

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1612 Session of
1999

INTRODUCED BY LEH, BELFANTI, BUNT, CAWLEY, DALLY, GEIST, GEORGE,
GRUCELA, HENNESSEY, HESS, LAUGHLIN, LEVDANSKY, McILHATTAN,
McNAUGHTON, S. MILLER, ROHRER, S. H. SMITH, SURRA, THOMAS,
WILT, YOUNGBLOOD AND YUDICHAK, JUNE 9, 1999

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
JUNE 9, 1999

AN ACT

1 Establishing a landfill impact fee and fund to compensate owners
2 of residential property near a landfill for loss in property
3 value and to provide grants to certain political subdivisions
4 for traffic improvement and safety projects.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Landfill
9 Impact Fee Act.

10 Section 2. Fee imposed.

11 A fee of 25¢ is hereby imposed on each ton of weighed waste
12 or 25¢ per three cubic yards of volume-measured waste of any
13 type deposited in any landfill located in this Commonwealth.

14 This fee shall be paid by the operator and shall be collected by
15 the Department of Environmental Protection. All of these fees
16 shall be deposited in the Landfill Impact Fee Fund established
17 in section 6.

1 Section 3. Form and timing of fee payment.

2 (a) Quarterly payments.--Each operator of a waste landfill
3 shall make the fee payment quarterly. The fee shall be paid on
4 or before the 20th day of April, July, October and January for
5 the three months ending the last day of March, June, September
6 and December.

7 (b) Quarterly reports.--Each fee payment shall be
8 accompanied by a form prepared and furnished by the Department
9 of Environmental Protection and completed by the operator. The
10 form shall state the total weight or volume of waste received by
11 the facility during the payment period and provide any other
12 aggregate information deemed necessary by the department to
13 carry out the purposes of this act. The form shall be signed by
14 the operator.

15 (c) Timeliness of payment.--The operator shall be deemed to
16 have made a timely payment of the fee if the operator complies
17 with all of the following:

18 (1) The enclosed payment is for the full amount owed
19 pursuant to this section and no further departmental action
20 is required for collection.

21 (2) The payment is accompanied by the required form, and
22 such form is complete and accurate.

23 (3) The letter transmitting the payment that is received
24 by the department is postmarked by the United States Postal
25 Service on or prior to the final day on which the payment is
26 to be received.

27 (d) Refunds.--Any operator who believes he has overpaid the
28 fee may file a petition for refund to the department. If the
29 department determines the operator has overpaid the fee, it
30 shall refund the amount due, together with interest at a rate

1 established pursuant to section 806.1 of the act of April 9,
2 1929 (P.L.343, No.176), known as The Fiscal Code, from the date
3 of overpayment. No refund shall be made unless the petition is
4 filed with the department within six months of the overpayment.

5 (e) Alternative proof of payment.--For purposes of this
6 section, presentation of a receipt indicating that the payment
7 was mailed by registered or certified mail on or before the due
8 date shall be evidence of timely payment.

9 Section 4. Collection and enforcement of fee.

10 (a) Interest.--If an operator fails to make a timely payment
11 of the fee, the operator shall pay interest on the unpaid amount
12 due at the rate established pursuant to section 806 of the act
13 of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code,
14 from the last day for timely payment to the date paid.

15 (b) Additional penalty.--In addition to the interest
16 provided in subsection (a), if an operator fails to make timely
17 payment of the fee, there shall be added to the amount of fee
18 actually due 5% of the amount of such fee, if the failure to
19 file a timely payment is for not more than one month, with an
20 additional 5% for each additional month, or fraction thereof,
21 during which such failure continues, not exceeding 25% in the
22 aggregate.

23 (c) Assessment notices.--

24 (1) If the Department of Environmental Protection
25 determines that any operator has not made a timely payment of
26 the fee, it shall send the operator a written notice of the
27 amount of the deficiency within 30 days of determining the
28 deficiency. When the operator has not provided a complete and
29 accurate statement of the weight or volume of waste received
30 at the facility for the payment period, the department may

1 estimate the weight or volume in its notice.

2 (2) The operator shall have 30 days to pay the
3 deficiency in full or, if the operator wishes to contest the
4 deficiency, to forward the amount of the deficiency to the
5 department for placement in an escrow account with the State
6 Treasurer or any Pennsylvania bank, or post an appeal bond in
7 the amount of the deficiency. The bond shall be executed by a
8 surety licensed to do business in this Commonwealth and shall
9 be satisfactory to the department. Failure to forward the
10 money or the appeal bond to the department within 30 days
11 shall result in a waiver of all legal rights to contest the
12 deficiency.

13 (3) If, through administrative or judicial review of the
14 deficiency, it is determined that the amount of deficiency
15 should be reduced, the department shall within 30 days remit
16 the appropriate amount to the operator, with any interest
17 accumulated by the escrow deposit.

18 (4) The amount determined after administrative hearing
19 or after waiver of administrative hearing shall be payable to
20 the Commonwealth and shall be collectible in the manner
21 provided in section 1709 of the act of July 28, 1988
22 (P.L.556, No.101), known as the Municipal Waste Planning,
23 Recycling and Waste Reduction Act.

24 (5) Any other provision of law to the contrary
25 notwithstanding, there shall be a statute of limitations of
26 five years upon actions brought by the Commonwealth pursuant
27 to this section.

28 (6) If any amount due under this section remains unpaid
29 30 days after receipt of notice thereof, the department may
30 order the operator to cease receiving any waste until the

1 deficiency is completely paid.

2 (d) Filing of appeals.--Notwithstanding any other provision
3 of law, all appeals of final department actions concerning the
4 fee, including, but not limited to, petitions for refunds, shall
5 be filed with the Environmental Hearing Board.

6 (e) Constructive trust.--All fees collected by an operator
7 and held by the operator prior to payment to the department
8 shall constitute a trust fund for the Commonwealth, and the
9 trust shall be enforceable against the operator, its
10 representatives and any person receiving any part of the fund
11 without consideration or with knowledge that the operator is
12 committing a breach of the trust. However, any person receiving
13 payment of lawful obligation of the operator from the fund shall
14 be presumed to have received the same in good faith and without
15 any knowledge of the breach of trust.

16 (f) Remedies cumulative.--The remedies provided to the
17 department in this section are in addition to any other remedies
18 provided at law or in equity.

19 Section 5. Surcharge.

20 The provisions of any law to the contrary notwithstanding:

21 (1) An operator may collect the fee imposed by this act
22 as a surcharge on any fee schedule established pursuant to
23 law, ordinance, resolution or contract for waste disposal at
24 the facility.

25 (2) A person who collects or transports waste subject to
26 the fee to a landfill may impose a surcharge on any fee
27 schedule established pursuant to law, ordinance, resolution
28 or contract for the collection or transportation of waste to
29 the facility. The surcharge shall be equal to the increase in
30 disposal fees at the facility attributable to the fee.

1 However, interest and penalties on the fee under section 4(a)
2 and (b) may not be collected as a surcharge.

3 Section 6. Landfill Impact Fee Fund.

4 The Landfill Impact Fee Fund is established as a restricted
5 receipts account within the General Fund. The Landfill Impact
6 Fee Fund shall be used to compensate all eligible residential
7 property owners and to provide funds for traffic improvement and
8 safety grants to eligible political subdivisions. The fund shall
9 include a reserve in an amount determined by the Auditor General
10 to be necessary to maintain its actuarial soundness in the view
11 of outstanding and reasonably foreseeable claims. Moneys raised
12 by the fee during the fiscal year in excess of the reserve shall
13 be directed to the Department of Transportation at the beginning
14 of the following fiscal year and shall be allocated for
15 providing grants to host and neighboring municipalities for
16 traffic and safety improvements in accordance with section 8.

17 Section 7. Eligible residential property owners.

18 A person is an eligible residential property owner if that
19 person owns and lives in a residential dwelling within one mile
20 of the boundary of any landfill which was granted a permit to
21 open or to physically expand since July 1, 1998, and as a result
22 of the opening or expansion he suffered a decrease in the
23 property value of that person's residential dwelling.

24 Section 8. Eligible political subdivision.

25 Any political subdivision wherein a landfill is located or
26 through which passes a public road within ten miles of the
27 entrance of the landfill which is regularly used as an access
28 road to the landfill is eligible for a traffic improvement and
29 safety grant provided for under this act.

30 Section 9. Landfill impact compensation.

1 All homeowners who make application to the Department of
2 Environmental Protection and are determined to be eligible for
3 compensation shall be awarded full compensation within one year
4 of the final determination of such eligibility by the
5 department.

6 Section 10. Traffic improvement and safety grants.

7 The Department of Transportation may award traffic
8 improvement and safety grants in accordance with the provisions
9 of section 6.

10 Section 11. Administrative costs.

11 (a) Department of Environmental Protection costs.--The
12 Department of Environmental Protection may retain an amount of
13 money not to exceed 5% of the total amount of money in the
14 Landfill Impact Fee Fund for its expenses directly related to
15 the administration of this act.

16 (b) Department of Transportation costs.--The Department of
17 Transportation may retain an amount of money not to exceed 5% of
18 the total amount of traffic improvement and safety grants for
19 its expenses directly related to the administration of this act.

20 Section 12. Regulations.

21 The Department of Environmental Protection and the Department
22 of Transportation shall promulgate regulations in order to carry
23 out their duties under this act.

24 Section 13. Reports.

25 The Department of Environmental Protection shall report
26 annually to the General Assembly by depositing copies of the
27 report with the Secretary of the Senate and the Chief Clerk of
28 the House of Representatives. The report shall indicate all
29 collections to and payments from the Landfill Impact Fee Fund,
30 including any recommendations for any increase in the fee.

1 Section 14. Effective date.

2 This act shall take effect in 60 days.