

SENATE, No. 1903

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 4, 2000

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

Senator Bennett

SYNOPSIS

Provides mechanism for provision of municipal trash collection services or reimbursement to apartment buildings and complexes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/15/2000)

S1903 SINGER, GORMLEY

2

1 AN ACT concerning the provision of solid waste collection services to
2 apartment complexes, supplementing Title 40 of the Revised
3 Statutes and amending P.L.1976, c.68.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) For the purposes of sections 1 through 5 of
9 P.L. , c. (C.) (pending before the Legislature as this bill):

10 "Qualified apartment building or garden apartment complex" means
11 any building or structure or complex of buildings or structures in
12 which five or more housing units are rented or leased or offered for
13 rental or lease for residential purposes except hotels, motels or other
14 guesthouses serving transient or seasonal guests.

15 "Solid waste collection services" means the collection and disposal
16 of solid waste.

17 "Total cost of services" means the cost that would be incurred by
18 a municipality in providing solid waste collection services to a
19 qualified apartment building or garden apartment complex in the same
20 manner as the municipality provides those services, streetside, to other
21 residents of the municipality.

22

23 2. (New section) a. Except as otherwise provided in subsection
24 b. of this section, when solid waste collection services are provided to
25 qualified private communities within a municipality pursuant to
26 P.L.1989, c.299 (C.40:67-23.2 et seq.), the governing body of that
27 municipality shall reimburse a qualified apartment building or garden
28 apartment complex for the actual cost to the qualified apartment
29 building or garden apartment complex of providing that service, but
30 not more than the amount that the municipality would have expended
31 on the solid waste collection services if provided by the municipality
32 directly to the qualified apartment building or garden apartment
33 complex, calculated as if the apartment units were located along public
34 roads and streets. Alternatively, the municipality shall provide the
35 solid waste collection services in the same manner as provided to the
36 residents of the municipality who live along public roads and streets.

37 b. (1) Nothing in P.L. , c. (C.) (pending before the
38 Legislature as this bill) shall require a municipality to operate any
39 municipally owned or leased vehicles or other equipment, or to
40 provide any of the services enumerated in subsection a. of this section,
41 upon, along or in relation to any road or street in a garden apartment
42 complex which either (a) is not accepted for dedication to public use
43 or (b) does not meet all municipal standards and specifications for such

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 dedication, except for width.

2 (2) In order to be eligible for solid waste collection services or
3 reimbursement for those services, a qualified apartment building or
4 garden apartment complex shall be required to comply with all
5 recycling requirements generally applicable to all other residential
6 properties within the municipality. If a certified public works manager
7 employed by the municipality determines that a qualified apartment
8 building or garden apartment complex is not in compliance with the
9 municipal recycling requirements, then the municipality may terminate
10 solid waste and recyclables collection services to the building or
11 complex, or reduce its reimbursement payments by an amount equal
12 to the landfill or disposal costs that would be saved if the recyclables
13 were separated from the other solid waste. No solid waste collection
14 shall be terminated or reimbursement amount shall be reduced
15 pursuant to this subsection unless the landlord has been sent written
16 notice of noncompliance and been given 30 days' written notice of the
17 proposed reimbursement amount reduction. During those 30 days the
18 landlord shall have the opportunity to bring the building or complex
19 into compliance with the municipal recycling requirements, and have
20 that compliance certified by a certified public works manager
21 employed by the municipality.

22 c. The Director of the Division of Local Government Services in
23 the Department of Community Affairs, for the purpose of calculating
24 the allowable operating appropriations before exceptions pursuant to
25 section 2 of P.L.1976, c.68 (C.40A:4-45.2), shall provide a cap base
26 adjustment to the total general appropriations of the local budget year
27 prior to the year in which the services are first provided by the
28 municipality for the full amount appropriated pursuant to P.L. , c.
29 (C.) (pending before the Legislature as this bill).

30 d. Reimbursement or provision of services to a qualified apartment
31 building or garden apartment complex, when provided to qualified
32 private communities within the municipality pursuant to P.L.1989,
33 c.299 (C.40:67-23.2 et seq.), shall commence for local budget year
34 2002 in municipalities operating on a calendar year basis and local
35 budget year 2003 in municipalities operating on a State fiscal year
36 basis; provided that reimbursement payments shall be phased-in over
37 a five-year period pursuant to section 4 of P.L. , c. (C.)
38 (pending before the Legislature as this bill).

39 e. No municipality shall be liable for the provision of any solid
40 waste collection services or for the payment of any reimbursement
41 amounts with regard to solid waste collection services to any qualified
42 apartment building or garden apartment complex except as specifically
43 provided pursuant to P.L. , c. (C.) (pending before the
44 Legislature as this bill).

45

46 3. (New section) a. Pursuant to section 2 of P.L. , c. (C.)

1 (pending before the Legislature as this bill) and section 4 of P.L. , c.
2 (C.) (pending before the Legislature as this bill), when a
3 municipal governing body determines not to provide solid waste
4 collection services to a qualified apartment building or garden
5 apartment complex, it shall enter into a written agreement with the
6 qualified apartment building or garden apartment complex to annually
7 reimburse the qualified apartment building or garden apartment
8 complex in an amount not to exceed the cost that would be incurred
9 by the municipality in providing those services.

10 b. The amount to be reimbursed to the qualified apartment building
11 or garden apartment complex shall be used by the qualified apartment
12 building or garden apartment complex to pay for the solid waste
13 collection service that the municipality chooses not to provide. The
14 municipal governing body shall reimburse the qualified apartment
15 building or garden apartment complex for the actual cost to the
16 qualified apartment building or garden apartment complex of providing
17 that service, but not more than the amount that the municipality would
18 have expended on the solid waste collection services if provided by the
19 municipality directly to the qualified apartment building or garden
20 apartment complex, calculated as if the apartment units were located
21 along public roads and streets. The amount of reimbursement for
22 services paid by the municipality shall be distributed among the
23 qualified tenants of the qualified apartment building or garden
24 apartment complex pursuant to section 5 of P.L. , c. (C.)
25 (pending before the Legislature as this bill).

26 c. An agreement entered into pursuant to this section shall provide
27 for an accounting by the qualified apartment building or garden
28 apartment complex of the use of the money paid over to it by the
29 municipality, and for the refunding to the municipality of any payments
30 in excess of the amounts actually expended or contractually committed
31 by the qualified apartment building or garden apartment complex
32 during the accounting period in order to provide for the solid waste
33 collection services covered by the agreement.

34
35 4. (New section) Pursuant to a reimbursement agreement entered
36 into in lieu of providing streetside solid waste collection services, a
37 municipality shall reimburse the landlord of a qualified apartment
38 building or garden apartment complex for a portion of the cost of
39 providing services commencing in local budget year 2002 for
40 municipalities operating on a calendar year basis, and in local budget
41 year 2003, for municipalities operating on a State fiscal year basis, in
42 the following manner:

43 2002 or 2003, as appropriate, ...20% of the total cost of services in
44 2002 or 2003, as appropriate

45 2003 or 2004, as appropriate, ...40% of the total cost of services in
46 2003 or 2004, as appropriate

1 2004 or 2005, as appropriate, ...60% of the total cost of services in
2 2004 or 2005, as appropriate

3 2005 or 2006, as appropriate, ...80% of the total cost of services in
4 2005 or 2006, as appropriate

5 The total cost of services in each local budget year shall be
6 determined pursuant to section 3 of P.L. , c. (C.) (pending
7 before the Legislature as this bill). In local budget year 2006 or 2007,
8 as appropriate, and for each local budget year thereafter, the
9 municipality shall either provide the solid waste collection services
10 pursuant to section 2 of P.L. , c. (C.) (pending before the
11 Legislature as this bill) or enter into a written agreement to annually
12 reimburse the qualified private community pursuant to section 3 of
13 P.L. , c. (C.) (pending before the Legislature as this bill).

14

15 5. (New section) a. For the purposes of this section:

16 "Qualified tenant" means a person who actually had rent paid during
17 the period of time for which a reimbursement amount is received by a
18 landlord, regardless of whether that person is currently a tenant of the
19 landlord; provided that any such tenant who does not occupy a rental
20 unit operated by the landlord at the time the reimbursement amount is
21 received has provided the landlord with a current forwarding address.
22 If a former tenant fails to provide a landlord with a current forwarding
23 address, then that tenant's share of the reimbursement amount shall be
24 distributed among, or credited to, the other qualified tenants in the
25 same proportion as the original distribution or credit was made
26 pursuant to subsection b. of this section.

27 "Reimbursement amount" means a sum of money paid by a
28 municipality to a landlord of a qualified apartment building or garden
29 apartment complex pursuant to a written agreement under section 3 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31 "Rent paid" means rent actually paid, and also includes rent payable
32 but lawfully withheld pursuant to an order of court or an order of a
33 local rent control or rent leveling board. Rent paid shall not include
34 any amount held by a landlord as a security deposit, regardless of
35 whether the security deposit is eventually used as a rent payment.

36 b. When an annual reimbursement amount is received by the
37 landlord of a qualified apartment building or garden apartment
38 complex pursuant to section 3 of P.L. , c. (C.) (pending
39 before the Legislature as this bill), the reimbursement amount shall be
40 distributed to each qualified tenant in proportion to the amount of rent
41 paid by that tenant to the total amount of rent collected by the landlord
42 for the 12-month period, or such other period, for which the
43 reimbursement amount is paid by the municipality to the landlord. The
44 reimbursement amount, at the option of the landlord, shall be credited
45 either as a rent reduction or paid directly to the qualified tenants
46 within 15 business days of receipt by the landlord.

1 c. In any action for possession instituted by a landlord who has
2 failed to comply with the provisions of this section, no judgment for
3 possession shall be entered until there has been compliance. The court
4 shall continue such case for up to 90 days and if there has not been
5 compliance within such period, the action shall be dismissed.

6 d. A qualified tenant or group of qualified tenants may bring a
7 summary action in municipal court against any landlord who fails to
8 comply with the provisions of this section. The municipal court may
9 require a landlord to pay treble damages, along with reasonable
10 attorney fees and costs, to any qualified tenant, upon a finding that the
11 landlord failed to properly distribute or credit any reimbursement
12 amount within 15 business days of the landlord's receipt of the
13 reimbursement amount.

14 e. The Director of the Division of Local Government Services in
15 the Department of Community Affairs, in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), shall adopt and promulgate such rules and regulations as may be
18 necessary for the implementation of this section.

19
20 6. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read
21 as follows:

22 3. In the preparation of its budget a municipality shall limit any
23 increase in said budget to 5% or the index rate, whichever is less, over
24 the previous year's final appropriations subject to the following
25 exceptions:

26 a. (Deleted by amendment, P.L.1990, c.89.)

27 b. Capital expenditures, including appropriations for current
28 capital expenditures, whether in the capital improvement fund or as a
29 component of a line item elsewhere in the budget, provided that any
30 such current capital expenditure would be otherwise bondable under
31 the requirements of N.J.S.40A:2-21 and 40A:2-22;

32 c. (1) An increase based upon emergency temporary appropriations
33 made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event
34 which immediately endangers the health, safety or property of the
35 residents of the municipality, and over which the governing body had
36 no control and for which it could not plan and emergency
37 appropriations made pursuant to N.J.S.40A:4-46. Emergency
38 temporary appropriations and emergency appropriations shall be
39 approved by at least two-thirds of the governing body and by the
40 Director of the Division of Local Government Services, and shall not
41 exceed in the aggregate 3% of the previous year's final current
42 operating appropriations.

43 (2) (Deleted by amendment, P.L.1990, c.89.)

44 The approval procedure in this subsection shall not apply to
45 appropriations adopted for a purpose referred to in subsection d. or j.
46 below;

S1903 SINGER, GORMLEY

7

- 1 d. All debt service, including that of a Type I school district;
- 2 e. Upon the approval of the Local Finance Board in the Division
3 of Local Government Services, amounts required for funding a
4 preceding year's deficit;
- 5 f. Amounts reserved for uncollected taxes;
- 6 g. (Deleted by amendment, P.L.1990, c.89.)
- 7 h. Expenditure of amounts derived from new or increased
8 construction, housing, health or fire safety inspection or other service
9 fees imposed by State law, rule or regulation or by local ordinance;
- 10 i. Any amount approved by any referendum;
- 11 j. Amounts required to be paid pursuant to (1) any contract with
12 respect to use, service or provision of any project, facility or public
13 improvement for water, sewerage, parking, senior citizen housing or
14 any similar purpose, or payments on account of debt service therefor,
15 between a municipality and any other municipality, county, school or
16 other district, agency, authority, commission, instrumentality, public
17 corporation, body corporate and politic or political subdivision of this
18 State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60
19 through 13:17-76) by a constituent municipality to the intermunicipal
20 account; (3) any lease of a facility owned by a county improvement
21 authority when the lease payment represents the proportionate amount
22 necessary to amortize the debt incurred by the authority in providing
23 the facility which is leased, in whole or in part; and (4) any repayments
24 under a loan agreement entered into in accordance with the provisions
25 of section 5 of P.L.1992, c.89;
- 26 k. (Deleted by amendment, P.L.1987, c.74.)
- 27 l. Appropriations of federal, county, independent authority or
28 State funds, or by grants from private parties or nonprofit
29 organizations for a specific purpose, and amounts received or to be
30 received from such sources in reimbursement for local expenditures.
31 If a municipality provides matching funds in order to receive the
32 federal, county, independent authority or State funds, or the grants
33 from private parties or nonprofit organizations for a specific purpose,
34 the amount of the match which is required by law or agreement to be
35 provided by the municipality shall be excepted;
- 36 m. (Deleted by amendment, P.L.1987, c.74.)
- 37 n. (Deleted by amendment, P.L.1987, c.74.)
- 38 o. (Deleted by amendment, P.L.1990, c.89.)
- 39 p. (Deleted by amendment, P.L.1987, c.74.)
- 40 q. (Deleted by amendment, P.L.1990, c.89.)
- 41 r. Amounts expended to fund a free public library established
42 pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;
- 43 s. (Deleted by amendment, P.L.1990, c.89.)
- 44 t. Amounts expended in preparing and implementing a housing
45 element and fair share plan pursuant to the provisions of P.L.1985,
46 c.222 (C.52:27D-301 et al.) and any amounts received by a

- 1 municipality under a regional contribution agreement pursuant to
2 section 12 of that act;
- 3 u. Amounts expended to meet the standards established pursuant
4 to the "New Jersey Public Employees' Occupational Safety and Health
5 Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
- 6 v. (Deleted by amendment, P.L.1990, c.89.)
- 7 w. Amounts appropriated for expenditures resulting from the
8 impact of a hazardous waste facility as described in subsection c. of
9 section 32 of P.L.1981, c.279 (C.13:1E-80);
- 10 x. Amounts expended to aid privately owned libraries and reading
11 rooms, pursuant to R.S.40:54-35;
- 12 y. (Deleted by amendment, P.L.1990, c.89.)
- 13 z. (Deleted by amendment, P.L.1990, c.89.)
- 14 aa. Extraordinary expenses, approved by the Local Finance Board,
15 required for the implementation of an interlocal services agreement;
- 16 bb. Any expenditure mandated as a result of a natural disaster, civil
17 disturbance or other emergency that is specifically authorized pursuant
18 to a declaration of an emergency by the President of the United States
19 or by the Governor;
- 20 cc. Expenditures for the cost of services mandated by any order of
21 court, by any federal or State statute, or by administrative rule,
22 directive, order, or other legally binding device issued by a State
23 agency which has identified such cost as mandated expenditures on
24 certification to the Local Finance Board by the State agency;
- 25 dd. Expenditures of amounts actually realized in the local budget
26 year from the sale of municipal assets if appropriated for non-recurring
27 purposes or otherwise approved by the director;
- 28 ee. Any local unit which is determined to be experiencing fiscal
29 distress pursuant to the provisions of P.L.1987, c.75
30 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible
31 municipality" as defined in section 3 of P.L.1987, c.75
32 (C.52:27D-118.26), and which has available surplus pursuant to the
33 spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et
34 seq.), may appropriate and expend an amount of that surplus approved
35 by the director and the Local Finance Board as an exception to the
36 spending limitation. Any determination approving the appropriation
37 and expenditure of surplus as an exception to the spending limitations
38 shall be based upon:
- 39 1) the local unit's revenue needs for the current local budget year
40 and its revenue raising capacity;
- 41 2) the intended actions of the governing body of the local unit to
42 meet the local unit's revenue needs;
- 43 3) the intended actions of the governing body of the local unit to
44 expand its revenue generating capacity for subsequent local budget
45 years;
- 46 4) the local unit's ability to demonstrate the source and existence

1 of sufficient surplus as would be prudent to appropriate as an
2 exception to the spending limitations to meet the operating expenses
3 for the local unit's current budget year; and
4 5) the impact of utilization of surplus upon succeeding budgets of
5 the local unit;
6 ff. Amounts expended for the staffing and operation of the
7 municipal court;
8 gg. Amounts appropriated for the cost of administering a joint
9 insurance fund established pursuant to subsection b. of section 1 of
10 P.L.1983, c.372 (C.40A:10-36), but not including appropriations for
11 claims payments by local member units;
12 hh. Amounts appropriated for the cost of implementing an
13 estimated tax billing system and the issuance of tax bills thereunder
14 pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);
15 ii. Expenditures related to the cost of conducting and
16 implementing a total property tax levy sale pursuant to section 16 of
17 P.L.1997, c.99 (C.54:5-113.5);
18 jj. Amounts expended for a length of service award program
19 pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);
20 kk. Amounts expended to provide municipal services or
21 reimbursement amounts to qualified apartment buildings and garden
22 apartment complexes for the collection and disposal of solid waste
23 generated by the residents of the qualified apartment buildings and
24 garden apartment complexes. **[This exception shall apply to all**
25 **agreements for reimbursement entered into after July 27, 1999]** This
26 subsection shall cease to be operative at the end of the first local
27 budget year in which the municipality has fully phased in its
28 reimbursement amount expenses;
29 ll. Amounts expended by a municipality under an interlocal
30 services agreement entered into pursuant to the "Interlocal Services
31 Act," P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the
32 effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing
33 body of the municipality that will receive the service may choose to
34 allow the amount of projected annual savings to be added to the
35 amount of final appropriations upon which its permissible expenditures
36 are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);
37 mm. Amounts expended under a joint contract pursuant to the
38 "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et
39 seq.) entered into after the effective date of P.L.2000, c.126
40 (C.52:13H-21 et al.). The governing body of each participating
41 municipality may choose to allow the amount of projected annual
42 savings to be added to the amount of final appropriations upon which
43 its permissible expenditures are calculated pursuant to section 2 of
44 P.L.1976, c.68 (C.40A:4-45.2).
45 (cf: P.L.2000, c.126, s.19)

1 7. This act shall take effect immediately; however, reimbursement
2 or provision of services to a qualified apartment building or garden
3 apartment complex, shall commence for local budget year 2002 for
4 municipalities operating on a calendar year basis and local budget year
5 2003 for municipalities operating on a State fiscal year basis, and
6 reimbursement payments shall be phased in over a five-year period
7 pursuant to section 4 of P.L. , c. (C.) (pending before the
8 Legislature as this bill).

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STATEMENT

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13 This bill provides the mechanism for provision of solid waste
14 collection services, or the payment of a reimbursement amount, by a
15 municipality to qualified apartment buildings and complexes. Under
16 current law, a municipality that provides various services to its
17 residential homeowners is required to provide those same services, or
18 reimbursement for those services, to certain condominiums,
19 cooperatives and other private communities. In WHS Realty
20 Company, Inc. v. Town of Morristown, 323 N.J. Super. 553 (App.
21 Div. 1999), cert. denied 162 N.J. 489 (1999), the court held, on equal
22 protection grounds, that a municipal garbage collection ordinance
23 providing service to qualified private communities could not exclude
24 apartment buildings and garden apartment complexes. This bill
25 represents a rational method for implementing the reasoning of the
26 court in a fiscally prudent manner. Under this bill municipalities have
27 the option of either directly providing services or entering into an
28 agreement to pay the landlord a reimbursement amount. The
29 reimbursement amount may be phased in over a five-year period so as
30 not to cause a drastic increase in the municipal tax rate in any single
31 budget year. The landlord would be required to comply with any
32 generally applicable municipal residential recycling requirements. The
33 bill also provides for an adjustment to the cap-base during the phase-in
34 period. The bill would apply to apartment buildings or garden
35 apartment complexes of five or more tenants and the services or
36 reimbursement would have to commence for local budget year 2002
37 in municipalities operating on the calendar year and local budget year
38 2003 for municipalities operating on the fiscal year. This delay is
39 intended to ensure that the municipalities are able to adequately plan
40 for the increased service demand, which may require the renegotiation
41 of contracts, the purchase of new equipment, the hiring of additional
42 personnel, or the negotiation of new joint or consolidated services
43 agreements.

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45 The bill requires that landlords that receive reimbursement from a
46 municipality pass those funds through to their tenants on a pro rata
basis in accordance with the tenant's share of overall rent paid for the

S1903 SINGER, GORMLEY

11

1 year. A landlord would have the option of distributing the
2 reimbursement money or providing a rent credit to the tenants. A
3 landlord that fails to distribute or credit the reimbursement amount
4 could be prevented from having a judgment for possession entered
5 against a tenant. Additionally, the landlord could be liable for treble
6 damages plus reasonable attorney fees and costs in a summary action
7 brought by a tenant or group of tenants in municipal court.