

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 727

BY SENATORS CLEMENTS, IHLENFELD, MARONEY,

ROMANO, HARDESTY, ROBERTS, STOLLINGS, AND

PLYMALE

[Introduced February 7, 2020; referred

to the Committee on Transportation and

Infrastructure]

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 the account until remitted to the Tax Commissioner. ~~Such~~ The notice remains in effect until a
27 notice 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
38 as 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 of this code, each and
73 every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1
74 *et seq.* of this code shall apply to the fee imposed by this section with like effect as if said act were
75 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-
77 17, inclusive, of this code shall apply to the fee imposed by this section with like effect as if said
78 sections were applicable only to the fee imposed by this section and were set forth in extenso
79 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
99 West Virginia is denied site approval by a county or regional solid waste authority, and if ~~such~~ the
100 denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any
101 indebtedness issued or approved by the Solid Waste Management Board, then in that event the
102 Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which
103 would otherwise be directed to ~~such~~ the county or regional authority and shall deposit ~~such~~ the
104 withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any,
105 of said net proceeds among the following three special revenue accounts for the purpose of
106 maintaining a reasonable balance in each special revenue account, which are hereby continued
107 in the State 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~~ the 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 Division of Highways district where the waste is deposited that are identified by the Commissioner
134 of Highways as having been damaged by trucks and other traffic associated with horizontal well
135 drilling sites or the disposal of waste generated by ~~such~~ the sites, and that experience congestion
136 caused, in whole or in part, by ~~such~~ the trucks and traffic that interferes with the use of said roads
137 by residents in the vicinity of ~~such~~ the roads: *Provided*, That up to \$750,000 from ~~such~~ the fund
138 shall be made available to the Department of Environmental Protection from the same fund to
139 offset contracted costs incurred by the Department of Environmental Protection while undertaking
140 the horizontal drilling waste disposal studies mandated by the provisions of §22-15-8(j) of this
141 code. Any balance remaining in the special revenue account at the end of any fiscal year shall
142 not revert to the General Revenue Fund but shall remain in the special revenue account and shall
143 be used solely in a manner consistent with this section. The fund shall consist of the fee provided
144 for in subsection (k) of this section.

145 (k) *Horizontal drilling waste assessment fee.* — An additional solid waste assessment fee
146 is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal
147 well sites in the amount of \$1 per ton, which fee is in addition to all other fees and taxes levied by
148 this section or otherwise and shall be added to and constitute part of any other fee charged by
149 the operator or owner of the solid waste disposal facility: *Provided*, That the horizontal drilling
150 waste assessment fee shall be collected and administered in the same manner as the solid waste
151 assessment fee imposed by this section, but shall be imposed only upon the disposal of drill
152 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.