WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

Committee Substitute for
SENATE BILL NO. 602

(By Senator WOOTON, ET AL.)

PASSED March 14, 1998
In Effect 90 Days 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; and to amend and reenact section four, article sixteen, chapter twenty-two of said code, all relating generally to the collection and disbursement of recycling and solid waste assessment fees; ineligibility of certain persons to receive assistance from recycling assistance fund; authorizing the use of a portion of recycling assessment fee for certain purposes; reallocating a portion of recycling assessment fee; and authorizing transfer of a portion of solid waste assessment fee deposited into closure cost assistance fund.
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; and that section four, article sixteen, chapter twenty-two of said code be amended and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

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

(a) Imposition. — 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 of a ton of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(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 fifteenth 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 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 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 that 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 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 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 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 of this code may be enforced
against them and 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 commis-
sioner in accordance with the rules of the tax commis-

(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 the fee in the motor
carrier’s rates for solid waste removal service. In calculat-
ing the amount of the fee to the motor carrier, the commis-
sion 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 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 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 that person in his or her 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 the days and times 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 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 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 the sections were the only fee imposed by this section and were set forth in extenso in this section.

(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 continued. The director of the division of natural resources shall allocate the proceeds of the 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 requirements and other matters considered appropriate. Provided, That persons responsible for collecting, hauling or disposing 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, through the thirtieth day of June, one thousand nine hundred ninety-eight, to be used in assisting counties and municipalities in the design and construction of wastewater treatment facilities and other solid waste management projects designed to protect the waters of the state. Beginning the first day of July, one thousand nine hundred ninety-eight, these total proceeds shall be directly allocated to the solid waste planning fund;

(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 prevention and open dumps program (PFOD) which encourages recycling, reuse, waste reduction and clean-up activities; and
164 (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.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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 of solid waste at any solid waste disposal facility in this state in the amount of three dollars and fifty cents 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 fifteen 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.

16 (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:

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

25 (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
28 fee accrued. Upon remittance of the fee, the operator shall
29 file returns on forms and in the manner prescribed by the
tax commissioner;
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31 (3) The operator shall account to the state for all fees
32 collected under this section and shall hold them in trust
33 for the state until they are remitted to the tax commis-
34 sioner;
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36 (4) If any operator fails to collect the fee imposed by this
37 section, he or she is personally liable for the amount he or
38 she failed to collect, plus applicable additions to tax,
39 penalties and interest imposed by article ten, chapter
40 eleven of this code;
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42 (5) Whenever any operator fails to collect, truthfully
43 account for, remit the fee or file returns with the fee as
44 required in this section, the tax commissioner may serve
45 written notice requiring the operator to collect the fees
46 which become collectible after service of the notice, to
47 deposit the fees in a bank approved by the tax commis-
48 sioner, in a separate account, in trust for and payable to
49 the tax commissioner, and to keep the amount of the fees
50 in the account until remitted to the tax commissioner. The
51 notice shall remain in effect until a notice of cancellation
52 is served on the operator or owner by the tax commis-
53 sioner;
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55 (6) Whenever the owner of a solid waste disposal facility
56 leases the solid waste facility to an operator, the operator
57 is primarily liable for collection and remittance of the fee
58 imposed by this section and the owner is secondarily liable
59 for remittance of the fee imposed by this section. How-
60 ever, if the operator fails, in whole or in part, to discharge
61 his or her obligations under this section, the owner and the
62 operator of the solid waste facility are jointly and sever-
63 ally responsible and liable for compliance with the
64 provisions of this section;
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66 (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 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. — 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 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 thirty 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 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 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 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 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 twelve of this article: Provided, That the director may transfer up to fifty 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 the first day of July, one thousand nine hundred ninety-eight, 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 thirty thousand tons per month from any landfill which is permitted to accept in excess of thirty thousand tons per month pursuant to section nine, article fifteen of this chapter 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 twelve of this article.
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 ninety days 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 1st
day of April, 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/98
Time 10:55 a.m.