WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 601

(By Senator Wooton, et al.)

PASSED March 13, 1998
In Effect From Passage
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 thousand nine hundred ninety-two, a recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate of two dollars per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

2 (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 such 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.

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

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

5 (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.

6 (4) If any operator fails to collect the fee 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 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 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 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 thereof 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 of this code may be enforced against them and 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 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 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 fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee 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) Definitions. — For purposes of this section:

“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 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 imposed by this section:

(1) Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it 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; and

(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 director of the division of environmental protection by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

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

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

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

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs, and recycling market procurement efforts, established pursuant to this article. The director of the division of natural resources shall promulgate rules, in accordance with
chapter twenty-nine-a of this code, containing application
procedures, guidelines for eligibility, reporting require-
ments and other matters deemed appropriate: Provided,
That persons responsible for collecting, hauling or dispos-
ing of solid waste who do not participate in the collection
and payment of the solid waste assessment fee imposed by
this section in addition to all other fees and taxes levied
by law for solid waste generated in this state which is
destined for disposal, shall not be eligible to receive grants
under the provisions of this article.

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

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

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

and

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

(i) Severability. — If any provision of this section or the
application thereof is for any reason adjudged by any
court of competent jurisdiction to be invalid, such judg-
ment does not affect, impair or invalidate the remainder
of this section, but is confined in its operation to the
provision thereof directly involved in the controversy in
which such judgment is rendered, and the applicability of
such provision to other persons or circumstances is not
affected thereby.

(j) Effective date. — This section is effective on the first
day of January, one thousand nine hundred ninety-two.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee.

Chairman House Committee

Originated in the Senate.
In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
Date 3/26/88
Time 12:05 pm