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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4431**

(By Delegates Staton, Amores, Hunt, Rowe and Hutchins)



Passed March 11, 2000

In Effect Ninety Days from Passage

# **ENROLLED**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 4431**

(BY DELEGATES STATON, AMORES, HUNT, ROWE AND HUTCHINS)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to repeal section five-b, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five and six, article nineteen of chapter twenty-two of said code, all relating to providing funding for the hazardous waste emergency response fund; deleting certain provisions relating to solid and hazardous waste supplemental assessment fee; updating references to federal law; modifying certain definitions; expanding circumstances when fund moneys may be utilized; modifying hazardous waste emergency response fund requirements; excluding certain materials and substances from the hazardous waste generator fund fee; modifying fee assessment criteria for fee assessments to the fund; modifying criteria for agreements for expenditures from the fund; and modifying rulemaking authority of the director of the division of environmental protection.

*Be it enacted by the Legislature of West Virginia:*

That section five-b, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, five and six, article nineteen, of chapter twenty-two of said code be amended and reenacted, all to read as follows:

**ARTICLE 19. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.**

**§22-19-1. Findings; purpose.**

1       The Legislature recognizes that large quantities of hazard-  
2       ous waste are generated within the state, and that emergency  
3       situations involving hazardous waste can and will arise which  
4       may present a hazard to human health, safety, or the environ-  
5       ment. The Legislature also recognizes that some hazardous  
6       waste has been stored, treated or disposed of at sites in the state  
7       in a manner insufficient to protect human health, safety or the  
8       environment. The Legislature further recognizes that the federal  
9       government has enacted the Comprehensive Environmental  
10      Response, Compensation and Liability Act of 1980, as amended  
11      by the Superfund Amendments and Reauthorization Act of  
12      1986, which provides for federal assistance to respond to  
13      hazardous substance emergencies and to remove and remedy  
14      the threat of damage to the public health or welfare or to the  
15      environment, and declares that West Virginia desires to produce  
16      revenue for matching the federal assistance provided under the  
17      federal acts. Therefore, the Legislature hereby creates a  
18      hazardous waste emergency fund to provide state funds for  
19      responding to hazardous waste emergencies, responding to  
20      releases of hazardous substances into the environment, match-  
21      ing federal financial assistance for restoring hazardous waste  
22      sites and other costs or expenses incurred in the administration  
23      of this article.

**§22-19-2. Definitions.**

1 As used in this article, unless the context clearly requires a  
2 different meaning:

3 (1) "Cleanup" means such actions as may be necessary to  
4 monitor, assess and evaluate the threat of release of hazardous  
5 waste or hazardous substances, the containment, collection,  
6 control, identification, treatment, dispersal, removal or disposal  
7 of hazardous waste or other such actions as may be necessary  
8 to respond to hazardous waste or hazardous substance emergen-  
9 cies or to prevent, minimize or mitigate damage to the public  
10 health, safety, welfare or to the environment, and includes,  
11 where necessary, replacement of existing, or provision of  
12 alternative, drinking water supplies that have been contami-  
13 nated with hazardous waste as a result of an emergency;

14 (2) "Cleanup costs" means all costs incurred by the  
15 director, or with the approval of the director, by any state  
16 agency or person participating in the cleanup of a hazardous  
17 waste or hazardous substance emergency or remedial action;  
18 and also includes responding to emergencies that may contain  
19 petroleum products: *Provided*, That cleanup costs do not  
20 include expenditures for remediation of or responding to  
21 releases from underground storage tanks.

22 (3) "Generator" means any person, corporation, partnership,  
23 association or other legal entity, by site location, whose act or  
24 process produces hazardous waste as identified or listed by the  
25 director in rules promulgated pursuant to section six, article  
26 eighteen of this chapter, in an amount greater than five thou-  
27 sand kilograms per year.

28 All other terms have the meaning as prescribed in the rules  
29 promulgated by the director pursuant to the provisions of  
30 section six, article eighteen of this chapter.

**§22-19-3. Hazardous waste emergency response fund; components of fund.**

1 (a) The special fund designated “The Hazardous Waste  
2 Emergency Response Fund,” hereinafter referred to as “the  
3 fund,” shall be continued in the state treasury.

4 (b) All generator fee assessments, any interest or surcharge  
5 assessed and collected by the director, interest accruing on  
6 investments and deposits of the fund, and any other moneys  
7 designated shall be paid into the fund. Expenditures from the  
8 fund shall be for the purposes set forth in this article and are not  
9 authorized from collections but are to be made only in accor-  
10 dance with appropriation by the Legislature and in accordance  
11 with the provisions of article three, chapter twelve of this code  
12 and upon the fulfillment of the provisions set forth in article  
13 two, chapter five-a of this code: *Provided*, That for the fiscal  
14 year ending the thirtieth day of June, two thousand, expendi-  
15 tures are authorized from collections rather than pursuant to an  
16 appropriation by the Legislature. Amounts collected which are  
17 found from time to time to exceed the funds needed for  
18 purposes set forth in this article may be transferred to other  
19 accounts or funds and redesignated for other purposes by  
20 appropriation of the Legislature.

**§22-19-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.**

1 (a) Each generator of hazardous waste within this state shall  
2 pay an annual fee based upon the amount of hazardous waste  
3 generated as reported to the director by the generator on a fee  
4 assessment form prescribed by the director submitted pursuant  
5 to article eighteen of this chapter. The director shall establish a  
6 fee schedule according to the following: Full assessment for  
7 generated hazardous waste disposed or treated off-site; ninety  
8 percent of the full assessment for generated hazardous waste

9 either treated or disposed on-site; seventy-five percent of the  
10 full assessment for generated hazardous waste treated off-site  
11 so that such waste is rendered nonhazardous; and twenty-five  
12 percent of the full assessment for generated hazardous waste  
13 treated on-site so that such waste is rendered nonhazardous:  
14 *Provided*, That the generator fee assessment does not apply to  
15 the following: (1) Sludge from any publicly owned treatment  
16 works in the state; (2) any discharge to waters of the state of  
17 hazardous waste pursuant to a valid water pollution control  
18 permit issued under federal or state law; (3) any hazardous  
19 wastes beneficially used or reused or legitimately recycled or  
20 reclaimed; (4) hazardous wastes which are created or retrieved  
21 pursuant to an emergency or remedial action plan; (5) hazard-  
22 ous wastes whose sole characteristic as a hazardous waste is  
23 based on corrosivity and which are subjected to on-site elemen-  
24 tary neutralization in containers or tanks; (6) fly ash waste,  
25 bottom ash waste, slag waste, and flue gas emission control  
26 waste generated primarily from the combustion of coal or other  
27 fossil fuels; (7) solid waste from the extraction, beneficiation,  
28 and processing of ores and minerals, including coal, phosphate  
29 rock and overburden from the mining of uranium ore; (8)  
30 cement kiln dust waste; (9) drilling fluids, produced waters, and  
31 other wastes associated with the exploration, development or  
32 production of crude oil, natural gas, or geo-thermal energy; and  
33 (10) any other material that is exempted or excluded from  
34 hazardous waste regulation pursuant to the federal Resource  
35 Conservation and Recovery Act and the rules promulgated  
36 thereunder, including, but not limited to the exemptions and  
37 exclusions set forth in 40 CFR 261.4 and 261.6, or the state  
38 hazardous waste management act, article eighteen of this  
39 chapter, and the rules promulgated thereunder.

40 (b) Each generator of hazardous waste within the state  
41 subject to a fee assessment under subsection (a) of this section  
42 shall pay a fee based on its annual tonnage of generated  
43 hazardous waste. Any unexpended balance of such collected

44 fees shall not be transferred to the general revenue fund, but  
45 shall remain in the fund. Whenever the balance in the fund is  
46 less than one million dollars, the director is authorized to  
47 impose a fee assessment as provided in this article, but in no  
48 event shall the fees established be set produce revenue exceed-  
49 ing five hundred thousand dollars in any year.

50 (c) Generator fee assessments are due and payable to the  
51 division of environmental protection on the fifteenth day of  
52 January of each year. Such payments shall be accompanied by  
53 information in such form as the director may prescribe.

54 (d) If the fees or any portion thereof are not paid by the date  
55 prescribed, interest accrues upon the unpaid amount at the rate  
56 of ten percent per annum from the date due until payment is  
57 actually made. Such interest payments shall be deposited in the  
58 fund. If any generator fails to pay the fees imposed before the  
59 first day of April of the year in which they are due, there is  
60 imposed in addition to the fee and interest determined to be  
61 owed a surcharge equivalent to the total amount of the fee  
62 which shall also be collected and deposited in the fund.

**§22-19-5. Director's responsibilities; fee schedules; authorized  
expenditures; other powers of director; authorizing  
civil actions; assistance of attorney general or  
prosecuting attorney.**

1 (a) The director shall collect all fees assessed pursuant to  
2 this article and administer the fund. The fee schedule shall be  
3 published in the state register by the first day of August of each  
4 year. Each generator who filed the fee assessment form  
5 prescribed by the director shall be notified and provided with a  
6 copy of the fee schedule by certified mail. In the event the fee  
7 schedule is not published by the first day of August, the date  
8 prescribed for payment in section four of this article shall be  
9 advanced by the same number of days that the publication of

10 the fee schedule is delayed. The interest and surcharge provi-  
11 sions of section four of this article shall be similarly advanced.

12 (b) The director is authorized to enter into agreements and  
13 contracts and to expend the moneys in the fund for the follow-  
14 ing purposes:

15 (1) Responding to hazardous waste emergencies and  
16 releases of hazardous substances when, based on readily  
17 available information, the director determines that immediate  
18 action may prevent or mitigate significant risk of harm to  
19 human health, safety or the environment from hazardous wastes  
20 or releases of hazardous substances in situations for which no  
21 federal funds are immediately available for such response  
22 cleanup or containment: *Provided*, That the director shall apply  
23 for and diligently pursue available federal funds for such  
24 emergencies at the earliest possible time;

25 (2) Reimbursing any person for reasonable cleanup costs  
26 incurred with the authorization of the director in responding to  
27 a hazardous waste emergency or release of hazardous sub-  
28 stances pursuant to authorization of the director;

29 (3) Financing the nonfederal share of the cleanup and site  
30 reclamation activities pursuant to the federal Comprehensive  
31 Environmental Response, Compensation and Liability Act of  
32 1980, as amended by the Superfund Amendments and  
33 Reauthorization Act of 1986 as well as future operation and  
34 maintenance costs for these sites; and

35 (4) Financing any and all preparations necessary for  
36 responding to hazardous waste and hazardous substance  
37 activities and emergencies within the state, including, but not  
38 limited to, the purchase or lease of hazardous waste emergency  
39 response equipment.

40 (c) Prior to making expenditures from the fund pursuant to  
41 subdivision (1), (2) or (3), subsection (b) of this section, the



42 director will make reasonable efforts to secure agreements to  
43 pay the costs of cleanup and remedial actions from owners or  
44 operators of sites or other responsible persons.

45 (d) The director is authorized to promulgate and revise rules  
46 in compliance with chapter twenty-nine-a of this code to  
47 implement and effectuate the powers, duties and responsibilities  
48 vested in him or her under this article. Prior to the assessment  
49 of any fees under this article, the director shall promulgate rules  
50 which account for the mixture of hazardous and nonhazardous  
51 constituents in the hazardous waste which is generated. The  
52 director may not assess a fee on the nonhazardous portion,  
53 including, but not limited to, the weight of water.

54 (e) The director is authorized to recover through civil action  
55 or cooperative agreements with responsible persons the full  
56 amount of any funds expended for purposes enumerated in  
57 subdivision (1), (2) or (3), subsection (b) of this section. All  
58 moneys expended from the fund which are so recovered shall  
59 be deposited in the fund. Any civil action instituted pursuant to  
60 this subsection may be brought in either Kanawha County or  
61 the county in which the hazardous waste emergency occurs or  
62 the county in which remedial action is taken.

63 (f) The director is authorized to institute a civil action  
64 against any generator for failure to pay any fee assessed  
65 pursuant to this article. Any action instituted against a generator  
66 pursuant to this subsection may be brought in either Kanawha  
67 County or the county in which the generator does business. The  
68 generator shall pay all attorney fees and costs of such action if  
69 the director prevails.

70 (g) Upon request by the director, the attorney general or  
71 prosecuting attorney for the county in which an action was  
72 brought shall assist the director in any civil action instituted  
73 pursuant to this section and any proceedings relating thereto.

74 (h) The director is authorized to enter into contracts or  
75 cooperative agreements with the federal government to secure  
76 to the state the benefits of funding for action taken pursuant to  
77 the requirements of the federal Comprehensive Environmental  
78 Response, Compensation and Liability Act of 1980 as amended  
79 by the Superfund Amendments and Reauthorization Act of  
80 1986.

81 (i) The director is authorized to accept gifts, donations,  
82 contributions, bequests or devises of money, security or  
83 property for deposit in the fund.

84 (j) The director is authorized to invest the fund to earn a  
85 reasonable rate of return on the unexpended balance.

**§22-19-6. State hazardous waste contingency plan.**

1 The director shall promulgate rules in compliance with  
2 chapter twenty-nine-a of this code, establishing a state hazard-  
3 ous waste contingency plan which shall set forth procedures and  
4 standards for responding to hazardous waste emergencies,  
5 releases of hazardous substances, for conducting remedial  
6 cleanup and maintenance of hazardous waste sites and for  
7 making expenditures from the fund after the date of promulga-  
8 tion of the plan. The plan shall include:

9 (a) Methods for discovering, reporting and investigating  
10 sites at which hazardous waste or hazardous substances may  
11 present significant risk of harm to the public health and safety  
12 or to the environment;

13 (b) Methods and criteria for establishing priority responses  
14 and for determining the appropriate extent of cleanup, contain-  
15 ment and other measures authorized by this article;

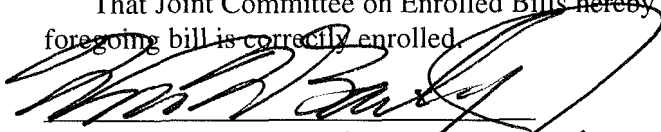
16 (c) Appropriate roles for governmental, interstate and  
17 nongovernmental entities in effectuating the plan;

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18 (d) Methods for identifying, procuring, maintaining, and  
19 storing hazardous waste response equipment and supplies; and

20 (e) Methods to identify the most appropriate and  
21 cost-effective emergency and remedial actions in view of the  
22 relative risk or danger presented by each case or event.

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



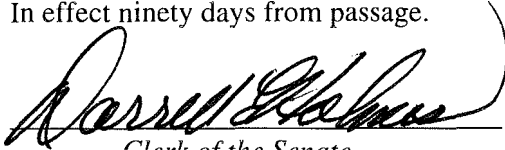
*Chairman Senate Committee*



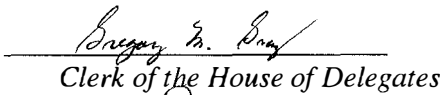
*Chairman House Committee*

Originating in the House.

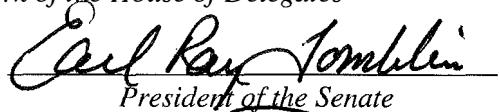
In effect ninety days from passage.



*Clerk of the Senate*



*Clerk of the House of Delegates*

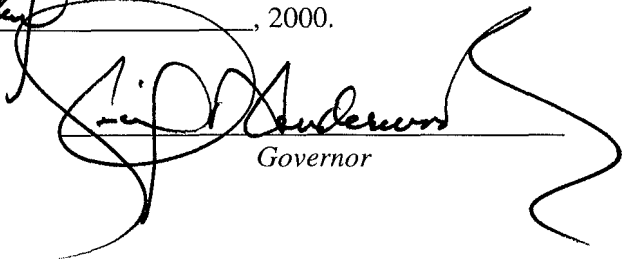


*President of the Senate*



*Speaker of the House of Delegates*

The within approved this the 5<sup>th</sup>  
day of April, 2000.



*Governor*

PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 3:50pm