

SB601

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 601

(By Senator WIGTON, ET AL)



PASSED MARCH 13, 1998

In Effect From Passage

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SENATE

ENROLLED

Senate Bill No. 601

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR, HUNTER,
KESSLER, OLIVERIO, ROSS, SCHOONOVER, SNYDER,
WHITE, DEEM AND KIMBLE)

[Passed March 13, 1998; in effect from passage.]

AN ACT to amend and reenact section five-a, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the collection and disbursement of recycling and solid waste assessment fees; establishing recycling assessment fee; providing for collection of the fee, providing recordkeeping; providing for recycling fee in rate approved by the public service commission for regulated motor carriers; defining terms; providing for exemptions; establishing procedures and administration of the funds; providing for criminal penalties; providing for the dedication of the proceeds; and establishing eligibility requirements for receipt of grants.

Be it enacted by the Legislature of West Virginia:

That section five-a, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

1 (a) *Imposition.* — Effective the first day of January, one
2 thousand nine hundred ninety-two, a recycling assessment
3 fee is hereby levied and imposed upon the disposal of solid
4 waste at all solid waste disposal facilities in this state, to
5 be collected at the rate of two dollars per ton or part
6 thereof of solid waste. The fee imposed by this section is
7 in addition to all other fees levied by law.

8 (b) *Collection, return, payment and records.* — The
9 person disposing of solid waste at the solid waste disposal
10 facility shall pay the fee imposed by this section, whether
11 or not such person owns the solid waste, and the fee shall
12 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
15 the solid waste is delivered to the solid waste disposal
16 facility.

17 (2) The operator shall remit the fee imposed by this
18 section to the tax commissioner on or before the fifteenth
19 day of the month next succeeding the month in which the
20 fee accrued. Upon remittance of the fee, the operator shall
21 be required to file returns on forms and in the manner as
22 prescribed by the tax commissioner.

23 (3) The operator shall account to the state for all fees
24 collected under this section and shall hold them in trust
25 for the state until they are remitted to the tax commis-
26 sioner.

27 (4) If any operator fails to collect the fee imposed by this
28 section, he or she is personally liable for such amount as

29 he or she failed to collect, plus applicable additions to tax,
30 penalties and interest imposed by article ten, chapter
31 eleven of this code.

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

44 (6) Whenever the owner of a solid waste disposal facility
45 leases the solid waste facility to an operator, the operator
46 is primarily liable for collection and remittance of the fee
47 imposed by this section and the owner is secondarily liable
48 for remittance of the fee imposed by this section. How-
49 ever, if the operator fails, in whole or in part, to discharge
50 his or her obligations under this section, the owner and the
51 operator of the solid waste facility are jointly and sever-
52 ally responsible and liable for compliance with the
53 provisions of this section.

54 (7) If the operator or owner responsible for collecting the
55 fee imposed by this section is an association or corpora-
56 tion, the officers thereof are liable, jointly and severally,
57 for any default on the part of the association or corpora-
58 tion, and payment of the fee and any additions to tax,
59 penalties and interest imposed by article ten, chapter
60 eleven of this code may be enforced against them and
61 against the association or corporation which they repre-
62 sent.

63 (8) Each person disposing of solid waste at a solid waste
64 disposal facility and each person required to collect the

65 fee imposed by this section shall keep complete and
66 accurate records in such form as the tax commissioner
67 may require in accordance with the rules of the tax
68 commissioner.

69 (c) *Regulated motor carriers.* — The fee imposed by this
70 section is a necessary and reasonable cost for motor
71 carriers of solid waste subject to the jurisdiction of the
72 public service commission under chapter twenty-four-a of
73 this code. Notwithstanding any provision of law to the
74 contrary, upon the filing of a petition by an affected motor
75 carrier, the public service commission shall, within
76 fourteen days, reflect the cost of said fee in said motor
77 carrier's rates for solid waste removal service. In calculat-
78 ing the amount of said fee to said motor carrier, the
79 commission shall use the national average of pounds of
80 waste generated per person per day as determined by the
81 United States environmental protection agency.

82 (d) *Definitions.* — For purposes of this section:

83 "Solid waste disposal facility" means any approved solid
84 waste facility or open dump in this state and includes a
85 transfer station when the solid waste collected at the
86 transfer station is not finally disposed of at a solid waste
87 facility within this state that collects the fee imposed by
88 this section.

89 Nothing herein authorizes in any way the creation or
90 operation of or contribution to an open dump.

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

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

99 (2) Reuse or recycling of any solid waste; and

100 (3) Disposal of residential solid waste by an individual
101 not in the business of hauling or disposing of solid waste
102 on such days and times as designated by the director of
103 the division of environmental protection by rule as exempt
104 from the fee imposed pursuant to section eleven, article
105 fifteen, chapter twenty-two of this code.

106 (f) *Procedure and administration.* — Notwithstanding
107 section three, article ten, chapter eleven of this code, each
108 and every provision of the “West Virginia Tax Procedure
109 and Administration Act” set forth in article ten, chapter
110 eleven of this code applies to the fee imposed by this
111 section with like effect as if said act were applicable only
112 to the fee imposed by this section and were set forth in
113 extenso herein.

114 (g) *Criminal penalties.* — Notwithstanding section two,
115 article nine, chapter eleven of this code, sections three
116 through seventeen, article nine, chapter eleven of this code
117 apply to the fee imposed by this section with like effect as
118 if said sections were the only fee imposed by this section
119 and were set forth in extenso herein.

120 (h) *Dedication of proceeds.* — The proceeds of the fee
121 collected pursuant to this section shall be deposited by the
122 tax commissioner, at least monthly, in a special revenue
123 account designated as the “Recycling Assistance Fund”
124 which is hereby created. The director of the division of
125 natural resources shall allocate the proceeds of the said
126 fund as follows:

127 (1) Fifty percent of the total proceeds shall be provided
128 in grants to assist municipalities, counties and other
129 interested parties in the planning and implementation of
130 recycling programs, public education programs, and
131 recycling market procurement efforts, established pursu-
132 ant to this article. The director of the division of natural
133 resources shall promulgate rules, in accordance with

134 chapter twenty-nine-a of this code, containing application
135 procedures, guidelines for eligibility, reporting require-
136 ments and other matters deemed appropriate: *Provided*,
137 That persons responsible for collecting, hauling or dispos-
138 ing of solid waste who do not participate in the collection
139 and payment of the solid waste assessment fee imposed by
140 this section in addition to all other fees and taxes levied
141 by law for solid waste generated in this state which is
142 destined for disposal, shall not be eligible to receive grants
143 under the provisions of this article.

144 (2) Twelve and one-half percent of the total proceeds
145 shall be expended for personal services and benefit
146 expenses of full-time salaried conservation officers;

147 (3) Twelve and one-half percent of the total proceeds
148 shall be transferred to the West Virginia development
149 office, to be used in assisting counties and municipalities
150 in the design and construction of wastewater treatment
151 facilities;

152 (4) Twelve and one-half percent of the total proceeds
153 shall be transferred to the solid waste reclamation and
154 environmental response fund, established pursuant to
155 section eleven, article fifteen, chapter twenty-two of this
156 code, to be expended by the division of environmental
157 protection to assist in the funding of the pollution preven-
158 tion and open dumps program (PPOD) which encourages
159 recycling, reuse, waste reduction and clean-up activities;
160 and

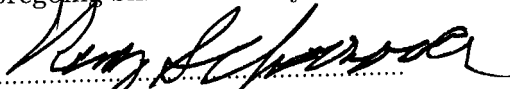
161 (5) Twelve and one-half percent of the total proceeds
162 shall be deposited in the hazardous waste emergency
163 response fund established in article nineteen, chapter
164 twenty-two of this code.

165 (i) *Severability*. — If any provision of this section or the
166 application thereof is for any reason adjudged by any
167 court of competent jurisdiction to be invalid, such judg-
168 ment does not affect, impair or invalidate the remainder

169 of this section, but is confined in its operation to the
170 provision thereof directly involved in the controversy in
171 which such judgment is rendered, and the applicability of
172 such provision to other persons or circumstances is not
173 affected thereby.

174 (j) *Effective date.* — This section is effective on the first
175 day of January, one thousand nine hundred ninety-two.

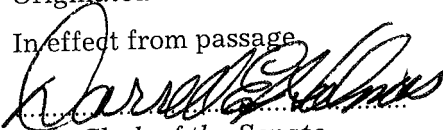
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

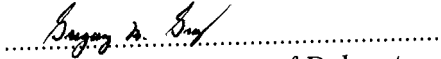

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Chairman Senate Committee.


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Chairman House Committee

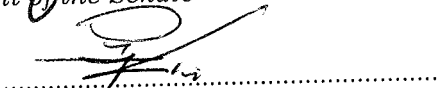
Originated in the Senate.

In effect from passage

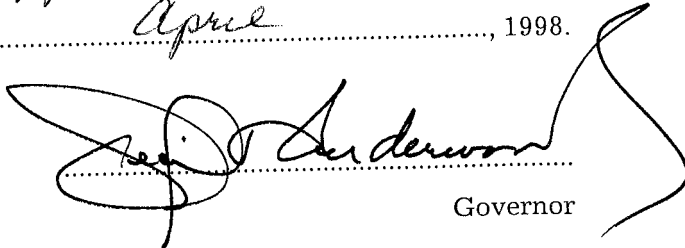

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *approved* this the *2nd*
day of *April*, 1998.


.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/26/98

Time 12:05 pm