

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES,
COMMISSIONS AND COMPACTS.

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-1. Short title.

This article shall be known and cited as the "Solid Waste Management Board Act."

§22C-3-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.

The Legislature finds that uncontrolled, inadequately controlled and improper collection and disposal of solid waste (1) is a public nuisance and a clear and present danger to people; (2) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; and (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste.

Further, the Legislature finds that governmental agencies in the state and the private sector do not have the financial and other resources needed to provide for the proper collection and disposal of solid waste; that solid waste disposal sheds and projects must be established on a relatively large scale to be economically feasible and stable; and that proper solid waste collection and disposal at the lowest minimum cost can only be achieved through comprehensive solid waste management.

It is declared to be the public policy and a responsibility of this state to assist efforts of governmental agencies and the private sector to provide for the proper collection, disposal and recycling of solid waste and to solve and prevent the problems set forth in this article. It is the purpose and intent of the Legislature in enacting this article to provide for the necessary, dependable, effective and efficient collection, disposal and recycling of solid waste and to assist and cooperate with governmental agencies and the private sector in achieving all the purposes set forth in this article, and to encourage the recycling or extraction of recoverable resources from such solid waste.

The Legislature finds that the public policy and responsibility of the state as set forth in this section cannot be effectively attained without the funding, establishment, operation and maintenance of solid waste disposal projects as provided in this article.

§22C-3-3. Definitions.

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

- (1) "Board" means the solid waste management board provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.
- (2) "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the solid waste management board, previously known as the West Virginia resource recovery -- solid waste disposal authority, to effect the intents and purposes of this article.
- (3) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.
- (4) "Cost" means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project are a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the provisions of this article.
- (5) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste facilities; the United

States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

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

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

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

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

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

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

as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" does not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

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

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

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

(15) "Solid waste facility operator" means any person or persons possessing or exercising operational, managerial or financial control over a commercial solid waste facility, whether or not such person holds a certificate of convenience and necessity or a permit for such facility.

§22C-3-4. Solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.

The solid waste management board is a governmental instrumentality of the state and a body corporate. The exercise by the board of the powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and are for a public purpose.

The board is composed of seven members. The secretary of the Department of Health and Human Resources and the director of the Division of Environmental Protection, or their designees, are members ex officio of the board. The other five members of the board are appointed by the Governor, by and with the advice and consent of the Senate, for terms of one, two, three, four and five years, respectively. Two appointees shall be persons having at least three years of professional experience in solid waste management, civil engineering or regional planning and three appointees shall be representatives of the general public. The successor of

each such appointed member shall be appointed for a term of five years in the same manner the original appointments were made and so that the representation on the board as set forth in this section is preserved, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her successor.

No more than three of the appointed board members may at any one time be from the same congressional district or belong to the same political party. No appointed board member may be an officer or employee of the United States or this state. Appointed board members may be reappointed to serve additional terms. All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of \$25,000. Appointed members may be removed from the board only for the same causes as elective state officers may be removed.

Annually the board shall elect one of its appointed members as chair, another as vice chair and appoint a secretary-treasurer, who need not be a member of the board. Four members of the board are a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board. The person appointed as secretary-treasurer shall give bond in the sum of \$50,000. If a board member is appointed as secretary-treasurer, he or she shall give bond in the sum of \$25,000 in addition to the bond required in the preceding paragraph.

The ex officio members of the board shall not receive any compensation for serving as a board member. Each of the five appointed members of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. All such compensation and expenses incurred by board members are payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriation.

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

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

§22C-3-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

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

- (1) The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge of all revenues from such project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such project;
- (2) The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;
- (3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of such governmental agency under the loan agreement, increase service charges from persons using said project, which service charges shall be pledged for the repayment of such loan together with all interest, fees and charges thereon and all other financial obligations of such governmental agency under the loan agreement;
- (4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the board or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project; and
- (5) Such other provisions, terms or conditions as the board may reasonably require.

The board shall comply with all of the provisions of federal law and of article fifteen, chapter twenty-two of this code and any rules promulgated thereunder which pertain to solid waste collection and disposal.

§22C-3-6. Powers, duties and responsibilities of board generally.

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

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

(2) Adopt an official seal.

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

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

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

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

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

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

governmental agencies for the acquisition, design or construction of solid waste disposal projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

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

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than \$2,000, the board shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. A contract or lease for the operation of a solid waste disposal project constructed and owned by the board or an agreement for cooperation in the acquisition or construction of a solid waste disposal project pursuant to section sixteen of this article is not subject to the foregoing requirements and the board may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The board may reject any and all bids. A bond with good and sufficient surety, approved by the board, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents, engineers, accountants, Auditors and other employees, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof are payable solely from the proceeds of solid waste disposal revenue bonds

or notes issued by the board, from revenues and from funds appropriated for such purpose by the Legislature.

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

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

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

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

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

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

§22C-3-7. Development of state solid waste management plan.

On or before January 1, 1993, the Solid Waste Management Board shall prepare an overall state plan for the proper management of solid waste: Provided, That such plan shall be consistent with the findings and purposes of article four of this chapter and articles fifteen and fifteen-a, chapter twenty-two of this code: Provided, however, That such plan shall incorporate the county or regional plans developed pursuant to sections eight and twenty-four, article four of this chapter, as amended: Provided further, That such plan shall be updated every two years following its initial preparation.

§22C-3-8. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

In order to ensure that the public purposes to be served by the board may be properly carried out and in order to assure the timely payment to the board of all sums due and owing under loan agreements with governmental agencies, as referred to in section five of this article, notwithstanding any provision to the contrary elsewhere contained in this code, in event of any default by a governmental agency under such a loan agreement, the board has, and may, at its option, exercise the following rights and remedies in addition to the rights and remedies conferred by law or pursuant to said loan agreement:

(1) The board may directly impose, in its own name and for its own benefit, service charges determined by it to be necessary under the circumstances upon all users of the solid waste disposal project to be acquired or constructed pursuant to such loan agreement, and proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(2) The board may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, authority, powers and remedies of the governmental agency with respect to the solid waste disposal project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including, without limitation, all rights and remedies with respect to users of such solid waste disposal project.

(3) The board may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including, without limitation, the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.

§22C-3-9. Development and designation of solid waste disposal sheds by board.

The board shall maintain the division of the state into geographical areas for solid waste management which shall be known as solid waste disposal sheds. The board may, from time to time, modify the boundaries of such sheds in a manner consistent with the provisions of this section. Before it modifies the sheds, the board shall consult with the affected municipalities and county or regional solid waste authorities and obtain and evaluate their opinions as to how many sheds there should be and where their boundaries should be located. The board shall then cause feasibility and cost studies to be made in order for it to designate the solid waste disposal sheds within each of which the most dependable, effective, efficient and economical solid waste disposal projects may be established. The sheds shall not overlap and shall cover the entire state.

The board shall designate the sheds so that:

- (1) The goal of providing solid waste collection and disposal service to each household, business and industry in the state can reasonably be achieved.
- (2) The total cost of solid waste collection and disposal and the cost of solid waste collection and disposal within each shed and per person can be kept as low as possible.
- (3) Solid waste collection and disposal service, facilities and projects can be integrated in the most feasible, dependable, effective, efficient and economical manner.
- (4) No county is located in more than one shed: Provided, That the board may divide a county among two or more sheds upon request of the appropriate county or regional solid waste authority.

The board, in modifying the boundaries of solid waste disposal sheds, is exempt from the provisions of chapter 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.

The board is hereby empowered to issue, from time to time, solid waste disposal revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance, in whole or in part, by loans to governmental agencies, one or more solid waste development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of \$100 million: Provided, That up to \$25 million may be issued for projects located or to be located in areas which lack adequate sewer or water service and the area is in need of such services to comply with federal requirements.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste disposal revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes are obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board is immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is valid and binding as against all

parties having claims of any kind in tort, contract or otherwise against the board irrespective of whether such parties have notice thereof. All such bonds and notes shall have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the board, bear such dates and mature at such times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the board may authorize. The board may sell such bonds and notes at public or private sale, at the price the board determines. The bonds and notes shall be executed by the chair and vice chair of the board, both of whom may use facsimile signatures. The official seal of the board or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached thereto shall bear the signature or facsimile signature of the chair of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until such delivery and, in case the seal of the board has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

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

expenses of the board; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to the payment of such bonds or notes is less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chair of the board shall certify, on or before December 1, of each year, the amount of such deficiency to the Governor of the state, for inclusion, if the Governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the board to be pledged for payment of such bonds or notes: Provided, That the Legislature is not required to make any appropriation so requested, and the amount of such deficiencies is not a debt or liability of the state.

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

§22C-3-11. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.

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

- (1) The relationship of the proposed issuance of revenue bonds to the statutory debt limitation provided for in section ten of this article;
- (2) The degree to which the proceeds will be used for capital improvements in the form of real or personal property;
- (3) The extent to which the proposed use of proceeds coincides with the purposes of this article;
- (4) A weighing of the public benefit to be derived from the issuance as opposed to any private gain; and
- (5) The sufficiency of projected revenues available to the board to pay the interest on indebtedness as it falls due, to constitute a sinking fund for the payment thereof at maturity, or to discharge the principal within a prescribed period of time.

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

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

- (1) To pay the cost of acquiring, constructing, reconstructing, enlarging, improving, furnishing, equipping or repairing solid waste disposal projects;
- (2) To make loans to persons or to governmental agencies for the acquisition, design and construction of solid waste disposal projects, taking such collateral security for any such loans as may be approved by the water development authority; and
- (3) To pay the costs and expenses incidental to or necessary for the issuance of such bonds.

(d) If the proceeds of revenue bonds issued for any solid waste disposal project exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used by the fiscal agent for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but not at a price exceeding the price at which any of such bonds is in the same year redeemable, as fixed by the board in its said resolution, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

§22C-3-12. Legal remedies of bondholders.

Any holder of solid waste disposal revenue bonds issued under the authority of this article or any of the coupons appertaining thereto, except to the extent the rights given by this article may be restricted by the applicable resolution, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state or granted under this article, by the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, or by the resolution, to be performed by the board or any officer or employee thereof, including the fixing, charging and collecting of sufficient rentals, fees, service charges or other charges.

§22C-3-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

Solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds issued under authority of this article and any coupons in connection therewith are not a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds are payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. This article does not authorize the board to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

§22C-3-14. Use of funds, properties, etc., by board; restrictions thereon.

All moneys, properties and assets acquired by the board, whether as proceeds from the sale of solid waste disposal revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of solid waste disposal revenue bonds or except when invested, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds of any issue shall provide that any officer to whom such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution provide.

§22C-3-15. Audit of funds disbursed by the board and recipients thereof.

Beginning in the fiscal year ending June 30, 1992, and every second fiscal year thereafter, the Legislature shall cause to be performed a post audit and a performance audit for the intervening two-year period of the recipients of any grant or loan provided by the solid waste management board. The audit shall cover the disbursement of such loans or grants provided pursuant to section thirty, article four of this chapter, the use of such loans or grants by the recipient as well as all other appropriate subject matter.

§22C-3-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.

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

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

Any governmental agency or agencies or combination thereof may cooperate with the board in the acquisition or construction of a solid waste disposal project and shall enter into such agreements with the board as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the board to the extent necessary or appropriate for purposes of the issuance of solid waste disposal revenue bonds by the board. Any

governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof, and by the payment of such appropriated money or the proceeds of such bonds or notes to the board pursuant to such agreements.

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

§22C-3-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to Governor and Legislature.

Each solid waste development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the board or if owned by a governmental agency, by such governmental agency, or the board or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the board shall be operated by such operating employees as the board employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the board shall make an annual report of its activities for the preceding fiscal year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the board's operations during the preceding fiscal year. The board shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of its projects. A report of the audit shall be submitted to the Governor and the Legislature.

§22C-3-18. Solid waste disposal revenue bonds lawful investments.

The provisions of sections nine and ten, article six, chapter twelve of this code notwithstanding, all solid waste disposal revenue bonds issued pursuant to this article are lawful investments for the West Virginia state Board of Investments and are also lawful investments for financial institutions as defined in section two, article one, chapter thirty-one-a of this code, and for insurance companies.

§22C-3-19. Exemption from taxation.

The board is not required to pay any taxes or assessments upon any solid waste disposal project or upon any property acquired or used by the board or upon the income therefrom. Bonds and notes issued by the board and all interest and income thereon are exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§22C-3-20. Governmental agencies authorized to convey property.

All governmental agencies, notwithstanding any provision of law to the contrary, may lease, lend, grant or convey to the board, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the board, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.

§22C-3-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

No officer, member or employee of the board may be financially interested, directly or indirectly, in any contract of any person with the board, or in the sale of any property, real or personal, to or by the board. This section does not apply to contracts or purchases of property, real or personal, between the board and any governmental agency.

No officer, member or employee of the board may have or acquire any financial interest, either direct or indirect, in any project or activity of the board or in any services or material to be used or furnished in connection with any project or activity of the board. If an officer, member or employee of the board has any such interest at the time he or she becomes an officer, member or employee of the board, he or she shall disclose and divest himself or herself of it. Failure to do so is cause for dismissal from the position he or she holds with the authority.

This section does not apply in instances where a member of the board who is a contract solid waste hauler either seeks or has a financial interest, direct or indirect, in any project or activity of the board or in any services or material to be used or furnished in connection with any project or activity of the board: Provided, That member shall fully disclose orally and in writing to the board the nature and extent of any interest, prior to any vote by the board which involves his or her interest, withdraw from any deliberation or discussion by the board of matters involving his or her interest, and refrain from voting on any matter which directly or indirectly affects him or her.

No officer, member or employee of the board may accept a gratuity from any person doing business with the board or from any person for the purpose of gaining favor with the board.

Any officer, member or employee of the board who has any financial interest prohibited by this section or who fails to comply with its provisions is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§22C-3-22. Conduct of proceedings of board.

The board shall comply with all of the requirements in article nine-a, chapter six of this code.

§22C-3-23. Regulation of solid waste collectors and haulers to continue under Public Service Commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.

Solid waste collectors and haulers who are "common carriers by motor vehicle," as defined in section two, article one, chapter twenty-four-a of this code, shall continue to be regulated by the Public Service Commission in accordance with the provisions of chapter twenty-four-a and rules promulgated thereunder. Nothing in this article gives the board any power or right to regulate such solid waste collectors and haulers in any manner, but the Public Service Commission, when it issues a new certificate of convenience and necessity, or when it alters or adjusts the provisions of any existing certificate of convenience and necessity, or when it approves the assignment or transfer of any certificate of convenience and necessity, shall consult with the board regarding what action it could take which would most likely further the implementation of the board's solid waste disposal shed plan and solid waste disposal projects and shall take any reasonable action that will lead to or bring about compliance of such waste collectors and haulers with such plan and projects.

At any hearing conducted by the Public Service Commission pertaining to solid waste collectors and haulers on any of these matters, any member of the board, the director or an employee of the board designated by the director may appear before the 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.

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

§22C-3-25. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§22C-3-26. Supersedure over county and regional solid waste authorities.

For purposes of exercising the authority provided under section nine-a, article four of this chapter, the board may by resolution supersede and exercise, in part or whole, the powers granted to only county or regional solid waste authorities that operate solid waste facilities as provided in chapters seven, twenty-two, twenty-two-c and twenty-four of this code. Actions of the board supersede those powers granted to only county or regional solid waste authorities that operate solid waste facilities.