

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 120

*An Act to amend and reenact §§ 1 and 2, as amended, §§ 3 through 6, §§ 10 and 11, as amended, §§ 13, 22 and 32, § 45, as amended, and §§ 48 and 49 of Chapter 66 of the Acts of Assembly of 1960, relating to the Hampton Roads Sanitation District.*

[S 654]

Approved March 15, 2004

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 1 and 2, as amended, §§ 3 through 6, §§ 10 and 11, as amended, §§ 13, 22 and 32, § 45, as amended, and §§ 48 and 49 of Chapter 66 of the Acts of Assembly of 1960 are amended and reenacted as follows:**

§ 1. The creation of the Hampton Roads Sanitation District is hereby ratified, validated and confirmed, and said District shall embrace all the territory within the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg; the Counties of Gloucester, Isle of Wight, James City, *King and Queen*, King William, Mathews, Middlesex and York; and the Town of Urbanna. Territory may be added to the District as hereinafter provided in this act.

For the purpose of this section the territory of a county included within the District shall include all the territory lying within the boundaries of any town in the county.

Said District shall constitute a political subdivision of Commonwealth established as a governmental instrumentality to provide for the public health and welfare.

§ 2. The functions, affairs and property of the Hampton Roads Sanitation District shall be managed and controlled by a commission, known as the "Hampton Roads Sanitation District Commission," consisting of eight members appointed by the Governor. The Commission and the term of each such member shall continue until his successor shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of four years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Commission shall be eligible for reappointment without limitation as to the number of terms that may be served. Members of the Commission may be suspended or removed by the Governor at his pleasure.

At the time of their appointment, one of the members of the Commission, and each of his successors, shall be residents of the territory in the District within the City of Norfolk, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Virginia Beach, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Newport News, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Hampton, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Chesapeake, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Suffolk or Isle of Wight County, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Williamsburg or James City County or York County or the City of Poquoson or Gloucester County or King William County or Mathews County or Middlesex County or the Town of Urbanna, *or King and Queen County*, and one of the members, and each of his successors, shall be residents of the territory in the District within the City of Portsmouth. Any member who shall cease to reside within the territory from which he was appointed shall thereupon be disqualified from holding office as a member of the Commission and the vacancy thus created shall be filled by appointment by the Governor for the balance of the unexpired term.

§ 3. The Commission shall annually elect one of its members as chairman and another as vice chairman. The Commission shall appoint a secretary, who may or may not be a member of the Commission, and a treasurer, who shall not be a member of the Commission. The compensation of the secretary and of the treasurer shall be fixed by the Commission. The secretary and the treasurer shall serve at the pleasure of the Commission.

The secretary shall keep a record of the proceedings of the Commission and shall be custodian of all books, documents and papers filed with the Commission and of the minute book or journal of the Commission and of its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Commission and to give certificates under the official seal of the Commission to the effect that such copies are true copies, and all persons dealing with the Commission may rely upon such certificates.

~~Three~~ **Four** members of the Commission shall constitute a quorum and the affirmative vote of ~~three~~ **four** members shall be necessary for any action taken by the Commission. No vacancy in the

membership of the Commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the Commission.

§ 4. Each member of the Commission shall, before entering upon the discharge of his duties, take and subscribe the oath of office required by § 34 of the *Article II, § 7, Constitution of Virginia (1971)*, and give bond payable to the District in form approved by the Attorney General, in such penalty as shall be fixed from time to time by the Governor, with some surety or guaranty company duly authorized to do business in the Commonwealth and approved by the Governor, as security, conditioned upon the faithful discharge of his duties. *Each such Commissioner shall be covered by a public official's liability policy in the amount of at least \$1,000,000, with a \$10,000 deductible available through the Commonwealth.* The premium of such ~~bonds~~ *insurance policies* shall be paid by the Commission.

§ 5. The members of the Commission shall receive no salary, but shall be paid their necessary traveling and other expenses incurred in attendance upon meetings of the Commission or while otherwise engaged in the discharge of their duties and the same sum per diem for each day or portion thereof in which they are engaged in the performance of such duties as is paid the members of the ~~State Highway Commission~~ *Commonwealth Transportation Board*.

§ 6. Regular meetings of the Commission shall be held at least once every month at such time and place as the Commission shall from time to time prescribe. Special meetings of the Commission shall be held upon ~~one day's~~ *mailed such notice; or actual notice otherwise given;* to each member of the Commission upon call of the chairman or of any two members of the Commission, at such time and at such place within the District as such notice may specify, or at such other time and place with or without notice as all of the members of the Commission may expressly approve *as required by the Virginia Freedom of Information Act*.

§ 10. The Commission is hereby authorized and empowered:

(a) to adopt bylaws and to make rules and regulations for the management of its affairs and the conduct of its business;

(b) to adopt an official seal and alter the same at pleasure;

(c) to sue and to be sued;

(d) to construct, and to improve, extend, enlarge, reconstruct, maintain, equip, repair and operate a sewage disposal system or systems, enter within or without or partly within and partly without the corporate limits of the District, and to construct sewer improvements within the corporate limits of the District;

(e) to issue revenue bonds, notes or other obligations of the District for any of its authorized purposes, payable solely from the special funds provided under the authority of this act and pledged for their payment, all as provided in this act;

(f) to fix and collect rates, fees and other charges for the services and facilities furnished by any such sewage disposal system or sewer improvements, and to fix and collect charges for making connections;

(g) to acquire in the name of the District, either by purchase, lease, grant, or the exercise of the right of eminent domain, such lands, structures, property, rights, rights of way, easements, franchises and other interests in or relating to lands, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, improvement, extension, enlargement or operation of any sewage disposal system or sewer improvements, and to hold and dispose of all real and personal property under its control;

(h) to employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, managers, and such other officers, employees and agents as may be necessary in its judgment, and to fix their compensation;

(i) to exercise jurisdiction, control and supervision over any sewage disposal system or systems or sewer improvements operated or maintained by the Commission and to make and enforce such rules and regulations for the maintenance and operation of any such sewage disposal system or systems or sewer improvements as may, in the judgment of the Commission, be necessary or desirable for the efficient operation of any such system or improvements and for accomplishing the purposes of this act;

(j) to enter on any lands, water or premises located within or without the District to make surveys, borings, soundings or examinations for the purposes of this act;

(k) to construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipelines in, along or under any streets, alleys, highways or other public places within or without the District; in so constructing its facilities, it shall see that the public use of such streets, alleys, highways, and other public places is not unnecessarily interrupted or interfered with and that such streets, alleys, highways and other public places are restored to their former usefulness and condition within a reasonable time; to this end the Commission shall cooperate with the Commonwealth Transportation Board and the appropriate officers of the respective counties, cities and towns having an interest in such matters;

(l) to restrain, enjoin or otherwise prevent any county, city, town or political subdivision and any person or corporation, public or private, from discharging into any waters within the District, any sewage, industrial wastes or other refuse which would contribute or tend to contribute to the pollution of

such waters, and to restrain, enjoin or otherwise prevent the violation of any provision of this act or of any resolution, rule or regulation adopted pursuant to the powers granted by this act;

(m) to use and connect with any sewage disposal system or sewer improvement within the District and, if deemed necessary by the Commission to close off and seal any outlets and outfalls therefrom;

(n) subject to such provisions and restrictions as may be set forth in the resolution authorizing any revenue bonds or in the trust agreement hereinafter mentioned securing the same, to enter into contracts with the United States of America or any agency or instrumentality thereof, or with any county, city, town or political subdivision or any sanitary district, private corporation, copartnership, association or individual providing for or relating to the treatment and disposal of sewage;

(o) to receive and accept from the United States of America or any agency or instrumentality thereof grants for or in aid of the planning, construction or financing of any sewage disposal system or sewer improvements, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(p) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(q) to do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contracts with any persons;

(r) to execute any and all instruments and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the Commission or to carry out the powers expressly given in this act; and

(s) to seek civil penalties or civil charges against owners who have been charged with violation of or found to be in violation of the pretreatment standards incorporated in the permit or other requirements of the District's approved industrial waste control program. The penalties which the District may seek, and the procedures to be followed by the District, shall be the same as those set forth for the State Water Control Board, as set forth in § 62.1-44.32 of the Code of Virginia.

1. For purposes of this subsection, the term "owner" shall include the definition contained in § 9 (i) and, in addition, any corporate officer designated in the permit issued by the District, if any.

2. With the consent of any owner who has violated ~~an~~ a provision of this subsection, or is charged by the District with having violated the provision of this subsection, the District may provide, in an order issued by it against such owner, for the payment of civil charges for such violations in specific sums not to exceed ~~\$10,000~~ *those set forth in § 62.1-44.32 of the Code of Virginia* for each violation. Each day of violation shall constitute a separate offense. Such civil charges shall be instead of any appropriate civil or criminal penalty imposed under the provisions of this subsection.

§ 11. (a) The Commission is hereby authorized and empowered to acquire by purchase, lease, grant or conveyance such lands, structures, property, rights, rights of way, easements, franchises and other interests in or relating to lands, including lands lying under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any sewage disposal system or sewer improvements, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

All public agencies and commissions of the Commonwealth with the approval of the Governor and all counties, cities, towns and political subdivisions, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the District at the request of the Commission upon such terms and conditions as may be mutually agreed upon, without the necessity for any advertisement, order of court or other action or formality, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Commission, including public highways and other real property already devoted to public use.

(b) *The Commission is also hereby authorized and empowered to acquire by condemnation or eminent domain such lands, structures, property rights, rights-of-way, easements, franchises and other interests in or relating to lands, including lands lying under water and riparian rights, deemed necessary or convenient for the construction and operation of any sewage disposal system or sewer improvements.* The powers of condemnation or eminent domain conferred on the Commission by this act shall be exercised by the Commission pursuant to the provisions of ~~Chapter 4, Title 25 25.1, Chapter 1 through 4, inclusive, of the Code of Virginia, 1950, as amended, to the extent that such provisions may be applicable, and subject to the provisions of § 25-233 of said Code as now enacted or as hereafter amended or reenacted;~~ provided, however, that the Commission may ~~exercise such power~~ proceed pursuant to the provisions of Article 5 7 (§ 33.1-89 et seq.) of Chapter 1 of Title ~~33 33.1 of the Code of Virginia, 1950, as enacted or as hereafter amended or reenacted,~~ for the procurement of rights of way for sewer lines and sites for pumping stations; ~~subject, however, to the provisions of § 25-233 of said Code.~~

(c) Title to any property acquired by the Commission shall be taken in the name of the District.

(d) The Commonwealth with the approval of the Governor hereby consents to the use of any lands or property owned by the Commonwealth including lands lying under water, which are deemed by the Commission to be necessary for the construction or operation of any sewage disposal system or sewer

improvements.

§ 13. The principal of and the interest on revenue bonds issued under the provisions of this act shall be payable solely from the funds therein provided for such payment. The bonds of each issue shall be dated, ~~shall bear interest at such rate or rates not exceeding six per centum (6%) per annum,~~ shall mature at such time or times not exceeding ~~forty~~ 40 years from their date or dates, as may be determined by the Commission, and may be made redeemable before maturity, at the option of the Commission, at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds; ~~provided, however, that any bonds of more than ten years maturity shall be made redeemable before maturity, at the option of the Commission, at such price or prices and under such term and conditions as may be fixed by the Commission prior to the issuance of the bonds.~~ The Commission shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such person or persons as at the actual time of the execution of such bond shall be the proper officer or officers to sign such bond although at the date of such bond such person or persons may not have been such officer or officers. ~~Notwithstanding any other provisions of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth.~~ The bonds may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Commission may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the District, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six ~~per centum (6%)~~ percent per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values excluding, however, from such computation, the amount of any premium to be paid on the redemption of any bonds prior to maturity.

§ 22. The Commission ~~shall~~ may, in the resolution providing for the issuance of revenue bonds or in the trust agreement securing the same, ~~covenant to fix the schedule of rates, fees and other charges for the use of, and for the services and facilities furnished or to be furnished by, the sewage disposal system or systems and the sewer improvements, if any, for which such bonds are to be issued, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or may use any such sewage disposal system or sewer improvements.~~ The Commission may revise such ~~schedule of rates, fees and charges from time to time.~~ Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times (a) to pay the cost of maintaining, repairing and operating such sewage disposal system or systems and such sewer improvements, if any, including reserves for such purpose and for renewals and replacements and necessary extensions and additions to the sewerage system, (b) to pay the principal of and the interest on such revenue bonds as the same shall become due and to provide reserves therefor, and (c) to provide a margin of safety for making such payments. The Commission shall charge and collect the rates, fees and charges so fixed or revised, and, except as hereinafter provided in this act, such rates, fees and charges shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the Commonwealth or of any district or other political subdivision of the Commonwealth.

Such rates, fees and charges shall be just and equitable and may be based or computed either upon the quantity of water used or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewerage system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors. Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than a public water system may be determined by gauging or metering at the expense of the owner, tenant or occupant of such premises or in any other manner as directed and approved by the Commission. Premises not discharging the entire volume of water into the sanitary sewers shall be allowed a reduction in the charges provided the customer installs facilities, in a manner satisfactory to the Commission, for measuring the volume either discharged or not discharged into the sanitary sewers.

The Commission shall fix and determine the time or times when and the place or places where such rates, fees and charges shall be due and payable and may require that such rates, fees and charges shall be paid in advance for periods of not more than six months. A copy of the schedules of all rates, fees

and charges in effect shall at all times be kept on file at the principal office of the Commission, and such schedules shall at all reasonable times be open to public inspection.

In cases where the character of the sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewage disposal system, an additional charge may be made therefor, or the Commission may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the Commission before discharging such sewage, into the sewerage system or prohibit the discharge, directly or indirectly, of such sewage into the sewerage system.

§ 32. The Commission shall have no power to mortgage, pledge, encumber or otherwise dispose of any part of the sewerage system of the District, except such part or parts thereof as may be no longer necessary or useful for the purposes of the Commission; *however, the Commission may enter into lease purchase and installment purchase agreements for equipment and fixtures and grant security interests therein.* The provisions of this section shall be deemed to constitute a contract with the holders of bonds of the District. The sewerage system of the District shall be exempt from any and all liability which may be incurred by, or imposed upon, the Commission or any county, city, town or political subdivision.

§ 45. All construction contracts, except in cases of emergency, ~~over ten thousand dollars~~ that the Commission may let for construction or materials in connection with such construction shall be let after public advertising *and in accordance with the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).* The Commission shall advertise for bids for the work or materials at least ~~ten~~ 10 days prior to the letting of any contracts therefor. The advertisement shall state the place where bidders may examine the plans and specifications and the time and place where bids for the work or materials will be opened. Each bidder shall accompany his bid with bid bond or other security payable to the Commission, for a reasonable sum to be fixed by the Commission, as a guarantee that if the contract is awarded to him, he will enter into a contract with the Commission for doing the work or furnishing the materials. The contract shall be let to the lowest responsible bidder, and the successful bidder shall give bond or other security for the faithful performance of the contract, in such form and amount as the Commission may require. The Commission is authorized to reject any and all bids. In the event that all bids are rejected, the Commission shall advertise for new bids as in the first instance. All bids and contracts shall be public records. The Commission is authorized, in its discretion, to do any and all such work by force account.

§ 48. The circuit court of the county or the corporation or circuit court of the city in which any territory proposed to be added to the District is located, upon receipt of a petition of the Commission or a petition of the governing body of the territory proposed to be added to the District or a petition signed by not less than ~~twenty-five per centum (25%)~~ 25 percent of the qualified voters residing within the limits of the territory proposed to be added to the District, or a petition signed by the owners of not less than ~~twenty-five per centum (25%)~~ 25 percent by area of the real property within the territory proposed to be added to the District, shall enter an order fixing the date and hour and place for a public hearing on the question of the addition of territory to the District, which order shall set forth a copy of the petition, excluding signatures, and shall describe the territory proposed to be added to the District.

A copy of such order shall be published once a week for three consecutive weeks in a newspaper of general circulation within the territory proposed to be added to the District to be designated by such court and posted in such public places within such territory as shall be designated by such court. The first of such publications and such posting shall occur not less than ~~thirty~~ 30 days prior to the date fixed for such hearing.

At the time and place stated in such order, or to which an adjournment may be taken by the court, the court shall receive and hear any objections of interested persons to the addition of such territory to the District or to any defect in the petition and the court may then or thereafter grant such petition with such modifications, if any, as it may deem advisable and which do not enlarge the territory proposed to be added to the District. All such objections shall be made in writing, in person or by attorney, and filed with the court at or before the time or adjourned time of such hearing. Any such objections not so made shall be considered as waived.

If upon such hearing the court shall be of the opinion that any area proposed to be added to the District will not be benefited by the District, then said area shall not be included in the District. The order altering the boundaries of and enlarging the District shall prescribe the territory to be added to the District and fix the boundaries thereof.

From an order enlarging the District under the provisions of this section an appeal shall lie to the Supreme Court of Appeals Virginia in the manner provided by law.

~~If the city of Hampton, Newport News, Norfolk or South Norfolk shall hereafter annex any territory not then within the District to said city, such territory shall become a part of and be embraced within the District at such time as such annexation shall become effective.~~

§ 49. Nothing in this act shall be construed to affect, impair, repeal or supersede in any way the powers of the State Water Control Board under the provisions of Chapter 2 3.1, Title 62 62.1, Code of Virginia, 1950, as amended.