

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

**Introduced**

### **House Bill 4485**

**FISCAL  
NOTE**

BY DELEGATES OVERINGTON, BLAIR, UPSON, ESPINOSA

HOUSEHOLDER AND BARRETT

[Introduced February 9, 2018; Referred  
to the Committee on Political Subdivisions then  
Finance.]

1 A BILL to amend and reenact §7-5-22 of the Code of West Virginia, 1931, as amended, to amend  
 2 and reenact §22-16-4 of said code, all relating to shifting funding from the Landfill Closure  
 3 Assistance Fund to local solid waste authorities.

*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¢~~  
 3 \$1.50 per ton or part thereof upon the disposal of solid waste in that county or region. All  
 4 assessments due shall be applied to the reasonable costs of administration of the county's  
 5 regional or county solid waste authority including the necessary and reasonable expenses of its  
 6 members, and any other expenses incurred from refuse cleanup, litter control programs, or any  
 7 solid waste programs ~~deemed~~ considered necessary to fulfill its duties.

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**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~~ \$2.50 per ton  
 3 or like ratio on any part of a ton of solid waste, except as provided in subsection (e) of this section:  
 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.

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

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

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

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

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

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

32           (6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to  
33 an operator, the operator is primarily liable for collection and remittance of the fee imposed by  
34 this section and the owner is secondarily liable for remittance of the fee imposed by this section.  
35 However, if the operator fails, in whole or in part, to discharge his or her obligations under this

36 section, the owner and the operator of the solid waste facility are jointly and severally responsible  
37 and liable for compliance with the provisions of this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of  
87 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per

88 month pursuant to §22-15-9 of this code shall be remitted, at least monthly, to the county  
89 commission in the county in which the landfill is located. The remainder of the proceeds of the fee  
90 collected pursuant to this section shall be deposited in the Closure Cost Assistance Fund  
91 established pursuant to §22-16-12 of this code.

NOTE: The purpose of this bill is to shift funding from the Landfill Closure Assistance Fund, which was set up in 1991 to properly close old landfills across the state, to local solid waste authorities. According to the 2017 West Virginia Solid Waste Management Plan, 28 of the 35 old landfills have been properly remediated by the fund. Given the progress made towards closure of the old landfills, the portion of the solid waste fee assessed on landfill deposits, which is currently sent to the fund, is being reduced in order to accommodate an in-kind increase in the portion of the solid waste fee charged by county or regional solid waste authorities to fund various recycling, litter control, and other locally important solid waste program. Additionally, this bill would allow for a reduction in the use of county commission/county tax dollars currently utilized to support various recycling, litter control, and other locally important solid waste programs.

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