

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 147

SENATOR BLAIR, *original sponsor*

[Originating in the Committee on Finance;

Reported on February 14, 2019]

1 A BILL to amend and reenact §7-5-22 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §22-15-11 of said code; and to amend and reenact §22-16-4 of said code, all
3 relating to shifting funding from the Landfill Closure Assistance Fund to local solid waste
4 authorities; and setting an exemption from the fees for certain monofill landfills.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

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

1 Each county or regional solid waste authority is hereby authorized to impose a similar solid
2 waste assessment fee to that imposed by §22-15-11 of this code at a rate not to exceed 50 cents;
3 Provided, That on and after July 1, 2019 the rate shall be \$1.50 per ton or part thereof upon the
4 disposal of solid waste in that county or region. All assessments due shall be applied to the
5 reasonable costs of administration of the county's regional or county solid waste authority
6 including the necessary and reasonable expenses of its members, and any other expenses
7 incurred from refuse cleanup, litter control programs, or any solid waste programs deemed
8 considered necessary to fulfill its duties; Provided, however, That any monofill landfill regulated
9 under §22-15-21 of this code shall be exempt from such county or regional solid waste
10 assessment fee.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

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

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

5 or owner of the solid waste disposal facility: Provided, That any monofill landfill regulated under
6 §22-15-21 of this code shall be exempt from such solid waste assessment fee.

7 (b) *Collection, return, payment, and records.* — The person disposing of solid waste at the
8 solid waste disposal facility shall pay the fee imposed by this section, whether or not such person
9 owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who
10 shall remit it to the Tax Commissioner.

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

13 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on
14 or before the 15th day of the month next succeeding the month in which the fee accrued. Upon
15 remittance of the fee, the operator is required to file returns on forms and in the manner as
16 prescribed by the Tax Commissioner.

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

19 (4) If any operator fails to collect the fee imposed by this section, he or she is personally
20 liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties,
21 and interest imposed by §11-10-1 *et seq.* of this code.

22 (5) Whenever any operator fails to collect, truthfully account for, remit the fee, or file returns
23 with the fee as required in this section, the Tax Commissioner may serve written notice requiring
24 such operator to collect the fees which become collectible after service of such notice, to deposit
25 such fees in a bank approved by the Tax Commissioner, in a separate account, in trust for, and
26 payable to, the Tax Commissioner and to keep the amount of such fees in such account until
27 remitted to the Tax Commissioner. Such notice remains in effect until a notice of cancellation is
28 served on the operator or owner by the Tax Commissioner.

29 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to
30 an operator, the operator is primarily liable for collection and remittance of the fee imposed by

31 this section and the owner is secondarily liable for remittance of the fee imposed by this section.
32 However, if the operator fails, in whole or in part, to discharge his or her obligations under this
33 section, the owner and the operator of the solid waste facility are jointly and severally responsible
34 and liable for compliance with the provisions of this section.

35 (7) If the operator or owner responsible for collecting the fee imposed by this section is an
36 association or corporation, the officers thereof are liable, jointly and severally, for any default on
37 the part of the association or corporation, and payment of the fee and any additions to tax,
38 penalties and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them as
39 against the association or corporation which they represent.

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

44 (c) *Regulated motor carriers.* — The fee imposed by this section and §7-5-22 of this code
45 is considered a necessary and reasonable cost for motor carriers of solid waste subject to the
46 jurisdiction of the Public Service Commission under chapter 24A of this code. Notwithstanding
47 any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the
48 Public Service Commission shall, within 14 days, reflect the cost of said fee in said motor carrier's
49 rates for solid waste removal service. In calculating the amount of said fee to said motor carrier,
50 the commission shall use the national average of pounds of waste generated per person per day
51 as determined by the United States Environmental Protection Agency.

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

56 section. Nothing herein authorizes in any way the creation or operation of, or contribution to, an
57 open dump.

58 (e) *Exemptions.* — The following transactions are exempt from the fee imposed by this
59 section:

60 (1) Disposal of solid waste at a solid waste disposal facility by the person who owns,
61 operates, or leases the solid waste disposal facility if the facility is used exclusively to dispose of
62 waste originally produced by such person in such person's regular business or personal activities
63 or by persons utilizing the facility on a cost-sharing or nonprofit basis;

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

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

68 (4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which
69 disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for
70 this exemption each commercial recycler must keep accurate records of incoming and outgoing
71 waste by weight. Such records must be made available to the appropriate inspectors from the
72 division, upon request.

73 (f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and
74 every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1
75 *et seq.* of this code shall apply to the fee imposed by this section with like effect as if said act were
76 applicable only to the fee imposed by this section and were set forth in extenso herein.

77 (g) *Criminal penalties.* — Notwithstanding §11-9-2 of this code, §11-9-3 through §11-9-17
78 of this code shall apply to the fee imposed by this section with like effect as if said sections were
79 applicable only to the fee imposed by this section and were set forth in extenso herein.

80 (h) *Dedication of proceeds.* — The net proceeds of the fee collected by the Tax
81 Commissioner pursuant to this section shall be deposited at least monthly in an account

82 designated by the secretary. The secretary shall allocate 25 cents for each ton of solid waste
83 disposed of in this state upon which the fee imposed by this section is collected and shall deposit
84 the total amount so allocated into the Solid Waste Reclamation and Environmental Response
85 Fund to be expended for the purposes hereinafter specified. The first \$1 million of the net
86 proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the
87 Solid Waste Enforcement Fund and expended for the purposes hereinafter specified. The next
88 \$250,000 of the net proceeds of the fee imposed by this section collected in each fiscal year shall
89 be deposited in the Solid Waste Management Board Reserve Fund and expended for the
90 purposes hereinafter specified: *Provided*, That in any year in which the Water Development
91 Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer
92 any contingent liability of the fund, the Water Development Authority shall so certify to the
93 secretary and the secretary shall then cause no less than \$50,000 nor more than \$250,000 to be
94 deposited to the fund: *Provided, however*, That in any year in which the Water Development
95 Authority determines that the Solid Waste Management Board Reserve Fund is inadequate to
96 defer any contingent liability of the fund, the Water Development Authority shall so certify to the
97 secretary and the secretary shall then cause not less than \$250,000 nor more than \$500,000 to
98 be deposited in the fund: *Provided further*, That if a facility owned or operated by the state of West
99 Virginia is denied site approval by a county or regional solid waste authority, and if such denial
100 contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness
101 issued or approved by the Solid Waste Management Board, then in that event the Solid Waste
102 Management Board or its fiscal agent may withhold all or any part of any funds which would
103 otherwise be directed to such county or regional authority and shall deposit such withheld funds
104 in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net
105 proceeds among the following three special revenue accounts for the purpose of maintaining a
106 reasonable balance in each special revenue account, which are hereby continued in the State
107 Treasury:

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

111 (2) The Solid Waste Management Board Reserve Fund, which shall be exclusively
112 dedicated to providing a reserve fund for the issuance and security of solid waste disposal
113 revenue bonds issued by the Solid Waste Management Board pursuant to §22C-3-1 *et seq.* of
114 this code; and

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

120 (i) *Findings.* — In addition to the purposes and legislative findings set forth in §22-15-1 of
121 this code, the Legislature finds as follows:

122 (1) In-state and out-of-state locations producing solid waste should bear the responsibility
123 of disposing of said solid waste or compensate other localities for costs associated with accepting
124 such solid waste;

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

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

129 (j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby
130 created as a special revenue fund in the State Treasury to be administered by the West Virginia
131 Division of Highways and to be expended only on the improvement, maintenance, and repair of
132 public roads of three lanes or less located in the watershed from which the revenue was received
133 that are identified by the Commissioner of Highways as having been damaged by trucks and other

134 traffic associated with horizontal well drilling sites, or the disposal of waste generated by such
135 sites, and that experience congestion caused, in whole or in part, by such trucks and traffic that
136 interferes with the use of said roads by residents in the vicinity of such roads: *Provided*, That up
137 to \$750,000 from such fund shall be made available to the Department of Environmental
138 Protection from the same fund to offset contracted costs incurred by the Department of
139 Environmental Protection while undertaking the horizontal drilling waste disposal studies
140 mandated by the provisions of §22-15-8(j) of this code. Any balance remaining in the special
141 revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but
142 shall remain in the special revenue account and shall be used solely in a manner consistent with
143 this section. The fund shall consist of the fee provided for in subsection (k) of this section.

144 (k) *Horizontal drilling waste assessment fee.* — An additional solid waste assessment fee
145 is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal
146 well sites in the amount of \$1 per ton, which fee is in addition to all other fees and taxes levied by
147 this section or otherwise and shall be added to and constitute part of any other fee charged by
148 the operator or owner of the solid waste disposal facility: *Provided*, That the horizontal drilling
149 waste assessment fee shall be collected and administered in the same manner as the solid waste
150 assessment fee imposed by this section, but shall be imposed only upon the disposal of drill
151 cuttings and drilling waste generated by horizontal well sites.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

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

1 (a) *Imposition.* — A solid waste assessment fee is levied and imposed upon the disposal
2 of solid waste at any solid waste disposal facility in this state in the amount of \$3.50 per ton or
3 like ratio on any part of a ton of solid waste, except as provided in §22-16-4(e) of this code:
4 *Provided*, That any solid waste disposal facility may deduct from this assessment fee an amount,
5 not to exceed the fee, equal to the amount that the facility is required by the Public Service
6 Commission to set aside for the purpose of closure of that portion of the facility required to close

7 by §22-15-1 *et seq.* of this code. The fee imposed by this section is in addition to all other fees
8 and taxes levied by law and shall be added to and constitute part of any other fee charged by the
9 operator or owner of the solid waste disposal facility: Provided, however, That any monofill landfill
10 regulated under §22-15-21 of this code shall be exempt from such county or regional solid waste
11 assessment fee.

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

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

18 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on
19 or before the 15th day of the month next succeeding the month in which the fee accrued. Upon
20 remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the
21 Tax Commissioner;

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

24 (4) If any operator fails to collect the fee imposed by this section, he or she is personally
25 liable for the amount he or she failed to collect, plus applicable additions to tax, penalties, and
26 interest imposed by §11-10-1 *et seq.* of this code;

27 (5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns
28 with the fee as required in this section, the Tax Commissioner may serve written notice requiring
29 the operator to collect the fees which become collectible after service of the notice, to deposit the
30 fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable
31 to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the

32 Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served on the
33 operator or owner by the Tax Commissioner;

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

40 (7) If the operator or owner responsible for collecting the fee imposed by this section is an
41 association or corporation, the officers of the association or corporation are liable, jointly and
42 severally, for any default on the part of the association or corporation, and payment of the fee and
43 any additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code may be
44 enforced against them as against the association or corporation which they represent; and

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

48 (c) *Regulated motor carriers.* — The fee imposed by this section is a necessary and
49 reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service
50 Commission under chapter 24A of this code. Notwithstanding any provision of law to the contrary,
51 upon the filing of a petition by an affected motor carrier, the Public Service Commission shall,
52 within 14 days, reflect the cost of the fee in the motor carrier's rates for solid waste removal
53 service. In calculating the amount of the fee to the motor carrier, the commission shall use the
54 national average of pounds of waste generated per person per day as determined by the United
55 States Environmental Protection Agency.

56 (d) *Definitions.* — For purposes of this section, the term “solid waste disposal facility”
57 means any approved solid waste facility or open dump in this state, and includes a transfer station

58 when the solid waste collected at the transfer station is not finally disposed of at a solid waste
59 facility within this state that collects the fee imposed by this section. Nothing in this section
60 authorizes in any way the creation or operation of or contribution to an open dump.

61 (e) *Exemptions.* — The following transactions are exempt from the fee imposed by this
62 section:

63 (1) Disposal of solid waste at a solid waste disposal facility by the person who owns,
64 operates, or leases the solid waste disposal facility if the facility is used exclusively to dispose of
65 waste originally produced by that person in the person's regular business or personal activities or
66 by persons utilizing the facility on a cost-sharing or nonprofit basis;

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

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

71 (4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which
72 disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for
73 this exemption each commercial recycler shall keep accurate records of incoming and outgoing
74 waste by weight. The records shall be made available to the appropriate inspectors from the
75 division, upon request.

76 (f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and
77 every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1
78 *et seq.* of this code applies to the fee imposed by this section with like effect as if the act were
79 applicable only to the fee imposed by this section and were set forth in extenso in this section.

80 (g) *Criminal penalties.* — Notwithstanding §11-9-2 of this code, §11-9-3 through §11-9-17
81 of this code apply to the fee imposed by this section with like effect as if the sections were
82 applicable only to the fee imposed by this section and were set forth in extenso in this section.

83 (h) *Dedication of proceeds.* — (1) The proceeds of the fee collected pursuant to this
84 section shall be deposited in the Closure Cost Assistance Fund established pursuant to §22-16-
85 12 of this code: *Provided*, That the director may transfer up to 50 cents for each ton of solid waste
86 disposed of in this state upon which the fee imposed by this section is collected on or after July
87 1, 1998, to the Solid Waste Enforcement Fund established pursuant to §22-15-11 of this code.

88 (2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of
89 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per
90 month pursuant to §22-15-9 of this code shall be remitted, at least monthly, to the county
91 commission in the county in which the landfill is located. The remainder of the proceeds of the fee
92 collected pursuant to this section shall be deposited in the Closure Cost Assistance Fund
93 established pursuant to §22-16-12 of this code.