

[Second Reprint]

SENATE, No. 796

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JANUARY 24, 2008

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Delays effective date of recycling tax and adjusts allocation of moneys in the State Recycling Fund.

CURRENT VERSION OF TEXT

As amended by the Senate on March 3, 2008.



(Sponsorship Updated As Of: 1/29/2008)

1 AN ACT concerning the recycling tax on solid waste generation,
2 ²[and]² amending ²P.L.1981, c.278 and² P.L.2007, c.311², and
3 supplementing P.L.2007, c.62².

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 4 of P.L.2007, c.311 (C.13:1E-96.5) is amended to
9 read as follows:

10 4. a. (1) **[There]** Beginning on April 1, 2008, there is levied
11 upon the owner or operator of every solid waste facility a recycling
12 tax of \$3.00 per ton on all solid waste accepted for disposal or
13 transfer at the solid waste facility.

14 The recycling tax shall not be imposed on solid waste transported
15 from an in-state transfer station from which the recycling tax has
16 been levied on the owner or operator thereof to an in-state solid
17 waste facility for final disposal.

18 (a) The recycling tax shall not be imposed on the owner or
19 operator of a railroad transfer station or other facility designed
20 exclusively to transport waste on railroads.

21 (b) The recycling tax shall not be imposed on the owner or
22 operator of a sanitary landfill facility for the acceptance for disposal
23 of the ash residue resulting from the incineration of solid waste at a
24 resource recovery facility.

25 (c) The recycling tax shall not be imposed on the owner or
26 operator of a solid waste facility for the acceptance for disposal of
27 solid waste originating from out-of-state sources under a contract
28 awarded prior to December 31, 2007 if the contract does not include
29 a change-in-law or similar mechanism by which the recycling tax
30 imposed by this section may be passed through as a fee or surcharge
31 on the rates and charges set forth in the contract.

32 (d) The recycling tax shall not be imposed on the owner or
33 operator of a resource recovery facility for the acceptance for
34 disposal of solid waste originating from in-state sources under a
35 contract awarded prior to December 31, 2007 if the contract does
36 not include a change-in-law or similar mechanism by which the
37 recycling tax imposed by this section may be passed through as a
38 fee or surcharge on the rates and charges set forth in the contract.

39 The recycling tax shall be imposed on the owner or operator of a
40 solid waste facility for the acceptance for disposal of solid waste
41 originating from out-of-state sources under any contract awarded
42 after December 31, 2007.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted January 28, 2008.

²Senate floor amendments adopted March 3, 2008.

1 (2) ~~There~~ Beginning on April 1, 2008, there is levied upon
2 every solid waste collector that transports solid waste for
3 transshipment or direct transportation to an out-of-state disposal site
4 a recycling tax. The recycling tax shall be levied on the solid waste
5 collector at the rate of \$3.00 per ton on all solid waste collected for
6 transportation to a railroad transfer station or other facility designed
7 to transport waste on railroads or directly to an out-of-state disposal
8 site.

9 b. (1) Every person subject to the recycling tax shall, ~~within~~
10 ~~30 days of the effective date of this act~~ by²~~March 1, 2008~~ April
11 1, 2008², register with the director on forms prescribed by the
12 director.

13 (2) Every person subject to the recycling tax shall, on or before
14 ~~the first day of the first full fiscal quarter following the effective~~
15 ~~date of this act~~ 'July 1, 2008 July 20, 2008¹, and quarterly
16 thereafter 'with returns due the 20th day of the first month
17 following the end of the quarter¹, render a return under oath to the
18 director, on such forms as may be prescribed by the director,
19 indicating the number of tons of solid waste accepted for disposal
20 or transfer, or collected, as appropriate, and at that time shall pay
21 the full amount due.

22 c. If a return required by this section is not filed, or if a return
23 when filed is incorrect or insufficient in the opinion of the director,
24 the amount due shall be determined by the director from such
25 information as may be available. Notice of the determination shall
26 be given to the person subject to the recycling tax. The
27 determination shall finally and irrevocably fix the amount due,
28 unless the person on whom it is imposed, within 90 days after the
29 giving of the notice of the determination, shall file a protest in
30 writing as provided in R.S.54:49-18 and request a hearing, or unless
31 the director on the director's own motion shall redetermine the
32 same. After the hearing the director shall give notice of the
33 determination to the person on whom the recycling tax is imposed.

34 d. Any person subject to the recycling tax who fails to file a
35 return when due or to pay any tax when it becomes due, as herein
36 provided, shall be subject to such penalties and interest as provided
37 in the "State Tax Uniform Procedure Law," R.S.54:48-1 et seq. If
38 the director determines that the failure to comply with any provision
39 of this section was excusable under the circumstances, the director
40 may remit that part or all of the penalty as shall be appropriate
41 under the circumstances.

42 e. The director shall deposit all revenues collected pursuant to
43 this section in the State Recycling Fund established pursuant to
44 section 5 of P.L.1981, c.278 (C.13:1E-96).

45 f. In addition to the other powers granted to the director in this
46 section, the director is authorized:

1 (1) To delegate to any officer or employee of the division those
2 powers and duties as the director deems necessary to carry out
3 efficiently the provisions of this section, and the person to whom
4 the power has been delegated shall possess and may exercise all of
5 these powers and perform all of the duties delegated by the director;

6 (2) To prescribe and distribute all necessary forms for the
7 implementation of this section.

8 g. (1) Every owner or operator of a solid waste facility may
9 collect the recycling tax imposed by this section by (a) including
10 the amount of recycling tax due as a separate line item on every
11 customer bill or other statement presented to a solid waste collector
12 or solid waste generator; (b) including the amount of recycling tax
13 due as a fee or surcharge on any amount collected under a contract
14 awarded pursuant to the "Local Public Contracts Law," P.L.1971,
15 c.198 (C.40A:11-1 et seq.) or any other law for the provision of
16 solid waste collection or solid waste disposal services; or (c)
17 imposing an automatic surcharge on any tariff established pursuant
18 to law for the solid waste disposal or transfer operations of the solid
19 waste facility.

20 (2) Every solid waste collector is hereby authorized to calculate,
21 charge and collect rates, fees or surcharges from all solid waste
22 generators serviced by the solid waste collector sufficient to recover
23 the recycling tax collected by the owner or operator of the solid
24 waste facility.

25 (3) Every solid waste collector subject to the recycling tax is
26 hereby authorized to calculate, charge and collect rates, fees or
27 surcharges from all solid waste generators serviced by the solid
28 waste collector sufficient to recover the recycling tax imposed by
29 this section.

30 h. The recycling tax imposed by this section shall be governed
31 in all respects by the provisions of the "State Tax Uniform
32 Procedure Law," R.S.54:48-1 et seq., except only to the extent that
33 a specific provision of this section may be in conflict therewith.

34 i. (1) The recycling tax imposed by this section shall not be
35 imposed on the owner or operator of a materials recovery facility
36 for the acceptance of Type 13C Construction and Demolition waste,
37 provided that the facility meets or exceeds recyclable materials
38 extraction rates as established by the department.

39 (2) The recycling tax imposed by this section shall not be
40 imposed on a solid waste collector or the owner or operator of a
41 solid waste facility for the collection or acceptance for disposal or
42 transfer of residue resulting from the operations of a scrap
43 processing facility as defined in section 2 of P.L.1987, c.102
44 (C.13:1E-99.12).

45 j. The recycling tax imposed by this section shall not be
46 imposed on a solid waste collector or the owner or operator of a
47 solid waste facility for the collection or acceptance for disposal or
48 transfer of residue, provided that the residue is generated as a result

1 of the use of post-consumer waste material in the manufacture of a
2 recycled product which constitutes at least 75% of total annual sales
3 dollar volume of the products manufactured by a manufacturer in
4 this State as determined by the director.

5 k. The registration issued to any person subject to the recycling
6 tax who violates the provisions of this section may be subject to
7 revocation or suspension pursuant to section 12 of P.L.1970, c.39
8 (C.13:1E-12).

9 l. Subsections a. through k. of this section shall be without
10 effect on and after the tenth day following a certification by the
11 Director of the Division of Budget and Accounting in the
12 Department of the Treasury pursuant to subsection b. of section 6 of
13 P.L.2007, c.311 (C.13:1E-96.7).

14 (cf: P.L.2007, c.311, s.4)

15

16 ²2. Section 3 of P.L.2007, c.311 (C.13:1E-96.4) is amended to
17 read as follows:

18 3. For the purposes of this act:

19 "Beverage container" means an individual, separate, hermetically
20 sealed, or made airtight with a metal or plastic cap, bottle or can
21 composed of glass, metal, plastic or any combination thereof,
22 containing a beverage.

23 "Certified recycling coordinator" means a person or persons
24 designated as such pursuant to section 3 of P.L.1987, c.102
25 (C.13:1E-99.13) or section 6 of P.L.1987, c.102 (C.13:1E-99.16).

26 "Commissioner" means the Commissioner of Environmental
27 Protection.

28 "Department" means the Department of Environmental
29 Protection.

30 "Director" means the Director of the Division of Taxation in the
31 Department of the Treasury.

32 "Division" means the Division of Taxation in the Department of
33 the Treasury.

34 "Materials recovery" means the processing and separation of
35 solid waste utilizing manual or mechanical methods for the
36 purposes of recovering recyclable materials for disposition and
37 recycling prior to the disposal of the residual solid waste at an
38 authorized solid waste facility.

39 "Materials recovery facility" means a transfer station or other
40 authorized solid waste facility at which nonhazardous solid waste,
41 which material is not source separated by the generator thereof prior
42 to collection, is received for onsite processing and separation
43 utilizing manual or mechanical methods for the purposes of
44 recovering recyclable materials for disposition and recycling prior
45 to the disposal of the residual solid waste at an authorized solid
46 waste facility.

47 "Post-consumer waste material" means a material or product that
48 would otherwise become solid waste, having completed its intended

1 end use and product life cycle; except that "post-consumer waste
2 material" shall not include secondary waste material or materials
3 and by-products generated from, and commonly used within, an
4 original manufacturing and fabrication process.

5 "Recycled product" means any product or commodity which is
6 manufactured or produced in whole or in part from post-consumer
7 waste material and which meets the recycled content standard of the
8 United States Environmental Protection Agency as published in the
9 Comprehensive Procurement Guidelines for Products Containing
10 Recovered Material.

11 "Residue" means any solid waste generated as a result of the use
12 of post-consumer waste material in the manufacture of a recycled
13 product.

14 "Resource recovery facility" means a solid waste facility
15 constructed and operated for the incineration of solid waste for
16 energy production and the recovery of metals and other materials
17 for reuse; or a mechanized composting facility, or any other solid
18 waste facility constructed or operated for the collection, separation,
19 recycling, and recovery of metals, glass, paper, and other materials
20 for reuse or for energy production.

21 "Secondary waste material" means waste material generated after
22 the completion of a manufacturing process.

23 "Solid waste" means the same as that term is defined in section 3
24 of P.L.1970, c.39 (C.13:1E-3), except that, as used in the provisions
25 of P.L.2007, c.311 (C.13:1E-96.2 et al.), "solid waste" shall be
26 limited to the following solid waste ID types: Type 10 Municipal;
27 **[Type 12 Dry sewage sludge;]** Type 13 Bulky waste; Type 13C
28 Construction and Demolition waste; Type 23 Vegetative waste;
29 Type 25 Animal and food processing wastes; and Type 27 Dry
30 industrial waste, including Type 27-A Asbestos-containing waste,
31 as set forth in N.J.A.C.7:26-1.6 and N.J.A.C.7:26-2.13.

32 "Solid waste collection" means the activity related to pick-up and
33 transportation of solid waste from its source or location to a solid
34 waste facility or other destination.

35 "Solid waste collector" means a person engaged in the collection
36 of solid waste and registered pursuant to sections 4 and 5 of
37 P.L.1970, c.39 (C.13:1E-4 and 13:1E-5); or any municipality
38 wherein the municipal governing body has established and operates
39 a municipal service system for solid waste collection pursuant to
40 R.S.40:66-1.

41 "Solid waste disposal" means the storage, treatment, utilization,
42 processing, transfer, or final disposal of solid waste.

43 "Solid waste facilities" means and includes the plants, structures
44 and other real and personal property acquired, constructed or
45 operated or to be acquired, constructed or operated by, or on behalf
46 of, any person, public authority or county pursuant to the provisions
47 of P.L.1970, c.39 (C.13:1E-1 et seq.) or any other act, including
48 transfer stations, incinerators, resource recovery facilities, sanitary

1 landfill facilities or other plants for the disposal of solid waste, and
2 all vehicles, equipment and other real and personal property and
3 rights therein and appurtenances necessary or useful and convenient
4 for the collection or disposal of solid waste in a sanitary manner.

5 (cf: P.L.2007, c.311, s.3)²

6
7 ²3. Section 5 of P.L.1981, c.278 (C.13:1E-96) is amended to
8 read as follows:

9 5. a. The State Recycling Fund (hereinafter referred to as the
10 "fund") is established as a nonlapsing, revolving fund. The fund
11 shall be administered by the Department of Environmental
12 Protection, and shall be credited with all recycling tax revenue
13 collected pursuant to section 4 of P.L.2007, c.311 (C.13:1E-96.5),
14 and all interest received on moneys in the fund.

15 b. Moneys in the fund shall be appropriated annually solely for
16 the following purposes and no others:

17 (1) Not less than 60% of the estimated annual balance of the
18 fund shall be used for the annual expenses of a program for direct
19 recycling grants to municipalities or counties in those instances
20 where a county, at its own expense, provides for the collection,
21 processing and marketing of recyclable materials on a regional
22 basis. The amount of a direct recycling grant shall be calculated on
23 the basis of the total number of tons of recyclable materials
24 annually recycled from residential, commercial and institutional
25 sources within a particular municipality, or group of municipalities
26 in the case of a county recycling program. No direct recycling grant
27 shall exceed \$10 per ton of recyclable materials recycled. All grant
28 moneys received by a municipality shall be expended only for its
29 recycling program. The department may allocate a portion of the
30 direct recycling grant moneys as bonus grants to municipalities and
31 counties whenever a municipality or county, at its own expense,
32 provides for the collection of recyclable materials in its recycling
33 program. The department shall announce each year the total
34 amount of moneys available in the bonus grant fund.

35 A municipality may distribute a portion of its direct recycling
36 grant moneys to nonprofit groups that are located within that
37 municipality and which have contributed to the receipt of the direct
38 recycling grant, except that this distribution shall not exceed the
39 value of approved documented tonnage contributed by a nonprofit
40 group.

41 A municipality may designate any nonprofit group as a recycling
42 agent. A recycling agent shall receive that part of the municipality's
43 direct recycling grant under this paragraph that represents the
44 percentage of the grant received by the municipality due to the
45 documented tonnage contributed by that recycling agent. Moneys
46 received by a recycling agent shall be expended only for its
47 recycling program. Any moneys not used for recycling shall be
48 returned by the recycling agent to the municipality.

1 To be eligible for a direct recycling grant pursuant to this
2 paragraph, a municipality or county in the case of a county
3 recycling program shall demonstrate that the recyclable materials
4 recycled by the municipal or county recycling program were not
5 diverted from a commercial recycling program already in existence
6 on the effective date of the ordinance or resolution establishing the
7 municipal or county recycling program.

8 To remain eligible for a direct recycling grant pursuant to this
9 paragraph, a municipality or county in the case of a county
10 recycling program shall submit an annual recycling tonnage report
11 to the department in accordance with rules and regulations adopted
12 by the department therefor. Following the designation of a district
13 certified recycling coordinator pursuant to section 3 of P.L.1987,
14 c.102 (C.13:1E-99.13) and the designation of a municipal certified
15 recycling coordinator pursuant to section 6 of P.L.1987, c.102
16 (C.13:1E-99.16), the department shall not accept an annual
17 recycling tonnage report from a county or municipality unless the
18 report has been signed by a certified recycling coordinator.

19 No direct recycling grant to any municipality shall be used for
20 constructing or operating any facility for the baling of wastepaper
21 or for the shearing, baling or shredding of ferrous or nonferrous
22 materials.

23 Whenever a municipality operates a municipal service system for
24 solid waste collection pursuant to R.S.40:66-1, or provides for
25 regular solid waste collection service under a contract awarded
26 pursuant to the "Local Public Contracts Law," P.L.1971, c.198
27 (C.40A:11-1 et seq.), the amount of grant moneys received by the
28 municipality shall not be less than the annual amount of recycling
29 tax paid by the municipality pursuant to section 4 of P.L.2007,
30 c.311 (C.13:1E-96.5), except that all grant moneys received by the
31 municipality shall be expended only for its recycling program;

32 (2) 5% of the estimated annual balance of the fund shall be used
33 for State recycling program planning and program funding,
34 including the administrative expenses thereof;

35 (3) 25% of the estimated annual balance of the fund shall be
36 used to provide State aid to counties for preparing, revising, and
37 implementing solid waste management plans, including the
38 implementation of the goals of the State Recycling Plan. The
39 moneys may also be used by the counties to support community
40 oversight projects and to establish a citizens' advisory committee. A
41 county receiving State aid shall not expend more than 2% of the
42 amount of aid received in any year for the costs of administering the
43 aid. The State aid shall be distributed to the counties on the basis of
44 the total amount of solid waste generated from within each county
45 during the previous calendar year as determined by the department.
46 In the event that the department determines that any county has
47 failed to fulfill its district solid waste management planning
48 responsibilities, the department may withhold for an entire year or

1 until the county fulfills its responsibilities, all or a portion of the
2 amount of moneys that county would have received in any year
3 pursuant to this paragraph. Any moneys withheld for an entire year
4 shall be distributed among the remaining counties in the same
5 proportion as the other moneys were distributed. The moneys may
6 also be used by the counties for household hazardous waste
7 collection, and for recycling program planning and program
8 funding, including the administrative expenses thereof;

9 (4) 5% of the estimated annual balance of the fund shall be used
10 by counties for public information and education programs
11 concerning recycling activities; and

12 (5) Not more than 5% of the estimated annual balance of the
13 fund shall be used by the department to provide grants to
14 institutions of higher education **[to conduct research in]** for
15 recycling demonstration, research or education, including
16 professional training.

17 (cf: P.L.2007, c.311, s.7)²

18

19 ²4. (New section) Notwithstanding the provisions of section 10
20 of P.L.2007, c.62 (C.40A:4-45.45) to the contrary, amounts
21 required to be raised to pay the recycling tax imposed by section 4
22 of P.L.2007, c.311 (C.13:1E-96.5) shall be treated as an exclusion
23 that shall be added to the calculation of the adjusted tax levy.²

24

25 ²[2.] 5.² This act shall take effect immediately ²and section 1
26 shall be retroactive to January 13, 2008².