

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4443

FISCAL
NOTE

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AND PORTERFIELD

[Introduced January 21, 2020; Referred to the

Committee on Government Organization then

Finance]

1 A BILL to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended; to and
2 to amend and reenact §22-16-4 of said code, all relating to shifting funding from the Landfill
3 Closure Assistance Fund to local solid waste authorities; providing for an additional fee;
4 providing for reduction of a fee; and setting out conditions and limitations for collection and
5 use of the additional fee.

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. –

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

7 (2) Effective July 1, 2020, in addition to the fee set forth in subdivision (1) of this
8 subsection, an additional solid waste assessment fee shall be levied and imposed upon the
9 disposal of solid waste at any solid waste landfill disposal facility in this state. This additional fee
10 shall be in the amount of \$1.00 per ton or like ratio on any part of a ton of solid waste. The
11 additional fee set forth in this subdivision shall be distributed on a per capita basis to each county
12 or regional solid waste authority based on the most recent population projections from the United
13 States Census Bureau. The proceeds from this fee are to be expended for the reasonable costs
14 of administration of the county or regional solid waste authority including the necessary and
15 reasonable expenses of its members, and any other expenses incurred from refuse cleanup,
16 recycling programs, litter control programs, or any other locally important solid waste programs
17 deemed necessary to fulfill its duties. The Tax Commissioner may promulgate interpretive rules
18 to provide for the distribution of funds as provided by this subdivision.

19 (b) Collection, return, payment and records. – The person disposing of solid waste at the
20 solid waste disposal facility shall pay the ~~fee~~ fees imposed by this section, whether or not such
21 person owns the solid waste, and the ~~fee~~ fees shall be collected by the operator of the solid waste
22 facility who shall remit it to the Tax Commissioner.

23 (1) The ~~fee~~ fees imposed by this section ~~accrues~~ accrue at the time the solid waste is
24 delivered to the solid waste disposal facility.

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

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

31 (4) If any operator fails to collect the ~~fee~~ fees imposed by this section, he or she is
32 personally liable for such amount as he or she failed to collect, plus applicable additions to tax,
33 penalties and interest imposed by ~~article ten, chapter eleven, §11-10-1 et seq.~~ of this code.

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

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

45 this section, the owner and the operator of the solid waste facility are jointly and severally
46 responsible and liable for compliance with the provisions of this section.

47 (7) If the operator or owner responsible for collecting the ~~fee~~ fees imposed by this section
48 is an association or corporation, the officers thereof are liable, jointly and severally, for any default
49 on the part of the association or corporation, and payment of the ~~fee~~ fees and any additions to
50 tax, penalties and interest imposed by ~~article 10, chapter 11~~ §11-10-1 et seq. of this code may be
51 enforced against them as against the association or corporation which they represent.

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

56 (c) Regulated motor carriers. – The ~~fee~~ fees imposed by this section and ~~section twenty-~~
57 ~~two, article five, chapter seven~~ §7-5-22 of this code ~~is~~ are considered a necessary and reasonable
58 cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission
59 under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary,
60 upon the filing of a petition by an affected motor carrier, the Public Service Commission shall,
61 within 14 days, reflect the cost of said ~~fee~~ fees in said motor carrier's rates for solid waste removal
62 service. In calculating the amount of said ~~fee~~ fees to said motor carrier, the commission shall use
63 the national average of pounds of waste generated per person per day as determined by the
64 United States Environmental Protection Agency.

65 (d) Definition of solid waste disposal facility. – For purposes of this section, the term solid
66 waste disposal facility means any approved solid waste facility or open dump in this state, and
67 includes a transfer station when the solid waste collected at the transfer station is not finally
68 disposed of at a solid waste disposal facility within this state that collects the ~~fee~~ fees imposed by
69 this section. Nothing herein authorizes in any way the creation or operation of or contribution to
70 an open dump.

71 (e) Exemptions – The following transactions are exempt from the ~~fee~~ fees imposed by this
72 section:

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

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

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

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

86 (5) As of July 1, 2020, any solid waste facility not paying the landfill closure fees as set
87 forth in subsection (a)(1) of this section shall not be subject to the additional fees set forth in
88 subsection (a)(2) of this section.

89 (f) Procedure and administration. – Notwithstanding ~~section three, article 10, chapter 11~~
90 §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and
91 Administration Act set forth in article 10, chapter 11 of this code shall apply to the ~~fee~~ fees imposed
92 by this section with like effect as if said act were applicable only to the ~~fee~~ fees imposed by this
93 section and were set forth in extenso herein.

94 (g) Criminal penalties. – Notwithstanding ~~section two, article nine, chapter eleven §§11-9-~~
95 3 through 17 of this code, sections three through seventeen, article nine, chapter eleven of this
96 code shall apply to the ~~fee~~ fees imposed by this section with like effect as if said sections were

97 applicable only to the ~~fee~~ fees imposed by this section and were set forth in extenso herein.

98 (h) Dedication of proceeds. – Except as provided in subsection (a)(2) of this section the
99 net proceeds of the ~~fee~~ fees collected by the Tax Commissioner pursuant to this section shall be
100 deposited at least monthly in an account designated by the secretary. The secretary shall allocate
101 \$0.25 for each ton of solid waste disposed of in this state upon which the ~~fee~~ fees imposed by
102 this section ~~is~~ are collected and shall deposit the total amount so allocated into the “Solid Waste
103 Reclamation and Environmental Response Fund” to be expended for the purposes hereinafter
104 specified. The first \$1 million dollars of the net proceeds of the ~~fee~~ fees imposed by this section
105 collected in each fiscal year shall be deposited in the Solid Waste Enforcement Fund and
106 expended for the purposes hereinafter specified. The next \$250,000 of the net proceeds of the
107 ~~fee~~ fees imposed by this section collected in each fiscal year shall be deposited in the Solid Waste
108 Management Board Reserve Fund, and expended for the purposes hereinafter specified:
109 *Provided*, That in any year in which the Water Development Authority determines that the Solid
110 Waste Management Board Reserve Fund is adequate to defer any contingent liability of the fund,
111 the Water Development Authority shall so certify to the secretary and the secretary shall then
112 cause no less than \$50,000 nor more than \$250,000 to be deposited to the fund: *Provided*,
113 *however*, That in any year in which the water development authority determines that the Solid
114 Waste Management Board Reserve Fund is inadequate to defer any contingent liability of the
115 fund, the Water Development Authority shall so certify to the secretary and the secretary shall
116 then cause not less than \$250,000 nor more than \$500,000 to be deposited in the fund: *Provided*
117 *further*, That if a facility owned or operated by the State of West Virginia is denied site approval
118 by a county or regional solid waste authority, and if such denial contributes, in whole or in part, to
119 a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the Solid
120 Waste Management Board, then in that event the Solid Waste Management Board or its fiscal
121 agent may withhold all or any part of any funds which would otherwise be directed to such county
122 or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The

123 secretary shall allocate the remainder, if any, of said net proceeds among the following three
124 special revenue accounts for the purpose of maintaining a reasonable balance in each special
125 revenue account, which are hereby continued in the State Treasury:

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

129 (2) The Solid Waste Management Board Reserve Fund which shall be exclusively
130 dedicated to providing a reserve fund for the issuance and security of solid waste disposal
131 revenue bonds issued by the Solid Waste Management Board pursuant to ~~article three, chapter~~
132 ~~twenty-two-c~~ §22C-3-1 et seq. of this code;

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

138 (i) Findings. – In addition to the purposes and legislative findings set forth in section one
139 of this article, the Legislature finds as follows:

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

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

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

147 (j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby
148 created as a special revenue fund in the State Treasury to be administered by the West Virginia

149 Division of Highways and to be expended only on the improvement, maintenance, and repair of
150 public roads of three lanes or less located in the watershed from which the revenue was received
151 that are identified by the Commissioner of Highways as having been damaged by trucks and other
152 traffic associated with horizontal well drilling sites or the disposal of waste generated by such
153 sites, and that experience congestion caused, in whole or in part, by such trucks and traffic that
154 interferes with the use of said roads by residents in the vicinity of such roads: Provided, That up
155 to \$750,000 from such fund shall be made available to the Department of Environmental
156 Protection from the same fund to offset contracted costs incurred by the Department of
157 Environmental Protection while undertaking the horizontal drilling waste disposal studies
158 mandated by the provisions of subsection (j), section eight of this article. Any balance remaining
159 in the special revenue account at the end of any fiscal year shall not revert to the General Revenue
160 Fund but shall remain in the special revenue account and shall be used solely in a manner
161 consistent with this section. The fund shall consist of the fee provided for in subsection (k) of this
162 section.

163 (k) Horizontal drilling waste assessment fee – An additional solid waste assessment fee
164 is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal
165 well sites in the amount of \$1 per ton, which fee is in addition to all other fees and taxes levied by
166 this section or otherwise and shall be added to and constitute part of any other fee charged by
167 the operator or owner of the solid waste disposal facility: Provided, That the horizontal drilling
168 waste assessment fee shall be collected and administered in the same manner as the solid waste
169 assessment fee imposed by this section, but shall be imposed only upon the disposal of drill
170 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 of
2 solid waste at any solid waste disposal facility in this state in the amount of ~~3.50~~ \$2.50 per ton or

3 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 article 15 of this chapter. The fee imposed by this section is in addition to all other fees and
8 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 15th 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 ~~article 10, chapter 14~~ §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 ~~article ten, chapter eleven~~ §11-10-1 et
42 seq. of this code may be enforced against them as against the association or corporation which
43 they represent; and

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

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

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

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

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

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

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

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

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

80 (g) *Criminal penalties* – Notwithstanding ~~section two, article nine, chapter eleven~~ §11-9-2

81 of this code, ~~sections three through seventeen, article nine, chapter eleven~~ §§11-9-3 through 17
82 of this code apply to the fee imposed by this section with like effect as if the sections were
83 applicable only to the fee imposed by this section and were set forth in extenso in this section.

84 (h) *Dedication of proceeds.* – (1) The proceeds of the fee collected pursuant to this section
85 shall be deposited in the closure cost assistance fund established pursuant to section 12 of this
86 article: *Provided*, That the director may transfer up to 50 cents for each ton of solid waste disposed
87 of in this state upon which the fee imposed by this section is collected on or after July 1, 1998, to
88 the solid waste enforcement fund established pursuant to section eleven, article fifteen of this
89 chapter.

90 (2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of
91 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per
92 month pursuant to ~~section nine, article fifteen of this chapter~~ §22-15-9 shall be remitted, at least
93 monthly, to the county commission in the county in which the landfill is located. The remainder of
94 the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost
95 assistance fund established pursuant to section 12 of this article.

NOTE: The purpose of this bill is to shift funding from the Landfill Closure Assistance Fund to county or regional solid waste authorities based on population; when the Landfill Closure Assistance Fund was set up in 1991 to properly close old landfills across the state. According to the 2019 West Virginia Solid Waste Management Plan, 28 of the 35 old landfills have been properly remediated by the fund. Given the progress made toward closure of the old landfills, the portion of the solid waste fee assessed on landfill deposits, is being reduced in order to accommodate an in-kind fee increase distributed per capita to each county or regional solid waste authorities to fund various recycling, litter control and other locally important solid waste programs therefore, this bill would allow for a reduction in the use of county commission/county council 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.