

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4613

BY DELEGATE BUTLER

(BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS)

[Introduced January 30, 2020; Referred to the
Committee on Technology and Infrastructure then
Finance]

1 A BILL to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended, relating
 2 to disbursement of the funds in the “Gas Field Highway Repair and Horizontal Drilling
 3 Waste Study Fund” for highway road repair; providing that money from the fund is to be
 4 expended within the district where gas field and horizontal drilling waste is deposited; and
 5 updating grammatical style throughout the section.

Be it enacted by the Legislature of West Virginia:

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.

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

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

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

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

18 (4) If any operator fails to collect the fee imposed by this section, he or she is personally

19 liable for ~~such the~~ amount as he or she failed to collect, plus applicable additions to tax, penalties
20 and interest imposed by §11-10-1 *et seq.* of this code.

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

28 (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to
29 an operator, the operator is primarily liable for collection and remittance of the fee imposed by
30 this section and the owner is secondarily liable for remittance of the fee imposed by this section.
31 However, if the operator fails, in whole or in part, to discharge his or her obligations under this
32 section, the owner and the operator of the solid waste facility are jointly and severally responsible
33 and liable for compliance with the provisions of this section.

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

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

43 (c) *Regulated motor carriers.* — The fee imposed by this section and §7-5-22 of this code
44 is considered a necessary and reasonable cost for motor carriers of solid waste subject to the

45 jurisdiction of the Public Service Commission under Chapter 24A of this code. Notwithstanding
46 any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the
47 Public Service Commission shall, within 14 days, reflect the cost of said fee in said motor carrier's
48 rates for solid waste removal service. In calculating the amount of said fee to said motor carrier,
49 the commission shall use the national average of pounds of waste generated per person per day
50 as determined by the United States Environmental Protection Agency.

51 (d) *Definition of solid waste disposal facility.* — For purposes of this section, the term “solid
52 waste disposal facility” means any approved solid waste facility or open dump in this state, and
53 includes a transfer station when the solid waste collected at the transfer station is not finally
54 disposed of at a solid waste disposal facility within this state that collects the fee imposed by this
55 section. Nothing herein authorizes in any way the creation or operation of or contribution to an
56 open dump.

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

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

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

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

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

71 the division, upon request.

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

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

79 (h) *Dedication of proceeds.* — The net proceeds of the fee collected by the Tax
80 Commissioner pursuant to this section shall be deposited at least monthly in an account
81 designated by the secretary. The secretary shall allocate \$0.25 for each ton of solid waste
82 disposed of in this state upon which the fee imposed by this section is collected and shall deposit
83 the total amount so allocated into the “Solid Waste Reclamation and Environmental Response
84 Fund” to be expended for the purposes hereinafter specified. The first \$1 million of the net
85 proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the
86 “Solid Waste Enforcement Fund” and expended for the purposes hereinafter specified. The next
87 \$250,000 of the net proceeds of the fee imposed by this section collected in each fiscal year shall
88 be deposited in the “Solid Waste Management Board Reserve Fund”, and expended for the
89 purposes hereinafter specified: *Provided*, That in any year in which the Water Development
90 Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer
91 any contingent liability of the fund, the Water Development Authority shall so certify to the
92 secretary and the secretary shall then cause no less than \$50,000 nor more than \$250,000 to be
93 deposited to the fund: *Provided, however*, That in any year in which the water development
94 authority determines that the Solid Waste Management Board Reserve Fund is inadequate to
95 defer any contingent liability of the fund, the Water Development Authority shall so certify to the
96 secretary and the secretary shall then cause not less than \$250,000 nor more than \$500,000 to

97 be deposited in the fund: *Provided further*, That if a facility owned or operated by the State of
98 West Virginia is denied site approval by a county or regional solid waste authority, and if ~~such~~ the
99 denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any
100 indebtedness issued or approved by the Solid Waste Management Board, then in that event the
101 Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which
102 would otherwise be directed to ~~such~~ the county or regional authority and shall deposit ~~such~~ the
103 withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any,
104 of said net proceeds among the following three special revenue accounts for the purpose of
105 maintaining a reasonable balance in each special revenue account, which are hereby continued
106 in the State Treasury:

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

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

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

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

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

123 ~~such~~ the solid waste;

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

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

128 (j) The “Gas Field Highway Repair and Horizontal Drilling Waste Study Fund” is hereby
129 created as a special revenue fund in the State Treasury to be administered by the West Virginia
130 Division of Highways and to be expended only on the improvement, maintenance, and repair of
131 public roads of three lanes or less located in the ~~watershed from which the revenue was received~~
132 Division of Highway’s district where the waste is deposited that are identified by the Commissioner
133 of Highways as having been damaged by trucks and other traffic associated with horizontal well
134 drilling sites or the disposal of waste generated by ~~such~~ the sites, and that experience congestion
135 caused, in whole or in part, by ~~such~~ the trucks and traffic that interferes with the use of said roads
136 by residents in the vicinity of ~~such~~ the roads: *Provided*, That up to \$750,000 from ~~such~~ the fund
137 shall be made available to the Department of Environmental Protection from the same fund to
138 offset contracted costs incurred by the Department of Environmental Protection while undertaking
139 the horizontal drilling waste disposal studies mandated by the provisions of §22-15-8(j) of this
140 code. Any balance remaining in the special revenue account at the end of any fiscal year shall
141 not revert to the General Revenue Fund but shall remain in the special revenue account and shall
142 be used solely in a manner consistent with this section. The fund shall consist of the fee provided
143 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.

NOTE: The purpose of this bill is to allow that the Division of Highways may use the money in the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund in the Division of Highways district where the waste was generated or where the fee was received. Currently the money cannot be used because the agencies involved, Department of Environmental Protection and Department of Revenue, do not know the watershed where the waste was generated. This amendment allows the Division of Highways to use the money on roads in the DOH District where the fee is collected. The Division has records of the roads that are impacted by horizontal drilling operations and waste hauling and will be able to use the money to repair roads effected by these operations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.