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CHAPTER 16

Solid Waste Disposal Resource Recovery Facilities Act

**SECTION 6‑16‑10.** Short title.

 This chapter may be cited as the “Solid Waste Disposal ‑ Resource Recovery Facilities Act”.

HISTORY: 1980 Act No. 491, Section 2.

**SECTION 6‑16‑20.** Definitions.

 The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

 (a) “Joint agency” means a public body and body corporate and politic organized in accordance with the provisions of this chapter.

 (b) “State” means the State of South Carolina.

 (c) “Project” means any project undertaken by a joint agency for any one or more of the following purposes: the collection, transfer or disposal of solid wastes; the recovery of resources, including energy, from solid wastes; the processing of solid wastes or resources in order to facilitate such disposal or recovery; or the sale of recovered resources.

 (d) “Cost”, with respect to a project, means all costs of planning, designing, constructing and financing such projects including fees for professional services, costs of insurance, costs for principal interest during planning, designing and construction and for up to one year thereafter and reserves deemed necessary or desirable in connection with a project.

 (e) “Governing bodies” means each political subdivision or entity of the State empowered to or responsible for the disposal of solid waste.

 (f) “Member” of a joint agency means those governing bodies which have agreed to create a joint agency to undertake the ownership, operation, maintenance, financing or contractual use of a project.

HISTORY: 1980 Act No. 491, Section 3.

**SECTION 6‑16‑30.** Powers of joint agency; action by single governing body.

 In addition to the powers granted to governing bodies, any two or more governing bodies may form a joint agency to plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, lease, sell, operate or maintain a project situated within this State. Each governing body may severally make such plans and enter into such contracts in connection with the foregoing, not inconsistent with the provisions of this chapter, as are necessary or appropriate.

 Nothing contained herein shall be construed to prevent a single governing body from undertaking studies to determine whether there is a need for a project or whether such project is feasible or undertaking the project or facilities similar to a project singly and individually.

HISTORY: 1980 Act No. 491, Section 4.

**SECTION 6‑16‑40.** Creation of joint agency; findings prerequisite to creation; notice.

 Any two or more governing bodies may by resolution or ordinance as appropriate determine that it is in the best interests of themselves and their residents to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, purchase, construction, reconstruction, improvement, enlargement, ownership, sale, lease, operation or maintenance of a project to provide for the present and future needs of the inhabitants and residents of their service areas as an alternative to or supplementary of severally and individually assuming the responsibilities of ownership in a project.

 Each resolution or ordinance shall be premised upon a finding that the creation of a joint agency is in the best interests of the governing body and its residents for one or more of the following reasons:

 (a) That a joint agency may be able to finance the cost of a project in a more efficient and economical manner;

 (b) That a better financial market acceptance may result if one entity is responsible for issuing all of the bonds and incurring all other debt required for a project in a timely and orderly manner;

 (c) That fiscal savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, purchase, construction, ownership and operation of a project.

 If the creation of a joint agency is found to be in the best interests of a governing body, notice of the adoption of such ordinance or resolution shall be published once a week for two consecutive weeks in a newspaper of general circulation within the county in which such governing body is located. Any person affected by the action of such governing body may institute an action in the circuit court for the county in which such governing body is located within twenty days following the last publication of the notice prescribed challenging the action of such governing body.

HISTORY: 1980 Act No. 491, Section 5.

**SECTION 6‑16‑50.** Representatives to joint agency; application to Secretary of State; Secretary to examine application; corporate certificate; agency deemed valid.

 Upon fulfilling the requirements set forth in Section 6‑16‑40, each governing body which determines that its participation in the proposed joint agency is in its best interest shall by resolution appoint one representative to the proposed joint agency. Any two or more representatives shall file with the Secretary of State an application signed by the representative of each proposed member setting forth:

 (a) The names of all the proposed members and their respective appointed representatives;

 (b) A certified copy of (i) the resolution or ordinance of each member determining it is in its best interest to participate in the proposed joint agency and (ii) the resolution appointing such member’s representative;

 (c) The desire that the joint agency be organized as a public body and a body corporate and politic under this chapter;

 (d) The name which is proposed for the joint agency.

 The Secretary of State shall file the application if after examining it and determining that it complies with the requirements set forth above and that the proposed name of the joint agency is not identical with that of any other corporation of the State or any agency or instrumentality or so nearly similar as to lead to confusion and uncertainty.

 After the application has been made and filed, the Secretary of State shall issue a corporate certificate which shall be filed with the application and the joint agency shall then be constituted a public body corporate and politic under the name proposed in the application. The corporate certificate shall set forth the names of the members and the name of the joint agency. Notice of the issuance of such corporate certificate shall be given to all members of the joint agency by the Secretary of State.

 In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of a joint agency, the joint agency in the absence of establishing fraud shall be conclusively deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding and shall be conclusive proof of the filing and contents.

HISTORY: 1980 Act No. 491, Section 6.

**SECTION 6‑16‑60.** Board of directors; voting; election of chairman and other officers; quorum.

 (a) The management and control of a joint agency shall be vested in a board of directors. The governing body of each member of a joint agency shall appoint a representative who shall be a director of the joint agency. The representative may be an officer or employee of the member and may also serve ex officio as a member of the board of directors. Each director shall have not less than one vote and may have such additional votes as a majority of the members of the joint agency shall determine. Each director shall serve at the pleasure of the governing body by which he was appointed. Each appointed member director, before entering upon his duties, shall take and subscribe to an oath before a person authorized by law to administer oaths to execute the duties of his office faithfully and impartially and a record of each such oath shall be filed with the governing body of the appointing authority.

 (b) The board of directors of the joint agency shall annually elect, with each director having one vote, one of the directors as chairman, another as vice chairman and other persons who may, but need not be directors, as treasurer, secretary and, if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of directors may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency and the secretary shall be the custodian of all books, records, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal.

 (c) A majority of the directors of the joint agency shall constitute a quorum. A vacancy on the board of directors of the joint agency shall not impair the right of a quorum to exercise all rights and perform all the duties of a joint agency. Any action taken by the joint agency under the provisions of this chapter may be authorized by resolution at any regular or special meeting held pursuant to notice in accordance with bylaws of the joint agency and each such resolution shall take effect immediately and need not be published or posted. Except as is otherwise provided in this chapter or in the bylaws of the joint agency, a majority of the votes which the directors present are entitled to cast, with a quorum present, shall be necessary and sufficient to take any action or to pass any resolution. No director of a joint agency shall receive any compensation solely for the performance of duties as a director but each director may be paid per diem, mileage and subsistence expenses, as provided by law for state boards, committees and commissions, incurred while engaged in the performance of such duties.

HISTORY: 1980 Act No. 491, Section 7.

**SECTION 6‑16‑70.** Admission of new members to agency; withdrawal; notice of membership change.

 After the creation of a joint agency, any other governing body may become a member upon:

 (a) Adoption of a resolution or ordinance complying with the requirements of Section 6‑16‑40 including publication of notice;

 (b) Submission of an application to the joint agency;

 (c) Approval of such application by resolution of the governing body of each member of such joint agency.

 Any member may withdraw from a joint agency by resolution or ordinance of its governing body. All contractual rights acquired and contractual obligations incurred by a member while it was a member shall remain in full force and effect.

 Notice of any change in membership shall be filed in the office of the Secretary of State and no change shall be final until such filing.

HISTORY: 1980 Act No. 491, Section 8.

**SECTION 6‑16‑80.** Dissolution of agency.

 Whenever the board of directors of a joint agency and the governing body of each of its members shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds issued and all other obligations incurred by the joint agency have been fully paid or satisfied, such board of directors and members may declare the joint agency to be dissolved. On the effective date of such resolution or ordinance the title to all funds and other property owned by the joint agency at the time of such dissolution shall be disbursed to the members of the joint agency according to its bylaws.

HISTORY: 1980 Act No. 491, Section 9.

**SECTION 6‑16‑90.** Executive committee.

 The board of directors of a joint agency may create an executive committee, the composition of which shall be set forth in the bylaws of the joint agency. The composition of the executive committee shall afford a fair representation of the members. The executive committee may exercise such powers during intervals between the board’s meetings as provided by the board. The terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the bylaws of the joint agency.

HISTORY: 1980 Act No. 491, Section 10.

**SECTION 6‑16‑100.** Rights and powers of joint agency.

 Each joint agency shall have all the rights and powers of a public body politic and corporate of this State, including, without limitation, all the rights and powers necessary or convenient to carry out and effectuate the provisions of this chapter, including but not limited to, rights and powers:

 (a) To adopt bylaws for the regulation of the affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

 (b) To adopt an official seal and alter it at pleasure;

 (c) To maintain an office at such place as it may determine;

 (d) To sue and be sued in its own name and to plead and be impleaded;

 (e) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

 (f) To acquire by purchase, lease, gift, or otherwise or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee in conformity with state law;

 (g) To sell, lease, exchange, transfer or otherwise dispose of or to grant options for any such purposes with respect to any real or personal property or interest therein in conformity with state law;

 (h) To pledge or assign any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards;

 (i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

 (j) To authorize the construction, operation, or maintenance of any project by any person, firm or corporation, including political subdivisions and agencies of any state of the United States;

 (k) To acquire by negotiated purchase or lease one or more projects which may be an existing project, project under construction or other property, either individually or jointly, with one or more other governing bodies or joint agencies in this State;

 (l) To fix, charge and collect rents, rates, fees and charges for solid waste disposal and other services, facilities and commodities sold, furnished or supplied through any project;

 (m) To generate, produce, transmit, deliver, exchange, purchase or sell electric power or energy or other form of energy derived from a project and to enter into contracts for any or all such purposes, subject to the provisions of Section 6‑16‑110;

 (n) To negotiate and enter into contracts for the acquisition of solid wastes from any county, other governmental unit, or private businesses;

 (o) To negotiate and enter into contracts for the sale of any recoverable resources derived from solid waste;

 (p) To own, operate or maintain or provide for the ownership, operation or maintenance of any transportation, compacting or other facilities necessary or desirable for the collection and transport of solid waste to any of its projects;

 (q) To own, operate and maintain a landfill or system of landfills or other similar facilities for the disposal of solid waste;

 (r) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this chapter, including contracts with persons, firms, corporations and others;

 (s) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals and to obtain, hold and use any licenses, permits, certificates or approvals in the same manner as any other person or operating unit of any other person, previously obtained by such person;

 (t) To employ engineers, architects, attorneys, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor.

HISTORY: 1980 Act No. 491, Section 11.

**SECTION 6‑16‑105.** Requirements for joint agency member to contract for solid waste services with joint agency.

 (A) A member of a joint agency may contract with the joint agency for the collection, transfer, and/or disposal of solid waste, the recovery of resources, including energy, from solid waste, the processing of solid waste or resources in order to facilitate disposal or recovery, or the sale of recovered resources. The contract may provide that the contracting member is obligated to make the payments required by the contract whether or not a project is completed, operable, or operating, and that the payments under the contract are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. A contract between a joint agency and its members also may provide that if one or more of the members defaults in the payment of obligations to the joint agency, the remaining members are required to satisfy proportionately the obligations of the defaulting member and are entitled proportionately to the benefits to be provided by the joint agency to the defaulting member to the extent of the payments made.

 (B) For the purposes of this chapter, a contract authorized under subsection (A) may extend for a period not exceeding fifty years from the date a project is estimated to be placed in normal continuous operation and is not affected by the governing body ceasing to be a member of the joint agency. The execution and effectiveness of the contract is not subject to authorization or approval by the State or an agency, commission, instrumentality, or political subdivision of the State. A contract to which a county is a party must be approved by ordinance requiring three readings.

 (C) Payments by a member under a contract with a joint agency may be made from the revenues derived by the member from fees and charges assessed by the member for the collection, transfer, and/or disposal of solid waste and from any other lawful source, and an obligation under the contract does not constitute a legal or equitable pledge, charge, lien, or encumbrance upon property of the governing body or upon any of its income, receipts, or revenues, except the revenues, if any, derived by the member from fees and charges assessed by the member for the collection, transfer, and/or disposal of solid waste and neither the faith and credit nor the taxing power of the member may be pledged for the payment of an obligation under the contract. A member shall fix, charge, and collect fees and charges for the collection, transfer, and/or disposal of solid waste and other services furnished or supplied by the member and the joint agency which, together with monies from other lawful sources available for payment must be sufficient to provide revenues adequate to meet its obligations under the contract and to pay all other amounts payable from or constituting a charge and lien upon the revenues derived from the collection of the fees and charges, including amounts sufficient to pay the principal of and interest on any other obligations heretofore or hereafter issued by the member for purposes related to the collection, transfer, and/or disposal of solid waste.

 (D) A governing body which is a member of a joint agency may furnish the joint agency with money derived from its fees and charges assessed for the collection, transfer, and/or disposal of solid waste by the governing body and from any other lawful source and provide the joint agency with personnel, equipment, and property, both real and personal. A governing body also may provide services to a joint agency.

 (E) A member may contract for, advance, or contribute funds to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall, if so agreed, repay the advances or contributions from proceeds of bonds, from operating revenues, or from other funds of the joint agency together with interest thereon as may be agreed upon by the member and joint agency.

 (F) The powers granted under this section are in addition to the powers of governing bodies and joint agencies provided by law.

HISTORY: 1996 Act No. 313, Section 1.

**SECTION 6‑16‑110.** Agency may incur debt and issue bonds.

 A joint agency may incur debt for any of its purposes and may issue bonds pledging to the payment as to both principal and interest the revenues, or any portion, derived or to be derived from all or any of its projects and any additions and betterments or extensions or contributions or advances from its members.

HISTORY: 1980 Act No. 491, Section 12.

**SECTION 6‑16‑120.** Approval of governing bodies required for projects financed by bonds.

 No joint agency may undertake a project required to be financed, in whole or in part, with the proceeds of bonds without the approval of the governing bodies of each member contracting with the joint agency for services relating to the project.

HISTORY: 1980 Act No. 491, Section 13; 1996 Act No. 313, Section 2.

**SECTION 6‑16‑130.** Status of joint agency personnel; participation in South Carolina Retirement System.

 Personnel employed or appointed by a member to work for a joint agency shall have the same authority, rights, privileges and immunities (including coverage under the workmen’s compensation laws) which the officers, agents and employees of the appointing member enjoy within the territory of that member whether within or without the territory of the appointing member when they are acting within the scope of their authority or in the course of their employment.

 Personnel employed or appointed directly by a joint agency shall be qualified for participation in the South Carolina Retirement System, with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality, if they are residents of this State.

HISTORY: 1980 Act No. 491, Section 14.

**SECTION 6‑16‑140.** Annual report.

 Each joint agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to each member. Each report shall set forth a complete operating and financial statement covering the operations of the joint agency during the year. The joint agency shall cause an audit of its books of record and accounts to be made at least once in each year by a certified public accountant and the cost may be treated as a part of the cost of construction of a project or otherwise as part of the expense of administration of a project covered by such audit.

HISTORY: 1980 Act No. 491, Section 15.

**SECTION 6‑16‑150.** Board may enter contracts and accept grants and loans.

 The board of directors of a joint agency may make application and enter into contracts for and accept grants in aid and loans from the federal and state governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility or participating in any research or development program or performing any function which any of the members of the joint agency may be authorized by general or local law to provide or perform.

 In order to exercise the authority granted by this section, the board of directors of a joint agency may:

 (a) Enter into and carry out contracts with the state or federal government or any agency or institution under which such government, agency or institution grants financial or other assistance to the member or joint agency;

 (b) Accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;

 (c) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans;

 (d) Make expenditures from any funds so granted.

HISTORY: 1980 Act No. 491, Section 16.

**SECTION 6‑16‑160.** Eminent domain.

 Any joint agency shall possess the power of eminent domain within the jurisdictional limits of any of its members in accordance with Section 5‑7‑50 and Chapter 2 of Title 28 of the 1976 Code in order to effectuate the purposes of this chapter and shall exercise such power in accordance with Chapter 2 of Title 28 of the 1976 Code.

HISTORY: 1980 Act No. 491, Section 17.

**SECTION 6‑16‑170.** Enumerated powers deemed supplemental to existing laws.

 The foregoing sections shall be deemed to provide an additional method for doing the things authorized and shall be deemed and construed to be supplemental to powers conferred by existing laws and shall not be regarded in derogation of any powers now existing. If any provisions of this chapter are inconsistent with the provisions of other general, special or local laws, the provisions of this chapter shall be controlling.

HISTORY: 1980 Act No. 491, Section 18.

**SECTION 6‑16‑180.** Chapter to be liberally construed.

 The provisions of this chapter shall be liberally construed.

HISTORY: 1980 Act No. 491, Section 19.

**SECTION 6‑16‑190.** Waiver of immunity from suit.

 The General Assembly waives and withdraws from the joint agencies authorized by this chapter their immunity from suit of every kind and description whether the suit is in tort, contract or otherwise when the suits arise out of or are in any way connected with the development, ownership, operation, maintenance or otherwise of a project or the doing, or failure to do, of anything authorized by this chapter.

HISTORY: 1980 Act No. 491, Section 20.