

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-80

Time 5:15 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

**ENROLLED**

SENATE BILL NO. 101

(By Mr. Nelson)

PASSED March 8, 1980

In Effect from Passage



No: 101

**ENROLLED**  
**Senate Bill No. 101**  
(By Mr. NELSON)

[Passed March 8, 1980; in effect from passage.]

AN ACT to amend and reenact sections four, six and twenty-one, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the educational qualifications of the director of the West Virginia resource recovery—solid waste disposal authority; removing the requirement that the public service commission give prior approval for charges for rentals and certain services; and permitting the private hauler member of the board of the West Virginia resource recovery—solid waste disposal authority to have a financial interest in an authority project if there is full disclosure and the private hauler does not vote on any measure which would affect him.

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

That sections four, six and twenty-one, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 26. WEST VIRGINIA RESOURCE RECOVERY—SOLID WASTE DISPOSAL AUTHORITY.**

**§16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.**

- 1 The West Virginia resource recovery — solid waste
- 2 disposal authority is hereby created. The authority is
- 3 a governmental instrumentality of the state and a body

4 corporate. The exercise by the authority of the powers  
5 conferred on it by this article and the carrying out of  
6 its purposes and duties are essential governmental  
7 functions and for a public purpose.

8 The authority shall be controlled, managed and  
9 operated by a five-member board known as the West  
10 Virginia resource recovery — solid waste disposal  
11 authority board which is hereby created. The director  
12 of the department of health shall be a member ex  
13 officio of the board. The other four members of the board  
14 shall be appointed by the governor, by and with the  
15 advice and consent of the Senate, for terms of one,  
16 two, three and four years, respectively. One appointee  
17 shall be a member of the West Virginia association of  
18 county officials, one a member of the West Virginia  
19 municipal league and a resident of a municipality as  
20 defined in section two, article one, chapter eight of this  
21 code, one a member of a regional council as defined  
22 in section two, article twenty-five, chapter eight of this  
23 code and one a contract solid waste hauler who holds  
24 a valid certificate of convenience and necessity issued  
25 by the public service commission. The successor of each  
26 such appointed member shall be appointed for a term  
27 of four years in the same manner the original appoint-  
28 ments were made and so that the representation on the  
29 board as set forth in this section is preserved, except  
30 that any person appointed to fill a vacancy occurring  
31 prior to the expiration of the term for which his pre-  
32 decessor was appointed shall be appointed only for the  
33 remainder of such term. Each board member shall serve  
34 until the appointment and qualification of his successor.

35 No more than two of the appointed board members may  
36 at any one time be from the same congressional district or  
37 belong to the same political party. No appointed board  
38 member may be an officer or employee of the United  
39 States or this state. Appointed board members may be re-  
40 appointed to serve additional terms. All members of the  
41 board shall be citizens of the state. Each appointed mem-  
42 ber of the board, before entering upon his duties, shall  
43 comply with the requirements of article one, chapter six  
44 of this code and give bond in the sum of twenty-five thou-

45 sand dollars. Appointed members may be removed from  
46 the board only for the same causes as elective state  
47 officers may be removed.

48 Annually the board shall elect one of its appointed mem-  
49 bers as chairman, another as vice-chairman and appoint a  
50 secretary-treasurer, who need not be a member of the  
51 board. Three members of the board shall constitute a  
52 quorum and the affirmative vote of three members shall be  
53 necessary for any action taken by vote of the board. No  
54 vacancy in the membership of the board shall impair the  
55 rights of a quorum by such vote to exercise all the rights  
56 and perform all the duties of the board and the authority.  
57 The person appointed as secretary-treasurer shall give  
58 bond in the sum of fifty thousand dollars. If a board mem-  
59 ber is appointed as secretary-treasurer, he shall give bond  
60 in the sum of twenty-five thousand dollars in addition to  
61 the bond required in the preceding paragraph.

62 The director of the department of health shall not  
63 receive any compensation for serving as a board mem-  
64 ber. Each of the four appointed members of the board  
65 shall receive compensation of fifty dollars for each day  
66 actually spent in attending meetings of the board or  
67 in the discharge of his duties as a member of the board,  
68 but not to exceed two thousand five hundred dollars in  
69 any fiscal year. Each of the five board members shall  
70 be reimbursed for all reasonable and necessary expenses  
71 actually incurred in the performance of his duties as  
72 a member of the board. All such compensation and ex-  
73 penses incurred by board members shall be payable solely  
74 from funds of the authority or from funds appropriated  
75 for such purpose by the Legislature and no liability  
76 or obligation shall be incurred by the authority beyond  
77 the extent to which moneys are available from funds  
78 of the authority or from such appropriation.

79 The board shall meet at least four times annually and  
80 at any time upon the call of its chairman or upon the  
81 request in writing to the chairman of three board mem-  
82 bers.

83 The board shall appoint a director of the authority.  
84 The director shall have successfully completed one full  
85 year of graduate school and, in addition, shall have

86 two years of work experience in solid waste manage-  
87 ment.

**§16-26-6. Powers, duties and responsibilities of authority generally.**

1 The West Virginia resource recovery — solid waste  
2 disposal authority may exercise all powers necessary  
3 or appropriate to carry out and effectuate its corporate  
4 purpose. The authority may:

5 (1) Adopt, and from time to time, amend and re-  
6 peal bylaws necessary and proper for the regulation  
7 of its affairs and the conduct of its business, and rules  
8 and regulations, promulgated pursuant to the provisions  
9 of chapter twenty-nine-a of this code, to implement and  
10 make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office which shall be in  
13 Kanawha County, and, if necessary, regional suboffices  
14 at locations properly designated or provided.

15 (4) Sue and be sued in its own name and plead  
16 and be impleaded in its own name, and particularly to  
17 enforce the obligations and covenants made under sec-  
18 tions ten, eleven and sixteen of this article. Any actions  
19 against the authority shall be brought in the circuit  
20 court of Kanawha County.

21 (5) Make loans and grants to persons and to govern-  
22 mental agencies for the acquisition or construction of  
23 solid waste disposal projects and adopt rules and pro-  
24 cedures for making such loans and grants.

25 (6) Acquire, construct, reconstruct, enlarge, improve,  
26 furnish, equip, maintain, repair, operate, lease or rent  
27 to, or contract for operation by a governmental agency  
28 or person, solid waste disposal projects, and, in accord-  
29 ance with chapter twenty-nine-a of this code, adopt  
30 rules and regulations for the use of such projects.

31 (7) Make available the use or services of any solid  
32 waste disposal project to one or more persons, one or  
33 more governmental agencies, or any combination there-  
34 of.

35 (8) Issue solid waste disposal revenue bonds and  
36 notes and solid waste disposal revenue refunding bonds  
37 of the state, payable solely from revenues as provided  
38 in section nine of this article unless the bonds are re-  
39 funded by refunding bond, for the purpose of paying all  
40 or any part of the cost of or financing by loans to govern-  
41 mental agencies one or more solid waste disposal pro-  
42 jects or parts thereof.

43 (9) Acquire by gift or purchase, hold and dispose  
44 of real and personal property in the exercise of its  
45 powers and the performance of its duties as set forth  
46 in this article.

47 (10) Acquire in the name of the state, by purchase  
48 or otherwise, on such terms and in such manner as it  
49 deems proper, or by the exercise of the right of eminent  
50 domain in the manner provided in chapter fifty-four of  
51 this code, such public or private lands, or parts thereof  
52 or rights therein, rights-of-way, property, rights, ease-  
53 ments and interest it deems necessary for carrying out  
54 the provisions of this article, but excluding the acquisition  
55 by the exercise of the right of eminent domain of any  
56 solid waste disposal facility operated under permits is-  
57 sued pursuant to the provisions of article one, chapter  
58 sixteen of this code and owned by any person or govern-  
59 mental agency. This article does not authorize the  
60 authority to take or disturb property or facilities belong-  
61 ing to any public utility or to a common carrier, which  
62 property or facilities are required for the proper and  
63 convenient operation of such public utility or common  
64 carrier, unless provision is made for the restoration, re-  
65 location or duplication of such property or facilities else-  
66 where at the sole cost of the authority.

67 (11) Make and enter into all contracts and agree-  
68 ments and execute all instruments necessary or incidental  
69 to the performance of its duties and the execution of its  
70 powers. When the cost under any such contract or agree-  
71 ment, other than compensation for personal services, in-  
72 volves an expenditure of more than two thousand dol-  
73 lars, the authority shall make a written contract with  
74 the lowest responsible bidder after public notice pub-  
75 lished as a Class II legal advertisement in compliance

76 with the provisions of article three, chapter fifty-nine  
77 of this code, the publication area for such publication  
78 to be the county wherein the work is to be performed or  
79 which is affected by the contract, which notice shall state  
80 the general character of the work and the general  
81 character of the materials to be furnished, the place  
82 where plans and specifications therefor may be examined  
83 and the time and place of receiving bids. A contract  
84 or lease for the operation of a solid waste disposal pro-  
85 ject constructed and owned by the authority or an agree-  
86 ment for cooperation in the acquisition or construction  
87 of a solid waste disposal project pursuant to section six-  
88 teen of this article is not subject to the foregoing re-  
89 quirements and the authority may enter into such con-  
90 tract or lease or such agreement pursuant to negoti-  
91 ation and upon such terms and conditions and for such  
92 period as it finds to be reasonable and proper under  
93 the circumstances and in the best interests of proper  
94 operation or of efficient acquisition or construction of  
95 such project. The authority may reject any and all bids.  
96 A bond with good and sufficient surety, approved by  
97 the authority, shall be required of all contractors in an  
98 amount equal to at least fifty percent of the contract  
99 price, conditioned upon the faithful performance of the  
100 contract.

101 (12) Employ managers, superintendents, engineers,  
102 accountants, auditors and other employees, and retain  
103 or contract with consulting engineers, financial con-  
104 sultants, accounting experts, architects, attorneys and  
105 such other consultants and independent contractors as  
106 are necessary in its judgment to carry out the provisions  
107 of this article, and fix the compensation or fees thereof.  
108 All expenses thereof shall be payable solely from the  
109 proceeds of solid waste disposal revenue bonds or notes  
110 issued by the authority, from revenues and from funds  
111 appropriated for such purpose by the Legislature.

112 (13) Receive and accept from any federal agency,  
113 subject to the approval of the governor, grants for or  
114 in aid of the construction of any solid waste disposal pro-  
115 ject or for research and development with respect to  
116 solid waste disposal projects and solid waste disposal

117 sheds and receive and accept from any source aid or  
118 contributions of money, property, labor or other things  
119 of value, to be held, used and applied only for the pur-  
120 poses for which such grants and contributions are  
121 made.

122 (14) Engage in research and development with respect  
123 to solid waste disposal projects and solid waste disposal  
124 sheds.

125 (15) Purchase fire and extended coverage and liability  
126 insurance for any solid waste disposal projects and for  
127 the principal office and suboffices of the authority, in-  
128 surance protecting the authority and its officers and  
129 employees against liability, if any, for damage to property  
130 or injury to or death of persons arising from its oper-  
131 ations and any other insurance the authority may agree  
132 to provide under any resolution authorizing the issuance  
133 of solid waste disposal revenue bonds or in any trust  
134 agreement securing the same.

135 (16) Charge, alter and collect rentals and other  
136 charges for the use or services of any solid waste dis-  
137 posal project as provided in this article, and charge and  
138 collect reasonable interest, fees and other charges in  
139 connection with the making and servicing of loans to  
140 governmental agencies in furtherance of the purposes  
141 of this article.

142 (17) Establish or increase reserves from moneys re-  
143 ceived or to be received by the authority to secure or to  
144 pay the principal of and interest on the bonds and notes  
145 issued by the authority pursuant to this article.

146 (18) Do all acts necessary and proper to carry out  
147 the powers expressly granted to the authority in this  
148 article.

**§16-26-21. Financial interest in contracts, projects, etc., prohib-  
ited; gratuities prohibited; penalty.**

1 No officer, member or employee of the authority may  
2 be financially interested, directly or indirectly, in any  
3 contract of any person with the authority, or in the sale  
4 of any property, real or personal, to or by the authority.  
5 This section does not apply to contracts or purchases of



6 property, real or personal, between the authority and any  
7 governmental agency.

8 No officer, member or employee of the authority may  
9 have or acquire any financial interest, either direct or  
10 indirect, in any project or activity of the authority or in  
11 any services or material to be used or furnished in con-  
12 nection with any project or activity of the authority.  
13 If an officer, member or employee of the authority has  
14 any such interest at the time he becomes an officer,  
15 member or employee of the authority, he shall disclose  
16 and divest himself of it. Failure to do so shall be cause  
17 for dismissal from the position he holds with the au-  
18 thority.

19 This section does not apply in instances where a mem-  
20 ber of the board who is a contract solid waste hauler  
21 either seeks or has a financial interest, direct or indirect,  
22 in any project or activity of the authority or in any  
23 services or material to be used or furnished in connection  
24 with any project or activity of the authority: *Provided*,  
25 That that member shall fully disclose orally and in  
26 writing to the board the nature and extent of any interest,  
27 prior to any vote by the board which involves his interest,  
28 withdraw from any deliberation or discussion by the  
29 board of matters involving his interest, and refrain from  
30 voting on any matter which directly or indirectly affects  
31 him.

32 No officer, member or employee of the authority may  
33 accept a gratuity from any person doing business with  
34 the authority or from any person for the purpose of  
35 gaining favor with the authority.

36 Any officer, member or employee of the authority who  
37 has any financial interest prohibited by this section or  
38 who fails to comply with its provisions is guilty of a  
39 misdemeanor, and, upon conviction thereof, shall be fined  
40 not more than one thousand dollars, or imprisoned in  
41 the county jail not more than one year, or both fined  
42 and imprisoned.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Christy*  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

*Isaac C. Wick*  
Clerk of the Senate

*Ch Blankenship*  
Clerk of the House of Delegates

*H. G. Brinkley*  
President of the Senate

*Clyde M. Lee Jr.*  
Speaker House of Delegates

The within *is approved* this the *26*  
day of *March*, 1980.

*James D. [Signature]*  
Governor

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