WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED

SENATE BILL NO. 721

(By Senator Wooton, et al.)

PASSED April 14, 2001
In Effect from Passage
AN ACT to amend and reenact sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend section sixteen, article ten, chapter seventeen-a of said code, all relating to the waste tire remediation/environmental cleanup fund; renaming the waste tire remediation/environmental cleanup fund the A. James Manchin fund; and authorizing the use of the fund for the tire disposal program.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section sixteen, article ten, chapter seventeen-a be amended and reenacted, all to read as follows:

ARTICLE 24. WASTE TIRE REMEDIATION.
§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

(a) There is hereby created in the state treasury a special revenue fund known as the “A. James Manchin Fund”. All moneys appropriated, deposited or accrued in this fund shall be used exclusively for remediation of waste tire piles as required by this article for the tire disposal program established under section four of this article or for the purposes of subsection (c), section five of this article. The fund shall consist of the proceeds from the sale of waste tires; fees collected by the division of motor vehicles as provided for in section sixteen, article ten, chapter seventeen-a of this code; any federal, state or private grants; legislative appropriations; loans and any other funding source available for waste tire remediation. Any balance remaining in the fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and be used only in a manner consistent with the requirements of this article.

(b) No further collections or deposits shall be made after the commissioner certifies to the governor and the Legislature that the remediation of all waste tire piles that were determined by the commissioner to exist on the first day of June, two thousand one, has been completed.

(c) The joint committee on government operations shall, pursuant to authority granted in article ten, chapter four of this code, conduct a preliminary performance review of the division’s compliance with the waste tire remediation mandated in this article; whether the purposes of this article have been met; and whether it is appropriate to terminate this program. In conducting such preliminary performance review, the committee shall follow the guidelines established in said article. A preliminary review shall be completed on or before the first day of January, two thousand three.
§17-24-7. Remediation; liability for remediation and court costs.

(a) Any person who has prior or subsequent to the effective date of this act illegally disposed of waste tires or has waste tires illegally disposed on his or her property shall be liable for:

1. All costs of removal or remedial action incurred by the division;
2. Any other necessary costs of remediation, including properly disposing of waste tires and damage to adjacent property owners; and
3. All costs incurred in bringing civil actions under this article.

(b) The division shall notify any person who owns real property or rights to property where a waste tire pile is located that remediation of the waste tire pile is necessary. The division shall make and enter an order directing such person or persons to remove and properly dispose of the waste tires. The division shall set a time limit for completion of the remediation. The order shall be served by registered or certified mail, return receipt requested, or by a county sheriff or deputy sheriff.

(c) If the remediation is not completed within the time limit or the person cannot be located or the person notifies the division that he or she is unable to comply with the order, the division may expend funds, as provided herein, to complete the remediation. Any amounts so expended shall be promptly repaid by the person or persons responsible for the waste tire pile. Any person owing remediation costs and or damages shall be liable at law until such time as all costs and or damages are fully paid.

(d) Authorized representatives of the division have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse
effects of a waste tire pile, to determine the feasibility of
the remediation or prevention of such adverse effects and
to conduct remediation activities provided for herein.
Such entry is an exercise of the police power of the state
and for the protection of public health, safety and general
welfare and is not an act of condemnation of property or
trespass thereon. Nothing contained in this section
eliminates any obligation to follow any process that may
be required by law.

(e) There is hereby created a statutory lien upon all real
property and rights to the property from which a waste
tire pile was remediated for all reclamation costs and
damages incurred by the division. The lien created by this
section shall arise at the later of the following:

(1) The time costs are first incurred by the division; or

(2) The time the person is provided, by certified or
registered mail, or personal service, written notice as
required by this section.

The lien shall continue until the liability for the costs or
judgment against the property is satisfied.

(f) Liens created by this section shall be duly recorded in
the office of the clerk of the county commission in the
county where the real property is located, be liens of equal
dignity, rank and priority with the lien on such premises
of state, county, school and municipal taxes for the
amount thereof upon the real property served. The
division shall have the power and authority to enforce
such liens in a civil action to recover the money due for
remediation costs and damages plus court fees and costs
and reasonable attorney's fees.

(g) The division may foreclose upon the premises by
bringing a civil action, in the circuit court of the county
where the property is located, for foreclosure and an order
to sell the property to satisfy the lien.
(h) Any proceeds from any sale of property obtained as a result of execution of a lien or judgment under this section for remediation costs, excluding costs of obtaining judgment and perfecting the lien, shall be deposited into the A. James Manchin fund of the state treasury.

(i) The provisions of this section do not apply and no lien may attach to the right-of-way, easement or other property interest of a utility, whether electric, gas, water, sewer, telephone, television cable or other public service unless the utility contributed to the illegal tire pile.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for the A. James Manchin fund.

In addition to each fee provided for in this article, an additional five-dollar fee shall be imposed on the issuance of each certificate of title issued pursuant to article three of this chapter. All money collected under this section shall be deposited in the state treasury and credited to the A. James Manchin fund to be established within the department of highways for waste tire remediation in accordance to the provisions of article twenty-four, chapter seventeen of this code. The additional fee provided herein shall be imposed for each application for certificate and renewal thereof made on or after the first day of July, two thousand: Provided, That no further collections or deposits shall be made after the commissioner certifies to the governor and the Legislature that the remediation of all waste tire piles that were determined by the commissioner to exist on the first day of June, two thousand one, has been completed.
The 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 is approved this the 24th Day of April, 2001.

Governor