-a of this code, shall
4 continue to be regulated by the public service commis-
5 sion in accordance with the provisions of chapter
6 twenty-four-a and rules promulgated thereunder.
7 Nothing in this article gives the board any power or
8 right to regulate such solid waste collectors and haulers
9 in any manner, but the public service commission, when
10 it issues a new certificate of convenience and necessity,
11 or when it alters or adjusts the provisions of any existing
12 certificate of convenience and necessity, or when it
13 approves the assignment or transfer of any certificate
14 of convenience and necessity, shall consult with the
15 board regarding what action it could take which would
16 most likely further the implementation of the board's
17 solid waste disposal shed plan and solid waste disposal
18 projects and shall take any reasonable action that will
19 lead to or bring about compliance of such waste
20 collectors and haulers with such plan and projects.

21 At any hearing conducted by the public service
22 commission pertaining to solid waste collectors and

23 haulers on any of these matters, any member of the
 24 board, the director or an employee of the board
 25 designated by the director may appear before the
 26 commission and present evidence.

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

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

§22C-3-25. Liberal construction of article.

1 The provisions of this article are hereby declared to
 2 be remedial and shall be liberally construed to effectuate
 3 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 uncon-
- 2 trolled collection, transportation, processing and dispo-
- 3 sal of domestic and commercial garbage, refuse and
- 4 other solid wastes in the state of West Virginia results
- 5 in: (1) A public nuisance and a clear and present danger
- 6 to the citizens of West Virginia; (2) the degradation of
- 7 the state's environmental quality including both surface
- 8 and groundwaters which provide essential and irre-

9 placeable sources of domestic and industrial water
10 supplies; (3) provides harborage and breeding places
11 for disease-carrying, injurious insects, rodents and other
12 pests injurious to the public health, safety and welfare;
13 (4) decreases public and private property values and
14 results in the blight and deterioration of the natural
15 beauty of the state; (5) has adverse social and economic
16 effects on the state and its citizens; and (6) results in the
17 waste and squandering of valuable nonrenewable
18 resources contained in such solid wastes which can be
19 recovered through proper recycling and resource-
20 recovery techniques with great social and economic
21 benefits for the state.

22 The Legislature further finds that the proper collec-
23 tion, transportation, processing, recycling and disposal
24 of solid waste is for the general welfare of the citizens
25 of the state and that the lack of proper and effective
26 solid waste collection services and disposal facilities
27 demands that the state of West Virginia and its political
28 subdivisions act promptly to secure such services and
29 facilities in both the public and private sectors.

30 The Legislature further finds that other states of
31 these United States of America have imposed stringent
32 standards for the proper collection and disposal of solid
33 waste and that the relative lack of such standards and
34 enforcement for such activities in West Virginia has
35 resulted in the importation and disposal into the state
36 of increasingly large amounts of infectious, dangerous
37 and undesirable solid waste and hazardous waste from
38 other states by persons and firms who wish to avoid the
39 costs and requirements for proper, effective and safe
40 disposal of such wastes in the states of origin.

41 The Legislature further finds that the process of
42 developing rational and sound solid waste plans at the
43 county or regional level is impeded by the proliferation
44 of siting proposals for new solid waste facilities.

45 Therefore, it is the purpose of the Legislature to
46 protect the public health and welfare by providing for
47 a comprehensive program of solid waste collection,
48 processing, recycling and disposal to be implemented by

49 state and local government in cooperation with the
50 private sector. The Legislature intends to accomplish
51 this goal by establishing county and regional solid waste
52 authorities throughout the state to develop and imple-
53 ment litter and solid waste control plans. It is the
54 further purpose of the Legislature to restrict and
55 regulate persons and firms from exploiting and endan-
56 gering the public health and welfare of the state by
57 disposing of solid wastes and other dangerous materials
58 which would not be accepted for disposal in the location
59 where such wastes or materials were generated.

60 It is further the purpose of the Legislature to reduce
61 our solid waste management problems and to meet the
62 purposes of this article by requiring county and regional
63 solid waste authorities to establish programs and plans
64 based on an integrated waste management hierarchy. In
65 order of preference, the hierarchy is as follows:

66 (1) *Source reduction.* — This involves minimizing
67 waste production and generation through product
68 design, reduction of toxic constituents of solid waste, and
69 similar activities.

70 (2) *Recycling, reuse and materials recovery.* — This
71 involves separating and recovering valuable materials
72 from the waste stream, composting food and yard waste,
73 and marketing of recyclables.

74 (3) *Landfilling.* — To the maximum extent possible,
75 this option should be reserved for nonrecyclables and
76 other materials that cannot practically be managed in
77 any other way. This is the lowest priority in the
78 hierarchy and involves the waste management option of
79 last resort.

80 The Legislature further finds that the potential
81 impacts of proposed commercial solid waste facilities
82 may have a deleterious and debilitating impact upon the
83 transportation network, property values, economic
84 growth, environmental quality, other land uses and the
85 public health and welfare in affected communities. The
86 Legislature also finds that the siting of such facilities
87 is not being adequately addressed to protect these
88 compelling interests of counties and local communities.

89 The Legislature further finds that affected citizens
90 and local governments often look to state environmental
91 regulatory agencies to resolve local land use conflicts
92 engendered by these proposed facilities. The Legislature
93 also finds that such local land use conflicts are most
94 effectively resolved in a local governmental forum
95 where citizens can most easily participate in the
96 decision-making process and the land use values of local
97 communities most effectively identified and incorpo-
98 rated into a comprehensive policy which reflects the
99 values and goals of those communities.

100 Therefore, it is the purpose of the Legislature to
101 enable local citizens to resolve the land-use conflicts
102 which may be created by proposed commercial solid
103 waste facilities through the existing forum of county or
104 regional solid waste authorities.

§22C-4-2. Definitions.

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

3 (a) "Approved solid waste facility" means a commer-
4 cial solid waste facility or practice which has a valid
5 permit or compliance order under article fifteen,
6 chapter twenty-two of this code.

7 (b) "Commercial solid waste facility" means any solid
8 waste facility which accepts solid waste generated by
9 sources other than the owner or operator of the facility
10 and does not include an approved solid waste facility
11 owned and operated by a person for the sole purpose of
12 disposing of solid wastes created by that person or that
13 person and another person on a cost-sharing or nonprofit
14 basis and does not include land upon which reused or
15 recycled materials are legitimately applied for structu-
16 ral fill, road base, mine reclamation and similar
17 applications.

18 (c) "Commercial recycler" means any person, corpo-
19 ration or business entity whose operation involves the
20 mechanical separation of materials for the purpose of
21 reselling or recycling at least seventy percent by weight
22 of the materials coming into the commercial recycling
23 facility.

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

33 (e) "Class B facility" means a commercial solid waste
34 facility which receives or is expected to receive an
35 average daily quantity of mixed solid waste equal to or
36 exceeding one hundred tons each working day, or serves
37 or is expected to serve a population equal to or
38 exceeding forty thousand persons, but which does not
39 receive solid waste exceeding an aggregate of ten
40 thousand tons per month. Class B facilities do not
41 include construction/demolition facilities: *Provided,*
42 That the definition of Class B facility may include such
43 reasonable subdivisions or subclassifications as the
44 director may establish by legislative rule proposed in
45 accordance with the provisions of chapter twenty-nine-
46 a of this code.

47 (f) "Compliance order" means an administrative order
48 issued pursuant to section ten, article fifteen, chapter
49 twenty-two of this code authorizing a solid waste facility
50 to operate without a solid waste permit.

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

55 (h) "Person" means any industrial user, public or
56 private corporation, institution, association, firm or
57 company organized or existing under the laws of this or
58 any other state or country; the state of West Virginia;
59 governmental agency, including federal facilities;
60 political subdivision; county commission; municipal
61 corporation; industry; sanitary district; public service
62 district; drainage district; soil conservation district;
63 watershed improvement district; partnership; trust;

64 estate; person or individual; group of persons or
65 individuals acting individually or as a group; or any
66 legal entity whatever.

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

72 (j) "Solid waste" means any garbage, paper, litter,
73 refuse, cans, bottles, waste processed for the express
74 purpose of incineration, sludge from a waste treatment
75 plant, water supply treatment plant or air pollution
76 control facility, other discarded material, including
77 offensive or unsightly matter, solid, liquid, semisolid or
78 contained liquid or gaseous material resulting from
79 industrial, commercial, mining or community activities
80 but does not include solid or dissolved material in
81 sewage, or solid or dissolved materials in irrigation
82 return flows or industrial discharges which are point
83 sources and have permits under article eleven, chapter
84 twenty-two of this code, or source, special nuclear or
85 byproduct material as defined by the Atomic Energy
86 Act of 1954, as amended, including any nuclear or
87 byproduct material considered by federal standards to
88 be below regulatory concern, or a hazardous waste
89 either identified or listed under article eighteen, chapter
90 twenty-two of this code, or refuse, slurry, overburden or
91 other waste or material resulting from coal-fired
92 electric power or steam generation, the exploration,
93 development, production, storage and recovery of coal,
94 oil and gas, and other mineral resources placed or
95 disposed of at a facility which is regulated under articles
96 two, three, four, six, seven, eight, nine or ten, chapter
97 twenty-two or chapter twenty-two-a of this code, so long
98 as such placement or disposal is in conformance with a
99 permit issued pursuant to said chapters. "Solid waste"
100 does not include materials which are recycled by being
101 used or reused in an industrial process to make a
102 product, as effective substitutes for commercial pro-
103 ducts, or are returned to the original process as a
104 substitute for raw material feedstock.

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

109 (l) "Solid waste disposal shed" means the geographical
110 area which the solid waste management board design-
111 nates and files in the state register pursuant to section
112 nine, article three of this chapter.

113 (m) "Solid waste facility" means any system, facility,
114 land, contiguous land, improvements on the land,
115 structures or other appurtenances or methods used for
116 processing, recycling or disposing of solid waste,
117 including landfills, transfer stations, resource-recovery
118 facilities and other such facilities not herein specified.
119 Such facility is situated, for purposes of this article, in
120 the county where the majority of the spatial area of such
121 facility is located.

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

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

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

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

**§22C-4-3. Creation of county solid waste authority; ap-
pointment to board of directors; vacancies.**

1 (a) Each and every county solid waste authority
2 authorized and created by the county commission of any
3 county pursuant to former article sixteen, chapter seven
4 of this code is hereby abolished on and after the first
5 day of January, one thousand nine hundred eighty-nine.
6 On and after the first day of January, one thousand nine
7 hundred eighty-nine, a new county solid waste authority
8 is hereby created and established as a public agency in
9 every county of the state and is the successor to each
10 county solid waste authority which may have been
11 created by the county commission: *Provided*, That such
12 county solid waste authorities shall not be established or
13 shall cease to exist, as the case may be, in those counties
14 which establish a regional solid waste authority pursu-
15 ant to section four of this article. The solid waste
16 management board may require a county solid waste
17 authority to cooperate and participate in programs with
18 other authorities if the need arises.

19 (b) The authority board of directors is comprised of
20 five members who are appointed as follows: One by the
21 director of the division of environmental protection, two
22 by the county commission, one by the board of super-
23 visors for the soil conservation district in which the
24 county is situated and one by the chairman of the public
25 service commission. The members of the board are
26 appointed for terms of four years for which the initial
27 shall start on the first day of July, one thousand nine
28 hundred eighty-eight: *Provided*, That the first two
29 members appointed by the county commission shall be
30 appointed to initial terms of two and four years,
31 respectively, and for terms of four years for each
32 appointment thereafter. The members of the board shall
33 receive no compensation for their service thereon but
34 shall be reimbursed for their actual expenses incurred
35 in the discharge of their duties. Vacancies in the office
36 of member of the board of directors shall be filled for
37 the balance of the remaining term by the appropriate
38 appointing authority within sixty days after such
39 vacancy occurs. No member who has any financial
40 interest in the collection, transportation, processing,
41 recycling or the disposal of refuse, garbage, solid waste
42 or hazardous waste shall vote or act on any matter

43 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.

1 (a) On and after the first day of January, one thousand
2 nine hundred eighty-nine, any two or more counties
3 within the same solid waste shed and with the approval
4 of the solid waste management board, may establish a
5 regional solid waste authority. Such a regional solid
6 waste authority is a public agency and is the successor
7 to any county solid waste authority existing on the date
8 of said approval by the solid waste management board.
9 The solid waste management board may require a
10 county authority to cooperate and participate in pro-
11 grams with other county and regional authorities if the
12 need arises.

13 (b) The board of directors of the regional solid waste
14 authority are appointed as follows: One by the director
15 of the division of environmental protection, two by the
16 county commission of each county participating therein,
17 one by the board of supervisors for each soil conserva-
18 tion district in which a county of the region is situated,
19 one by the chairman of the public service commission
20 and two municipal representatives from each county
21 having one or more participating municipality to be
22 selected by the mayors of the participating municipality
23 from each such county. The members of the board are
24 appointed for terms of four years for which the initial
25 terms start on the first day of July, one thousand nine
26 hundred eighty-eight: *Provided*, That the members
27 appointed by the county commission shall be appointed
28 to initial terms of two and four years, respectively, and
29 to terms of four years after the expiration of each such
30 initial term. The members of the board shall receive no
31 compensation for their service thereon but shall be
32 reimbursed their actual expenses incurred in the
33 discharge of their duties. Vacancies in the office of
34 member of the board of directors shall be filled for the
35 balance of the remaining term by the appropriate
36 appointing authority within sixty days after such

37 vacancy occurs. No member who has any financial
38 interest in the collection, transportation, processing,
39 recycling or the disposal of refuse, garbage, solid waste
40 or hazardous waste shall vote or act on any matter
41 which directly affects the member's personal interests.

**§22C-4-5. Authorities as successor to county commissions
and former county solid waste authorities.**

1 The county and regional solid waste authorities
2 created herein, as the case may be, are the successors
3 to the county commissions of each county, or the solid
4 waste authority previously created by said commission
5 and abolished as of the first day of January, one
6 thousand nine hundred eighty-nine, by this article, in
7 the ownership, operation and maintenance of such
8 dumps, landfills and other solid waste facilities, solid
9 waste collection services and litter and solid waste
10 control programs. The county commission of each
11 county, or the solid waste authority thereof, shall, on the
12 first day of January, one thousand nine hundred eighty-
13 nine, transfer all ownership, operation, control and other
14 rights, title and interests in such solid waste facilities,
15 services and programs, and the properties, funds,
16 appropriations and contracts related thereto to the
17 county or regional solid waste authority established
18 pursuant to this article.

**§22C-4-6. Election by county commission to assume
powers and duties of the county solid waste
authority.**

1 Notwithstanding any provision of this article, any
2 county commission which, on the first day of July, one
3 thousand nine hundred eighty-eight, held a valid permit
4 or compliance order for a commercial solid waste
5 transfer station issued pursuant to article fifteen,
6 chapter twenty-two of this code, may elect to assume all
7 the duties, powers, obligations, rights, title and interests
8 vested in the county solid waste authority by this
9 chapter. A county commission may, prior to the first day
10 of October, one thousand nine hundred eighty-nine,
11 exercise this right of election by entering an order
12 declaring such election and serving a certified copy

13 thereof upon the solid waste management board. Thirty
14 days after entry of said order by the county commission
15 the county solid waste authority ceases to exist and the
16 county commission assumes all the duties, powers,
17 obligations, rights, title and interest vested in the
18 former authority pursuant to this chapter or chapter
19 twenty-two of this code.

**§22C-4-7. Management of authority vested in board of
directors; expenses paid by county commis-
sions, procedure.**

1 (a) The management and control of the authority, its
2 property, operations and affairs of any nature is vested
3 in and governed by the board of directors.

4 (b) The expenses of any county solid waste authority
5 incurred for necessary secretarial and clerical assist-
6 ance, office supplies and general administrative ex-
7 penses, in the development of the litter and solid waste
8 control plan under section eight of this article and to
9 provide solid waste collection and disposal services
10 under this article shall be paid by the county commis-
11 sion from the general funds in the county treasury to
12 the extent that such expenses are not paid by fees,
13 grants and funds received by the authority from other
14 sources. The county commission has the authority to
15 determine the amount to be allocated annually to the
16 authority.

17 (c) The expenses of any regional solid waste authority
18 incurred for necessary secretarial and clerical assist-
19 ance, office supplies and general administrative ex-
20 penses, or for the development of the litter and solid
21 waste control plan under section eight of this article, or
22 to provide solid waste collection and disposal services
23 under this article shall be paid by the county commis-
24 sions of each participating county from general funds in
25 the county treasury to the extent that such expenses are
26 not paid by fees, grants and funds from other sources
27 received by the authority. Each county participating in
28 the regional solid waste authority shall pay a pro rata
29 share of such expenses based upon the population of said
30 county in the most recent decennial census conducted by

31 the United States Census Bureau. Prior to any county
32 becoming liable for any expenses of the authority under
33 this subsection, the authority's annual budget must first
34 be approved by the solid waste management board.

35 (d) An organizational meeting of each board of
36 directors shall be held as soon as practicable at which
37 time a chair and vice chair shall be elected from among
38 the members of the board to serve a term of one year
39 after which such officers shall be elected annually. The
40 board of directors shall also appoint a secretary-
41 treasurer, who need not be a member of the board of
42 directors, and who shall give bond in a sum determined
43 adequate to protect the interests of the authority by the
44 director of the division of environmental protection. The
45 board shall meet at such times and places as it or the
46 chair may determine. It is the duty of the chair to call
47 a meeting of the board upon the written request of a
48 majority of the members thereof. The board shall
49 maintain an accurate record and minutes of all its
50 proceedings and is subject to the provisions of article
51 one, chapter twenty-nine-b of this code, the freedom of
52 information act and article nine-a, chapter six of this
53 code, open governmental proceedings. A majority of the
54 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 man-
agement board; development of plan by
director; advisory rules.**

1 (a) Each county and regional solid waste authority is
2 required to develop a comprehensive litter and solid
3 waste control plan for its geographic area and to submit
4 said plan to the solid waste management board on or
5 before the first day of July, one thousand nine hundred
6 ninety-one. Each authority shall submit a draft litter
7 and solid waste control plan to the solid waste manage-
8 ment board by the thirty-first day of March, one
9 thousand nine hundred ninety-one. The comments
10 received by the county or regional solid waste authority
11 at public hearings, two of which are required, shall be
12 considered in developing the final plan.

13 (b) Each litter and solid waste control plan shall
14 include provisions for:

15 (1) An assessment of litter and solid waste problems
16 in the county;

17 (2) The establishment of solid waste collection and
18 disposal services for all county residents at their
19 residences, where practicable, or the use of refuse
20 collection stations at disposal access points in areas
21 where residential collection is not practicable. In
22 developing such collection services, primacy shall be
23 given to private collection services currently operating
24 with a certificate of convenience and necessity from the
25 motor carrier division of the public service commission;

26 (3) The evaluation of the feasibility of requiring or
27 encouraging the separation of residential or commercial
28 solid waste at its source prior to collection for the
29 purpose of facilitating the efficient and effective
30 recycling of such wastes and the reduction of those
31 wastes which must be disposed of in landfills or by other
32 nonrecycling means;

33 (4) The establishment of an appropriate mandatory
34 garbage disposal program which shall include methods
35 whereby residents must prove either: (i) Payment of
36 garbage collection fee; or (ii) proper disposal at an
37 approved solid waste facility or in an otherwise lawful
38 manner;

39 (5) A recommendation for the siting of one or more
40 properly permitted public or private solid waste
41 facilities, whether existing or proposed, to serve the
42 solid waste needs of the county or the region, as the case
43 may be, consistent with the comprehensive county plan
44 prepared by the county planning commission;

45 (6) A timetable for the implementation of said plan;

46 (7) A program for the cleanup, reclamation and
47 stabilization of any open and unpermitted dumps;

48 (8) The coordination of the plan with the related solid
49 waste collection and disposal services of municipalities
50 and, if applicable, other counties;

51 (9) A program to enlist the voluntary assistance of
52 private industry and civic groups in volunteer cleanup
53 efforts to the maximum practicable extent;

54 (10) Innovative incentives to promote recycling
55 efforts;

56 (11) A program to identify the disposal of solid wastes
57 which are not generated by sources situated within the
58 boundaries of the county or the region established
59 pursuant to this section;

60 (12) Coordination with the division of highways and
61 other local, state and federal agencies in the control and
62 removal of litter and the cleanup of open and unpermit-
63 ted dumps;

64 (13) Establishment of a program to encourage and
65 utilize those individuals incarcerated in the county jail
66 and those adults and juveniles sentenced to probation for
67 the purposes of litter pickup; and

68 (14) Provision for the safe and sanitary disposal of all
69 refuse from commercial and industrial sources within
70 the county or region, as the case may be, including
71 refuse from commercial and industrial sources, but
72 excluding refuse from sources owned or operated by the
73 state or federal governments.

74 (c) The solid waste management board shall establish
75 advisory rules to guide and assist the counties in the
76 development of the plans required by this section.

77 (d) Each plan prepared under this section is subject
78 to approval by the solid waste management board. Any
79 plan rejected by the solid waste management board
80 shall be returned to the regional or county solid waste
81 authority with a statement of the insufficiencies in such
82 plan. The authority shall revise the plan to eliminate the
83 insufficiencies and submit it to the director within
84 ninety days.

85 (e) The solid waste management board shall develop
86 a litter and solid waste control plan for any county or
87 regional solid waste authority which fails to submit such
88 a plan on or before the first day of July, one thousand

89 nine hundred ninety-two: *Provided*, That in preparing
90 such plans the director may determine whether to
91 prepare a regional or county based plan for those
92 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.

1 (a) The division of natural resources, the division of
2 environmental protection, the solid waste management
3 board, and the bureau of public health shall provide
4 technical assistance to each county and regional solid
5 waste authority as reasonable and practicable for the
6 purposes of this article within the existing resources and
7 appropriations of each agency available for such
8 purposes. The attorney general shall provide legal
9 counsel and representation to each county and regional
10 solid waste authority for the purposes of this article
11 within the existing resources and appropriations
12 available for such purposes, or with the written
13 approval of the attorney general, said authority may
14 employ counsel to represent it.

15 (b) The solid waste management board shall provide
16 assistance to the county or regional solid waste author-
17 ities, municipalities and other interested parties in
18 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.

1 (a) Each person occupying a residence or operating a
2 business establishment in this state shall either:

3 (1) Subscribe to and use a solid waste collection
4 service and pay the fees established therefor; or

5 (2) Provide proper proof that said person properly
6 disposes of solid waste at approved solid waste facilities
7 or in any other lawful manner. The director of the
8 division of environmental protection shall promulgate

9 rules pursuant to chapter twenty-nine-a of this code
10 regarding an approved method or methods of supplying
11 such proper proof. A civil penalty of one hundred fifty
12 dollars shall be assessed to the person not receiving solid
13 waste collection services in addition to the unpaid fees
14 for every year that a fee is not paid.

15 (b) The solid waste management board in consultation
16 and collaboration with the public service commission
17 shall prepare and submit, no later than the first day of
18 October, one thousand nine hundred ninety-two, a report
19 concerning the feasibility of implementing a mandatory
20 fee for the collection and disposal of solid waste in West
21 Virginia: *Provided*, That such plan shall consider such
22 factors as affordability, impact on open dumping and
23 other relevant matters. The report shall be submitted to
24 the governor, the president of the Senate and the
25 speaker of the House of Delegates.

26 (c) The public service commission in consultation and
27 collaboration with the division of human services shall
28 prepare and submit, no later than the first day of
29 October, one thousand nine hundred ninety-two, a report
30 concerning the feasibility of reducing solid waste
31 collection fees to individuals who directly pay such fees
32 and who receive public assistance from state or federal
33 government agencies and are therefore limited in their
34 ability to afford to pay for solid waste disposal. This
35 report shall consider the individual's health and income
36 maintenance and other relevant matters. This report
37 shall also include recommended procedures for individ-
38 uals or households to qualify for and avail themselves
39 of a reduction in fees. This report shall be submitted to
40 the governor, the president of the Senate and the
41 speaker of the House of Delegates.

**§22C-4-11. Acquisition of land; operation of public solid
waste landfills and other facilities; restric-
tions on solid wastes generated outside
authority area; fees.**

1 Upon approval of the litter and solid waste control
2 plan by the solid waste management board, the county
3 or regional solid waste authority may acquire, by

4 purchase, lease, gift or otherwise, land for the establish-
5 ment of solid waste facilities and is authorized to
6 construct, operate, maintain and contract for the
7 operation of such facilities. The authority may pay for
8 lease or acquisition of such lands and the construction,
9 operation and maintenance of such solid waste facilities
10 from such fees, grants, financing by the solid waste
11 program of the division of environmental protection or
12 funds from other sources as may be available to the
13 authority. The authority may prohibit the deposit of any
14 solid waste in such solid waste facilities owned, leased
15 or operated by the authority which have originated from
16 sources outside the geographic limits of the county or
17 region. The authority board of directors shall establish
18 and charge reasonable fees for the use of such facilities
19 operated by the authority.

§22C-4-12. Bonds and notes.

1 For constructing or acquiring any solid waste facil-
2 ities for the authorized purposes of the authority, or
3 necessary or incidental thereto, and for constructing
4 improvements and extension thereto, and also for
5 reimbursing or paying the costs and expenses of
6 creating the authority, if any, the board of any such
7 authority is hereby authorized to borrow money from
8 time to time and in evidence thereof issue the bonds or
9 notes of such authority, payable from the revenues
10 derived from the operation of the solid waste facilities
11 under control of the authority or from such other funds
12 as are available to the authority for such purpose. Such
13 bonds or notes may be issued in one or more series, may
14 bear such date or dates, may mature at such time or
15 times not to exceed forty years from their respective
16 dates, may bear interest at such rate or rates, payable
17 at such times, may be in such form, may carry such
18 registration privileges, may be executed in such
19 manner, may be payable at such place or places, may
20 be subject to such terms of redemption with or without
21 premium, may be declared or become due before
22 maturity date thereof, may be authenticated in any
23 manner, and upon compliance with such conditions, and
24 may contain such terms and covenants as may be

25 provided by resolution or resolutions of the board.
26 Notwithstanding the form or tenor thereof, and in the
27 absence of any express recital on the face thereof, that
28 the bond or note is nonnegotiable, all such bonds or notes
29 are, and shall be treated as, negotiable instruments for
30 all purposes. The bonds or notes shall be executed by
31 the chair of the board, who may use a facsimile
32 signature. The official seal of the authority or a
33 facsimile thereof shall be affixed to or printed on each
34 bond or note and attested, manually or by facsimile
35 signature, by the secretary-treasurer of the board, and
36 any coupons attached to any bond or note shall bear the
37 signature or facsimile signature of the chair of the
38 board. Bonds or notes bearing the signatures of officers
39 in office on the date of the signing thereof are valid and
40 binding for all purposes notwithstanding that before the
41 delivery thereof any or all of the persons whose
42 signatures appear thereon have ceased to be such
43 officers. Notwithstanding the requirements or provi-
44 sions of any other law, any such bonds or notes may be
45 negotiated or sold in such manner and at such time or
46 times as is found by the board to be most advantageous.
47 Any resolution or resolutions providing for the issuance
48 of such bonds or notes may contain such covenants and
49 restrictions upon the issuance of additional bonds or
50 notes thereafter as may be deemed necessary or
51 advisable for the assurance of the payment of the bonds
52 or notes thereby authorized.

§22C-4-13. Items included in cost of properties.

1 The cost of any solid waste facilities acquired under
2 the provisions of this article includes the cost of the
3 acquisition or construction thereof, costs of closure of
4 solid waste facilities, the cost of all property rights,
5 easements and franchises deemed necessary or conve-
6 nient therefor and for the improvements and extensions
7 thereto; interest upon bonds or notes prior to and during
8 construction or acquisition and for twelve months after
9 completion of construction or of acquisition of the
10 improvements and extensions; engineering, fiscal agents
11 and legal expenses; expenses for estimates of cost and
12 of revenues, expenses for plans, specifications and

13 surveys; other expenses necessary or incident to deter-
14 mining 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
2 bonds or notes may be secured by a trust indenture by
3 and between the authority and a corporate trustee,
4 which may be a trust company or bank having powers
5 of a trust company within or without the state of West
6 Virginia. The resolution authorizing the bonds or notes
7 and fixing the details thereof may provide that such
8 trust indenture may contain such provisions for protect-
9 ing and enforcing the rights and remedies of bond-
10 holders as may be reasonable and proper, not in
11 violation of law, including covenants setting forth the
12 duties of the authority and the members of its board and
13 officers in relation to the construction or acquisition of
14 solid waste facilities and the improvement, extension,
15 operation, repair, maintenance and insurance thereof,
16 and the custody, safeguarding and application of all
17 moneys, and may provide that all or any part of the
18 construction work shall be contracted for, constructed
19 and paid for, under the supervision and approval of
20 consulting engineers employed or designated by the
21 board and satisfactory to the original bond purchasers,
22 their successors, assignees or nominees, who may be
23 given the right to require the security given by
24 contractors and by any depository of the proceeds of
25 bonds or notes or revenues of the solid waste facilities
26 or other money pertaining thereto be satisfactory to such
27 purchasers, their successors, assignees or nominees.
28 Such indenture may set forth the rights and remedies
29 of the bondholders or noteholders and such trustee.

§22C-4-15. Sinking fund for bonds or notes.

1 At or before the time of the issuance of any bonds or
2 notes under this article, the board may by resolution or
3 in the trust indenture provide for the creation of a
4 sinking fund and for payments into such fund from the
5 revenues of the solid waste facilities operated by the
6 authority or from other funds available thereto such
7 sums in excess of the cost of maintenance and operation
8 of such properties as will be sufficient to pay the
9 accruing interest and retire the bonds or notes at or
10 before the time each will respectively become due and
11 to establish and maintain reserves therefor. All sums
12 which are or should be, in accordance with such
13 provisions, paid into such sinking fund shall be used
14 solely for payment of interest and principal and for the
15 retirement of such bonds or notes or at prior to maturity
16 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.

1 The board for any such authority has power to insert
2 enforceable provisions in any resolution authorizing the
3 issuance of bonds or notes relating to the collection,
4 custody and application of revenues or of the authority
5 from the operation of the solid waste facilities under its
6 control or other funds available to the authority and to
7 the enforcement of the covenants and undertakings of
8 the authority. In the event there is default in the sinking
9 fund provisions aforesaid or in the payment of the
10 principal or interest on any of such bonds or notes or,
11 in the event the authority or its board or any of its
12 officers, agents or employees, fails or refuses to comply
13 with the provisions of this article, or defaults in any
14 covenant or agreement made with respect to the
15 issuance of such bonds or notes or offered as security
16 therefor, then any holder or holders of such bonds or
17 notes and any such trustee under the trust indenture,
18 if there be one, have the right by suit, action, mandamus
19 or other proceeding instituted in the circuit court for the
20 county or any of the counties wherein the authority

21 extends, or in any other court of competent jurisdiction,
22 to enforce and compel performance of all duties
23 required by this article or undertaken by the authority
24 in connection with the issuance of such bonds or notes,
25 and upon application of any such holder or holders, or
26 such trustee, such court shall, upon proof of such
27 defaults, appoint a receiver for the affairs of the
28 authority and its properties, which receiver so appointed
29 shall forthwith directly, or by her or his agents and
30 attorneys, enter into and upon and take possession of the
31 affairs of the authority and each and every part thereof,
32 and hold, use, operate, manage and control the same,
33 and in the name of the authority exercise all of the
34 rights and powers of such authority as found expedient,
35 and such receiver has power and authority to collect and
36 receive all revenues and apply same in such manner as
37 the court directs. Whenever the default causing the
38 appointment of such receiver has been cleared and fully
39 discharged and all other defaults have been cured, the
40 court may in its discretion and after such notice and
41 hearing as it deems reasonable and proper direct the
42 receiver to surrender possession of the affairs of the
43 authority to its board. Such receiver so appointed has
44 no power to sell, assign, mortgage, or otherwise dispose
45 of any assets of the authority except as hereinbefore
46 provided.

§22C-4-17. Operating contracts.

1 The board may enter into contracts or agreements
2 with any persons, firms or corporations for the operation
3 and management of the solid waste facilities for such
4 period of time and under such terms and conditions as
5 are agreed upon between the board and such persons,
6 firms or corporations. The board has power to provide
7 in the resolution authorizing the issuance of bonds or
8 notes, or in any trust indenture securing such bonds or
9 notes, that such contracts or agreements are valid and
10 binding upon the authority as long as any of said bonds
11 or notes, or interest thereon, are outstanding and
12 unpaid.

§22C-4-18. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.

1 Unless otherwise provided by resolution of the board,
2 there is a statutory mortgage lien upon such solid waste
3 facilities of the authority, which exists in favor of the
4 holders of bonds or notes hereby authorized to be issued,
5 and each of them, and the coupons attached to said
6 bonds or notes, and such solid waste facilities remain
7 subject to such statutory mortgage lien until payment
8 in full of all principal of and interest on such bonds or
9 notes. Any holder of such bonds or notes, of any coupons
10 attached thereto, may, either at law or in equity, enforce
11 said statutory mortgage lien conferred hereby and upon
12 default in the payment of the principal of or interest on
13 said bonds or notes, and may foreclose such statutory
14 mortgage lien in the manner now provided by the laws
15 of the state of West Virginia for the foreclosure of
16 mortgages on real property.

§22C-4-19. Refunding bonds or notes.

1 The board of any authority having issued bonds or
2 notes under the provisions of this article is hereby
3 empowered thereafter by resolution to issue refunding
4 bonds or notes of such authority for the purpose of
5 retiring or refinancing any or all outstanding bonds or
6 notes, together with any unpaid interest thereon and
7 redemption premium thereunto appertaining and all of
8 the provisions of this article relating to the issuance,
9 security and payment of bonds or notes are applicable
10 to such refunding bonds or notes, subject, however, to
11 the provisions of the proceedings which authorized the
12 issuance of the bonds or notes to be so refunded.

§22C-4-20. Indebtedness of authority.

1 No constitutional or statutory limitation with respect
2 to the nature or amount of or rate of interest on
3 indebtedness which may be incurred by municipalities,
4 counties or other public or governmental bodies applies
5 to the indebtedness of an authority. No indebtedness of
6 any nature of authority is an indebtedness of the state
7 of West Virginia or any municipality or county therein
8 or a charge against any property of said state of West
9 Virginia or any municipalities or counties. No indebted-
10 ness or obligation incurred by any authority gives any

11 right against any member of the governing body of any
12 municipality or any member of the authority of any
13 county or any member of the board of any authority. The
14 rights of creditors of any authority are solely against the
15 authority as a corporate body and shall be satisfied only
16 out of property held by it in its corporate capacity.

§22C-4-21. Property, bonds or notes and obligations of authority exempt from taxation.

1 The authority is exempt from the payment of any
2 taxes or fees to the state or any subdivisions thereof or
3 any municipalities or to any officer or employee of the
4 state or of any subdivision thereof or of any municipal-
5 ities. The property of the authority is exempt from all
6 local and municipal taxes. Bonds, notes, debentures and
7 other evidence of indebtedness of the authority are
8 declared to be issued for a public purpose and to be
9 public instrumentalities, and, together with interest
10 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.

1 Upon the approval of the litter and solid waste control
2 plan as provided in section eight hereof, each county and
3 regional solid waste authority is hereby authorized and
4 directed to implement a program to utilize those
5 individuals incarcerated in the county or regional jails
6 for litter pickup within the limits of available funds.
7 Such program shall be funded from those moneys
8 allocated to the authority by the director of the division
9 of natural resources from the litter control fund
10 pursuant to section twenty-six, article four, chapter
11 twenty of this code. The authority may expend such
12 additional funds for this program as may be available
13 from other sources. The county commission and the
14 sheriff of each county and the regional jail and correc-
15 tional facility authority shall cooperate with the county
16 or regional solid waste authority in implementing this
17 program pursuant to section one, article eleven-a, and

18 sections three and thirteen, article twelve, chapter sixty-
19 two of this code.

§22C-4-23. Powers, duties and responsibilities of authority generally.

1 The authority may exercise all powers necessary or
2 appropriate to carry out the purposes and duties
3 provided in this article, including the following:

4 (1) Sue and be sued, plead and be impleaded and have
5 and use a common seal.

6 (2) To conduct its business in the name of the county
7 solid waste authority or the regional solid waste
8 authority, as the case may be, in the names of the
9 appropriate counties.

10 (3) The authority board of directors shall promulgate
11 rules to implement the provisions of sections nine and
12 ten of this article and is authorized to promulgate rules
13 for purposes of this article and the general operation
14 and administration of authority affairs.

15 (4) Adopt, and from time to time, amend and repeal
16 bylaws necessary and proper for the conduct of its
17 affairs consistent with this article.

18 (5) To promulgate such rules as may be proper and
19 necessary to implement the purposes and duties of this
20 article.

21 (6) Acquire, construct, reconstruct, enlarge, improve,
22 furnish, equip, maintain, repair, operate, lease or rent
23 or contract for the operation by any person, partnership,
24 corporation or governmental agency, any solid waste
25 facility or collection, transportation and processing
26 facilities related thereto.

27 (7) Issue negotiable bonds, notes, debentures or other
28 evidences of indebtedness and provide for the rights of
29 the holders thereof, incur any proper indebtedness and
30 issue any obligations and give any security therefor
31 which it may deem necessary or advisable in connection
32 with exercising powers as provided herein.

33 (8) Make available the use or services of any solid

34 waste facility collection, transportation and processing
35 facilities related thereto, to any person, partnership,
36 corporation or governmental agency consistent with this
37 article.

38 (9) Acquire by gift or purchase, hold and dispose of
39 real and personal property in the exercise of its powers
40 and duties.

41 (10) Make and enter all contracts, leases and agree-
42 ments and to execute all instruments necessary or
43 incidental to the performance of its duties and powers.

44 (11) Employ managers, engineers, accountants,
45 attorneys, planners and such other professional and
46 support personnel as are necessary in its judgment to
47 carry out the provisions of this article.

48 (12) Receive and accept from any source such grants,
49 fees, real and personal property, contributions and funds
50 of any nature as may become available to the authority
51 in order to carry out the purposes of this article.

52 (13) Cooperate with and make such recommendations
53 to local, state and federal government and the private
54 sector in the technical, planning and public policy
55 aspects of litter control and solid waste management as
56 the authority may find appropriate and effective to
57 carry out the purposes of this article.

58 (14) Charge, alter and collect rentals, fees, service
59 charges and other charges for the use or services of any
60 solid waste facilities or any solid waste collection,
61 transportation and processing services provided by the
62 authority.

63 (15) Prohibit the dumping of solid waste outside the
64 hours of operation of a solid waste facility.

65 (16) Enforce the hours of operation of a solid waste
66 facility and the mandatory disposal provision in section
67 ten of this article by referring violations to the division
68 of environmental protection or the appropriate law-
69 enforcement authorities.

70 (17) Do all acts necessary and proper to carry out the
71 powers expressly granted to the authority by this article

72 and powers conferred upon the authority by this article.

73 All rules promulgated by the authority pursuant to
74 this article are exempt from the provisions of article
75 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.**

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

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

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

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

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

24 (b) The county or regional solid waste authority shall
25 develop the siting plan authorized by this section based
26 upon the consideration of one or more of the following
27 criteria: The efficient disposal of solid waste, including
28 all solid waste generated within the county or region,
29 economic development, transportation facilities, prop-
30 erty values, groundwater and surface waters, geological

31 and hydrological conditions, aesthetic and environmen-
32 tal quality, historic and cultural resources, the present
33 or potential land uses for residential, commercial,
34 recreational, environmental conservation or industrial
35 purposes and the public health, welfare and conven-
36 ience. The plan shall be developed based upon informa-
37 tion readily available. Due to the limited funds and time
38 available the plan need not be an exhaustive and
39 technically detailed analysis of the criteria set forth
40 above. Unless the information readily available clearly
41 establishes that an area is suitable for the location of a
42 commercial solid waste facility or not suitable for such
43 a facility, the area shall be designated as an area in
44 which the location of a commercial solid waste facility
45 is tentatively prohibited. Any person making an
46 application for the redesignation of a tentatively
47 prohibited area shall make whatever examination is
48 necessary and submit specific detailed information in
49 order to meet the provision established in subsection (g)
50 of this section.

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

63 (d) The siting plan takes effect upon approval by the
64 solid waste management board pursuant to the rules
65 promulgated for this purpose. Upon approval of said
66 plan, the solid waste management board shall transmit
67 a copy thereof to the director of the division of envir-
68 onmental protection and to the clerk of the county
69 commission of the county encompassed by said plan
70 which county clerk shall file the plan in an appropriate
71 manner and shall make the plan available for inspection

72 by the public.

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

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

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

113 assist it in reviewing an application for any such
114 amendment.

115 (h) The solid waste management board shall prepare
116 and adopt a siting plan for any county or regional solid
117 waste authority which does not complete and file with
118 the said state authority such a siting plan in compliance
119 with the provisions of this section and the rules
120 promulgated thereunder. Any siting plan adopted by the
121 solid waste management board pursuant to this subsec-
122 tion shall comply with the provisions of this section, and
123 the rules promulgated thereunder, and has the same
124 effect as a siting plan prepared by a county or regional
125 solid waste authority and approved by the solid waste
126 management board.

127 (i) The siting plan adopted pursuant to this section
128 shall incorporate the provisions of the litter and solid
129 waste control plan, as approved by the solid waste
130 management board pursuant to section eight of this
131 article, regarding collection and disposal of solid waste
132 and the requirements, if any, for additional commercial
133 solid waste facility capacity.

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

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

1 (a) It is the intent of the Legislature that all commer-
2 cial solid waste facilities operating in this state must
3 receive site approval at the local level, except for
4 recycling facilities, as defined in section two, article
5 fifteen, chapter twenty-two of this code, that are
6 specifically exempted by section twelve, article eleven,
7 chapter twenty of this code. Notwithstanding said
8 intent, facilities which obtained such approval from
9 either a county or regional solid waste authority, or from
10 a county commission, under any prior enactment in this
11 code, and facilities which were otherwise exempted
12 from local site approval under any prior enactment in

13 this code, shall be deemed to have satisfied such
14 requirement. All other facilities, including facilities
15 which received such local approval but which seek to
16 expand spatial area or to convert from a Class B facility
17 to a Class A facility, shall obtain such approval only in
18 the manner specified in sections twenty-six, twenty-
19 seven and twenty-eight of this article.

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

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

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

**§22C-4-26. Approval of new Class A facilities by solid
waste authorities and county commissions,
and referendum.**

1 (a) Except as provided below with respect to Class B
2 facilities, from and after the tenth day of March, one
3 thousand nine hundred ninety, in order to obtain
4 approval to operate a new Class A facility, an applicant
5 shall:

6 (1) File an application for a certificate of need with.

7 and obtain approval from, the public service commission
8 in the manner specified in section one-c, article two,
9 chapter twenty-four of this code and in section thirteen,
10 article fifteen, chapter twenty-two of this code;

11 (2) File an application for a certificate of site approval
12 with, and obtain approval from, the county or regional
13 solid waste authority for the county or counties in which
14 the facility is proposed. Such application shall be
15 submitted on forms prescribed by the solid waste
16 management board. The county or regional solid waste
17 authority shall act on such application and either grant
18 or deny it within thirty days after the application is
19 determined by the county or regional solid waste
20 authority to be filed in a completed manner; and

21 (3) File an application for approval of operation as a
22 Class A facility with, and obtain approval from, the
23 county commission for each county in which the facility
24 would be located. Each county commission shall act on
25 such application and either grant or deny it within
26 thirty days after the application is determined by the
27 county commission to be filed in a completed manner.
28 The county commission shall hold at least one public
29 hearing and shall solicit public comment prior to acting
30 on the application. The county commission shall provide
31 notice of such public hearing with publication of a Class
32 II legal advertisement in a qualified newspaper serving
33 the county where the proposed site is situated.

34 (b) If applications are approved pursuant to subdivi-
35 sions (1), (2) and (3), subsection (a) of this section, each
36 county commission shall order that a referendum be
37 placed upon the ballot not less than fifty-six days before
38 the next primary, general or other countywide election.

39 (1) Such referendum is to determine whether it is the
40 will of the voters of the county that a Class A facility
41 be located in the county. Any such election shall be held
42 at the voting precincts established for holding primary
43 or general elections. All of the provisions of the general
44 election laws, when not in conflict with the provisions
45 of this article, apply to voting and elections hereunder,
46 insofar as practicable.

47 (2) The ballot, or the ballot labels where voting
48 machines are used, shall have printed thereon substan-
49 tially the following:

50 "Shall a solid waste facility handling of between ten
51 and thirty thousand tons of solid waste per month be
52 located within _____ County, West Virginia?

53 For the facility

54 Against the facility

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

57 (3) If a majority of the legal votes cast upon the
58 question is against the siting of a Class A facility within
59 the county, then the county commission, the county or
60 regional solid waste authority and the division of
61 environmental protection shall not proceed any further
62 with the application. If a majority of the legal votes cast
63 upon the question is for siting a Class A facility within
64 the county, then the application process as set forth in
65 this article and article fifteen, chapter twenty-two of
66 this code may proceed: *Provided*, That such vote is not
67 binding on and does not require the division of envir-
68 onmental protection to issue a permit. If the majority
69 of the legal votes cast is against the question, the
70 question may be submitted to a vote at any subsequent
71 election in the manner herein specified: *Provided*,
72 *however*, That the question may not be resubmitted to
73 a vote until two years after the date of the previous
74 referendum.

75 (c) After the tenth day of March, one thousand nine
76 hundred ninety, the public referendum established in
77 this section is mandatory for every new Class A facility
78 applicant which will accept between ten and thirty
79 thousand tons of solid waste per month. A new Class A
80 facility applicant means any applicant for a state solid
81 waste permit for a Class A facility who has not prior
82 to the tenth day of March, one thousand nine hundred
83 ninety, obtained a certificate of site approval for a Class
84 A facility from the county or regional solid waste
85 authority to establish, construct or operate a Class A

86 facility, and also means any applicant for a state solid
87 waste permit for a Class A facility if a legal challenge
88 to the issuance of a certificate of site approval by the
89 county or regional solid waste authority or the county
90 commission approval for the proposed Class A facility
91 was pending in any state or federal court as of the first
92 day of September, one thousand nine hundred ninety-
93 one.

**§22C-4-27. Approval of conversion from Class B facility
to Class A facility.**

1 (a) From and after the eighteenth day of October, one
2 thousand nine hundred ninety-one, in order to obtain
3 approval to operate as a Class A facility at a site
4 previously permitted to operate as a Class B facility, an
5 applicant shall:

6 (1) File an application for a certificate of need with,
7 and obtain approval from, the public service commission
8 in the manner specified in section one-c, article two,
9 chapter twenty-four, and in section thirteen, article
10 fifteen, chapter twenty-two of this code;

11 (2) File an application for a certificate of site approval
12 with, and obtain approval from, the county or regional
13 solid waste authority for the county or counties in which
14 the facility is located or proposed. Such application shall
15 be submitted on forms prescribed by the solid waste
16 management board. The county or regional solid waste
17 authority shall act on such application and either grant
18 or deny it within thirty days after the application is
19 determined by the county or regional solid waste
20 authority to be filed in a completed manner; and

21 (3) File an application for approval of operation as a
22 Class A facility with, and obtain approval from, the
23 county commission for each county in which the facility
24 is or would be located. Each county commission shall act
25 on such application and either grant or deny it within
26 thirty days after the application is determined by the
27 county commission to be filed in a completed manner.
28 The county commission shall hold at least one public
29 hearing and shall solicit public comment prior to acting
30 on the application. The county commission shall provide

31 notice of such public hearing with publication of a Class
32 II legal advertisement in a qualified newspaper serving
33 the county where the proposed site is situated.

34 (b) If applications are approved pursuant to subdivi-
35 sions (1), (2) and (3), subsection (a) of this section, the
36 county or regional solid waste authority shall publish a
37 Class II legal advertisement in compliance with the
38 provisions of article three, chapter fifty-nine of this code,
39 in a newspaper of general circulation in the counties
40 wherein the solid waste facility is located. Upon the
41 written petition of registered voters residing in the
42 county equal to not less than fifteen percent of the
43 number of votes cast within the county for governor at
44 the preceding gubernatorial election, which petition
45 shall be filed with the county commission within sixty
46 days after the last date of publication of the notice
47 provided in this section, the county commission shall,
48 upon verification of the required number of signatures
49 on the petition, and not less than fifty-six days before
50 the election, order a referendum be placed upon the
51 ballot. Any referendum conducted pursuant to this
52 section shall be held at the next primary, general or
53 other countywide election.

54 (1) Such referendum is to determine whether it is the
55 will of the voters of the county that the Class B facility
56 be converted to a Class A facility. Any election at which
57 such question of locating a solid waste facility is voted
58 upon shall be held at the voting precincts established for
59 holding primary or general elections. All of the provi-
60 sions of the general election laws, when not in conflict
61 with the provisions of this article, apply to voting and
62 elections hereunder, insofar as practicable. The secre-
63 tary of state shall prescribe the form of the petition
64 which shall include the printed name, address and date
65 of birth of each person whose signature appears on the
66 petition.

67 (2) The ballot, or the ballot labels where voting
68 machines are used, shall have printed thereon substan-
69 tially the following:

70 "Shall the _____ solid waste facility, located within

71 _____ County, West Virginia, be permitted to handle
 72 between ten and thirty thousand tons of solid waste per
 73 month?

74 For the facility

75 Against the facility

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

78 (3) If a majority of the legal votes cast upon the
 79 question is against the facility, then the county commis-
 80 sion, the county or regional solid waste authority and the
 81 division of environmental protection shall not proceed
 82 any further with the application. If a majority of the
 83 legal votes cast upon the question be for the facility, then
 84 the application process as set forth in this article and
 85 article fifteen, chapter twenty-two of this code may
 86 proceed: *Provided*, That such vote is not binding on nor
 87 does it require the division of environmental protection
 88 to modify the permit. If the majority of the legal votes
 89 cast is against the question, the question may be
 90 submitted to a vote at any subsequent election in the
 91 manner herein specified: *Provided, however*, That the
 92 question may not be resubmitted to a vote until two
 93 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
 2 thousand nine hundred ninety-one, in order to increase
 3 the maximum allowable monthly tonnage handled at a
 4 Class A facility by an aggregate amount of more than
 5 ten percent of the facility's permit tonnage limitation
 6 within a two-year period, the permittee shall:

7 (1) File an application for approval with, and obtain
 8 approval from, the county or regional solid waste
 9 authority for the county or counties in which the facility
 10 is located. Such application shall be a modification of the
 11 Class A facility's certificate of site approval. The county
 12 or regional solid waste authority shall act upon such
 13 application and either grant or deny it within thirty
 14 days after the application is determined by the county

15 or regional solid waste authority to be filed in a
16 completed manner;

17 (2) File an application for approval with, and obtain
18 approval from, the public service commission to modify
19 the certificate of need in the manner set forth in section
20 one-c, article two, chapter twenty-four of this code; and

21 (3) File an application for a major permit modifica-
22 tion with the division of environmental protection.

23 (b) If applications are approved pursuant to subdivi-
24 sions (1) and (2), subsection (a) of this section and an
25 application has been filed pursuant to subdivision (3),
26 subsection (a) of this section, the county or regional solid
27 waste authority shall publish a Class II legal advertise-
28 ment in compliance with the provisions of article three,
29 chapter fifty-nine of this code, in a newspaper of general
30 circulation in the counties wherein the solid waste
31 facility is located. Upon the written petition of regis-
32 tered voters residing in the county equal to not less than
33 fifteen percent of the number of votes cast within the
34 county for governor at the preceding gubernatorial
35 election, which petition shall be filed with the county
36 commission within sixty days after the last date of
37 publication of the notice provided in this section, the
38 county commission shall, upon verification of the
39 required number of signatures on the petition, and not
40 less than fifty-six days before the election, order a
41 referendum be placed upon the ballot. Any referendum
42 conducted pursuant to this section shall be held at the
43 next primary, general or other countywide election.

44 (1) Such referendum is to determine whether it is the
45 will of the voters of the county that the Class A facility
46 applicant be permitted to increase the maximum
47 tonnage allowed to be handled at the facility not to
48 exceed thirty thousand tons per month. Any election at
49 which such question is voted upon shall be held at the
50 voting precincts established for holding primary or
51 general elections. All of the provisions of the general
52 election laws, when not in conflict with the provisions
53 of this article, apply to voting and elections hereunder,
54 insofar as practicable. The secretary of state shall

55 prescribe the form of the petition which shall include
56 the printed name, address and date of birth of each
57 person whose signature appears on the petition.

58 (2) The ballot, or the ballot labels where voting
59 machines are used, shall have printed thereon substan-
60 tially the following:

61 "Shall the solid waste facility located within _____
62 County, West Virginia, be allowed to handle a maxi-
63 mum of _____ solid waste per month?

64 For the increase in maximum allowable
65 tonnage

66 Against the increase in maximum allowable
67 tonnage

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

70 (3) If a majority of the legal votes cast upon the
71 question is against allowing the Class A facility to
72 increase the maximum tonnage of solid waste allowed
73 to be handled per month at the facility, then the division
74 of environmental protection shall not proceed to modify
75 the Class A facility permit to increase the maximum
76 allowable tonnage. If a majority of the legal votes cast
77 upon the question is for allowing the Class A facility to
78 increase the maximum tonnage of solid waste allowed
79 to be handled per month at such facility, then the
80 application process as set forth in this article and article
81 fifteen, chapter twenty-two of this code may proceed:
82 *Provided*, That such vote is not binding on nor does it
83 require the county or regional solid waste authority or
84 the division of environmental protection to approve an
85 application to modify the permit. If the majority of the
86 legal votes cast is against the question, that does not
87 prevent the question from again being submitted to a
88 vote at any subsequent election in the manner provided
89 for in this section: *Provided, however*, That an applicant
90 may not resubmit the question for a vote prior to a
91 period of two years from the date of the previous
92 referendum herein described.

§22C-4-29. Judicial review of certificate of site approval.

1 (a) Any party aggrieved by a decision of the county
2 or regional solid waste authority or county commission
3 granting or denying a certificate of site approval may
4 obtain judicial review thereof in the same manner
5 provided in section four, article five, chapter twenty-
6 nine-a of this code, which provisions shall govern such
7 review with like effect as if the provisions of said section
8 were set forth in extenso in this section, except that the
9 petition shall be filed, within the time specified in said
10 section, in the circuit court of Kanawha County.

11 (b) The judgment of the circuit court is final unless
12 reversed, vacated or modified on appeal to the supreme
13 court of appeals, in accordance with the provisions of
14 section one, article six, chapter twenty-nine-a of this
15 code, except that notwithstanding the provisions of said
16 section, the petition seeking such review must be filed
17 with the supreme court of appeals within ninety days
18 from the date of entry of the judgment of the circuit
19 court.

**§22C-4-30. Solid waste assessment interim fee; regulated
motor carriers; dedication of proceeds;
criminal penalties.**

1 (a) *Imposition.* — Effective the first day of July, one
2 thousand nine hundred eighty-nine, a solid waste
3 assessment fee is hereby levied and imposed upon the
4 disposal of solid waste at any solid waste disposal facility
5 in this state to be collected at the rate of one dollar per
6 ton or part thereof of solid waste. The fee imposed by
7 this section is in addition to all other fees levied by law.

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

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

17 (2) The operator shall remit the fee imposed by this

18 section to the tax commissioner on or before the fifteenth
19 day of the month next succeeding the month in which
20 the fee accrued. Upon remittance of the fee, the operator
21 is required to file returns on forms and in the manner
22 as prescribed by the tax commissioner.

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

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

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

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

54 (7) If the operator or owner responsible for collecting
55 the fee imposed by this section is an association or
56 corporation, the officers thereof are liable, jointly and
57 severally, for any default on the part of the association

58 or corporation, and payment of the fee and any additions
59 to tax, penalties and interest imposed by article ten,
60 chapter eleven of this code may be enforced against
61 them as against the association or corporation which
62 they represent.

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

69 (c) *Regulated motor carriers.* — The fee imposed by
70 this section and section twenty-two, article five, chapter
71 seven of this code is a necessary and reasonable cost for
72 motor carriers of solid waste subject to the jurisdiction
73 of the public service commission under chapter twenty-
74 four-a of this code. Notwithstanding any provision of law
75 to the contrary, upon the filing of a petition by an
76 affected motor carrier, the public service commission
77 shall, within fourteen days, reflect the cost of said fee
78 in said motor carrier's rates for solid waste removal
79 service. In calculating the amount of said fee to said
80 motor carrier, the commission shall use the national
81 average of pounds of waste generated per person per
82 day as determined by the United States Environmental
83 Protection Agency.

84 (d) *Definition of solid waste disposal facility.* — For
85 purposes of this section, the term "solid waste disposal
86 facility" means any approved solid waste facility or open
87 dump in this state and includes a transfer station when
88 the solid waste collected at the transfer station is not
89 finally disposed of at a solid waste facility within this
90 state that collects the fee imposed by this section.
91 Nothing herein authorizes in any way the creation or
92 operation of or contribution to an open dump.

93 (e) *Exemptions.* — The following transactions are
94 exempt from the fee imposed by this section:

95 (1) Disposal of solid waste at a solid waste disposal
96 facility by the person who owns, operates or leases the
97 solid waste disposal facility if it is used exclusively to

98 dispose of waste originally produced by such person in
99 such person's regular business or personal activities or
100 by persons utilizing the facility on a cost-sharing or
101 nonprofit basis;

102 (2) Reuse or recycling of any solid waste;

103 (3) Disposal of residential solid waste by an individual
104 not in the business of hauling or disposing of solid waste
105 on such days and times as designated by the director of
106 the division of environmental protection as exempt from
107 the fee imposed pursuant to section eleven, article
108 fifteen, chapter twenty-two of this code; and

109 (4) Disposal of solid waste at a solid waste disposal
110 facility by a commercial recycler which disposes of
111 thirty percent or less of the total waste it processes for
112 recycling. In order to qualify for this exemption each
113 commercial recycler must keep accurate records of
114 incoming and outgoing waste by weight. Such records
115 must be made available to the appropriate inspectors
116 from the division of environmental protection of solid
117 waste authority, upon request.

118 (f) *Procedure and administration.* — Notwithstanding
119 section three, article ten, chapter eleven of this code,
120 each and every provision of the "West Virginia Tax
121 Procedure and Administration Act" set forth in article
122 ten, chapter eleven of this code applies to the fee
123 imposed by this section with like effect as if said act
124 were applicable only to the fee imposed by this section
125 and were set forth in extenso herein.

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

132 (h) *Dedication of proceeds.* — The net proceeds of the
133 fee collected by the tax commissioner pursuant to this
134 section shall be deposited, at least monthly, in a special
135 revenue account known as the "Solid Waste Planning
136 Fund" which is hereby continued. The solid waste

137 management board shall allocate the proceeds of the
138 said fund as follows:

139 (1) Fifty percent of the total proceeds shall be divided
140 equally among, and paid over to, each county solid waste
141 authority to be expended for the purposes of this article:
142 *Provided*, That where a regional solid waste authority
143 exists, such funds shall be paid over to the regional solid
144 waste authority to be expended for the purposes of this
145 article in an amount equal to the total share of all
146 counties within the jurisdiction of said regional solid
147 waste authority; and

148 (2) Fifty percent of the total proceeds shall be
149 expended by the solid waste management board for:

150 (A) Grants to the county or regional solid waste
151 authorities for the purposes of this article; and

152 (B) Administration, technical assistance or other costs
153 of the solid waste management board necessary to
154 implement the purposes of this article and article three
155 of this chapter.

156 (i) *Effective date.* — This section is effective on the
157 first day of July, one thousand nine hundred ninety.

ARTICLE 5. COMMERCIAL HAZARDOUS WASTE MANAGE- MENT 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-5-7. Judicial review.

§22C-5-8. Remedies.

§22C-5-1. Short title.

1 This article may be known and cited as the “Commer-
2 cial Hazardous Waste Management Facility Siting Act.”

§22C-5-2. Purpose and legislative findings.

1 (a) The purpose of this article is to establish a state

2 commercial hazardous waste management facility siting
3 board and to establish the procedure for which approval
4 certificates are granted or denied for commercial
5 hazardous waste management facilities.

6 (b) The Legislature finds that hazardous waste is
7 generated throughout the state as a by-product of the
8 materials used and consumed by individuals, businesses,
9 enterprise and governmental units in the state, and that
10 the proper management of hazardous waste is necessary
11 to prevent adverse effects on the environment and to
12 protect public health and safety. The Legislature
13 further finds that:

14 (1) The availability of suitable facilities for the
15 treatment, storage and disposal of hazardous waste is
16 necessary to protect the environment resources and
17 preserve the economic strength of this state and to fulfill
18 the diverse needs of its citizens;

19 (2) Whenever a site is proposed for the treatment,
20 storage or disposal of hazardous waste, the nearby
21 residents and the affected county and municipalities
22 may have a variety of reasonable concerns regarding the
23 location, design, construction, operation, closing and
24 long-term care of facilities to be located at the site, the
25 effect of the facility upon their community's economic
26 development and environmental quality and the incor-
27 poration of such concerns into the siting process;

28 (3) Local authorities have the responsibility for
29 promoting public health, safety, convenience and
30 general welfare, encouraging planned and orderly land
31 use development, recognizing the needs of industry and
32 business, including solid waste disposal and the treat-
33 ment, storage and disposal of hazardous waste and that
34 reasonable concerns of local authorities should be
35 considered in the siting of commercial hazardous waste
36 management facilities; and

37 (4) New procedures are needed to resolve many of the
38 conflicts which arise during the process of siting
39 commercial hazardous waste management facilities.

§22C-5-3. Definitions.

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

3 (a) "Board" means the commercial hazardous waste
4 management facility siting board established pursuant
5 to section four of this article;

6 (b) "Commercial hazardous waste management
7 facility" means any hazardous waste treatment, storage
8 or disposal facility which accepts hazardous waste, as
9 identified or listed by the director of the division of
10 environmental protection under article eighteen, chap-
11 ter twenty-two of this code, generated by sources other
12 than the owner or operator of the facility and does not
13 include an approved hazardous waste facility owned and
14 operated by a person for the sole purpose of disposing
15 of hazardous wastes created by that person or such
16 person and other persons on a cost-sharing or nonprofit
17 basis;

18 (c) "Hazardous waste management facility" means
19 any facility including land and structures, appurtenan-
20 ces, improvements and equipment used for the treat-
21 ment, storage or disposal of hazardous wastes, which
22 accepts hazardous waste for storage, treatment or
23 disposal. For the purposes of this article, it does not
24 include: (i) Facilities for the treatment, storage or
25 disposal of hazardous wastes used principally as fuels in
26 an on-site production process; or (ii) facilities used
27 exclusively for the pretreatment of wastes discharged
28 directly to a publicly owned sewage treatment works. A
29 facility may consist of one or more treatment, storage
30 or disposal operational units.

**§22C-5-4. Establishment of commercial hazardous waste
management facility siting board; composi-
tion; appointment; compensation; powers;
rules; and procedures.**

1 (a) The commercial hazardous waste management
2 facility siting board is continued. It consists of nine
3 members including the director of the division of
4 environmental protection and the chief of the office of
5 air quality of the division of environmental protection

6 who are nonvoting members ex officio, two ad hoc
7 members appointed by the county commission of the
8 county in which the facility is or is proposed to be
9 located who are residents of said county, and five other
10 permanent members to be appointed by the governor
11 with the advice and consent of the Senate, two of whom
12 are representative of industries engaged in business in
13 this state and three of whom are representative of the
14 public at large. No two or more of the five permanent
15 voting members of the board appointed by the governor
16 shall be from the same county. Upon initial appointment
17 one of said other five members shall be appointed for
18 five years, one for four years, one for three years, one
19 for two years and one for one year. Thereafter, said
20 permanent members shall be appointed for terms of five
21 years each. Vacancies occurring other than by expira-
22 tion of a term shall be filled by the governor in the same
23 manner as the original appointment for the unexpired
24 portion of the term. The term of the ad hoc members
25 continue until a final determination has been made in
26 the particular proceeding for which they are appointed.
27 Four of the voting members on the board constitute a
28 quorum for the transaction of any business, and the
29 decision of four voting members of the board is action
30 of the board. No person is eligible to be an appointee
31 of the governor to the board who has any direct personal
32 financial interest in any commercial hazardous waste
33 management enterprise. The five permanent voting
34 members of the board shall annually elect from among
35 themselves a chair no later than the thirty-first day of
36 July of each calendar year. The board shall meet upon
37 the call of the chair or upon the written request of at
38 least three of the voting members of the board.

39 (b) Each member of the board, other than the two
40 members ex officio, shall be paid, out of funds approp-
41 riated for such purpose the same compensation, and
42 each member of the board, including members ex
43 officio, shall be paid the expense reimbursement, as is
44 paid to members of the Legislature for their interim
45 duties as recommended by the citizens legislative
46 compensation commission and authorized by law for
47 each day or portion thereof engaged in the discharge of

48 official duties. The division of environmental protection
49 shall make available to the board such professional and
50 support staff and services as may be necessary in order
51 to support the board in carrying out its responsibilities
52 within the limit of funds available for this purpose. The
53 office of the attorney general shall provide legal advice
54 and representation to the board as requested, within the
55 limit of funds available for this purpose, or the board,
56 with the written approval of the attorney general, may
57 employ counsel to represent it.

58 (c) After the eighth day of April, one thousand nine
59 hundred eighty-nine, no person shall construct or
60 commence construction of a commercial hazardous
61 waste management facility without first obtaining a
62 certificate of site approval issued by the board in the
63 manner prescribed herein. For the purpose of this
64 section, "construct" and "construction" means (i) with
65 respect to new facilities, the significant alteration of a
66 site to install permanent equipment or structures or the
67 installation of permanent equipment or structures; (ii)
68 with respect to existing facilities, the alteration or
69 expansion of existing structures or facilities to include
70 accommodation of hazardous waste, or expansion of
71 more than fifty percent the area or capacity of an
72 existing hazardous waste facility, or any change in
73 design or process of a hazardous waste facility that will
74 result in a substantially different type of facility.
75 Construction does not include preliminary engineering
76 or site surveys, environmental studies, site acquisition,
77 acquisition of an option to purchase or activities
78 normally incident thereto.

79 (d) Upon receiving a written request from the owner
80 or operator of the facility, the board may allow, without
81 going through the procedures of this article, any
82 changes in the facilities which are designed (1) to
83 prevent a threat to human health or the environment
84 because of an emergency situation; (2) to comply with
85 federal or state laws and regulations; or (3) to result in
86 demonstrably safer or environmentally more acceptable
87 processes.

88 (e) An application for certificate of site approval

89 consists of a copy of all hazardous waste permits, if any,
90 and permit applications, if any, issued by or filed with
91 any state permit-issuing authority pursuant to article
92 eighteen, chapter twenty-two of this code and a detailed
93 written analysis with supporting documentation of the
94 following factors:

95 (1) The nature of the probable environmental and
96 economic impacts, including, but not limited to, speci-
97 fication of the predictable adverse effects on quality of
98 natural environment, public health and safety, scenic,
99 historic, cultural and recreational values, water and air
100 quality, wildlife, property values, transportation net-
101 works and an evaluation of measures to mitigate such
102 adverse effects;

103 (2) The nature of the environmental benefits likely to
104 be derived from such facility, including the resultant
105 decrease in reliance upon existing waste disposal
106 facilities which do not comply with applicable laws and
107 rules, and a reduction in fuel consumption and vehicle
108 emissions related to long-distance transportation of
109 hazardous waste; and

110 (3) The economic benefits likely to be derived from
111 such facility, including, but not limited to, a reduction
112 in existing costs for the disposal of hazardous waste,
113 improvement to the state's ability to retain and attract
114 business and industry due to predictable and stable
115 waste disposal costs, and any economic benefits which
116 may accrue to the municipality or county in which the
117 facility is to be located.

118 (f) On or before sixty calendar days after the receipt
119 of such application, the board shall mail written notice
120 to the applicant as to whether or not such application
121 is complete. If, or when, the application is complete, the
122 board shall notify the applicant and the county commis-
123 sion of the county in which the facility is or is proposed
124 to be located. Said county commission shall thereupon,
125 within thirty days of receipt of such notice, appoint the
126 two ad hoc members of the board to act upon the
127 application.

128 (g) Immediately upon determining that an application

129 is complete, the board shall, at the applicant's expense,
130 cause a notice to be published in the state register,
131 which shall be no later than thirty calendar days after
132 the date of such written notice of completeness, and shall
133 provide notice to the chief executive office of each
134 municipality in which the proposed facility is to be
135 located and to the county commission of the county in
136 which the facility is proposed to be located, and shall
137 direct the applicant to provide reasonable notice to the
138 public which shall, at a minimum, include publication
139 as a Class I-O legal advertisement in at least two
140 newspapers having general circulation in the vicinity in
141 which the proposed facility is to be located identifying
142 the proposed location, type of facility and activities
143 involved, the name of the permittee, and the date, time
144 and place at which the board will convene a public
145 hearing with regard to the application. The date of the
146 hearing shall be set by the board and shall commence
147 within sixty days of the date of notice of completeness
148 of an application.

149 (h) The board shall conduct a public hearing upon the
150 application in the county in which the facility is to be
151 located and shall keep an accurate record of such
152 proceedings by stenographic notes and characters or by
153 mechanical or electronic means. Such proceedings shall
154 be transcribed at the applicant's expense. The board
155 may accept both written and oral comments on the
156 application.

157 (i) The commercial hazardous waste management
158 facility siting board may request further information of
159 the applicant and shall render a decision based upon the
160 application and the record, either, requesting further
161 information, granting a certificate of site approval,
162 denying it, or granting it upon such terms, conditions
163 and limitations as the board deems appropriate. The
164 board shall base its decision upon the factors set forth
165 in subsection (e). The written decision of the board
166 containing its findings and conclusions shall be mailed
167 by certified mail to the applicant and to any requesting
168 person on or before sixty calendar days after receipt by
169 the board of a complete record of the hearing.

170 (j) The board may exercise all powers necessary or
171 appropriate to carry out the purposes and duties
172 provided in this article, including the power to promul-
173 gate rules in compliance with chapter twenty-nine-a of
174 this code.

§22C-5-5. Effect of certification.

1 A grant of an approval certificate shall supersede any
2 local ordinance or regulation that is inconsistent with
3 the terms of the approval certificate. Nothing in this
4 chapter affects the authority of the host community to
5 enforce its regulations and ordinances to the extent that
6 they are not inconsistent with the terms and conditions
7 of the approval certificate. Grant of an approval
8 certificate does not preclude or excuse the applicant
9 from the requirement to obtain approval or permits
10 under this chapter or other state or federal laws.

**§22C-5-6. Commercial hazardous waste management
facility siting fund; fees.**

1 (a) There is hereby continued in the state treasury a
2 special revenue fund entitled the "commercial hazard-
3 ous waste management facility siting fund" which may
4 be expended by the director of the division of environ-
5 mental protection for the following:

6 (1) The necessary expenses of the board which may
7 include expenses and compensation for each member of
8 the board as authorized by this article.

9 (2) Administration, professional and support services
10 provided by the division to the board.

11 (3) Legal counsel and representation provided by the
12 attorney general to the board for the purposes of this
13 article.

14 (b) The director of the division of environmental
15 protection shall promulgate rules , pursuant to section
16 one, article one, chapter twenty-nine-a of this code,
17 establishing reasonable fees to be charged each appli-
18 cant for a certificate of site approval. Such fees shall be
19 calculated to recover the reasonable and necessary
20 expenses of the board, division of environmental

21 protection and attorney general which such agencies
22 incur as pursuant to this article.

§22C-5-7. Judicial review.

1 (a) Any person having an interest adversely affected
2 by a final decision made and entered by the board is
3 entitled to judicial review thereof in the circuit court of
4 Kanawha County, or the circuit court of the county in
5 which the facility is, or is proposed to be, situated, such
6 appeal to be perfected by the filing of a petition with
7 the court within sixty days of the date of receipt by the
8 applicant of the board's written decision.

9 (b) The review shall be conducted by the court without
10 a jury and shall be upon the record made before the
11 board except that in cases of alleged irregularities in
12 procedure before the board not shown in the record,
13 testimony thereon may be taken before the court. The
14 court may hear oral arguments and require written
15 briefs.

16 The court may affirm the order or decision of the
17 board or remand the case for further proceedings. It
18 may reverse, vacate or modify the order or decision of
19 the board if the substantial rights of the petitioner or
20 petitioners have been prejudiced because the adminis-
21 trative findings, inferences, conclusions, decision or
22 order are:

23 (1) In violation of constitutional or statutory
24 provisions;

25 (2) In excess of the statutory authority or jurisdiction
26 of the board;

27 (3) Made upon unlawful procedures;

28 (4) Affected by other error of law;

29 (5) Clearly wrong in view of the reliable, probative
30 and substantial evidence on the whole record; or

31 (6) Arbitrary or capricious or characterized by abuse
32 of discretion or clearly unwarranted exercise of
33 discretion.

34 (c) The judgment of the circuit court is final unless

35 reversed, vacated or modified on appeal to the supreme
36 court of appeals. The petition seeking such review must
37 be filed with said supreme court of appeals within
38 ninety days from the date of entry of the judgment of
39 the circuit court.

40 (d) Legal counsel and services for the board in all
41 appeal proceedings shall be provided by the attorney
42 general.

§22C-5-8. Remedies.

1 (a) Any person who violates this section shall be
2 compelled by injunction, in a proceeding instituted in
3 the circuit court or the locality where the facility or
4 proposed facility is to be located, to cease the violation.

5 (b) Such an action may be instituted by the board,
6 director of the division of environmental protection,
7 political subdivision in which the violation occurs or any
8 other person aggrieved by such violation. In any such
9 action, it is not necessary for the plaintiff to plead or
10 prove irreparable harm or lack of an adequate remedy
11 at law. No person shall be required to post any
12 injunction bond or other security under this section.

13 (c) No action may be brought under this section after
14 an approval certificate has been issued by the board,
15 notwithstanding the pendency of any appeals or other
16 challenges to the board's action.

17 (d) In any action under this section, the court may
18 award reasonable costs of litigation, including attorney
19 and expert witness fees, to any party if the party
20 substantially prevails on the merits of the case and if
21 in the determination of the court the party against
22 whom the costs are requested has acted in bad faith.

ARTICLE 6. HAZARDOUS WASTE FACILITY SITING APPROVAL.

§22C-6-1. Legislative purpose.

§22C-6-2. Definitions.

§22C-6-3. Procedure for public participation.

§22C-6-1. Legislative purpose.

1 The purpose of this article is to provide the opportunit-

2 ity for public participation in the decision to locate
3 commercial hazardous waste management facilities and
4 to locate any hazardous waste management facility
5 which disposes of greater than ten thousand tons of
6 hazardous waste per annum in West Virginia.

§22C-6-2. Definitions.

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

3 (a) "Board" means the commercial hazardous waste
4 management facility siting board established pursuant
5 to section three, article five of this chapter;

6 (b) "Commercial hazardous waste management
7 facility" means any hazardous waste treatment, storage
8 or disposal facility which accepts hazardous waste, as
9 identified or listed by the director of the division of
10 environmental protection under article eighteen, chap-
11 ter twenty-two of this code, generated by sources other
12 than the owner or operator of the facility and does not
13 include an approved hazardous waste facility owned and
14 operated by a person for the sole purpose of disposing
15 of hazardous wastes created by that person or such
16 person and other persons on a cost-sharing or nonprofit
17 basis;

18 (c) "Hazardous waste management facility" means
19 any facility including land and structures, appurtenan-
20 ces, improvements and equipment used for the treat-
21 ment, storage or disposal of hazardous wastes, which
22 accepts hazardous waste for storage, treatment or
23 disposal. For the purposes of this article, it does not
24 include: (i) Facilities for the treatment, storage or
25 disposal of hazardous wastes used principally as fuels in
26 an on-site production process; or (ii) facilities used
27 exclusively for the pretreatment of wastes discharged
28 directly to a publicly owned sewage treatment works. A
29 facility may consist of one or more treatment, storage
30 or disposal operational units.

31 (d) "On site" means the location for disposal of
32 hazardous waste including the hazardous waste gener-
33 ated at the location of disposal or generated at some

34 location other than the location of disposal.

§22C-6-3. Procedure for public participation.

1 (a) From and after the fifth day of June, one thousand
2 nine hundred ninety-two, in order to obtain approval to
3 locate either a commercial hazardous waste manage-
4 ment facility or a hazardous waste management facility
5 which disposes of greater than ten thousand tons per
6 annum on site in this state, an applicant shall:

7 (1) File a pre-siting notice with the county or counties
8 in which the facility is to be located or proposed. Such
9 notice shall be submitted on forms prescribed by the
10 commercial hazardous waste management facility siting
11 board;

12 (2) File a pre-siting notice with the commercial
13 hazardous waste management facility siting board; and

14 (3) File a pre-siting notice with the division of
15 environmental protection.

16 (b) If a pre-siting notice is filed in accordance with
17 subsection (a) of this section, the county commission
18 shall publish a Class II legal advertisement in com-
19 pliance with the provisions of article three, chapter fifty-
20 nine of this code, in a newspaper of general circulation
21 in the counties wherein the hazardous waste manage-
22 ment facility is to be located. Upon an affirmative vote
23 of the majority of the county commissioners or upon the
24 written petition of registered voters residing in the
25 county equal to not less than fifteen percent of the
26 number of votes cast within the county for governor at
27 the preceding gubernatorial election, which petition
28 shall be filed with the county commission within sixty
29 days after the last date of publication of the notice
30 provided in this section, the county commission shall,
31 upon verification of the required number of signatures
32 on the petition, and not less than fifty-six days before
33 the election, order a referendum be placed upon the
34 ballot: *Provided*, That such a referendum is not required
35 for a hazardous waste management facility for which at
36 least ninety percent of the capacity is designated for
37 hazardous waste generated at the site of disposal. Any

38 referendum conducted pursuant to this section shall be
39 held at the next primary, general or other countywide
40 election.

41 (1) Such referendum is to determine whether it is the
42 will of the voters of the county that a commercial
43 hazardous waste management facility be located in the
44 county or that a hazardous waste management facility
45 disposing of greater than ten thousand tons of hazardous
46 waste per annum on site be located in the county. Any
47 election at which such question of locating a hazardous
48 waste management facility is voted upon shall be held
49 at the voting precincts established for holding primary
50 or general elections. All of the provisions of the general
51 election laws, when not in conflict with the provisions
52 of this article, apply to voting and elections hereunder,
53 insofar as practicable. The secretary of state shall
54 prescribe the form of the petition which shall include
55 the printed name, address and date of birth of each
56 person whose signature appears on the petition.

57 (2) The ballot, or the ballot labels where voting
58 machines are used, shall have printed thereon substan-
59 tially the following depending upon the type of facility
60 to be located with the county:

61 "Shall a commercial hazardous waste management
62 facility be located within _____ County, West
63 Virginia?

64 For the facility

65 Against the facility

66 (Place a cross mark in the square opposite your
67 choice.)" or,

68 "Shall a hazardous waste management facility dis-
69 posing of greater than ten thousand tons per annum on
70 site be located within _____ County, West Virginia?

71 For the facility

72 Against the facility

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

75 (3) If a majority of the legal votes cast upon the
 76 question is against the facility, then the county commis-
 77 sion shall notify the division of environmental protection
 78 and the commercial hazardous waste management
 79 facility siting board, in the case of a commercial facility,
 80 of the result and the commercial hazardous waste
 81 management facility siting board or division of envir-
 82 onmental protection, as the case may be, shall not
 83 proceed any further with the application. If a majority
 84 of the legal votes cast upon the question is for the
 85 facility, then the application process as set forth in
 86 article eighteen, chapter twenty-two of this code and
 87 article five of this chapter, in the case of a commercial
 88 hazardous waste management facility, may proceed:
 89 *Provided*, That such vote is not binding on nor does it
 90 require the commercial hazardous waste management
 91 facility siting board to grant a certificate of site
 92 approval or the division of environmental protection to
 93 issue the permit, as the case may be. If the majority of
 94 the legal votes cast is against the question, the question
 95 may be submitted to a vote at any subsequent election
 96 in the manner herein specified: *Provided, however*, That
 97 the question may not be resubmitted to a vote until two
 98 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.

1 Notwithstanding any other provisions of law, oil and
 2 gas inspectors shall be selected, serve and be removed
 3 as in this article provided.

4 The director of the division of environmental protec-
 5 tion shall divide the state so as to equalize, as far as
 6 practical, the work of each oil and gas inspector. The
 7 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 protection.

49 conditioned upon the faithful discharge of the inspector's
50 duties, a certificate of which oath and bond shall be filed
51 in the office of the secretary of state.

52 The supervising inspector and oil and gas inspectors
53 shall perform such duties as are imposed upon them by
54 this chapter or chapter twenty-two of this code, and
55 related duties assigned by the director of the division of
56 environmental protection.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

1 (a) No person is eligible for appointment as an oil and
2 gas inspector or supervising inspector unless, at the time
3 of his or her probationary appointment, such person (1)
4 is a citizen of West Virginia, in good health, and of good
5 character, reputation and temperate habits; (2) has had
6 at least six years' actual relevant experience in the oil
7 and gas industry: *Provided*, That not exceeding three
8 years of such experience shall be satisfied by any
9 combination of (i) a bachelor of science degree in science
10 or engineering which shall be considered the equivalent
11 of three years' actual relevant experience in the oil and
12 gas industry, (ii) an associate degree in petroleum
13 technology which shall be considered the equivalent of
14 two years actual relevant experience in the oil and gas
15 industry, and (iii) actual relevant environmental
16 experience including, without limitation, experience in
17 wastewater, solid waste or reclamation each full year of
18 which shall be considered as a year of actual relevant
19 experience in the oil and gas industry; and (3) has good
20 theoretical and practical knowledge of oil and gas
21 drilling and production methods, practices and tech-
22 niques, sound safety practices and applicable mining
23 laws.

24 (b) In order to qualify for appointment as an oil and
25 gas inspector or supervising inspector, an eligible
26 applicant shall submit to a written and oral examination
27 by the oil and gas inspectors' examining board and shall
28 furnish such evidence of good health, character and
29 other facts establishing eligibility as such board may

30 require. If such board finds after investigation and
31 examination that an applicant (1) is eligible for
32 appointment and (2) has passed all written and oral
33 examinations, the board shall add such applicant's name
34 and grade to the register of qualified eligible candidates
35 and certify its action to the director of the division of
36 environmental protection. No candidate's name may
37 remain on the register for more than three years
38 without requalifying.

39 (c) The salary of the supervising inspector shall be not
40 less than twenty-seven thousand five hundred dollars
41 per annum. Salaries of inspectors shall be not less than
42 twenty-two thousand dollars per annum. The supervising
43 inspector and inspectors are entitled to mileage
44 expense reimbursement at the rate established for in-
45 state travel of public employees, in the governor's travel
46 rules, as administered by the department of administra-
47 tion. Within the limits provided by law, the salary of
48 each inspector and of the supervising inspector shall be
49 fixed by said director and the oil and gas inspectors'
50 examining board. In fixing salaries of the oil and gas
51 inspectors and of the supervising inspector, said director
52 shall consider ability, performance of duty and expe-
53 rience. No reimbursement for traveling expenses may
54 be made except upon an itemized account of such
55 expenses submitted by the inspector or supervising
56 inspector, as the case may be, who shall verify, upon
57 oath, that such expenses were actually incurred in the
58 discharge of official duties.

59 (d) An inspector or the supervising inspector, after
60 having received a permanent appointment, shall be
61 removed from office only for physical or mental
62 impairment, incompetency, neglect of duty, drunken-
63 ness, malfeasance in office or other good cause.

64 Proceedings for the removal of an oil and gas
65 inspector or the supervising inspector may be initiated
66 by said director whenever there are reasonable grounds
67 to believe that adequate cause exists warranting
68 removal. Such a proceeding shall be initiated by a
69 verified petition, filed with the oil and gas inspectors'
70 examining board by said director, setting forth w. . .

71 particularity the facts alleged. Not less than twenty
72 reputable citizens engaged in oil and gas drilling and
73 production operations in the state may petition said
74 director for the removal of an inspector or the super-
75 vising inspector. If such petition is verified by at least
76 one of the petitioners, based on actual knowledge of the
77 affiant, and alleges facts which, if true, warrant the
78 removal of the inspector or supervising inspector, said
79 director shall cause an investigation of the facts to be
80 made. If, after such investigation, said director finds
81 that there is substantial evidence which, if true,
82 warrants removal of the inspector or supervising
83 inspector, the director shall file a petition with the oil
84 and gas inspectors' examining board requesting removal
85 of the inspector or supervising inspector.

86 On receipt of a petition by said director seeking
87 removal of an inspector or the supervising inspector, the
88 oil and gas inspectors' examining board shall promptly
89 notify the inspector or supervising inspector, as the case
90 may be, to appear before it at a time and place
91 designated in said notice, which time shall be not less
92 than fifteen days nor more than thirty days thereafter.
93 There shall be attached to the copy of the notice served
94 upon the inspector or supervising inspector a copy of the
95 petition filed with such board.

96 At the time and place designated in said notice, the
97 oil and gas inspectors' examining board shall hear all
98 evidence offered in support of the petition and on behalf
99 of the inspector or supervising inspector. Each witness
100 shall be sworn and a transcript shall be made of all
101 evidence taken and proceedings had at any such
102 hearing. No continuance may be granted except for good
103 cause shown.

104 The chair of the board, and the director may admin-
105 ister oaths and subpoena witnesses.

106 An inspector or supervising inspector who willfully
107 refuses or fails to appear before such board, or having
108 appeared, refuses to answer under oath any relevant
109 question on the ground that the inspector's testimony or
110 answer might incriminate such inspector, or refuses to

111 accept a grant of immunity from prosecution on account
112 of any relevant matter about which the inspector may
113 be asked to testify at such hearing before such board,
114 forfeits the inspector's position.

115 If, after hearing, the oil and gas inspectors' examining
116 board finds that the inspector or supervising inspector
117 should be removed, it shall enter an order to that effect.
118 The decision of the board shall be final and shall not be
119 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.**

1 (a) There is hereby continued an oil and gas inspec-
2 tors' examining board consisting of five members, two
3 of whom shall be ex officio members and three of whom
4 shall be appointed by the governor, by and with the
5 advice and consent of the Senate. Appointed members
6 may be removed only for the same causes and like
7 manner as elective state officers. One member of the
8 board who shall be the representative of the public at
9 large and shall be a person who is knowledgeable about
10 the subject matter of this article and has no direct or
11 indirect financial interest in oil and gas production
12 other than the receipt of royalty payments which do not
13 exceed a five year average of six hundred dollars per
14 year; one member shall be a person who by reason of
15 previous training and experience may reasonably be
16 said to represent the viewpoint of independent oil and
17 gas operators; and one member shall be a person who
18 by reason of previous training and experience may
19 reasonably be said to represent the viewpoint of major
20 oil and gas producers.

21 The chief of the office of oil and gas of the division
22 of environmental protection and the chief of the office
23 of water resources of the division of environmental
24 protection shall be ex officio members.

* Clerk's Note: The provisions of this section were also contained in H. B. 4091 (Chapter 157), and were originally codified as §22-13-3 and passed prior to this act.

25 The appointed members of the board shall be ap-
26 pointed for overlapping terms of six years, except that
27 the original appointments shall be for terms of two, four
28 and six years, respectively. Any member whose term
29 expires may be reappointed by the governor.

30 The board shall pay each member the same compen-
31 sation and expense reimbursement as is paid to
32 members of the Legislature for their interim duties as
33 recommended by the citizens legislative compensation
34 commission and authorized by law for each day or
35 portion thereof engaged in the discharge of official
36 duties.

37 The chief of the office of oil and gas shall serve as
38 chair of the board. The board shall elect a secretary
39 from its members.

40 Members of the board, before performing any duty,
41 shall take and subscribe to the oath required by section
42 5, article IV of the constitution of West Virginia.

43 The board shall meet at such times and places as shall
44 be designated by the chair. It is the duty of the chair
45 to call a meeting of the board on the written request of
46 two members. Notice of each meeting shall be given in
47 writing to each member by the secretary at least five
48 days in advance of the meeting. A majority of members
49 is a quorum for the transaction of business.

50 (b) In addition to other powers and duties expressly
51 set forth elsewhere in this article, the board shall:

52 (1) Establish, and from time to time revise, forms of
53 application for employment as an oil and gas inspector
54 and supervising inspector and forms for written
55 examinations to test the qualifications of candidates,
56 with such distinctions, if any, in the forms for oil and
57 gas inspector and supervising inspector as the board
58 may from time to time deem necessary or advisable;

59 (2) Adopt and promulgate reasonable rules relating to
60 the examination, qualification and certification of
61 candidates for appointment, and relating to hearings for
62 removal of inspectors or the supervising inspector,
63 required to be held by this article. All of such rules shall

64 be printed and a copy thereof furnished by the secretary
65 of the board to any person upon request;

66 (3) Conduct, after public notice of the time and place
67 thereof, examinations of candidates for appointment. By
68 unanimous agreement of all members of the board, one
69 or more members of the board or an employee of the
70 division of environmental protection may be designated
71 to give to a candidate the written portion of the
72 examination;

73 (4) Prepare and certify to the director of the division
74 of environmental protection a register of qualified
75 eligible candidates for appointment as oil and gas
76 inspectors or as supervising inspectors, with such
77 differentiation, if any, between the certification of
78 candidates for oil and gas inspectors and for supervising
79 inspectors as the board may from time to time deem
80 necessary or advisable. The register shall list all
81 qualified eligible candidates in the order of their grades,
82 the candidate with the highest grade appearing at the
83 top of the list. After each meeting of the board held to
84 examine such candidates and at least annually, the
85 board shall prepare and submit to the director of the
86 division of environmental protection a revised and
87 corrected register of qualified eligible candidates for
88 appointment, deleting from such revised register all
89 persons: (a) Who are no longer residents of West
90 Virginia; (b) who have allowed a calendar year to expire
91 without, in writing, indicating their continued availabil-
92 ity for such appointment; (c) who have been passed over
93 for appointment for three years; (d) who have become
94 ineligible for appointment since the board originally
95 certified that such persons were qualified and eligible
96 for appointment; or (e) who, in the judgment of at least
97 three members of the board, should be removed from
98 the register for good cause;

99 (5) Cause the secretary of the board to keep and
100 preserve the written examination papers, manuscripts,
101 grading sheets and other papers of all applicants for
102 appointment for such period of time as may be estab-
103 lished by the board. Specimens of the examination
104 given, together with the correct solution of

105 question, shall be preserved permanently by the
106 secretary of the board;

107 (6) Issue a letter or written notice of qualification to
108 each successful eligible candidate;

109 (7) Hear and determine proceedings for the removal
110 of inspectors or the supervising inspector in accordance
111 with the provisions of this article;

112 (8) Hear and determine appeals of inspectors or the
113 supervising inspector from suspension orders made by
114 said director pursuant to the provisions of section two,
115 article six, chapter twenty-two of this code: *Provided,*
116 That in order to appeal from any order of suspension,
117 an aggrieved inspector or supervising inspector shall
118 file such appeal in writing with the oil and gas
119 inspectors' examining board not later than ten days
120 after receipt of the notice of suspension. On such appeal
121 the board shall affirm the action of said director unless
122 it be satisfied from a clear preponderance of the
123 evidence that said director has acted arbitrarily;

124 (9) Make an annual report to the governor concerning
125 the administration of oil and gas inspection personnel in
126 the state service; making such recommendations as the
127 board considers to be in the public interest; and

128 (10) Render such advice and assistance to the director
129 of the division of environmental protection as the
130 director shall from time to time determine necessary or
131 desirable in the performance of such duties.

132 (c) After having conducted a preliminary perfor-
133 mance review through its joint committee on govern-
134 ment operations, pursuant to article ten, chapter four of
135 this code, the Legislature hereby finds and declares that
136 the oil and gas inspectors' examining board within the
137 division of environmental protection should be continued
138 and reestablished. Accordingly, notwithstanding the
139 provisions of said article, the oil and gas inspectors'
140 examining board within the division of environmental
141 protection shall continue to exist until the first day of
142 July, two thousand.

ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.

- §22C-8-1. Declaration of public policy; legislative findings.
- §22C-8-2. Definitions.
- §22C-8-3. Application of article; exclusions.
- §22C-8-4. Shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.
- §22C-8-5. Same — Meetings; notice; general powers and duties.
- §22C-8-6. Rules; notice requirements.
- §22C-8-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.
- §22C-8-8. Distance limitations.
- §22C-8-9. Application to establish a drilling unit; contents; notice.
- §22C-8-10. Establishment of drilling units; hearings; orders.
- §22C-8-11. Pooling of interests in a drilling unit; limitations.
- §22C-8-12. Effect of order establishing drilling unit or pooling of interests; recordation.
- §22C-8-13. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §22C-8-14. Operation on drilling units.
- §22C-8-15. Validity of unit agreements.
- §22C-8-16. Injunctive relief.
- §22C-8-17. Penalties.
- §22C-8-18. Construction.
- §22C-8-19. Rules, orders and permits remain in effect.

§22C-8-1. Declaration of public policy; legislative findings.

- 1 (a) It is hereby declared to be the public policy of this
- 2 state and in the public interest to:
- 3 (1) Ensure the safe recovery of coal and gas;
- 4 (2) Foster, encourage and promote the fullest practi-
- 5 cal exploration, development, production, recovery and
- 6 utilization of this state's coal and gas, where both are
- 7 produced from beneath the same surface lands, by
- 8 establishing procedures, including procedures for the
- 9 establishment of drilling units, for the location of
- 10 shallow gas wells without substantially affecting the
- 11 right of the gas operator proposing to drill a shallow gas
- 12 well to explore for and produce gas; and
- 13 (3) Safeguard, protect and enforce the correlative
- 14 rights of gas operators and royalty owners in a pool of
- 15 gas to the end that each such gas operator and royalty
- 16 owner may obtain a just and equitable share of produc-
- 17 tion from such pool of gas.
- 18 (b) The Legislature hereby determines and finds that

19 gas found in West Virginia in shallow sands or strata
20 has been produced continuously for more than one
21 hundred years; that the placing of shallow wells has
22 heretofore been regulated by the state for the purpose
23 of ensuring the safe recovery of coal and gas, but that
24 regulation should also be directed toward encouraging
25 the fullest practical recovery of both coal and gas
26 because modern extraction technologies indicate the
27 desirability of such change in existing regulation and
28 because the energy needs of this state and the United
29 States require encouragement of the fullest practical
30 recovery of both coal and gas; that in order to encourage
31 and ensure the fullest practical recovery of coal and gas
32 in this state and to further ensure the safe recovery of
33 such natural resources, it is in the public interest to
34 enact new statutory provisions establishing a shallow
35 gas well review board which shall have the authority to
36 regulate and determine the appropriate placing of
37 shallow wells when gas well operators and owners of
38 coal seams fail to agree on the placing of such wells, and
39 establishing specific considerations, including minimum
40 distances to be allowed between certain shallow gas
41 wells, to be utilized by the shallow gas well review board
42 in regulating the placing of shallow wells; that in order
43 to encourage and ensure the fullest practical recovery
44 of coal and gas in this state and to protect and enforce
45 the correlative rights of gas operators and royalty
46 owners of gas resources, it is in the public interest to
47 enact new statutory provisions establishing a shallow
48 gas well review board which shall also have authority
49 to establish drilling units and order the pooling of
50 interests therein to provide all gas operators and royalty
51 owners with an opportunity to recover their just and
52 equitable share of production.

§22C-8-2. Definitions.

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

3 (1) "Board" means the shallow gas well review board
4 provided for in section four of this article;

5 (2) "Chair" means the chair of the shallow gas well

- 6 review board provided for in section four of this article;
- 7 (3) "Coal operator" means any person who proposes to
8 or does operate a coal mine;
- 9 (4) "Coal seam" and "workable coal bed" are inter-
10 changeable terms and mean any seam of coal twenty
11 inches or more in thickness, unless a seam of less
12 thickness is being commercially worked, or can in the
13 judgment of the division foreseeably be commercially
14 worked and will require protection if wells are drilled
15 through it;
- 16 (5) "Commission" means the oil and gas conservation
17 commission provided for in section four, article nine of
18 this chapter;
- 19 (6) "Commissioner" means the oil and gas conserva-
20 tion commissioner provided for in section four, article
21 nine of this chapter;
- 22 (7) "Correlative rights" means the reasonable oppor-
23 tunity of each person entitled thereto to recover and
24 receive without waste the gas in and under a tract or
25 tracts, or the equivalent thereof;
- 26 (8) "Deep well" means any well other than a shallow
27 well, drilled and completed in a formation at or below
28 the top of the uppermost member of the "Onondaga
29 Group";
- 30 (9) "Division" means the state division of environmen-
31 tal protection provided for in chapter twenty-two of this
32 code;
- 33 (10) "Director" means the director of the division of
34 environmental protection as established in article one,
35 chapter twenty-two of this code or such other person to
36 whom the director delegates authority or duties pursu-
37 ant to sections six or eight, article one, chapter twenty-
38 two of this code;
- 39 (11) "Drilling unit" means the acreage on which the
40 board decides one well may be drilled under section ten
41 of this article;
- 42 (12) "Gas" means all natural gas and all other P

43 hydrocarbons not defined as oil in subdivision (15) of this
44 section;

45 (13) "Gas operator" means any person who owns or has
46 the right to develop, operate and produce gas from a
47 pool and to appropriate the gas produced therefrom
48 either for such person or for such person and others. In
49 the event that there is no gas lease in existence with
50 respect to the tract in question, the person who owns or
51 has the gas rights therein shall be considered a "gas
52 operator" to the extent of seven eighths of the gas in that
53 portion of the pool underlying the tract owned by such
54 person, and a "royalty owner" to the extent of one eighth
55 of such gas;

56 (14) "Just and equitable share of production" means,
57 as to each person, an amount of gas in the same
58 proportion to the total gas production from a well as that
59 person's acreage bears to the total acreage in the
60 drilling unit;

61 (15) "Oil" means natural crude oil or petroleum and
62 other hydrocarbons, regardless of gravity, which are
63 produced at the well in liquid form by ordinary
64 production methods and which are not the result of
65 condensation of gas after it leaves the underground
66 reservoir;

67 (16) "Owner" when used with reference to any coal
68 seam, shall include any person or persons who own, lease
69 or operate such coal seam;

70 (17) "Person" means any natural person, corporation,
71 firm, partnership, partnership association, venture,
72 receiver, trustee, executor, administrator, guardian,
73 fiduciary or other representative of any kind, and
74 includes any government or any political subdivision or
75 any agency thereof;

76 (18) "Plat" means a map, drawing or print showing
77 the location of one or more wells or a drilling unit;

78 (19) "Pool" means an underground accumulation of
79 gas in a single and separate natural reservoir (ordinar-
80 ily a porous sandstone or limestone). It is characterized
81 by a single natural-pressure system so that production

82 of gas from one part of the pool tends to or does affect
83 the reservoir pressure throughout its extent. A pool is
84 bounded by geologic barriers in all directions, such as
85 geologic structural conditions, impermeable strata, and
86 water in the formation, so that it is effectively separated
87 from any other pools which may be present in the same
88 district or in the same geologic structure;

89 (20) "Royalty owner" means any owner of gas in place,
90 or gas rights, to the extent that such owner is not a gas
91 operator as defined in subdivision (13) of this section;

92 (21) "Shallow well" means any gas well drilled and
93 completed in a formation above the top of the uppermost
94 member of the "Onondaga Group": *Provided*, That in
95 drilling a shallow well the well operator may penetrate
96 into the "Onondaga Group" to a reasonable depth, not
97 in excess of twenty feet, in order to allow for logging
98 and completion operations, but in no event may the
99 "Onondaga Group" formation be otherwise produced,
100 perforated or stimulated in any manner;

101 (22) "Tracts comprising a drilling unit" means that all
102 separately owned tracts or portions thereof which are
103 included within the boundary of a drilling unit;

104 (23) "Well" means any shaft or hole sunk, drilled,
105 bored or dug into the earth or into underground strata
106 for the extraction, injection or placement of any liquid
107 or gas, or any shaft or hole sunk or used in conjunction
108 with such extraction, injection or placement. The term
109 "well" does not include any shaft or hole sunk, drilled,
110 bored or dug into the earth for the sole purpose of core
111 drilling or pumping or extracting therefrom potable,
112 fresh or usable water for household, domestic, indus-
113 trial, agricultural or public use; and

114 (24) "Well operator" means any person who proposes
115 to or does locate, drill, operate or abandon any well.

§22C-8-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all wells
3 located in this state, under which a coal seam gas
4 in section two of this article and section one of

5 chapter twenty-two of this code, is located, however
6 owned, including any lands owned or administered by
7 any government or any agency or subdivision thereof,
8 over which the state has jurisdiction under its police
9 power. The provisions of this article are in addition to
10 and not in derogation of or substitution for the provi-
11 sions of this chapter or chapter twenty-two of this code.

12 (b) This article shall not apply to or affect:

13 (1) Deep wells;

14 (2) Oil wells and enhanced oil recovery wells asso-
15 ciated with oil wells;

16 (3) Any shallow well as to which no objection is made
17 under section seventeen, article six, chapter twenty-two
18 of this code;

19 (4) Wells as defined in subdivision (4), section one,
20 article nine, chapter twenty-two of this code; or

21 (5) Free gas rights.

**§22C-8-4. Shallow gas well review board; membership;
method of appointment; vacancies; compen-
sation and expenses; staff.**

1 (a) There is hereby continued the " Shallow Gas Well
2 Review Board" which shall be composed of three
3 members, two of whom shall be the commissioner and
4 the chief of the office of oil and gas. The remaining
5 member of the board shall be a registered professional
6 who has been successfully tested in mining engineering,
7 with at least ten years practical experience in the coal
8 mining industry and shall be appointed by the governor,
9 by and with the advice and consent of the Senate:
10 *Provided*, That any person so appointed while the Senate
11 of this state is not in session shall be permitted to serve
12 in an acting capacity for one year from appointment or
13 until the next session of the Legislature, whichever is
14 less. As soon as practical after appointment and
15 qualification of the member appointed by the governor,
16 the governor shall convene a meeting of the board for
17 the purpose of organizing and electing a chair, who
18 serves as such until a successor is elected by the board.

19 (b) A vacancy in the membership appointed by the
20 governor shall be filled by appointment by the governor
21 within sixty days after the occurrence of such vacancy.
22 Before performing any duty hereunder, each member of
23 the board shall take and subscribe to the oath required
24 by section 5, article IV of the Constitution of West
25 Virginia, and serves thereafter until a successor has
26 been appointed and qualified.

27 (c) The member of the board appointed by the
28 governor shall be paid the same compensation, and each
29 member of the board shall be paid the expense reim-
30 bursement, as is paid to members of the Legislature for
31 their interim duties as recommended by the citizens
32 legislative compensation commission and authorized by
33 law for each day or portion thereof engaged in the
34 discharge of official duties. Each member of the board
35 shall also be reimbursed for all reasonable and neces-
36 sary expenses actually incurred in the performance of
37 the duties as a member of the board.

38 (d) The division shall furnish office and clerical staff
39 and supplies and services, including reporters for
40 hearings, as required by the board.

§22C-8-5. Same — Meetings; notice; general powers and duties.

1 (a) The board shall meet and hold conferences and
2 hearings at such times and places as shall be designated
3 by the chair. The chair may call a meeting of the board
4 at any time. The chair shall call a meeting of the board
5 (1) upon receipt of a notice from the director that an
6 objection to the proposed drilling or deepening of a
7 shallow well has been filed by a coal seam owner
8 pursuant to section seventeen, article six of chapter
9 twenty-two of this code or that an objection has been
10 made by the director, (2) upon receipt of an application
11 to establish a drilling unit filed with the board pursuant
12 to section nine of this article, or (3) within twenty days
13 upon the written request by another member of the
14 board. Meetings called pursuant to subdivisions (1) and
15 (2) of this subsection shall be scheduled not less than ten
16 days nor more than twenty days from receipt by the

17 chair of the notice of objection or the application to
18 establish a drilling unit. Notice of all meetings shall be
19 given to each member of the board by the chair at least
20 ten days in advance thereof, unless otherwise agreed by
21 the members.

22 (b) At least ten days prior to every meeting of the
23 board called pursuant to the provisions of subdivisions
24 (1) and (2), subsection (a) of this section, the chair shall
25 also notify (1) in the case of a notice of objection, the well
26 operator and all objecting coal seam owners, and (2) in
27 the case of an application to establish a drilling unit, the
28 applicant, all persons to whom copies of the application
29 were required to be mailed pursuant to the provisions
30 of subsection (d), section nine of this article and all
31 persons who filed written protests or objections with the
32 board in accordance with the provisions of subsection
33 (c), section nine of this article.

34 (c) A majority of the members of the board shall
35 constitute a quorum for the transaction of any business.
36 A majority of the members of the board shall be
37 required to determine any issue brought before it.

38 (d) The board is hereby empowered and it shall be its
39 duty to execute and carry out, administer and enforce
40 the provisions of this article in the manner provided
41 herein. Subject to the provisions of section three of this
42 article, the board shall have jurisdiction and authority
43 over all persons and property necessary therefor:
44 *Provided*, That the provisions of this article shall not be
45 construed to grant to the board authority or power to
46 (1) limit production or output from or prorate produc-
47 tion of any gas well, or (2) fix prices of gas.

48 (e) The board shall have specific authority to:

49 (1) Take evidence and issue orders concerning
50 applications for drilling permits and drilling units in
51 accordance with the provisions of this article;

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

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

58 (4) Issue subpoenas for the attendance of and sworn
59 testimony by witnesses and subpoenas duces tecum for
60 the production of any books, records, maps, charts,
61 diagrams and other pertinent documents, and adminis-
62 ter oaths and affirmations to such witnesses, whenever,
63 in the judgment of the board, it is necessary to do so
64 for the effective discharge of its duties under the
65 provisions of this article.

§22C-8-6. Rules; notice requirements.

1 (a) The board may promulgate, pursuant to the
2 provisions of chapter twenty-nine-a of this code, such
3 reasonable rules as are deemed necessary or desirable
4 to implement and make effective the provisions of this
5 article.

6 (b) Notwithstanding the provisions of section two,
7 article seven, chapter twenty-nine-a of this code, any
8 notice required under the provisions of this article shall
9 be given at the direction of the chair by (1) personal or
10 substituted service and if such cannot be had then by
11 (2) certified United States mail, addressed, postage and
12 certification fee prepaid, to the last known mailing
13 address, if any, of the person being served, with the
14 direction that the same be delivered to addressee only,
15 return receipt requested, and if there be no known
16 mailing address or if the notice is not so delivered then
17 by (3) publication of such notice as a Class II legal
18 advertisement in compliance with the provisions of
19 article three, chapter fifty-nine of this code, and the
20 publication area for such publication shall be the county
21 or counties wherein any land which may be affected by
22 the order of the board is situate. The chair shall also
23 mail a copy of such notice to all other persons who have
24 specified to the chair an address to which all such
25 notices may be mailed. All notices shall issue in the
26 name of the state, shall be signed by the chair, shall
27 specify the style and number of the proceeding, the date,
28 time and place of any meeting, conference or hearing,
29 and shall briefly state the purpose of the proceeding.

30 Proof of service or publication of such notice shall be
31 made to the board promptly and in any event within the
32 time during which the person served must respond to
33 the notice. If service is made by a person other than the
34 sheriff or the chair, such person shall make proof
35 thereof by affidavit. Failure to make proof of service or
36 publication within the time required shall not affect the
37 validity of the service of the notice.

**§22C-8-7. Objections to proposed drilling; conferences;
agreed locations and changes on plats;
hearings; orders.**

1 (a) At the time and place fixed by the chair for the
2 meeting of the board and for consideration of the
3 objections to proposed drilling filed by coal seam owners
4 pursuant to section seventeen, article six, chapter
5 twenty-two of this code, the well operator and the
6 objecting coal seam owners present or represented shall
7 hold a conference with the board to consider the
8 objections. Such persons present or represented at the
9 conference may agree upon either the drilling location
10 as proposed by the well operator or an alternate location.
11 Any change in the drilling location from the drilling
12 location proposed by the well operator shall be indicated
13 on the plat enclosed with the notice of objection filed
14 with the chair by the director in accordance with the
15 provisions of section seventeen, article six, chapter
16 twenty-two of this code, and the distance and direction
17 to the new drilling location from the proposed drilling
18 location shall also be shown on such plat. If agreement
19 is reached at the conference by the well operator and
20 such objecting coal seam owners present or represented
21 at the conference, the board shall issue a written order
22 stating that an agreement has been reached, stating the
23 nature of such agreement, and directing the director to
24 grant the well operator a drilling permit for the location
25 agreed upon. The original of such order shall be filed
26 with the division within five days after the conference
27 of the board at which the drilling location was agreed
28 upon and copies thereof shall be mailed by registered
29 or certified mail to the well operator and the objecting
30 coal seam owners present or represented at such
31 conference.

32 (b) If the well operator and the objecting coal seam
33 owners present or represented at the conference with
34 the board are unable to agree upon a drilling location,
35 then, unless they otherwise agree, the board shall,
36 without recess for more than one business day, hold a
37 hearing to consider the application for a drilling permit.
38 All of the pertinent provisions of article five, chapter
39 twenty-nine-a of this code shall apply to and govern such
40 hearing. Within twenty days after the close of a hearing,
41 the board shall issue and file with the director a written
42 order directing him or her, subject to other matters
43 requiring approval of the director, to:

44 (1) Refuse a drilling permit;

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

47 (3) Issue a drilling permit for an alternate drilling
48 location different from that requested by the well
49 operator; or

50 (4) Issue a drilling permit either for the proposed
51 drilling location or for an alternate drilling location
52 different from that requested by the well operator, but
53 not allow the drilling of the well for a period of not more
54 than one year from the date of issuance of such permit.

55 (c) The written order of the board shall contain
56 findings of fact and conclusions based thereon concern-
57 ing the following safety aspects, and no drilling permit
58 shall be issued for any drilling location where the board
59 finds from the evidence that such drilling location will
60 be unsafe:

61 (1) Whether the drilling location is above or in close
62 proximity to any mine opening or shaft, entry, travel-
63 way, airway, haulageway, drainageway or passageway,
64 or to any proposed extension thereof, in any operated or
65 abandoned or operating coal mine, or any coal mine
66 already surveyed and platted but not yet being operated;

67 (2) Whether the proposed drilling can reasonably be
68 done through an existing or planned pillar of coal, or
69 in close proximity to an existing well or such pillar of
70 coal, taking into consideration the surface topography;

71 (3) Whether the proposed well can be drilled safely,
72 taking into consideration the dangers from creeps,
73 squeezes or other disturbances due to the extraction of
74 coal; and

75 (4) The extent to which the proposed drilling location
76 unreasonably interferes with the safe recovery of coal
77 and gas.

78 The written order of the board shall also contain
79 findings of fact and conclusions based thereon concern-
80 ing the following:

81 (5) The extent to which the proposed drilling location
82 will unreasonably interfere with present or future coal
83 mining operations on the surface including, but not
84 limited to, operations subject to the provisions of article
85 three, chapter twenty-two of this code;

86 (6) The feasibility of moving the proposed drilling
87 location to a mined-out area, below the coal outcrop, or
88 to some other location;

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

92 (8) The methods proposed for the recovery of coal and
93 gas;

94 (9) The distance limitations established in section
95 eight of this article;

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

98 (11) The surface topography and use; and

99 (12) Whether the order of the board will substantially
100 affect the right of the gas operator to explore for and
101 produce gas.

102 (d) Any member of the board may file a separate
103 opinion. Copies of all orders and opinions shall be mailed
104 by the board, by registered or certified mail, to the
105 parties present or represented at the hearing.

§22C-8-8. Distance limitations.

1 (a) If the well operator and the objecting coal seam
2 owners present or represented at the time and place
3 fixed by the chair for consideration of the objections to
4 the proposed drilling location are unable to agree upon
5 a drilling location, then the written order of the board
6 shall direct the director to refuse to issue a drilling
7 permit unless the following distance limitations are
8 observed:

9 (1) For all shallow wells with a depth less than three
10 thousand feet, there shall be a minimum distance of one
11 thousand feet from the drilling location to the nearest
12 existing well as defined in subsection (b) of this section;
13 and

14 (2) For all shallow wells with a depth of three
15 thousand feet or more, there shall be a minimum
16 distance of one thousand five hundred feet from the
17 drilling location to the nearest existing well as defined
18 in subsection (b) of this section, except that where the
19 distance from the drilling location to such nearest
20 existing well is less than two thousand feet but more
21 than one thousand five hundred feet and a coal seam
22 owner has objected, the gas operator shall have the
23 burden of establishing the need for the drilling location
24 less than two thousand feet from such nearest existing
25 well. Where the distance from the drilling location
26 proposed by the operator or designated by the board to
27 the nearest existing well as defined in subsection (b) of
28 this section is greater than two thousand feet, distance
29 criterion will not be a ground for objection by a coal
30 seam owner.

31 (b) The words "existing well" as used in this section
32 means (i) any well not plugged within nine months after
33 being drilled to its total depth and either completed in
34 the same target formation or drilled for the purpose of
35 producing from the same target formation, and (ii) any
36 unexpired, permitted drilling location for a well to the
37 same target formation.

38 (c) The minimum distance limitations established by
39 this section shall not apply if the proposed well be
40 drilled through an existing or planned pillar of coal

41 required for protection of a preexisting oil or gas well
42 and the proposed well will neither require enlargement
43 of such pillar nor otherwise have an adverse effect on
44 existing or planned coal mining operations.

45 (d) Nothing in this article shall be construed to
46 empower the board to order the director to issue a
47 drilling permit to any person other than the well
48 operator filing the application which is the subject of the
49 proceedings.

**§22C-8-9. Application to establish a drilling unit; con-
tents; notice.**

1 (a) Whenever the board has issued an order directing
2 the director to refuse a drilling permit, the gas operator
3 may apply to the board for the establishment of a
4 drilling unit encompassing a contiguous tract or tracts
5 if such gas operator believes that such a drilling unit
6 will afford one well location for the production of gas
7 from under the tract on which the drilling permit was
8 sought, and will be agreeable to the coal seam owners.

9 (b) An application to establish a drilling unit shall be
10 filed with the board and shall contain:

11 (1) The name and address of the applicant;

12 (2) A plat prepared by a licensed land surveyor or
13 registered professional engineer showing the boundary
14 of the proposed drilling unit, the district and county in
15 which such unit is located, the acreage of the proposed
16 drilling unit, the boundary of the tracts which comprise
17 the proposed drilling unit, the names of the owners of
18 record of each such tract, the proposed well location on
19 the proposed drilling unit, and the proposed well
20 location for which the division refused to issue a drilling
21 permit;

22 (3) The names and addresses of the royalty owners of
23 the gas underlying the tracts which comprise the
24 proposed drilling unit;

25 (4) The names and addresses of the gas operators of
26 the tracts which comprise the proposed drilling unit;

27 (5) The approximate depth and target formation to

28 which the well for the proposed drilling unit is to be
29 drilled;

30 (6) A statement indicating whether a voluntary
31 pooling agreement has been reached among any or all
32 of the royalty owners of the gas underlying the tracts
33 which comprise the proposed drilling unit and the gas
34 operators of such tracts;

35 (7) An affidavit of publication of the notice of intent
36 to file an application to establish a drilling unit as
37 required in subsection (c) of this section; and

38 (8) Such other pertinent and relevant information as
39 the board may prescribe by reasonable rules promul-
40 gated in accordance with the provisions of section six of
41 this article.

42 (c) Prior to the filing of an application to establish a
43 drilling unit, the applicant shall cause to be published,
44 as a Class II legal advertisement in accordance with the
45 provisions of article three, chapter fifty-nine of this code,
46 a notice of intent to file an application to establish a
47 drilling unit. Such notice shall contain the information
48 required by subdivisions (1), (4) and (5), subsection (b)
49 of this section, the name of the royalty owner of the gas
50 underlying the proposed well location on the proposed
51 drilling unit, plus an abbreviated description, or, at the
52 applicant's option, a plat of the drilling unit, disclosing
53 the county and district wherein the proposed drilling
54 unit is to be located, the post office closest to the
55 proposed drilling unit, a statement that the applicant
56 will deliver a copy of the plat required by subdivision
57 (2) of subsection (b) to any person desiring the same, the
58 date upon which the applicant intends to file the
59 application to establish a drilling unit, and a statement
60 that written protests and objections to such application
61 may be filed with the board until a specified date, which
62 date shall be at least ten days after the date upon which
63 the applicant intends to file the application to establish
64 a drilling unit. The publication area of the notice
65 required by this subsection shall be the county or
66 counties in which the proposed drilling unit is to be
67 located.

68 (d) At the time an application to establish a drilling
69 unit is filed, the applicant shall forward a copy thereof
70 by registered or certified mail to each and every person
71 whose name and address were included on the applica-
72 tion in accordance with the provisions of subdivisions (3)
73 and (4), subsection (b) of this section. With each such
74 application there shall be enclosed a notice (the form for
75 which shall be furnished by the board on request)
76 addressed to each such person to whom a copy of the
77 application is required to be sent, informing the person
78 that the application is being mailed by registered or
79 certified mail, pursuant to the requirements of this
80 article: *Provided*, That the application and notice need
81 not be forwarded to those royalty owners or gas
82 operators within the boundary of the proposed drilling
83 unit who have previously agreed to voluntary pooling by
84 separately stated document or documents empowering
85 the gas operator, by assignment or otherwise, unilater-
86 ally to declare a unit.

**§22C-8-10. Establishment of drilling units; hearings;
orders.**

1 (a) At the time and place fixed by the chair for the
2 meeting of the board and for consideration of an
3 application to establish a drilling unit, the applicant
4 shall present proof that the drilling location on the
5 proposed drilling unit has been agreed to by all of the
6 owners of the coal seams underlying such drilling
7 location; and thereafter the applicant, the royalty
8 owners of the gas underlying the tracts comprising the
9 unit, and the gas operators of the tracts comprising the
10 unit or such of them as are present or represented, shall
11 hold a conference with the board to consider the
12 application. Such persons present or represented at the
13 conference may agree upon the boundary of the drilling
14 unit as proposed by the applicant or as changed to
15 satisfy all valid objections of those persons present or
16 represented. Any change in the boundary of the drilling
17 unit from the boundary proposed by the applicant shall
18 be shown on the plat filed with the board as part of the
19 application. If agreement is reached at the conference
20 upon the boundary of the drilling unit among the

21 applicants, the royalty owners of the gas underlying the
22 tracts comprising the drilling unit and the gas operators
23 of the tracts comprising such unit, or such of them as
24 are present or represented, and if such agreement is
25 approved by the board, the board shall issue a written
26 order establishing and specifying the boundary of the
27 drilling unit.

28 (b) If the applicant, the royalty owners of the gas
29 underlying the tracts comprising the drilling unit and
30 the gas operators of the tracts comprising such unit, or
31 such of them as are present or represented at the time
32 and place fixed by the chair for consideration of the
33 application, are unable to agree upon the boundary of
34 the drilling unit, then the board shall hold a hearing
35 without recess of more than one business day to consider
36 the application to establish a drilling unit. All of the
37 pertinent provisions of article five, chapter twenty-nine-
38 a of this code shall apply to and govern such hearing.
39 Within twenty days after the close of the hearing, the
40 board shall issue a written order either establishing a
41 drilling unit or dismissing the application. If the board
42 determines to establish a drilling unit, the order shall
43 specify the boundary of such drilling unit. In determin-
44 ing whether to grant or deny an application to establish
45 a drilling unit, the board shall consider:

46 (1) The surface topography and property lines of the
47 lands comprising the drilling unit;

48 (2) The correlative rights of all gas operators and
49 royalty owners therein;

50 (3) The just and equitable share of production of each
51 gas operator and royalty owner therein;

52 (4) Whether a gas operator or royalty owner objecting
53 to the drilling unit has proved by clear and convincing
54 evidence that the drilling unit is substantially smaller
55 than the area that will be produced by the proposed
56 well; and

57 (5) Other evidence relevant to the establishment of the
58 boundary of a drilling unit.

59 (c) The board shall not grant an applicat

60 establish a drilling unit, nor shall it approve any drilling
61 unit, unless the board finds that:

62 (1) The applicant has proved that the drilling location
63 on the drilling unit has been agreed to by all of the
64 owners of the coal seams underlying such drilling
65 location;

66 (2) The director has previously refused to issue a
67 drilling permit on one of the tracts comprising the
68 drilling unit because of an order of the board;

69 (3) The drilling unit includes all acreage within the
70 minimum distance limitations provided by section eight
71 of this article, unless the gas operators and royalty
72 owners of any excluded acreage have agreed to such
73 exclusion; and

74 (4) The drilling unit includes a portion of the acreage
75 from under which the well operator intended to produce
76 gas under the drilling permit which was refused.

77 (d) All orders issued by the board under this section
78 shall contain findings of fact and conclusions based
79 thereon as required by section three, article five,
80 chapter twenty-nine-a of this code and shall be filed with
81 the director within twenty days after the hearing. Any
82 member of the board may file a separate opinion. Copies
83 of all orders and opinions shall be mailed by the board,
84 by registered or certified mail, to the parties present or
85 represented at the hearing.

**§22C-8-11. Pooling of interests in a drilling unit;
limitations.**

1 (a) Whenever the board establishes a drilling unit
2 pursuant to the provisions of sections nine and ten of this
3 article, the order establishing such drilling unit shall
4 include an order pooling the separately owned interests
5 in the gas to be produced from such drilling unit.

6 (b) If a voluntary pooling agreement has been reached
7 between all persons owning separate operating interests
8 in the tracts comprising the drilling unit, the order of
9 the board shall approve such agreement.

10 (c) If no voluntary pooling agreement is reached prior

11 to or during the hearing held pursuant to subsection (b),
12 section ten of this article, then at such hearing the board
13 shall also determine the pooling of interests in the
14 drilling unit.

15 (d) Any order of the board pooling the separately
16 owned interests in the gas to be produced from the
17 drilling unit shall be upon terms and conditions which
18 are just and equitable and shall authorize the production
19 of gas from the drilling unit; shall designate the
20 applicant as the operator to drill and operate such gas
21 well; shall prescribe the procedure by which all owners
22 of operating interests in the pooled tracts or portions of
23 tracts may elect to participate therein; shall provide that
24 all reasonable costs and expenses of drilling, completing,
25 equipping, operating, plugging, abandoning and re-
26 claiming such well shall be borne, and all production
27 therefrom shared, by all owners of operating interests
28 in proportion to the net gas acreage in the pooled tracts
29 owned or under lease to each owner; and shall make
30 provisions for payment of all reasonable costs thereof,
31 including all reasonable charges for supervision and for
32 interest on past-due accounts, by all those who elect to
33 participate therein.

34 (e) Upon request, any such pooling order shall provide
35 an owner of an operating interest, an election to be made
36 within ten days from the date of the pooling order, (i)
37 to participate in the risks and costs of the drilling of the
38 well, or (ii) to participate in the drilling of the well on
39 a limited or carried basis on terms and conditions
40 which, if not agreed upon, shall be determined by the
41 board to be just and equitable. If the election is not made
42 within the ten-day period, such owner shall be conclu-
43 sively presumed to have elected the limited or carried
44 basis. Thereafter, if an owner of any operating interest
45 in any portion of the pooled tract shall drill and operate,
46 or pay the costs of drilling and operating, a well for the
47 benefit of such nonparticipating owner as provided in
48 the order of the board, then such operating owner shall
49 be entitled to the share of production from the tracts or
50 portions thereof pooled accruing to the interest of such
51 nonparticipating owner, exclusive of any royalties,

52 overriding royalty reserved with respect to such tracts
53 or portions thereof, or exclusive of one eighth of the
54 production attributable to all unleased tracts or portions
55 thereof, until the market value of such nonparticipating
56 owner's share of the production, exclusive of such
57 royalty, overriding royalty or one eighth of production,
58 equals double the share of such costs payable by or
59 charged to the interest of such nonparticipating owner.

60 (f) In no event shall drilling be initiated or completed
61 on any tract, where the gas underlying such tract has
62 not been severed from the surface thereof by deed, lease
63 or other title document, without the written consent of
64 the person who owns such tract.

65 (g) All disputes which may arise as to the costs of
66 drilling and operating a well under a pooling order
67 issued pursuant to this section shall be resolved by the
68 board within ninety days from the date of written
69 notification to the board of the existence of such dispute.

**§22C-8-12. Effect of order establishing drilling unit or
pooling of interests; recordation.**

1 (a) An order issued by the board establishing a
2 drilling unit and ordering the pooling of interests
3 therein shall not entitle the gas operator designated in
4 such order to drill a well on such drilling unit until such
5 gas operator shall have received a drilling permit in
6 accordance with the provisions applicable to alternative
7 drilling locations set out in section seventeen, article six,
8 chapter twenty-two of this code. All orders issued by the
9 board establishing a drilling unit shall be filed with the
10 director and shall also direct the director to issue a
11 drilling permit for the drilling location agreed to by all
12 of the owners of the coal seams underlying such drilling
13 location.

14 (b) A certified copy of any order of the board
15 establishing a drilling unit or a pooling of interests shall
16 be mailed by the board to the clerk of the county
17 commission of each county wherein all or any portion
18 of the drilling unit is located, for recordation in the
19 record book of such county in which oil and gas leases
20 are normally recorded. Such recordation from the time

21 noted thereon by such clerk shall be notice of the order
22 to all persons.

§22C-8-13. Judicial review; appeal to supreme court of appeals; legal representation for board.

1 (a) Any person adversely affected by an order of the
2 board shall be entitled to judicial review thereof. All of
3 the pertinent provisions of section four, article five,
4 chapter twenty-nine-a of this code shall apply to and
5 govern such judicial review with like effect as if the
6 provisions of said section four were set forth in extenso
7 in this section.

8 (b) The judgment of the circuit court shall be final
9 unless reversed, vacated or modified on appeal to the
10 supreme court of appeals in accordance with the
11 provisions of section one, article six, chapter twenty-
12 nine-a of this code.

13 (c) Legal counsel and services for the board in all
14 appeal proceedings in any circuit court and the supreme
15 court of appeals shall be provided by the attorney
16 general or his or her assistants and in any circuit court
17 by the prosecuting attorney of the county as well, all
18 without additional compensation. The board, with the
19 written approval of the attorney general, may employ
20 special counsel to represent the board at any such appeal
21 proceedings.

§22C-8-14. Operation on drilling units.

1 All operations including, but not limited to, the
2 commencement, drilling or operation of a well upon a
3 drilling unit for which a pooling order has been entered,
4 shall be deemed for all purposes the conduct of such
5 operations upon each separately owned tract in the
6 drilling unit by the several owners thereof. That portion
7 of the production allocated to a separately owned tract
8 included in a drilling unit shall, when produced, be
9 deemed for all purposes to have been actually produced
10 from such tract by a well drilled thereon.

§22C-8-15. Validity of unit agreements.

1 No agreement between or among gas operators,

2 lessees or other owners of gas rights in gas properties,
3 entered into pursuant to the provisions of this article or
4 with a view to or for the purpose of bringing about the
5 unitized development or operation of such properties,
6 shall be held to violate the statutory or common law of
7 this state prohibiting monopolies or acts, arrangements,
8 contracts, combinations or conspiracies in restraint of
9 trade or commerce.

§22C-8-16. Injunctive relief.

1 (a) Whenever it appears to the board that any person
2 has been or is violating or is about to violate any
3 provision of this article, any rule promulgated by the
4 board hereunder or any order or final decision of the
5 board, the board may apply in the name of the state to
6 the circuit court of the county in which the violations
7 or any part thereof has occurred, is occurring or is about
8 to occur, or to the judge thereof in vacation, for an
9 injunction against such person and any other persons
10 who have been, are or are about to be, involved in any
11 practices, acts or omissions, so in violation, enjoining
12 such person or persons from any such violation or
13 violations. Such application may be made and prose-
14 cuted to conclusion whether or not any such violation or
15 violations have resulted or shall result in prosecution or
16 conviction under the provisions of section seventeen of
17 this article.

18 (b) Upon application by the board, the circuit courts
19 of this state may by mandatory or prohibitory injunction
20 compel compliance with the provisions of this article,
21 the rules promulgated by the board hereunder and all
22 orders of the board. The court may issue a temporary
23 injunction in any case pending a decision on the merits
24 of any application filed. Any other section of this code
25 to the contrary notwithstanding, the state shall not be
26 required to furnish bond or other undertaking as a
27 prerequisite to obtaining mandatory, prohibitory or
28 temporary injunctive relief under the provisions of this
29 article.

30 (c) The judgment of the circuit court upon any
31 application permitted by the provisions of this section

32 shall be final unless reversed, vacated or modified on
33 appeal to the supreme court of appeals. Any such appeal
34 shall be sought in the manner and within the time
35 provided by law for appeals from circuit courts in other
36 civil actions.

37 (d) The board shall be represented in all such
38 proceedings by the attorney general or the attorney
39 general's assistants and in such proceedings in the
40 circuit courts by the prosecuting attorneys of the several
41 counties as well, all without additional compensation.
42 The board, with the written approval of the attorney
43 general, may employ special counsel to represent the
44 board in any such proceedings.

45 (e) If the board shall refuse or fail to apply for an
46 injunction to enjoin a violation or threatened violation
47 of any provision of this article, any rule promulgated by
48 the board hereunder or any order or final decision of the
49 board, within ten days after receipt of a written request
50 to do so by any person who is or will be adversely
51 affected by such violation or threatened violation, the
52 person making such request may apply in such person's
53 own behalf for an injunction to enjoin such violation or
54 threatened violation in any court in which the board
55 might have brought suit. The board shall be made a
56 party defendant in such application in addition to the
57 person or persons violating or threatening to violate any
58 provision of this article, any rule promulgated by the
59 board hereunder or any order of the board. The
60 application shall proceed and injunctive relief may be
61 granted without bond or other undertaking in the same
62 manner as if the application had been made by the
63 chair.

§22C-8-17. Penalties.

1 (a) Any person who violates any provision of this
2 article, any of the rules promulgated by the board
3 hereunder or any order of the board other than a
4 violation governed by the provisions of subsection (b) of
5 this section, shall be guilty of a misdemeanor, and, upon
6 conviction thereof, shall be fined not more than one
7 thousand dollars.

8 (b) Any person who, with the intention of evading any
9 provision of this article, any of the rules promulgated
10 by the board hereunder or any order of the board shall
11 make or cause to be made any false entry or statement
12 in any application or other document permitted or
13 required to be filed under the provisions of this article,
14 any of the rules promulgated by the board hereunder
15 or any order of the board, shall be guilty of a misde-
16 meanor, and, upon conviction thereof, shall be fined not
17 more than five thousand dollars, or imprisoned in the
18 county jail not more than six months, or both fined and
19 imprisoned.

20 (c) Any person who knowingly aids or abets any other
21 person in the violation of any provision of this article,
22 any of the rules promulgated by the board hereunder
23 or any order or final decision of the board, shall be
24 subject to the same penalty as that prescribed in this
25 article for the violation by such other person.

§22C-8-18. Construction.

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

§22C-8-19. Rules, orders and permits remain in effect.

1 The rules promulgated and all orders and permits in
2 effect upon the effective date of this article pursuant to
3 the provisions of article seven, of former chapter twenty-
4 two of this code shall remain in full force and effect as
5 if such rules, orders and permits were adopted by the
6 board continued in this article but all such rules, orders
7 and permits shall be subject to review by the board to
8 ensure they are consistent with the purposes and policies
9 set forth in this chapter and chapter twenty-two of this
10 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; com-
mission membership; qualifications of members; terms of
members; vacancies on commission; meetings; compensation
and expenses; appointment and qualifications of commis-
sioner; general powers and duties.

- §22C-9-5. Rules; notice requirements.
- §22C-9-6. Waste of oil or gas prohibited.
- §22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.
- §22C-9-8. Secondary recovery of oil; unit operations.
- §22C-9-9. Validity of unit agreements.
- §22C-9-10. Hearing procedures.
- §22C-9-11. Judicial review; appeal to supreme court of appeals; legal representation for commissioner.
- §22C-9-12. Injunctive relief.
- §22C-9-13. Special oil and gas conservation tax.
- §22C-9-14. Penalties.
- §22C-9-15. Construction.
- §22C-9-16. Rules, orders and permits remain in effect.

§22C-9-1. Declaration of public policy; legislative findings.

- 1 (a) It is hereby declared to be the public policy of this
2 state and in the public interest to:
- 3 (1) Foster, encourage and promote exploration for and
4 development, production, utilization and conservation of
5 oil and gas resources;
- 6 (2) Prohibit waste of oil and gas resources and
7 unnecessary surface loss of oil and gas and their
8 constituents;
- 9 (3) Encourage the maximum recovery of oil and gas;
10 and
- 11 (4) Safeguard, protect and enforce the correlative
12 rights of operators and royalty owners in a pool of oil
13 or gas to the end that each such operator and royalty
14 owner may obtain his just and equitable share of
15 production from such pool of oil or gas.
- 16 (b) The Legislature hereby determines and finds that
17 oil and natural gas found in West Virginia in shallow
18 sands or strata have been produced continuously for
19 more than one hundred years; that oil and gas deposits
20 in such shallow sands or strata have geological and other
21 characteristics different than those found in deeper
22 formations; and that in order to encourage the maxi-
23 mum recovery of oil and gas from all productive
24 formations in this state, it is not in the public interest,
25 with the exception of shallow wells utilized in a

26 secondary recovery program, to enact statutory provi-
27 sions relating to the exploration for or production from
28 oil and gas from shallow wells, as defined in section two
29 of this article, but that it is in the public interest to enact
30 statutory provisions establishing regulatory procedures
31 and principles to be applied to the exploration for or
32 production of oil and gas from deep wells, as defined in
33 said section two.

§22C-9-2. Definitions.

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

3 (1) "Commission" means the oil and gas conservation
4 commission and "commissioner" means the oil and gas
5 conservation commissioner as provided for in section
6 four of this article;

7 (2) "Director" means the director of the division of
8 environmental protection or such other person to whom
9 the director has delegated authority or duties pursuant
10 to sections six or eight, article one, chapter twenty-two
11 of this code;

12 (3) "Person" means any natural person, corporation,
13 partnership, receiver, trustee, executor, administrator,
14 guardian, fiduciary or other representative of any kind,
15 and includes any government or any political subdivi-
16 sion or any agency thereof;

17 (4) "Operator" means any owner of the right to
18 develop, operate and produce oil and gas from a pool and
19 to appropriate the oil and gas produced therefrom,
20 either for such person or for such person and others; in
21 the event that there is no oil and gas lease in existence
22 with respect to the tract in question, the owner of the
23 oil and gas rights therein shall be considered as
24 "operator" to the extent of seven eighths of the oil and
25 gas in that portion of the pool underlying the tract
26 owned by such owner, and as "royalty owner" as to one-
27 eighth interest in such oil and gas; and in the event the
28 oil is owned separately from the gas, the owner of the
29 substance being produced or sought to be produced from
30 the pool shall be considered as "operator" as to such pool;

31 (5) "Royalty owner" means any owner of oil and gas
32 in place, or oil and gas rights, to the extent that such

33 owner is not an operator as defined in subdivision (4)
34 of this section;

35 (6) "Independent producer" means a person who is
36 actively engaged in the production of oil and gas in West
37 Virginia, but whose gross revenue from such production
38 in West Virginia does not exceed five hundred thousand
39 dollars per year;

40 (7) "Oil" means natural crude oil or petroleum and
41 other hydrocarbons, regardless of gravity, which are
42 produced at the well in liquid form by ordinary
43 production methods and which are not the result of
44 condensation of gas after it leaves the underground
45 reservoir;

46 (8) "Gas" means all natural gas and all other fluid
47 hydrocarbons not defined as oil in subdivision (7) of this
48 section;

49 (9) "Pool" means an underground accumulation of
50 petroleum in a single and separate natural reservoir
51 (ordinarily a porous sandstone or limestone). It is
52 characterized by a single natural-pressure system so
53 that production of petroleum from one part of the pool
54 affects the reservoir pressure throughout its extent. A
55 pool is bounded by geologic barriers in all directions,
56 such as geologic structural conditions, impermeable
57 strata, and water in the formations, so that it is
58 effectively separated from any other pools that may be
59 presented in the same district or on the same geologic
60 structure;

61 (10) "Well" means any shaft or hole sunk, drilled,
62 bored or dug into the earth or underground strata for
63 the extraction of oil or gas;

64 (11) "Shallow well" means any well drilled and
65 completed in a formation above the top of the uppermost
66 member of the "Onondaga Group": *Provided*, That in
67 drilling a shallow well the operator may penetrate into
68 the "Onondaga Group" to a reasonable depth, not in
69 excess of twenty feet, in order to allow for logging and
70 completion operations, but in no event may the "Onon-
71 daga Group" formation be otherwise produced, perfo-
72 rated or stimulated in any manner;

73 (12) "Deep well" means any well, other than a shallow
74 well, drilled and completed in a formation at or below
75 the top of the uppermost member of the "Onondaga
76 Group";

77 (13) "Drilling unit" means the acreage on which one
78 well may be drilled;

79 (14) "Waste" means and includes: (A) Physical waste,
80 as that term is generally understood in the oil and gas
81 industry; (B) the locating, drilling, equipping, operating
82 or producing of any oil or gas well in a manner that
83 causes, or tends to cause, a reduction in the quantity of
84 oil or gas ultimately recoverable from a pool under
85 prudent and proper operations, or that causes or tends
86 to cause unnecessary or excessive surface loss of oil or
87 gas; or (C) the drilling of more deep wells than are
88 reasonably required to recover efficiently and econom-
89 ically the maximum amount of oil and gas from a pool.
90 Waste does not include gas vented or released from any
91 mine areas as defined in section two, article one, chapter
92 twenty-two-a of this code or from adjacent coal seams
93 which are the subject of a current permit issued under
94 article two of chapter twenty-two-a of this code:
95 *Provided*, That nothing in this exclusion is intended to
96 address ownership of the gas;

97 (15) "Correlative rights" means the reasonable
98 opportunity of each person entitled thereto to recover
99 and receive without waste the oil and gas in and under
100 his tract or tracts, or the equivalent thereof; and

101 (16) "Just and equitable share of production" means,
102 as to each person, an amount of oil or gas or both
103 substantially equal to the amount of recoverable oil and
104 gas in that part of a pool underlying such person's tract
105 or tracts.

106 (b) Unless the context clearly indicates otherwise, the
107 use of the word "and" and the word "or" shall be
108 interchangeable, as, for example, "oil and gas" shall
109 mean oil or gas or both.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all lands
3 located in this state, however owned, including any

4 lands owned or administered by any government or any
5 agency or subdivision thereof, over which the state has
6 jurisdiction under its police power. The provisions of
7 this article are in addition to and not in derogation of
8 or substitution for the provisions of article six, chapter
9 twenty-two of this code.

10 (b) This article shall not apply to or affect:

11 (1) Shallow wells other than those utilized in second-
12 dary recovery programs as set forth in section eight of
13 this article;

14 (2) Any well commenced or completed prior to the
15 ninth day of March, one thousand nine hundred seventy-
16 two, unless such well is, after completion (whether such
17 completion is prior or subsequent to that date), (i)
18 deepened subsequent to that date to a formation at or
19 below the top of the uppermost member of the "Onon-
20 daga Group" or (ii) involved in secondary recovery
21 operations for oil under an order of the commissioner
22 entered pursuant to section eight of this article;

23 (3) Gas storage operations or any well employed to
24 inject gas into or withdraw gas from a gas storage
25 reservoir or any well employed for storage observation;
26 or

27 (4) Free gas rights.

28 (c) The provisions of this article shall not be construed
29 to grant to the commissioner authority or power to:

30 (1) Limit production or output, or prorate production
31 of any oil or gas well, except as provided in subdivision
32 (6), subsection (a), section seven of this article; or

33 (2) Fix prices of oil or gas.

**§22C-9-4. Oil and gas conservation commissioner and
commission; commission membership; quali-
fications of members; terms of members;
vacancies on commission; meetings; compen-
sation and expenses; appointment and qual-
ifications of commissioner; general powers
and duties.**

1 (a) There is hereby continued as provided for in
2 subsection (h) of this section, the "Oil and Gas Conser-
3 vation Commission" which shall be composed of five
4 members. The director of the division of environmental
5 protection and the chief of the office of oil and gas shall
6 be members of the commission ex officio. The remaining
7 three members of the commission shall be appointed by
8 the governor, by and with the advice and consent of the
9 Senate. Of the three members appointed by the gover-
10 nor, one shall be an independent producer and at least
11 one shall be a public member not engaged in full-time
12 employment in an activity under the jurisdiction of the
13 public service commission or the federal energy regu-
14 latory commission. As soon as practical after appoint-
15 ment of the members of the commission, the governor
16 shall call a meeting of the commission to be convened
17 at the state capitol for the purpose of organizing and
18 electing a chair.

19 (b) The members of the commission appointed by the
20 governor shall be appointed for overlapping terms of six
21 years each, except that the original appointments shall
22 be for terms of two, four and six years, respectively.
23 Each member appointed by the governor shall serve
24 until the members successor has been appointed and
25 qualified. Members may be appointed by the governor
26 to serve any number of terms. The members of the
27 commission appointed by the governor, before perform-
28 ing any duty hereunder, shall take and subscribe to the
29 oath required by section 5, article IV of the constitution
30 of West Virginia. Vacancies in the membership ap-
31 pointed by the governor shall be filled by appointment
32 by the governor for the unexpired term of the member
33 whose office is vacant and such appointment shall be
34 made by the governor within sixty days of the occur-
35 rence of such vacancy. Any member appointed by the
36 governor may be removed by the governor in case of
37 incompetency, neglect of duty, gross immorality or
38 malfeasance in office.

39 (c) The commission shall meet at such times and

40 places as shall be designated by the chair. The chair
41 may call a meeting of the commission at any time, and
42 shall call a meeting of the commission upon the written
43 request of two members or upon the written request of
44 the oil and gas conservation commissioner. Notification
45 of each meeting shall be given in writing to each
46 member by the chair at least five days in advance of the
47 meeting. Any three members, one of which may be the
48 chair constitute a quorum for the transaction of any
49 business as herein provided for. A majority of the
50 commission is required to determine any issue brought
51 before it.

52 (d) The board shall pay each member the same
53 compensation as is paid to members of the Legislature
54 for their interim duties as recommended by the citizens
55 legislative compensation commission and authorized by
56 law for each day or portion thereof engaged in the
57 discharge of official duties and shall reimburse each
58 member for actual and necessary expenses incurred in
59 the discharge of official duties.

60 (e) The commission shall appoint the oil and gas
61 conservation commissioner and advise the commissioner
62 regarding the duties and authority under this article
63 and consult with the commissioner prior to his or her
64 reaching any final decisions and entering orders
65 hereunder. However, the commissioner has full and
66 final authority under this article with the commission
67 serving in an advisory capacity to the commissioner. The
68 commissioner shall possess a degree from an accredited
69 college or university in petroleum engineering or
70 geology and must be a registered professional engineer
71 with particular knowledge and experience in the oil and
72 gas industry.

73 (f) The oil and gas commissioner is hereby empowered
74 and it is the commissioner's duty to execute and carry
75 out, administer and enforce the provisions of this article
76 in the manner provided herein. Subject to the provisions
77 of section three of this article, the commissioner has
78 jurisdiction and authority over all persons and property
79 necessary therefor. The commissioner is authorized to
80 make such investigation of records and facilities as the

81 commissioner deems proper. In the event of a conflict
82 between the duty to prevent waste and the duty to
83 protect correlative rights, the commissioner's duty to
84 prevent waste shall be paramount. The commissioner
85 shall serve as secretary of the oil and gas conservation
86 commission.

87 (g) Without limiting the commissioner's general
88 authority, the commissioner shall have specific authority
89 to:

90 (1) Regulate the spacing of deep wells;

91 (2) Make and enforce reasonable rules and orders
92 reasonably necessary to prevent waste, protect correla-
93 tive rights, govern the practice and procedure before the
94 commissioner and otherwise administer the provisions
95 of this article;

96 (3) Issue subpoenas for the attendance of witnesses
97 and subpoenas duces tecum for the production of any
98 books, records, maps, charts, diagrams and other
99 pertinent documents, and administer oaths and affirma-
100 tions to such witnesses, whenever, in the judgment of the
101 commissioner, it is necessary to do so for the effective
102 discharge of the commissioner's duties under the
103 provisions of this article; and

104 (4) Serve as technical advisor regarding oil and gas
105 to the Legislature, its members and committees, to the
106 chief of office of oil and gas, to the division of environ-
107 mental protection and to any other agency of state
108 government having responsibility related to the oil and
109 gas industry.

110 (h) After having conducted a preliminary perfor-
111 mance audit through its joint committee on government
112 operations, pursuant to article ten, chapter four of this
113 code, the Legislature hereby finds and declares that the
114 oil and gas conservation commission should be continued
115 and reestablished. Accordingly, pursuant to the provi-
116 sions of section five of said article, the oil and gas
117 conservation commission shall continue to exist until the
118 first day of July, one thousand nine hundred ninety-
119 seven.

§22C-9-5. Rules; notice requirements.

1 (a) The commissioner may promulgate such reasona-
2 ble rules as the commissioner may deem necessary or
3 desirable to implement and make effective the provi-
4 sions of this article and the powers and authority
5 conferred and the duties imposed upon the commis-
6 sioner under the provisions of this article and for
7 securing uniformity of procedure in the administration
8 of the provisions of article three, chapter twenty-nine-
9 a of this code.

10 (b) Notwithstanding the provisions of section two,
11 article seven, chapter twenty-nine-a of this code, any
12 notice required under the provisions of this article shall
13 be given at the direction of the commissioner by (1)
14 personal or substituted service and if such cannot be had
15 then by (2) certified United States mail, addressed,
16 postage prepaid, to the last-known mailing address, if
17 any, of the person being served, with the direction that
18 the same be delivered to addressee only, return receipt
19 requested, and if there be no known mailing address or
20 if the notice is not so delivered then by (3) publication
21 of such notice as a Class II legal advertisement in
22 compliance with the provisions of article three, chapter
23 fifty-nine of this code, and the publication area for such
24 publication shall be the county or counties wherein any
25 land which may be affected by such order is situate. In
26 addition, the commissioner shall mail a copy of such
27 notice to all other persons who have specified to the
28 commissioner an address to which all such notices may
29 be mailed. The notice shall issue in the name of the state,
30 shall be signed by the commissioner, shall specify the
31 style and number of the proceeding, the time and place
32 of any hearing and shall briefly state the purpose of the
33 proceeding. Personal or substituted service and proof
34 thereof may be made by an officer authorized to serve
35 process or by an agent of the commissioner in the same
36 manner as is now provided by the "West Virginia Rules
37 of Civil Procedure for Trial Courts of Record" for
38 service of process in civil actions in the various courts
39 of this state. A certified copy of any pooling order
40 entered under the provisions of this article shall be

41 presented by the commissioner to the clerk of the county
42 commission of each county wherein all or any portion
43 of the pooled tract is located, for recordation in the
44 record book of such county in which oil and gas leases
45 are normally recorded. Such recording of such order
46 from the time noted thereon by such clerk shall be notice
47 of the order to all persons.

§22C-9-6. Waste of oil or gas prohibited.

1 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.**

1 (a) Drilling units.

2 (1) After one discovery deep well has been drilled
3 establishing a pool, an application to establish drilling
4 units may be filed with the commissioner by the
5 operator of such discovery deep well or by the operator
6 of any lands directly and immediately affected by the
7 drilling of such discovery deep well, or subsequent deep
8 wells in said pool, and the commissioner shall promptly
9 schedule a hearing on said application. Each application
10 shall contain such information as the commissioner may
11 prescribe by reasonable rules promulgated by the
12 commissioner in accordance with the provisions of
13 section five of this article.

14 (2) Upon the filing of an application to establish
15 drilling units, notice of the hearing shall be given by the
16 commissioner. Each notice shall specify the date, time
17 and place of hearing, describe the area for which a
18 spacing order is to be entered, and contain such other
19 information as is essential to the giving of proper notice.

20 (3) On the date specified in such notice, the commis-
21 sioner shall hold a public hearing to determine the area
22 to be included in such spacing order and the acreage to
23 be contained by each drilling unit, the shape thereof,
24 and the minimum distance from the outside boundary
25 of the unit at which a deep well may be drilled thereon.
26 At such hearing the commissioner shall consider:

27 (i) The surface topography and property lines of the
28 lands underlaid by the pool to be included in such order;

29 (ii) The plan of deep well spacing then being employed
30 or proposed in such pool for such lands;

31 (iii) The depth at which production from said pool has
32 been found;

33 (iv) The nature and character of the producing
34 formation or formations, and whether the substance
35 produced or sought to be produced is gas or oil or both;

36 (v) The maximum area which may be drained
37 efficiently and economically by one deep well; and

38 (vi) Any other available geological or scientific data
39 pertaining to said pool which may be of probative value
40 to the commissioner in determining the proper deep well
41 drilling units therefor.

42 To carry out the purposes of this article, the commis-
43 sioner shall, upon proper application, notice and hearing
44 as herein provided, and if satisfied after such hearing
45 that drilling units should be established, enter an order
46 establishing drilling units of a specified and approxi-
47 mately uniform size and shape for each pool subject to
48 the provisions of this section.

49 (4) When it is determined that an oil or gas pool
50 underlies an area for which a spacing order is to be
51 entered, the commissioner shall include in such order all
52 lands determined or believed to be underlaid by such
53 pool and exclude all other lands.

54 (5) No drilling unit established by the commissioner
55 shall be smaller than the maximum area which can be
56 drained efficiently and economically by one deep well:
57 *Provided*, That if at the time of a hearing to establish
58 drilling units, there is not sufficient evidence from
59 which to determine the area which can be drained
60 efficiently and economically by one deep well, the
61 commissioner may enter an order establishing tempor-
62 ary drilling units for the orderly development of the pool
63 pending the obtaining of information necessary to
64 determine the ultimate spacing for such pool.

65 (6) An order establishing drilling units shall specify
66 the minimum distance from the nearest outside bound-
67 ary of the drilling unit at which a deep well may be
68 drilled. The minimum distance provided shall be the
69 same in all drilling units established under said order
70 with necessary exceptions for deep wells drilled or being
71 drilled at the time of the filing of the application. If the
72 commissioner finds that a deep well to be drilled at or
73 more than the specified minimum distance from the
74 boundary of a drilling unit would not be likely to
75 produce in paying quantities or will encounter surface
76 conditions which would substantially add to the burden
77 or hazard of drilling such deep well, or that a location
78 within the area permitted by the order is prohibited by
79 the lawful order of any state agency or court, the
80 commissioner is authorized after notice and hearing to
81 make an order permitting the deep well to be drilled
82 at a location within the minimum distance prescribed
83 by the spacing order. In granting exceptions to the
84 spacing order, the commissioner may restrict the
85 production from any such deep well so that each person
86 entitled thereto in such drilling unit shall not produce
87 or receive more than his just and equitable share of the
88 production from such pool.

89 (7) An order establishing drilling units for a pool shall
90 cover all lands determined or believed to be underlaid
91 by such pool, and may be modified by the commissioner
92 from time to time, to include additional lands deter-
93 mined to be underlaid by such pool or to exclude lands
94 determined not to be underlaid by such pool. An order
95 establishing drilling units may be modified by the
96 commissioner to permit the drilling of additional deep
97 wells on a reasonably uniform pattern at a uniform
98 minimum distance from the nearest unit boundary as
99 provided above. Any order modifying a prior order shall
100 be made only after application by an interested operator
101 and notice and hearing as prescribed herein for the
102 original order: *Provided*, That drilling units established
103 by order shall not exceed one hundred sixty acres for
104 an oil well or six hundred forty acres for a gas well.

105 (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.

111 (9) The commissioner shall, within forty-five days
112 after the filing of an application to establish drilling
113 units for a pool subject to the provisions of this section,
114 either enter an order establishing such drilling units or
115 dismiss the application.

116 (10) As part of the order establishing a drilling unit,
117 the commissioner shall prescribe just and reasonable
118 terms and conditions upon which the royalty interests
119 in the unit shall, in the absence of voluntary agreement,
120 be deemed to be integrated without the necessity of a
121 subsequent order integrating the royalty interests.

122 (b) Pooling of interests in drilling units.

123 (1) When two or more separately owned tracts are
124 embraced within a drilling unit, or when there are
125 separately owned interests in all or a part of a drilling
126 unit, the interested persons may pool their tracts or
127 interests for the development and operation of the
128 drilling unit. In the absence of voluntary pooling and
129 upon application of any operator having an interest in
130 the drilling unit, and after notice and hearing, the
131 commissioner shall enter an order pooling all tracts or
132 interests in the drilling unit for the development and
133 operation thereof and for sharing production therefrom.
134 Each such pooling order shall be upon terms and
135 conditions which are just and reasonable, and in no
136 event shall drilling be initiated on the tract of an
137 unleased royalty owner without such owner's written
138 consent.

139 (2) All operations, including, but not limited to, the
140 commencement, drilling or operation of a deep well,
141 upon any portion of a drilling unit for which a pooling
142 order has been entered, shall be deemed for all purposes
143 the conduct of such operations upon each separately
144 owned tract in the drilling unit by the several owners
145 thereof. That portion of the production allocated to a

146 separately owned tract included in a drilling unit shall,
147 when produced, be deemed for all purposes to have been
148 actually produced from such tract by a deep well drilled
149 thereon.

150 (3) Any pooling order under the provisions of this
151 subsection (b) shall authorize the drilling and operation
152 of a deep well for the production of oil or gas from the
153 pooled acreage; shall designate the operator to drill and
154 operate such deep well; shall prescribe the time and
155 manner in which all owners of operating interests in the
156 pooled tracts or portions of tracts may elect to partic-
157 ipate therein; shall provide that all reasonable costs and
158 expenses of drilling, completing, equipping, operating,
159 plugging and abandoning such deep well shall be borne,
160 and all production therefrom shared, by all owners of
161 operating interests in proportion to the net oil or gas
162 acreage in the pooled tracts owned or under lease to
163 each owner; and shall make provisions for payment of
164 all reasonable costs thereof, including a reasonable
165 charge for supervision and for interest on past-due
166 accounts, by all those who elect to participate therein.

167 (4) No drilling or operation of a deep well for the
168 production of oil or gas shall be permitted upon or
169 within any tract of land unless the operator shall have
170 first obtained the written consent and easement there-
171 for, duly acknowledged and placed of record in the office
172 of the county clerk, for valuable consideration of all
173 owners of the surface of such tract of land, which
174 consent shall describe with reasonable certainty, the
175 location upon such tract, of the location of such proposed
176 deep well, a certified copy of which consent and
177 easement shall be submitted by the operator to the
178 commissioner.

179 (5) Upon request, any such pooling order shall provide
180 just and equitable alternatives whereby an owner of an
181 operating interest who does not elect to participate in
182 the risk and cost of the drilling of a deep well may elect:

183 (i) Option 1. To surrender such interest or a portion
184 thereof to the participating owners on a reasonable basis
185 and for a reasonable consideration, which, if not agreed

186 upon, shall be determined by the commissioner; or

187 (ii) Option 2. To participate in the drilling of the deep
188 well on a limited or carried basis on terms and
189 conditions which, if not agreed upon, shall be deter-
190 mined by the commissioner to be just and reasonable.

191 (6) In the event a nonparticipating owner elects
192 Option 2, and an owner of any operating interest in any
193 portion of the pooled tract shall drill and operate, or pay
194 the costs of drilling and operating, a deep well for the
195 benefit of such nonparticipating owner as provided in
196 the pooling order, then such operating owner shall be
197 entitled to the share of production from the tracts or
198 portions thereof pooled accruing to the interest of such
199 nonparticipating owner, exclusive of any royalty or
200 overriding royalty reserved in any leases, assignments
201 thereof or agreements relating thereto, of such tracts or
202 portions thereof, or exclusive of one eighth of the
203 production attributable to all unleased tracts or portions
204 thereof, until the market value of such nonparticipating
205 owner's share of the production, exclusive of such
206 royalty, overriding royalty or one eighth of production,
207 equals double the share of such costs payable by or
208 charged to the interest of such nonparticipating owner.

209 (7) If a dispute shall arise as to the costs of drilling
210 and operating a deep well, the commissioner shall
211 determine and apportion the costs, within ninety days
212 from the date of written notification to the commissioner
213 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
2 productive of oil and after notice and hearing, the
3 commissioner may enter an order requiring the unit
4 operation of such pool in connection with a program of
5 secondary recovery of oil, and providing for the
6 unitization of separately owned tracts and interests
7 within such pool, but only after finding that: (1) The
8 order is reasonably necessary for the prevention of waste
9 and the drilling of unnecessary deep wells; (2) the
10 proposed plan of secondary recovery will increase the
11 ultimate recovery of oil from the pool to such an extent

12 that the proposed secondary recovery operation will be
13 economically feasible; (3) the production of oil from the
14 unitized pool can be allocated in such a manner as to
15 ensure the recovery by all operators of their just and
16 equitable share of such production; and (4) the operators
17 of at least three fourths of the acreage (calculating
18 partial interests on a pro rata basis for operator
19 interests on any parcel owned in common) and the
20 royalty owners of at least three fourths of the acreage
21 (calculating partial interests on a pro rata basis for
22 royalty interests on any parcel owned in common) in
23 such pool have approved the plan and terms of unit
24 operation to be specified by the commissioner in its
25 order, such approval to be evidenced by a written
26 contract setting forth the terms of the unit operation and
27 executed by said operators and said royalty owners, and
28 filed with the commissioner on or before the day set for
29 hearing. The order requiring such unit operation shall
30 designate one operator in the pool as unit operator and
31 shall also make provision for the proportionate alloca-
32 tion to all operators of the costs and expenses of the unit
33 operation, including reasonable charges for supervision
34 and interest on past-due accounts, which allocation shall
35 be in the same proportion that the separately owned
36 tracts share in the production of oil from the unit. In
37 the absence of an agreement entered into by the
38 operators and filed with the commissioner providing for
39 sharing the costs of capital investment in wells and
40 physical equipment, and intangible drilling costs, the
41 commissioner shall provide by order for the sharing of
42 such costs in the same proportion as the costs and
43 expenses of the unit operation: *Provided*, That any
44 operator who has not consented to the utilization shall
45 not be required to contribute to the costs or expenses of
46 the unit operation, or to the cost of capital investment
47 in wells and physical equipment, and intangible drilling
48 costs, except out of the proceeds from the sale of the
49 production accruing to the interest of such operator:
50 *Provided, however*, That no credit to the well costs shall
51 be adjusted on the basis of less than the average well
52 costs within the unitized area: *Provided further*, That no
53 order entered under the provisions of this section

54 requiring unit operation shall vary or alter any of the
55 terms of any contract entered into by operators and
56 royalty owners under the provisions of this section.

§22C-9-9. Validity of unit agreements.

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.

§22C-9-10. Hearing procedures.

1 (a) Upon receipt of an application for an order of the
2 commissioner for which a hearing is required by the
3 provisions of this article, the commissioner shall set a
4 time and place for such hearing not less than ten and
5 not more than thirty days thereafter. Any scheduled
6 hearing may be continued by the commissioner upon the
7 commissioner's own motion or for good cause shown by
8 any party to the hearing. All interested parties shall be
9 entitled to be heard at any hearing conducted under the
10 provisions of this article.

11 (b) All of the pertinent provisions of article five,
12 chapter twenty-nine-a of this code shall apply to and
13 govern the hearing and the administrative procedures
14 in connection with and following such hearing, with like
15 effect as if the provisions of said article five were set
16 forth in extenso in this subsection.

17 (c) Any such hearing shall be conducted by the
18 commissioner. For the purpose of conducting any such
19 hearing, the commissioner shall have the power and
20 authority to issue subpoenas and subpoenas duces tecum
21 which shall be issued and served within the time, for
22 the fees and shall be enforced, as specified in section one,
23 article five of said chapter twenty-nine-a, and all of the
24 said section one provisions dealing with subpoenas and
25 subpoenas duces tecum shall apply to subpoenas and

26 subpoenas duces tecum issued for the purpose of a
27 hearing hereunder.

28 (d) At any such hearing any interested person may
29 represent themselves or be represented by an attorney-
30 at-law admitted to practice before any circuit court of
31 this state. Upon request by the commissioner, the
32 commissioner shall be represented at such hearing by
33 the attorney general or the attorney general's assistants
34 without additional compensation. The commissioner,
35 with the written approval of the attorney general, may
36 employ special counsel to represent the commissioner at
37 any such hearing.

38 (e) After any such hearing and consideration of all of
39 the testimony, evidence and record in the case, the
40 commissioner shall render a decision in writing. The
41 written decision of the commissioner shall be accompan-
42 ied by findings of fact and conclusions of law as
43 specified in section three, article five, chapter twenty-
44 nine-a of this code, and a copy of such decision and
45 accompanying findings and conclusions shall be served
46 by certified mail, return receipt requested, upon all
47 interested persons and their attorney of record, if any.

48 The decision of the commissioner shall be final unless
49 reversed, vacated or modified upon judicial review
50 thereof in accordance with the provisions of section
51 eleven of this article.

**§22C-9-11. Judicial review; appeal to supreme court of
appeals; legal representation for
commissioner.**

1 (a) Any person adversely affected by a decision of the
2 commissioner rendered after a hearing held in accor-
3 dance with the provisions of section ten of this article
4 shall be entitled to judicial review thereof. All of the
5 pertinent provisions of section four, article five, chapter
6 twenty-nine-a of this code, shall apply to and govern
7 such judicial review with like effect as if the provisions
8 of said section four were set forth in extenso in this
9 section.

10 (b) The judgment of the circuit court shall be final

11 unless reversed, vacated or modified on appeal to the
12 supreme court of appeals in accordance with the
13 provisions of section one, article six, chapter twenty-
14 nine-a of this code, except that notwithstanding the
15 provisions of said section one the petition seeking such
16 review must be filed with said supreme court of appeals
17 within thirty days from the date of entry of the
18 judgment of the circuit court.

19 (c) Legal counsel and services for the commissioner in
20 all appeal proceedings in any circuit court and the
21 supreme court of appeals shall be provided by the
22 attorney general or the attorney general's assistants and
23 in any circuit court by the prosecuting attorney of the
24 county as well, all without additional compensation. The
25 commissioner, with the written approval of the attorney
26 general, may employ special counsel to represent the
27 commissioner at any such appeal proceedings.

§22C-9-12. Injunctive relief.

1 (a) Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article, any reasonable rule promul-
4 gated by the commissioner hereunder or any order or
5 final decision of the commissioner, the commissioner
6 may apply in the name of the state to the circuit court
7 of the county in which the violations or any part thereof
8 has occurred, is occurring or is about to occur, or the
9 judge thereof in vacation, for an injunction against such
10 person and any other persons who have been, are or are
11 about to be, involved in any practices, acts or omissions,
12 so in violation, enjoining such person or persons from
13 any such violation or violations. Such application may
14 be made and prosecuted to conclusion whether or not
15 any such violation or violations have resulted or shall
16 result in prosecution or conviction under the provisions
17 of section fourteen of this article.

18 (b) Upon application by the commissioner, the circuit
19 courts of this state may by mandatory or prohibitory
20 injunction compel compliance with the provisions of this
21 article, the reasonable rules promulgated by the
22 commissioner hereunder and all orders and final

23 decisions of the commissioner. The court may issue a
24 temporary injunction in any case pending a decision on
25 the merits of any application filed. Any other section of
26 this code to the contrary notwithstanding, the state shall
27 not be required to furnish bond or other undertaking as
28 a prerequisite to obtaining mandatory, prohibitory or
29 temporary injunctive relief under the provisions of this
30 article.

31 (c) The judgment of the circuit court upon any
32 application permitted by the provisions of this section
33 shall be final unless reversed, vacated or modified on
34 appeal to the supreme court of appeals. Any such appeal
35 shall be sought in the manner and within the time
36 provided by law for appeals from circuit courts in other
37 civil actions.

38 (d) The commissioner shall be represented in all such
39 proceedings by the attorney general or the attorney
40 general's assistants and in such proceedings in the
41 circuit courts by the prosecuting attorneys of the several
42 counties as well, all without additional compensation.
43 The commissioner, with the written approval of the
44 attorney general, may employ special counsel to represent
45 the commissioner in any such proceedings.

46 (e) If the commissioner shall refuse or fail to apply
47 for an injunction to enjoin a violation or threatened
48 violation of any provision of this article, any reasonable
49 rule promulgated by the commissioner hereunder or any
50 order or final decision of the commissioner, within ten
51 days after receipt of a written request to do so by any
52 person who is or will be adversely affected by such
53 violation or threatened violation, the person making
54 such request may apply in his own behalf for an
55 injunction to enjoin such violation or threatened
56 violation in any court in which the commissioner might
57 have brought suit. The commissioner shall be made a
58 party defendant in such application in addition to the
59 person or persons violating or threatening to violate any
60 provision of this article, any reasonable rule promul-
61 gated by the commissioner hereunder or any order or
62 final decision of the commissioner. The application shall
63 proceed and injunctive relief may be granted without

64 bond or other undertaking in the same manner as if the
65 application had been made by the commissioner.

§22C-9-13. Special oil and gas conservation tax.

1 Owners of leases on oil and gas for the exploration,
2 development or production of oil or natural gas shall pay
3 to the commission a special oil and gas conservation tax
4 of three cents for each acre under lease, excluding from
5 the tax the first twenty-five thousand acres. The
6 commission shall deposit with the treasurer of the state
7 of West Virginia, to the credit of the special oil and gas
8 conservation fund, all taxes collected hereunder. The
9 special oil and gas conservation fund shall be a special
10 fund and shall be administered by the commission for
11 the sole purpose of carrying out all costs necessary to
12 carry out the provisions of this article. This tax shall be
13 paid as provided herein annually on or before the first
14 day of July, one thousand nine hundred seventy-two, and
15 on or before the first day of July in each succeeding
16 year.

§22C-9-14. Penalties.

1 (a) Any person who violates any provision of this
2 article, any of the reasonable rules promulgated by the
3 commissioner hereunder or any order or any final
4 decision of the commissioner, other than a violation
5 covered by the provisions of subsection (b) of this section,
6 shall be guilty of a misdemeanor, and, upon conviction
7 thereof, shall be fined not more than one thousand
8 dollars, and each day that a violation continues shall
9 constitute a new and separate violation.

10 (b) Any person who, for the purpose of evading any
11 provision of this article, any of the reasonable rules
12 promulgated by the commissioner hereunder or any
13 order or final decision of the commissioner, shall make
14 or cause to be made any false entry or statement in a
15 report required under the provisions of this article, any
16 of the reasonable rules promulgated by the commis-
17 sioner hereunder or any order or final decision of the
18 commissioner, or shall make or cause to be made any
19 false entry in any record, account or memorandum
20 required under the provisions of this article, any of the

21 reasonable rules promulgated by the commissioner
22 hereunder or any order or any final decision of the
23 commissioner, or who shall omit, or cause to be omitted,
24 from any such record, account or memorandum, full,
25 true and correct entries, or shall remove from this state
26 or destroy, mutilate, alter or falsify any such record,
27 account or memorandum, shall be guilty of a misdemea-
28 nor, and, upon conviction thereof, shall be fined not
29 more than five thousand dollars, or imprisoned in the
30 county jail not more than six months, or both fined and
31 imprisoned.

32 (c) Any person who knowingly aids or abets any other
33 person in the violation of any provision of this article,
34 any of the reasonable rules promulgated by the commis-
35 sioner hereunder or any order of final decision of the
36 commissioner, shall be subject to the same penalty as
37 that prescribed in this article for the violation by such
38 other person.

§22C-9-15. Construction.

1 Except as provided in subsection (c), section three of
2 this article, this article shall be liberally construed so
3 as to effectuate the declaration of public policy set forth
4 in section one of this article.

§22C-9-16. Rules, orders and permits remain in effect.

1 The rules promulgated and all orders and permits in
2 effect upon the effective date of this article pursuant to
3 the provisions of article eight, of former chapter twenty-
4 two of this code shall remain in full force and effect as
5 if such rules, orders and permits were adopted by the
6 director established in this chapter but all such rules,
7 orders and permits are subject to review by the
8 commissioner to ensure they are consistent with the
9 purposes and policies set forth in this chapter and
10 chapter twenty-two of this code.

ARTICLE 10. INTERSTATE MINING COMPACT.

§22C-10-1. Enactment of compact.

§22C-10-2. Bylaws of interstate mining commission.

§22C-10-3. Effective date.

§22C-10-1. Enactment of compact.

1 The "Interstate Mining Compact" is hereby continued

2 in law and continued in effect with all other jurisdic-
3 tions legally joining therein in the form substantially as
4 follows:

5 INTERSTATE MINING COMPACT

6 Article I. Findings and Purposes.

7 (a) The party states find that:

8 (1) Mining and the contributions thereof to the
9 economy and well-being of every state are of basic
10 significance.

11 (2) The effects of mining on the availability of land,
12 water and other resources for other uses present special
13 problems which properly can be approached only with
14 due consideration for the rights and interests of those
15 engaged in mining, those using or proposing to use these
16 resources for other purposes and the public.

17 (3) Measures for the reduction of the adverse effects
18 of mining on land, water and other resources may be
19 costly and the devising of means to deal with them are
20 of both public and private concern.

21 (4) Such variables as soil structure and composition,
22 physiography, climatic conditions and the needs of the
23 public make impracticable to all mining areas of a
24 single standard for the conservation, adaption or
25 restoration of mined land, or the development of mineral
26 and other natural resources, but justifiable require-
27 ments of law and practice relating to the effects of
28 mining on land, water and other resources may be
29 reduced in equity or effectiveness unless they pertain
30 similarly from state to state for all mining operations
31 similarly situated.

32 (5) The states are in a position and have the respon-
33 sibility to assure that mining shall be conducted in
34 accordance with sound conservation principles, and with
35 due regard for local conditions.

36 (b) The continuing purposes of this compact are to:

37 (1) Advance the protection and restoration of land,
38 water and other resources affected by mining.

39 (2) Assist in the reduction or elimination or counter-

40 acting of pollution or deterioration of land, water and
41 air attributable to mining.

42 (3) Encourage, with due recognition of relevant
43 regional, physical and other differences, programs in
44 each of the party states which will achieve comparable
45 results in protecting, conserving and improving the
46 usefulness of natural resources, to the end that the most
47 desirable conduct of mining and related operations may
48 be universally facilitated.

49 (4) Assist the party states in their efforts to facilitate
50 the use of land and other resources affected by mining,
51 so that such use may be consistent with sound land use,
52 public health and public safety, and to this end to study
53 and recommend, wherever desirable, techniques for the
54 improvement, restoration or protection of such land and
55 other resources.

56 (5) Assist in achieving and maintaining an efficient
57 and productive mining industry and in increasing
58 economic and other benefits attributable to mining.

59 Article II. Definitions.

60 As used in this compact, the term:

61 (a) "Mining" means the breaking of the surface soil
62 in order to facilitate or accomplish the extraction or
63 removal of minerals, ores or other solid matter, any
64 activity or process constituting all or part of a process
65 for the extraction or removal of minerals, ores and other
66 solid matter from its original location, and the prepa-
67 ration, washing, cleaning or other treatment of miner-
68 als, ores or other solid matter so as to make them
69 suitable for commercial, industrial or construction use;
70 but shall not include those aspects of deep mining not
71 having significant effect on the surface, and shall not
72 include excavation or grading when conducted solely in
73 aid of on-site farming or construction.

74 (b) "State" means a state of the United States, the
75 District of Columbia, the commonwealth of Puerto Rico
76 or a territory or possession of the United States.

77 Article III. State Programs.

78 Each party state agrees that within a reasonable time
79 it will formulate and establish an effective program for
80 the conservation and use of mined land, by the estab-
81 lishment of standards, enactment of laws or the
82 continuing of the same in force, to accomplish:

83 (a) The protection of the public and the protection of
84 adjoining and other landowners from damage to their
85 lands and the structures and other property thereon
86 resulting from the conduct of mining operations or the
87 abandonment or neglect of land and property formerly
88 used in the conduct of such operations.

89 (b) The conduct of mining and the handling of refuse
90 and other mining wastes in ways that will reduce
91 adverse effects on the economic, residential, recreational
92 or aesthetic value and utility of land and water.

93 (c) The institution and maintenance of suitable
94 programs for adaption, restoration and rehabilitation of
95 mined lands.

96 (d) The prevention, abatement and control of water,
97 air and soil pollution resulting from mining, present,
98 past and future.

99 Article IV. Powers.

100 In addition to any other powers conferred upon the
101 interstate mining commission, established by Article V
102 of this compact, such commission shall have power to:

103 (a) Study mining operations, processes and techniques
104 for the purpose of gaining knowledge concerning the
105 effects of such operations, processes and techniques on
106 land, soil, water, air, plant and animal life, recreation
107 and patterns of community or regional development or
108 change.

109 (b) Study the conservation, adaptation, improvement
110 and restoration of land and related resources affected by
111 mining.

112 (c) Make recommendations concerning any aspect or
113 aspects of law or practice and governmental administra-
114 tion dealing with matters within the purview of this
115 compact.

116 (d) Gather and disseminate information relating to
117 any of the matters within the purview of this compact.

118 (e) Cooperate with the federal government and any
119 public or private entities having interests in any subject
120 coming within the purview of this compact.

121 (f) Consult, upon the request of a party state and
122 within resources available therefor, with the officials of
123 such state in respect to any problem within the purview
124 of this compact.

125 (g) Study and make recommendations with respect to
126 any practice, process, technique or course of action that
127 may improve the efficiency of mining or the economic
128 yield from mining operations.

129 (h) Study and make recommendations relating to the
130 safeguarding of access to resources which are or may
131 become the subject of mining operations to the end that
132 the needs of the economy for the products of mining may
133 not be adversely affected by unplanned or inappropriate
134 use of land and other resources containing minerals or
135 otherwise connected with actual or potential mining
136 sites.

137 Article V. The Commission.

138 (a) There is hereby created an agency of the party
139 states to be known as the "Interstate Mining Commis-
140 sion," hereinafter called "the commission." The commis-
141 sion shall be composed of one commissioner from each
142 party state who shall be the governor thereof. Pursuant
143 to the laws of his party state, each governor shall have
144 the assistance of an advisory body (including member-
145 ship from mining industries, conservation interests and
146 such other public and private interests as may be
147 appropriate) in considering problems relating to mining
148 and in discharging his responsibilities as the commis-
149 sioner of his state on the commission. In any instance
150 where a governor is unable to attend a meeting of the
151 commission or perform any other function in connection
152 with the business of the commission, he shall designate
153 an alternate from among the members of the advisory
154 body required by this paragraph, who shall represent

155 him and act in his place and stead. The designation of
156 an alternate shall be communicated by the governor to
157 the commission in such manner as its bylaws may
158 provide.

159 (b) The commissioners shall be entitled to one vote
160 each on the commission. No action of the commission
161 making a recommendation pursuant to Articles IV (c),
162 IV (g) and IV (h) or requesting, accepting or disposing
163 of funds, services or other property pursuant to this
164 paragraph, Article V (g), V (h) or VII shall be valid
165 unless taken at a meeting at which a majority of the
166 total number of votes on the commission is cast in favor
167 thereof. All other action shall be by a majority of those
168 present and voting: *Provided*, That action of the
169 commission shall be only at a meeting at which a
170 majority of the commissioners, or their alternates, is
171 present. The commission may establish and maintain
172 such facilities as may be necessary for the transacting
173 of its business. The commission may acquire, hold and
174 convey real and personal property and any interest
175 therein.

176 (c) The commission shall have a seal.

177 (d) The commission shall elect annually, from among
178 its members, a chairman, a vice chairman, and a
179 treasurer. The commission shall appoint an executive
180 director and fix his duties and compensation. Such
181 executive director shall serve at the pleasure of the
182 commission. The executive director, the treasurer and
183 such other personnel as the commission shall designate
184 shall be bonded. The amount or amounts of such bond
185 or bonds shall be determined by the commission.

186 (e) Irrespective of the civil service, personnel or other
187 merit system laws of any of the party states, the
188 executive director with the approval of the commission,
189 shall appoint, remove or discharge such personnel as
190 may be necessary for the performance of the commis-
191 sion's functions, and shall fix the duties and compensa-
192 tion of such personnel.

193 (f) The commission may establish and maintain,
194 independently or in conjunction with a party state, a

195 suitable retirement system for its employees. Employees
196 of the commission shall be eligible for social security
197 coverage in respect of old age and survivor's insurance:
198 *Provided*, That the commission take such steps as may
199 be necessary pursuant to the laws of the United States
200 to participate in such program of insurance as a
201 governmental agency or unit. The commission may
202 establish and maintain or participate in such additional
203 programs of employee benefits as it may deem
204 appropriate.

205 (g) The commission may borrow, accept or contract
206 for the services of personnel from any state, the United
207 States or any other governmental agency, or from any
208 person, firm, association or corporation.

209 (h) The commission may accept for any of its purposes
210 and functions under this compact any and all donations
211 and grants of money, equipment, supplies, materials and
212 services, conditional or otherwise, from any state, the
213 United States or any other governmental agency, or
214 from any person, firm, association or corporation, and
215 may receive, utilize and dispose of the same. Any
216 donation or grant accepted by the commission pursuant
217 to this paragraph or services borrowed pursuant to
218 paragraph (g) of this article shall be reported in the
219 annual report of the commission. Such report shall
220 include the nature, amount and conditions, if any, of the
221 donation, grant or services borrowed and the identity of
222 the donor or lender.

223 (i) The commission shall adopt bylaws for the conduct
224 of its business and shall have the power to amend and
225 rescind these bylaws. The commission shall publish its
226 bylaws in convenient form and shall file a copy thereof
227 and a copy of any amendment thereto with the approp-
228 riate agency or officer in each of the party states.

229 (j) The commission annually shall make to the
230 governor, Legislature and advisory body required by
231 Article V (a) of each party state a report covering the
232 activities of the commission for the preceding year, and
233 embodying such recommendations as may have been
234 made by the commission. The commission may make

235 such additional reports as it may deem desirable.

236 Article VI. Advisory, Technical
237 and Regional Committees.

238 The commission shall establish such advisory, techni-
239 cal and regional committees as it may deem necessary,
240 membership on which shall include private persons and
241 public officials, and shall cooperate with and use the
242 services of any such committees and the organizations
243 which the members represent in furthering any of its
244 activities. Such committees may be formed to consider
245 problems of special interest to any party states,
246 problems dealing with particular commodities or types
247 of mining operations, problems relating to reclamation,
248 development or use of mined land or any other matters
249 of concern to the commission.

250 Article VII. Finance.

251 (a) The commission shall submit to the governor or
252 designated officer or officers of each party state a
253 budget of its estimated expenditures for such periods as
254 may be required by the laws of that party state for
255 presentation to the Legislature thereof.

256 (b) Each of the commission's budgets of estimated
257 expenditures shall contain specific recommendations of
258 the amount or amounts to be appropriated by each of
259 the party states. The total amount of appropriations
260 requested under any such budget shall be apportioned
261 among the party states as follows: One half in equal
262 shares, and the remainder in proportion to the value of
263 minerals, ores and other solid matter mined. In deter-
264 mining such values, the commission shall employ such
265 available public source or sources of information as, in
266 its judgment, present the most equitable and accurate
267 comparisons among the party states. Each of the
268 commission's budgets of estimated expenditures and
269 requests for appropriations shall indicate the source or
270 sources used in obtaining information concerning value
271 of minerals, ores and other solid matter mined.

272 (c) The commission shall not pledge the credit of any
273 party state. The commission may meet any of its

274 obligations, in whole or in part, with funds available to
275 it under Article V (h) of this compact: *Provided*, That
276 the commission takes specific action setting aside such
277 funds prior to incurring any obligation to be met, in
278 whole or in part, in such manner. Except where the
279 commission makes use of funds available to it under
280 Article V (h) hereof, the commission shall not incur any
281 obligation prior to the allotment of funds by the party
282 states adequate to meet the same.

283 (d) The commission shall keep accurate accounts of all
284 receipts and disbursements. The receipts and disburse-
285 ments of the commission shall be subject to the audit
286 and accounting procedures established under its bylaws.
287 All receipts and disbursements of funds handled by the
288 commission shall be audited yearly by a qualified public
289 accountant and the report of the audit shall be included
290 in and become part of the annual report of the
291 commission.

292 (e) The accounts of the commission shall be open at
293 any reasonable time for inspection by duly constituted
294 officers of the party states and by any persons autho-
295 rized by the commission.

296 (f) Nothing contained herein shall be construed to
297 prevent commission compliance with laws relating to
298 audit or inspection of accounts by or on behalf of any
299 government contributing to the support of the
300 commission.

301 Article VIII. Entry Into Force and Withdrawal.

302 (a) This compact shall enter into force when enacted
303 into law by any four or more states. Thereafter, this
304 compact shall become effective as to any other state
305 upon its enactment thereof.

306 (b) Any party state may withdraw from this compact
307 by enacting a statute repealing the same, but no such
308 withdrawal shall take effect until one year after the
309 governor of the withdrawing state has given notice in
310 writing of the withdrawal to the governors of all other
311 party states. No withdrawal shall affect any liability
312 already incurred by or chargeable to a party state prior

313 to the time of such withdrawal.

314 Article IX. Effect on Other Laws.

315 Nothing in this compact shall be construed to limit,
316 repeal or supersede any other law of any party state.

317 Article X. Construction and Severability.

318 This compact shall be liberally construed so as to
319 effectuate the purposes thereof. The provisions of this
320 compact shall be severable and if any phrase, clause,
321 sentence or provision of this compact is declared to be
322 contrary to the constitution of any state or of the United
323 States or the applicability thereof to any government,
324 agency, person or circumstance is held invalid, the
325 validity of the remainder of this compact and the
326 applicability thereof to any government, agency, person
327 or circumstance shall not be affected thereby. If this
328 compact shall be held contrary to the constitution of any
329 state participating herein, the compact shall remain in
330 full force and effect as to the remaining party states and
331 in full force and effect as to the state affected as to all
332 severable matters.

§22C-10-2. Bylaws of interstate mining commission.

1 In accordance with Article V (i) of the interstate
2 mining compact, the commission shall file copies of its
3 bylaws and any amendments thereto in the office of the
4 secretary of state of West Virginia.

§22C-10-3. Effective date.

1 This article is effective as of the first day of July, one
2 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.

1 There is hereby created a commission consisting of
2 three members, to act jointly with commissioners
3 appointed for like purposes by the commonwealths of
4 Pennsylvania and Virginia, the state of Maryland, and
5 the District of Columbia, and an additional three
6 members to be appointed by the president of the United
7 States, and which, together with the other commission-
8 ers appointed as hereinbefore mentioned, shall consti-
9 tute and be known as the "Interstate Commission on the
10 Potomac River Basin." The said commission of the state
11 of West Virginia shall consist of three members. The
12 governor, by and with the advice and consent of the
13 Senate, shall appoint two persons as two of such
14 commissioners, each of whom shall be a resident and
15 citizen of this state. The terms of one of the said two
16 commissioners first appointed shall be three years and
17 of the other shall be six years; and their successors shall
18 be appointed by the governor, by and with the advice
19 and consent of the Senate, for terms of six years each.
20 Each commissioner shall hold office until his successor
21 shall be appointed and qualified. Vacancies occurring in
22 the office of any such commissioner for any reason or
23 cause shall be filled by appointment by the governor, by
24 and with the advice and consent of the Senate, for the
25 unexpired term. The third commissioner from this state
26 is the commissioner of the bureau of public health ex
27 officio, and the term of the ex officio commissioner
28 terminates at the time he ceases to hold said office. Said
29 ex officio commissioner may delegate, from time to time,
30 to any deputy or other subordinate in his division or
31 office, the power to be present and participate, including
32 voting, as his representative or substitute at any
33 meeting of or hearing by or other proceeding of the
34 commission. The term of each of the initial three
35 members shall begin at the date of the appointment of
36 the two appointive commissioners: *Provided*, That the
37 compact hereinafter referred to shall then have gone
38 into effect, in accordance with article six thereof,
39 otherwise to begin upon the date said compact shall
40 become effective, in accordance with said article six.

41 Any commissioner may be removed from office by the
42 governor.

43 The governor of the state of West Virginia is hereby
44 authorized and directed to execute a compact on behalf
45 of the state of West Virginia, with the other states and
46 the district hereinabove referred to, who may by their
47 legislative bodies so authorize a compact in form
48 substantially as follows:

49

A COMPACT

50 Whereas, It is recognized that abatement of existing
51 pollution and the control of future pollution of interstate
52 streams can best be promoted through a joint agency
53 representing the several states located wholly or in part
54 within the area drained by any such interstate streams;
55 and

56 Whereas, The Congress of the United States has given
57 its consent to the states of Maryland and West Virginia,
58 the commonwealths of Pennsylvania and Virginia, and
59 the District of Columbia to enter into a compact
60 providing for the creation of a conservancy district to
61 consist of the drainage basin of the Potomac River and
62 the main and tributary streams therein, for "the purpose
63 of regulating, controlling, preventing, or otherwise
64 rendering unobjectionable and harmless the pollution of
65 the waters of said Potomac drainage area by sewage and
66 industrial and other wastes"; and

67 Whereas, The regulation, control and prevention of
68 pollution is directly affected by the quantities of water
69 in said streams and the uses to which such water may
70 be put, thereby requiring integration and coordination
71 of the planning for the development and use of the water
72 and associated land resources through cooperation with,
73 and support and coordination of, the activities of federal,
74 state, local and private agencies, groups, and interests
75 concerned with the development, utilization and conser-
76 vation of the water and associated land resources of the
77 said conservancy district; now, therefore,

78 The states of Maryland and West Virginia, the
79 commonwealths of Pennsylvania and Virginia, and the
80 District of Columbia, hereinafter designated signatory
81 bodies, do hereby create the Potomac valley conservancy
82 district, hereinafter designated the conservancy district,

83 comprising all of the area drained by the Potomac River
84 and its tributaries; and also, do hereby create, as an
85 agency of each signatory body, the interstate commis-
86 sion on the Potomac River basin, hereinafter designated
87 the commission, under the articles of organization as set
88 forth below.

89 Article I

90 The interstate commission on the Potomac River basin
91 shall consist of three members from each signatory body
92 and three members appointed by the president of the
93 United States. Said commissioners, other than those
94 appointed by the president, shall be chosen in a manner
95 and for the terms provided by law of the signatory body
96 from which they are appointed, and shall serve without
97 compensation from the commission but shall be paid by
98 the commission their actual expenses incurred and
99 incident to the performance of their duties.

100 (A) The commission shall meet and organize within
101 thirty days after the effective date of this compact, shall
102 elect from its number a chairman and vice chairman,
103 shall adopt suitable bylaws, shall make, adopt and
104 promulgate such rules and regulations as are necessary
105 for its management and control, and shall adopt a seal.

106 (B) The commission shall appoint, and at its pleasure,
107 remove or discharge such officers and legal, engineer-
108 ing, clerical, expert and other assistants as may be
109 required to carry the provisions of this compact into
110 effect, and shall determine their qualifications and fix
111 their duties and compensation. Such personnel as may
112 be employed shall be employed without regard to any
113 civil service or other similar requirements for employees
114 of any of the signatory bodies. The commission may
115 maintain one or more offices for the transaction of its
116 business and may meet at any time within the area of
117 the signatory bodies.

118 (C) The commission shall keep accurate accounts of all
119 receipts and disbursements and shall make an annual
120 report thereof and shall in such report set forth in detail
121 the operations and transactions conducted by it pursu-
122 ant to this compact. The commission, however, shall not

123 incur any obligations for administrative or other
124 expenses prior to the making of appropriations adequate
125 to meet the same nor shall it in any way pledge the
126 credit of any of the signatory bodies. Each of the
127 signatory bodies reserves the right to make at any time
128 an examination and audit of the accounts of the
129 commission.

130 (D) A quorum of the commission shall, for the
131 transaction of business, the exercise of any powers, or
132 the performance of any duties, consist of at least six
133 members of the commission who shall represent at least
134 a majority of the signatory bodies: *Provided, however,*
135 That no action of the commission relating to policy or
136 stream classification or standards shall be binding on
137 any one of the signatory bodies unless at least two of the
138 commissioners from such signatory body shall vote in
139 favor thereof.

140 Article II

141 The commission shall have the power:

142 (A) To collect, analyze, interpret, coordinate, tabulate,
143 summarize and distribute technical and other data
144 relative to, and to conduct studies, sponsor research and
145 prepare reports on, pollution and other water problems
146 of the conservancy district.

147 (B) To cooperate with the legislative and administra-
148 tive agencies of the signatory bodies, or the equivalent
149 thereof, and with other commissions and federal, local
150 governmental and nongovernmental agencies, organiza-
151 tions, groups and persons for the purpose of promoting
152 uniform laws, rules or regulations for the abatement
153 and control of pollution of streams and the utilization,
154 conservation and development of the water and asso-
155 ciated land resources in the said conservancy district.

156 (C) To disseminate to the public information in
157 relation to stream pollution problems and the utilization,
158 conservation and development of the water and asso-
159 ciated land resources of the conservancy district and on
160 the aims, views, purposes and recommendations of the
161 commission in relation thereto.

162 (D) To cooperate with, assist, and provide liaison for
163 and among, public and nonpublic agencies and organ-
164 izations concerned with pollution and other water
165 problems in the formulation and coordination of plans,
166 programs and other activities relating to stream
167 pollution or to the utilization, conservation or develop-
168 ment of water or associated land resources, and to
169 sponsor cooperative action in connection with the
170 foregoing.

171 (E) In its discretion and at any time during or after
172 the formulation thereof, to review and to comment upon
173 any plan or program of any public or private agency or
174 organization relating to stream pollution or the utiliza-
175 tion, conservation or development of water or associated
176 land resources.

177 (F) (1) To make, and, if needful from time to time,
178 revise and to recommend to the signatory bodies,
179 reasonable minimum standards for the treatment of
180 sewage and industrial or other wastes now discharged
181 or to be discharged in the future to the streams of the
182 conservancy district, and also, for cleanliness of the
183 various streams in the conservancy district.

184 (2) To establish reasonable physical, chemical and
185 bacteriological standards of water quality satisfactory
186 for various classifications of use. It is agreed that each
187 of the signatory bodies through appropriate agencies
188 will prepare a classification of its interstate waters in
189 the district in entirety or by portions according to
190 present and proposed highest use, and for this purpose
191 technical experts employed by appropriate state water
192 pollution control agencies are authorized to confer on
193 questions relating to classification of interstate waters
194 affecting two or more states. Each signatory body
195 agrees to submit its classification of its interstate waters
196 to the commission with its recommendations thereon.

197 The commission shall review such classification and
198 recommendations and accept or return the same with its
199 comments. In the event of return, the signatory body
200 will consider the comments of the commission and
201 resubmit the classification proposal, with or without

202 amendment, with any additional comments for further
203 action by the commission.

204 It is agreed that after acceptance of such classifica-
205 tion, the signatory body through its appropriate state
206 water pollution control agencies will work to establish
207 programs of treatment of sewage and industrial wastes
208 which will meet or exceed standards established by the
209 commission for classified waters. The commission may
210 from time to time make such changes in definitions of
211 classifications and in standards as may be required by
212 changed conditions or as may be necessary for unifor-
213 mity and in a manner similar to that in which these
214 standards and classifications were originally
215 established.

216 It is recognized, owing to such variable factors as
217 location, size, character and flow and the many varied
218 uses of the waters subject to the terms of this compact,
219 that no single standard of sewage and waste treatment
220 and no single standard of quality of receiving waters is
221 practical and that the degree of treatment of sewage and
222 industrial wastes should take into account the classifi-
223 cation of the receiving waters according to present and
224 proposed highest use, such as for drinking water supply,
225 bathing and other recreational purposes, maintenance
226 and propagation of fish life, industrial and agricultural
227 uses, navigation and disposal of wastes.

228 Article III

229 For the purpose of dealing with the problems of
230 pollution and of water and associated land resources in
231 specific areas which directly affect two or more, but not
232 all, signatory bodies, the commission may establish
233 sections of the commissions consisting of the commis-
234 sioners from such affected signatory bodies: *Provided,*
235 *however,* That no signatory body may be excluded from
236 any section in which it wishes to participate. The
237 commissioners appointed by the president of the United
238 States may participate in any section. The commission
239 shall designate, and from time to time may change, the
240 geographical area with respect to which each section
241 shall function. Each section shall, to such extent as the

242 commission may from time to time authorize, have
243 authority to exercise and perform with respect to its
244 designated geographical area any power or function
245 vested in the commission, and in addition may exercise
246 such other powers and perform such functions as may
247 be vested in such section by the laws of any signatory
248 body or by the laws of the United States. The exercise
249 or performance by a section of any power or function
250 vested in the commission may be financed by the
251 commission, but the exercise or performance of powers
252 or functions vested solely in a section shall be financed
253 through funds provided in advance by the bodies,
254 including the United States, participating in such
255 section.

256

Article IV

257 The moneys necessary to finance the commission in
258 the administration of its business in the conservancy
259 district shall be provided through appropriations from
260 the signatory bodies and the United States, in the
261 manner prescribed by the laws of the several signatory
262 bodies and of the United States, and in amounts as
263 follows:

264 The pro rata contribution shall be based on such
265 factors as population; the amount of industrial and
266 domestic pollution; and a flat service charge; as shall be
267 determined from time to time by the commission,
268 subject, however, to the approval, ratification and
269 appropriation of such contribution by the several
270 signatory bodies.

271

Article V

272 Pursuant to the aims and purposes of this compact,
273 the signatory bodies mutually agree:

274 1. Faithful cooperation in the abatement of existing
275 pollution and the prevention of future pollution in the
276 streams of the conservancy district and in planning for
277 the utilization, conservation and development of the
278 water and associated land resources thereof.

279 2. The enactment of adequate and, insofar as is
280 practicable, uniform legislation for the abatement and

281 control of pollution and control and use of such streams.

282 3. The appropriation of biennial sums on the propor-
283 tionate basis as set forth in article four.

284 Article VI

285 This compact shall become effective immediately
286 after it shall have been ratified by the majority of the
287 legislatures of the states of Maryland and West Virgi-
288 nia, the commonwealths of Pennsylvania and Virginia,
289 and by the commissioners of the District of Columbia,
290 and approval by the Congress of the United States:
291 *Provided, however,* That this compact shall not be
292 effective as to any signatory body until ratified thereby.

293 Article VII

294 Any signatory body may, by legislative action, after
295 one year's notice to the commission, withdraw from this
296 compact.

§22C-11-2. Appointment of alternates.

1 The governor, by and with the consent of the Senate,
2 shall appoint an alternate member for the two members
3 of the commission who are not ex officio, and each
4 alternate shall have power to act in the absence of the
5 person for whom he is alternate. The governor shall
6 appoint the first alternates hereunder on or before July
7 first, one thousand nine hundred forty-nine, the term of
8 each alternate to run concurrently with the term of the
9 member for whom he is alternate.

**§22C-11-3. Expenses of commission; appropriation;
officers and employees; meetings.**

1 The commissioners shall be reimbursed, out of
2 moneys appropriated for such purposes, all sums which
3 they necessarily shall expend in the discharge of their
4 duties as members of such commission.

5 There shall be appropriated to the commission out of
6 any moneys in the state treasury unexpended and
7 available therefor, and not otherwise appropriated, such
8 sums as may be necessary for the uses and purposes of
9 the commission in carrying out the provisions of this

10 article and the payment of the proper proportion of the
11 state of West Virginia of the expenses of the "Interstate
12 Commission on the Potomac River Basin," in accordance
13 with article four of said compact.

14 The commission shall elect from its membership a
15 chairman and may also select a secretary who need not
16 be a member. The commission may employ such
17 assistants as it may deem necessarily required, and the
18 duties of such assistants shall be prescribed and their
19 compensation fixed by the commission and paid out of
20 the state treasury out of funds appropriated for such
21 purposes upon the requisition of said commission.

22 The commission shall meet at such times and places
23 as agreed upon by the commissioners or upon call of its
24 chairman.

§22C-11-4. Effective date; findings; termination date.

1 This article shall become effective upon the adoption
2 of substantially similar amendments to the interstate
3 compact by each of the signatory states to the compact,
4 and upon the approval of the amendments to the
5 compact by the Congress of the United States.

6 After having conducted a performance and fiscal
7 audit through its joint committee on government
8 operations, pursuant to article ten, chapter four of this
9 code, the Legislature hereby finds and declares that
10 West Virginia should remain a member of the interstate
11 compact. Accordingly, pursuant to the provisions of
12 section five, article ten, chapter four of this code, West
13 Virginia shall continue to be a member of this compact
14 until the first day of July, one thousand nine hundred
15 ninety-eight.

§22C-11-5. Restrictions.

1 Neither the governor of the state of West Virginia nor
2 any member of the commission aforesaid, representing
3 the state of West Virginia, shall consent to the construc-
4 tion of any dam, whether in the state of West Virginia,
5 or without this state, which shall flood lands in this
6 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.

1 The following Ohio River Valley Water Sanitation
2 Compact, which has been negotiated by representatives
3 of the states of Illinois, Indiana, Kentucky, New York,
4 Ohio, Pennsylvania, Tennessee and West Virginia, is
5 hereby approved, ratified, adopted, enacted into law,
6 and entered into by the state of West Virginia as a party
7 thereto and signatory state, namely:

8 OHIO RIVER VALLEY
9 WATER SANITATION COMPACT

10 Whereas, A substantial part of the territory of each
11 of the signatory states is situated within the drainage
12 basin of the Ohio River; and

13 Whereas, The rapid increase in the population of the
14 various metropolitan areas situate within the Ohio
15 drainage basin, and the growth in industrial activity
16 within that area, have resulted in recent years in an
17 increasingly serious pollution of the waters and streams
18 within the said drainage basin, constituting a grave
19 menace to the health, welfare, and recreational facilities
20 of the people living in such basin, and occasioning great
21 economic loss; and

22 Whereas, The control of future pollution and the
23 abatement of existing pollution in the waters of said
24 basin are of prime importance to the people thereof, and
25 can best be accomplished through the cooperation of the
26 states situated therein, by and through a joint or
27 common agency;

28 Now, Therefore, the states of Illinois, Indiana,
29 Kentucky, New York, Ohio, Pennsylvania, Tennessee
30 and West Virginia do hereby covenant and agree as
31 follows:

32 Article I

33 Each of the signatory states pledges to each of the
34 other signatory states faithful cooperation in the control
35 of future pollution in and abatement of existing
36 pollution from the rivers, streams and waters in the
37 Ohio River basin which flow through, into or border
38 upon any of such signatory states, and in order to effect
39 such object, agrees to enact any necessary legislation to
40 enable each such state to place and maintain the waters
41 of said basin in a satisfactory sanitary condition,
42 available for safe and satisfactory use as public and
43 industrial water supplies after reasonable treatment,
44 suitable for recreational usage, capable of maintaining
45 fish and other aquatic life, free from unsightly or
46 malodorous nuisances due to floating solids or sludge
47 deposits, and adaptable to such other uses as may be
48 legitimate.

49 Article II

50 The signatory states hereby create a district to be
51 known as the "Ohio River valley water sanitation
52 district," hereinafter called the district, which shall
53 embrace all territory within the signatory states, the
54 water in which flows ultimately into the Ohio River, or
55 its tributaries.

56 Article III

57 The signatory states hereby create the "Ohio River
58 valley water sanitation commission," hereinafter called
59 the commission, which shall be a body corporate, with
60 the powers and duties set forth herein, and such
61 additional powers as may be conferred upon it by
62 subsequent action of the respective legislatures of the
63 signatory states or by act or acts of the Congress of the
64 United States.

65 Article IV

66 The commission shall consist of three commissioners
67 from each state, each of whom shall be a citizen of the
68 state from which he is appointed, and three commission-
69 ers representing the United States government. The
70 commissioners from each state shall be chosen in the
71 manner and for the terms provided by the laws of the
72 state from which they shall be appointed, and any
73 commissioner may be removed or suspended from office
74 as provided by the law of the state from which he shall
75 be appointed. The commissioners representing the
76 United States shall be appointed by the president of the
77 United States, or in such other manner as may be
78 provided by Congress. The commissioners shall serve
79 without compensation, but shall be paid their actual
80 expenses incurred in and incident to the performance of
81 their duties; but nothing herein shall prevent the
82 appointment of an officer or employee of any state or
83 of the United States government.

84

Article V

85 The commission shall elect from its number a
86 chairman and vice chairman, and shall appoint, and at
87 its pleasure remove or discharge, such officers and legal,
88 clerical, expert and other assistants as may be required
89 to carry the provisions of this compact into effect, and
90 shall fix and determine their duties, qualifications and
91 compensation. It shall adopt a seal and suitable bylaws,
92 and shall adopt and promulgate rules and regulations
93 for its management and control. It may establish and
94 maintain one or more offices within the district for the
95 transaction of its business, and may meet at any time
96 or place. One or more commissioners from a majority
97 of the member states shall constitute a quorum for the
98 transaction of business.

99 The commission shall submit to the governor of each
100 state, at such time as he may request, a budget of its
101 estimated expenditures for such period as may be
102 required by the laws of such state for presentation to
103 the legislature thereof.

104 The commission shall keep accurate books of account,
105 showing in full its receipts and disbursements, and said

106 books of account shall be open at any reasonable time
107 to the inspection of such representatives of the respec-
108 tive signatory states as may be duly constituted for that
109 purpose.

110 On or before the first day of December of each year,
111 the commission shall submit to the respective governors
112 of the signatory states a full and complete report of its
113 activities for the preceding year.

114 The commission shall not incur any obligations of any
115 kind prior to the making of appropriations adequate to
116 meet the same; nor shall the commission pledge the
117 credit of any of the signatory states, except by and with
118 the authority of the legislature thereof.

119

Article VI

120 It is recognized by the signatory states that no single
121 standard for the treatment of sewage or industrial
122 wastes is applicable in all parts of the district due to
123 such variable factors as size, flow, location, character,
124 self-purification, and usage of waters within the district.
125 The guiding principle of this compact shall be that
126 pollution by sewage or industrial wastes originating
127 within a signatory state shall not injuriously affect the
128 various uses of the interstate waters as hereinbefore
129 defined.

130 All sewage from municipalities or other political
131 subdivisions, public or private institutions, or corpora-
132 tions, discharged or permitted to flow into these portions
133 of the Ohio River and its tributary waters which form
134 boundaries between, or are contiguous to, two or more
135 signatory states, or which flow from one signatory state
136 into another signatory state, shall be so treated, within
137 a time reasonable for the construction of the necessary
138 works, as to provide for substantially complete removal
139 of settleable solids, and the removal of not less than
140 forty-five percent of the total suspended solids: *Provided,*
141 That in order to protect the public health or to preserve
142 the waters for other legitimate purposes, including those
143 specified in article I, in specific instances such higher
144 degree of treatment shall be used as may be determined
145 to be necessary by the commission after investigation,

146 due notice and hearing.

147 All industrial wastes discharged or permitted to flow
148 into the aforesaid waters shall be modified or treated,
149 within a time reasonable for the construction of the
150 necessary works, in order to protect the public health
151 or to preserve the waters for other legitimate purposes,
152 including those specified in article I, to such degree as
153 may be determined to be necessary by the commission
154 after investigation, due notice and hearing.

155 All sewage or industrial wastes discharged or permit-
156 ted to flow into tributaries of the aforesaid waters
157 situated wholly within one state shall be treated to that
158 extent, if any, which may be necessary to maintain such
159 waters in a sanitary and satisfactory condition at least
160 equal to the condition of the waters of the interstate
161 stream immediately above the confluence.

162 The commission is hereby authorized to adopt,
163 prescribe and promulgate rules, regulations and stand-
164 ards for administering and enforcing the provisions of
165 this article.

166

Article VII

167 Nothing in this compact shall be construed to limit
168 the powers of any signatory state, or to repeal or prevent
169 the enactment of any legislation or the enforcement of
170 any requirement by any signatory state, imposing
171 additional conditions and restrictions to further lessen
172 or prevent the pollution of waters within its jurisdiction.

173

Article VIII

174 The commission shall conduct a survey of the territory
175 included within the district, shall study the pollution
176 problems of the district, and shall make a comprehen-
177 sive report for the prevention or reduction of stream
178 pollution therein. In preparing such report, the commis-
179 sion shall confer with any national or regional planning
180 body which may be established, and any department of
181 the federal government authorized to deal with matters
182 relating to the pollution problems of the district. The
183 commission shall draft and recommend to the governors
184 of the various signatory states uniform legislation

185 dealing with the pollution of rivers, streams and waters
186 and other pollution problems within the district. The
187 commission shall consult with and advise the various
188 states, communities, municipalities, corporations,
189 persons, or other entities with regard to particular
190 problems connected with the pollution of waters,
191 particularly with regard to the construction of plants for
192 the disposal of sewage, industrial and other waste. The
193 commission shall, more than one month prior to any
194 regular meeting of the legislature of any state which is
195 a party thereto, present to the governor of the state its
196 recommendations relating to enactments to be made by
197 any legislature in furthering the intents and purposes
198 of this compact.

199

Article IX

200 The commission may from time to time, after inves-
201 tigation and after a hearing, issue an order or orders
202 upon any municipality, corporation, person or other
203 entity discharging sewage or industrial waste into the
204 Ohio River or any other river, stream or water, any part
205 of which constitutes any part of the boundary line
206 between any two or more of the signatory states, or into
207 any stream any part of which flows from any portion
208 of one signatory state through any portion of another
209 signatory state. Any such order or orders may prescribe
210 the date on or before which such discharge shall be
211 wholly or partially discontinued, modified or treated or
212 otherwise disposed of. The commission shall give
213 reasonable notice of the time and place of the hearing
214 to the municipality, corporation or other entity against
215 which such order is proposed. No such order shall go
216 into effect unless and until it receives the assent of at
217 least a majority of the commissioners from each of not
218 less than a majority of the signatory states; and no such
219 order upon a municipality, corporation, person or entity
220 in any state shall go into effect unless and until it
221 receives the assent of not less than a majority of the
222 commissioners from such state.

223 It shall be the duty of the municipality, corporation,
224 person or other entity to comply with any such order

225 issued against it or him by the commission, and any
226 court of general jurisdiction or any United States
227 district court in any of the signatory states shall have
228 the jurisdiction, by mandamus, injunction, specific
229 performance or other form of remedy, to enforce any
230 such order against any municipality, corporation or
231 other entity domiciled or located within such state or
232 whose discharge of the waste takes place within or
233 adjoining such state, or against any employee, depart-
234 ment or subdivision of such municipality, corporation,
235 person or other entity: *Provided*, That such court may
236 review the order and affirm, reverse or modify the same
237 upon any of the grounds customarily applicable in
238 proceedings for court review of administrative decisions.
239 The commission or, at its request, the attorney general
240 or other law-enforcing official, shall have power to
241 institute in such court any action for the enforcement
242 of such order.

243

Article X

244 The signatory states agree to appropriate for the
245 salaries, office and other administrative expenses, their
246 proper proportion of the annual budget as determined
247 by the commission and approved by the governors of the
248 signatory states, one half of such amount to be prorated
249 among the several states in proportion to their popula-
250 tion within the district at the last preceding federal
251 census, the other half to be prorated in proportion to
252 their land area within the district.

253

Article XI

254 This compact shall become effective upon ratification
255 by the legislatures of a majority of the states located
256 within the district and upon approval by the Congress
257 of the United States; and shall become effective as to any
258 additional states signing thereafter at the time of such
259 signing.

260 In Witness Whereof, the various signatory states have
261 executed this compact through their respective compact
262 commissioners.

***§22C-12-2. Appointment of members of commission; director of division of environmental protection member ex officio.**

1 In pursuance of article four of said compact, there
2 shall be three members of the "Ohio River valley water
3 sanitation commission" from the state of West Virginia.
4 The governor, by and with the advice and consent of the
5 Senate, shall appoint two persons as two of such
6 commissioners, each of whom shall be a resident and
7 citizen of this state. The terms of one of the said two
8 commissioners first appointed shall be three years and
9 of the other shall be six years; and their successors shall
10 be appointed by the governor, by and with the advice
11 and consent of the Senate for terms of six years each.
12 Each commissioner shall hold office until his successor
13 shall be appointed and qualified. Vacancies occurring in
14 the office of any such commissioner from any reason or
15 cause shall be filled by appointment by the governor, by
16 and with the advice and consent of the Senate, for the
17 unexpired term. The third commissioner from this state
18 is the director of the division of environmental protec-
19 tion, ex officio, and the term of the ex officio commis-
20 sioner terminates at the time he ceases to hold the office
21 of director of the division of environmental protection,
22 and his successor as a commissioner shall be his
23 successor as the director of the division of environmental
24 protection. With the exception of the issuance of any
25 order under the provisions of article nine of the compact,
26 the ex officio commissioner may delegate, from time to
27 time, to any deputy or other subordinate in his division
28 or office, the power to be present and participate,
29 including voting, as his representative or substitute at
30 any meeting of or hearing by or other proceeding of the
31 commission. The terms of each of the initial three
32 members shall begin at the date of the appointment of
33 the two appointive commissioners, provided the said
34 compact shall then have gone into effect in accordance
35 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.

36 upon the date which said compact shall become effective
37 in accordance with said article eleven.

38 Any commissioner may be removed from office by the
39 governor.

§22C-12-3. Powers of commission; duties of state officers, departments, etc.; jurisdiction of circuit courts; enforcement of article.

1 There is hereby granted to the commission and
2 commissioners thereof all the powers provided for in the
3 said compact and all the powers necessary or incidental
4 to the carrying out of said compact in every particular.
5 All officers of this state are hereby authorized and
6 directed to do all things falling within their respective
7 provinces and jurisdiction necessary to or incidental to
8 the carrying out of said compact in every particular; it
9 being hereby declared to be the policy of this state to
10 perform and carry out the said compact and to accom-
11 plish the purposes thereof. All officers, bureaus, depart-
12 ments and persons of and in the state government or
13 administration of this state of West Virginia are hereby
14 authorized and directed at convenient times and upon
15 request of the said commission to furnish the said
16 commission with information and data possessed by
17 them or any of them and to aid said commission by loan
18 of personnel or other means lying within their legal
19 powers respectively.

20 The circuit courts of this state are hereby granted the
21 jurisdiction specified in article nine of said compact, and
22 the attorney general or any other law-enforcing officer
23 of this state is hereby granted the power to institute any
24 action for the enforcement of the orders of the commis-
25 sion as specified in said article nine of the compact.

§22C-12-4. Powers granted herein supplemental to other powers vested in commission.

1 Any powers herein granted to the commission shall
2 be regarded as in aid of and supplemental to and in no
3 case a limitation upon any of the powers vested in said
4 commission by other laws of this state or by the laws
5 of the states of Illinois, Indiana, Kentucky, New York,

6 Ohio, Pennsylvania, Tennessee, or by Congress or the
7 terms of said compact.

**§22C-12-5. Expenses of commission; appropriations;
officers and employees; meetings.**

1 The commissioners shall be reimbursed out of moneys
2 appropriated for such purposes, all sums which they
3 necessarily shall expend in the discharge of their duties
4 as members of such commission.

5 There shall be appropriated to the commission out of
6 any moneys in the state treasury unexpended and
7 available therefor, and not otherwise appropriated, such
8 sums as may be necessary for the uses and purposes of
9 the commission in carrying out the provisions of this
10 article and the payment of the proper proportion of the
11 state of West Virginia of the annual budget of the "Ohio
12 River valley water sanitation commission" in accordance
13 with article ten of said compact.

14 The commission shall elect from its membership a
15 chairman and may also select a secretary who need not
16 be a member. The commission may employ such
17 assistance as it may deem necessarily required, and the
18 duties of such assistants shall be prescribed and their
19 compensation fixed by the commission and paid out of
20 the state treasury out of funds appropriated for such
21 purposes upon the requisition of said commission.

22 The commission shall meet at such times and places
23 as agreed upon by the commissioners or upon call of its
24 chairman.

***§22C-12-6. When article effective; findings; continu-
ation.**

1 This article shall take effect and become operative
2 and the compact be executed for and on behalf of this
3 state only from and after the approval, ratification, and
4 adoption and entering into thereof by the states of New
5 York, Pennsylvania, Ohio and Virginia.

6 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.

7 review through its joint committee on government
8 operations, pursuant to article ten, chapter four of this
9 code, the Legislature hereby finds and declares that
10 West Virginia should remain a member of the compact.
11 Accordingly, notwithstanding the provisions of article
12 ten, chapter four of this code, West Virginia shall
13 continue to be a member of this compact until the first
14 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 intention" defined.

1 (a) Notwithstanding anything hereinbefore or herein-
2 after contained, no employee or dependent of any
3 employee is entitled to receive any sum from the
4 workers' compensation fund, or to direct compensation
5 from any employer making the election and receiving
6 the permission mentioned in section nine, article two of
7 this chapter, or otherwise under the provisions of this
8 chapter, on account of any personal injury to or death
9 to any employee caused by a self-inflicted injury or the
10 intoxication of such employee. For the purpose of this
11 chapter, the commissioner may cooperate with the office
12 of miners' health, safety and training and the state
13 division of labor in promoting general safety programs
14 and in formulating rules to govern hazardous
15 employments.

16 (b) If injury or death result to any employee from the
17 deliberate intention of his or her employer to produce
18 such injury or death, the employee, the widow, widower,
19 child or dependent of the employee has the privilege to
20 take under this chapter, and has a cause of action
21 against the employer, as if this chapter had not been
22 enacted, for any excess of damages over the amount
23 received or receivable under this chapter.

24 (c) (1) It is declared that enactment of this chapter
25 and the establishment of the workers' compensation

26 system in this chapter was and is intended to remove
27 from the common law tort system all disputes between
28 or among employers and employees regarding the
29 compensation to be received for injury or death to an
30 employee except as herein expressly provided, and to
31 establish a system which compensates even though the
32 injury or death of an employee may be caused by his
33 or her own fault or the fault of a co-employee; that the
34 immunity established in sections six and six-a, article
35 two of this chapter, is an essential aspect of this workers'
36 compensation system; that the intent of the Legislature
37 in providing immunity from common law suit was and
38 is to protect those so immunized from litigation outside
39 the workers' compensation system except as herein
40 expressly provided; that, in enacting the immunity
41 provisions of this chapter, the Legislature intended to
42 create a legislative standard for loss of that immunity
43 of more narrow application and containing more specific
44 mandatory elements than the common law tort system
45 concept and standard of willful, wanton and reckless
46 misconduct; and that it was and is the legislative intent
47 to promote prompt judicial resolution of the question of
48 whether a suit prosecuted under the asserted authority
49 of this section is or is not prohibited by the immunity
50 granted under this chapter.

51 (2) The immunity from suit provided under this
52 section and under section six-a, article two of this
53 chapter, may be lost only if the employer or person
54 against whom liability is asserted acted with "deliberate
55 intention". This requirement may be satisfied only if:

56 (i) It is proved that such employer or person against
57 whom liability is asserted acted with a consciously,
58 subjectively and deliberately formed intention to
59 produce the specific result of injury or death to an
60 employee. This standard requires a showing of an
61 actual, specific intent and may not be satisfied by
62 allegation or proof of (A) conduct which produces a
63 result that was not specifically intended; (B) conduct
64 which constitutes negligence, no matter how gross or
65 aggravated; or (C) willful, wanton or reckless miscon-
66 duct; or

67 (ii) The trier of fact determines, either through
68 specific findings of fact made by the court in a trial
69 without a jury, or through special interrogatories to the
70 jury in a jury trial, that all of the following facts are
71 proven:

72 (A) That a specific unsafe working condition existed
73 in the workplace which presented a high degree of risk
74 and a strong probability of serious injury or death;

75 (B) That the employer had a subjective realization and
76 an appreciation of the existence of such specific unsafe
77 working condition and of the high degree of risk and the
78 strong probability of serious injury or death presented
79 by such specific unsafe working condition;

80 (C) That such specific unsafe working condition was
81 a violation of a state or federal safety statute, rule or
82 regulation, whether cited or not, or of a commonly
83 accepted and well-known safety standard within the
84 industry or business of such employer, which statute,
85 rule, regulation or standard was specifically applicable
86 to the particular work and working condition involved,
87 as contrasted with a statute, rule, regulation or standard
88 generally requiring safe workplaces, equipment or
89 working conditions;

90 (D) That notwithstanding the existence of the facts set
91 forth in subparagraphs (A) through (C) hereof, such
92 employer nevertheless thereafter exposed an employee
93 to such specific unsafe working condition intentionally;
94 and

95 (E) That such employee so exposed suffered serious
96 injury or death as a direct and proximate result of such
97 specific unsafe working condition.

98 (iii) In cases alleging liability under the provisions of
99 the preceding paragraph (ii):

100 (A) No punitive or exemplary damages shall be
101 awarded to the employee or other plaintiff;

102 (B) Notwithstanding any other provision of law or
103 rule to the contrary, and consistent with the legislative
104 findings of intent to promote prompt judicial resolution

105 of issues of immunity from litigation under this chapter,
106 the court shall dismiss the action upon motion for
107 summary judgment if it finds, pursuant to Rule 56 of
108 the Rules of Civil Procedure that one or more of the facts
109 required to be proved by the provisions of subpara-
110 graphs (A) through (E) of the preceding paragraph (ii)
111 do not exist, and the court shall dismiss the action upon
112 a timely motion for a directed verdict against the
113 plaintiff if after considering all the evidence and every
114 inference legitimately and reasonably raised thereby
115 most favorably to the plaintiff, the court determines that
116 there is not sufficient evidence to find each and every
117 one of the facts required to be proven by the provisions
118 of subparagraphs (A) through (E) of the preceding
119 paragraph (ii); and

120 (C) The provisions of this paragraph and of each
121 subparagraph thereof are severable from the provisions
122 of each other subparagraph, subsection, section, article
123 or chapter of this code so that if any provision of a
124 subparagraph of this paragraph is held void, the
125 remaining provisions of this act and this code remain
126 valid.

127 (d) The reenactment of this section in the regular
128 session of the Legislature during the year one thousand
129 nine hundred eighty-three does not in any way affect the
130 right of any person to bring an action with respect to
131 or upon any cause of action which arose or accrued prior
132 to the effective date of such reenactment.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article

2. Powers and Duties of Public Service Commission.
- 2B. Weather Modification.
3. Fire Prevention and Control Act.

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.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-eight, in addition to all other powers and
3 duties of the commission as defined in this article, the
4 commission shall establish, prescribe and enforce rates
5 and fees charged by commercial solid waste facilities,
6 as defined in section two, article fifteen, chapter twenty-
7 two of this code, that are owned or under the direct
8 control of persons or entities who are regulated under
9 section five, article two, chapter twenty-four-a of this
10 code. The commission shall establish, prescribe and
11 enforce rules providing for the safe transportation of
12 solid waste in the state.

13 (b) The public service commission shall study the
14 feasibility of incorporating and adopting guidelines for
15 solid waste collection fees that are based upon the
16 volume of solid waste generated by any person. This
17 report shall be submitted to the governor and the
18 members of the Legislature on or before the first day
19 of January, one thousand nine hundred ninety-three.

§24-2-1c. Certificate of need required for solid waste facilities; priority of disposal.

1 (a) Any person who holds a valid permit, compliance
2 order or administrative order allowing continued
3 operation of a commercial solid waste facility in this
4 state on the first day of September, one thousand nine
5 hundred ninety-one, shall submit an application for a
6 certificate of need with the public service commission,
7 on forms prescribed by the commission, prior to the first
8 day of March, one thousand nine hundred ninety-two.
9 The commission shall grant such application within
10 sixty days after submission of a complete application.

11 (b) Any person applying for a permit to construct,
12 operate or expand a commercial solid waste facility as
13 defined in section two, article fifteen, chapter twenty-
14 two of this code, or any person seeking a major permit
15 modification from the division of environmental protec-
16 tion first shall obtain a certificate of need from the
17 public service commission. Application for such certifi-
18 cate shall be submitted on forms prescribed by the
19 commission. The commission shall grant or deny a
20 certificate of need, in accordance with provisions set
21 forth in this chapter. If the commission grants a
22 certificate of need, the commission may include condi-
23 tions not inconsistent with the criteria set forth in this
24 section.

25 (c) For purposes of subsections (a) and (b) of this
26 section, a complete application consists of the following
27 and notwithstanding any other provision of this chapter
28 to the contrary, such information contained in the
29 application provided by the applicant is not confidential
30 and is disclosable pursuant to the provisions of chapter
31 twenty-nine-b of this code:

32 (1) The names of the owners or operators of the
33 facility including any officer, director, manager, person
34 owning five percent or more interest or other person
35 conducting or managing the affairs of the applicant or
36 of the proposed facility;

37 (2) The proposed or existing location of the facility;

38 (3) A description of the geographic area to be served
39 by the facility;

40 (4) The anticipated total number of citizens to be
41 served by the facility;

42 (5) The average monthly tonnage of solid waste to be
43 disposed of by the facility;

44 (6) The total monthly tonnage of solid waste for which
45 the facility is seeking a permit from the division of
46 environmental protection;

47 (7) The anticipated lifespan and closure date of the
48 facility; and

49 (8) Any other information requested on the forms
50 prescribed by the public service commission.

51 (d) In considering whether to grant a certificate of
52 need the commission shall consider, but is not limited
53 to considering, the following factors:

54 (1) The total tonnage of solid waste generated within
55 the county;

56 (2) The total tonnage of solid waste generated within
57 the wasteshed;

58 (3) The current capacity and lifespan of other solid
59 waste facilities located within the county, if any;

60 (4) The current capacity and lifespan of other solid
61 waste facilities located within the wasteshed, if any;

62 (5) The current capacity and lifespan of other solid
63 waste facilities located within this state;

64 (6) The lifespan of the proposed or existing facility;

65 (7) The cost of transporting solid waste from the
66 points of generation within the county or wasteshed and
67 the disposal facility;

68 (8) The impact of the proposed or existing facility on
69 needs and criteria contained in the statewide solid waste
70 management plan; and

71 (9) Any other criteria which the commission regularly
72 utilizes in making such determinations.

73 (e) The public service commission shall deny a
74 certificate of need upon one or more of the following
75 findings:

76 (1) The proposed capacity is unreasonable in light of
77 demonstrated needs;

78 (2) The location of the facility is inconsistent with the
79 statewide solid waste management plan;

80 (3) The location of the facility is inconsistent with any
81 applicable county or regional solid waste management
82 plan;

83 (4) The proposed capacity is not reasonably cost

84 effective in light of alternative disposal sites;

85 (5) The proposal, taken as a whole, is inconsistent with
86 the needs and criteria contained in the statewide solid
87 waste management plan; or

88 (6) The proposal, taken as a whole, is inconsistent with
89 the public convenience and necessity.

90 (f) Any certificates of need granted pursuant to this
91 section shall be conditioned on acceptance of:

92 (1) Solid waste generated within the county in which
93 the facility is or is to be located; and

94 (2) Solid waste generated within the watershed in
95 which the facility is or is to be located.

96 (g) An application for a certificate of need shall be
97 submitted prior to submitting an application for
98 certificate of site approval in accordance with section
99 twenty-four, article four, chapter twenty-two-c of this
100 code. Upon the decision of the commission to grant or
101 deny a certificate of need, the commission shall im-
102 mediately notify the solid waste management board and the
103 division of environmental protection.

104 (h) Any party aggrieved by a decision of the commis-
105 sion granting or denying a certificate of need may
106 obtain judicial review thereof in the same manner
107 provided in section one, article five of this chapter.

108 (i) No person may sell, lease or transfer a certificate
109 of need without first obtaining the consent and approval
110 of the commission pursuant to the provisions of section
111 twelve, article two of this chapter.

§24-2-1f. Jurisdiction of commission over solid waste facilities.

1 Effective the first day of July, one thousand nine
2 hundred eighty-nine, in addition to all other powers and
3 duties of the commission as defined in this article, the
4 commission shall establish, prescribe and enforce rates
5 and fees charged by commercial solid waste facilities,
6 as defined in subsection (b), section two, article four,
7 chapter twenty-two-c of this code.

§24-2-1h. Additional powers and duties of commission to control flow of solid waste.

1 (a) Upon the petition of any county or regional solid
2 waste authority, motor carrier or solid waste facility, or
3 upon the commission's own motion, the commission may
4 issue an order that solid waste generated in the
5 surrounding geographical area of a solid waste facility
6 and transported for processing or disposal by solid waste
7 collectors and haulers who are "motor carriers", as
8 defined in chapter twenty-four-a of this code, be
9 processed or disposed of at a designated solid waste
10 facility or facilities: *Provided*, That such order shall not
11 include:

12 (1) Disposal of solid waste at a solid waste facility by
13 the person who owns, operates or leases the solid waste
14 disposal facility if it is used exclusively to dispose of
15 waste originally produced by such person in such
16 person's regular business or personal activities or by
17 persons utilizing the facility on a cost-sharing or
18 nonprofit basis;

19 (2) Reuse or recycling of any solid waste; or

20 (3) Disposal of residential solid waste by an individual
21 not in the business of hauling or disposing of solid waste
22 on such days and times as designated pursuant to the
23 provisions of section seven, article fifteen, chapter
24 twenty-two of this code.

25 (b) In determining whether to issue an order estab-
26 lishing flow control to a solid waste facility, the
27 commission shall consider, but is not limited to consid-
28 ering, the nature and composition of the solid waste, the
29 environmental impact of controlling the flow of solid
30 waste, the efficient disposal of solid waste, financial
31 feasibility of proposed or existing solid waste facilities,
32 the county or region solid waste control plan, the
33 statewide solid waste control plan and the public
34 convenience and necessity.

35 (c) The public service commission shall promulgate
36 rules providing standards and criteria to effectuate the
37 purposes of this section.

38 (d) Notwithstanding any provision of this code to the
39 contrary, excepting rules of the public service commis-
40 sion from legislative rule-making review, the public
41 service commission shall propose a legislative rule in
42 accordance with the provisions of article three, chapter
43 twenty-nine-a of this code, which shall mandate that
44 motor carriers transport source-separated recyclable
45 materials to a recycling facility. Such legislative rule
46 shall provide, at a minimum, for a separate rate for the
47 transportation of such materials or that such motor
48 carriers may contract with a customer to waive the
49 charge for transporting such materials in exchange for
50 the value of such materials.

51 (e) Notwithstanding any provision of this code to the
52 contrary, the public service commission is hereby
53 authorized to employ ten persons, who shall be in the
54 classified exempt service, in addition to any personnel
55 positions otherwise authorized or allocated to the
56 commission as of the effective date of this section to
57 facilitate enforcement of duties imposed upon the
58 commission in the regulation of solid waste disposal
59 during the second extraordinary session of the Legisla-
60 ture, one thousand nine hundred ninety-one.

**§24-2-1i. Commission authorized to issue emergency
certificate of need to certain commercial
solid waste facilities; division of environmen-
tal protection to modify facility permit;
criteria for emergency certificates.**

1 (a) Notwithstanding any provision of this article, or
2 any provision of article fifteen, chapter twenty-two or
3 article four, chapter twenty-two-c, or any other provi-
4 sion of this code, upon the application of any commercial
5 solid waste facility, the commission may grant to a
6 commercial solid waste facility an emergency certificate
7 of need to increase the maximum monthly solid waste
8 disposal tonnage, for a period not to exceed one year, to
9 the extent deemed necessary to prevent any disruption
10 of solid waste disposal services in any county or
11 watershed of the state resulting from the closure of an
12 existing landfill in said county or watershed. The
13 authority granted to the commission under this section

14 shall expire after the thirtieth day of September, one
15 thousand nine hundred ninety-three. No temporary
16 certificate issued pursuant to this section shall extend
17 beyond the thirtieth day of September, one thousand
18 nine hundred ninety-four. The director of the division of
19 environmental protection shall modify any commercial
20 solid waste facility permit, issued under article fifteen,
21 chapter twenty-two of this code, to conform with the
22 maximum monthly solid waste disposal tonnage and any
23 other terms and conditions set forth in a temporary
24 certificate issued under this section.

25 (b) If the net tonnage increase under a temporary
26 certificate application made pursuant to subsection (a)
27 of this section would cause the gross monthly solid waste
28 disposal tonnage of such facility to exceed ten thousand
29 tons, a temporary certificate shall be issued only if the
30 solid waste facility has: (1) Obtained from the county or
31 regional solid waste authority for the county or counties
32 in which the facility is located a certificate of site
33 approval or approval for conversion from a Class B
34 facility to a Class A facility; and (2) obtained from the
35 county or regional solid waste authority for the county
36 or counties in which the facility is located approval to
37 increase the maximum monthly tonnage disposed at the
38 facility; and (3) obtained from the county commission for
39 the county or counties in which the landfill is located
40 approval to operate as a Class A facility; and (4) has a
41 certificate of need application pending before the public
42 service commission; and (5) has installed a composite
43 liner system in compliance with the requirements set
44 forth in the solid waste management rules promulgated
45 by the division of environmental protection or its
46 predecessor. Such emergency certificate shall not
47 authorize an increase in the maximum monthly solid
48 waste disposal tonnage in an amount greater than that
49 approved by the county or regional solid waste authority
50 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.

1 (a) The rates and charges of electric cooperatives,
2 natural gas cooperatives and municipally operated
3 public utilities, except for municipally operated com-
4 mercial solid waste facilities as defined in section two,
5 article fifteen, chapter twenty-two of this code, and the
6 rates and charges for local exchange services provided
7 by telephone cooperatives are not subject to the rate
8 approval provisions of section four or four-a of this
9 article, but are subject to the limited rate provisions of
10 this section.

11 (b) All rates and charges set by electric cooperatives,
12 natural gas cooperatives and municipally operated
13 public utilities and all rates and charges for local
14 exchange services set by telephone cooperatives shall be
15 just, reasonable, applied without unjust discrimination
16 or preference and based primarily on the costs of
17 providing these services. Such rates and charges shall
18 be adopted by the electric, natural gas or telephone
19 cooperative's governing board and in the case of the
20 municipally operated public utility by municipal
21 ordinance to be effective not sooner than forty-five days
22 after adoption: *Provided*, That notice of intent to effect
23 a rate change shall be specified on the monthly billing
24 statement of the customers of such utility for the month
25 next preceding the month in which the rate change is
26 to become effective or the utility shall give its customers,
27 and in the case of a cooperative, its customers, members
28 and stockholders, such other reasonable notices as will
29 allow filing of timely objections to such rate change.
30 Such rates and charges shall be filed with the commis-
31 sion together with such information showing the basis
32 of such rates and charges and such other information
33 as the commission considers necessary. Any change in
34 such rates and charges with updated information shall
35 be filed with the commission. If a petition, as set out in
36 subdivision (1), (2) or (3), subsection (c) of this section,
37 is received and the electric cooperative, natural gas
38 cooperative, telephone cooperative or municipality has
39 failed to file with the commission such rates and charges
40 with such information showing the basis of rates and
41 charges and such other information as the commission
42 considers necessary, the suspension period limitation of

43 one hundred twenty days and the one hundred day
44 period limitation for issuance of an order by a hearing
45 examiner, as contained in subsections (d) and (e) of this
46 section, is tolled until the necessary information is filed.
47 The electric cooperative, natural gas cooperative,
48 telephone cooperative or municipality shall set the date
49 when any new rate or charge is to go into effect.

50 (c) The commission shall review and approve or
51 modify such rates upon the filing of a petition within
52 thirty days of the adoption of the ordinance or resolution
53 changing said rates or charges by:

54 (1) Any customer aggrieved by the changed rates or
55 charges who presents to the commission a petition
56 signed by not less than twenty-five percent of the
57 customers served by such municipally operated public
58 utility, or twenty-five percent of the membership of the
59 electric, natural gas or telephone cooperative residing
60 within the state; or

61 (2) Any customer who is served by a municipally
62 operated public utility and who resides outside the
63 corporate limits and who is affected by the change in
64 said rates or charges and who presents to the commis-
65 sion a petition alleging discrimination between custo-
66 mers within and without the municipal boundaries. Said
67 petition shall be accompanied by evidence of discrimi-
68 nation; or

69 (3) Any customer or group of customers who are
70 affected by said change in rates who reside within the
71 municipal boundaries and who present a petition to the
72 commission alleging discrimination between said
73 customer or group of customers and other customers of
74 the municipal utility. Said petition shall be accompanied
75 by evidence of discrimination.

76 (d) (1) The filing of a petition with the commission
77 signed by not less than twenty-five percent of the
78 customers served by the municipally operated public
79 utility, or twenty-five percent of the membership of the
80 electric, natural gas or telephone cooperative residing
81 within the state, under subdivision (1), subsection (c) of
82 this section, shall suspend the adoption of the rate

83 change contained in the ordinance or resolution for a
84 period of one hundred twenty days from the date said
85 rates or charges would otherwise go into effect, or until
86 an order is issued as provided herein.

87 (2) Upon sufficient showing of discrimination by
88 customers outside the municipal boundaries, or a
89 customer or a group of customers within the municipal
90 boundaries, under a petition filed under subdivision (2)
91 or (3), subsection (c) of this section, the commission shall
92 suspend the adoption of the rate change contained in the
93 ordinance for a period of one hundred twenty days from
94 the date said rates or charges would otherwise go into
95 effect or until an order is issued as provided herein.

96 (e) The commission shall forthwith appoint a hearing
97 examiner from its staff to review the grievances raised
98 by the petitioners. Said hearing examiner shall conduct
99 a public hearing, and shall within one hundred days
100 from the date the said rates or charges would otherwise
101 go into effect, unless otherwise tolled as provided in
102 subsection (b) of this section, issue an order approving,
103 disapproving or modifying, in whole or in part, the rates
104 or charges imposed by the electric, natural gas or
105 telephone cooperative or by the municipally operated
106 public utility pursuant to this section.

107 (f) Upon receipt of a petition for review of the rates
108 under the provisions of subsection (c) of this section, the
109 commission may exercise the power granted to it under
110 the provisions of section three of this article. The
111 commission may determine the method by which such
112 rates are reviewed and may grant and conduct a de novo
113 hearing on the matter if the customer, electric, natural
114 gas or telephone cooperative or municipality requests
115 such a hearing.

116 (g) The commission may, upon petition by a munic-
117 ipality or electric, natural gas or telephone cooperative,
118 allow an interim or emergency rate to take effect,
119 subject to future modification, if it is determined that
120 such interim or emergency rate is necessary to protect
121 the municipality from financial hardship and if that
122 financial hardship is attributable solely to the purchase

123 of the utility commodity sold. In such cases, the
124 commission may waive the forty-five-day waiting period
125 provided for in subsection (b) of this section and the one
126 hundred twenty-day suspension period provided for in
127 subsection (d) of this section.

128 (h) Notwithstanding any other provision, the commis-
129 sion has no authority or responsibility with regard to the
130 regulation of rates, income, services or contracts by
131 municipally operated public utilities for services which
132 are transmitted and sold outside of the state of West
133 Virginia.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 2B. WEATHER MODIFICATION.

§29-2B-11. Enforcement of article.

1 In order to enforce the provisions of this article, the
2 West Virginia state police shall, on request of the
3 commission, assign at least one trooper and one inves-
4 tigator to an area where unlawful cloud seeding is
5 suspected. If such police request the same, the commis-
6 sion shall assign an airplane and pilot. Air samples shall
7 be taken by the division of environmental protection if
8 requested by the state police or the commission. For
9 such enforcement purposes, the bureau of public health
10 shall furnish such technical services as the commission
11 or director may request.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5a. Hazardous substance emergency response training programs.

1 (a) Within one hundred twenty days of the effective
2 date of this section, the state fire commission shall
3 promulgate rules pursuant to chapter twenty-nine-a of
4 this code establishing criteria for qualified training
5 programs in hazardous substance emergency response
6 activities and procedures for such qualified training
7 programs to be certified by the state fire marshal.

8 (b) For the purposes of this section, "hazardous
9 substance" means any hazardous substance as defined in

10 chapter eighty-eight, Acts of the Legislature, regular
11 session, one thousand nine hundred eighty-five any
12 "chemical substances and materials" listed in the rules
13 promulgated by the commissioner of labor pursuant to
14 section eighteen, article three, chapter twenty-one of this
15 code, and any "hazardous waste" as defined in section
16 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.

1 The commission shall develop and recommend a
2 strategy for financial and technical assistance to steel
3 and steel-related industries in the state. The strategy
4 shall include investment policies with regard to these
5 industries. In administering the program, the commis-
6 sion shall consult with appropriate representatives of
7 steel, and steel-related industries, appropriate represen-
8 tatives of any union that represents workers in these
9 industries, and any other persons with expert knowledge
10 of these industries. The commission shall consult with
11 the chairman of the public service commission to foster
12 the development of public and private cooperative
13 efforts that would result in energy savings and reduced
14 energy costs for steel and steel-related industries. The
15 commission shall consult with the division of environ-
16 mental protection and other agencies with which the
17 steel industry must interact to assist the steel industry
18 in adhering to regulations in a manner conducive to
19 economic viability. Assistance may be made available to
20 steel and steel-related industries undertaking projects
21 the commission determines to have long-term implica-
22 tions for and broad applicability to the economy of this
23 state when the secretary of the department of com-
24 merce, labor and environmental resources finds that:

- 25 (a) The undertaking of projects by the steel industries
26 will benefit the people of the state by creating or

27 preserving jobs and employment opportunities; and
28 (b) The undertaking of projects by the steel industries
29 will allow them to compete more effectively in the
30 marketplace.

31 Projects eligible to receive assistance under the steel
32 futures program may include, but are not limited to, the
33 following:

34 (a) Research and development specifically related to
35 steel and steel-related industries and feasibility studies
36 for business development within these industries;

37 (b) Employee training;

38 (c) Labor and management relations; and

39 (d) Technology-driven capital investment.

40 Financial and technical assistance may be in the form
41 and conditioned upon terms as stipulated by each
42 enterprise assistance program administered by the
43 department of commerce, labor and environmental
44 resources as the secretary considers appropriate. No
45 later than the thirtieth day of June, one thousand nine
46 hundred ninety-four, and no later than the thirtieth day
47 of June of each year thereafter, the commission shall
48 submit a report to the governor and Legislature
49 describing projects of the steel futures program, results
50 obtained from completed projects of the program and
51 program projects for the next fiscal year.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-20a. Land development fund.

1 (a) The board of directors of the housing development
2 fund may create and establish a special revolving fund
3 of moneys made available by appropriation, grant,
4 contribution or loan, to be known as the land develop-
5 ment fund and to be governed, administered and
6 accounted for by the directors, officers and managerial
7 staff of the housing development fund as a special
8 purpose account separate and distinct from any other
9 moneys, fund or funds owned and managed by the
10 housing development fund.

11 (b) The purpose of the land development fund is to
12 provide a source from which the housing development
13 fund may finance development costs and land develop-
14 ment in this state by making loans or grants therefrom,
15 such loans to be with or without interest and with such
16 security for repayment as the housing development fund
17 deems reasonably necessary and practicable, or by
18 expending moneys therefrom, for development costs and
19 land development in this state.

20 (c) The housing development fund may invest and
21 reinvest all moneys in the land development fund in any
22 investments authorized under section six of this article,
23 pending the disbursement thereof in connection with the
24 financing of development costs and land development in
25 this state.

26 (d) No loans shall be made by the housing develop-
27 ment fund from the land development fund except in
28 accordance with a written loan agreement which shall
29 include, but not be limited to, the following terms and
30 conditions:

31 (1) The proceeds of all such loans shall be used only
32 for development costs and land development;

33 (2) All such loans shall be repaid in full, with or
34 without interest, as provided in the agreement;

35 (3) All repayments shall be made concurrent with
36 receipt by the borrower of the proceeds of a construction
37 loan or mortgage, as the case may be, or at such other
38 times as the housing development fund deems reason-
39 ably necessary or practicable; and

40 (4) Specification of such security for repayments upon
41 such terms and conditions as the housing development
42 fund deems reasonably necessary or practicable.

43 (e) No grants shall be made by the housing develop-
44 ment fund from the land development fund except in
45 accordance with a written grant agreement which shall
46 require that the proceeds of all such grants shall be used
47 only for development costs or land development and
48 containing such other terms and provisions as the
49 housing development fund may require to ensure that

50 the public purposes of this article are furthered by such
51 grant.

52 (f) The housing development fund may expend any
53 income from the financing of development costs and
54 land development with moneys in the land development
55 fund, and from investment of such moneys, in payment,
56 or reimbursement, of all expenses of the housing
57 development fund which, as determined in accordance
58 with procedures approved by the board of directors of
59 the housing development fund, are fairly allocable to
60 such financing or its land-development activities:
61 *Provided*, That no funds from the land development
62 fund shall be used to carry on propaganda, or otherwise
63 attempt to influence legislation.

64 (g) The housing development fund shall create and
65 establish a special account within the land development
66 fund to be designated as the "special project account"
67 into which the housing development fund shall, effective
68 the first day of July, one thousand nine hundred ninety-
69 two, deposit the sum of ten million dollars. Such funds
70 shall be governed, administered and accounted for by
71 the housing development fund as a special purpose
72 account separate and distinct from any other moneys,
73 fund or funds owned or managed by the housing
74 development fund. The sole and exclusive purpose of
75 such account is to provide a source of funds for the
76 financing of infrastructure projects including distribu-
77 tion from time to time to the West Virginia water
78 pollution control revolving fund created pursuant to
79 section three, article two, chapter twenty-two-c of this
80 code: *Provided*, That such distribution shall not exceed
81 five million four hundred fifty thousand dollars; and
82 distribution from time to time to fund soil conservation
83 projects: *Provided, however*, That such distribution shall
84 not exceed four million five hundred fifty thousand
85 dollars. Until so disbursed, the moneys initially depos-
86 ited or thereafter from time to time deposited in such
87 special project account, may be invested and reinvested
88 by the housing development fund as permitted under
89 subdivision (8), section six of this article. Any funds
90 remaining in the special project account on the first day

91 of July, one thousand nine hundred ninety-five, shall
92 automatically revert to the general fund of the housing
93 development fund free of any limitations provided in
94 this section. The provisions of subsections (c), (d), (e) and
95 (f) of this section do not apply to the special project
96 account created in this section.

**ARTICLE 19. WEST VIRGINIA COMMUNITY INFRASTRUCTURE
AUTHORITY.**

**§31-19-4. West Virginia community infrastructure au-
thority created; West Virginia community
infrastructure board created; organization
of authority and board; appointment of
board members; their term of office, com-
pensation and expenses; duties and respon-
sibilities of director and staff of authority.**

1 (a) There is hereby created the West Virginia
2 community infrastructure authority. The authority is a
3 governmental instrumentality of the state and a body
4 corporate. The exercise by the authority of the powers
5 conferred by this article and the carrying out of its
6 purposes and duties are essential governmental func-
7 tions and for a public purpose.

8 The authority shall be controlled, managed and
9 operated by the five member board known as the West
10 Virginia community infrastructure board, which is
11 hereby created. The director of the West Virginia
12 development office, or her or his designee, the director
13 of the division of environmental protection, or her or his
14 designee, and the commissioner of the division of
15 highways, or her or his designee, are members ex officio
16 of the board. The executive director of the West Virginia
17 development office, or her or his designee, is the ex
18 officio chair. Two members of the board shall be
19 representative of the general public, one of which shall
20 have had experience or a demonstrated interest in local
21 government. The two members who are not ex officio
22 members of the board shall be appointed by the
23 governor, by and with the advice and consent of the
24 Senate, for initial terms of three and six years,
25 respectively. The successor of each such appointed
26 member shall be appointed for a term of six years in

27 the same manner as the original appointments were
28 made, except that any person appointed to fill a vacancy
29 occurring prior to the expiration of the term for which
30 her or his predecessor was appointed shall be appointed
31 only for the remainder of such term. Each board
32 member shall serve until the appointment and qualifi-
33 cation of her or his successor. The two appointed board
34 members shall not at any one time belong to the same
35 political party. Appointed board members may be
36 reappointed to serve additional terms, not to exceed two
37 consecutive full terms. All members of the board shall
38 be citizens of the state. Each appointed member of the
39 board, before entering upon her or his duties, shall
40 comply with the requirements of article one, chapter six
41 of this code and give bond in the sum of twenty thousand
42 dollars in the manner provided in article two, chapter
43 six of this code. The governor may remove any board
44 member for cause as provided in article six, chapter six
45 of this code.

46 Annually the board shall elect one of its appointed
47 members as chair, and shall appoint a secretary-
48 treasurer, who need not be a member of the board.
49 Three members of the board is a quorum and the
50 affirmative vote of three members is necessary for any
51 action taken by vote of the board. No vacancy in the
52 membership of the board impairs the rights of a quorum
53 by such vote to exercise all the rights and perform all
54 the duties of the board and the authority. The person
55 appointed as secretary-treasurer, including a board
56 member if she or he is so appointed, shall give bond in
57 the sum of fifty thousand dollars in the manner provided
58 in article two, chapter six of this code.

59 The executive director of the West Virginia develop-
60 ment office or her or his designee, the director of the
61 division of environmental protection or her or his
62 designee, and the commissioner of the division of
63 highways or her or his designee, shall not receive any
64 compensation for serving as board members. Each of
65 the two appointed board members of the board shall
66 receive an annual salary of five thousand dollars,
67 payable in monthly installments. Each of the five board

68 members shall be reimbursed for all reasonable and
69 necessary expenses actually incurred in the perfor-
70 mance of her or his duties as a member of such board.
71 All such expenses incurred by the board are payable
72 solely from funds of the authority or from funds
73 appropriated for such purpose by the Legislature and
74 no liability or obligation shall be incurred by the
75 authority beyond the extent for which moneys are
76 available from funds of the authority or from such
77 appropriations.

78 (b) There shall be a director of the authority ap-
79 pointed by the board who shall supervise and manage
80 the community infrastructure authority, and the West
81 Virginia development office shall serve as the staff for
82 the authority. Except as otherwise provided in this
83 section, the duties and responsibilities of the director
84 and of the staff shall be established by the authority. At
85 the board's discretion, it may provide for the position of
86 general counsel, who shall be an employee of the
87 authority, or for the appointment of special counsel. As
88 the board deems necessary and desirable, it may at any
89 time elect to change its decision on the employment or
90 appointment of a counsel.

91 (c) The director, or her or his designee, may employ
92 or appoint any staff members in addition to those
93 provided by the West Virginia development office,
94 including general or special counsel if the position is
95 established by the board. The number of employees
96 needed, the positions to be filled and their salaries or
97 wages shall be determined by the director with the
98 approval of the board, unless the board elects to not
99 require its approval. At any time the board may elect
100 to change its decision concerning approval of additional
101 staff hiring and salaries.

102 (d) The board shall meet at least quarterly, and more
103 often as it deems necessary. The director and any other
104 staff member or members as the director deems
105 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.

1 Except in the case where operations for the drilling
2 of a well are being conducted thereunder, any undeve-
3 loped lease for oil and/or gas in this state hereafter
4 executed in which the consideration therein provided to
5 be paid for the privilege of postponing actual drilling
6 or development or for the holding of said lease without
7 commencing operations for the drilling of a well,
8 commonly called delay rental, has not been paid when
9 due according to the terms of such lease, or the terms
10 of any other agreement between lessor and lessee, shall
11 be null and void as to such oil and/or gas unless payment
12 thereof shall be made within sixty days from the date
13 upon which demand for payment in full of such delay
14 rental has been made by the lessor upon the lessee
15 therein, as hereinafter provided, except in such cases
16 where a bona fide dispute shall exist between lessor and
17 lessee as to any amount due or entitlement thereto or
18 any part thereof under such lease.

19 No person, firm, corporation, partnership or associa-
20 tion shall maintain any action or proceeding in the
21 courts of this state for the purpose of enforcing or
22 perpetuating during the term thereof any lease here-
23 tofore executed covering oil and/or gas, as against the
24 owner of such oil and/or gas, or the owner's subsequent
25 lessee, if such person, firm, corporation, partnership or
26 association has failed to pay to the lessor such delay
27 rental in full when due according to the terms thereof,
28 for a period of sixty days after demand for such
29 payment has been made by the lessor upon such lessee,
30 as hereinafter provided.

31 The demand for payment referred to in the two
32 preceding paragraphs shall be made by notice in
33 writing and shall be sufficient if served upon such
34 person, firm, partnership, association or corporation
35 whether domestic or foreign, whether engaged in

36 business or dissolved, by United States registered mail,
37 return receipt requested, to the lessee's last known
38 address.

39 A copy of such notice, together with the return receipt
40 attached thereto, shall be filed with the clerk of the
41 county commission in which such lease is recorded, or
42 in which such oil and/or gas property is located, in
43 whole or in part, and upon payment of a fee of fifty cents
44 for each such lease, said clerk shall permanently file
45 such notice alphabetically under the name of the first
46 lessor appearing in such lease and shall stamp or write
47 upon the margin of the record in the clerk's office of
48 such lease hereafter executed the words "canceled by
49 notice"; and as to any such lease executed before the
50 enactment of this statute said clerk shall file such notice
51 as hereinbefore provided and shall stamp or write upon
52 the margin of the record of such lease in the clerk's
53 office the words "enforcement barred by notice."

54 The word "lessor" includes the original lessor, as well
55 as the original lessor's successors in title to the oil and/or
56 gas involved. The word "lessee" includes the original
57 lessee, the original lessee's assignee properly of record
58 at the time such demand is made, and the original
59 lessee's successors, heirs, or personal representatives. No
60 assignee of such lease whose assignment is not recorded
61 in the proper county shall be heard in any court of this
62 state to attack the validity or sufficiency of the notice
63 hereinbefore mentioned.

64 There is a rebuttable legal presumption that the
65 failure of a person, firm, corporation, partnership or
66 association to produce and sell or produce and use for
67 its own purpose for a period of greater than twenty-four
68 months, subsequent to the first day of July, one thousand
69 nine hundred seventy-nine, oil and/or gas produced from
70 such leased premises constitutes an intention to abandon
71 any oil and/or gas well and oil and/or gas well equip-
72 ment situate on said leased premises, including casing,
73 rods, tubing, pumps, motors, lines, tanks, separators and
74 any other equipment, or both, used in the production of
75 any oil and/or gas from any well or wells on said
76 leasehold estate.

77 This rebuttable presumption shall not be created in
78 instances (i) of leases for gas storage purposes, or (ii)
79 where any shut-in royalty, flat rate well rental, delay
80 rental or other similar payment designed to keep an oil
81 or gas lease in effect or to extend its term has been paid
82 or tendered, or (iii) where the failure to produce and sell
83 is the direct result of the interference or action of the
84 owner of such oil and/or gas or his subsequent lessee or
85 assignee. Additionally, no such presumption is created
86 when a delay in excess of twenty-four months occurs
87 because of any inability to sell any oil and/or gas
88 produced or because of any inability to deliver or
89 otherwise tender such oil and/or gas produced to any
90 person, firm, corporation, partnership or association.

91 In all instances when the owner of such oil and/or gas
92 or the owner's subsequent lessee or assignee desires to
93 terminate the right, interest or title of any person, firm,
94 corporation, partnership or association in such oil and/or
95 gas by utilization of the presumption created in this
96 section, this presumption may not be utilized except in
97 an action or proceeding by the owner of the oil and/or
98 gas or the owner's lessee or assignee in an action
99 brought in the circuit court for the judicial district in
100 which the oil and/or gas property is partially or wholly
101 located. A certified copy of a final order of the circuit
102 court shall be mailed by the clerk of such court to the
103 chief of the office of oil and gas of the division of
104 environmental protection.

105 The continuation in force of any such lease after
106 demand for and failure to pay such delay rental or
107 failure to produce and sell, or to produce and use oil and
108 gas for a period of twenty-four months as hereinbefore
109 set forth is deemed by the Legislature to be opposed to
110 public policy against the general welfare. If any part of
111 this section shall be declared unconstitutional such
112 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.**

1 No person trained in a qualified program of hazard-
2 ous substance emergency response certified by the state
3 fire marshal pursuant to rules promulgated by authority
4 of subsection (a), section five-a, article three, chapter
5 twenty-nine of this code, who in good faith renders
6 advice or assistance at the scene of an actual or
7 threatened discharge of any hazardous substance and
8 receives no remuneration for rendering such advice or
9 assistance, is liable for any civil damages as the result
10 of any act or omission in rendering such advice or
11 assistance: *Provided*, That the exemption from liability
12 for civil damages of this section shall be extended to any
13 such person who receives reimbursement for out-of-
14 pocket expenses incurred in rendering such advice or
15 assistance or compensation from his or her regular
16 employer for the time period during which he or she was
17 actually engaged in rendering such advice or assistance
18 but is not extended to any such person who by his or
19 her act or omission caused or contributed to the cause
20 of such actual or threatened discharge of any hazardous
21 substance.

22 For the purposes of this section, "hazardous sub-
23 stance" means any "hazardous substance" as defined in
24 chapter eighty-eight, Acts of the Legislature, regular
25 session, one thousand nine hundred eighty-five; any
26 "chemical substances and materials" listed in the rules
27 promulgated by the commissioner of labor pursuant to
28 section eighteen, article three, chapter twenty-one, of
29 this code; and any "hazardous waste" as defined in
30 section three, article eighteen, chapter twenty-two of
31 this code.

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.**§55-12A-2. Definitions.**

1 As used in this article, the following definitions shall
2 apply:

3 (1) "Abandoning owner" means any person, vested
4 with title to any interest in minerals, who is proved to
5 have abandoned the interest, that is, to have relin-
6 quished any right to possess or enjoy the interest with
7 the expressed intention of terminating ownership of the
8 interest, but without vesting the ownership in any other
9 person.

10 (2) "Development of the minerals" or "mineral
11 development" means (a) mining coal by any method, or
12 (b) drilling for and producing oil or gas by conventional
13 techniques, or by enhanced recovery by injection of
14 fluids of any kind into the producing formation, or (c)
15 utilization of a gas-bearing formation as an under-
16 ground gas storage reservoir within the meaning of
17 article nine, chapter twenty-two of this code, or (d)
18 production of other minerals by any method.

19 (3) "Interest in minerals" means any interest, real or
20 personal, in coal, oil, gas or any other mineral, for which
21 interest the property taxes are not delinquent as of the
22 date of the filing of a petition under this article.

23 (4) "Surface owner" means any person vested with any
24 interest in fee in the surface estate overlying the
25 particular minerals sought to be developed under this
26 article. A surface owner's rights under this article shall
27 be subject to any deed of trust or other security
28 instrument, lien, surface lease, easement or other
29 nonpossessory interest in the surface owned by any other
30 person; but such persons other than the surface owner
31 shall have no right to notice and no standing to appear
32 and be heard hereunder.

33 (5) "Unknown or missing owner" means any person,
34 vested with title to any interest in minerals, whose
35 present identity or location cannot be determined from
36 the records of the clerk of the county commission, the
37 sheriff, the assessor and the clerk of the circuit court
38 in the county in which the interest is located or by
39 diligent inquiry in the vicinity of the owner's last known
40 place of residence, and shall include such owner's heirs,
41 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.

1 No person may fell any timber and permit the same
2 to remain in any navigable or floatable stream of this
3 state when to do so obstructs the passage of boats, rafts,
4 staves, ties or timber of any kind.

5 Except as may be provided in chapter twenty or
6 twenty-two of this code, no person may construct or
7 maintain any dam or other structure in any stream or
8 watercourse, which in any way prevents or obstructs the
9 free and easy passage of fish up or down such stream
10 or watercourse, without first providing as a part of such
11 dam or other structure a suitable fish ladder, way or
12 flume, so constructed as to allow fish easily to ascend
13 or descend the same; which ladder, way or flume shall
14 be constructed only upon plans, in a manner, and at a
15 place, satisfactory to the division of natural resources:
16 *Provided*, That if the director of the division of natural
17 resources determines that there is no substantial fish life
18 in such stream or watercourse, or that the installation
19 of a fish ladder, way or flume would not facilitate the
20 free and easy passage of fish up or down a stream or
21 watercourse, or that an industrial development project
22 requires the construction of such dam or other structure
23 and the installation of an operational fish ladder, way
24 or flume is impracticable, the director may, in writing,
25 permit the construction or maintenance of a dam or
26 other structure in a stream or watercourse without
27 providing a suitable fish ladder, way or flume; and in
28 all navigable and floatable streams provisions shall be
29 made in such dam or structure for the passage of boats
30 and other crafts, logs and other materials: *Provided*,
31 *however*, That this section does not relieve such person
32 from liability for damage to any riparian owner on
33 account of the construction or maintenance of such dam.

34 Any person who violates any of the provisions of this
35 section is guilty of a misdemeanor, and, upon conviction
36 thereof, shall be fined not exceeding one thousand
37 dollars, or imprisoned in the county jail not exceeding
38 one year, or both fined and imprisoned, and, whether a
39 conviction is had under this section or not, such violation
40 is a nuisance, which may be abated at the suit of any
41 citizen or taxpayer, the county commission of the county,

42 or, as to fish ladders, at the suit of the director of the
43 division of natural resources, and, if the same endangers
44 county roads, the county commission may abate such
45 nuisance peaceably without such suit.

CHAPTER 62

(H. B. 4101—By Delegate Pethel)

[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 REGISTRATION 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.
- §36-10-9. Nontestamentary transfer on death.
- §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 certifi-
34 cated security, an uncertificated security and a security

35 account.

36 (10) "Security account" means (i) a reinvestment
37 account associated with a security, a securities account
38 with a broker, a cash balance in a brokerage account,
39 cash, interest, earnings, or dividends earned or declared
40 on a security in an account, a reinvestment account, or
41 a brokerage account, whether or not credited to the
42 account before the owner's death, or (ii) a cash balance
43 or other property held for or due to the owner of a
44 security as a replacement for or product of an account
45 security, whether or not credited to the account before
46 the owner's death.

47 (11) "State" includes any state of the United States,
48 the District of Columbia, the Commonwealth of Puerto
49 Rico, and any territory or possession subject to the
50 legislative authority of the United States.

**§36-10-2. Registration in beneficiary form; sole or joint
tenancy ownership.**

1 Only individuals whose registration of a security
2 shows sole ownership by one individual or multiple
3 ownership by two or more with right of survivorship,
4 rather than as tenants in common, may obtain registra-
5 tion in beneficiary form. Multiple owners of a security
6 registered in beneficiary form hold as joint tenants with
7 right of survivorship, as tenants by the entireties, or as
8 owners of community property held in survivorship
9 form, and not as tenants in common.

**§36-10-3. Registration in beneficiary form; applicable
law.**

1 A security may be registered in beneficiary form if
2 the form is authorized by this or a similar statute of the
3 state of organization of the issuer or registering entity,
4 the location of the registering entity's principal office,
5 the office of its transfer agent or its office making the
6 registration, or by this or a similar statute of the law
7 of the state listed as the owner's address at the time of
8 registration. A registration governed by the law of a
9 jurisdiction in which this or similar legislation is not in
10 force or was not in force when a registration in

11 beneficiary form was made is nevertheless presumed to
12 be valid and authorized as a matter of contract law.

§36-10-4. Origination of registration in beneficiary form.

1 A security, whether evidenced by certificate or
2 account, is registered in beneficiary form when the
3 registration includes a designation of a beneficiary to
4 take the ownership at the death of the owner or the
5 deaths of all multiple owners.

§36-10-5. Form of registration in beneficiary form.

1 Registration in beneficiary form may be shown by the
2 words "transfer on death" or the abbreviation "TOD," or
3 by the words "pay on death" or the abbreviation "POD,"
4 after the name of the registered owner and before the
5 name of a beneficiary.

§36-10-6. Effect of registration in beneficiary form.

1 The designation of a TOD beneficiary on a registra-
2 tion in beneficiary form has no effect on ownership until
3 the owner's death. A registration of a security in
4 beneficiary form may be canceled or changed at any
5 time by the sole owner or all then surviving owners
6 without the consent of the beneficiary.

§36-10-7. Ownership of death of owner.

1 On death of a sole owner or the last to die of all
2 multiple owners, ownership of securities registered in
3 beneficiary form passes to the beneficiary or beneficiar-
4 ies who survive all owners. On proof of death of all
5 owners and compliance with any applicable require-
6 ments of the registering entity, a security registered in
7 beneficiary form may be reregistered in the name of the
8 beneficiary or beneficiaries who survived the death of
9 all owners. Until division of the security after the death
10 of all owners, multiple beneficiaries surviving the death
11 of all owners hold their interests as tenants in common.
12 If no beneficiary survives the death of all owners, the
13 security belongs to the estate of the deceased sole owner
14 or the estate of the last to die of all multiple owners.

§36-10-8. Protection of registering entity.

1 (a) A registering entity is not required to offer or to
2 accept a request for security registration in beneficiary
3 form. If a registration in beneficiary form is offered by
4 a registering entity, the owner requesting registration
5 in beneficiary form assents to the protections given to
6 the registering entity by this article.

7 (b) By accepting a request for registration of a
8 security in beneficiary form, the registering entity
9 agrees that the registration will be implemented on
10 death of the deceased owner as provided in this article.

11 (c) A registering entity is discharged from all claims
12 to a security by the estate, creditors, heirs or devisees
13 of a deceased owner if it registers a transfer of the
14 security in accordance with section seven of this article
15 and does so in good faith reliance (i) on the registration,
16 (ii) on this article, and (iii) on information provided to
17 it by affidavit of the personal representative of the
18 deceased owner, or by the surviving beneficiary or by
19 the surviving beneficiary's representatives, or other
20 information available to the registering entity. The
21 protections of this article do not extend to a reregistra-
22 tion or payment made after a registering entity has
23 received written notice from any claimant to any
24 interest in the security objecting to implementation of
25 a registration in beneficiary form. No other notice or
26 other information available to the registering entity
27 affects its right to protection under this article.

28 (d) The protection provided by this article to the
29 registering entity of a security does not affect the rights
30 of beneficiaries in disputes between themselves and
31 other claimants to ownership of the security transferred
32 or its value or proceeds.

§36-10-9. Nontestamentary transfer on death.

1 (a) A transfer on death resulting from a registration
2 in beneficiary form is effective by reason of the contract
3 regarding the registration between the owner and the
4 registering entity and this article and is not
5 testamentary.

6 (b) This article does not limit the rights of creditors

7 of security owners against beneficiaries and other
8 transferees under other laws of this state.

§36-10-10. Terms, conditions and forms for registration.

1 (a) A registering entity offering to accept registra-
2 tions in beneficiary form may establish the terms and
3 conditions under which it will receive requests (i) for
4 registrations in beneficiary form, and (ii) for implemen-
5 tation of registrations in beneficiary form, including
6 requests for cancellation of previously registered TOD
7 beneficiary designations and requests for reregistration
8 to effect a change of beneficiary. The terms and
9 conditions so established may provide for proving death,
10 avoiding or resolving any problems concerning frac-
11 tional shares, designating primary and contingent
12 beneficiaries, and substituting a named beneficiary's
13 descendants to take in the place of the named benefi-
14 ciary in the event of the beneficiary's death. Substitution
15 may be indicated by appending to the name of the
16 primary beneficiary the letters LDPS, standing for
17 "lineal descendants per stirpes." This designation
18 substitutes a deceased beneficiary's descendants who
19 survive the owner for a beneficiary who fails to so
20 survive, the descendants to be identified and to share in
21 accordance with the law of the beneficiary's domicile at
22 the owner's death governing inheritance by descendants
23 of an intestate. Other forms of identifying beneficiaries
24 who are to take on one or more contingencies, and rules
25 for providing proofs and assurances needed to satisfy
26 reasonable concerns by registering entities regarding
27 conditions and identities relevant to accurate implemen-
28 tation of registrations in beneficiary form, may be
29 contained in a registering entity's terms and conditions.

30 (b) The following are illustrations of registrations in
31 beneficiary form which a registering entity may
32 authorize: (1) Sole owner-sole beneficiary: John S Brown
33 TOD (or POD) John S Brown Jr. (2) Multiple owners-
34 sole beneficiary: John S Brown Mary B Brown JT TEN
35 TOD John S Brown Jr. (3) Multiple owners-primary and
36 secondary (substituted) beneficiaries: John S Brown
37 Mary B Brown JT TEN TOD John S Brown Jr SUB
38 BENE Peter Q Brown or John S Brown Mary B Brown

39 JT TEN TOD John S Brown Jr LDPS.

§36-10-11. Short title; rules of construction.

1 (a) This article shall be known as and may be cited
2 as the Uniform TOD Security Registration Act.

3 (b) This article shall be liberally construed and
4 applied to promote its underlying purposes and policy
5 and to make uniform the laws with respect to the subject
6 of this article among states enacting it.

7 (c) Unless displaced by the particular provisions of
8 this article the principles of law and equity supplement
9 its provisions.

§36-10-12. Application of article.

1 This article applies to registrations of securities in
2 beneficiary form made before or after its initial
3 enactment, by decedents dying on or after its initial
4 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

5B. Economic Development Act of 1985.

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.

1 (a) The division of tourism and parks and the office
2 of commissioner of tourism and parks is hereby abol-
3 ished effective the first day of July, one thousand nine
4 hundred ninety-five. Not later than the first day of
5 January, one thousand nine hundred ninety-five, the

6 sections and functions of the division of tourism and
7 parks related to state parks, state recreation areas and
8 wildlife recreation areas shall be transferred to the
9 division of natural resources and all sections and
10 functions of the division of tourism and parks related to
11 tourism shall be transferred to the West Virginia
12 development office.

13 (b) The governor shall, by executive order, implement
14 the transfer of sections and functions provided for in
15 subsection (a) of this section. The governor may provide
16 by said executive order for the transfer, in whole or in
17 part, of any section in the division of tourism and parks
18 and the offices, assets, liabilities, contracts, property,
19 records, personnel, and functions of any section in the
20 division of tourism and parks. The governor may also
21 provide by said executive order for the merger, combi-
22 nation and renaming of any section in the division of
23 tourism and parks. Notwithstanding any provisions in
24 this code to the contrary, no privatization of any park
25 may occur without statutory authority.

26 (c) The authority to make transfers as provided in
27 subsection (a) of this section shall expire on the first day
28 of January, one thousand nine hundred ninety-five. The
29 authority granted in this section shall not be construed
30 to permit the governor to transfer the duty and
31 authority to manage any particular state park or state
32 recreation area without transferring the duty and
33 authority to manage all state park and recreation areas.

34 (d) Upon transfers as authorized in subsection (a) of
35 this section, the governor may transfer the funds
36 appropriated to the section transferred or attributable
37 to the function transferred in order to implement the
38 transfer: *Provided*, That the authority to transfer funds
39 under this section shall expire on the thirtieth day of
40 June, one thousand nine hundred ninety-five: *Provided*,
41 *however*, That no funds may be transferred from a
42 special revenue account, dedicated account, capital
43 expenditure account or any other dedicated account or
44 fund for any use or purpose other than the purpose for
45 which the account or fund is dedicated: *Provided further*,
46 That nothing herein shall be construed to prohibit the

47 expenditure of lottery proceeds for those purposes
48 specifically authorized in subsection (i), section eighteen,
49 article twenty-two, chapter twenty-nine of this code:
50 *And provided further*, That of any funds transferred
51 which were appropriated to the division of tourism and
52 parks and allocated for purposes of advertising and
53 marketing expenses for the promotion and development
54 of tourism, not less than twenty percent of the funds
55 shall be expended to advertise, promote and market
56 state parks, state forests, state recreation areas or
57 cultural and wildlife recreational resources.

58 (e) Upon the exercise of the powers granted in
59 subsection (a) of this section, the governor shall submit
60 to the Legislature a report setting forth the reorgani-
61 zation implemented by executive action pursuant to this
62 section, any recommendations for further reorganization
63 requiring legislative action and drafts of specific
64 legislation for consideration by the Legislature during
65 the regular session in the year one thousand nine
66 hundred ninety-five to conform this code to the reorgan-
67 ization implemented by executive action.

68 (f) All persons employed on the effective date of this
69 section in the division of tourism and parks, the duties
70 and functions of which are transferred pursuant to this
71 section, shall retain their coverage under the civil
72 service system and all matters relating to job classifi-
73 cation, job tenure, salary and conditions of employment
74 are governed by the provisions of article six, chapter
75 twenty-nine of this code. The director of the division of
76 natural resources may employ up to six additional
77 unclassified personnel to carry out the purposes of this
78 section, but such additional persons may not be em-
79 ployed to replace any existing employees of the division
80 of tourism and parks transferred to the division of
81 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
2 enter into a contract with a person, firm, corporation,
3 foundation or public agency for the operation of a
4 commissary, restaurant, recreational facility or other
5 such establishment within the state parks and public
6 recreation system, the contract shall be for a duration
7 not to exceed ten years, but the contract may provide
8 for an option to renew at the director's discretion for an
9 additional term or terms not to exceed ten years at the
10 time of renewal. Prior to initiating a contract for the
11 operation of a state park lodge, cabin, campground, gift
12 shop, golf facility, including pro shop operations, or ski
13 facility, the director shall submit the specific location
14 which would be subject to the contract to the Legislature
15 for its approval and authorization: *Provided*, That for
16 contracts for gift shops or golf facilities in specific
17 locations operated under contract on the effective date
18 of this section, and contracts for a duration of not more
19 than one year which provide for options to renew for not
20 more than five succeeding years, notice to the joint
21 committee on government and finance, but not specific
22 legislative authorization and approval, is required prior
23 to execution of the contract.

24 Any contract entered into by the director shall
25 provide an obligation upon the part of the operator that
26 he or she maintain a level of performance satisfactory
27 to the director, and shall further provide that any
28 contract may be terminated by the director in the event
29 he or she determines that the performance is unsatis-
30 factory and has given the operator reasonable notice of
31 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.

1 The West Virginia public energy authority heretofore
2 created is hereby continued. The authority is a govern-
3 mental instrumentality of the state and a body corpo-
4 rate. The exercise by the authority of the powers
5 conferred by this article and the carrying out of its
6 purposes and duties are determined to be essential
7 governmental functions and for a public purpose.

8 The authority shall be controlled, managed and
9 operated by a nine member board known as the West
10 Virginia public energy authority board which is hereby
11 continued. The nine members of the board shall be
12 appointed by the governor, by and with the advice and
13 consent of the Senate. Two members shall be appointed
14 to serve a term of two years; two members shall be
15 appointed to serve a term of three years; two members
16 shall be appointed to serve a term of four years; two
17 members shall be appointed to serve a term of five
18 years; and one member shall be appointed to serve a
19 term of six years. The successor of each such appointed
20 member shall be appointed for a term of five years,
21 except that any person appointed to fill a vacancy
22 occurring prior to the expiration of the term for which
23 his predecessor was appointed shall be appointed only
24 for the remainder of such term. Each board member
25 shall serve until the appointment of his successor. No
26 more than five of the board members shall at any one
27 time belong to the same political party. No more than
28 four members of the board shall be employed by or
29 associated with any industry this authority is empow-
30 ered to affect. Two members of the board shall be

31 persons who have significant experience in the advocacy
32 of environmental protection. Board members may be
33 reappointed to serve additional terms.

34 All members of the board shall be citizens of the state.
35 Before entering upon his or her duties, each member of
36 the board shall comply with the requirements of article
37 one, chapter six of this code and give bond in the sum
38 of twenty-five thousand dollars in the manner provided
39 in article two, chapter six of this code. The governor
40 may remove any board member for cause as provided
41 in article six, chapter six of this code.

42 Annually the board shall elect one of its members as
43 chairman and another as vice chairman, and shall
44 appoint a secretary-treasurer, who need not be a
45 member of the board. Five members of the board shall
46 constitute a quorum and the affirmative vote of the
47 majority of members present at any meeting shall be
48 necessary for any action taken by vote of the board. No
49 vacancy in the membership of the board shall impair the
50 rights of a quorum by such vote to exercise all the rights
51 and perform all the duties of the board and the
52 authority. The person appointed as secretary-treasurer,
53 including a board member if he is so appointed, shall
54 give bond in the sum of fifty thousand dollars in the
55 manner provided in article two, chapter six of this code.

56 Each member of the board shall receive the same
57 compensation and expense reimbursement as is paid to
58 members of the Legislature for their interim duties as
59 recommended by the citizens legislative compensation
60 commission and authorized by law for each day or
61 portion thereof engaged in the discharge of official
62 duties. All such expenses incurred by the board shall be
63 payable solely from funds of the authority or from funds
64 appropriated to the authority for such purpose by the
65 Legislature and no liability or obligation shall be
66 incurred by the authority beyond the extent to which
67 moneys are available from funds of the authority or
68 from such appropriations.

69 There shall also be a director of the authority
70 appointed by the governor, with the advice and consent

71 of the Senate, who shall serve at the governor's will and
72 pleasure, who shall be responsible for managing and
73 administering the daily functions of the authority and
74 for performing any and all other functions necessary or
75 helpful to the effective functioning of the authority,
76 together with all other functions and powers as may be
77 delegated by the board.

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

1 The West Virginia public energy authority is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purpose. The authority shall have the power and
5 capacity to:

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its
8 affairs and the conduct of its business and rules to
9 implement and make effective its powers and duties,
10 such rules to be promulgated in accordance with the
11 provisions of chapter twenty-nine-a of this code.

12 (2) Adopt and use an official seal and alter the same
13 at pleasure.

14 (3) Maintain a principal office and, if necessary,
15 regional suboffices at locations properly designated or
16 provided.

17 (4) Sue and be sued in its own name and plead and
18 be impleaded in its own name, and particularly to
19 enforce the obligations and covenants made under this
20 article. Any actions against the authority shall be
21 brought in the circuit court of Kanawha County.

22 (5) Foster, encourage and promote the mineral
23 development industry.

24 (6) Represent the state with respect to national
25 initiatives concerning the mineral development indus-
26 try, and international marketing activities affecting the
27 mineral development industry.

28 (7) Engage in strategic planning to enable the state
29 to cope with changes affecting or which may affect the

30 mineral development industry.

31 (8) Acquire, whether by purchase, construction, gift,
32 lease, lease-purchase or otherwise, any electric power
33 project or natural gas transmission project. In the event
34 that an electric power project to be constructed pursu-
35 ant to this article is designed to utilize coal wastes for
36 the generation of electricity or the production of other
37 energy, such project shall also be capable of using coal
38 as its primary energy input: *Provided*, That it shall be
39 demonstrated to the authority's satisfaction that quan-
40 tities of coal wastes exist in amounts sufficient to
41 provide energy input for such project for the term of the
42 bonds or notes issued by the authority to finance the
43 project and are accessible to the project.

44 (9) Lease, lease with an option by the lessee to
45 purchase, sell, by installment sale or otherwise, or
46 otherwise dispose of, to persons other than governmental
47 agencies, any or all of its electric power projects or
48 natural gas transmission projects for such rentals or
49 amounts and upon such terms and conditions as the
50 public energy authority board may deem advisable.

51 (10) Finance one or more electric power projects or
52 natural gas transmission projects by making secured
53 loans to persons other than governmental agencies to
54 provide funds for the acquisition, by purchase, construc-
55 tion or otherwise, of any such project or projects.

56 (11) Issue bonds for the purpose of financing the cost
57 of acquisition and construction of one or more electric
58 power projects or natural gas transmission projects or
59 any additions, extensions or improvements thereto
60 which will be sold, leased with an option by the lessee
61 to purchase, leased or otherwise disposed of to persons
62 other than governmental agencies or for the purpose of
63 loaning the proceeds thereof to persons other than
64 governmental agencies for the acquisition and construc-
65 tion of said projects or both. Such bonds shall be issued
66 and the payment of such bonds secured in the manner
67 provided by the applicable provisions of sections seven,
68 eight, nine, ten, eleven, twelve, thirteen and seventeen,
69 article two-c, chapter thirteen of this code: *Provided*,

70 That the principal and interest on such bonds shall be
71 payable out of the revenues derived from the lease, lease
72 with an option by the lessee to purchase, sale or other
73 disposition of or from loan payments in connection with
74 the electric power project or natural gas transmission
75 project for which the bonds are issued, or any other
76 revenue derived from such electric power project or
77 natural gas transmission project.

78 (12) In the event that the electric power project or
79 natural gas transmission project is to be owned by a
80 governmental agency, apply to the economic develop-
81 ment authority for the issuance of bonds payable solely
82 from revenues as provided in article fifteen, chapter
83 thirty-one of this code: *Provided*, That the economic
84 development authority shall not issue any such bonds
85 except by an act of general law: *Provided, however*, That
86 the authority shall require that in the construction of
87 any such project, prevailing wages shall be paid as part
88 of a project specific agreement which also takes into
89 account terms and conditions contained in the West
90 Virginia-Ohio valley market retention and recovery
91 agreement or a comparable agreement.

92 (13) Acquire by gift or purchase, hold and dispose of
93 real and personal property in the exercise of its powers
94 and the performance of its duties as set forth in this
95 article.

96 (14) Acquire in the name of the state, by purchase or
97 otherwise, on such terms and in such manner as it
98 deems proper, or by the exercise of the right of eminent
99 domain in the manner provided in chapter fifty-four of
100 this code, such real property or parts thereof or rights
101 therein, rights-of-way, property, rights, easements and
102 interests it deems necessary for carrying out the
103 provisions of this article, and compensation shall be paid
104 for public or private lands so taken; and the authority
105 may sell any of the real property or parts thereof or
106 rights therein, rights-of-way, property, rights, ease-
107 ments and interests acquired hereunder in such manner
108 and upon such terms and conditions as the authority
109 deems proper: *Provided*, That if the authority deter-
110 mines that land or an interest therein acquired by the

111 authority through the exercise of the power of eminent
112 domain for the purpose of this article is no longer
113 necessary or useful for such purposes, and if the
114 authority desires to sell such land or interest therein, the
115 authority shall first offer to sell such land or interest to
116 the owner or owners from whom it was acquired, at a
117 price equal to its fair market value: *Provided, however,*
118 That if the prior owner or owners shall decline to
119 reacquire the land or interest therein, the authority
120 shall be authorized to dispose of such property by direct
121 sale, auction, or competitive bidding. In no case shall
122 such land or an interest therein acquired under this
123 subdivision be sold for less than its fair market value.
124 This article does not authorize the authority to take or
125 disturb property or facilities belonging to any public
126 utility or to a common carrier, which property or
127 facilities are required for the proper and convenient
128 operation of such public utility or common carrier,
129 except for the acquisition of easements or rights-of-way
130 which will not unreasonably interfere with the operation
131 of the property or facilities of such public utility or
132 common carrier, and in the event of the taking or
133 disturbance of property or facilities of public utility or
134 common carrier, provision shall be made for the
135 restoration, relocation or duplication of such property or
136 facilities elsewhere at the sole cost of the authority.

137 The term "real property" as used in this article is
138 defined to include lands, structures, franchises and
139 interests in land, including lands under water and
140 riparian rights, and any and all other things and rights
141 usually included within the said term, and includes also
142 any and all interests in such property less than full title,
143 such as easements, rights-of-way, uses, leases, licenses
144 and all other incorporeal hereditaments and every
145 estate, interest or right, legal or equitable, including
146 terms for years and liens thereon by way of judgments,
147 mortgages or otherwise, and also all claims for damages
148 for such real estate.

149 For the purposes of this section "fair market value"
150 shall be determined by an appraisal made by an
151 independent person or firm chosen by the authority. The

152 appraisal shall be performed using the principles
153 contained in the "Uniform Appraisal Standards for
154 Federal Land Acquisitions" published under the auspi-
155 ces of the Interagency Land Acquisition Conference,
156 United States Government Printing Office, 1972.

157 (15) Make and enter into all contracts and agreements
158 and execute all instruments necessary or incidental to
159 the performance of its duties and the execution of its
160 powers: *Provided*, That if any electric power project or
161 natural gas transmission project is to be constructed by
162 a person other than a governmental agency, and with
163 whom the authority has contracted to lease, sell or
164 finance such project upon its completion, then the
165 authority shall not be required to comply with the
166 provisions of article twenty-two, chapter five of this code
167 requiring the solicitation of competitive bids for the
168 construction of such a project.

169 (16) Employ managers, superintendents and other
170 employees, and retain or contract with consulting
171 engineers, financial consultants, accountants, architects,
172 attorneys, and such other consultants and independent
173 contractors as are necessary in its judgment to carry out
174 the provisions of this article, and fix the compensation
175 or fees thereof. All expenses thereof shall be payable
176 solely from the proceeds of bonds issued by the economic
177 development authority, from the proceeds of bonds
178 issued by or loan payments, lease payments or other
179 payments received by the authority, from revenues and
180 from funds appropriated for such purpose by the
181 Legislature.

182 (17) Receive and accept from any federal agency, or
183 any other source, grants for or in aid of the construction
184 of any project or for research and development with
185 respect to electric power projects, natural gas transmis-
186 sion projects or other energy projects, and receive and
187 accept aid or contribution from any source of money,
188 property, labor or other things of value to be held, used
189 and applied only for the purpose for which such grants
190 and contributions are made.

191 (18) Purchase property coverage and liability insu-

192 rance for any electric power project or natural gas
193 transmission project or other energy project and for the
194 principal office and suboffices of the authority, insu-
195 rance protecting the authority and its officers and
196 employees against liability, if any, for damage to
197 property or injury to or death of persons arising from
198 its operations and any other insurance which may be
199 provided for under a resolution authorizing the issuance
200 of bonds or in any trust agreement securing the same.

201 (19) Charge, alter and collect transportation fees and
202 other charges for the use or services of any natural gas
203 transmission project as provided in this article.

204 (20) Charge and collect fees or other charges from any
205 energy project undertaken as a result of this article.

206 (21) When the electric power project is owned and
207 operated by the authority, charge reasonable fees in
208 connection with the making and providing of electric
209 power and the sale thereof to corporations, states,
210 municipalities or other entities in the furtherance of the
211 purposes of this article.

212 (22) Purchase and sell electricity or other energy
213 produced by an electric power project in and out of the
214 state of West Virginia.

215 (23) Enter into wheeling contracts for the transmis-
216 sion of electric power over the authority's or another
217 party's lines.

218 (24) Make and enter into contracts for the construc-
219 tion of a project facility and joint ownership with
220 another utility, and the provisions of this article shall
221 not constrain the authority from participating as a joint
222 partner therein.

223 (25) Make and enter into joint ownership agreements.

224 (26) Establish or increase reserves from moneys
225 received or to be received by the authority to secure or
226 to pay the principal of and interest on the bonds issued
227 by the economic development authority pursuant to the
228 provisions of article fifteen, chapter thirty-one of this
229 code or bonds issued by the authority.

230 (27) Broker the purchase of natural gas for resale to
231 end-users: *Provided*, That whenever there are local
232 distribution company pipelines already in place the
233 authority shall arrange to transport the gas through
234 such pipelines at the rates approved by the public
235 service commission of West Virginia.

236 (28) Engage in market research, feasibility studies,
237 commercial research, and other studies and research
238 pertaining to electric power projects and natural gas
239 transmission projects or any other functions of the
240 authority pursuant to this article.

241 (29) Enter upon any lands, waters and premises in the
242 state for the purpose of making surveys and examina-
243 tions as it may deem necessary or convenient for the
244 purpose of this article, and such entry shall not be
245 deemed a trespass, nor shall an entry for such purposes
246 be deemed an entry under any condemnation proceed-
247 ings which may be then pending, and the authority shall
248 make reimbursement for any actual damages resulting
249 to such lands, waters and premises as a result of such
250 activities.

251 (30) Participate in any reorganization proceeding
252 pending pursuant to the United States Code (being the
253 act of Congress establishing a uniform system of
254 bankruptcy throughout the United States, as amended)
255 or any receivership proceeding in a state or federal
256 court for the reorganization or liquidation of a respon-
257 sible buyer or responsible tenant. The authority may file
258 its claim against any such responsible buyer or respon-
259 sible tenant in any of the foregoing proceedings, vote
260 upon any question pending therein, which requires the
261 approval of the creditors participating in any reorgan-
262 ization proceeding or receivership, exchange any
263 evidence of such indebtedness for any property, security
264 or evidence of indebtedness offered as a part of the
265 reorganization of such responsible buyer or responsible
266 tenant or of any entity formed to acquire the assets
267 thereof and may compromise or reduce the amount of
268 any indebtedness owing to it as a part of any such
269 reorganization.

270 (31) Make or enter into management contracts with
271 a second party or parties to operate any electric power
272 project or any gas transmission project and associated
273 facilities, or other related energy project, either during
274 construction or permanent operation.

275 (32) Do all acts necessary and proper to carry out the
276 powers expressly granted to the authority in this article.

277 (33) Nothing herein shall be construed to permit the
278 transportation of gas produced outside of this state
279 through a natural gas transmission project.

280 (34) The authority shall, after consultation with other
281 agencies of state government having environmental
282 regulatory functions, promulgate legislative rules
283 pursuant to chapter twenty-nine-a of this code, to
284 establish standards and principles to be applied to all
285 projects in assessing the effects of projects on the
286 environment: *Provided*, That when a proposed project
287 requires an environmental impact statement pursuant
288 to the National Environmental Policy Act of 1969, a
289 copy of the environmental impact statement shall be
290 filed with the authority and be made available prior to
291 any final decision or final approval of any project and
292 prior to the conducting of any public hearings regarding
293 the project, and in any such case, no assessment
294 pursuant to the legislative rule need be made.

295 (35) The power and authority granted to the public
296 energy authority pursuant to this section and section six
297 of this article to initiate, acquire, construct, finance or
298 issue bonds for electric power projects and transmission
299 facilities, or to exercise the power of eminent domain
300 with respect to any project, shall terminate on the
301 effective date of this section: *Provided*, That nothing
302 herein shall be construed to affect the validity of any act
303 of the public energy authority prior to the effective date
304 of this section or to impair the rights of bondholders
305 with respect to bonds or other evidence of indebtedness
306 issued prior to the effective date of this section.
307 Following the effective date of this section, the public
308 energy authority may exercise any power expressly
309 granted pursuant to this section or section six of this

310 article with respect to any project or facility previously
311 constructed or acquired, any existing contractual
312 obligations, and any outstanding bonded indebted-
313 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.

1 (a) The following agencies and boards, including all
2 of the allied, advisory, affiliated or related entities and
3 funds associated with any such agency or board, are
4 hereby transferred to and incorporated in and shall be
5 administered as a part of the department of
6 administration:

7 (1) Building commission provided for in article six,
8 chapter five of this code;

9 (2) Public employees insurance agency and public
10 employees insurance agency advisory board provided for
11 in article sixteen, chapter five of this code;

12 (3) Council of finance and administration provided for
13 in article one, chapter five-a of this code;

14 (4) Employee suggestion award board provided for in
15 article one-a, chapter five-a of this code;

16 (5) Governor's mansion advisory committee provided
17 for in article five, chapter five-a of this code;

18 (6) Commission on uniform state laws provided for in
19 article one-a, chapter twenty-nine of this code;

20 (7) Education and state employees grievance board
21 provided for in article twenty-nine, chapter eighteen
22 and article six-a, chapter twenty-nine of this code;

23 (8) Board of risk and insurance management provided
24 for in article twelve, chapter twenty-nine of this code;

25 (9) Boundary commission provided for in article
26 twenty-three, chapter twenty-nine of this code;

27 (10) Public defender services provided for in article
28 twenty-one, chapter twenty-nine of this code;

29 (11) Division of personnel provided for in article six,
30 chapter twenty-nine of this code;

31 (12) The West Virginia ethics commission provided
32 for in article two, chapter six-b of this code; and

33 (13) Consolidated public retirement board provided
34 for in article ten-d, chapter five of this code.

35 (b) The department of commerce, labor and environ-
36 mental resources and the office of secretary of the
37 department of commerce, labor and environmental
38 resources are hereby abolished. For purposes of admi-
39 nistrative support and liaison with the office of the
40 governor, the following agencies and boards, including
41 all allied, advisory and affiliated entities shall be
42 grouped under three bureaus as follows:

43 (1) Bureau of commerce:

44 (A) Division of labor provided for in article one,
45 chapter twenty-one of this code, which shall include:

46 (i) Occupational safety and health review commission
47 provided for in article three-a, chapter twenty-one of
48 this code;

49 (ii) Board of manufactured housing construction and
50 safety provided for in article nine, chapter twenty-one
51 of this code;

52 (B) Office of miners' health, safety and training
53 provided for in article one, chapter twenty-two-a of this
54 code. The following boards are transferred to the office
55 of miners' health, safety and training for purposes of
56 administrative support and liaison with the office of the
57 governor:

58 (i) Board of coal mine health and safety and coal mine
59 safety and technical review committee provided for in
60 article six, chapter twenty-two-a of this code;

61 (ii) Board of miner training, education and certifica-
62 tion provided for in article seven, chapter twenty-two-
63 a of this code; and

64 (iii) Mine inspectors' examining board provided for in
65 article nine, chapter twenty-two-a of this code;

66 (C) The West Virginia development office provided
67 for in article two, chapter five-b, which shall include:

68 (i) Enterprise zone authority provided for in article
69 two-b, chapter five-b of this code;

70 (ii) Economic development authority provided for in
71 article fifteen, chapter thirty-one of this code; and

72 (D) Division of tourism, which shall consist of those
73 functions related to the promotion of the state's tourism
74 provided for in article one, chapter five-b of this code;

75 (E) Division of natural resources and natural resour-
76 ces commission provided for in article one, chapter
77 twenty of this code. The Blennerhassett Island historical
78 state park provided for in article eight, chapter twenty-
79 nine of this code shall be under the division of natural
80 resources;

81 (F) Division of forestry provided for in article one-a,
82 chapter nineteen of this code;

83 (G) Geological and economic survey provided for in
84 article two, chapter twenty-nine of this code;

85 (H) Water development authority and board provided
86 for in article one, chapter twenty-two-c of this code;

87 (2) Bureau of employment programs provided for in
88 article one, chapter twenty-one-a of this code.

89 (3) Bureau of environment:

90 (A) Air quality board provided for in article five,
91 chapter twenty-two of this code;

92 (B) Solid waste management board provided for in
93 article three, chapter twenty-two of this code;

94 (C) Environmental quality board, or its successor
95 board, provided for in article three, chapter twenty-two-

- 96 b of this code;
- 97 (D) Division of environmental protection provided for
98 in article one, chapter twenty-two of this code;
- 99 (E) Surface mine board of review provided for in
100 article four, chapter twenty-two-b of this code;
- 101 (F) Oil and gas inspectors' examining board provided
102 for in article seven, chapter twenty-two-c of this code;
- 103 (G) Shallow gas well review board provided for in
104 article eight, chapter twenty-two-c of this code;
- 105 (H) Oil and gas conservation commission provided for
106 in article nine, chapter twenty-two-c of this code.
- 107 (c) The following agencies and boards, including all
108 of the allied, advisory, affiliated or related entities and
109 funds associated with any such agency or board, are
110 hereby transferred to and incorporated in and shall be
111 administered as a part of the department of education
112 and the arts:
- 113 (1) Library commission provided for in article one,
114 chapter ten of this code;
- 115 (2) Educational broadcasting authority provided for
116 in article five, chapter ten of this code;
- 117 (3) University of West Virginia board of trustees
118 provided for in article two, chapter eighteen-b of this
119 code;
- 120 (4) Board of directors of the state college system
121 provided for in article three, chapter eighteen-b of this
122 code;
- 123 (5) Joint commission for vocational-technical-occupa-
124 tional education provided for in article three-a, chapter
125 eighteen-b of this code;
- 126 (6) Division of culture and history provided for in
127 article one, chapter twenty-nine of this code; and
- 128 (7) Division of rehabilitation services provided for in
129 section two, article ten-a, chapter eighteen of this code.
- 130 (d) The following agencies and boards, including all

131 of the allied, advisory, affiliated or related entities and
132 funds associated with any such agency or board, are
133 hereby transferred to and incorporated in and shall be
134 administered as a part of the department of health and
135 human resources:

136 (1) Human rights commission provided for in article
137 eleven, chapter five of this code;

138 (2) Division of human services provided for in article
139 two, chapter nine of this code;

140 (3) Division of health provided for in article one,
141 chapter sixteen of this code;

142 (4) Office of emergency medical services and advisory
143 council thereto provided for in article four-c, chapter
144 sixteen of this code;

145 (5) Health care cost review authority provided for in
146 article twenty-nine-b, chapter sixteen of this code;

147 (6) Commission on aging provided for in article
148 fourteen, chapter twenty-nine of this code;

149 (7) Commission on mental retardation provided for in
150 article fifteen, chapter twenty-nine of this code; and

151 (8) Women's commission provided for in article
152 twenty, chapter twenty-nine of this code.

153 (e) The following agencies and boards, including all
154 of the allied, advisory, affiliated or related entities and
155 funds associated with any such agency or board, are
156 hereby transferred to and incorporated in and shall be
157 administered as a part of the department of military
158 affairs and public safety:

159 (1) Adjutant general's department provided for in
160 article one-a, chapter fifteen of this code;

161 (2) Armory board provided for in article six, chapter
162 fifteen of this code;

163 (3) Military awards board provided for in article one-
164 g, chapter fifteen of this code;

165 (4) Division of public safety provided for in arti le
166 two, chapter fifteen of this code;

167 (5) Office of emergency services and disaster recovery
168 board provided for in article five and emergency
169 response commission provided for in article five-a,
170 chapter fifteen of this code;

171 (6) Sheriffs' bureau provided for in article eight,
172 chapter fifteen of this code;

173 (7) Division of corrections provided for in chapter
174 twenty-five of this code;

175 (8) Fire commission provided for in article three,
176 chapter twenty-nine of this code;

177 (9) Regional jail and correctional facility authority
178 provided for in article twenty, chapter thirty-one of this
179 code;

180 (10) Board of probation and parole provided for in
181 article twelve, chapter sixty-two of this code; and

182 (11) Division of veterans' affairs and veterans' council
183 provided for in article one, chapter nine-a of this code.

184 (f) The following agencies and boards, including all
185 of the allied, advisory, affiliated or related entities and
186 funds associated with any such agency or board, are
187 hereby transferred to and incorporated in and shall be
188 administered as a part of the department of tax and
189 revenue:

190 (1) Tax division provided for in article one, chapter
191 eleven of this code;

192 (2) Appraisal control and review commission provided
193 for in article one-a, chapter eleven of this code;

194 (3) Racing commission provided for in article twenty-
195 three, chapter nineteen of this code;

196 (4) Lottery commission and position of lottery director
197 provided for in article twenty-two, chapter twenty-nine
198 of this code;

199 (5) Agency of insurance commissioner provided for in
200 article two, chapter thirty-three of this code;

201 (6) Office of alcohol beverage control commissioner
202 provided for in article sixteen, chapter eleven and

- 203 article two, chapter sixty of this code;
- 204 (7) Division of professional and occupational licenses
205 which may be hereafter created by the Legislature;
- 206 (8) Board of banking and financial institutions
207 provided for in article three, chapter thirty-one-a of this
208 code;
- 209 (9) Lending and credit rate board provided for in
210 chapter forty-seven-a of this code; and
- 211 (10) Division of banking provided for in article two,
212 chapter thirty-one-a of this code.
- 213 (g) The following agencies and boards, including all
214 of the allied, advisory, affiliated or related entities and
215 funds associated with any such agency or board, are
216 hereby transferred to and incorporated in and shall be
217 administered as a part of the department of
218 transportation:
- 219 (1) Road commission provided for in article two,
220 chapter seventeen of this code;
- 221 (2) Division of highways provided for in article two-
222 a, chapter seventeen of this code;
- 223 (3) Parkways, economic development and tourism
224 authority provided for in article sixteen-a, chapter
225 seventeen of this code;
- 226 (4) Division of motor vehicles provided for in article
227 two, chapter seventeen-a of this code;
- 228 (5) Driver's licensing advisory board provided for in
229 article two, chapter seventeen-b of this code;
- 230 (6) Aeronautics commission provided for in article
231 two-a, chapter twenty-nine of this code;
- 232 (7) State rail authority provided for in article
233 eighteen, chapter twenty-nine of this code; and
- 234 (8) Port authority provided for in article sixteen-b,
235 chapter seventeen of this code.
- 236 (h) The following agencies and boards, including all
237 of the allied, advisory, affiliated or related entities and

238 funds associated with any such agency or board, are
239 hereby transferred to and incorporated in and shall be
240 administered as a part of the West Virginia Housing
241 Development Fund:

242 (1) The municipal bond commission.

243 (i) Except for such powers, authority and duties as
244 have been delegated to the secretaries of the depart-
245 ments by the provisions of section two of this article, the
246 existence of the position of administrator and of the
247 agency and the powers, authority and duties of each
248 administrator and agency shall not be affected by the
249 enactment of this chapter.

250 (j) Except for such powers, authority and duties as
251 have been delegated to the secretaries of the depart-
252 ments by the provisions of section two of this article, the
253 existence, powers, authority and duties of boards and
254 the membership, terms and qualifications of members
255 of such boards shall not be affected by the enactment
256 of this chapter, and all boards which are appellate
257 bodies or were otherwise established to be independent
258 decisionmakers shall not have their appellate or
259 independent decision-making status affected by the
260 enactment of this chapter.

261 (k) Any department previously transferred to and
262 incorporated in a department created in section two,
263 article one of this chapter by prior enactment of this
264 section in chapter three, acts of the Legislature, first
265 extraordinary session, one thousand nine hundred
266 eighty-nine, and subsequent amendments thereto, shall
267 henceforth be read, construed and understood to mean
268 a division of the appropriate department so created.
269 Wherever elsewhere in this code, in any act, in general
270 or other law, in any rule, or in any ordinance, resolution
271 or order, reference is made to any department trans-
272 ferred to and incorporated in a department created in
273 section two, article one of this chapter, such reference
274 shall henceforth be read, construed and understood to
275 mean a division of the appropriate department so
276 created, and any such reference elsewhere to a division
277 of a department so transferred and incorporated shall

278 henceforth be read, construed and understood to mean
279 a section of the appropriate division of the department
280 so created.

281 (l) When an agency, board or commission is trans-
282 ferred under a bureau or agency other than a depart-
283 ment headed by a secretary pursuant to this section, that
284 transfer shall be construed to be solely for purposes of
285 administrative support and liaison with the office of the
286 governor, a department secretary, or a bureau. The
287 bureaus created by the Legislature upon the abolish-
288 ment of the department of commerce, labor and
289 environmental resources in the year one thousand nine
290 hundred ninety-four shall be headed by a commissioner
291 or other statutory officer of an agency within that
292 bureau. Nothing in this section shall be construed to
293 extend the powers of department secretaries under
294 section two of this article to any person other than a
295 department secretary, and nothing herein shall be
296 construed to limit or abridge the statutory powers and
297 duties of statutory commissioners or officers pursuant to
298 this code. Upon the abolishment of the office of secretary
299 of the department of commerce, labor and environmen-
300 tal resources, the governor may appoint a statutory
301 officer serving functions formerly within that depart-
302 ment to a position which was filled by the secretary ex
303 officio.

§5F-2-5. Independent appeal boards.

1 (a) The Legislature finds and declares that it may be
2 desirable and appropriate for certain boards and
3 commissions created by the Legislature which may be
4 called upon to review, adjudicate or reverse administra-
5 tive actions and decisions of agencies of the state to be
6 fiscally and functionally independent of the agency or
7 agencies reviewed, to issue rules and manage day-to-day
8 operations independently, and to function as independ-
9 ent and autonomous instrumentalities of the state.

10 (b) To achieve this purpose, the governor may by
11 executive order provide for the transfer from the
12 departments and agencies of the state of any or all of
13 the following boards or commissions which are appellate

14 bodies or were otherwise established to be independent
15 decisionmakers:

16 (1) Human rights commission provided for in article
17 eleven, chapter five of this code;

18 (2) Workers compensation appeals board and office of
19 judges provided for in article five, chapter twenty-three
20 of this code;

21 (3) Air quality board provided for in article two,
22 chapter twenty-two-b of this code;

23 (4) Environmental quality board provided for in
24 article three, chapter twenty-two-b of this code;

25 (5) Surface mine board provided for in article four,
26 chapter twenty-two-b of this code;

27 (6) Board of appeals provided for in article five,
28 chapter twenty-two-a of this code; and

29 (7) Shallow gas well review board provided for in
30 article eight, chapter twenty-two-c of this code.

31 (c) Upon any transfer by executive action authorized
32 in subsection (b) of this section, the governor may
33 provide for administrative support by a department or
34 agency of the state to the board or commission trans-
35 ferred in the same manner as is provided by a depart-
36 ment secretary and for liaison with the office of the
37 governor with respect to budgetary and administrative
38 matters through a department or agency of the state:
39 *Provided*, That nothing in this section shall be construed
40 to affect the existence, powers, authority and duties of
41 independent boards and commissions or the member-
42 ship, terms and qualifications of members of such
43 boards and commissions.

44 (d) The authority to make transfers as provided in
45 subsection (a) of this section shall expire on the first day
46 of January, one thousand nine hundred ninety-five.
47 Upon the exercise of the powers granted in subsection
48 (b) of this section, the governor shall submit to the
49 Legislature a report setting forth the reorganization
50 implemented by executive action pursuant to this
51 section, any recommendations for further reorganization

52 requiring legislative action and drafts of any recom-
53 mended legislation for consideration by the Legislature
54 during the regular session in the year one thousand nine
55 hundred ninety-five to conform this code to the reorgan-
56 ization implemented by executive action.

57 (e) Upon transfers as authorized in subsection (a) of
58 this section, the governor may transfer the funds
59 appropriated to the department or agency of the state
60 attributable to the functions of the board or commission
61 transferred in order to implement the transfer: *Pro-*
62 *vided*, That the authority to transfer funds under this
63 section shall expire on the thirtieth day of June, one
64 thousand nine hundred ninety-five: *Provided, however*,
65 That no funds may be transferred from a special
66 revenue account, dedicated account, capital expenditure
67 account or any other dedicated account or fund for any
68 use or purpose other than the purpose for which the
69 account or fund is dedicated.

70 (f) Nothing in this section shall be construed to affect
71 the consolidation of legal, technical and support person-
72 nel and of procedures of the air quality board, environ-
73 mental quality board and surface mining board pro-
74 vided for in article one, chapter twenty-two-b of this
75 code.

§5F-2-6. Reorganization of boards issuing or incurring debt.

1 (a) The Legislature finds and declares that boards and
2 commissions empowered to issue bonds, incur indebted-
3 ness and provide financing or financial services for a
4 public purpose may in some cases benefit the public
5 interest or operate more efficiently through consolida-
6 tion of legal, technical and support staff or services,
7 sharing of office space, consolidation of procedures, and
8 cooperation to identify circumstances where one entity
9 may provide services for another, including, but not
10 limited to, circumstances where one board or commis-
11 sion may finance the programs of another.

12 (b) In furtherance of the goal of increased efficiency
13 and cooperation, the director of the debt management
14 division of the board of investments and the secretary

15 of the department of administration are jointly charged
16 with the responsibility of developing and presenting to
17 the boards and commissions, to the board of invest-
18 ments, to the governor, and to the Legislature recom-
19 mendations for administrative and statutory change.
20 Not later than the first day of January, one thousand
21 nine hundred ninety-five, the director and the secretary
22 shall present to the governor and the Legislature a
23 report setting forth their findings, any recommenda-
24 tions for administrative or statutory change and drafts
25 of specific legislation for consideration by the Legisla-
26 ture during the regular session in the year one thousand
27 nine hundred ninety-five.

28 (c) The director and the secretary shall invite
29 representatives of the following boards to participate in
30 an ad hoc working group to develop policies and respond
31 to initiatives recommended by the director and the
32 secretary:

33 (1) Municipal bond commission provided for in article
34 three, chapter thirteen of this code;

35 (2) Hospital finance authority provided for in article
36 twenty-nine-a, chapter sixteen of this code;

37 (3) Solid waste management board provided for in
38 article twenty-six, chapter sixteen of this code;

39 (4) Water development authority provided for in
40 article five-c, chapter twenty of this code; and

41 (5) Housing development fund provided for in article
42 eighteen, chapter thirty-one of this code.

43 The working group shall identify circumstances
44 where one entity may provide services for another,
45 including, but not limited to, circumstances where one
46 spending unit may finance the programs of another, to
47 ensure that the terms of any indebtedness are the terms
48 most beneficial to the state. The director and the
49 secretary shall facilitate cooperation between the boards
50 and commissions in developing specific legislation for
51 consideration by the Legislature during the regular
52 session of the Legislature in the year one thousand nine
53 hundred ninety-five.

54 (d) On and after the effective date of this section, the
55 board of investments, with the assistance of the director
56 of the West Virginia debt management commission,
57 shall provide administrative support and shall act as
58 liaison with the office of the governor with respect to
59 the following entities:

60 (1) Municipal bond commission provided for in article
61 three, chapter thirteen of this code: *Provided*, That
62 nothing in this section shall be construed to limit the
63 independence and autonomy of the municipal bond
64 commission;

65 (2) Hospital finance authority provided for in article
66 twenty-nine-a, chapter sixteen of this code; and

67 (3) Public energy authority provided for in article one,
68 chapter five-d of this code.

CHAPTER 18. EDUCATION.

ARTICLE 10A. VOCATIONAL REHABILITATION.

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- §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 depart-
3 ment of education and the arts, or where required by
4 federal law, the board, commission or council designated
5 by the secretary of the department of education and the
6 arts to oversee certain functions of the division of
7 rehabilitation services. All references in this code to the
8 state board of vocational education, except where the
9 context clearly indicates the provision of vocational
10 education to other than disabled individuals, shall mean
11 the state board defined by this subsection.

12 (2) "Division" means the division of vocational
13 rehabilitation established by this article.

14 (3) "Director" means the director of the division of
15 vocational rehabilitation.

16 (4) "Employment handicap" means a physical or
17 mental condition which constitutes, contributes to, or if
18 not corrected will probably result in, an obstruction to
19 occupational performance.

20 (5) "Disabled individual" means any person who has
21 a substantial employment handicap.

22 (6) "Vocational rehabilitation" and "vocational reha-
23 bilitation services" means any services, provided
24 directly or through public or private instrumentalities,
25 found by the director to be necessary to compensate a
26 disabled individual for his employment handicap and to
27 enable him to engage in a remunerative occupation
28 including, but not limited to, medical and vocational
29 diagnosis, vocational guidance, counseling and place-
30 ment, rehabilitation training, attendant care services,
31 physical restoration, transportation, occupational li-
32 censes, occupational tools and equipment, including
33 motor vehicles, maintenance, and training books and
34 materials.

35 (7) "Rehabilitation training" means all necessary
36 training provided to a disabled individual to compensate
37 for his employment handicap including, but not limited
38 to, manual, preconditioning, prevocational, vocational,
39 and supplementary training and training provided for
40 the purpose of achieving broader or more remunerative
41 skills and capacities.

42 (8) "Physical restoration" means any medical, surgical
43 or therapeutic treatment necessary to correct or
44 substantially reduce a disabled individual's employment
45 handicap within a reasonable length of time including,
46 but not limited to, medical, psychiatric, dental and
47 surgical treatment, nursing services, hospital care not
48 to exceed ninety days, convalescent home care, drugs,
49 medical and surgical supplies, and prosthetic applian-
50 ces, but excluding curative treatment for acute or

51 transitory conditions.

52 (9) "Prosthetic appliance" means any artificial device
53 necessary to support or take the place of a part of the
54 body or to increase the acuity of a sense organ.

55 (10) "Occupational licenses" means any license, permit
56 or other written authority required by any governmen-
57 tal unit to be obtained in order to engage in an
58 occupation.

59 (11) "Maintenance" means money payments not
60 exceeding the estimated cost of subsistence during
61 vocational rehabilitation.

62 (12) "Regulations" means regulations made by the
63 director with the approval of the secretary of the
64 department of education and the arts or the state board.

65 (13) "Attendant care evaluation unit" means any
66 agency certified by the division of vocational rehabili-
67 tation that employs a qualified evaluator to provide
68 evaluations and attendant referrals such as the centers
69 for independent living, the West Virginia rehabilitation
70 center and any other unit approved by the division.

71 (14) "Attendant care services" means services which
72 include, but are not limited to:

73 (a) Routine bodily functions such as bowel and
74 bladder care;

75 (b) Dressing;

76 (c) Ambulation;

77 (d) Meal preparation and consumption;

78 (e) Assistance in moving in and out of bed;

79 (f) Bathing and grooming;

80 (g) Housecleaning and laundry; and

81 (h) Any other similar activity of daily living.

82 (15) "Attendant" means a self-employed individual
83 who is trained to perform attendant care services and
84 who works as an independent contractor.

§18-10A-2. Division of rehabilitation services.

1 The division of rehabilitation services is hereby
2 transferred to the department of education and the arts
3 created in article one, chapter five-f of this code. The
4 secretary shall appoint any such board, commission, or
5 council over the division to the extent required by
6 federal law to qualify for federal funds for providing
7 rehabilitation services for disabled persons. The secre-
8 tary and such boards, commissions, or councils as he or
9 she is required by federal law to appoint, are authorized
10 and directed to cooperate with the federal government
11 to the fullest extent in an effort to provide rehabilitation
12 services for disabled persons.

13 References in this article or article ten-b of this
14 chapter to the state board of vocational education, the
15 state board of rehabilitation or the state board as the
16 governing board of vocational or other rehabilitation
17 services or facilities shall mean the secretary of
18 education and the arts: *Provided*, That the designation
19 of the department of education and the arts as the
20 designated state agency for purposes of the state's
21 participation in the state-federal rehabilitation program
22 under the federal Rehabilitation Act of 1973 shall be
23 effective upon a finding by the federal Rehabilitation
24 Services Administration that the designation of the
25 department of education and the arts is in conformity
26 with requirements of federal law. Should the Rehabil-
27 itation Services Administration issue a formal finding
28 of nonconformance, the state board of education shall be
29 continued as the state board of rehabilitation, shall
30 appoint such advisory boards as are required by federal
31 law, and shall have such powers and duties as are set
32 forth in this article. All references in the code to the
33 division of vocational rehabilitation shall mean the
34 division of rehabilitation services, and all references to
35 the director of the division of vocational rehabilitation
36 shall mean the director of the division of rehabilitation
37 services.

38 The director shall review the administrative and
39 fiscal structure of the West Virginia rehabilitation
40 hospital and shall report not later than the thirtieth day

41 of September, one thousand nine hundred ninety-four,
42 to the joint committee on government and finance. The
43 report shall include a complete analysis of income and
44 expenditures attributable to the operation of the
45 hospital, analysis of alternatives for administrative and
46 fiscal modifications, and recommendations and conclu-
47 sions as to whether administrative and fiscal modifica-
48 tions should be implemented.

49 Within thirty days of the effective date of this section
50 the secretary of education and the arts shall hold a
51 public hearing for the purpose of hearing any concerns
52 from employees, persons served by the division or other
53 interested persons related to any impact on programs or
54 services by the continuation of the division of rehabil-
55 itation services under the department of education and
56 the arts.

57 Notwithstanding the provisions of article ten, chapter
58 four of this code, the division of rehabilitation services
59 shall terminate on the first day of July, one thousand
60 nine hundred ninety-five, to allow for the completion of
61 a preliminary performance review by the joint commit-
62 tee on government operations.

**§18-10A-3. Director of division of vocational rehabilita-
tion; powers and duties.**

1 The division shall be administered, under the general
2 supervision and direction of the secretary of the
3 department of education and the arts or, if required by
4 federal law his or her designated state board, by a
5 director appointed by said secretary, or if required by
6 federal law his or her designated state board in
7 accordance with established personnel standards and on
8 the basis of his or her education, training, experience
9 and demonstrated ability.

10 In carrying out his or her duties under this article,
11 the director shall:

12 (1) Appoint such personnel as he or she deems
13 necessary for the efficient performance of the functions
14 of the division.

15 (2) Establish a merit system of personnel manage-

16 ment, or in lieu thereof, avail himself or herself of the
17 services of the state merit system upon payment of a fair
18 share of the expenses of the operation of such system.

19 (3) Make regulations governing the protection of
20 records and confidential information; the manner and
21 form of filing applications for vocational rehabilitation
22 services, eligibility therefor, and investigation and
23 determination thereof; procedures for fair hearings; and
24 such other matters as may be necessary or desirable in
25 accomplishing the purposes of this article.

26 (4) Have the authority to establish and operate a staff
27 development program for the employees of the division
28 and may, in furtherance of such a program, and
29 utilizing any funds appropriated or made available, for
30 such purpose, pay to such employees compensation or
31 expenses, or both, while such employees are pursuing
32 approved training courses or academic studies for the
33 purpose of becoming better equipped for their employ-
34 ment in such division; such staff development program
35 shall be conducted subject to appropriate rules as
36 adopted by the director and approved by the state board:
37 *Provided*, That such rules shall include reasonable
38 provisions for the return of any employee, receiving the
39 benefits of such training, for a reasonable period of duty,
40 or for reimbursement to the state for expenditures
41 incurred on behalf of the training of such employee.

42 (5) Establish appropriate subordinate administrative
43 units within the division.

44 (6) Prepare and submit to the secretary of the
45 department of education and the arts or his or her
46 designated state board annual reports of activities and
47 expenditures and, prior to each regular session of the
48 Legislature, estimates of sums required for carrying out
49 the provisions of this article and estimates of the
50 amounts to be made available for this purpose from all
51 sources.

52 (7) Make requisition for disbursement, in accordance
53 with regulations of the funds available for vocational
54 rehabilitation purposes.

55 (8) Take such other action as may be deemed neces-
56 sary or appropriate to carry out the purposes of this
57 article.

§18-10A-4. Vocational rehabilitation services.

1 Except as otherwise provided by law the division shall
2 provide vocational rehabilitation services to disabled
3 individuals determined by the director to be eligible
4 therefor, and for this purpose the division is authorized
5 among other things to:

6 (1) Cooperate with other departments, agencies and
7 institutions, both public and private, in providing for the
8 vocational rehabilitation of disabled individuals, in
9 studying the problems involved therein, and in estab-
10 lishing, developing and providing, in conformity with
11 the provisions of this article, such programs, facilities
12 and services as may be necessary or desirable.

13 (2) Enter into reciprocal agreements with any other
14 state to provide for the vocational rehabilitation of
15 residents of such state.

16 (3) Conduct research and compile statistics relating to
17 the vocational rehabilitation of disabled individuals.

§18-10A-4a. Attendant care services.

1 The purpose of this section is to declare the intent of
2 the state to enable severely physically disabled adults to
3 enter or continue in the workforce, to enhance the
4 opportunities for disabled individuals to participate
5 fully in society through self-fulfillment and economic
6 independence.

7 The division shall administer the provision of attend-
8 ant care services as a separate and distinct program to
9 any severely physically disabled adult who is present in
10 the state at the time of filing their application. The
11 division may administer the program or may enter into
12 a contract with a private or public organization to
13 administer and operate the program. If the program is
14 administered by the division, the funds shall be used as
15 payments for attendant care services, evaluations,
16 attendant management training and administrative

17 costs. If the division enters into a contract with a private
18 or public organization, the private or public organiza-
19 tion may use the funds as payments for attendant care
20 services, evaluations, attendant management training
21 and for reasonable administrative costs. The administra-
22 tive costs allowed under the contract shall be negotiated
23 and approved by the director. The division shall
24 establish a waiting list of eligible disabled individuals
25 if sufficient funds are not available under the program.
26 Determination will be made by a certified evaluation
27 unit that such adult needs fourteen or more hours of
28 attendant care per week: *Provided*, That the severely
29 physically disabled adult is eighteen years of age or
30 older, is employed or will be ready for employment
31 within six months of the time application for services
32 is made and has a total income of no more than thirty
33 thousand dollars annually. The maximum income
34 allowable will be recalculated each year based on
35 changes in the consumer price index. The eligible adult
36 shall be reevaluated by a certified evaluation unit at the
37 direction of the division at least once every two years
38 to determine their continuing need for attendant care
39 services. The eligible adult is responsible for hiring,
40 firing and supervising his or her attendant. Any subsidy
41 received under the provisions of this section for the
42 purpose of providing attendant care services shall not
43 be considered income to the severely disabled person for
44 any purpose to the extent permitted by federal law and
45 regulations (IRS Act of 1954) but shall supplement any
46 other aid for which the adult is eligible.

47 The division is responsible for accepting applications
48 for attendant care services from severely physically
49 disabled adults and making determinations of eligibil-
50 ity. The division shall provide for certifying evaluation
51 units and shall make determination regarding certifica-
52 tion for each evaluation unit which makes application.

53 The cost of evaluation fees, training of both attendants
54 and eligible adults in the management of attendants and
55 provision of attendant care services shall be borne by the
56 division from funds allocated for this program.

57 The division shall acquire from a certified evaluation

58 unit an evaluation of the attendant care needs for each
59 applicant. Within thirty days of the time that any
60 application for attendant care services is filed, the
61 applicant shall be notified that arrangements have been
62 made for the applicant to be evaluated by a certified
63 evaluation unit. Based upon the evaluator's information,
64 the division shall develop a plan for each eligible
65 applicant that shall include the amount of attendant
66 care time needed per week and an estimate of the length
67 of time the attendant care services will be needed.
68 Notice shall be given to the applicant and the evaluator
69 as soon as a decision has been made regarding the
70 eligibility of each applicant. If the recommendations of
71 the certified evaluation unit are not followed, the
72 division shall include the reasons for reaching its
73 decision in the notice sent to the applicant and evaluator.

74 The division shall promulgate policies and procedures
75 for the administration of this program. The division
76 shall adopt rules for full fiscal accountability for all
77 appropriated funds and financial assistance shall be
78 given in accordance with a sliding payment scale
79 established by the division. The division shall also
80 establish a consumer advisory committee for the
81 purpose of advising on policies and procedures and
82 related matters involved in administration of the
83 program.

84 The division shall be responsible for establishing an
85 appeals procedure for those applicants who have been
86 denied attendant care services and for informing all
87 applicants of their right to appeal a decision of the
88 division.

§18-10A-5. Cooperation with federal government.

1 The division, or if required by federal law the board,
2 commission or council appointed by the secretary of the
3 department of education and the arts to oversee certain
4 functions of the division, shall make agreements or plans
5 to cooperate with the federal government in carrying
6 out the purposes of any federal statutes pertaining to
7 vocational rehabilitation and to this end may adopt such
8 methods of administration as are found by the federal

9 government to be necessary for the proper and efficient
10 operation of such agreements or plans for vocational
11 rehabilitation and to comply with such conditions as
12 may be necessary to secure the full benefits of such
13 federal statutes.

§18-10A-7. Gifts.

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.

§18-10A-9. Grievance hearings.

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

18 including, to the degree needed, an evaluation of the
19 individual's personality, intelligence level, educational
20 achievements, work experience, vocational aptitudes
21 and interests, personal and social adjustments, employ-
22 ment opportunities, and other pertinent data helpful in
23 determining the nature and scope of services needed;

24 (c) Services to appraise the individual's patterns of
25 work behavior and ability to acquire occupational skills,
26 and to develop work attitudes, work habits, work
27 tolerance, and social and behavior patterns suitable for
28 successful job performance, including the utilization of
29 work, simulated or real, to assess and develop the
30 individual's capacities to perform adequately in a work
31 environment;

32 (d) Any other goods or services provided to a disad-
33 vantaged individual, determined (in accordance with
34 regulations of the federal government) to be necessary
35 for, and which are provided for the purpose of, ascer-
36 taining the nature of the handicap to employment and
37 whether it may reasonably be expected the individual
38 can benefit from vocational rehabilitation services or
39 other services available to disadvantaged individuals;

40 (e) Outreach, referral, and advocacy; and

41 (f) The administration of these evaluation and work
42 adjustment services.

43 As used in this section, the term "disadvantaged
44 individuals" means: (1) Disabled individuals as defined
45 in subdivision (5), section one of this article; (2)
46 individuals disadvantaged by reason of their youth or
47 advanced age, low educational attainments, ethnic or
48 cultural factors, prison or delinquency records, or other
49 conditions which constitute a barrier to employment;
50 and (3) other members of their families when the
51 provision of vocational rehabilitation services to family
52 members is necessary for the rehabilitation of the
53 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
2 established by this article is hereby abolished. The real
3 and personal property held by the commission, includ-
4 ing all institutional farms and all easements, mineral
5 rights, appurtenances, farm equipment, agricultural
6 products, inventories and farm facilities, operating
7 revenue funds for those operations, and all employees of
8 the farm management commission, are hereby trans-
9 ferred to the department of agriculture. The commis-
10 sioner of the department of agriculture shall have all
11 those powers, duties and responsibilities previously
12 vested in the farm management commission and the
13 farm management director pursuant to this article.

14 (b) Not later than the first day of January, one
15 thousand nine hundred ninety-five, the commissioner of
16 the department of agriculture shall report to the
17 Legislature on the optimum use or disposition of each
18 institutional farm transferred pursuant to this section.
19 The commissioner shall set forth the objectives of the
20 agency with respect to the land, the criteria by which
21 the agency has determined the optimum use or dispo-
22 sition of the property, and determinations as to whether
23 the land shall be used in the production of food products,
24 the production or development of natural resources, held
25 for recreational or other specified uses, or sold, or leased
26 in whole or in part. With respect to each institutional
27 farm, the commissioner shall report on which properties
28 are subject to reversionary clauses or other restrictions
29 in deeds of conveyance which may affect permitted uses,
30 or proposed sales or leases. With respect to each
31 institutional farm, the commissioner shall report on
32 projected revenues and expenses from operations.
33 Planned activities and uses with respect to the land shall
34 be detailed for at least five years specifically and at least
35 ten years generally and shall include a cost benefit
36 analysis of options or alternatives for action. In the case
37 of land managed for production of timber, the commis-
38 sioner shall report on projections for timber harvesting

39 on a sustained-yield basis, income estimates, and the
40 years in which income will be generated. The report
41 shall detail planned actions to protect the land from
42 erosion, fire, plant and animal pests, noxious insects,
43 noxious weeds and plant and animal diseases. In the
44 case of land subject to rights granted by existing
45 contracts, leases, licenses or easements, the report shall
46 include a determination as to whether the interest
47 granted should be continued or withdrawn. In the case
48 of land managed under land management plans adopted
49 prior to the effective date of this section, land manage-
50 ment plans shall be reviewed and amended as may be
51 necessary. When appropriate, the commissioner shall
52 consult with the secretaries of the various departments
53 of state government and shall request from the secre-
54 taries suggestions for land use and resource develop-
55 ment on the land. In the case of land recommended for
56 sale, lease, or transfer, the report shall include the
57 review and approval of the director of the West Virginia
58 development office of the proposed use and alternate
59 suggestions for use of any institutional farm which may
60 be in the public interest. The report shall include a plan
61 to transfer the Weston state hospital institutional farm,
62 located at Weston, Lewis County, which shall include not
63 less than three hundred fifty acres, to the department
64 of health and human resources not later than the first
65 day of July, one thousand nine hundred ninety-five, for
66 use as a behavioral health center or other related
67 purposes. If the report discloses that no reversionary
68 clauses or other restrictions in deeds of conveyance
69 prohibit the proposed use, and that the proposed use is
70 practicable, the transfer of the Weston state hospital
71 farm to the department of health and human resources
72 is specifically authorized.

73 (c) Nothing in this section shall be construed to limit
74 the duties imposed on the department of health and
75 human resources and the division of corrections to
76 purchase food products pursuant to section five of this
77 article and to make interdepartmental transfers pursu-
78 ant to section six of this article: *Provided*, That
79 purchases shall be made from and transfers made to the
80 department of agriculture.

81 (d) Nothing in this section shall be construed to
82 invalidate any action or contractual obligation of the
83 farm management commission prior to the effective
84 date of this section.

85 (e) Notwithstanding the provisions of subsection (b) of
86 this section, in any case where the farm management
87 commission has determined by motion adopted prior to
88 the effective date of this article that an institutional
89 farm or part thereof should be transferred or disposed
90 of, or authorized any formal agreement for this purpose,
91 whether or not any documents related to the agreement
92 have been reduced to writing or executed, the commis-
93 sioner shall execute all documents and take all necessary
94 actions to implement the transfer or disposition of the
95 property.

96 (f) For any land transferred to the public land
97 corporation for sale, exchange or transfer pursuant to
98 section five of this article, the farm property shall be
99 offered for sale in both small parcels of land and as
100 whole farms and shall be sold in the form which brings
101 the highest price for the total property. For purposes of
102 this subsection, "small parcels" means parcels of no
103 more than five acres.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-1. Short title.

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority.

§29-18-1. Short title.

1 This article shall be known and cited as the "West
2 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,
2 heretofore created, is hereby continued and redesign-

3 nated the West Virginia state rail authority. References
4 in this code to the West Virginia railroad maintenance
5 authority shall be understood and taken to mean the
6 West Virginia state rail authority. Nothing in this
7 article is intended to invalidate any action or obligation
8 of the West Virginia railroad maintenance authority
9 undertaken prior to the effective date of this article. The
10 authority is a governmental instrumentality of the state
11 and a body corporate. The exercise by the authority of
12 the powers conferred by this article and the carrying out
13 of its purposes and duties shall be deemed and held to
14 be, and are hereby determined to be, essential govern-
15 mental functions and for a public purpose.

16 The authority shall consist of seven members. The
17 secretary of the department of transportation shall be
18 a member ex officio. The other six members shall be
19 appointed by the governor, by and with the advice and
20 consent of the Senate, for a term of six years. Of the
21 members of the authority first appointed, two shall be
22 appointed for a term ending on the thirtieth day of June,
23 one thousand nine hundred seventy-seven, two shall be
24 appointed for a term ending two years thereafter and
25 two shall be appointed for a term ending four years
26 thereafter. A person appointed to fill a vacancy occur-
27 ring prior to the expiration of the term for which his
28 predecessor was appointed shall be appointed only for
29 the remainder of such term. Each authority member
30 shall serve until the appointment and qualification of his
31 successor. No more than three of the appointed authority
32 members shall at any one time belong to the same
33 political party. Appointed authority members may be
34 reappointed to serve additional terms.

35 All members of the authority shall be citizens of the
36 state. Each appointed member of the board, before
37 entering upon his duties, shall comply with the require-
38 ments of article one, chapter six of this code and give
39 bond in the sum of twenty-five thousand dollars in the
40 manner provided in article two, chapter six of this code.
41 The governor may remove any authority member for
42 cause as provided in article six, chapter six of this code.

43 Annually the authority shall elect one of its members

44 as chairman and another as vice chairman, and shall
45 appoint a secretary-treasurer, who need not be a
46 member of the authority. Four members of the authority
47 shall constitute a quorum and the affirmative vote of
48 four members shall be necessary for any action taken
49 by vote of the authority. No vacancy in the membership
50 of the authority shall impair the rights of a quorum by
51 such vote to exercise all the rights and perform all the
52 duties of the authority. The person appointed as
53 secretary-treasurer, including an authority member if
54 he is so appointed, shall give bond in the sum of fifty
55 thousand dollars in the manner provided in article two,
56 chapter six of this code.

57 The secretary of the department of transportation
58 shall not receive any compensation for serving as an
59 authority member. Each of the six appointed members
60 of the authority shall receive the same compensation and
61 expense reimbursement as is paid to members of the
62 Legislature for their interim duties as recommended by
63 the citizens legislative compensation commission and
64 authorized by law for each day or substantial portion
65 thereof engaged in the discharge of official duties. All
66 such compensation and expenses incurred shall be
67 payable solely from funds of the authority or from funds
68 appropriated for such purpose by the Legislature and
69 no liability or obligation shall be incurred by the
70 authority beyond the extent to which moneys are
71 available from funds of the authority or from such
72 appropriations.

73 There shall also be a director of the authority
74 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

1. **Definitions and General Provisions.**
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-1-4. Definitions.
 §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-1-9. Posting of bonds; actions on bond.
 §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-1-13. Compensation.

§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

4 the Constitution of the state of West Virginia gives it
5 the discretionary authority to pass legislation which
6 “. . . provides that all matters of probate, the appoint-
7 ment and qualification of personal representatives,
8 guardians, committees and curators, and the settlements
9 of their accounts . . .” be under the exclusive jurisdiction
10 of circuit courts. The Legislature further finds and
11 declares that the use of the word “all” does not require
12 an interpretation that the Legislature must place every
13 aspect of such matters with circuit courts, but, that
14 because of the discretionary authority given, the
15 Legislature may transfer, from time to time, only those
16 matters which it believes would be better served under
17 the jurisdiction of circuit courts.

18 The Legislature hereby further finds and declares
19 that legal proceedings requiring a tribunal to determine
20 whether persons should be appointed to manage the
21 personal or financial affairs of individuals deemed
22 mentally incompetent, mentally retarded or mentally
23 handicapped involve considerations of constitutionally
24 protected rights which can best be resolved within the
25 circuit courts of this state.

**§44A-1-2. Determinations and appointments under prior
law.**

1 (a) Any person determined to be “mentally incompe-
2 tent”, “mentally retarded” or “mentally handicapped”
3 and for such reason deemed to be in need of a guardian
4 or committee pursuant to any order entered and in
5 effect prior to the effective date of this chapter is
6 deemed to be a “protected person” within the meaning
7 of this chapter, from and after its effective date, unless
8 any such determination be revoked or otherwise
9 modified.

10 (b) Any person heretofore appointed to serve as a
11 committee for an incompetent person and any person
12 appointed to serve as a guardian for a mentally retarded
13 or for a mentally handicapped person, is, as of the
14 effective date of this chapter, deemed to be: (1) A
15 guardian, within the meaning of this chapter, if the
16 order appointing such person provides that the person

17 so appointed has responsibility only for the personal
18 affairs of a mentally incompetent, mentally retarded or
19 mentally handicapped person; (2) a conservator, within
20 the meaning of this chapter, if the order appointing such
21 person provides that the person so appointed had
22 responsibility only for managing the estate and financial
23 affairs of a mentally incompetent, mentally retarded or
24 mentally handicapped person; or (3) a guardian and a
25 conservator, within the meaning of this chapter, if the
26 order appointing such person does not set forth limita-
27 tions of responsibility for both the personal affairs and
28 the financial affairs of mentally incompetent, mentally
29 retarded or mentally handicapped person.

30 (c) From and after the effective date of this chapter,
31 the circuit courts shall have exclusive jurisdiction of all
32 matters involving determinations of mental incompe-
33 tency, mental retardation or mental handicap, including
34 the jurisdiction of any proceedings pending as of such
35 effective date. All orders entered prior to the effective
36 date of this chapter in such cases shall remain in full
37 force and effect until terminated, revoked or modified
38 as provided herein.

39 (d) All persons heretofore appointed to serve as a
40 committee or as a guardian shall retain their authority,
41 powers and duties in such capacity, except to the extent
42 that their authority, powers and duties as such guardian
43 or conservator under the provisions of this chapter are
44 more specifically enumerated, in which event such
45 committee or guardian shall have the authority, powers
46 and duties so enumerated.

47 Wherever in the constitution, the code of West
48 Virginia, acts of the Legislature or elsewhere in law a
49 reference is made to a committee for an incompetent
50 person, such reference shall be read, construed and
51 understood to mean guardian and/or conservator as
52 defined in this chapter.

53 (e) The provisions of this chapter providing for the
54 presentation of reports by guardians and the presenta-
55 tion of accountings by conservators shall not be retro-
56 actively applied, and applicable law in effect prior to the

57 effective date of this chapter shall control as to any
58 reports or accountings to be made or filed for any period
59 prior to the effective date of this chapter.

60 (f) As used in this section, "prior law" refers to article
61 eleven, chapter twenty-seven of this code, relating to the
62 appointment of committees for mentally incompetent
63 persons, and to article ten-a, chapter forty-four, relating
64 to the appointment of guardians for mentally retarded
65 and mentally handicapped persons, as such articles were
66 in effect prior to the effective date of this chapter.

§44A-1-3. Advance directives.

1 The existence of an advance directive such as a living
2 will, medical power of attorney or durable power of
3 attorney, duly executed by a person alleged to be a
4 "protected person", as defined in section four of this
5 article, or the prior appointment of a surrogate decision-
6 maker for the protected person may eliminate, limit or
7 supersede the need for the assistance or protection of a
8 guardian or conservator, and any person so appointed
9 shall be the first preferred nominee for guardian or
10 conservator, as set forth in section eight, article two of
11 this chapter.

§44A-1-4. Definitions.

1 As used in this chapter, unless a different meaning
2 is clearly required by the context:

3 (1) "Conservator" means a person appointed by the
4 court who is responsible for managing the estate and
5 financial affairs of a protected person, and, where the
6 context plainly indicates, the term "conservator" shall
7 mean or include a "limited conservator" or a "temporary
8 conservator."

9 (2) "Guardian" means a person appointed by the court
10 who is responsible for the personal affairs of a protected
11 person, and, where the context plainly indicates, the
12 term "guardian" shall mean or include a "limited
13 guardian" or a "temporary guardian."

14 (3) "Protected person" means an adult individual,
15 eighteen years of age or older, who has been found by

16 a court, because of mental impairment, to be unable to
17 receive and evaluate information effectively or to
18 respond to people, events, and environments to such an
19 extent that the individual lacks the capacity: (A) To
20 meet the essential requirements for his or her health,
21 care, safety, habilitation, or therapeutic needs without
22 the assistance or protection of a guardian; or (B) to
23 manage property or financial affairs or to provide for
24 his or her support or for the support of legal dependents
25 without the assistance or protection of a conservator. A
26 finding that the individual displays poor judgment,
27 alone, will not be considered sufficient evidence that the
28 individual is a protected person within the meaning of
29 this subsection.

30 (4) "Interested person" means (A) an individual who
31 is the subject of a guardianship or conservatorship
32 proceeding, (B) a guardian or conservator of a protected
33 person, and (C) any other person with an actual and
34 substantial interest in the proceeding, either generally
35 or as to a particular matter, as distinguished from a
36 person who has only a nominal, formal, or technical
37 interest in or connection with the proceeding.

38 (5) "Limited conservator" means a person appointed
39 by the court who has only those responsibilities for
40 managing the estate and financial affairs of a protected
41 person, as specified in the order of appointment.

42 (6) "Limited guardian" means one appointed by the
43 court who has only those responsibilities for the personal
44 affairs of a protected person, as specified in the order
45 of appointment.

46 (7) "Person" means, generally, a natural person, any
47 corporation, association, partnership or other business
48 entity, any political subdivision or other public agency,
49 or any estate, trust or other collection of properties to
50 which the law attributes the capacity of having rights
51 or duties.

52 (8) "Living will" means a living will existing and duly
53 executed in accordance with the provisions of section
54 three, article thirty, chapter sixteen of this code.

55 (9) "Medical power of attorney" means a power of
56 attorney existing and duly executed in accordance with
57 the provisions of section six, article thirty-a, chapter
58 sixteen of this code.

59 (10) "Surrogate decision-maker" means an individual
60 identified as such by an attending physician in accor-
61 dance with the provisions of section seven, article thirty-
62 b, chapter sixteen of this code.

§44A-1-5. Rules of civil procedure.

1 The West Virginia "Rules of Civil Procedure for Trial
2 Courts of Record" shall apply to all proceedings
3 instituted under the provisions of this chapter except as
4 is otherwise specifically provided.

§44A-1-6. Relationship to other laws.

1 Nothing in this section may be construed to supersede
2 the provisions of the Uniform Veterans' Guardianship
3 Act, article fifteen, chapter forty-four of this code, nor
4 any provisions of this code regarding testamentary
5 guardianships or appointments of guardians for minors.

§44A-1-7. Transfer of venue following appointment.

1 Following the appointment of a full or limited
2 guardian or conservator, the court with jurisdiction over
3 the proceeding may, upon petition, order the transfer of
4 jurisdiction to another circuit court in this state or to
5 an appropriate tribunal in another state if it appears to
6 the court that the interests of the protected person will
7 be best served by such transfer.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

1 (a) Any adult individual may be appointed to serve as
2 a guardian, a conservator, or both, upon determination
3 by the court that the individual is capable of providing
4 an active and suitable program of guardianship or
5 conservatorship for the protected person: *Provided*, That
6 such individual is not employed by or affiliated with any
7 public agency, entity or facility which is providing
8 substantial services or financial assistance to the
9 protected person.

10 (b) Any nonprofit corporation chartered in this state
11 and licensed as set forth in subsection (c) of this section
12 or a public agency that is not a provider of health care
13 services to the protected person may be appointed to
14 serve as a guardian, a conservator, or both: *Provided,*
15 That such entity is capable of providing an active and
16 suitable program of guardianship or conservatorship for
17 the protected person and is not otherwise providing
18 substantial services or financial assistance to the
19 protected person.

20 (c) A nonprofit corporation chartered in this state may
21 be appointed to serve as a guardian or conservator or
22 as a limited or temporary guardian or conservator for
23 a protected person if it is licensed to do so by the
24 secretary of health and human resources. The secretary
25 shall propose legislative rules, for promulgation in
26 accordance with the provisions of chapter twenty-nine-
27 a of this code, for the licensure of such nonprofit
28 corporations and shall provide for the review of such
29 licenses. The rules shall, at a minimum, establish
30 standards to assure that any corporation licensed for
31 such guardianship or conservatorship:

32 (1) Has sufficient fiscal and administrative resources
33 to perform the fiduciary duties and make the reports
34 and accountings required by this chapter;

35 (2) Will respect and maintain the dignity and privacy
36 of the protected person;

37 (3) Will protect and advocate the legal human rights
38 of the protected person;

39 (4) Will assure that the protected person is receiving
40 appropriate educational, vocational, residential and
41 medical services in the setting least restrictive of the
42 individual's personal liberty;

43 (5) Will encourage the protected person to participate
44 to the maximum extent of his or her abilities in all
45 decisions affecting him or her and to act in his or her
46 own behalf on all matters in which he or she is able to
47 do so;

48 (6) Does not provide educational vocational, residen-

49 tial or medical services to the protected person; and

50 (7) Has written provisions in effect for the distribution
51 of assets and for the appointment of temporary
52 guardians and conservators for any protected persons it
53 serves in the event the corporation ceases to be licensed
54 by the department of health and human resources or
55 otherwise becomes unable to serve as guardian.

56 (d) A duly licensed nonprofit corporation that has
57 been appointed to serve as a guardian or as a conser-
58 vator pursuant to the provisions of this article is entitled
59 to compensation in accordance with the provisions of
60 section thirteen of this article.

61 (e) Except as provided in section thirteen of this
62 article, no guardian or conservator nor any officer,
63 agent, director, servant or employee of any such
64 guardian or conservator shall do business with or in any
65 way profit, either directly or indirectly, from the estate
66 or income of any protected person for whom services are
67 being performed by such guardian or conservator.

68 (f) Any bank or trust company authorized to exercise
69 trust powers or to engage in trust business in this state
70 may be appointed as a conservator if the court deter-
71 mines it is capable of providing suitable conservatorship
72 for the protected person.

73 (g) The department of adult protective services or a
74 department designated by the secretary of health and
75 human resources may be appointed to serve as a
76 guardian, a conservator, or both, for individuals under
77 its care or to whom it is providing services or financial
78 assistance, but such appointment may only be made if
79 there is no other individual, nonprofit corporation, bank
80 or trust company, or other public agency that is equally
81 or better qualified and willing to serve.

82 (h) The sheriff of the county in which a court has
83 assumed jurisdiction may be appointed as a guardian,
84 a conservator, or both.

85 (i) Other than a bank or trust company authorized to
86 exercise trust powers or to engage in trust business in
87 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.

§44A-1-9. Posting of bonds; actions on bond.

1 (a) The court shall have the discretion to determine
2 whether the posting of a bond by a guardian, once
3 appointed, is necessary.

4 (b) The court shall require the posting of a bond by
5 a conservator upon appointment except where the
6 conservator is excused from posting bond under the
7 provisions of section eighteen, article four of chapter
8 thirty-one-a of this code. In determining the amount or
9 type of a conservator's bond, the court shall consider:

10 (1) The value of the personal estate and annual gross
11 income and other receipts within the conservator's
12 control;

13 (2) The extent to which the estate has been deposited
14 under an arrangement requiring an order of court for
15 its removal;

16 (3) Whether an order has been entered waiving the
17 requirement that accountings be filed and presented or
18 permitting accountings to be presented less frequently
19 than annually;

20 (4) The extent to which the income and receipts are
21 payable directly to a facility responsible for or which
22 has assumed responsibility for the care or custody of the
23 protected person;

24 (5) The extent to which the income and receipts are
25 derived from state or federal programs that require
26 periodic accountings;

27 (6) Whether a guardian has been appointed, and if so,
28 whether the guardian has presented reports as required;
29 and

30 (7) Whether the conservator was appointed pursuant
31 to a nomination which requested that bond be waived.

32 (c) Any required bond shall be with such surety and
33 in such amount and form as the court may order, and

34 the court may order additional bond or reduce the bond
35 whenever the court finds that such modification is in the
36 best interests of the protected person or of the estate.
37 The court may allow a property bond in lieu of a cash
38 bond.

39 (d) In case of a breach of any condition placed on the
40 bond of any guardian or conservator, an action may be
41 instituted by any interested person for the use and
42 benefit of the protected person, for the estate of the
43 protected person or for the beneficiaries of such estate.

44 (e) The following requirements and provisions apply
45 to any bond which the court may require under this
46 section:

47 (1) Unless otherwise provided by the terms of the
48 approved bond, sureties are jointly and severally liable
49 with the guardian/conservator and with each other.

50 (2) By executing an approved bond of a guardian or
51 conservator, the surety consents to the jurisdiction of the
52 court in any proceeding pertaining to the fiduciary
53 duties of the conservator and naming the surety as a
54 party respondent. Notice of any proceeding must be
55 delivered to the surety or mailed by registered or
56 certified mail to the address of the surety listed with the
57 court in which the bond is filed. If the party initiating
58 a proceeding possesses information regarding the
59 address of a surety which would appear to be more
60 current than the address listed with the court, notice
61 shall also be mailed by registered or certified mail to
62 the last address of the surety known to the party
63 initiating the proceeding.

64 (3) On petition of a successor guardian or conservator
65 or any interested person, a proceeding may be initiated
66 against a surety for breach of the obligation of the bond
67 of the preceding guardian or conservator.

68 (4) The bond of the guardian or conservator is not void
69 after any recovery but may be proceeded against from
70 time to time until the whole penalty is exhausted.

71 (f) No proceeding may be commenced against the
72 surety on any matter as to which an action or proceeding

73 against the guardian or conservator is barred by
74 adjudication or limitation.

§44A-1-10. Mandatory education.

1 (a) Any individual appointed to serve as a guardian
2 or conservator shall receive educational material or
3 complete mandated educational training, unless other-
4 wise directed by the court.

5 (b) Upon a determination that the individual who is
6 the subject of proceedings under this chapter is a
7 protected person, as defined in section four of this
8 article, the required educational training shall be
9 completed within thirty days of the court's determina-
10 tion. Upon completion, the appointed guardian or
11 conservator shall provide an affidavit to the court,
12 certifying that such educational training has been
13 completed, and the court shall forthwith issue the order
14 of appointment in accordance with the provisions of
15 section thirteen, article two of this chapter.

16 (c) The secretary of health and human resources, no
17 later than one year after the effective date of this act,
18 shall develop and implement an educational program
19 for guardians and conservators. The secretary shall also
20 propose legislative rules for promulgation, in accor-
21 dance with the provisions of chapter twenty-nine-a of
22 this code, regarding mandatory educational training for
23 guardians and conservators. Such educational training
24 may include the following:

25 (1) Written materials;

26 (2) Recorded information, whether audio, visual or
27 both; or

28 (3) A combination of the above.

§44A-1-11. Guardian or conservator who resides out of state to designate resident agent.

1 A guardian or conservator who is or who later
2 becomes a nonresident of this state shall file with the
3 clerk of the circuit court in the county in which the
4 proceeding is pending or where he or she was appointed
5 guardian/conservator a designation of an agent residing

6 in this state to accept service of process. Such filing shall
7 be made promptly following the change of residence.

§44A-1-12. Appointment of guardian or conservator acting in another state.

1 (a) A guardian, conservator or like fiduciary ap-
2 pointed in another state may be appointed to serve as
3 a guardian or conservator in this state upon presentation
4 of a petition therefor, proof of appointment, and a
5 certified copy of such portion of the court record in the
6 other state as the court in this state may require.

7 (b) Upon proper notice of hearing to all persons
8 entitled to such notice under section six, article two of
9 this chapter, a hearing shall be held, at which the court
10 may, in its discretion, determine that the appointment
11 in another state has sufficiently fulfilled the require-
12 ments of this chapter. Upon such determination,
13 appointment will be ordered forthwith, and the
14 guardian/conservator shall immediately assume all
15 responsibilities and duties required under the provisions
16 of this chapter.

§44A-1-13. Compensation.

1 (a) Any guardian or conservator, whether full,
2 temporary, or limited, is entitled to reasonable compen-
3 sation as allowed by the court from the estate, including
4 reimbursement for costs advanced. The frequency and
5 amount of all compensation must be approved by the
6 court.

7 (b) No guardian or conservator may use funds out of
8 the estate in defense of an allegation of wrongdoing
9 made on behalf of the protected person against the
10 guardian or conservator.

11 (c) Attorneys appointed to represent individuals under
12 this article shall be paid a reasonable rate of compen-
13 sation from the estate, as approved by the circuit court,
14 or, in the event the court determines that the estate is
15 devoid of funds for the payment of such fees, the
16 attorney shall be paid at a rate prescribed by and from
17 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.
§44A-2-2. Who may file petition; contents.
§44A-2-3. Evaluation report.
§44A-2-4. Statement of financial resources.
§44A-2-5. Confidentiality.
§44A-2-6. Notice of hearing.
§44A-2-7. Appointment of counsel.
§44A-2-8. Nomination of guardian or conservator of alleged protected person; preferences.
§44A-2-9. Hearing on petition to appoint.
§44A-2-10. Factors to be considered by court.
§44A-2-11. Limited guardianships.
§44A-2-12. Limited conservatorships.
§44A-2-13. Order of appointment; notice.
§44A-2-14. Temporary guardians and conservators.
§44A-2-15. Notice of hearing on petitions subsequent to the appointment of a guardian or conservator.

§44A-2-1. Filing of petition; jurisdiction; fees.

- 1 (a) A petition for the appointment of a guardian or
2 conservator shall be filed with the clerk of the circuit
3 court in the county in which the alleged protected
4 person resides or, if the alleged protected person has
5 been admitted to a health care or correctional facility,
6 in the county in which that facility is located.
- 7 (b) The circuit court in which the proceeding is first
8 commenced shall have exclusive jurisdiction unless that
9 court determines that a transfer of venue would be in
10 the best interests of the person alleged to need
11 protection.
- 12 (c) The fee for filing a petition shall be seventy dollars,
13 payable upon filing to the circuit clerk, all of which shall
14 be retained by the circuit clerk. The person bringing the
15 petition shall be responsible for fees for filings of the
16 petition and other papers, for service of process, and for
17 copies of court documents and transcripts. In the event
18 that a guardian and/or conservator is appointed by the
19 court, such fees shall be reimbursed to the individual
20 who filed the petition from the protected person's estate,
21 if funds are available. Any person who is pecuniarily
22 unable to pay such fees and costs as set forth in article
23 one, chapter fifty-nine of this code, and article 2

24 chapter fifty-one of this code, will not be required to pay
25 said fees and costs.

§44A-2-2. Who may file petition; contents.

1 (a) A petition for the appointment of a guardian, a
2 conservator, or both, may be filed by the individual
3 alleged to be a protected person, by a person who is
4 responsible for or has assumed responsibility for the
5 individual's care or custody, by the facility providing
6 care to the individual, by the person that the individual
7 has nominated as guardian or conservator, or by any
8 other interested person, including, but not limited to, the
9 department of health and human resources.

10 (b) A petition for the appointment of a guardian, a
11 conservator, or both, shall state the petitioner's name,
12 place of residence, post office address, and relationship
13 to the alleged protected person, and shall, to the extent
14 known as of the date of filing, include the following:

15 (1) The alleged protected person's name, date of birth,
16 place of residence or location, and post office address;

17 (2) The names and post office addresses of the alleged
18 protected person's nearest relatives, in the following
19 order:

20 (i) The spouse and children, if any; or if none

21 (ii) The parents and brothers and sisters, if any; or
22 if none

23 (iii) The nearest known relatives who would be
24 entitled to succeed to the person's estate by intestate
25 succession as set forth in article one, chapter forty-two
26 of this code.

27 Once a relative or several relatives have been
28 identified in one of the aforementioned categories,
29 relatives in a lower category do not have to be listed in
30 the petition.

31 (3) The name, place of residence or location, and post
32 office address of the individual or facility that is
33 responsible for or has assumed responsibility for the
34 person's care or custody;

35 (4) The name, place of residence or location, and post
36 office address of any person designated as a surrogate
37 decision-maker for the alleged protected person, or of
38 any representative or representatives designated under
39 a durable power of attorney, medical power of attorney,
40 or living will, of which the alleged protected person is
41 the principal, and the petitioner shall attach a copy of
42 any such documents, if available;

43 (5) Whether the person's incapacity will prevent
44 attendance at the hearing and the reasons therefor;

45 (6) The type of guardianship or conservatorship
46 requested and the reasons for the request;

47 (7) The proposed guardian or conservator's name, post
48 office address and, if the proposed guardian or conser-
49 vator is an individual, the individual's age, occupation
50 and relationship to the alleged protected person;

51 (8) The name and post office address of a guardian
52 nominated by the alleged protected person if different
53 from the proposed guardian or conservator, and, if the
54 person nominated as a guardian or conservator is an
55 individual, the individual's age, occupation and relation-
56 ship to the alleged protected person;

57 (9) The name and post office address of any guardian
58 or conservator currently acting, whether in this state or
59 elsewhere;

60 (10) If the appointment of a limited guardian is
61 requested, the specific areas of protection and assistance
62 to be included in the order of appointment; and

63 (11) If the appointment of a limited conservator is
64 requested, the specific areas of management and
65 assistance to be included in the order of appointment.

§44A-2-3. Evaluation report.

1 The petition shall include a report by a licensed
2 physician or psychologist evaluating the condition of the
3 alleged protected person which shall contain, to the best
4 information and belief of its signatory or signatories:

5 (1) A description of the nature, type and extent of

6 person's incapacity, including the person's specific
7 cognitive and functional limitations;

8 (2) Evaluations of the person's mental and physical
9 condition and, where appropriate, educational condition,
10 adaptive behavior and social skills;

11 (3) If the appointment of a guardian is requested, a
12 description of the services, if any, currently being
13 provided for the person's health, care, safety, habilita-
14 tion, or therapeutic needs, and a recommendation as to
15 the most suitable living arrangement and, where
16 appropriate, treatment or habilitation plan and the
17 reasons therefor;

18 (4) An opinion as to whether the appointment of a
19 guardian or conservator is necessary, the type and scope
20 of the guardianship or conservatorship needed, and the
21 reasons therefor;

22 (5) If the petition states that the incapacity of the
23 alleged protected person will prevent attendance at the
24 hearing, an opinion as to whether such attendance would
25 be detrimental to the person's health, care, or safety;

26 (6) If the alleged protected person will attend the
27 hearing, a statement as to whether the individual is on
28 any medications that may affect the person's actions,
29 demeanor and participation at the hearing;

30 (7) The signature of the evaluating physician or
31 psychologist, and the signatures of any other individuals
32 who performed, supervised or reviewed the assessments
33 or examinations upon which the report is based or who
34 made substantial contributions toward the report's
35 preparation; and

36 (8) The date or dates of the assessments and exam-
37 inations upon which the report is based.

38 The court, for good cause shown, may grant leave to
39 file the petition without an evaluation report. If such
40 leave is granted, the court shall order the appropriate
41 assessments or examinations and shall order that a
42 report be prepared and filed with the court.

§44A-2-4. Statement of financial resources.

1 Prior to a hearing for a conservatorship, the petitioner
2 shall file a statement of the financial resources of the
3 alleged protected person which shall, to the extent
4 known, list the person's social security number, the
5 approximate value of the person's real and personal
6 property, and the person's anticipated annual gross
7 income and other receipts.

§44A-2-5. Confidentiality.

1 Upon filing of a petition requesting appointment of a
2 guardian or conservator, all pleadings, exhibits and
3 other documents contained in the court file shall be
4 considered confidential and not open for public inspec-
5 tion, either during the pendency of the case or after the
6 case is closed. However, the contents of the court file
7 shall be open to inspection and copying by the parties,
8 their designees, and their attorneys.

§44A-2-6. Notice of hearing.

1 (a) Upon the filing of the petition and evaluation
2 report, the court shall promptly issue a notice fixing the
3 date, hour and location for a hearing to take place
4 within sixty days.

5 (b) The alleged protected person shall be personally
6 served with the notice, a copy of the petition, and the
7 evaluation report not less than fourteen days before the
8 hearing. The person may not waive notice, and a failure
9 to properly notify the person shall be jurisdictional.

10 (c) A copy of the notice, together with a copy of the
11 petition, shall be mailed by certified mail return receipt
12 requested, by the petitioner, at least fourteen days
13 before the hearing to all individuals seven years of age
14 or older and to all entities whose names and post office
15 addresses appear in the petition. A copy of certified mail
16 return receipts shall be filed in the office of the circuit
17 clerk on or before the date of hearing.

18 (d) The notice shall include a brief statement in large
19 print of the purpose of the proceedings, and shall inform
20 the alleged protected person of the right to appear at
21 the hearing, the right to an attorney and the right to
22 object to the proposed appointment. Add

23 notice shall include the following statement in large
24 print;

25 **POSSIBLE CONSEQUENCES OF A COURT**
26 **FINDING THAT YOU ARE INCAPACITATED**

27 At the hearing you may lose many of your rights. A
28 guardian may be appointed to make personal decisions
29 for you. A conservator may be appointed to make
30 decisions concerning your property and finances. The
31 appointment may affect control of how you spend your
32 money, how your property is managed and controlled,
33 who makes your medical decisions, where you live,
34 whether you are allowed to vote and other important
35 rights.

§44A-2-7. Appointment of counsel.

1 (a) The court shall appoint legal counsel for the
2 alleged protected person. In appointing legal counsel,
3 the court shall consider any known preferences of the
4 alleged protected person.

5 (b) Legal counsel shall have the following major areas
6 of concern: (1) Whether or not a guardian is needed; (2)
7 limitation of the role of the guardian to the protected
8 person's specific needs — e.g., personal supervisor,
9 business affairs, medical consent only; (3) if needed,
10 assure that the person or entity with the greatest
11 interest in the protected person is appointed; (4) if
12 needed, assure the adequacy of the bond; and (5) if
13 needed, assure consideration of proper placement.

14 (c) In responsibly pursuing the major areas of concern
15 set forth in subsection (b) of this section, counsel may
16 perform any or all of the following: (1) Promptly notify
17 the individual and any caretaker of the appointment of
18 counsel; (2) contact any caretaker, review the file and
19 all other relevant information; (3) maintain contact with
20 the client throughout the case and assure that the client
21 is receiving services as are appropriate to the client's
22 needs; (4) contact persons who have or may have
23 knowledge of the client; (5) interview all possible
24 witnesses; (6) pursue discovery of evidence, formal and
25 informal; (7) file appropriate motions; (8) obtain

26 independent psychological examinations, medical exam-
27 inations, home studies, as needed; (9) advise the client
28 on the ramifications of the proceeding and inquire into
29 the specific interests and desires of the individual; (10)
30 subpoena witnesses to the hearing; (11) prepare testi-
31 mony for cross-examination of witnesses to assure
32 relevant material is introduced; (12) review all medical
33 reports; (13) apprise the decision maker of the individ-
34 ual's desires; (14) produce evidence on all relevant
35 issues; (15) interpose objections to inadmissible testi-
36 mony and otherwise zealously represent the interests
37 and desires of the client; (16) raise appropriate questions
38 to all nominations for guardian and the adequacy of the
39 bond; (17) take all steps to limit the scope of guardian-
40 ship to the individual's actual needs, and make all
41 arguments to limit the amount of the intervention; (18)
42 ensure that the court considers all issues as to the
43 propriety of the individual's current or intended
44 placement and that the limitations are set forth in the
45 order; (19) inform the client of the right to appeal, and
46 file an appeal to an order when appropriate; and (20)
47 file a motion for modification of an order or a petition
48 for a writ of habeas corpus if a change of circumstances
49 occurs which warrants a modification or termination.

50 (d) The protected person shall have the right to an
51 independent expert of his or her choice to perform an
52 evaluation and present evidence.

**§44A-2-8. Nomination of guardian or conservator of
alleged protected person; preferences.**

1 Any person who has sufficient capacity to form a
2 preference may at any time nominate any individual or
3 entity to serve as his or her guardian or conservator. The
4 nomination may be made in writing, by an oral request
5 to the court, or may be proved by any other competent
6 evidence. The designation of a representative under a
7 valid medical power of attorney, a living will or of a
8 surrogate decision-maker shall constitute competent
9 evidence of the nomination of a guardian, and the
10 designation of an attorney under a valid durable power
11 of attorney shall constitute competent evidence of the
12 nomination of a conservator. The court shall appoint the

13 one so nominated if the nominee is otherwise eligible to
14 act and would serve in the best interests of the alleged
15 protected person.

§44A-2-9. Hearing on petition to appoint.

1 (a) The court may hear the petition for the appoint-
2 ment of a guardian or conservator or may designate the
3 mental hygiene commissioner in the circuit to serve as
4 the trier of fact at the hearing on the petition. If a
5 mental hygiene commissioner is appointed, a mental
6 hygiene commitment proceeding may not be held
7 simultaneously with a proceeding for the appointment
8 of a guardian or conservator. The designated mental
9 hygiene commissioner shall submit written findings of
10 fact and recommendations to the court upon conclusion
11 of the hearing. The court may accept or reject the
12 recommendations of the mental hygiene commissioner.
13 Only the court may enter an order appointing a
14 guardian or conservator.

15 (b) The hearing may be held at such convenient place
16 as the court or mental hygiene commissioner directs,
17 including the place where the alleged protected person
18 is located. The hearing shall be closed to the public. The
19 proposed guardian or conservator shall attend the
20 hearing except for good cause shown. Any individual or
21 entity may apply for permission to observe or partici-
22 pate at the hearing, and the court or mental hygiene
23 commissioner shall grant the request if reasonably
24 satisfied that the applicant's participation would be in
25 the best interests of the alleged protected person.

26 (c) The alleged protected person is entitled to attend
27 the hearing, to oppose the petition, to be represented by
28 an attorney, to present evidence, to compel the attend-
29 ance of witnesses and to confront and cross-examine all
30 witnesses. If the alleged protected person is present at
31 the hearing, the court or mental hygiene commissioner
32 shall verbally inform the person of such rights, of the
33 contents of the petition, and of the purpose and legal
34 effect of the appointment of a guardian or conservator.
35 The hearing shall not proceed if the alleged protected
36 person is not present unless there is an affidavit of a

37 physician presented to the court, qualified expert
38 testimony to warrant a finding that the presence of the
39 individual is not possible due to a physical inability or
40 that such presence would significantly impair his or her
41 health, or evidence that the person refuses to appear.

42 (d) The standard of proof to be applied in determining
43 whether the alleged protected person is a person for
44 whom a guardian or conservator should be appointed is
45 clear and convincing evidence.

46 (e) The court shall make specific findings of fact and
47 conclusions of law in support of any orders entered.

48 (f) Upon request, a transcript of the proceedings of
49 appointment shall be provided for the purposes of an
50 appeal.

§44A-2-10. Factors to be considered by court.

1 (a) The court alone shall determine whether a
2 guardian or conservator should be appointed, the type
3 thereof, and the specific areas of protection, manage-
4 ment and assistance to be granted. Any determination
5 that the individual is a protected person shall contain
6 a specific finding that the person meets the definition
7 set forth in section four, article one of this chapter. In
8 making the determination, the court shall consider the
9 suitability of the proposed guardian or conservator, the
10 limitations of the alleged protected person, the develop-
11 ment of the person's maximum self-reliance and
12 independence, the availability of less restrictive alterna-
13 tives including advance directives, and the extent to
14 which it is necessary to protect the person from neglect,
15 exploitation, or abuse.

16 (b) Except as provided in section eight of this article,
17 the selection of the guardian or conservator shall be in
18 the discretion of the court. The court shall select the
19 individual or entity best qualified to act in the best
20 interest of the protected person, after consideration of
21 the proposed guardian's or conservator's geographic
22 location, familial or other relationship with such person,
23 ability to carry out the powers and duties of the office,
24 commitment to promoting such person's welfare, any

25 potential conflicts of interest, and the recommendations
26 of the spouse, the parents, children or other interested
27 relatives, whether made by will or otherwise. The court
28 may only appoint one guardian and one conservator and
29 it need not appoint the same individual or entity to serve
30 as both guardian and conservator.

31 (c) A guardianship or conservatorship appointed
32 under this article shall be the least restrictive possible,
33 and the powers shall not extend beyond what is
34 absolutely necessary for the protection of the individual.

§44A-2-11. Limited guardianships.

1 (a) A limited guardian may be appointed for an
2 individual who is deemed to be a protected person in
3 need of a guardian within the meaning of section four,
4 article one of this chapter, but is capable of addressing
5 some of the essential requirements for his or her health,
6 care, safety, habilitation, or therapeutic needs.

7 (b) A limited guardian may be appointed for an
8 individual who otherwise is deemed to be a protected
9 person within the meaning of this chapter, and who
10 resides in a supervised setting such that the individual's
11 health, care, safety, habilitation and therapeutic needs
12 are being attended to without interference, but whose
13 impairment warrants the appointment of a substitute
14 decision-maker for purposes of the ultimate decisions of
15 the location of residence and major medical decisions,
16 and the like.

17 (c) A limited guardian may be appointed for the sole
18 purpose of providing for an individual who otherwise is
19 deemed to be a protected person within the meaning of
20 this chapter, and whose health, care, safety, habilitation
21 and therapeutic needs are being attended to in a
22 supervised residence, but whose only need is for a
23 substituted decision-maker in the event of a major
24 medical decision.

§44A-2-12. Limited conservatorships.

1 (a) A limited conservator may be appointed for an
2 individual deemed to be a protected person in need of
3 a conservator within the meaning of section four, article

4 one of this chapter, but whose property or financial
5 affairs are so limited that there is only one or more
6 designated contexts for which a limitation of the
7 individual's legal rights is warranted.

8 (b) No conservator shall be appointed for a person
9 whose only source or major source of income and
10 property is from the Social Security Administration and
11 who has a representative payee functioning in the best
12 interest of the individual, or for such other person whose
13 opportunity for regular expenditure of resources is so
14 limited that the only practical effect of the appointment
15 of a conservator would be to deprive the individual of
16 the right of daily decisions involving minor personal
17 matters.

§44A-2-13. Order of appointment; notice.

1 (a) An order appointing a guardian or conservator
2 may only be issued by the court upon the following:

3 (1) The guardian or conservator has subscribed to and
4 filed an oath promising to faithfully perform the duties
5 of the office in accordance with all provisions of this
6 chapter;

7 (2) Posting of any bond, if required; and

8 (3) The completion of mandatory education, as
9 required under the provisions of section ten, article one
10 of this chapter, unless waived by the court.

11 (b) In addition to the findings of fact and conclusions
12 of law required in section nine of this article, the order
13 shall include the specific areas of protection or assist-
14 ance granted in the case of a guardian and the specific
15 areas of management and assistance granted in the case
16 of a conservator.

17 (c) Within fourteen days following the entry of an
18 order of appointment, the guardian or conservator shall
19 mail a copy of the order of appointment, together with
20 a brief statement in large print of rights to seek an
21 appeal for modification or termination, to the protected
22 person and to all individuals and entities given notice
23 of the petition.

§44A-2-14. Temporary guardians and conservators.

1 (a) The court may appoint a temporary guardian or
2 temporary conservator, or both, under this section upon
3 a finding that an immediate need exists, that adherence
4 to the procedures otherwise set forth in this chapter for
5 the appointment of a guardian or conservator may result
6 in significant harm to a person or the estate, and that
7 no other individual or entity appears to have authority
8 to act on behalf of the person, or that the individual or
9 entity with authority to act is unwilling, or has
10 ineffectively or improperly exercised the authority.

11 (b) A temporary guardian or temporary conservator
12 shall have only those powers and duties which are
13 specifically set forth in the order of appointment. The
14 appointment of a temporary guardian or temporary
15 conservator shall expire within forty-five days unless
16 extended by the court for an additional forty-five days
17 for good cause shown.

18 (c) An appointment of a temporary guardian or
19 temporary conservator shall be made upon timely and
20 adequate notice to the protected person after appoint-
21 ment of counsel and after all other protections have been
22 afforded, in accordance with due process of law,
23 including any other conditions as the court may order.
24 The protected person may petition the court for a
25 substitution of a temporary guardian or temporary
26 conservator at any time.

27 (d) Within five days following the entry of an order
28 of appointment, a temporary guardian or temporary
29 conservator shall mail a copy of the order of appoint-
30 ment, together with a brief statement in large print of
31 rights to seek an appeal for modification or termination,
32 to the person for whom the appointment was made and
33 to all individuals and entities that would be entitled to
34 notice of hearing on a petition for appointment as set
35 forth in section six of this article.

§44A-2-15. Notice of hearing on petitions subsequent to the appointment of a guardian or conservator.

1 Except as otherwise provided herein or as ordered by
2 the court for good cause shown, notice of hearing on a
3 petition for an order subsequent to the appointment of
4 a guardian or conservator shall be personally served
5 upon the protected person and mailed to all attorneys
6 of record, to those individuals who would be entitled to
7 notice of the filing of an original petition to appoint, to
8 any facility that is responsible for the care or custody
9 of the protected person, to the guardian or conservator,
10 if the guardian or conservator is not the petitioner, and
11 to such other individuals or entities as the court may
12 order. Unless otherwise ordered by the court, the notice
13 shall be personally served upon the protected person or
14 mailed by the petitioner by certified mail return receipt
15 requested to other parties entitled to notice at least
16 fourteen days prior to the hearing and shall be accom-
17 panied by a copy of the petition and other relevant
18 documents. A copy of the certified mail return receipts
19 shall be filed in the office of the circuit clerk on or
20 before the date of the hearing. If deceased, notice to a
21 protected person shall be sent to his or her last known
22 address or to his or her successors in interest, if known.

ARTICLE 3. ADMINISTRATION OF GUARDIANSHIPS AND CONSERVATORSHIPS.

- §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.

1 A guardian of a protected person shall be responsible
2 for obtaining provision for and making decisions with
3 respect to the protected person's support, care, health,
4 habilitation, education, therapeutic treatment, and, if
5 not inconsistent with an order of commitment or
6 custody, to determine the protected person's residence.
7 A guardian shall maintain sufficient contact with the
8 protected person to know of the protected person's
9 capabilities, limitations, needs, and opportunities, and
10 such contact shall not be less frequent than one visit
11 every six months. A guardian shall be required to seek
12 prior court authorization to change the protected
13 person's residence to another state, to terminate or
14 consent to a termination of the protected person's
15 parental rights, to initiate a change in the protected
16 person's marital status, to deviate from a protected
17 person's living will or medical power of attorney, or to
18 revoke or amend a durable power of attorney executed
19 by the protected person.

20 A guardian shall exercise authority only to the extent
21 necessitated by the protected person's limitations, and,
22 where feasible, shall encourage the protected person to
23 participate in decisions, to act on his or her own behalf,
24 and to develop or regain the capacity to manage
25 personal affairs. A guardian shall, to the extent known,
26 consider the express desires and personal values of the
27 protected person when making decisions, and shall
28 otherwise act in the protected person's best interests and
29 exercise reasonable care, diligence, and prudence.

§44A-3-2. Reports by guardian of protected person.

1 Any guardian appointed pursuant to the provisions of
2 this chapter shall file periodic reports, in accordance
3 with section eleven of this article.

4 (a) The guardian's report shall include:

5 (1) A description of the current mental, physical, and
6 social condition of the protected person;

7 (2) A description of the protected person's living
8 arrangements during the reported period;

9 (3) The medical, educational, vocational, and other

10 professional services provided to the protected person
11 and the guardian's opinion as to the adequacy of the
12 protected person's care;

13 (4) A summary of the guardian's visits with and
14 activities on behalf of the protected person;

15 (5) A statement of whether the guardian agrees with
16 the current treatment or habilitation plan;

17 (6) A recommendation as to the need for continued
18 guardianship and any recommended changes in the
19 scope of the guardianship;

20 (7) Any other information requested by the court or
21 useful in the opinion of the guardian;

22 (8) The compensation requested and the reasonable
23 and necessary expenses incurred by the guardian; and

24 (9) A verification signed by the guardian stating that
25 all of the information contained in the report is true and
26 correct to the best of his or her knowledge.

27 (b) The court may order the guardian to attend a
28 hearing on the report by motion of the court, or upon
29 the petition of any interested person. A report of the
30 guardian may be incorporated into and made a part of
31 the accounting of the conservator.

§44A-3-3. Distributive duties and powers of the conservator of a protected person.

1 (a) A conservator of a protected person, without the
2 necessity of seeking prior court authorization, shall
3 apply the income and principal of the estate as needed
4 for the protected person's support, care, health, and if
5 applicable, habilitation, education or therapeutic needs.
6 A conservator shall also apply the income and principal
7 as needed for the support of any legal dependents who
8 are unable to support themselves and who are in need
9 of support.

10 (b) A conservator, when making distributions, shall
11 exercise authority only to the extent necessitated by the
12 protected person's limitations, and shall, where feasible,
13 encourage the protected person to participate in

14 decisions, to act on his or her own behalf, and to develop
15 or regain the capacity to manage the estate and his or
16 her financial affairs. A conservator shall also consider
17 the size of the estate, the probable duration of the
18 conservatorship, the protected person's accustomed
19 manner of living, other resources known to the conser-
20 vator to be available, and the recommendations of the
21 guardian.

22 (c) A conservator shall, to the extent known, consider
23 the express desires and personal values of the protected
24 person when making decisions, and shall otherwise act
25 in the protected person's best interests and exercise
26 reasonable care, diligence, and prudence.

27 (d) A conservator may not revoke or amend a durable
28 power of attorney which has been executed by the
29 protected person without the prior approval of the court.

**§44A-3-4. Management powers and duties of
conservator.**

1 A conservator, in managing the estate, shall act as a
2 fiduciary and serve in the best interests of the protected
3 person and shall, in addition, have the following powers
4 which may be exercised without prior court authoriza-
5 tion except as otherwise specifically provided:

6 (1) To invest and reinvest the funds of the estate in
7 accordance with a standard of prudent investing;

8 (2) To collect, hold, and retain assets of the estate,
9 including land in another state, and to receive additions
10 to the estate;

11 (3) To continue or participate in the operation of any
12 unincorporated business or other enterprise;

13 (4) To deposit estate funds in a state or federally
14 insured financial institution, including one operated by
15 the conservator;

16 (5) To manage, control and sell at public or private
17 sale, for cash or for credit, the personal property of the
18 estate;

19 (6) To perform a contract entered into by a protected

20 person, including a contract to convey or purchase real
21 or personal property;

22 (7) To renew a lease entered into by a protected person
23 as lessor or lessee with or without an option to purchase,
24 including leases for real and personal property and
25 leases and other arrangements for exploration and
26 removal of minerals or other natural resources notwith-
27 standing that the lease or other arrangement may
28 extend beyond the term of the conservatorship;

29 (8) To borrow money and to place, renew or extend
30 an encumbrance upon any property, real or personal,
31 including the power to borrow from a financial institu-
32 tion operated by the conservator, subject to the provi-
33 sions of section twelve of this article;

34 (9) To abandon property when, in the opinion of the
35 conservator, it is valueless or is so encumbered or in
36 such condition that it is of no benefit to the estate;

37 (10) To make ordinary or extraordinary repairs or
38 alterations in buildings or other property and to grant
39 easements for public or private use, or both, with or
40 without consideration;

41 (11) To vote a security, in person or by general or
42 limited proxy, and to consent to the reorganization,
43 consolidation, merger, dissolution, or liquidation of a
44 corporation or other enterprise;

45 (12) To sell or exercise stock subscription or conver-
46 sion rights and to pay calls, assessments, and any other
47 sums chargeable or accruing against or on account of
48 securities;

49 (13) To hold a security in the name of a nominee or
50 in other form without disclosure of the conservatorship,
51 so that title to the security may pass by delivery, but
52 the conservator is liable for any act of the nominee in
53 connection with a security so held;

54 (14) To insure the assets of the estate against damage
55 or loss, and the guardian and conservator against
56 liability with respect to third persons;

57 (15) To allow, pay, reject, contest or settle any claim

58 by or against the estate or protected person by com-
59 promise or otherwise, and to release, in whole or in part,
60 any claim belonging to the estate to the extent it is
61 uncollectible;

62 (16) To pay taxes, assessments and other expenses
63 incurred in the collection, care and administration of the
64 estate;

65 (17) To pay any sum distributable for the benefit of
66 the protected person or for the benefit of a legal
67 dependent by paying the sum directly to the distributee,
68 to the provider of goods and services, to any individual
69 or facility that is responsible for or has assumed
70 responsibility for care and custody, to a distributee's
71 custodian under a Uniform Gifts or Transfers Act of any
72 applicable jurisdiction, or by paying the sum to the
73 guardian of the protected person or, in the case of a
74 dependent, to the dependent's guardian or conservator;

75 (18) To employ persons, including attorneys, account-
76 ants, investment advisors, or agents; to act upon their
77 recommendations without independent investigation; to
78 delegate to them any power, whether ministerial or
79 discretionary; and to pay them reasonable compensation;

80 (19) To maintain life, health, casualty and liability
81 insurance for the benefit of the protected person, or
82 legal dependents;

83 (20) To manage the estate following the termination
84 of the conservatorship and until its delivery to the
85 protected person, or successors in interest; and

86 (21) To execute and deliver all instruments and to
87 take all other actions that will accomplish or facilitate
88 the exercise of the powers conferred in accordance with
89 the provisions of this chapter.

§44A-3-5. Sale or mortgage of real estate.

1 A conservator shall not sell real estate and shall not
2 be authorized to mortgage any real estate until thirty
3 days after persons entitled to notice of hearing of the
4 original petition are notified, and the court has consi-
5 dered any objections and determined whether additional

6 bond is required.

§44A-3-6. Protective arrangements.

1 Upon petition therefor, the court may authorize a
2 conservator to enter into a protective arrangement, to
3 disburse the estate of the protected person and to
4 petition for termination of the conservatorship. "Protec-
5 tive arrangements" include, but are not limited to, the
6 payment, delivery, deposit, or retention of funds or
7 property; the sale, mortgage, lease, or other transfer of
8 property; the execution of an annuity contract, a
9 contract for life care, a deposit contract, or a contract
10 for training and education; and the addition to or
11 establishment of a suitable trust.

§44A-3-7. Estate planning.

1 (a) Upon petition, the court may authorize a conser-
2 vator to exercise the following powers over the estate or
3 financial affairs of a protected person which the
4 protected person could have exercised if he or she were
5 not subject to conservatorship:

6 (1) To make gifts to charity or other donees and to
7 convey interests in any property;

8 (2) To provide support for individuals who are not
9 legal dependents;

10 (3) To amend or revoke trusts or to create or make
11 additions to revocable or irrevocable trusts even though
12 such trusts may extend beyond the life of the protected
13 person;

14 (4) To disclaim, renounce, or release any interest or
15 power, or to exercise any power;

16 (5) To exercise options or change the beneficiary on
17 or withdraw the cash value of any life insurance policy,
18 annuity policy, or retirement plan;

19 (6) To elect against the estate of the protected person's
20 spouse;

21 (7) To withdraw funds from multiple party bank
22 accounts, to change the beneficiary on or dispose of any
23 payable or transfer on death arrangement, or to dispose

24 of any property specifically devised or bequeathed under
25 the protected person's will.

26 (b) The court, in authorizing the conservator to
27 exercise any of the above powers, shall primarily
28 consider the decision which the protected person would
29 have made, to the extent that the decision can be
30 ascertained. The court shall also consider the financial
31 needs of the protected person and the needs of legal
32 dependents for support, possible reduction of income,
33 estate, inheritance or other tax liabilities, eligibility for
34 governmental assistance, the protected person's prior
35 pattern of giving or level of support, the existing estate
36 plan, the protected person's probable life expectancy,
37 the probability that the conservatorship will terminate
38 prior to the protected person's death, and any other
39 factors which the court believes pertinent.

40 (c) No order may be entered under this section unless
41 notice of hearing is first given to the protected person,
42 to the beneficiaries of the protected person's estate plan
43 and to the individuals who would succeed to the
44 protected person's estate by intestate succession. No
45 trust may be amended or revoked without prior notice
46 of hearing to the trustee thereof.

47 (d) In making a determination under this section, the
48 court shall be entitled to compel the production of
49 documents, including the protected person's will.

50 (e) Nothing in this section shall be construed to create
51 a duty on the part of a conservator to revise a protected
52 person's estate plan.

§44A-3-8. Conservator's inventory.

1 (a) Within ninety days following entry of an order of
2 appointment, a conservator shall file with the court an
3 inventory of the real and personal estate of the protected
4 person which has come into the conservator's possession
5 or knowledge. The inventory shall include, with reason-
6 able detail, a listing of each item of the estate, its
7 approximate fair market value and the type and amount
8 of encumbrance to which it is subject. If any real or
9 personal estate comes into the possession or knowledge

10 of the conservator subsequent to the filing of the initial
11 inventory, the conservator shall either amend the
12 inventory or list the same in the next accounting
13 required to be filed with the court, as described in
14 section eight of this article.

15 (b) A conservator shall mail a copy of the inventory
16 to the individuals and entities who received notice of
17 hearing, as specified in section six, article two of this
18 chapter, no later than fourteen days following its
19 presentation of the inventory.

§44A-3-9. Accountings by conservator.

1 Any conservator appointed pursuant to the provisions
2 of this chapter shall file periodic accountings as
3 provided for under section eleven of this article.

4 (a) The accounting shall include:

5 (1) A listing of the receipts, disbursements and
6 distributions from the estate under the conservator's
7 control during the period covered by the accounting;

8 (2) A listing of the estate;

9 (3) The services being provided to the protected
10 person;

11 (4) The significant actions taken by the conservator
12 during the reporting period;

13 (5) A recommendation as to the continued need for
14 conservatorship and any recommended change in the
15 scope of the conservatorship.

16 (6) Any other information requested by the court or
17 useful in the opinion of the conservator;

18 (7) The compensation requested and the reasonable
19 and necessary expenses incurred by the conservator; and

20 (8) A verification signed by the conservator stating
21 that all of the information contained in the accounting
22 is true and correct to the best of his or her knowledge.

23 (b) The court may order the conservator to attend a
24 hearing on the accounting by motion of the court or upon
25 the petition of any interested person. An accounting by

26 a conservator may be incorporated into and made a part
27 of the report of the guardian.

§44A-3-10. Waiver of accountings.

1 (a) The court, upon petition therefor, may waive the
2 requirement that accountings be filed or may permit
3 accountings to be filed less frequently than annually if
4 it determines that the expense involved or burden
5 placed on the conservator in preparing and presenting
6 annual accountings outweighs the benefit and protection
7 afforded thereby to the protected person.

8 (b) In determining whether accountings may be
9 waived or filed less frequently than annually, the court
10 shall consider:

11 (1) The relationship of the conservator to the protected
12 person;

13 (2) The value of the estate and annual gross income
14 and other receipts within the conservator's control;

15 (3) The amount of the bond;

16 (4) The extent to which the estate has been deposited
17 under an arrangement requiring an order of court for
18 its removal;

19 (5) The extent to which the income and receipts are
20 payable directly to a facility responsible for the care or
21 custody of the protected person;

22 (6) The extent to which the income and receipts are
23 derived from state or federal programs that require
24 periodic accountings;

25 (7) Whether a guardian has been appointed, and if so,
26 whether the guardian has presented reports as required;
27 and

28 (8) Any other factors which the court deems approp-
29 riate.

§44A-3-11. Filing of reports and accountings.

1 (a) Reports of guardians and accountings of conserva-
2 tors, as described in this article shall be filed with the
3 circuit clerk of the county in which appointed, within

4 sixty days following the first anniversary of the
5 appointment and:

6 (1) At least annually thereafter;

7 (2) When the court orders additional reports or
8 accountings to be filed;

9 (3) When the guardian or conservator resigns or is
10 removed; and

11 (4) When the appointment of the guardian or conser-
12 vator is terminated, except that in the case of a
13 guardian, the court may determine that there is no need
14 for a report upon such termination; and in the case of
15 a conservator, no accounting will be required if the
16 persons entitled to the estate consent thereto.

17 (b) A guardian or conservator may elect to file a
18 periodic report or accounting on a calendar-year basis;
19 however, in no event may such a report or accounting
20 cover a period of more than one year. A calendar-year
21 report or accounting shall be filed with the circuit clerk
22 no later than the fifteenth day of April of the succeeding
23 year.

§44A-3-12. Self-dealing and conflicts of interest.

1 (a) Unless court approval is first obtained, or unless
2 such relationship existed prior to the appointment and
3 was disclosed in the petition for appointment, a conser-
4 vator may not:

5 (1) Have any interest, financial or otherwise, directly
6 or indirectly, in any business transaction or activity with
7 the conservatorship;

8 (2) Acquire an ownership, possessors, security, or
9 other pecuniary interest adverse to the protected person,
10 or to the estate, or an interest in an asset in which the
11 protected person also owns an interest;

12 (3) Directly or indirectly purchase, lease, or sell any
13 property from or to the protected person or from or to
14 the estate;

15 (4) Borrow or loan funds to the protected person or
16 to the estate, except for reasonable advances

17 interest for the protection of the estate;

18 (5) Compromise or otherwise modify a debt owed by
19 the conservator to the protected person or to the estate;

20 (6) Employ individuals or entities who were associated
21 with or employed by the conservator prior to the
22 appointment; or

23 (7) Directly or indirectly purchase, lease or sell
24 property or services from or to any entity in which the
25 conservator or a relative of the conservator is an officer,
26 director, shareholder or proprietor, or owns a significant
27 financial interest.

28 (b) Any activity prohibited by this section is voidable
29 by the court upon the petition of any interested person
30 or upon a motion of the court. This section does not limit
31 any other remedies which may be available for a breach
32 by the conservator or others of their fiduciary duty to
33 the protected person or to the estate.

§44A-3-13. Personal liability of guardians.

1 (a) A guardian shall have a fiduciary duty to the
2 protected person for whom he or she was appointed
3 guardian and may be held personally liable for a breach
4 of that duty.

5 (b) A guardian shall not be liable for the acts of the
6 protected person, unless the guardian is personally
7 negligent, nor shall a guardian be required to expend
8 personal funds on behalf of the protected person.

§44A-3-14. Personal liability of conservators.

1 (a) A conservator shall have a fiduciary duty to the
2 protected person for whom he or she was appointed
3 conservator and may be held personally liable for a
4 breach of that duty.

5 (b) Unless otherwise provided in the contract, a
6 conservator is not personally liable on a contract entered
7 into in a fiduciary capacity in the course of administra-
8 tion of the estate unless the conservator fails to reveal
9 the representative capacity or to identify the estate in
10 the contract.

11 (c) A conservator is personally liable for obligations
12 arising from ownership or control of property of the
13 estate or for torts committed in the course of adminis-
14 tration of the estate only if personally negligent.

15 (d) Claims based upon contracts entered into by a
16 conservator in a fiduciary capacity, obligations arising
17 from ownership or control of the estate, or torts
18 committed in the course of administration of the estate,
19 may be asserted against the estate by proceeding
20 against the conservator in a fiduciary capacity, whether
21 or not the conservator is personally liable therefor.

22 (e) A successor conservator is not personally liable for
23 the contracts or actions of a predecessor. However, a
24 successor conservator is not immunized from liability
25 for a breach of fiduciary duty committed by a prede-
26 cessor if the successor learns of the breach and fails to
27 take reasonable corrective action.

**§44A-3-15. Protection for persons conducting business
with guardians and conservators.**

1 Any individual or entity who, in good faith, conducts
2 business with a guardian or conservator as to any
3 matter or transaction is entitled to presume that the
4 guardian or conservator is properly authorized to act.
5 The fact that an individual or entity conducts business
6 with a guardian or conservator with knowledge of the
7 representative capacity does not alone require an
8 inquiry into the authority of the guardian or conserva-
9 tor, except that any such individual or entity shall be
10 charged with knowledge of restrictions which may
11 appear in an order appointing the guardian or conser-
12 vator. No individual or entity shall be required to see
13 to the proper application of any funds or property paid
14 to or delivered to a conservator.

**§44A-3-16. Court modification of powers and duties of
guardian or conservator.**

1 Nothing in this chapter shall prohibit the court from
2 limiting the powers which may otherwise be exercised
3 by a guardian or conservator without prior court
4 authorization, from authorizing transactions with the

5 might otherwise be prohibited, or from granting
6 additional powers to a guardian or conservator. Nothing
7 in this chapter shall prohibit a guardian or conservator
8 from seeking court authorization, instructions or
9 ratification for any actions, proposed actions, or
10 omissions to act.

ARTICLE 4. TERMINATION, REVOCATION AND MODIFICATION OF APPOINTMENTS.

- §44A-4-1. Termination of appointment of guardian or conservator.
- §44A-4-2. Appointment of successor guardian or conservator.
- §44A-4-3. Resignation of guardian or conservator.
- §44A-4-4. Removal of guardian or conservator.
- §44A-4-5. Termination of guardianship or conservatorship of protected person—When authorized.
- §44A-4-6. Petition for termination, revocation or modification; standards.
- §44A-4-7. Hearing on petition to terminate, revoke or modify.

§44A-4-1. Termination of appointment of guardian or conservator.

1 The appointment of a guardian or conservator shall
2 terminate upon the death, resignation, or removal of the
3 guardian or conservator or upon the termination of the
4 guardianship or conservatorship. A termination of an
5 appointment does not affect the liability of a guardian
6 or conservator for prior acts or the responsibility of a
7 conservator to account for the estate of the protected
8 person.

§44A-4-2. Appointment of successor guardian or conservator.

1 The court may appoint a successor guardian or
2 conservator prior to or at the time of a termination. A
3 successor guardian appointed prior to a termination
4 shall be immediately empowered to assume the duties
5 of office but shall be required to file the requisite oath,
6 post any required bond, and complete mandatory
7 education, if required by the court, within thirty days
8 of the termination of the predecessor. A successor
9 guardian or conservator shall succeed to the powers and
10 duties of the predecessor unless otherwise ordered by
11 the court.

§44A-4-3. Resignation of guardian or conservator.

1 A guardian or conservator shall petition the court for
2 permission to resign at least sixty days prior to the
3 effective date of resignation. The court shall grant the
4 permission to resign, except for good cause, and,
5 pursuant to the provisions of section two of this article,
6 shall appoint a suitable successor who is willing to serve.

§44A-4-4. Removal of guardian or conservator.

1 Upon the petition of any interested person or upon the
2 motion of the court, the court may remove a guardian
3 or conservator or order other appropriate relief if the
4 guardian or conservator:

5 (1) Is acting under an order entered pursuant to
6 material misrepresentation or mistake, whether fraud-
7 ulent or innocent;

8 (2) Has an incapacity or illness, including substance
9 abuse, which affects his or her fitness to perform or is
10 adjudged to be a protected person in this or in any other
11 jurisdiction;

12 (3) Is convicted of a crime which reflects upon his or
13 her fitness to perform;

14 (4) Wastes or mismanages the estate, unreasonably
15 withholds distributions or makes distributions in a
16 negligent or reckless manner or otherwise abuses
17 powers or fails to discharge duties;

18 (5) Neglects the care and custody of the protected
19 person or legal dependents;

20 (6) Has an interest adverse to the faithful perfor-
21 mance of duties such that there is a substantial risk that
22 the guardian or conservator will fail to properly
23 perform those duties;

24 (7) Fails to file reports or accountings when required,
25 or fails to comply with any court order;

26 (8) Fails to file sufficient bond after being ordered by
27 the court to do so;

28 (9) Avoids service of process or notice;

29 (10) Becomes incapable of performing duties; or

30 (11) Is not acting in the best interests of the protected
31 person or of the estate, with or without fault. The court
32 may appoint a temporary guardian pending a determi-
33 nation on a petition for removal of a guardian or
34 conservator.

§44A-4-5. Termination of guardianship or conservatorship of protected person—When authorized.

1 A guardianship or conservatorship of a protected
2 person shall terminate upon the death of the protected
3 person, whenever jurisdiction is transferred to another
4 state or if ordered by the court following a hearing on
5 the petition of any interested person.

§44A-4-6. Petition for termination, revocation or modification; standards.

1 (a) Upon a petition filed pursuant to this section, or
2 upon a petition for a writ of habeas corpus, duly filed,
3 the court may terminate the appointment of a guardian
4 or conservator.

5 (b) Upon petition by the protected person, by the
6 guardian or conservator, by any other interested person,
7 or upon the motion of the court, the court may terminate
8 a guardianship, conservatorship, or both, or modify the
9 type of appointment or the areas of protection, manage-
10 ment or assistance previously granted. Such termin-
11 ation, revocation or modification may be ordered if:

12 (1) The protected person is no longer in need of the
13 assistance or protection of a guardian or conservator;

14 (2) The extent of protection, management or assist-
15 ance previously granted is either excessive or insuffi-
16 cient considering the current need therefor;

17 (3) The protected person's understanding or capacity
18 to manage the estate and financial affairs or to provide
19 for his or her health, care or safety has so changed as
20 to warrant such action;

21 (4) No suitable guardian or conservator can be
22 secured who is willing to exercise the assigned duties;
23 or

24 (5) It is otherwise in the best interest of the protected
25 person.

26 (c) In making a determination under this section, the
27 court shall appoint legal counsel for the protected person
28 and may appoint such other persons whom it deems
29 qualified to make such evaluations as it shall determine
30 appropriate.

§44A-4-7. Hearing on petition to terminate, revoke or modify.

1 A hearing on a petition to terminate, revoke or modify
2 shall be conducted with the same notice and in the same
3 manner and the protected person shall have the same
4 rights as the protected person would obtain at a hearing
5 on a petition for the appointment of a guardian or
6 conservator. The protected person and the guardian or
7 conservator shall attend the hearing except for good
8 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.

1 (a) The commission shall have power and authority to
2 promulgate rules implementing a hazardous materials
3 transportation registration and permitting program for
4 operators of motor vehicles transporting hazardous
5 materials upon or over the public highways within the
6 borders of this state. Rules adopted under this section
7 shall be consistent with, and equivalent in scope,
8 coverage, and content to, the report submitted by the
9 alliance for uniform hazardous material transportation
10 procedures to the secretary of transportation, United
11 States department of transportation, pursuant to
12 paragraph (c) of section twenty-two of the "Hazardous
13 Materials Transportation Uniform Safety Act of 1990",
14 Public Law 101-615.

15 (b) The hazardous materials transportation registra-
16 tion and permitting program established in this section
17 shall be coordinated with hazardous materials regula-
18 tions enforced by other agencies of the state, and shall
19 preempt and supersede hazardous materials transporta-
20 tion regulation and permitting programs administered
21 or enforced by any municipality, county or other
22 political subdivision of this state.

23 (c) The funds for the program established in this
24 section shall be obtained from fees paid by registrants
25 hereunder. Those fees shall be established by rulemak-
26 ing and shall be apportioned; by the percentage of the
27 registrant's activity in this state; by the percentage of
28 a registrant's business that is related to hazardous
29 materials; and by the number of motor vehicles operated
30 in this state by a registrant. Rulemaking may also
31 establish fees for processing and registration: *Provided,*
32 That said fees established in this section shall not exceed
33 fifty dollars per registrant per annum, nor fifty dollars
34 per vehicle per annum: *Provided, however,* That said
35 apportioned vehicle fee shall not be required under this
36 program sooner than the registration year beginning on
37 the first day of July, one thousand nine hundred ninety-
38 five.

39 (d) The commission may enter into agreements with
40 other states, a national repository or federal agencies as
41 necessary to implement the program established under
42 this section.

43 (e) To achieve the purposes of this section, the
44 commission may, through its inspectors or other
45 authorized employees, inspect any facilities or motor
46 vehicles of any person who transports hazardous
47 materials subject to this program.

48 (f) It shall be unlawful for any person to operate, or
49 cause to be operated, a motor vehicle transporting
50 hazardous materials upon or over the public highways
51 within this state without first having complied with the
52 requirements of the registration and permitting pro-
53 gram, as established by the commission. Failure to
54 comply with the program requirements, as determined
55 by the commission after notice and opportunity to be
56 heard, may be sufficient cause for suspension or
57 revocation of permits and registration under the
58 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.]

AN ACT to amend and reenact section nine, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five, article three, chapter sixteen of said code; to amend and reenact section fifteen, article fifteen, chapter thirty-three of said code; to further amend said article fifteen by adding thereto a new section, designated section seventeen; to amend article sixteen of said chapter by adding thereto a new section, designated section twelve; to amend article sixteen-a of said chapter by adding thereto a new section, designated section fifteen; to amend and reenact sections three and

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.**
- 16. Public Health.**
- 33. Insurance.**

**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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§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.

1 (a) The director is hereby given exclusive authoriza-
2 tion to execute such contract or contracts as are
3 necessary to carry out the provisions of this article and
4 to provide the plan or plans of group hospital and
5 surgical insurance coverage, group major medical
6 insurance coverage, group prescription drug insurance
7 coverage and group life and accidental death insurance
8 coverage selected in accordance with the provisions of
9 this article, such contract or contracts to be executed
10 with one or more agencies, corporations, insurance
11 companies or service organizations licensed to sell group
12 hospital and surgical insurance, group major medical
13 insurance, group prescription drug insurance and group
14 life and accidental death insurance in this state.

15 (b) The group hospital or surgical insurance coverage
16 and group major medical insurance coverage herein
17 provided for shall include coverages and benefits for X-
18 ray and laboratory services in connection with mammo-
19 grams and pap smears when performed for cancer
20 screening or diagnostic services and annual checkups
21 for prostate cancer in men age fifty and over. Such
22 benefits shall include, but not be limited to, the
23 following:

24 (1) Baseline or other recommended mammograms for
25 women age thirty-five to thirty-nine, inclusive;

26 (2) Mammograms recommended or required for
27 women age forty to forty-nine, inclusive, every two years
28 or as needed;

29 (3) A mammogram every year for women age fifty
30 and over;

31 (4) A pap smear annually or more frequently based
32 on the woman's physician's recommendation for women
33 age eighteen and over; and

34 (5) A checkup for prostate cancer annually for men
35 age fifty or over.

36 (c) The group life and accidental death insurance
37 herein provided for shall be in the amount of ten
38 thousand dollars for every employee. The amount of the
39 group life and accidental death insurance to which an
40 employee would otherwise be entitled shall be reduced
41 to five thousand dollars upon such employee attaining
42 age sixty-five.

43 (d) All of the insurance coverage to be provided for
44 under this article may be included in one or more
45 similar contracts issued by the same or different
46 carriers.

47 (e) The provisions of article three, chapter five-a of
48 this code, relating to the division of purchases of the
49 department of finance and administration, shall not
50 apply to any contracts for any insurance coverage or
51 professional services authorized to be executed under
52 the provisions of this article. Before entering into any
53 contract for any insurance coverage, as herein autho-
54 rized, said director shall invite competent bids from all
55 qualified and licensed insurance companies or carriers,
56 who may wish to offer plans for the insurance coverage
57 desired. The director shall deal directly with insurers
58 in presenting specifications and receiving quotations for
59 bid purposes. No commission or finder's fee, or any
60 combination thereof, shall be paid to any individual or

61 agent; but this shall not preclude an underwriting
62 insurance company or companies, at their own expense,
63 from appointing a licensed resident agent, within this
64 state, to service the companies' contracts awarded under
65 the provisions of this article. Commissions reasonably
66 related to actual service rendered for such agent or
67 agents may be paid by the underwriting company or
68 companies: *Provided*, That in no event shall payment be
69 made to any agent or agents when no actual services are
70 rendered or performed. The director shall award such
71 contract or contracts on a competitive basis. In award-
72 ing the contract or contracts the director shall take into
73 account the experience of the offering agency, corpora-
74 tion, insurance company or service organization in the
75 group hospital and surgical insurance field, group major
76 medical insurance field, group prescription drug field
77 and group life and accidental death insurance field, and
78 its facilities for the handling of claims. In evaluating
79 these factors, the director may employ the services of
80 impartial, professional insurance analysts or actuaries
81 or both. Any contract executed by the director with a
82 selected carrier shall be a contract to govern all eligible
83 employees subject to the provisions of this article.
84 Nothing contained in this article shall prohibit any
85 insurance carrier from soliciting employees covered
86 hereunder to purchase additional hospital and surgical,
87 major medical or life and accidental death insurance
88 coverage.

89 (f) The director may authorize the carrier with whom
90 a primary contract is executed to reinsure portions of
91 such contract with other carriers which elect to be a
92 reinsurer and who are legally qualified to enter into a
93 reinsurance agreement under the laws of this state.

94 (g) Each employee who is covered under any such
95 contract or contracts shall receive a statement of
96 benefits to which such employee, his or her spouse and
97 his or her dependents are entitled thereunder, setting
98 forth such information as to whom such benefits shall
99 be payable, to whom claims shall be submitted, and a
100 summary of the provisions of any such contract or
101 contracts as they affect the employee, his or her spouse

102 and his or her dependents.

103 (h) The director may at the end of any contract period
104 discontinue any contract or contracts it has executed
105 with any carrier and replace the same with a contract
106 or contracts with any other carrier or carriers meeting
107 the requirements of this article.

108 (i) The director shall provide by contract or contracts
109 entered into under the provisions of this article the cost
110 for coverage of children's immunization services from
111 birth through age sixteen years to provide immunization
112 against the following illnesses: Diphtheria, polio,
113 mumps, measles, rubella, tetanus, hepatitis-b, haemo-
114 philus influenzae-b and whooping cough. Additional
115 immunizations may be required by the commissioner of
116 the bureau of public health for public health purposes.
117 Any contract entered into to cover these services shall
118 require that all costs associated with immunization,
119 including the cost of the vaccine, if incurred by the
120 health care provider, and all costs of vaccine adminis-
121 tration, be exempt from any deductible, per visit charge
122 and/or copayment provisions which may be in force in
123 these policies or contracts. This section does not require
124 that other health care services provided at the time of
125 immunization be exempt from any deductible and/or
126 copayment provisions.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-5. Distribution of free vaccine preventives of disease.

1 (a) *Declaration of legislative findings and purpose.* —
2 The Legislature finds and declares that early immun-
3 ization for preventable diseases represents one of the
4 most cost-effective means of disease prevention. The
5 savings which can be realized from immunization,
6 compared to the cost of health care necessary to treat
7 the illness and lost productivity, are substantial.
8 Immunization of children at an early age serves as a
9 preventative measure both in time and money and is
10 essential to maintain our children's health and well-

11 being. The costs of childhood immunizations should not
12 be allowed to preclude the benefits available from a
13 comprehensive, medically supervised child immuniza-
14 tion service. Furthermore, the federal government has
15 established goals that require ninety percent of all
16 children to be immunized by age two and provided
17 funding to allow uninsured children to meet this goal.

18 (b) The state director of health shall acquire vaccine
19 for the prevention of polio, measles, mumps, rubella,
20 diphtheria, pertussis, tetanus, hepatitis-b, haemophilus
21 influenzae-b and other vaccine preventives of disease as
22 may be deemed necessary or required by law, and shall
23 distribute the same, free of charge, in such quantities
24 as he or she may deem necessary, to county and
25 municipal health officers, to be used by them for the
26 benefit of, and without expense to the citizens within
27 their respective jurisdictions, to check contagions and
28 control epidemics.

29 (c) The county and municipal health officers shall
30 have the responsibility to properly store and distribute,
31 free of charge, vaccines to private medical or osteopathic
32 physicians within their jurisdictions to be utilized to
33 check contagions and control epidemics: *Provided*, That
34 the private medical or osteopathic physicians shall not
35 make a charge for the vaccine itself when administering
36 it to a patient. The county and municipal health officers
37 shall provide a receipt to the state director of health for
38 any vaccine delivered as herein provided.

39 (d) The director of the division of health is charged
40 with establishing a childhood immunization advisory
41 committee to plan for universal access, make recommen-
42 dations on the distribution of vaccines acquired pursu-
43 ant to this section and tracking of immunization
44 compliance in accordance with federal and state laws.
45 The childhood immunization advisory committee shall
46 be appointed by the secretary of the department of
47 health and human resources no later than the first day
48 of July, one thousand nine hundred ninety-four, and
49 shall be comprised of representatives from the following
50 groups: Public health nursing, public health officers,
51 primary health care providers, pediatricians, family

52 practice physicians, health care administrators, state
53 medicaid program, the health insurance industry, the
54 public employees insurance agency, the self-insured
55 industry and consumers. The state epidemiologist shall
56 serve as an advisor to the committee. Members of the
57 advisory committee shall serve two-year terms.

58 (e) All health insurance policies and prepaid care
59 policies issued in this state which provide coverage for
60 the children of the insured shall provide coverage for
61 child immunization services to include the cost of the
62 vaccine, if incurred by the health care provider, and all
63 costs of administration from birth through age sixteen
64 years. These services shall be exempt from any deduct-
65 ible, per-visit charge and/or copayment provisions
66 which may be in force in these policies or contracts. This
67 section does not exempt other health care services
68 provided at the time of immunization from any deduct-
69 ible and/or copayment provisions.

70 (f) Attending physicians, midwives, nurse practition-
71 ers, hospitals, birthing centers, clinics and other
72 appropriate health care providers shall provide parents
73 of newborns and preschool age children with informa-
74 tion on the following immunizations: Diphtheria, polio,
75 mumps, measles, rubella, tetanus, hepatitis-b, haemo-
76 philus influenzae-b and whooping cough. This informa-
77 tion should include the availability of free immunization
78 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.
- 16D. Marketing and Rate Practices for Small Employer Accident and Sickness Insurance Policies.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

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; exemption; legislative rules; premiums; applicability.

§33-15-17. Child immunization services coverage.

§33-15-15. Insurance commissioner to establish minimum benefits and coverages for an individual policy design; basic policy benefits; exemptions; legislative rules; premiums; applicability.

1 (a) The insurance commissioner shall establish
2 minimum benefits which may be included in any
3 individual accident and sickness insurance policy issued
4 pursuant to this article. The commissioner may accept
5 bids on designs for such minimum plans and shall
6 compile a final basic benefit plan for use by insurers
7 within six months after the effective date of this article.

8 (b) The basic policy plan established by the insurance
9 commissioner may include coverage for the services of
10 medical physicians or surgeons, podiatrists, physician
11 assistants, osteopathic physicians or surgeons, chiro-
12 practors, midwives, advanced nurse practitioners or any
13 other professional health care provider as deemed
14 appropriate by the insurance commissioner.

15 (c) The following shall serve as a guide to the
16 commissioner in the design of a basic policy issued
17 pursuant to this article:

18 (1) Inpatient hospital care up to twenty days per year;

19 (2) Outpatient hospital care including, but not limited
20 to, surgery and anesthesia, pre-admission testing,
21 radiation therapy and chemotherapy;

22 (3) Accident or emergency care through emergency
23 room care and emergency admissions to a hospital;

24 (4) Physician office visits for primary, preventive,
25 well, acute or sick care, up to four visits per year, and
26 laboratory fees, surgery and anesthesia, diagnostic X
27 rays, physician care in a hospital inpatient or outpatient
28 setting;

29 (5) Prenatal care, including a minimum of one

30 prenatal office visit per month during the first two
31 trimesters of pregnancy, two office visits per month
32 during the seventh and eighth months of pregnancy, and
33 one office visit per week during the ninth month and
34 until term. Coverage for each such visit shall include
35 necessary appropriate screening, including history,
36 physical examination, and such laboratory and diagnos-
37 tic procedures as may be deemed appropriate by the
38 physician based upon recognized medical criteria for the
39 risk group of which the patient is a member. Coverage
40 for each office visit shall also include such prenatal
41 counseling as the physician deems appropriate;

42 (6) Obstetrical care, including physician's services,
43 delivery room and other medically necessary hospital
44 services;

45 (7) X-ray and laboratory services in connection with
46 mammograms or pap smears when performed for
47 cancer screening or diagnostic purposes, at the direction
48 of a physician, including, but not limited to, the
49 following:

50 (A) Baseline or other recommended mammograms for
51 women age thirty-five to thirty-nine, inclusive;

52 (B) Mammograms recommended or required for
53 women age forty to forty-nine, inclusive, every two years
54 or as needed;

55 (C) A mammogram every year for women age fifty
56 and over; or

57 (D) A pap smear annually or more frequently based
58 on the woman's physician's recommendation for women
59 age eighteen or over. A basic policy issued pursuant to
60 this article may apply to mammograms or pap smears
61 the same deductibles or copayments as apply to other
62 covered services;

63 (8) Medical and laboratory services in connection with
64 annual checkups for prostate cancer in men age fifty
65 and over; and

66 (9) Child immunization services as described in
67 section five, article three, chapter sixteen of this code.

68 This coverage will cover all costs associated with
69 immunization, including the cost of the vaccine, if
70 incurred by the health care provider, and all costs of
71 vaccine administration. These services shall be exempt
72 from any deductible, per-visit charge and/or copayment
73 provisions which may be in force in these policies or
74 contracts. This section does not require that other health
75 care services provided at the time of immunization be
76 exempt from any deductible and/or copayment
77 provisions.

78 (d) Notwithstanding any other provision of this code
79 to the contrary, any basic policy issued pursuant to this
80 section shall be exempt from all statutorily and
81 regulatorily mandated benefits and coverages except for
82 the minimum benefits and coverages as established by
83 the commissioner pursuant to subsection (a) of this
84 section.

85 (e) Nothing in this section shall preclude an insurer
86 from offering any other benefit or coverage under a
87 basic policy issued pursuant to this article, for an
88 appropriate additional premium: *Provided*, That any
89 additional benefit or coverage must first be approved by
90 the insurance commissioner.

91 (f) A basic policy issued pursuant to this section may
92 include deductibles, copayments and maximum benefits:
93 *Provided*, That any additional benefit must first be
94 approved by the insurance commissioner.

95 (g) The insurance commissioner shall promulgate
96 legislative rules pursuant to chapter twenty-nine-a of
97 this code to implement the provisions of this section,
98 including, but not limited to, rules regarding bids,
99 forms and rates.

100 (h) The premiums paid for insurance provided
101 pursuant to this article shall be exempt from the
102 premium tax required to be paid pursuant to sections
103 fourteen and fourteen-a, article three of this chapter.

104 (i) A basic policy provided by this section shall be
105 issued only to individuals who have been without health
106 insurance coverage for at least one year prior to

107 application for the same.

§33-15-17. Child immunization services coverage.

1 All policies issued pursuant to this article shall cover
2 the cost of child immunization services as described in
3 section five, article three, chapter sixteen of this code,
4 including the cost of the vaccine, if incurred by the
5 health care provider, and all costs of vaccine adminis-
6 tration. These services shall be exempt from any
7 deductible, per-visit charge and/or copayment provi-
8 sions which may be in force in these policies or
9 contracts. This section does not require that other health
10 care services provided at the time of immunization be
11 exempt from any deductible and/or copayment provi-
12 sions.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-12. Child immunization services coverage.

1 All policies issued pursuant to this article shall cover
2 the cost of child immunization services as described in
3 section five, article three, chapter sixteen of this code,
4 including the cost of the vaccine, if incurred by the
5 health care provider, and all costs of vaccine adminis-
6 tration. These services shall be exempt from any
7 deductible, per-visit charge and/or copayment provi-
8 sions which may be in force in these policies or
9 contracts. This section does not require that other health
10 care services provided at the time of immunization be
11 exempt from any deductible and/or copayment provi-
12 sions.

ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.

§33-16A-15. Child immunization services coverage.

1 All policies issued pursuant to this article shall cover
2 the cost of child immunization services as described in
3 section five, article three, chapter sixteen of this code,
4 including the cost of the vaccine, if incurred by the
5 health care provider, and all costs of vaccine adminis-
6 tration. These services shall be exempt from any
7 deductible, per-visit charge and/or copayment provi-
8 sions which may be in force in these policies or

9 contracts. This section does not require that other health
10 care services provided at the time of immunization be
11 exempt from any deductible and/or copayment provi-
12 sions.

**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.

§33-16C-4. Insurance commissioner to establish minimum benefits and
coverages; basic policy benefits.

**§33-16C-3. Exemption from mandatory benefits and
coverages; optional benefits and cover-
ages; deductibles and copayments.**

1 (a) Notwithstanding any other provision of this code
2 to the contrary, any basic policy issued pursuant to this
3 article shall be exempt from all statutorily and regula-
4 torily mandated benefits and coverages except for the
5 minimum benefits and coverages provided for in section
6 four of this article.

7 (b) Nothing in this article shall preclude an insurer
8 from offering any other benefit or coverage under a
9 basic policy issued pursuant to this article, for an
10 appropriate additional premium: *Provided*, That any
11 additional benefit or coverage must first be approved by
12 the insurance commissioner.

13 (c) A basic policy issued pursuant to this article may
14 include deductibles, copayments and maximum benefits:
15 *Provided*, That any additional benefit must first be
16 approved by the insurance commissioner: *Provided*,
17 *however*, That child immunization services shall be
18 exempt from any deductible, per-visit charge and/or
19 copayment provisions which may be in force in these
20 policies or contracts. This section does not exempt other
21 health care services provided at the time of immuniza-
22 tion from any deductible and/or copayment provisions.

**§33-16C-4. Insurance commissioner to establish min-
imum benefits and coverages; basic policy
benefits.**

1 (a) The insurance commissioner shall establish

2 minimum benefits which shall be included in every
3 insurance policy issued pursuant to this article. The
4 commissioner may accept bids on designs for such
5 minimum plans and shall compile a final basic benefit
6 plan for use by insurers within six months after the
7 effective date of this article.

8 (b) The basic policy plan established by the insurance
9 commissioner may include coverage for the services of
10 medical physicians or surgeons, podiatrists, physician
11 assistants, osteopathic physicians or surgeons, chiro-
12 practors, midwives, advanced nurse practitioners, or
13 any other professional health care provider as deemed
14 appropriate by the insurance commissioner.

15 (c) The following shall serve as a guide to the
16 commissioner in the design of a basic policy issued
17 pursuant to this article:

18 (1) Inpatient hospital care up to twenty days per year;

19 (2) Outpatient hospital care including, but not limited
20 to, surgery and anesthesia, pre-admission testing,
21 radiation therapy and chemotherapy;

22 (3) Accident or emergency care through emergency
23 room care and emergency admissions to a hospital;

24 (4) Physician office visits for primary, preventive,
25 well, acute or sick care, up to four visits per year, and
26 laboratory fees, surgery and anesthesia, diagnostic X
27 rays, physician care in a hospital inpatient or outpatient
28 setting;

29 (5) Prenatal care, including a minimum of one
30 prenatal office visit per month during the first two
31 trimesters of pregnancy, two office visits per month
32 during the seventh and eighth months of pregnancy, and
33 one office visit per week during the ninth month and
34 until term. Coverage for each such visit shall include
35 necessary appropriate screening, including history,
36 physical examination, and such laboratory and diagnos-
37 tic procedures as may be deemed appropriate by the
38 physician based upon recognized medical criteria for the
39 risk group of which the patient is a member. Coverage
40 for each office visit shall also include such prenatal

41 counseling as the physician deems appropriate;

42 (6) Obstetrical care, including physician's services,
43 delivery room and other medically necessary hospital
44 services;

45 (7) X-ray and laboratory services in connection with
46 mammograms or pap smears when performed for
47 cancer screening or diagnostic purposes, at the direction
48 of a physician, including, but not limited to, the
49 following:

50 (A) Baseline or other recommended mammograms for
51 women age thirty-five to thirty-nine, inclusive;

52 (B) Mammograms recommended or required for
53 women age forty to forty-nine, inclusive, every two years
54 or as needed;

55 (C) A mammogram every year for women age fifty
56 and over; or

57 (D) A pap smear annually or more frequently based
58 on the woman's physician's recommendation for women
59 age eighteen or over. A basic policy issued pursuant to
60 this article may apply to mammograms or pap smears
61 the same deductibles or copayments as apply to other
62 covered services;

63 (8) Medical and laboratory services in connection with
64 annual checkups for prostate cancer in men age fifty
65 and over; and

66 (9) Child immunization services as described in
67 section five, article three, chapter sixteen of this code.
68 This coverage will cover all costs associated with
69 immunization, including the cost of the vaccine, if
70 incurred by the health care provider, and all costs of
71 vaccine administration. These services shall be exempt
72 from any deductible, per-visit charge and/or copayment
73 provisions which may be in force in these policies or
74 contracts. This section does not require that other health
75 care services provided at the time of immunization be
76 exempt from any deductible and/or copayment provi-
77 sions.

**ARTICLE 16D. MARKETING AND RATE PRACTICES FOR
SMALL EMPLOYER ACCIDENT AND SICK-
NESS INSURANCE POLICIES.**

§33-16D-14. Child immunization services coverage.

1 All policies issued pursuant to this article shall cover
2 the cost of child immunization services as described in
3 section five, article three, chapter sixteen of this code,
4 including the cost of the vaccine, if incurred by the
5 health care provider, and all costs of vaccine adminis-
6 tration. These services shall be exempt from any
7 deductible, per-visit charge and/or copayment provi-
8 sions which may be in force in these policies or
9 contracts. This section does not require that other health
10 care services provided at the time of immunization be
11 exempt from any deductible and/or copayment provi-
12 sions.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

**§33-24-7d. Required provisions in contracts which in-
clude child immunization services in the
terms of the contract.**

1 Each contract made by the corporation with partic-
2 ipating hospitals, physicians, and other health agencies
3 which provide immunizations to children shall require
4 that bills submitted to the corporation for child
5 immunization services rendered under the terms of
6 their contracts will set forth separately those charges for
7 said services. Charges for other health care services
8 provided during the same visit shall not be included in
9 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, provi-
2 sion, contract, plan or agreement to which this article

3 applies, any entity regulated by this article shall, on or
4 after the first day of July, one thousand nine hundred
5 ninety-four, provide as benefits to all subscribers and
6 members coverage for child immunization services as
7 described in section five, article three, chapter sixteen
8 of this code. This coverage will cover all costs associated
9 with immunization, including the cost of the vaccine, if
10 incurred by the health care provider, and all costs of
11 vaccine administration. These services shall be exempt
12 from any deductible, per-visit charge and/or copayment
13 provisions which may be in force in these policies,
14 provisions, plans, agreements or contracts. This section
15 does not require that other health care services provided
16 at the time of immunization be exempt from any
17 deductible and/or copayment provisions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8c. Third party payment for child immunization services.

1 Notwithstanding any provision of any policy, provi-
2 sion, contract, plan or agreement to which this article
3 applies, any entity regulated by this article shall, on or
4 after the first day of July, one thousand nine hundred
5 ninety-four, provide as benefits to all subscribers and
6 members coverage for child immunization services as
7 described in section five, article three, chapter sixteen
8 of this code. This coverage will cover all costs associated
9 with immunization, including the cost of the vaccine, if
10 incurred by the health care provider, and all costs of
11 vaccine administration. These services shall be exempt
12 from any deductible, per-visit charge and/or copayment
13 provisions which may be in force in these policies,
14 provisions, plans, agreements or contracts. This section
15 does not require that other health care services provided
16 at the time of immunization be exempt from any
17 deductible and/or copayment provisions.

CHAPTER 67

(Com. Sub. for S. B. 308—By Senator Manchin)

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

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.

§16-5C-9. Inspections.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "director" means the secretary of the
4 department of health and human resources or his or her
5 designee;

6 (b) The term "facility" means any nursing home,
7 personal care home or residential board and care home
8 as defined in subdivisions (d), (e) and (f) of this section:
9 *Provided*, That the care or treatment in a household,
10 whether for compensation or not, of any person related
11 by blood or marriage, within the degree of consanguin-
12 ity of second cousin to the head of the household, or his
13 or her spouse, may not be deemed to constitute a nursing
14 home, personal care home, or residential board and care
15 home within the meaning of this article. Nothing
16 contained in this article shall apply to hospitals, as
17 defined under section one, article five-b of this chapter,
18 or state institutions as defined under section six, article
19 one, chapter twenty-seven of this code or section three,
20 article one, chapter twenty-five of this code, or nursing
21 homes operated by the federal government or the state
22 government, or institutions operated for the treatment
23 and care of alcoholic patients, or offices of physicians,
24 or hotels, boarding homes or other similar places that

25 furnish to their guests only room and board, or extended
26 care facilities operated in conjunction with a hospital;

27 (c) The term "limited and intermittent nursing care"
28 means care which may only be provided when the need
29 for such care meets these factors: (1) The resident
30 requests to remain in the facility; (2) the resident is
31 advised of the availability of other specialized health
32 care facilities to treat his or her condition; and (3) the
33 need for such care is the result of a medical pathology
34 or a result of the normal aging process. Limited and
35 intermittent nursing care shall only be provided by or
36 under the direct supervision of a registered professional
37 nurse and in accordance with rules promulgated by the
38 board of health;

39 (d) The term "nursing home" means any institution,
40 residence or place, or any part or unit thereof, however
41 named, in this state which is advertised, offered,
42 maintained or operated by the ownership or manage-
43 ment, whether for a consideration or not, for the express
44 or implied purpose of providing accommodations and
45 care, for a period of more than twenty-four hours, for
46 four or more persons who are ill or otherwise incapac-
47 itated and in need of extensive, on-going nursing care
48 due to physical or mental impairment, or which
49 provides services for the rehabilitation of persons who
50 are convalescing from illness or incapacitation;

51 (e) The term "personal care home" means any
52 institution, residence or place, or any part or unit
53 thereof, however named, in this state which is adver-
54 tised, offered, maintained or operated by the ownership
55 or management, whether for a consideration or not, for
56 the express or implied purpose of providing accommo-
57 dations and personal assistance and supervision, for a
58 period of more than twenty-four hours, to four or more
59 persons who are dependent upon the services of others
60 by reason of physical or mental impairment who may
61 require limited and intermittent nursing care, including
62 those individuals who qualify for and are receiving
63 services coordinated by a licensed hospice: *Provided,*
64 That services utilizing equipment which requires
65 auxiliary electrical power in the event of a power failure

66 shall not be used unless the personal care home has a
67 backup power generator;

68 (f) The term "residential board and care home" means
69 any residence or place, or any part or unit thereof,
70 however named, in this state which is advertised,
71 offered, maintained or operated by the ownership or
72 management, whether for consideration or not, for the
73 express or implied purpose of providing accommoda-
74 tions and personal assistance and supervision, for a
75 period of more than twenty-four hours, to four to ten
76 persons who are not related to the owner or manager
77 by blood or marriage within the degree of consanguinity
78 of second cousin and are dependent upon the services of
79 others by reason of physical or mental impairment or
80 who may require limited and intermittent nursing care
81 but are capable of self-preservation and are not bedfast,
82 including those individuals who qualify for and are
83 receiving services coordinated by a licensed hospice:
84 *Provided*, That services utilizing equipment which
85 requires auxiliary electrical power in the event of a
86 power failure shall not be used unless the residential
87 board and care home has a backup power generator;

88 (g) The term "nursing care" means those procedures
89 commonly employed in providing for the physical,
90 emotional and rehabilitational needs of the ill or
91 otherwise incapacitated which require technical skills
92 and knowledge beyond that which the untrained person
93 possesses, including, but not limited to, such procedures
94 as: Irrigations, catheterizations, special procedure
95 contributing to rehabilitation and administration of
96 medication by any method which involves a level of
97 complexity and skill in administration not possessed by
98 the untrained person;

99 (h) The term "personal assistance" means personal
100 services, including, but not limited to, the following:
101 Help in walking, bathing, dressing, feeding or getting
102 in or out of bed, or supervision required because of the
103 age or mental impairment of the resident;

104 (i) The term "patient" means an individual under care
105 in a nursing home;

106 (j) The term "resident" means an individual living in
107 a personal care home or a residential board and care
108 home;

109 (k) The term "sponsor" means the person or agency
110 legally responsible for the welfare and support of a
111 patient or resident;

112 (l) The term "person" means an individual and every
113 form of organization, whether incorporated or unincor-
114 porated, including any partnership, corporation, trust,
115 association or political subdivision of the state.

116 The director may define in regulations any term used
117 herein which is not expressly defined.

§16-5C-9. Inspections.

1 The director and any duly designated employee or
2 agent thereof shall have the right to enter upon and into
3 the premises of any facility for which a license has been
4 issued, for which an application for license has been
5 filed with the director, or which the director has reason
6 to believe is being operated or maintained as a nursing
7 home, personal care home or residential board and care
8 home without a license. If such entry is refused by the
9 owner or person in charge of any such facility, the
10 director shall apply to the circuit court of the county in
11 which the facility is located or the circuit court of
12 Kanawha County for a warrant authorizing inspection,
13 and such court shall issue an appropriate warrant if it
14 finds good cause for inspection.

15 The director, by the director's authorized employees
16 or agents, shall conduct at least one inspection prior to
17 issuance of a license pursuant to section six of this
18 article, and shall conduct periodic unannounced inspec-
19 tions thereafter, to determine compliance by the facility
20 with applicable statutes and regulations promulgated
21 thereunder. All facilities shall comply with regulations
22 of the state fire commission. The state fire marshal, by
23 his employees or authorized agents, shall make all fire,
24 safety and like inspections. The director may provide for
25 such other inspections as the director may deem
26 necessary to carry out the intent and purpose of this

27 article. If after investigating a complaint, the director
28 determines that the complaint is substantiated and that
29 an immediate and serious threat to a consumer's health
30 or safety exists, the director may invoke any remedies
31 available pursuant to section eleven of this article. Any
32 facility aggrieved by a determination or assessment
33 made pursuant to this section shall have the right to an
34 administrative appeal as set forth in section twelve of
35 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.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "consumer" means an individual who is
4 provided services, whether or not for a fee, by a service
5 provider, but consumer does not include a person
6 receiving services provided by another who is related to
7 him or her or the spouse thereof by blood or marriage,
8 within the degree of consanguinity of second cousin.
9 Limited and intermittent nursing care may only be
10 provided when the need for such care: (1) Arises from
11 the consumer's desire to remain in the facility; (2) the
12 consumer is advised of the availability of other special-
13 ized health care facilities to treat his or her condition;
14 and (3) the need for such care is the result of a medical
15 pathology or a result of the normal aging process.
16 Limited and intermittent nursing care shall only be
17 provided by or under the direct supervision of a
18 registered professional nurse and in accordance with
19 rules promulgated by the secretary of the department
20 of health and human resources. If limited and intermit-
21 tent nursing care is provided in an unlicensed health
22 care facility, the facility shall: (1) Provide consumers, at
23 the time of admission, with the name, address and
24 telephone number of the offices of health facility
25 licensure and certification, the state long-term care

26 ombudsman, and adult protective services, all within the
27 department of health and human resources; and (2)
28 advise consumers both orally and in writing of their
29 right to file a complaint with the aforementioned
30 entities;

31 (b) The term "director" means the secretary of the
32 department of health and human resources or his or her
33 designee;

34 (c) The term "nursing care" means those procedures
35 commonly employed in providing for the physical,
36 emotional and rehabilitational needs of the ill or
37 otherwise incapacitated which require technical skills
38 and knowledge beyond that which the untrained person
39 possesses, including, but not limited to, such procedures
40 as: Irrigations; catheterization; special procedures
41 contributing to rehabilitation; and administration of
42 medication by any method prescribed by a physician
43 which involves a level of complexity and skill in
44 administration not possessed by the untrained person;

45 (d) The term "personal assistance" means personal
46 services, including, but not limited to, the following:
47 Help in walking, bathing, dressing, feeding or getting
48 in or out of bed, or supervision required because of the
49 age or physical or mental impairment of the resident;

50 (e) The term "service provider" means the individual
51 administratively responsible for providing to consumers
52 for a period of more than twenty-four hours, whether for
53 compensation or not, services of personal assistance for
54 one to three consumers and who may require limited
55 and intermittent nursing care, including those individ-
56 uals who qualify for and are receiving services coordi-
57 nated by a licensed hospice: *Provided*, That services
58 utilizing equipment which requires auxiliary electrical
59 power in the event of a power failure shall not be used
60 unless the health care facility has a backup power
61 generator.

§16-5E-5. Inspections; right of entry.

1 The director may employ inspectors to enforce the

2 provisions of this article. These inspectors shall have the
3 right of entry into any place where services are provided
4 by a service provider, to determine the number of
5 consumers therein and the adequacy of services being
6 provided to them. The director may obtain a search
7 warrant to inspect those premises that the director has
8 reason to believe are being used to provide services.

9 If after investigating a complaint, the director
10 determines that the complaint is substantiated and that
11 an immediate and serious threat to a resident's health
12 or safety exists, the director may petition the circuit
13 court for an injunction, order of abatement or other
14 appropriate action or proceeding to: (1) Close the
15 facility; (2) transfer consumers in the facility to other
16 facilities; or (3) appoint temporary management to
17 oversee the operation of the facility to assure the health,
18 safety, welfare and rights of the facility's consumers
19 where there is a need for temporary management to
20 ensure compliance with the court's order. Any facility
21 aggrieved by a determination or assessment made
22 pursuant to this section shall have the right to an
23 administrative appeal as set forth in section twelve,
24 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.

1 (a) The term "residential board and care home" means
2 any residence or place or any part or unit thereof,
3 however named, in this state which is advertised,
4 offered, maintained or operated by the ownership or
5 management, whether for a consideration or not, for the
6 express or implied purpose of providing accommoda-
7 tions, personal assistance and supervision, for a period
8 of more than twenty-four hours, to four to ten persons
9 who are not related to the owner or manager by blood
10 or marriage, within the degree of consanguinity of
11 second cousin, and who are dependent upon the services

1 of others by reason of physical or mental impairment or
2 who may require limited and intermittent nursing care
3 but who are capable of self-preservation and are not
4 bedfast, including those individuals who qualify for and
5 are receiving services coordinated by a licensed hospice:
6 *Provided*, That services utilizing equipment which
7 requires auxiliary electrical power in the event of a
8 power failure shall not be used unless the residential
9 board and care home has a backup power generator.

10 (b) The term "self-preservation" means that a person
11 is, at least, capable of removing his or her physical self
12 from situations involving imminent danger, such as fire.

13 (c) The term "limited and intermittent nursing care"
14 means care which may only be provided when: (1) The
15 resident desires to remain in the facility; (2) the resident
16 is advised of the availability of other specialized health
17 care facilities to treat his or her condition; and (3) the
18 need for such care is the result of a medical pathology
19 or a result of the normal aging process. Limited and
20 intermittent nursing care shall only be provided by or
21 under the direct supervision of a registered professional
22 nurse and in accordance with rules promulgated by the
23 secretary of the department of health and human
24 resources.

§16-5H-2a. Fire protection.

1 All residential board and care homes shall comply
2 with regulations of the state fire commission. The state
3 fire marshal, by his or her employees or authorized
4 agents, shall make regular fire and safety inspections of
5 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.]

AN ACT to amend article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated

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
2 through the sheriffs of the counties of this state and the
3 chiefs of police of municipalities of this state, shall
4 annually conduct random, unannounced inspections at
5 locations where tobacco products are sold or distributed
6 to ensure compliance with the provisions of sections two
7 and three of this article and in such manner as to
8 conform with Section 1926 of the Public Health Services
9 Act and applicable rules. Persons under the age of
10 eighteen years may be enlisted by such superintendent,
11 sheriffs or chiefs of police or employees thereof to test
12 compliance with these sections: *Provided*, That the
13 minors may be used to test compliance only if the testing
14 is conducted under the direct supervision of the
15 superintendent, sheriffs or chiefs of police or employees
16 thereof and written consent of the parent or guardian
17 of such person is first obtained. It is unlawful for any
18 person to use persons under the age of eighteen years
19 to test compliance in any manner not set forth herein
20 and the person so using a minor is guilty of a misde-
21 meanor, and, upon conviction thereof, shall be fined the
22 same amounts as set forth in section two of this article.

23 (b) A person charged with a violation of section two
24 or three of this article as the result of a random
25 inspection under subsection (a) of this section has a
26 complete defense if, at the time the cigarette or other
27 tobacco product or cigarette wrapper was sold, deli-
28 vered, bartered, furnished or given:

29 (1) The buyer or recipient falsely evidenced that he
30 was eighteen years of age or older;

31 (2) The appearance of the buyer or recipient was such
32 that a prudent person would believe the buyer or
33 recipient to be eighteen years of age or older; and

34 (3) Such person carefully checked a driver's license or
35 an identification card issued by this state or another
36 state of the United States, a passport or a United States
37 armed services identification card presented by the
38 buyer or recipient and acted in good faith and in
39 reliance upon the representation and appearance of the
40 buyer or recipient in the belief that the buyer or
41 recipient was eighteen years of age or older.

42 (c) Any fine collected after a conviction of violating
43 either section two or three of this article shall be paid
44 to the clerk of the court in which the conviction was
45 obtained. The clerk of the court upon receiving the fine
46 shall promptly notify the superintendent of the division
47 of public safety of the conviction and the collection of
48 the fine.

49 (d) The superintendent of the division of public safety
50 shall prepare and submit to the governor on the first day
51 of May of each year a report of the enforcement and
52 compliance activities undertaken pursuant to this
53 section and the results of the same. The report shall be
54 in the form and substance that the governor shall
55 submit to the secretary of the United States department
56 of health and human services, in compliance with
57 Section 1926, Subpart I, Part B, Title XIX of the federal
58 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.

§16-15-1. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following respective mean-
3 ings, unless in any case a different meaning clearly
4 appears from the context:

5 (a) "Authority" or "housing authority" shall mean a
6 corporate body organized in accordance with the
7 provisions of this article for the purposes, with the
8 powers, and subject to the restrictions hereinafter set
9 forth.

10 (b) "Mayor" shall mean the chief executive of the city,
11 whether the official designation of his office be mayor,
12 city manager or otherwise: *Provided*, That the term
13 "mayor" may also be the chief elected officer of the
14 municipality regardless of whether or not the corporate
15 charter provides for a city manager appointed by the
16 city council who is the chief executive officer.

17 (c) "Council" shall mean the chief legislative body of
18 the city.

19 (d) "Commissioner" shall mean one of the members of
20 an authority appointed in accordance with the provi-
21 sions of this article.

22 (e) "Government" shall include the state and federal
23 governments and any subdivisions, agency or instru-
24 mentality, corporate or otherwise, of either of them.

25 (f) The "state" shall mean the state of West Virginia.

26 (g) "City" shall mean any incorporated city, town or
27 village.

28 (h) "Slum clearance" shall include the removal of
29 housing conditions which shall be considered by the
30 housing authority of the city in which such conditions
31 exist to be unsanitary or substandard or a menace to
32 public health.

33 (i) "Low-cost housing" shall include any housing
34 accommodations which are or are to be rented at not in
35 excess of a maximum rate per room, or maximum
36 average rate per room, which shall be specified or
37 provided by the housing authority of the city in which
38 such housing accommodations are or are to be located,
39 or the Legislature, or a duly constituted agency of the
40 state, or of the United States of America.

41 (j) "Project" shall include all lands, buildings and
42 improvements, acquired, owned, leased, managed or
43 operated by a housing authority, and all buildings and
44 improvements constructed, reconstructed or repaired by
45 a housing authority, designed to provide housing
46 accommodations, or stores, offices and community
47 facilities appurtenant thereto, which are planned as a
48 unit, whether or not acquired or constructed at one time,
49 and which ordinarily are contiguous or adjacent to one
50 another. The term "project" may also be applied to the
51 planning of buildings and improvements, the acquisition
52 of property, the demolition of existing structures, the
53 clearing of land, the construction, reconstruction and
54 repair of improvements and all other work in connection
55 therewith.

56 (k) "Community facilities" shall include lands,
57 buildings and equipment of recreation or social assem-
58 bly, for educational, health or welfare activities and
59 other necessary utilities primarily for use and benefit of
60 the occupants of housing accommodations to be con-
61 structed and operated hereunder.