

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

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 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, 2021, 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 20 cents per ton beginning July 1, 2021, 40 cents per ton beginning July
11 1, 2022, 60 cents per ton beginning July 1, 2023, 80 cents per ton beginning July 1, 2024, and
12 \$1.00 per ton beginning July 1, 2025, thereafter or like ratio on any part of a ton of solid waste.
13 The additional fee set forth in this subdivision shall be distributed on a per capita basis to each
14 county or regional solid waste authority based on the most recent population projections from the

15 United States Census Bureau. The proceeds from this fee are to be expended for the reasonable
16 costs of administration of the county or regional solid waste authority including the necessary and
17 reasonable expenses of its members, and any other expenses incurred from refuse cleanup,
18 recycling programs, litter control programs, or any other locally important solid waste programs
19 deemed necessary to fulfill its duties. The Tax Commissioner may promulgate interpretive rules
20 to provide for the distribution of funds as provided by this subdivision.

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

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

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

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

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

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

41 account until remitted to the Tax Commissioner. Such notice remains in effect until a notice of
42 cancellation is served on the operator or owner by the Tax Commissioner.

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

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

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

58 (c) *Regulated motor carriers.* — The ~~fee~~ fees imposed by this section and §7-5-22 of this
59 code is considered a necessary and reasonable cost for motor carriers of solid waste subject to
60 the jurisdiction of the Public Service Commission under chapter 24A of this code. Notwithstanding
61 any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the
62 Public Service Commission shall, within 14 days, reflect the cost of said ~~fee~~ fees in said motor
63 carrier's rates for solid waste removal service. In calculating the amount of said ~~fee~~ fees to said
64 motor carrier, the commission shall use the national average of pounds of waste generated per
65 person per day as determined by the United States Environmental Protection Agency.

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

72 (e) *Exemptions*. — The following transactions are exempt from the ~~fee~~ fees imposed by
73 this section:

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

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

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

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

87 (f) *Procedure and administration*. — Notwithstanding §11-10-3 of this code, each and
88 every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1
89 *et seq.* of this code shall apply to the ~~fee~~ fees imposed by this section with like effect as if said act
90 were applicable only to the ~~fee~~ fees imposed by this section and were set forth in extenso herein.

91 (g) *Criminal penalties.* — Notwithstanding §11-9-2 of this code, sections three through
92 seventeen, article nine, chapter eleven of this code shall apply to the ~~fee~~ fees imposed by this
93 section with like effect as if said sections were applicable only to the ~~fee~~ fees imposed by this
94 section and were set forth in extenso herein.

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

117 issued or approved by the Solid Waste Management Board, then in that event the Solid Waste
118 Management Board or its fiscal agent may withhold all or any part of any funds which would
119 otherwise be directed to such county or regional authority and shall deposit such withheld funds
120 in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net
121 proceeds among the following three special revenue accounts for the purpose of maintaining a
122 reasonable balance in each special revenue account, which are hereby continued in the State
123 Treasury:

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

127 (2) The Solid Waste Management Board Reserve Fund which shall be exclusively
128 dedicated to providing a reserve fund for the issuance and security of solid waste disposal
129 revenue bonds issued by the solid waste management board pursuant to §22C-3-1 *et seq.* of this
130 code;

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

136 (i) *Findings.* — In addition to the purposes and legislative findings set forth in §22-15-1 of
137 this code, the Legislature finds as follows:

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

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

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

145 (j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby
146 created as a special revenue fund in the State Treasury to be administered by the West Virginia
147 Division of Highways and to be expended only on the improvement, maintenance, and repair of
148 public roads of three lanes or less located in the ~~watershed from which the revenue was received~~
149 Division of Highways district where the waste is deposited that are identified by the Commissioner
150 of the Division of Highways as having been damaged by trucks and other traffic associated with
151 horizontal well drilling sites or the disposal of waste generated by such sites, and that experience
152 congestion caused, in whole or in part, by such trucks and traffic that interferes with the use of
153 said roads by residents in the vicinity of such roads: *Provided*, That up to \$750,000 from such
154 fund shall be made available to the Department of Environmental Protection from the same fund
155 to offset contracted costs incurred by the Department of Environmental Protection while
156 undertaking the horizontal drilling waste disposal studies mandated by the provisions of §22-15-
157 8(j) of this code. Any balance remaining in the special revenue account at the end of any fiscal
158 year shall not revert to the General Revenue Fund but shall remain in the special revenue account
159 and shall be used solely in a manner consistent with this section. The fund shall consist of the fee
160 provided for in subsection (k) of this section.

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

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.

§22-16-4. 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~~ \$3.30 per ton
3 beginning July 1, 2021, \$3.10 per ton beginning July 1, 2022, \$2.90 per ton beginning July 1,
4 2023, \$2.70 per ton beginning July 1, 2024, and \$2.50 per ton beginning July 1, 2025, and
5 thereafter or like ratio on any part of a ton of solid waste, except as provided in subsection (e) of
6 this section: *Provided*, That any solid waste disposal facility may deduct from this assessment fee
7 an amount, not to exceed the fee, equal to the amount that the facility is required by the Public
8 Service Commission to set aside for the purpose of closure of that portion of the facility required
9 to close by article fifteen of this chapter. The fee imposed by this section is in addition to all other
10 fees and taxes levied by law and shall be added to and constitute part of any other fee charged
11 by the operator or owner of the solid waste disposal facility.

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

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

18 (2) The operator shall remit the fee imposed by this section to the Tax Commissioner on
19 or before the 15th day of the month next succeeding the month in which the fee accrued. Upon

20 remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the
21 Tax Commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 (h) *Dedication of proceeds.* — (1) The proceeds of the fee collected pursuant to this
84 section shall be deposited in the closure cost assistance fund established pursuant to §22-16-12
85 of this code: *Provided,* That the director may transfer up to 50 cents for each ton of solid waste
86 disposed of in this state upon which the fee imposed by this section is collected on or after July
87 1, 1998, to the solid waste enforcement fund established pursuant to §22-15-11 of this code.

88 (2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of
89 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per
90 month pursuant to §22-15-9 of this code shall be remitted, at least monthly, to the county
91 commission in the county in which the landfill is located. The remainder of the proceeds of the fee

92 collected pursuant to this section shall be deposited in the closure cost assistance fund
93 established pursuant to §22-16-12 of this code.

**§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 ~~permitees~~
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.