

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 27**

4 (By Senator D. Hall)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported March 1, 2015.]
8 _____

9
10
11 A BILL to amend and reenact §7-5-22 of the Code of West Virginia, 1931, as amended; to amend
12 and reenact §22-15-11 of said code; to amend and reenact §22-16-4 of said code; and to
13 amend and reenact §22C-4-30 of said code, all relating to county solid waste disposal fees
14 generally; raising county solid waste assessment fee to seventy-five cents; exempting solid
15 waste that is transported by rail to solid waste disposal facility located in a county, with a
16 population of less than thirty thousand, bordering another state from the \$1.75 solid waste
17 assessment fee, the \$3.50 solid waste assessment fee for the Solid Waste Landfill Closure
18 Assistance Program and the \$1.00 solid waste assessment fee for the Solid Waste Planning
19 Fund with approval of the solid waste authority, county commission and the voters of that
20 county; and providing for a county option election.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §7-5-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
23 that §22-15-11 of said code be amended and reenacted; that §22-16-4 of said code be amended and

1 reenacted; and that §22C-4-30 of said code be amended and reenacted, all to read as follows:

2 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

3 **ARTICLE 5. FISCAL AFFAIRS.**

4 **§7-5-22. County solid waste assessment fees authorized.**

5 Each county or regional solid waste authority ~~is hereby authorized to~~ may impose a similar
6 solid waste assessment fee to that imposed by section eleven, article fifteen, chapter twenty-two of
7 this code at a rate not to exceed ~~50¢~~ 75¢ per ton or part thereof upon the disposal of solid waste in
8 that county or region. All assessments due shall be applied to the reasonable costs of administration
9 of the county's regional or county solid waste authority including the necessary and reasonable
10 expenses of its members, and any other expenses incurred from refuse cleanup, litter control
11 programs, or any solid waste programs ~~deemed~~ considered necessary to fulfill its duties.

12 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

13 **ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

14 **§22-15-11. Solid waste assessment fee; penalties.**

15 (a) *Imposition.* -- A solid waste assessment fee is hereby imposed upon the disposal of solid
16 waste at any solid waste disposal facility in this state in the amount of \$1.75 per ton or part thereof
17 of solid waste. The fee imposed by this section is in addition to all other fees and taxes levied by
18 law and shall be added to and constitute part of any other fee charged by the operator or owner of
19 the solid waste disposal facility.

20 (b) *Collection, return, payment and records.* -- The person disposing of solid waste at the
21 solid waste disposal facility shall pay the fee imposed by this section, whether or not ~~such~~ the person
22 owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who
23 shall remit it to the Tax Commissioner.

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

3 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or
4 before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon
5 remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed
6 by the Tax Commissioner.

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

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

12 (5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns
13 with the fee as required in this section, the Tax Commissioner may serve written notice requiring
14 ~~such the~~ operator to collect the fees which become collectible after service of ~~such the~~ notice, to
15 deposit ~~such the~~ fees in a bank approved by the Tax Commissioner, in a separate account, in trust
16 for and payable to the Tax Commissioner and to keep the amount of ~~such the~~ fees in ~~such the~~
17 account until remitted to the Tax Commissioner. ~~Such The~~ notice remains in effect until a notice
18 of cancellation is served on the operator or owner by the Tax Commissioner.

19 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an
20 operator, the operator is primarily liable for collection and remittance of the fee imposed by this
21 section and the owner is secondarily liable for remittance of the fee imposed by this section.
22 However, if the operator fails, in whole or in part, to discharge his or her obligations under this
23 section, the owner and the operator of the solid waste facility are jointly and severally responsible

1 and liable for compliance with the provisions of this section.

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

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

11 (c) *Regulated motor carriers.* -- The fee imposed by this section and section twenty-two,
12 article five, chapter seven of this code is considered a necessary and reasonable cost for motor
13 carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter
14 twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of
15 a petition by an affected motor carrier, the Public Service Commission shall, within fourteen days,
16 reflect the cost of ~~said~~ the fee in ~~said~~ the motor carrier's rates for solid waste removal service. In
17 calculating the amount of said fee to said motor carrier, the commission shall use the national
18 average of pounds of waste generated per person per day as determined by the United States
19 Environmental Protection Agency.

20 (d) *Definition of solid waste disposal facility.* -- For purposes of this section, the term "solid
21 waste disposal facility" means any approved solid waste facility or open dump in this state, and
22 includes a transfer station when the solid waste collected at the transfer station is not finally disposed
23 of at a solid waste disposal facility within this state that collects the fee imposed by this section.

1 Nothing ~~herein~~ in this section authorizes in any way the creation or operation of or contribution to
2 an open dump.

3 (e) *Exemptions.* -- The following transactions are exempt from the fee imposed by this
4 section:

5 (1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates
6 or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste
7 originally produced by ~~such~~ that person in ~~such person's~~ his or her regular business or personal
8 activities or by persons ~~utilizing~~ using the facility on a cost-sharing or nonprofit basis;

9 (2) Reuse or recycling of any solid waste;

10 (3) Disposal of residential solid waste by an individual not in the business of hauling or
11 disposing of solid waste on ~~such~~ the days and times ~~as~~ designated by the secretary ~~is exempt from~~
12 ~~the solid waste assessment fee; and~~

13 (4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which
14 disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for
15 this exemption, each commercial recycler must keep accurate records of incoming and outgoing
16 waste by weight. ~~Such~~ The records must be made available to the appropriate inspectors from the
17 division, upon request; and

18 (5) Disposal of solid waste transported by rail to a solid waste disposal facility located in a
19 county, with a population of less than thirty thousand, that borders another state: *Provided*, That the
20 solid waste authority of that county approves the exemption: *Provided*, however That if the county
21 solid waste authority approves the exemption, the county commission must also approve the
22 exemption: *Provided*, further That the provisions of this subdivision do not apply in any county until
23 the county commission of the county holds an election on the question of whether the provisions of

1 this subdivision exempting the disposal of solid waste transported by rail to a solid waste disposal
2 facility from the solid waste assessment fee shall apply within the county and the voters approve the
3 exemption of the disposal of solid waste transported by rail to a solid waste disposal facility from
4 the solid waste assessment fee in the county. The election is determined by a vote of the resident
5 voters of the county in which the exemption of the disposal of solid waste transported by rail to a
6 solid waste disposal facility from the solid waste assessment fee is proposed to be authorized. The
7 county commission of the county in which the exemption of the disposal of solid waste transported
8 by rail to a solid waste disposal facility from the solid waste assessment fee is proposed shall give
9 notice to the public of the election by publication of the notice as a Class II-0 legal advertisement
10 in compliance with the provisions of article three, chapter fifty-nine of this code and the publication
11 area for the publication is the county in which the election is to be held. The date of the last
12 publication of the notice shall fall on a date within the period of the fourteen consecutive days next
13 preceding the election.

14 On the local option election ballot shall be printed the following:

15 Shall the exemption of the disposal of solid waste transported by rail to a solid waste disposal
16 facility from the solid waste assessment fee be authorized in _____ County?

17 Yes No

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

19 Any local option election to approve or disapprove of the proposed authorization of the
20 exemption of the disposal of solid waste transported by rail to a solid waste disposal facility from
21 the solid waste assessment fee within a county shall be in accordance with procedures adopted by
22 the commission. The local option election shall be held in conjunction with a primary or general
23 election or at a special election. Approval shall be by a majority of the voters casting votes on the

1 question of approval or disapproval of the exemption of the disposal of solid waste transported by
2 rail to a solid waste disposal facility from the solid waste assessment fee at the election.

3 If a majority votes against allowing the exemption of the disposal of solid waste transported
4 by rail to a solid waste disposal facility from the solid waste assessment fee , an election on the issue
5 may not be held for a period of one hundred four weeks. If a majority votes "yes," an election
6 reconsidering the action may not be held for a period of five years. A local option election may
7 thereafter be held if a written petition of qualified voters residing within the county equal to at least
8 five percent of the number of persons who were registered to vote in the next preceding general
9 election is received by the county commission of the county in which the exemption of the disposal
10 of solid waste transported by rail to a solid waste disposal facility from the solid waste assessment
11 fee is authorized. The petition may be in any number of counterparts. The election shall take place
12 at the next primary or general election scheduled more than ninety days following receipt by the
13 county commission of the petition required by this subsection: *Provided*, That the issue may not be
14 placed on the ballot until all statutory notice requirements have been met. No local law or regulation
15 providing any penalty, disability, restriction, regulation or prohibition the exemption of the disposal
16 of solid waste transported by rail to a solid waste disposal facility from the solid waste assessment
17 fee may be enacted and the provisions of this article preempt all regulations, rules, ordinances and
18 laws of any county or municipality in conflict with this subdivision.

19 (f) *Procedure and administration.* -- Notwithstanding section three, article ten, chapter eleven
20 of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act"
21 set forth in article ten, chapter eleven of this code ~~shall apply~~ applies to the fee imposed by this
22 section with like effect as if ~~said~~ the act were applicable only to the fee imposed by this section and
23 were set forth in extenso ~~herein~~ in this section.

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

5 (h) *Dedication of proceeds.* -- The net proceeds of the fee collected by the Tax Commissioner
6 pursuant to this section shall be deposited at least monthly in an account designated by the secretary.
7 The secretary shall allocate \$0.25 for each ton of solid waste disposed of in this state upon which the
8 fee imposed by this section is collected and shall deposit the total amount ~~so~~ allocated into the “Solid
9 Waste Reclamation and Environmental Response Fund” to be expended for the purposes ~~hereinafter~~
10 specified in this subsection. The first \$1 million dollars of the net proceeds of the fee imposed by
11 this section collected in each fiscal year shall be deposited in the “Solid Waste Enforcement Fund”
12 and expended for the purposes ~~hereinafter~~ specified in subdivision (1) of this subsection. The next
13 \$250,000 of the net proceeds of the fee imposed by this section collected in each fiscal year shall be
14 deposited in the “Solid Waste Management Board Reserve Fund”, and expended for the purposes
15 ~~hereinafter~~ specified in subdivision (2) of this subsection: *Provided*, That in any year in which the
16 Water Development Authority determines that the Solid Waste Management Board Reserve Fund
17 is adequate to defer any contingent liability of the fund, the Water Development Authority shall so
18 certify to the secretary and the secretary shall then cause no less than \$50,000 nor more than
19 \$250,000 to be deposited to the fund: *Provided, however*, That in any year in which the Water
20 Development Authority determines that the Solid Waste Management Board Reserve Fund is
21 inadequate to defer any contingent liability of the fund, the Water Development Authority shall so
22 certify to the secretary and the secretary shall then cause not less than \$250,000 nor more than
23 \$500,000 to be deposited in the fund: *Provided further*, That if a facility owned or operated by the

1 State of West Virginia is denied site approval by a county or regional solid waste authority, and if
2 ~~such the~~ denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any
3 indebtedness issued or approved by the Solid Waste Management Board, then in that event the Solid
4 Waste Management Board or its fiscal agent may withhold all or any part of any funds which would
5 otherwise be directed to ~~such the~~ county or regional authority and shall deposit ~~such the~~ withheld
6 funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of ~~said the~~
7 net proceeds among the following three special revenue accounts for the purpose of maintaining a
8 reasonable balance in each special revenue account, which are hereby continued in the State
9 Treasury:

10 (1) The “Solid Waste Enforcement Fund” which shall be expended by the secretary for
11 administration, inspection, enforcement and permitting activities established pursuant to this article;

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

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

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

23 (1) In-state and out-of-state locations producing solid waste should bear the responsibility

1 of disposing of ~~said~~ the solid waste or compensate other localities for costs associated with accepting
2 ~~such~~ the solid waste;

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

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

7 (j) The “Gas Field Highway Repair and Horizontal Drilling Waste Study Fund” is ~~hereby~~
8 ~~created~~ continued as a special revenue fund in the State Treasury to be administered by the West
9 Virginia Division of Highways and to be expended only on the improvement, maintenance, and
10 repair of public roads of three lanes or less located in the watershed from which the revenue was
11 received that are identified by the Commissioner of Highways as having been damaged by trucks and
12 other traffic associated with horizontal well drilling sites or the disposal of waste generated by ~~such~~
13 the sites, and that experience congestion caused, in whole or in part, by ~~such~~ the trucks and traffic
14 that interferes with the use of ~~said~~ the roads by residents in the vicinity of ~~such~~ the roads: *Provided,*
15 That up to \$750,000 from ~~such~~ the fund shall be made available to the Department of Environmental
16 Protection from the same fund to offset contracted costs incurred by the Department of
17 Environmental Protection while undertaking the horizontal drilling waste disposal studies mandated
18 by the provisions of subsection (j), section eight of this article. Any balance remaining in the special
19 revenue account at the end of any fiscal year shall not revert to the General Revenue Fund, but shall
20 remain in the special revenue account and shall be used solely in a manner consistent with this
21 section. The fund shall consist of the fee provided ~~for~~ in subsection (k) of this section.

22 (k) Horizontal drilling waste assessment fee-- An additional solid waste assessment fee is
23 ~~hereby imposed~~ continued upon the disposal of drill cuttings and drilling waste generated by

1 horizontal well sites in the amount of \$1 per ton, which fee is in addition to all other fees and taxes
2 levied by this section or otherwise and shall be added to and constitute part of any other fee charged
3 by the operator or owner of the solid waste disposal facility: *Provided*, That the horizontal drilling
4 waste assessment fee shall be collected and administered in the same manner as the solid waste
5 assessment fee imposed by this section, but shall be imposed only upon the disposal of drill cuttings
6 and drilling waste generated by horizontal well sites.

7 **ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.**

8 **§22-16-4. Solid waste assessment fee; penalties.**

9 (a) *Imposition.* -- A solid waste assessment fee is levied and imposed upon the disposal of
10 solid waste at any solid waste disposal facility in this state in the amount of \$3.50 per ton or like ratio
11 on any part of a ton of solid waste, except as provided in subsection (e) of this section: *Provided*,
12 That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed
13 the fee, equal to the amount that the facility is required by the Public Service Commission to set
14 aside for the purpose of closure of that portion of the facility required to close by article fifteen of
15 this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law
16 and shall be added to and constitute part of any other fee charged by the operator or owner of the
17 solid waste disposal facility.

18 (b) *Collection, return, payment and records.* -- The person disposing of solid waste at the
19 solid waste disposal facility shall pay the fee imposed by this section, whether or not that person
20 owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who
21 shall remit it to the Tax Commissioner:

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

1 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or
2 before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon
3 remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the Tax
4 Commissioner;

5 (3) The operator shall account to the state for all fees collected under this section and shall
6 hold them in trust for the state until they are remitted to the Tax Commissioner;

7 (4) If any operator fails to collect the fee imposed by this section, he or she is personally
8 liable for the amount he or she failed to collect, plus applicable additions to tax, penalties and
9 interest imposed by article ten, chapter eleven of this code;

10 (5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns
11 with the fee as required in this section, the Tax Commissioner may serve written notice requiring the
12 operator to collect the fees which become collectible after service of the notice, to deposit the fees
13 in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the
14 Tax Commissioner, and to keep the amount of the fees in the account until remitted to the Tax
15 Commissioner. The notice shall remain in effect until a notice of cancellation is served on the
16 operator or owner by the Tax Commissioner;

17 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an
18 operator, the operator is primarily liable for collection and remittance of the fee imposed by this
19 section and the owner is secondarily liable for remittance of the fee imposed by this section.
20 However, if the operator fails, in whole or in part, to discharge his or her obligations under this
21 section, the owner and the operator of the solid waste facility are jointly and severally responsible
22 and liable for compliance with the provisions of this section;

23 (7) If the operator or owner responsible for collecting the fee imposed by this section is an

1 association or corporation, the officers of the association or corporation are liable, jointly and
2 severally, for any default on the part of the association or corporation, and payment of the fee and
3 any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may
4 be enforced against them as against the association or corporation which they represent; and

5 (8) Each person disposing of solid waste at a solid waste disposal facility and each person
6 required to collect the fee imposed by this section shall keep complete and accurate records in the
7 form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

8 (c) *Regulated motor carriers.* -- The fee imposed by this section is a necessary and reasonable
9 cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission
10 under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon
11 the filing of a petition by an affected motor carrier, the Public Service Commission shall, within
12 fourteen days, reflect the cost of the fee in the motor carrier's rates for solid waste removal service.
13 In calculating the amount of the fee to the motor carrier, the commission shall use the national
14 average of pounds of waste generated per person per day as determined by the United States
15 Environmental Protection Agency.

16 (d) *Definitions.* -- For purposes of this section, the term "solid waste disposal facility" means
17 any approved solid waste facility or open dump in this state, and includes a transfer station when the
18 solid waste collected at the transfer station is not finally disposed of at a solid waste facility within
19 this state that collects the fee imposed by this section. Nothing in this section authorizes in any way
20 the creation or operation of or contribution to an open dump.

21 (e) *Exemptions.* -- The following transactions are exempt from the fee imposed by this
22 section:

23 (1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates

1 or leases the solid waste disposal facility, if the facility is used exclusively to dispose of waste
2 originally produced by that person in the person's regular business or personal activities or by
3 persons utilizing the facility on a cost-sharing or nonprofit basis;

4 (2) Reuse or recycling of any solid waste;

5 (3) Disposal of residential solid waste by an individual not in the business of hauling or
6 disposing of solid waste on the days and times designated by the director as exempt from the solid
7 waste assessment fee; ~~and~~

8 (4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which
9 disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for
10 this exemption each commercial recycler shall keep accurate records of incoming and outgoing waste
11 by weight. The records shall be made available to the appropriate inspectors from the division, upon
12 request; and

13 (5) Disposal of solid waste transported by rail to a solid waste disposal facility located in a
14 county, with a population of less than thirty thousand, that borders another state: *Provided*, That
15 the solid waste authority of that county approves the exemption: *Provided*, however That if the
16 county solid waste authority approves the exemption, the county commission must also approve the
17 exemption: *Provided*, further That the provisions of this subdivision do not apply in any county until
18 the county commission of the county holds an election on the question of whether the provisions of
19 this subdivision exempting the disposal of solid waste transported by rail to a solid waste disposal
20 facility from the solid waste assessment fee shall apply within the county and the voters approve the
21 exemption of the disposal of solid waste transported by rail to a solid waste disposal facility from
22 the solid waste assessment fee in the county. The election is determined by a vote of the resident
23 voters of the county in which the exemption of the disposal of solid waste transported by rail to a

1 solid waste disposal facility from the solid waste assessment fee is proposed to be authorized. The
2 county commission of the county in which the exemption of the disposal of solid waste transported
3 by rail to a solid waste disposal facility from the solid waste assessment fee is proposed shall give
4 notice to the public of the election by publication of the notice as a Class II-0 legal advertisement
5 in compliance with the provisions of article three, chapter fifty-nine of this code and the publication
6 area for the publication is the county in which the election is to be held. The date of the last
7 publication of the notice shall fall on a date within the period of the fourteen consecutive days next
8 preceding the election.

9 On the local option election ballot shall be printed the following:

10 Shall the exemption of the disposal of solid waste transported by rail to a solid waste disposal
11 facility from the solid waste assessment fee be authorized in _____ County?

12 Yes No

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

14 Any local option election to approve or disapprove of the proposed authorization of the
15 exemption of the disposal of solid waste transported by rail to a solid waste disposal facility from
16 the solid waste assessment fee within a county shall be in accordance with procedures adopted by
17 the commission. The local option election shall be held in conjunction with a primary or general
18 election or at a special election. Approval shall be by a majority of the voters casting votes on the
19 question of approval or disapproval of the exemption of the disposal of solid waste transported by
20 rail to a solid waste disposal facility from the solid waste assessment fee at the election.

21 If a majority votes against allowing the exemption of the disposal of solid waste transported
22 by rail to a solid waste disposal facility from the solid waste assessment fee, an election on the issue
23 may not be held for a period of one hundred four weeks. If a majority votes "yes," an election

1 reconsidering the action may not be held for a period of five years. A local option election may
2 thereafter be held if a written petition of qualified voters residing within the county equal to at least
3 five percent of the number of persons who were registered to vote in the next preceding general
4 election is received by the county commission of the county in which the exemption of the disposal
5 of solid waste transported by rail to a solid waste disposal facility from the solid waste assessment
6 fee is authorized. The petition may be in any number of counterparts. The election shall take place
7 at the next primary or general election scheduled more than ninety days following receipt by the
8 county commission of the petition required by this subsection: *Provided*, That the issue may not be
9 placed on the ballot until all statutory notice requirements have been met. No local law or regulation
10 providing any penalty, disability, restriction, regulation or prohibition the exemption of the disposal
11 of solid waste transported by rail to a solid waste disposal facility from the solid waste assessment
12 fee may be enacted and the provisions of this article preempt all regulations, rules, ordinances and
13 laws of any county or municipality in conflict with this subdivision.

14 (f) *Procedure and administration.* -- Notwithstanding section three, article ten, chapter eleven
15 of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act"
16 set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like
17 effect as if the act were applicable only to the fee imposed by this section and were set forth in
18 extenso in this section.

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

23 (h) *Dedication of proceeds.* -- (1) The proceeds of the fee collected pursuant to this section

1 shall be deposited in the closure cost assistance fund established pursuant to section twelve of this
2 article: *Provided*, That the director may transfer up to 50¢ for each ton of solid waste disposed of in
3 this state upon which the fee imposed by this section is collected on or after July 1, 1998, to the solid
4 waste enforcement fund established pursuant to section eleven, article fifteen of this chapter.

5 (2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of thirty
6 thousand tons per month from any landfill which is permitted to accept in excess of thirty thousand
7 tons per month pursuant to section nine, article fifteen of this chapter shall be remitted, at least
8 monthly, to the county commission in the county in which the landfill is located. The remainder of
9 the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost
10 assistance fund established pursuant to section twelve of this article.

11 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,**

12 **AUTHORITIES, COMMISSIONS AND COMPACTS.**

13 **ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.**

14 **§22C-4-30. Solid waste assessment interim fee; regulated motor carriers; dedication of**
15 **proceeds; criminal penalties.**

16 (a) *Imposition.* -- ~~Effective July 1, 1989, a~~ A solid waste assessment fee is ~~hereby~~ levied and
17 imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be
18 collected at the rate of \$1 per ton or part thereof of solid waste. The fee imposed by this section is
19 in addition to all other fees levied by law.

20 (b) *Collection, return, payment and record.* -- The person disposing of solid waste at the solid
21 waste disposal facility shall pay the fee imposed by this section, whether or not ~~such~~ that person
22 owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who
23 shall remit it to the Tax Commissioner.

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

3 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or
4 before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon
5 remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed
6 by the Tax Commissioner.

7 (3) The operator shall account to the state for all fees collected under this section and shall
8 hold them in trust for the state until they are remitted to the Tax Commissioner.

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

12 (5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns
13 with the fee as required in this section, the Tax Commissioner may serve written notice requiring ~~such~~
14 the operator to collect the fees which become collectible after service of ~~such~~ the notice, to deposit
15 ~~such~~ the fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and
16 payable to the Tax Commissioner, and to keep the amount of ~~such~~ the fees in ~~such~~ the account until
17 remitted to the Tax Commissioner. ~~Such~~ The notice remains in effect until a notice of cancellation
18 is served on the operator or owner by the Tax Commissioner.

19 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an
20 operator, the operator is primarily liable for collection and remittance of the fee imposed by this
21 section and the owner is secondarily liable for remittance of the fee imposed by this section. However,
22 if the operator fails, in whole or in part, to discharge his or her obligations under this section, the
23 owner and the operator of the solid waste facility are jointly and severally responsible and liable for

1 compliance with the provisions of this section.

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

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

11 (c) *Regulated motor carriers.* -- The fee imposed by this section and section twenty-two,
12 article five, chapter seven of this code is a necessary and reasonable cost for motor carriers of solid
13 waste subject to the jurisdiction of the Public Service Commission under chapter twenty-four-a of this
14 code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected
15 motor carrier, the Public Service Commission shall, within fourteen days, reflect the cost of ~~said~~ the
16 fee in ~~said~~ the motor carrier's rates for solid waste removal service. In calculating the amount of ~~said~~
17 the fee to ~~said~~ the motor carrier, the commission shall use the national average of pounds of waste
18 generated per person per day as determined by the United States Environmental Protection Agency.

19 (d) *Definition of solid waste disposal facility.* -- For purposes of this section, the term "solid
20 waste disposal facility" means any approved solid waste facility or open dump in this state and
21 includes a transfer station when the solid waste collected at the transfer station is not finally disposed
22 of at a solid waste facility within this state that collects the fee imposed by this section. Nothing
23 ~~herein~~ in this section authorizes in any way the creation or operation of or contribution to an open

1 dump.

2 (e) *Exemptions.* -- The following transactions are exempt from the fee imposed by this section:

3 (1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates
4 or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally
5 produced by ~~such~~ that person in such person's his or her regular business or personal activities or by
6 persons ~~utilizing~~ using the facility on a cost-sharing or nonprofit basis;

7 (2) Reuse or recycling of any solid waste;

8 (3) Disposal of residential solid waste by an individual not in the business of hauling or
9 disposing of solid waste on ~~such~~ the days and times ~~as~~ designated by the Director of the Division of
10 Environmental Protection as exempt from the fee imposed pursuant to section eleven, article fifteen,
11 chapter twenty-two of this code; ~~and~~

12 (4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which
13 disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for
14 this exemption each commercial recycler must keep accurate records of incoming and outgoing waste
15 by weight. ~~Such~~ The records must be made available to the appropriate inspectors from the Division
16 of Environmental Protection of solid waste authority, upon request; and

17 (5) Disposal of solid waste transported by rail to a solid waste disposal facility located in a
18 county, with a population of less than thirty thousand, that borders another state: *Provided*, That the
19 solid waste authority of that county approves the exemption: *Provided*, however That if the county
20 solid waste authority approves the exemption, the county commission must also approve the
21 exemption: *Provided*, further That the provisions of this subdivision do not apply in any county until
22 the county commission of the county holds an election on the question of whether the provisions of
23 this subdivision exempting the disposal of solid waste transported by rail to a solid waste disposal

1 facility from the solid waste assessment fee shall apply within the county and the voters approve the
2 exemption of the disposal of solid waste transported by rail to a solid waste disposal facility from the
3 solid waste assessment fee in the county. The election is determined by a vote of the resident voters
4 of the county in which the exemption of the disposal of solid waste transported by rail to a solid waste
5 disposal facility from the solid waste assessment fee is proposed to be authorized. The county
6 commission of the county in which the exemption of the disposal of solid waste transported by rail
7 to a solid waste disposal facility from the solid waste assessment fee is proposed shall give notice
8 to the public of the election by publication of the notice as a Class II-0 legal advertisement in
9 compliance with the provisions of article three, chapter fifty-nine of this code and the publication area
10 for the publication is the county in which the election is to be held. The date of the last publication
11 of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the
12 election.

13 On the local option election ballot shall be printed the following:

14 Shall the exemption of the disposal of solid waste transported by rail to a solid waste disposal
15 facility from the solid waste assessment fee be authorized in _____ County?

16

17 Yes

18 No

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

20 Any local option election to approve or disapprove of the proposed authorization of the
21 exemption of the disposal of solid waste transported by rail to a solid waste disposal facility from the
22 solid waste assessment fee within a county shall be in accordance with procedures adopted by the
23 commission. The local option election shall be held in conjunction with a primary or general election

1 or at a special election. Approval shall be by a majority of the voters casting votes on the question
2 of approval or disapproval of the exemption of the disposal of solid waste transported by rail to a
3 solid waste disposal facility from the solid waste assessment fee at the election.

4 If a majority votes against allowing the exemption of the disposal of solid waste transported
5 by rail to a solid waste disposal facility from the solid waste assessment fee , an election on the issue
6 may not be held for a period of one hundred four weeks. If a majority votes "yes," an election
7 reconsidering the action may not be held for a period of five years. A local option election may
8 thereafter be held if a written petition of qualified voters residing within the county equal to at least
9 five percent of the number of persons who were registered to vote in the next preceding general
10 election is received by the county commission of the county in which the exemption of the disposal
11 of solid waste transported by rail to a solid waste disposal facility from the solid waste assessment
12 fee is authorized. The petition may be in any number of counterparts. The election shall take place
13 at the next primary or general election scheduled more than ninety days following receipt by the
14 county commission of the petition required by this subsection: *Provided*, That the issue may not be
15 placed on the ballot until all statutory notice requirements have been met. No local law or regulation
16 providing any penalty, disability, restriction, regulation or prohibition the exemption of the disposal
17 of solid waste transported by rail to a solid waste disposal facility from the solid waste assessment
18 fee may be enacted and the provisions of this article preempt all regulations, rules, ordinances and
19 laws of any county or municipality in conflict with this subdivision.

20 (f) *Procedure and administration.* -- Notwithstanding section three, article ten, chapter eleven
21 of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act"
22 set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like
23 effect as if ~~said~~ the act were applicable only to the fee imposed by this section and were set forth in

1 extenso ~~herein~~ in this section.

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

6 (h) *Dedication of proceeds*. -- The net proceeds of the fee collected by the Tax Commissioner
7 pursuant to this section shall be deposited, at least monthly, in a special revenue account known as
8 the "Solid Waste Planning Fund" which is hereby continued. The Solid Waste Management Board
9 shall allocate the proceeds of the ~~said~~ the fund as follows:

10 (1) Fifty percent of the total proceeds shall be divided equally among, and paid over to, each
11 county solid waste authority to be expended for the purposes of this article: *Provided*, That where a
12 regional solid waste authority exists, ~~such~~ the funds shall be paid over to the regional solid waste
13 authority to be expended for the purposes of this article in an amount equal to the total share of all
14 counties within the jurisdiction of ~~said~~ the regional solid waste authority; and

15 (2) Fifty percent of the total proceeds shall be expended by the solid waste management board
16 for:

17 (A) Grants to the county or regional solid waste authorities for the purposes of this article; and

18 (B) Administration, technical assistance or other costs of the Solid Waste Management Board
19 necessary to implement the purposes of this article and article three of this chapter.

20 (i) *Effective date*. -- ~~This section is effective on July 1, 1990.~~