

SB 602

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



## ENROLLED

*Committee Substitute For*  
SENATE BILL NO. 602

(By Senator WOOTEN, ET AL)



PASSED MARCH 14, 1998

In Effect 90 Days From Passage

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OFFICE OF THE CLERK  
OF THE SENATE  
STATE OF WEST VIRGINIA

## ENROLLED

COMMITTEE SUBSTITUTE  
FOR

### Senate Bill No. 602

(SENATORS WOOTON, BALL, DITTMAR, KESSLER,  
OLIVERIO, SCHOONOVER AND SNYDER, *original sponsors*)

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[Passed March 14, 1998; in effect ninety days from passage.]

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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.**

1     (a) *Imposition.* — A recycling assessment fee is hereby  
2 levied and imposed upon the disposal of solid waste at all  
3 solid waste disposal facilities in this state, to be collected  
4 at the rate of two dollars per ton or part of a ton of solid  
5 waste. The fee imposed by this section is in addition to all  
6 other fees levied by law.

7     (b) *Collection, return, payment and records.* — The  
8 person disposing of solid waste at the solid waste disposal  
9 facility shall pay the fee imposed by this section, whether  
10 or not that person owns the solid waste, and the fee shall  
11 be collected by the operator of the solid waste facility who  
12 shall remit it to the tax commissioner:

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

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

22     (3) The operator shall account to the state for all fees

23 collected under this section and shall hold them in trust  
24 for the state until they are remitted to the tax commis-  
25 sioner;

26 (4) If any operator fails to collect the fee imposed by this  
27 section, he or she is personally liable for the amount that  
28 he or she failed to collect, plus applicable additions to tax,  
29 penalties and interest imposed by article ten, chapter  
30 eleven of this code;

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

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

52 (7) If the operator or owner responsible for collecting the  
53 fee imposed by this section is an association or corpora-  
54 tion, the officers of the association or corporation are  
55 liable, jointly and severally, for any default on the part of  
56 the association or corporation, and payment of the fee and  
57 any additions to tax, penalties and interest imposed by  
58 article ten, chapter eleven of this code may be enforced

59 against them and against the association or corporation  
60 which they represent; and

61 (8) Each person disposing of solid waste at a solid waste  
62 disposal facility and each person required to collect the  
63 fee imposed by this section shall keep complete and  
64 accurate records in the form required by the tax commis-  
65 sioner in accordance with the rules of the tax commis-  
66 sioner.

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

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

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

87 Nothing in this section authorizes in any way the  
88 creation or operation of or contribution to an open dump.

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

91 (1) Disposal of solid waste at a solid waste facility by the  
92 person who owns, operates or leases the solid waste

93 disposal facility if it is used exclusively to dispose of waste  
94 originally produced by that person in his or her regular  
95 business or personal activities or by persons utilizing the  
96 facility on a cost-sharing or nonprofit basis;

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

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

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

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

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

125 (1) Fifty percent of the total proceeds shall be provided  
126 in grants to assist municipalities, counties and other  
127 interested parties in the planning and implementation of

128 recycling programs, public education programs and  
129 recycling market procurement efforts, established pursu-  
130 ant to this article. The director of the division of natural  
131 resources shall promulgate rules, in accordance with  
132 chapter twenty-nine-a of this code, containing application  
133 procedures, guidelines for eligibility, reporting require-  
134 ments and other matters considered appropriate: *Pro-*  
135 *vided*, That persons responsible for collecting, hauling or  
136 disposing of solid waste who do not participate in the  
137 collection and payment of the solid waste assessment fee  
138 imposed by this section in addition to all other fees and  
139 taxes levied by law for solid waste generated in this state  
140 which is destined for disposal, shall not be eligible to  
141 receive grants under the provisions of this article;

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

145 (3) Twelve and one-half percent of the total proceeds  
146 shall be transferred to the West Virginia development  
147 office, through the thirtieth day of June, one thousand  
148 nine hundred ninety-eight, to be used in assisting counties  
149 and municipalities in the design and construction of  
150 wastewater treatment facilities and other solid waste  
151 management projects designed to protect the waters of the  
152 state. Beginning the first day of July, one thousand nine  
153 hundred ninety-eight, these total proceeds shall be  
154 directly allocated to the solid waste planning fund;

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

164 (5) Twelve and one-half percent of the total proceeds  
165 shall be deposited in the hazardous waste emergency  
166 response fund established in article nineteen, chapter  
167 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  
2 and imposed upon the disposal of solid waste at any solid  
3 waste disposal facility in this state in the amount of three  
4 dollars and fifty cents per ton or like ratio on any part of  
5 a ton of solid waste, except as provided in subsection (e) of  
6 this section: *Provided*, That any solid waste disposal  
7 facility may deduct from this assessment fee an amount,  
8 not to exceed the fee, equal to the amount that the facility  
9 is required by the public service commission to set aside  
10 for the purpose of closure of that portion of the facility  
11 required to close by article fifteen of this chapter. The fee  
12 imposed by this section is in addition to all other fees and  
13 taxes levied by law and shall be added to and constitute  
14 part of any other fee charged by the operator or owner of  
15 the solid waste disposal facility.

16 (b) *Collection, return, payment and records.* — The  
17 person disposing of solid waste at the solid waste disposal  
18 facility shall pay the fee imposed by this section, whether  
19 or not that person owns the solid waste, and the fee shall  
20 be collected by the operator of the solid waste facility who  
21 shall remit it to the tax commissioner:

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

25 (2) The operator shall remit the fee imposed by this  
26 section to the tax commissioner on or before the fifteenth  
27 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  
30 tax commissioner;

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;

35 (4) If any operator fails to collect the fee imposed by this  
36 section, he or she is personally liable for the amount he or  
37 she failed to collect, plus applicable additions to tax,  
38 penalties and interest imposed by article ten, chapter  
39 eleven of this code;

40 (5) Whenever any operator fails to collect, truthfully  
41 account for, remit the fee or file returns with the fee as  
42 required in this section, the tax commissioner may serve  
43 written notice requiring the operator to collect the fees  
44 which become collectible after service of the notice, to  
45 deposit the fees in a bank approved by the tax commis-  
46 sioner, in a separate account, in trust for and payable to  
47 the tax commissioner, and to keep the amount of the fees  
48 in the account until remitted to the tax commissioner. The  
49 notice shall remain in effect until a notice of cancellation  
50 is served on the operator or owner by the tax commis-  
51 sioner;

52 (6) Whenever the owner of a solid waste disposal facility  
53 leases the solid waste facility to an operator, the operator  
54 is primarily liable for collection and remittance of the fee  
55 imposed by this section and the owner is secondarily liable  
56 for remittance of the fee imposed by this section. How-  
57 ever, if the operator fails, in whole or in part, to discharge  
58 his or her obligations under this section, the owner and the  
59 operator of the solid waste facility are jointly and sever-  
60 ally responsible and liable for compliance with the  
61 provisions of this section;

62 (7) If the operator or owner responsible for collecting the

63 fee imposed by this section is an association or corpora-  
64 tion, the officers of the association or corporation are  
65 liable, jointly and severally, for any default on the part of  
66 the association or corporation, and payment of the fee and  
67 any additions to tax, penalties and interest imposed by  
68 article ten, chapter eleven of this code may be enforced  
69 against them as against the association or corporation  
70 which they represent; and

71 (8) Each person disposing of solid waste at a solid waste  
72 disposal facility and each person required to collect the  
73 fee imposed by this section shall keep complete and  
74 accurate records in the form required by the tax commis-  
75 sioner in accordance with the rules of the tax commis-  
76 sioner.

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

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

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

101 (1) Disposal of solid waste at a solid waste disposal  
102 facility by the person who owns, operates or leases the  
103 solid waste disposal facility if the facility is used exclu-  
104 sively to dispose of waste originally produced by that  
105 person in the person's regular business or personal  
106 activities or by persons utilizing the facility on a  
107 cost-sharing or nonprofit basis;

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

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

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

121 (f) *Procedure and administration.* — Notwithstanding  
122 section three, article ten, chapter eleven of this code, each  
123 and every provision of the "West Virginia Tax Procedure  
124 and Administration Act" set forth in article ten, chapter  
125 eleven of this code applies to the fee imposed by this  
126 section with like effect as if the act were applicable only  
127 to the fee imposed by this section and were set forth in  
128 extenso in this section.

129 (g) *Criminal penalties.* — Notwithstanding section two,  
130 article nine, chapter eleven of this code, sections three  
131 through seventeen, article nine, chapter eleven of this code  
132 apply to the fee imposed by this section with like effect as  
133 if the sections were applicable only to the fee imposed by

134 this section and were set forth in extenso in this section.

135 (h) *Dedication of proceeds.* — (1) The proceeds of the fee  
136 collected pursuant to this section shall be deposited in the  
137 closure cost assistance fund established pursuant to  
138 section twelve of this article: *Provided*, That the director  
139 may transfer up to fifty cents for each ton of solid waste  
140 disposed of in this state upon which the fee imposed by  
141 this section is collected on or after the first day of July,  
142 one thousand nine hundred ninety-eight, to the solid waste  
143 enforcement fund established pursuant to section eleven,  
144 article fifteen of this chapter.

145 (2) Fifty percent of the proceeds of the fee collected  
146 pursuant to this article in excess of thirty thousand tons  
147 per month from any landfill which is permitted to accept  
148 in excess of thirty thousand tons per month pursuant to  
149 section nine, article fifteen of this chapter shall be remit-  
150 ted, at least monthly, to the county commission in the  
151 county in which the landfill is located. The remainder of  
152 the proceeds of the fee collected pursuant to this section  
153 shall be deposited in the closure cost assistance fund  
154 established pursuant to section twelve of this article.

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

*Randy Schoover*  
.....  
Chairman Senate Committee

*Mike Santasas*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll Stokes*  
.....  
Clerk of the Senate

*Gregory D. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *approved* this the *1<sup>st</sup>*  
day of *April*, 1998.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 10:55 am