WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 2825

By Delegates Barrett, Householder, Criss, Hardy and Graves

[Introduced March 02, 2021; Referred to the Committee on Government Organization then Finance]

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

(a) Imposition. –

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

(2) Effective July 1, 2023, in addition to the fee set forth in subdivision (1) of this subsection, an additional solid waste assessment fee shall be levied and imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state. This additional fee shall be in the amount of $1.00 per ton or like ratio on any part of a ton of solid waste. The additional fee set forth in this subdivision shall be distributed on a per capita basis to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau. The proceeds from this fee are to be expended for the reasonable costs of administration of the county or regional solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, recycling programs, litter control programs, or any other locally important solid waste programs deemed necessary to fulfill its duties. The Tax Commissioner may promulgate interpretive rules to provide for the distribution of funds as provided by this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Reuse or recycling of any solid waste;

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

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

(5) As of July 1, 2023, any solid waste facility not paying the landfill closure fees as set forth in subsection (a)(1) of this section shall not be subject to the additional fees set forth in subsection (a)(2) of this section.

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

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

(h) Dedication of proceeds. – Except as provided in subsection (a)(2) of this section the net proceeds of the ~~fee~~ fees collected by the Tax Commissioner pursuant to this section shall be deposited at least monthly in an account designated by the secretary. The secretary shall allocate $0.25 for each ton of solid waste disposed of in this state upon which the ~~fee~~ fees imposed by this section ~~is~~ are collected and shall deposit the total amount so allocated into the “Solid Waste Reclamation and Environmental Response Fund” to be expended for the purposes hereinafter specified. The first $1 million dollars of the net proceeds of the ~~fee~~ fees imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Enforcement Fund and expended for the purposes hereinafter specified. The next $250,000 of the net proceeds of the ~~fee~~ fees imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Management Board Reserve Fund, and expended for the purposes hereinafter specified: *Provided,* That in any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause no less than $50,000 nor more than $250,000 to be deposited to the fund: *Provided, however,* That in any year in which the water development authority determines that the Solid Waste Management Board Reserve Fund is inadequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause not less than $250,000 nor more than $500,000 to be deposited in the fund: *Provided further,* That if a facility owned or operated by the State of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the Solid Waste Management Board, then in that event the Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the State Treasury:

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

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

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

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

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

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

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

(j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby created as a special revenue fund in the State Treasury to be administered by the West Virginia Division of Highways and to be expended only on the improvement, maintenance, and repair of public roads of three lanes or less located in the watershed from which the revenue was received that are identified by the Commissioner of Highways as having been damaged by trucks and other traffic associated with horizontal well drilling sites or the disposal of waste generated by such sites, and that experience congestion caused, in whole or in part, by such trucks and traffic that interferes with the use of said roads by residents in the vicinity of such roads: Provided, That up to $750,000 from such fund shall be made available to the Department of Environmental Protection from the same fund to offset contracted costs incurred by the Department of Environmental Protection while undertaking the horizontal drilling waste disposal studies mandated by the provisions of subsection (j), section eight of this article. Any balance remaining in the special revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section. The fund shall consist of the fee provided for in subsection (k) of this section.

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

(a) *Imposition. –* A solid waste assessment fee is levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of ~~3.50~~ $2.50 per ton or like ratio on any part of a ton of solid waste, except as provided in subsection (e) of this section: *Provided,* That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that the facility is required by the Public Service Commission to set aside for the purpose of closure of that portion of the facility required to close by article 15 of this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

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

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

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

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

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

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

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

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

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

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

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

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

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

(2) Reuse or recycling of any solid waste;

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

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

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

(g) *Criminal penalties. –* Notwithstanding ~~section two, article nine, chapter eleven~~ §11-9-2 of this code, ~~sections three through seventeen, article nine, chapter eleven~~ §§11-9-3 through 17 of this code apply to the fee imposed by this section with like effect as if the sections were applicable only to the fee imposed by this section and were set forth in extenso in this section.

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

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