WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED
SENATE BILL NO. 101

(By Mr. Nelson)

PASSED March 8, 1980

In Effect from Passage
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.

The West Virginia resource recovery — solid waste disposal authority is hereby created. The authority is a governmental instrumentality of the state and a body
The exercise by the authority of the powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by a five-member board known as the West Virginia resource recovery — solid waste disposal authority board which is hereby created. The director of the department of health shall be a member ex officio of the board. The other four members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of one, two, three and four years, respectively. One appointee shall be a member of the West Virginia association of county officials, one a member of the West Virginia municipal league and a resident of a municipality as defined in section two, article one, chapter eight of this code, one a member of a regional council as defined in section two, article twenty-five, chapter eight of this code and one a contract solid waste hauler who holds a valid certificate of convenience and necessity issued by the public service commission. The successor of each such appointed member shall be appointed for a term of four years in the same manner the original appointments were made and so that the representation on the board as set forth in this section is preserved, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor. No more than two of the appointed board members may at any one time be from the same congressional district or belong to the same political party. No appointed board member may be an officer or employee of the United States or this state. Appointed board members may be re-appointed to serve additional terms. All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thou-
sand dollars. Appointed members may be removed from the board only for the same causes as elective state officers may be removed.

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

The director of the department of health shall not receive any compensation for serving as a board member. Each of the four appointed members of the board shall receive compensation of fifty dollars for each day actually spent in attending meetings of the board or in the discharge of his duties as a member of the board, but not to exceed two thousand five hundred dollars in any fiscal year. Each of the five board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board. All such compensation and expenses incurred by board members shall be payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriation.

The board shall meet at least four times annually and at any time upon the call of its chairman or upon the request in writing to the chairman of three board members.

The board shall appoint a director of the authority. The director shall have successfully completed one full year of graduate school and, in addition, shall have
two years of work experience in solid waste manage-
ment.

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

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

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

11 (2) Adopt an official seal.

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

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

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

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

31 (7) Make available the use or services of any solid
waste disposal project to one or more persons, one or
more governmental agencies, or any combination there-
of.
(8) Issue solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds of the state, payable solely from revenues as provided in section nine of this article unless the bonds are refunded by refunding bond, for the purpose of paying all or any part of the cost of or financing by loans to governmental agencies one or more solid waste disposal projects or parts thereof.

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

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interest it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any solid waste disposal facility operated under permits issued pursuant to the provisions of article one, chapter sixteen of this code and owned by any person or governmental agency. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. A contract or lease for the operation of a solid waste disposal project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a solid waste disposal project pursuant to section sixteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, shall be required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

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

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any solid waste disposal project or for research and development with respect to solid waste disposal projects and solid waste disposal
sheds and receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

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

(15) Purchase fire and extended coverage and liability insurance for any solid waste disposal projects and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of solid waste disposal revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any solid waste disposal project as provided in this article, and charge and collect reasonable interest, fees and other charges in connection with the making and servicing of loans to governmental agencies in furtherance of the purposes of this article.

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

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

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

No officer, member or employee of the authority may be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or by the authority. This section does not apply to contracts or purchases of
property, real or personal, between the authority and any governmental agency.

No officer, member or employee of the authority may have or acquire any financial interest, either direct or indirect, in any project or activity of the authority or in any services or material to be used or furnished in connection with any project or activity of the authority. If an officer, member or employee of the authority has any such interest at the time he becomes an officer, member or employee of the authority, he shall disclose and divest himself of it. Failure to do so shall be cause for dismissal from the position he holds with the authority.

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

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

Any officer, member or employee of the authority who has any financial interest prohibited by this section or who fails to comply with its provisions is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Judd C. Wolfe  
Clerk of the Senate

(Blankenship)  
Clerk of the House of Delegates

M. O. Brackenstok  
President of the Senate

Clay N. defeat  
Speaker House of Delegates

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

Governor