

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Enrolled**

### **Senate Bill 727**

BY SENATORS CLEMENTS, IHLENFELD, MARONEY,

ROMANO, HARDESTY, ROBERTS, STOLLINGS, AND

PLYMALE

[Passed March 5, 2020; in effect 90 days from

passage]



1 AN ACT to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended,  
2 relating to disbursement of the funds in the Gas Field Highway Repair and Horizontal  
3 Drilling Waste Study Fund for highway road repair; providing that money from the fund is  
4 to be expended within the district where gas field and horizontal drilling waste is deposited;  
5 and 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 the person  
8 owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who  
9 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 the amount as he or she failed to collect, plus applicable additions to tax, penalties, and  
20 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 the operator to collect the fees which become collectible after service of the notice, to deposit the  
24 fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable  
25 to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the  
26 Tax Commissioner. The notice remains in effect until a notice of cancellation is served on the  
27 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 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 the person in his or her regular business or personal activities or by  
62 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 the days and times as designated by the secretary is exempt from the  
66 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. The records must be made available to the appropriate inspectors from the  
71 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 the denial  
100 contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness  
101 issued or approved by the Solid Waste Management Board, then in that event the Solid Waste  
102 Management Board or its fiscal agent may withhold all or any part of any funds which would  
103 otherwise be directed to the county or regional authority and shall deposit the withheld funds in  
104 the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net  
105 proceeds among the following three special revenue accounts for the purpose of maintaining a  
106 reasonable balance in each special revenue account, which are hereby continued in the State  
107 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 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 Division of Highways district where the waste is  
133 deposited that are identified by the Commissioner of Highways as having been damaged by trucks  
134 and other traffic associated with horizontal well drilling sites or the disposal of waste generated  
135 by the sites, and that experience congestion caused, in whole or in part, by the trucks and traffic  
136 that interferes with the use of said roads by residents in the vicinity of the roads: *Provided*, That  
137 up to \$750,000 from the fund shall be made available to the Department of Environmental  
138 Protection from the same fund to offset contracted costs incurred by the Department of  
139 Environmental Protection while undertaking the horizontal drilling waste disposal studies  
140 mandated by the provisions of §22-15-8(j) of this code. Any balance remaining in the special  
141 revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but  
142 shall remain in the special revenue account and shall be used solely in a manner consistent with  
143 this section. The fund shall consist of the fee provided 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.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2020.

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*Governor*