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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 721

(By Senator Wootton, et al)

PASSED April 14, 2001

In Effect from Passage

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Senate Bill No. 721

(BY SENATORS WOOTON, SNYDER, BURNETTE, CALDWELL,
FANNING, MITCHELL, ROSS AND ROWE)

[Passed April 14, 2001; in effect from passage.]

AN ACT to amend and reenact sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend section sixteen, article ten, chapter seventeen-a of said code, all relating to the waste tire remediation/environmental cleanup fund; renaming the waste tire remediation/environmental cleanup fund the A. James Manchin fund; and authorizing the use of the fund for the tire disposal program.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section sixteen, article ten, chapter seventeen-a be amended and reenacted, all to read as follows:

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

1 (a) There is hereby created in the state treasury a special
2 revenue fund known as the "A. James Manchin Fund". All
3 moneys appropriated, deposited or accrued in this fund
4 shall be used exclusively for remediation of waste tire piles
5 as required by this article for the tire disposal program
6 established under section four of this article or for the
7 purposes of subsection (c), section five of this article. The
8 fund shall consist of the proceeds from the sale of waste
9 tires; fees collected by the division of motor vehicles as
10 provided for in section sixteen, article ten, chapter
11 seventeen-a of this code; any federal, state or private
12 grants; legislative appropriations; loans and any other
13 funding source available for waste tire remediation. Any
14 balance remaining in the fund at the end of any state fiscal
15 year shall not revert to the state treasury but shall remain
16 in this fund and be used only in a manner consistent with
17 the requirements of this article.

18 (b) No further collections or deposits shall be made after
19 the commissioner certifies to the governor and the Legisla-
20 ture that the remediation of all waste tire piles that were
21 determined by the commissioner to exist on the first day of
22 June, two thousand one, has been completed.

23 (c) The joint committee on government operations shall,
24 pursuant to authority granted in article ten, chapter four
25 of this code, conduct a preliminary performance review of
26 the division's compliance with the waste tire remediation
27 mandated in this article; whether the purposes of this
28 article have been met; and whether it is appropriate to
29 terminate this program. In conducting such preliminary
30 performance review, the committee shall follow the
31 guidelines established in said article. A preliminary review
32 shall be completed on or before the first day of January,
33 two thousand three.

§17-24-7. Remediation; liability for remediation and court costs.

1 (a) Any person who has prior or subsequent to the
2 effective date of this act illegally disposed of waste tires or
3 has waste tires illegally disposed on his or her property
4 shall be liable for:

5 (1) All costs of removal or remedial action incurred by
6 the division;

7 (2) Any other necessary costs of remediation, including
8 properly disposing of waste tires and damage to adjacent
9 property owners; and

10 (3) All costs incurred in bringing civil actions under this
11 article.

12 (b) The division shall notify any person who owns real
13 property or rights to property where a waste tire pile is
14 located that remediation of the waste tire pile is necessary.
15 The division shall make and enter an order directing such
16 person or persons to remove and properly dispose of the
17 waste tires. The division shall set a time limit for comple-
18 tion of the remediation. The order shall be served by
19 registered or certified mail, return receipt requested, or by
20 a county sheriff or deputy sheriff.

21 (c) If the remediation is not completed within the time
22 limit or the person cannot be located or the person notifies
23 the division that he or she is unable to comply with the
24 order, the division may expend funds, as provided herein,
25 to complete the remediation. Any amounts so expended
26 shall be promptly repaid by the person or persons respon-
27 sible for the waste tire pile. Any person owing
28 remediation costs and or damages shall be liable at law
29 until such time as all costs and or damages are fully paid.

30 (d) Authorized representatives of the division have the
31 right, upon presentation of proper identification, to enter
32 upon any property for the purpose of conducting studies or
33 exploratory work to determine the existence of adverse

34 effects of a waste tire pile, to determine the feasibility of
35 the remediation or prevention of such adverse effects and
36 to conduct remediation activities provided for herein.
37 Such entry is an exercise of the police power of the state
38 and for the protection of public health, safety and general
39 welfare and is not an act of condemnation of property or
40 trespass thereon. Nothing contained in this section
41 eliminates any obligation to follow any process that may
42 be required by law.

43 (e) There is hereby created a statutory lien upon all real
44 property and rights to the property from which a waste
45 tire pile was remediated for all reclamation costs and
46 damages incurred by the division. The lien created by this
47 section shall arise at the later of the following:

48 (1) The time costs are first incurred by the division; or

49 (2) The time the person is provided, by certified or
50 registered mail, or personal service, written notice as
51 required by this section.

52 The lien shall continue until the liability for the costs or
53 judgment against the property is satisfied.

54 (f) Liens created by this section shall be duly recorded in
55 the office of the clerk of the county commission in the
56 county where the real property is located, be liens of equal
57 dignity, rank and priority with the lien on such premises
58 of state, county, school and municipal taxes for the
59 amount thereof upon the real property served. The
60 division shall have the power and authority to enforce
61 such liens in a civil action to recover the money due for
62 remediation costs and damages plus court fees and costs
63 and reasonable attorney's fees.

64 (g) The division may foreclose upon the premises by
65 bringing a civil action, in the circuit court of the county
66 where the property is located, for foreclosure and an order
67 to sell the property to satisfy the lien.

68 (h) Any proceeds from any sale of property obtained as
69 a result of execution of a lien or judgment under this
70 section for remediation costs, excluding costs of obtaining
71 judgment and perfecting the lien, shall be deposited into
72 the A. James Manchin fund of the state treasury.

73 (i) The provisions of this section do not apply and no lien
74 may attach to the right-of-way, easement or other prop-
75 erty interest of a utility, whether electric, gas, water,
76 sewer, telephone, television cable or other public service
77 unless the utility contributed to the illegal tire pile.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for the A. James Manchin fund.

1 In addition to each fee provided for in this article, an
2 additional five-dollar fee shall be imposed on the issuance
3 of each certificate of title issued pursuant to article three
4 of this chapter. All money collected under this section
5 shall be deposited in the state treasury and credited to the
6 A. James Manchin fund to be established within the
7 department of highways for waste tire remediation in
8 accordance to the provisions of article twenty-four,
9 chapter seventeen of this code. The additional fee pro-
10 vided herein shall be imposed for each application for
11 certificate and renewal thereof made on or after the first
12 day of July, two thousand: *Provided*, That no further
13 collections or deposits shall be made after the commis-
14 sioner certifies to the governor and the Legislature that the
15 remediation of all waste tire piles that were determined by
16 the commissioner to exist on the first day of June, two
17 thousand one, has been completed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Lucy M. Murr
.....
Chairman Senate Committee

R. Sawyer
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Norvell Elkhart
.....
Clerk of the Senate

Gregory M. Sawyer
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *24th*
Day of *April*, 2001.

Bob Wise
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/01

Time 4:00 pm