

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 368

BY SENATORS SWOPE, STOLLINGS, PLYMALE, PHILLIPS,

WOELFEL, SMITH, BALDWIN, AND JEFFRIES

[Originating in the Committee on Economic

Development; reported on February 25, 2021]

1 A BILL to amend and reenact §22-15A-1 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section, designated §22-15A-30; and to amend
3 and reenact §22-16-12 of said code, all relating to authorizing the Department of
4 Environmental Protection to develop the Reclamation of Abandoned and Dilapidated
5 Properties Program to reclaim abandoned and dilapidated structures in order to improve
6 West Virginia communities and to open new parcels for development; creating a special
7 revenue fund; providing a statement of legislative findings and purpose; and permitting the
8 payment of excess money from the Solid Waste Facility Closure Cost Assistance Fund
9 into the Reclamation of Abandoned and Dilapidated Properties Program Fund.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL
ACTION PLAN.**

§22-15A-1. Legislative findings and purpose.

1 (a) The Legislature finds that litter is a public nuisance and distracts from the beauty of
2 the state and its natural resources. It is therefore necessary to establish and implement a litter
3 control program to coordinate public and private litter control efforts; to establish penalties for
4 littering; to provide for litter pickup programs; to create education programs; and to provide
5 assistance to local solid waste authority litter control efforts.

6 (b) The Legislature further finds that the improper management of commercial and
7 residential solid waste and the unlawful disposal of such waste ~~creates~~ create open dumps that
8 adversely ~~impacts~~ impact the state's natural resources, public water supplies, and the public
9 health, safety, and welfare of the citizens of the state. It is therefore necessary to establish a
10 program to promote pollution prevention and to eliminate and remediate open dumps.

11 (c) The Legislature further finds that waste tire piles are a direct product of state citizens'
12 use and enjoyment of state roads and highways, and proper tire waste disposal is a necessary

13 component of maintenance of the transportation system. The accumulation of waste tires has
14 also become a significant environmental and public health hazard to the state, and the location
15 and number of waste tires are directly related to the efficiency of travel, by citizens, visitors, and
16 commerce, along public highways in West Virginia. In particular, the Legislature recognizes that
17 waste tires are widespread in location and in number throughout the state; waste tires physically
18 touch and concern public highways, including, but not limited to, state roads, county roads, park
19 roads, secondary routes, and orphan roads, all of which interferes with the efficiency of public
20 highways; and further that the existence of waste tires along and near public highways is
21 sometimes accompanied by other hazards and, in turn, adversely impacts the proper
22 maintenance and efficiency of public highways for citizens.

23 (d) The Legislature also recognizes and declares that waste tires are a public nuisance
24 and hazard; that waste tires serve as harborage and breeding places for rodents, mosquitoes,
25 fleas, ticks, and other insects and pests injurious to the public health, safety, and general welfare;
26 that waste tires collected in large piles pose an excessive risk to public health, safety, and welfare
27 from disease or fire; that the environmental, economic, and societal damage resulting from fires
28 in waste tire piles can be avoided by removing the piles; and that tire pile fires cause extensive
29 pollution of the air and surface and groundwater for miles downwind and downstream from the
30 fire.

31 (e) Therefore, in view of the findings relating to waste tires, the Legislature declares it to
32 be the public policy of the State of West Virginia to eliminate the present danger resulting from
33 discarded or abandoned waste tires and to eliminate the visual pollution resulting from waste tire
34 piles and that in order to provide for the public health, safety, welfare, and quality of life, and to
35 reverse the adverse impacts to the proper maintenance and efficiency of public highways, it is
36 necessary to enact legislation to those ends by providing expeditious means and methods for
37 effecting the disposal of waste tires.

38 (f) The Legislature further finds that abandoned and dilapidated structures statewide have
39 become a significant hazard and can result in the formation of open dumps or solid waste not
40 disposed of in a proper or lawful manner. In particular, the Legislature recognizes that damage to
41 the environment, natural resources, and the public health, safety, and welfare may result from
42 abandoned and dilapidated structures. Abandoned and dilapidated structures are widespread in
43 location and in number throughout the state; and further, that the existence of abandoned and
44 dilapidated structures along and near public highways is sometimes accompanied by other
45 hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways
46 for citizens.

47 (g) In view of the findings relating to abandoned and dilapidated structures, the Legislature
48 declares it to be the public policy of the State of West Virginia to establish a program to eliminate
49 and remediate abandoned and dilapidated structures.

50 (f) (h) The Legislature finds that many citizens desire a recycling program in order to
51 conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life
52 of solid waste landfills, reduce the need for new landfills, and create markets for recyclable
53 materials. It is therefore necessary to establish goals for recycling solid waste; to require certain
54 municipalities to implement recycling programs; to authorize counties to adopt comprehensive
55 recycling programs; to encourage source separation of solid waste; to increase the purchase of
56 recycled products by the various agencies and instrumentalities of government; and to educate
57 the public concerning the benefits of recycling.

58 ~~(g)~~ (i) The Legislature finds that the effectiveness of litter control, open dump, tire cleanup
59 programs and recycling programs have been made less efficient by fragmented implementation
60 of the various programs by different agencies. It is therefore necessary to coordinate all such
61 programs under one program managed by the department to ensure that all current and future
62 litter, open dump, waste tire, and recycling issues are managed and addressed efficiently and
63 effectively.

64 ~~(h)~~ (j) This article implements the A. James Manchin Rehabilitation Environmental Action
65 Plan, a coordinated effort to address litter, waste, open dump, tire cleanup, and recycling
66 programs.

§22-15A-30. Reclamation of Abandoned and Dilapidated Properties Program.

1 (a) To assist county commissions or municipalities in their efforts to remediate abandoned
2 and dilapidated structures as provided by §7-1-3ff and §8-38-5 of this code, the Department of
3 Environmental Protection may develop a program called the Reclamation of Abandoned and
4 Dilapidated Properties Program. Using the fund established in subsection (b) of this section, the
5 Department of Environmental Protection may work with county commissions or municipalities and
6 implement redevelopment plans which will, at a minimum, establish prioritized inventories of
7 structures eligible to participate in the program, offer reuse options for high-priority sites, and
8 recommend actions county commissions or municipalities may take to remediate abandoned and
9 dilapidated structures in their communities.

10 (b) There is created in the State Treasury a special revenue fund known as the
11 Reclamation of Abandoned and Dilapidated Properties Program Fund. The fund shall be
12 comprised of any money granted by charitable foundations, allocated by the Legislature, allocated
13 from federal agencies, and earned from the investment of money held in the fund, and all other
14 money designated for deposit to the fund from any source, public or private. The fund shall
15 operate as a special revenue fund and all deposits and payments into the fund do not expire to
16 the General Revenue Fund but shall remain in the account and be available for expenditure in
17 succeeding fiscal years.

18 (c) The fund, to the extent that money is available, may be used solely to assist county
19 commissions or municipalities in remediating abandoned and dilapidated structures in their
20 communities by demolishing or deconstructing them and other activities as authorized by a
21 charitable grant or legislative appropriation. The fund may also be used to defray costs incurred
22 by the Department of Environmental Protection in administering the provisions of this section.

23 However, no more than five percent of money transferred from the Solid Waste Facility Closure
24 Cost Assistance Fund may be used for administrative purposes.

25 (d) The Department of Environmental Protection may promulgate rules, in accordance
26 with the provisions of §29A-3-1 et seq. of this code, to govern the disbursement of money from
27 the fund, establish the Reclamation of Abandoned and Dilapidated Properties Program, direct the
28 distribution of money from the fund, and establish criteria for eligibility to receive money from the
29 fund.

30 (e) Nothing in this section shall be construed to limit, restrain, or otherwise discourage this
31 state and its political subdivisions from disposing of abandoned and dilapidated structures in any
32 other manner provided by the laws of this state.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.

1 (a) The Solid Waste Facility Closure Cost Assistance Fund continues as a special revenue
2 account in the State Treasury. The fund operates as a special fund in which all deposits and
3 payments do not expire to the General Revenue Fund, but remain in the account and are available
4 for expenditure in the succeeding fiscal year. Separate subaccounts may be established within
5 the special account for the purpose of identification of various revenue resources and payment of
6 specific obligations.

7 (b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

8 (c) The fund consists of the following:

9 (1) Moneys collected and deposited in the State Treasury which are specifically
10 designated by Acts of the Legislature for inclusion in the fund, including moneys collected and
11 deposited into the fund pursuant to §22-16-4 of this code;

12 (2) Contributions, grants, and gifts from any source, both public and private, which may
13 be used by the secretary for any project or projects;

14 (3) Amounts repaid by permittees pursuant to §22-15-18 of this code; and

15 (4) All interest earned on investments made by the state from moneys deposited in this
16 fund.

17 (d) The Solid Waste Management Board, upon written approval of the secretary, has the
18 authority to pledge all or part of the revenues paid into the Solid Waste Facility Closure Cost
19 Assistance Fund as needed to meet the requirements of any revenue bond issue or issues of the
20 Solid Waste Management Board authorized by this article, including the payment of principal of,
21 interest and redemption premium, if any, on the revenue bonds and the establishing and
22 maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption
23 premium, if any, on the revenue bond issue or issues where other moneys pledged may be
24 insufficient. Any pledge of moneys in the Solid Waste Facility Closure Cost Assistance Fund for
25 revenue bonds is a prior and superior charge on the fund over the use of any of the moneys in
26 the fund to pay for the cost of any project on a cash basis. Expenditures from the fund, other than
27 for the retirement of revenue bonds, may only be made in accordance with this article.

28 (e) The amounts deposited in the fund may be expended only on the cost of projects as
29 provided in §22-16-3 and §22-16-15 of this code, as provided in subsection (f) of this section, and
30 for payment of bonds and notes issued pursuant to §22-16-5 of this code. No more than two
31 percent of the annual deposits to the fund may be used for administrative purposes.

32 (f) Notwithstanding any provision of this article, upon request of the Solid Waste
33 Management Board, and with the approval of the projects by the Secretary of the Department of
34 Environmental Protection, the secretary may pledge and place into escrow accounts up to an
35 aggregate of \$2 million of the fund to satisfy two years debt service requirement that ~~permittees~~
36 permittees of publicly owned landfills and transfer stations are required to meet in order to obtain
37 loans. Pledges shall be made on a project-by-project basis, may not exceed \$500,000 for a
38 project, and are made available after loan commitments are received. The secretary may pledge
39 funds for a loan only when the following conditions are met:

40 (1) The proceeds of the loan are used only to perform construction of a transfer station or
41 a composite liner system that is required to meet Title 47, Series 38, Solid Waste Management
42 Rules;

43 (2) The permittee dedicates all yearly debt service revenue, as determined by the Public
44 Service Commission, to meet the repayment schedule of the loan, before it uses available
45 revenue for any other purpose; and

46 (3) That any funds pledged may only be paid to the lender if the permittee is in default on
47 the loan.

48 (g) Notwithstanding any provision of this code to the contrary, the Elkins-Randolph County
49 Landfill, located in Randolph County, and the Webster County Landfill, located in Webster County,
50 are eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to
51 complete their closure upon the filing of appropriate application. Upon the filing of an appropriate
52 application, the Department of Environmental Protection shall work with the applicant to ensure
53 the application meets the department's requirements.

54 (h) The Department of Environmental Protection is required to file, by January 1 of each
55 year, an annual report with the Joint Committee on Government and Finance providing details on
56 the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

57 (i) The Prichard Landfill in Wayne County is eligible for funds from the Solid Waste Facility
58 Closure Cost Assistance Fund necessary to complete post-closure maintenance and monitoring
59 upon the filing of an appropriate application. In the event of a permit transfer, neither the state nor
60 the Wayne County Economic Development Authority or entity may assume any liability from the
61 private landfill other than post-closure maintenance and monitoring costs.

62 (k)(1) Notwithstanding any other provision of this code, upon completion of the landfill
63 closure-related services at all eligible landfills pursuant to §22-16-3 of this code, the secretary
64 may transfer excess money from the Solid Waste Facility Closure Cost Assistance Fund to the
65 Reclamation of Abandoned and Dilapidated Properties Program Fund created by §22-15A-30 of

66 this code. However, the secretary may not transfer moneys from the Solid Waste Facility Closure
67 Cost Assistance Fund that are required to be maintained so that the department can conduct
68 post-closure activities authorized by this article and the legislative rules promulgated thereunder.
69 The department shall maintain in the Solid Waste Facility Closure Cost Assistance Fund a
70 minimum balance of twice the total cost of post-closure expenses projected for the fiscal year as
71 a buffer for unanticipated necessary post-closure activities.

72 (2) Contingent upon the Department of Environmental Protection securing private
73 foundation funding to establish the Reclamation of Abandoned and Dilapidated Properties
74 Program, and prior to the completion of the landfill closure-related services at all eligible landfills,
75 the secretary may expend money from the Solid Waste Facility Closure Cost Assistance Fund for
76 pilot projects conducted by the Department of Environmental Protection demonstrating the
77 function of the Reclamation of Abandoned and Dilapidated Properties Program.