

ASSEMBLY, No. 289

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROONEY

1 AN ACT concerning the regulation of public utilities and energy,
2 making transfers to certain departments, and supplementing and
3 amending various Titles of the Revised Statutes.

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

7
8 1. (New section) a. The Board of Regulatory Commissioners,
9 established and named as such and transferred to the Department of
10 Environmental Protection pursuant to Reorganization Plan No.
11 002-1991, is renamed the Board of Public Utility Commissioners and,
12 together with all its functions, powers and duties, is transferred to and
13 constituted as the Board of Public Utility Commissioners in but not of
14 the Department of the Treasury. Notwithstanding this allocation, the
15 board shall be independent of any supervision or control by the
16 Department of the Treasury or by any officer thereof.

17 b. The positions of the chairperson and commissioners of the
18 Board of Regulatory Commissioners shall be continued as the
19 president and commissioners of the Board of Public Utility
20 Commissioners. The president and commissioners of the Board of
21 Public Utility Commissioners shall be appointed in the manner, and
22 shall receive such salaries as shall be provided by law.

23 c. All responsibility for the budget, fiscal and personnel matters of
24 the Board of Public Utility Commissioners, including the adoption of
25 a Code of Ethics as required by P.L.1971, c.12 (C.52:13D-12 et seq.),
26 that was transferred to the Department of Environmental Protection
27 pursuant to Reorganization Plan No. 002-1991, is transferred to the
28 Board of Public Utility Commissioners in the Department of the
29 Treasury. The board shall make annual budget recommendations to
30 the Director of the Division of Budget and Accounting, in that
31 department, for review and recommendation to the Governor for
32 approval in the same manner as proposed departmental budgets. The

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 Department of Personnel shall not reclassify any title or position
2 transferred from the Board of Regulatory Commissioners pursuant to
3 P.L. , c. (C.) (pending in the Legislature as this bill) without
4 the approval of the board.

5 d. Whenever in any law, rule, regulation, order, contract,
6 document, judicial or administrative proceeding or otherwise,
7 reference is made to the Board of Regulatory Commissioners in the
8 Department of Environmental Protection and Energy, or any of its
9 predecessors, the same shall mean and refer to the Board of Public
10 Utility Commissioners in but not of the Department of the Treasury.

11 e. The board shall not be subject to the provisions of the
12 "Executive Reorganization Act of 1969," P.L.1969, c.203
13 (C.52:14C-1 et seq.).

14

15 2. (New section) a. There is established in the Board of Public
16 Utility Commissioners the Division of Energy Planning and
17 Conservation, and all of the functions, powers and duties of the
18 Division of Energy Planning and Conservation set forth in section 9 of
19 P.L.1977, c.146 (C.52:27F-11) and transferred to the Department of
20 Environmental Protection pursuant to Reorganization Plan No.
21 002-1991 are transferred to and vested in the Division of Energy
22 Planning and Conservation in the Board of Public Utility
23 Commissioners. The Office of Energy Planning in the Department of
24 Environmental Protection, created pursuant to Reorganization Plan
25 No. 002-1991, is continued and shall perform such functions as the
26 Commissioner of Environmental Protection shall prescribe.

27 b. The Division of Energy Planning and Conservation shall be
28 under the immediate supervision of a director who shall administer the
29 work of the division under the direction of the Board of Public Utility
30 Commissioners.

31 c. Whenever in any law, rule, regulation, order, contract,
32 document, judicial or administrative proceeding or otherwise,
33 reference is made to the Division of Energy Planning and Conservation
34 in the Department of Energy, the Department of Commerce, Energy
35 and Economic Development, or in the Board of Public Utilities, or the
36 Office of Energy Planning in the Department of Environmental
37 Protection and Energy, the same shall mean and refer to the Division
38 of Energy Planning and Conservation in the Board of Public Utility
39 Commissioners.

40

41 3. (New section) a. The Advisory Council on Energy Planning and
42 Conservation, transferred to the Department of Environmental
43 Protection pursuant to Reorganization Plan No. 002-1991, together
44 with all of its functions, powers and duties as set forth in section 11 of
45 P.L.1977, c.146 (C.52:27F-13), is continued and transferred to and
46 constituted as the Advisory Council on Energy Planning and

1 Conservation in the Division of Energy Planning and Conservation in
2 the Board of Public Utility Commissioners.

3 b. Whenever in any law, rule, regulation, order, contract,
4 document, judicial or administrative proceeding or otherwise,
5 reference is made to the Advisory Council on Energy Planning and
6 Conservation in the Department of Energy, the Department of
7 Commerce, Energy and Economic Development, the Board of Public
8 Utilities, or the Department of Environmental Protection and Energy,
9 the same shall mean and refer to the Advisory Council on Energy
10 Planning and Conservation in the Division of Energy Planning and
11 Conservation in the Board of Public Utility Commissioners.

12

13 4. (New section) a. The Department of Environmental Protection
14 and Energy, denominated as such pursuant to Reorganization Plan No.
15 002-1991, is renamed the Department of Environmental Protection.

16 b. Whenever in any law, rule, regulation, order, contract,
17 document, judicial or administrative proceeding or otherwise,
18 reference is made to the Department of Environmental Protection and
19 Energy or the Commissioner thereof, the same shall mean and refer to
20 the Department of Environmental Protection and the Commissioner
21 thereof, except that whenever in any law, rule, regulation, order,
22 contract, document, judicial or administrative proceeding reference is
23 made to the energy planning or energy conservation functions, powers
24 or duties of the Department of Environmental Protection and Energy
25 or the Commissioner thereof, the same shall mean and refer to the
26 Division of Energy Planning and Conservation in the Board of Public
27 Utility Commissioners.

28

29 5. (New section) All transfers directed by this act shall be made in
30 accordance with the "State Agency Transfer Act," P.L.1971, c.375
31 (C.52:14D-1 et seq.).

32

33 6. (New section) All provisions of Reorganization Plan 002-1991
34 inconsistent with the provisions of P.L. , c. (C.) (pending
35 before the Legislature as this bill) are hereby null and void.

36

37 7. R.S.48:2-1 is amended to read as follows:

38 48:2-1. a. There is hereby established in [the Executive Branch of
39 the State Government a principal department which shall be known as
40 the Department of Public Utilities. The Board of Public Utility
41 Commissioners, hereinafter in this chapter designated as the "board,"
42 created and established by the act entitled "An act concerning public
43 utilities; to create a board of public utility commissioners and to
44 prescribe its duties and powers," approved April 21, 1911 (L.1911, c.
45 195, p. 374), as amended and supplemented, is continued and is
46 designated the head of such principal department] but not of the

1 Department of the Treasury the Board of Public Utility
2 Commissioners.

3 b. The board shall consist of [three citizens of this State] three
4 commissioners, who shall devote their entire time to the duties of the
5 board and shall not engage in any occupation, profession or other
6 gainful employment. Members of the board shall be appointed by the
7 Governor with the advice and consent of the Senate, for terms of [6]
8 six years. The terms of office of the members of the board shall
9 continue until their successors are appointed and qualified. No person
10 shall act as a member of the board until his appointment has been
11 confirmed by the Senate. Not more than two of the members of the
12 board shall be members of the same political party. All vacancies,
13 except through the expiration of term, shall be filled for the unexpired
14 term only.

15

16 8. Section 2 of P.L.1948, c.90 (C.48:2-1.1) is amended to read as
17 follows:

18 2. The Governor shall designate one of the members of the board
19 of public utility commissioners as president of such board. Any
20 member of the board so designated shall serve as such president at the
21 pleasure of the Governor designating him and until his successor has
22 been designated. The president of the board shall be its presiding
23 officer and the chief administrative officer of the [Department of
24 Public Utilities] Board of Public Utility Commissioners. The other
25 members of the board shall be eligible to appointment to fill a vacancy
26 in the office of president of the board.

27 (cf: P.L.1948, c.90, s.2)

28

29 9. R.S.48:2-2 is amended to read as follows:

30 48:2-2. a. The board shall have a common seal. It shall appoint a
31 secretary, assistant secretaries, [counsel] and such other employees as
32 it may deem necessary and fix their duties and terms of service. [It]

33 b. Notwithstanding the provisions of P.L.1944, c.20 (C.52:17A-1
34 et seq.) or any other law or order to the contrary, the board shall
35 appoint counsel for the performance of administrative functions
36 entailing the hearing of issues and determining facts in order that the
37 board may perform its regulatory functions as required by law.

38 c. The board shall fix the compensation of all officers and
39 employees, subject to the provisions of Title 11, Civil Service, except
40 where otherwise provided by statute.

41 (cf: P.L.1962, c.198, s.1)

42

43 10. R.S.48:2-3 is amended to read as follows:

44 48:2-3. The board shall have a principal office in Newark and such
45 other offices in such place and places as the [Governor] board in
46 writing may designate, and shall be provided with all necessary

1 furniture, stationery, maps, supplies and office appliances. The board
2 shall appoint a director of office management to serve such office and
3 offices and fix his duties and terms of service. It shall fix the
4 compensation of the director of office management at not less than
5 range code A-32 under the State of New Jersey Compensation Plan,
6 effective June 23, 1973. The board shall meet at such times and places
7 within this State as it may provide.

8 (cf: P.L.1974, c.82, s.1)

9
10 11. Section 2 of P.L.1951, c.326 (C.48:2-3.1) is amended to read
11 as follows:

12 2. Upon the designation by the [Governor] board of the principal
13 office of the Board of Public Utility Commissioners pursuant to
14 section 48:2-3 of the Revised Statutes, the board shall file in the office
15 of the Secretary of State a copy of such designation, and thereafter,
16 wherever reference is made in any law to the office of the board [in
17 Trenton] it shall be given effect as though it specifically referred to
18 said principal office so designated.

19 (cf: P.L.1951, c.326, s.2)

20
21 12. Section 1 of P.L.1983, c.78 (C.48:2-13.1) is amended to read
22 as follows:

23 1. Notwithstanding the provisions of any other law, rule or
24 regulation to the contrary, with respect to a rural, electric cooperative
25 which is exclusively owned and controlled by the consumers it serves,
26 the Board of Public [Utilities] Utility Commissioners shall not exercise
27 any jurisdiction or control over the rates, charges or operation of the
28 cooperative nor shall the approval of the board be required to
29 authorize or validate any mortgage or encumbrance of real property of
30 or the issuance or execution of any evidence of indebtedness by the
31 cooperative, except that the board shall retain its jurisdiction to
32 determine disputes concerning the territory served or to be served by
33 an electric cooperative.

34 (cf: P.L.1983, c.78, s.1)

35
36 13. Section 1 of P.L.1982, c.222 (C.48:2-16.4) is amended to read
37 as follows:

38 1. The Board of Public [Utilities] Utility Commissioners shall
39 establish procedures to provide for management audits to be
40 performed on a regular or irregular schedule on all or any portion of
41 the operating procedures and any other internal workings of every gas
42 or electric utility subject to its jurisdiction. In any case where the
43 board determines that an audit is necessary or desirable, it may order
44 the audit to be performed by members of its staff, or it may require
45 that the audit be performed under the supervision of designated
46 members of the board's staff by an independent management consulting

1 firm selected by the utility from a list provided by the board for the
2 audit, which list shall include the names of at least five qualified firms,
3 at least two of which shall be of nationally recognized stature. An
4 audit shall be conducted at least once every 3 years, except where the
5 board finds that an audit is unnecessary. In no event, however, shall
6 an audit be conducted less than once every 6 years. All expenses of
7 the audits shall be borne by the affected utilities. The results of each
8 audit shall be filed with the board and shall be open to public
9 inspection. Upon completion and review of an audit, if the person or
10 firm performing or supervising the audit determines that any of the
11 operating procedures or any other internal workings of the affected
12 utility are inefficient, improvident, unreasonable, negligent or an abuse
13 of discretion, the board may, after notice and opportunity for a
14 hearing, order the affected public utility to adopt such new or altered
15 practices and procedures as the board shall find to be necessary to
16 promote efficient and adequate service to meet the public convenience
17 and necessity. All reasonable and proper costs and expenses, as
18 determined by the board, of complying with any order of the board
19 pursuant to this act shall be recognized by the board for all purposes
20 as proper business expenses of the affected utility. Nothing in this act
21 shall be deemed to interfere or conflict with any powers of the board
22 or its staff to conduct an audit, investigation or review of the books,
23 records and accounts of any gas or electric utility under its
24 jurisdiction.

25 (cf: P.L.1982, c.222, s.1)

26

27 14. Section 2 of P.L.1983, c.94 (C.48:2-21.5) is amended to read
28 as follows:

29 2. The Legislature finds and declares that the Board of Public
30 [Utilities] Utility Commissioners has the statutory responsibility to fix
31 just and reasonable electric utility rates; that the board, in carrying out
32 this responsibility, must balance the interests of the public utilities,
33 their stockholders, and the consuming public; that an accident at an
34 electric generating or transmission facility, as recent experience
35 indicates, may, by reason of the extraordinary costs involved in the
36 cleanup and repair of the facility, in purchasing replacement power,
37 and in paying any damages, seriously affect the financial condition of
38 any utility that has a full or part interest in any such disabled facility;
39 and that to insure maximum protection for, and an equitable sharing
40 of costs among, the utility, its ratepayers, and its stockholders, it is
41 necessary to establish a special hearing procedure to determine the
42 party or parties at fault, if any, and to develop guidelines concerning
43 the establishment of remedies and the apportionment of financial
44 responsibility.

45 (cf: P.L.1983, c.94, s.2)

46

1 15. Section 28 of P.L.1983, c.315 (C.48:2-21.10) is amended to
2 read as follows:

3 28. The Board of Public [Utilities] Utility Commissioners shall
4 consider all expenses incurred by a public utility in complying with the
5 provisions of [P.L.[1983], c. [315] (C.[34:5A-1 et seq.]) (now
6 pending before the Legislature as Senate Committee Substitute for
7 Senate Bill No. 1670 of 1982)]P.L.1983, c.315 (C.34:5A-1 et al) as
8 a current expense of providing utility service, which shall be charged
9 to all ratepayers of the utility in the same manner as other current
10 operating expenses of providing utility service.

11 (cf: P.L.1983, c.315, s.28)

12

13 16. Section 1 of P.L.1983, c.461 (C.48:2-21.11) is amended to
14 read as follows:

15 1. In determining just and reasonable rates for any electric utility
16 pursuant to R.S.48:2-21, R.S.48:2-21.1, or section 31 of P.L.1962,
17 c.198 (C.48:2-21.2), the Board of Public [Utilities] Utility
18 Commissioners shall provide that any moneys received by the utility as
19 reimbursement for costs incurred, including those for replacement
20 energy, from any insurance carrier, or as a result of any legal action or
21 settlement shall be accounted for as moneys available to the utility.

22 (cf: P.L.1983, c.461, s.1)

23

24 17. Section 19 of P.L.1989, c.3 (C.48:2-21.15) is amended to read
25 as follows:

26 19. Any telecommunications carrier other than a telephone
27 company, that is no longer subject to taxation on personal property
28 pursuant to R.S.54:4-1 et seq., or to taxation upon its gross receipts
29 pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.) as a result of the
30 amendments to sections 2 and 3 of P.L.1940, c.4 (C.54:30A-17 and
31 54:30A-18) and to R.S.54:4-1 made in sections 2, 3 and 4 of
32 P.L.1989, c.2 shall, within 90 days of the operative date of [this act]
33 P.L.1989, c.3 (C.52:17C-1 et al.), petition the Board of Public
34 [Utilities] Utility Commissioners for a reduction in its rates. The board
35 shall institute a hearing on the petition, and at the conclusion of the
36 hearing shall determine the amount of the reduction in the rate base of
37 the telecommunications carrier which reflects the elimination of the tax
38 liability of such carrier under those amendments. The rate reduction
39 shall not take effect prior to January 1 next following enactment of
40 [this act] P.L.1989, c.3.

41 (cf: P.L.1989, c.3, s.19)

42

43 18. Section 2 of P.L.1991, c.428 (C.48:2-21.17) is amended to
44 read as follows:

45 2. As used in this act:

46 "Alternative form of regulation" means a form of regulation of

1 telecommunications services other than traditional rate base, rate of
2 return regulation to be determined by the board and may include, but
3 not be limited to, the use of an index, formula, price caps, or zone of
4 rate freedom.

5 "Assess" means, in relation to the Director of the Division of Rate
6 Counsel, the making of any assessment or statement of the
7 compensation and expense of counsel, experts and assistants employed
8 by rate counsel and billed by the Director of the Division of Rate
9 Counsel as a final agency order or determination to a local exchange
10 telecommunications company or an interexchange telecommunications
11 carrier filing a petition with the Board of [Regulatory] Public Utility
12 Commissioners pursuant to the provisions of this act.

13 "Board" means the Board of [Regulatory] Public Utility
14 Commissioners or its predecessor agency.

15 "Competitive service" means any telecommunications service
16 determined by the board to be competitive prior to the effective date
17 of this act or determined to be competitive pursuant to sections 4 or
18 5 of this act, or any telecommunications service not regulated by the
19 board.

20 "Interexchange telecommunications carrier" means a carrier, other
21 than a local exchange telecommunications company, authorized by the
22 board to provide long-distance telecommunications services.

23 "LATA" means Local Access Transport Area as defined by the
24 board in conformance with applicable federal law.

25 "Local exchange telecommunications company" means a carrier
26 authorized by the board to provide local telecommunications services.

27 "Protected telephone services" means any of the following
28 telecommunications services provided by a local exchange
29 telecommunications company, unless the board determines, after
30 notice and hearing, that any of these services is competitive or should
31 no longer be a protected telephone service: telecommunications
32 services provided to business or residential customers for the purpose
33 of completing local calls; touch-tone service or similar service; access
34 services other than those services that the board has previously found
35 to be competitive; toll service provided by a local exchange
36 telecommunications company; and the ordering, installation and
37 restoration of these services.

38 "Rate counsel" means the Division of Rate Counsel in the
39 Department of the Public Advocate acting pursuant to section 19 of
40 P.L.1974, c.27 (C.52:27E-18).

41 "Telecommunications service" means any telecommunications
42 service which is subject to regulation by the board pursuant to Title 48
43 of the Revised Statutes.

44 (cf: P.L.1991, c.428, s.2)

45

46 19. Section 4 of P.L.1988, c.163 (C.48:2-23.1) is amended to read

1 as follows:

2 4. a. The Board of Public [Utilities] Utility Commissioners, in
3 reviewing a request by a public utility to convey land utilized for the
4 purpose of the protection of a public water supply to a corporation or
5 other entity which is not subject to the jurisdiction of the board, shall
6 request the Department of Environmental Protection to review and
7 make recommendations on an assessment, prepared and submitted by
8 the utility, of the impact that the conveyance, and the prospective use
9 or uses of the land conveyed, would have on the water quality of the
10 affected public water supply, and shall require the department to assess
11 the impact of the conveyance on the State's open space, conservation,
12 and recreation requirements. The department, upon receipt of a
13 request by the board for an assessment and a review pursuant to this
14 subsection, shall prepare and submit to the board the assessment and
15 review within 12 months of the request therefor.

16 b. Any public utility requesting the board to approve a conveyance
17 of land utilized for the purpose of the protection of a public water
18 supply to a corporation or other entity which is not subject to the
19 jurisdiction of the board shall submit to the board a document setting
20 forth a detailed explanation of the prospective use or uses of the land
21 to be conveyed. The board, upon receipt of this document, may
22 require the public utility to submit any additional information which
23 the board deems appropriate.

24 (cf: P.L.1988, c.163, s.4)

25

26 20. Section 2 of P.L.1983, c.95 (C.48:2-29.37) is amended to read
27 as follows:

28 2. The Board of Public [Utilities] Utility Commissioners is hereby
29 empowered to and shall direct every electric utility to allow any
30 ratepayer who is also a cogenerator and who sells cogenerated
31 electricity to the utility and repurchases electricity from the utility a
32 credit against that ratepayer's electricity charges. The credit shall be
33 in an amount equal to the gross receipts and franchise taxes imposed
34 by P.L.1940, c.5 (C.54:30A-49 et seq.) which, except for the
35 provisions of section 2 of P.L.1940, c.5 (C.54:30A-50), would have
36 been paid by the utility on receipts received by the utility from the
37 cogenerating ratepayer in payment for cogenerated electrical energy
38 resold by the utility to the producing cogenerator where produced.
39 The credit provided by this act shall be computed during each regular
40 billing period. The credit for any given billing period may be utilized
41 by the cogenerating ratepayer against any electricity purchases up to
42 six months after said billing period.

43 (cf: P.L.1983, c.95, s.2)

44

45 21. Section 4 of P.L.1985, c.203 (C.48:2-32.2b) is amended to
46 read as follows:

1 4. This amendatory and supplementary act shall not be construed
2 as limiting notice requirements, per se, to the hearings and
3 investigations set forth in section 3 hereof but, rather, shall be
4 construed as complementing any other public utility notice
5 requirements, and other notice requirements, pertaining to the Board
6 of Public [Utilities] Utility Commissioners, which are provided by law.
7 (cf: P.L.1985, c.203, s.4)

8
9 22. Section 1 of P.L.1980, c.179 (C.48:2-32.4) is amended to read
10 as follows:

11 1. Prior to granting a public utility a proposed adjustment which
12 would result in an increase in individual rates, joint rates, tolls, charges
13 or schedules thereof, the Board of Public [Utilities] Utility
14 Commissioners or the Office of Administrative Law shall hold at least
15 one public hearing in the municipality affected by the proposed
16 adjustment. If more than one municipality is located in the service
17 area affected by the proposed adjustment, the public hearing shall be
18 held in a centrally located municipality in the affected service area.
19 Notice of any such hearing shall be furnished in the manner provided
20 for notices generally pursuant to subsections c. and d. of section 34 of
21 P.L.1962, c.198 (C.48:2-32.2). In the case of a hearing held by the
22 Office of Administrative Law, proof of service of notice by a public
23 utility shall be furnished to that office.

24 (cf: P.L.1985, c.203, s.2)

25
26 23. Section 1 of P.L.1983, c.454 (C.48:2-32.5) is amended to read
27 as follows:

28 1. For purposes of this act:

29 a. "Geographic region" means one of the following regions of the
30 State: the southern region encompassing the counties of Atlantic,
31 Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and
32 Salem; the central region encompassing the counties of Hunterdon,
33 Mercer, Middlesex, Monmouth and Somerset; and the northern region
34 encompassing those counties remaining in the State.

35 b. "Intervenor" means any person permitted to intervene by the
36 Board of Public [Utilities] Utility Commissioners or its presiding
37 officer in any proceeding.

38 c. "Objector" means any person who objects on the grounds of
39 public or private interest to the approval, determination, consent,
40 certification or authorization of any petition pending before the board.

41 d. "Petitioner" means any person who files a petition, or on whose
42 behalf a petition is made, for approval, determination, consent,
43 certification or authorization of the board.

44 e. "Respondent" means any person subject to the jurisdiction of the
45 board to whom the board issues notice instituting a proceeding or
46 investigation of the board or ordered before any pending proceeding

1 of the board or against whom a petition is filed.

2 f. "Service area" means the entire geographic area over which a gas
3 or electric light, heat or power company has a privilege or franchise
4 granted by the State or by any political subdivision of the State, in
5 accordance with the provisions of R.S.48:2-13 and R.S.48:2-14.

6 g. "Significant increase" means an increase other than one resulting
7 from a levelized energy adjustment clause or raw materials adjustment
8 clause.

9 (cf: P.L.1983, c.454, s.1)

10

11 24. Section 1 of P.L.1984, c.2 (C.48:2-51.1) is amended to read as
12 follows:

13 1. No person shall acquire or seek to acquire control of a public
14 utility directly or indirectly through the medium of an affiliated or
15 parent corporation or organization, or through the purchase of shares,
16 the election of a board of directors, the acquisition of proxies to vote
17 for the election of directors, or through any other manner, without
18 requesting and receiving the written approval of the Board of Public
19 [Utilities] Utility Commissioners. Any agreement reached, or any
20 other action taken, in violation of this act shall be void. In considering
21 a request for approval of an acquisition of control, the board shall
22 evaluate the impact of the acquisition on competition, on the rates of
23 ratepayers affected by the acquisition of control, on the employees of
24 the affected public utility or utilities, and on the provision of safe and
25 adequate utility service at just and reasonable rates. The board shall
26 accompany its decision on a request for approval of an acquisition of
27 control with a written report detailing the basis for its decision,
28 including findings of fact and conclusions of law.

29 (cf: P.L.1984, c.2, s.1)

30

31 25. Section 1 of P.L.1968, c.173 (C.48:2-59) is amended to read
32 as follows:

33 1. To enable the Board of Public Utility Commissioners [in the
34 Department of Public Utilities] to better perform its lawful duties
35 relating to service, classifications to be used, rates and charges to be
36 made and collected, rules and regulations to be prescribed, and
37 supervision over all public utilities [and public movers] under its
38 jurisdiction, the Board of Public Utility Commissioners shall annually
39 make an assessment against each public utility [and public mover].

40 (cf: P.L.1972, c.36, s.1)

41

42 26. Section 2 of P.L.1968, c.173 (C.48:2-60) is amended to read
43 as follows:

44 2. The assessment shall be equal to a percentage of the gross
45 operating revenue of the public utilities under the jurisdiction of the
46 board derived from intrastate operations during the preceding calendar

1 year at a rate to be determined annually by the board on or before June
2 30 in the following manner:

3 The total amount appropriated to the Board of Public [Utilities]
4 Utility Commissioners by law for its general purposes for its next fiscal
5 year shall be divided by the total amount of the gross operating
6 revenues of all public utilities under the jurisdiction of the board
7 derived from intrastate operations during the preceding calendar year.
8 The quotient resulting shall constitute the percentage rate of the
9 assessment for the calendar year in which such computation is made.
10 The total amount so assessed to any particular public utility shall not
11 exceed 1/4 of 1% of the gross operating revenue subject to assessment
12 hereunder of that utility derived from its intrastate operation during
13 the preceding calendar year, except that the minimum assessment for
14 any public utility shall be \$500[.00].

15 (cf: P.L.1989, c.281, s.1)

16

17 27. (New section) a. All of the functions, powers and duties
18 heretofore exercised by the Board of Public Utilities for the regulation
19 of rates and public utility aspects of solid waste collection and solid
20 waste disposal operations and facilities pursuant to P.L.1968, c.173
21 (C.48:2-59 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), Title 48 of
22 the Revised Statutes, or any other law, and the responsibility and
23 authority to review and approve proposed contracts pursuant to the
24 provisions of P.L.1985, c.38 (C.13:1E-136 et seq.), are hereby
25 continued and transferred to and vested in the Department of
26 Environmental Protection and the Commissioner thereof.

27 b. Whenever in any law, rule, regulation, order, contract, tariff,
28 document, judicial or administrative proceeding or otherwise relating
29 to recycling, solid waste collection or solid waste disposal, reference
30 is made to the Board of Public Utilities, the same shall mean and refer
31 to the Department of Environmental Protection and the Commissioner
32 thereof.

33 c. After April 14, 1996, the provisions of P.L.1968, c.173
34 (C.48:2-59 et seq.) relating to the annual assessment made by the
35 Department of Environmental Protection shall not apply to any person
36 engaging in the business of solid waste collection pursuant to
37 P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L.1991, c.381
38 (C.48:13A-7.1 et seq.).

39

40 28. (New section) a. After August 19, 1991, the Board of Public
41 Utility Commissioners shall not make an assessment against any person
42 engaging in the business of solid waste collection or solid waste
43 disposal pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.).

44 b. The provisions of subsection a. of this section shall not affect
45 any obligation to pay an assessment made by the board prior to August
46 19, 1991, nor shall these provisions affect the legal authority of the

1 board under sections 1 and 2 of P.L.1968, c.173 (C.48:2-59 and
2 48:2-60) to make an assessment against any person engaging in the
3 business of solid waste collection or solid waste disposal prior to that
4 date.

5 c. The provisions of subsection a. of this section shall not affect the
6 legal authority of the State Treasurer under section 12 of P.L.1968,
7 c.173 (C.48:2-70) to collect the amount stated to be due, including
8 any interest which may accrue by virtue of the neglect or refusal of the
9 public utility to pay an assessment made by the board prior to August
10 19, 1991, nor shall these provisions invalidate or affect any proceeding
11 for the enforcement thereof.

12

13 29. Section 1 of P.L.1987, c.211 (C.48:3-2.1) is amended to read
14 as follows:

15 1. A public utility shall pay or credit interest at a rate prescribed by
16 the Board of Public [Utilities] Utility Commissioners on any
17 overpayment made by a residential customer due to a billing error,
18 unless the overpayment is fully refunded or credited to the customer's
19 account within two billing cycles after written notification by the
20 customer to the utility of the alleged error. For the purposes of this
21 act, "billing error" means a charge to a residential customer in excess
22 of that approved by the board for the type of service supplied to that
23 customer, or in excess of the charge due for the service supplied to
24 that customer as measured or recorded by meter or other device,
25 except that neither the amount of an estimated bill in and of itself, nor
26 the amount due on a budget account installment, shall constitute a
27 billing error. The board shall set and from time to time revise the
28 interest rate in accordance with appropriate prevailing marketplace
29 interest rates.

30 (cf: P.L.1987, c.211, s.1)

31

32 30. R.S.48:3-3 is amended to read as follows:

33 48:3-3. a. No public utility shall provide or maintain any service
34 that is unsafe, improper or inadequate, or withhold or refuse any
35 service which reasonably can be demanded or furnished when ordered
36 by the board.

37 b. (1) No solid waste collector as defined in section 3 of P.L.1970,
38 c.40 (C.48:13A-3) shall provide any solid waste collection services
39 that are unsafe, improper or inadequate, or withhold or refuse any
40 solid waste collection services which reasonably can be demanded or
41 furnished when ordered by the Department of Environmental
42 Protection.

43 (2) The [board] Department of Environmental Protection, upon
44 receipt of a notification of refusal to provide solid waste collection
45 services within a municipality pursuant to section 2 of P.L.1991, c.170
46 (C.40:66-5.2), may order the solid waste collector to provide these

1 services in accordance with the provisions of R.S.48:2-23.
2 (cf: P.L.1991, c.170, s.5)

3

4 31. R.S.48:3-7 is amended to read as follows:

5 48:3-7. a. No public utility shall, without the approval of the
6 board, sell, lease, mortgage or otherwise dispose of or encumber its
7 property, franchises, privileges or rights, or any part thereof; or merge
8 or consolidate its property, franchises, privileges or rights, or any part
9 thereof, with that of any other public utility.

10 Where, by the proposed sale, lease or other disposition of all or a
11 substantial portion of its property, any franchise or franchises,
12 privileges or rights, or any part thereof or merger or consolidation
13 thereof as set forth herein, it appears that the public utility or a wholly
14 owned subsidiary thereof may be unable to fulfill its obligation to any
15 employees thereof with respect to pension benefits previously enjoyed,
16 whether vested or contingent, the board shall not grant its approval
17 unless the public utility seeking the board's approval for such sale,
18 lease or other disposition assumes such responsibility as will be
19 sufficient to provide that all such obligations to employees will be
20 satisfied as they become due.

21 Every sale, mortgage, lease, disposition, encumbrance, merger or
22 consolidation made in violation of this section shall be void.

23 Nothing herein shall prevent the sale, lease or other disposition by
24 any public utility of any of its property in the ordinary course of
25 business, nor require the approval of the board to any grant,
26 conveyance or release of any property or interest therein heretofore
27 made or hereafter to be made by any public utility to the United States,
28 State or any county or municipality or any agency, authority or
29 subdivision thereof, for public use.

30 The approval of the board shall not be required to validate the title
31 of the United States, State or any county or municipality or any
32 agency, authority or subdivision thereof, to any lands or interest
33 therein heretofore condemned or hereafter to be condemned by the
34 United States, State or any county or municipality or any agency,
35 authority or subdivision thereof for public use.

36 b. Notwithstanding any law, rule, regulation or order to the
37 contrary, an autobus public utility regulated by and subject to the
38 provisions of Title 48 of the Revised Statutes may, without the
39 approval of the Department of Transportation, sell, lease, mortgage
40 or otherwise dispose of or encumber its property, or any part thereof,
41 except that approval of the Department of Transportation shall be
42 required for the following:

43 (1) the sale of 60% or more of its property within a 12-month
44 period;

45 (2) a merger or consolidation of its property, franchises, privileges
46 or rights; or

1 (3) the sale of any of its franchises, privileges or rights.

2 Notice of the sale, purchase or lease of any autobus or other vehicle
3 subject to regulation under Title 48 of the Revised Statutes shall be
4 provided to the Department of Transportation as the department shall
5 require.

6 c. Except as otherwise provided in subsection e. of this section, no
7 solid waste collector as defined in section 3 of P.L.1970, c.40
8 (C.48:13A-3) shall, without the approval of the [board] Department
9 of Environmental Protection:

10 (1) sell, lease, mortgage or otherwise dispose of or encumber its
11 property, including customer lists; or

12 (2) merge or consolidate its property, including customer lists, with
13 that of any other person or business concern, whether or not that
14 person or business concern is engaged in the business of solid waste
15 collection or solid waste disposal pursuant to the provisions of
16 P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et
17 seq.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

18 d. Any solid waste collector seeking approval for any transaction
19 enumerated in subsection c. of this section shall file with the [board]
20 department, on forms and in a manner prescribed by the [board]
21 department, a notice of intent at least 30 days prior to the completion
22 of the transaction.

23 (1) The [board] department shall promptly review all notices filed
24 pursuant to this subsection. The [board] department may, within 30
25 days of receipt of a notice of intent, request that the solid waste
26 collector submit additional information to assist in its review if it
27 deems that such information is necessary. If no such request is made,
28 the transaction shall be deemed to have been approved. In the event
29 that additional information is requested, the [board] department shall
30 outline, in writing, why it deems such information necessary to make
31 an informed decision on the impact of the transaction on effective
32 competition.

33 (2) The [board] department shall approve or deny a transaction
34 within 60 days of receipt of all requested information. In the event that
35 the [board] department fails to take action on a transaction within the
36 60-day period specified herein, then the transaction shall be deemed to
37 have been approved.

38 (3) The [board] department shall approve a transaction unless it
39 makes a determination pursuant to the provisions of section 19 of
40 P.L.1991, c.381 (C.48:13A-7.19) that the proposed sale, lease,
41 mortgage, disposition, encumbrance, merger or consolidation would
42 result in a lack of effective competition.

43 The [Board of Public Utilities] department shall prescribe and
44 provide upon request all necessary forms for the implementation of the
45 notification requirements of this subsection.

46 e. (1) Any solid waste collector may, without the approval of the

1 [board] department, purchase, finance or lease any equipment,
2 including collection or haulage vehicles.

3 (2) Any solid waste collector may, without the approval of the
4 [board] department, sell or otherwise dispose of its collection or
5 haulage vehicles; except that no solid waste collector shall, without the
6 approval of the [board] department in the manner provided in
7 subsection d. of this section, sell or dispose of 33% or more of its
8 collection or haulage vehicles within a 12-month period.

9 As used in this section, "business concern" means any corporation,
10 association, firm, partnership, sole proprietorship, trust or other form
11 of commercial organization.

12 (cf: P.L.1991, c.381, s.35)

13

14 32. Section 3 of P.L.1983, c.115 (C.48:7-18) is amended to read
15 as follows:

16 3. As used in this act:

17 [a. "Commissioner" means the Commissioner of the Department of
18 Energy;

19 b.] "Board" means the Board of Public Utility Commissioners;

20 "Construction" means on-site work to install any permanent
21 equipment or structure for any facility, but does not include
22 installation of environmental monitoring equipment or any work
23 related thereto;

24 [c. "Department" means the Department of Energy;

25 d.] "Director" means the director of the Division of Energy
26 Planning and Conservation in the Board of Public Utility
27 Commissioners;

28 "Division" means the Division of Energy Planning and Conservation
29 in the Board of Public Utility Commissioners;

30 "Electric facility" means:

31 (1) Any electric power generating unit or combination of units at
32 a single site with a combined production of 100 megawatts or more
33 and any facilities appurtenant thereto; or

34 (2) Any electric generating units added to an existing electric
35 generating facility which will increase its installed capacity by 25% or
36 by more than 100 megawatts, whichever is smaller.

37 (cf: P.L.1983, c.115, s.3)

38

39 33. Section 4 of P.L.1983, c.115 (C.48:7-19) is amended to read
40 as follows:

41 4. No public utility shall commence construction of any electric
42 facility without having obtained from the [department] division a
43 certificate of need therefor as hereinafter provided. No agency of the
44 State, or any county or municipal government, shall issue any license
45 or permit required for any such construction or substantial expansion
46 prior to the issuance of a certificate of need therefor by the

1 [department] division.

2 (cf: P.L.1983, c.115, s.4)

3

4 34. Section 5 of P.L.1983, c.115 (C.48:7-20) is amended to read
5 as follows:

6 5. Any utility planning to construct an electric facility shall, at least
7 1 year prior to the formal application for a certificate of need therefor,
8 submit to the [department] division a notice of intent on forms and in
9 a manner specified by the [department] division. Receipt by the
10 [department] division of the notice of intent shall initiate the early
11 assessment stage of the certificate of need process. During the early
12 assessment stage, the [department] division shall hold public hearings,
13 in the franchise area served by that utility, to solicit the views of
14 concerned individuals and groups on the proposed facility; provide
15 advice to the utility on the proposed facility and on relevant alternative
16 ways of meeting projected electricity demand which will minimize rate
17 increases, reduce any adverse environmental impact of the proposed
18 facility, and address other objections to the proposed facility; and
19 develop a comprehensive view of how the proposed facility and any
20 suggested alternatives thereto will affect the long-range energy plans
21 and economic development of the State and otherwise promote the
22 public interest. Notice of each public hearing shall be published in a
23 newspaper of general circulation in the region where the hearing is to
24 be held, and in any other newspapers of general circulation which the
25 [commissioner] director determines appropriate to reach the greatest
26 possible number of affected citizens.

27 During the early assessment stage, the [department] division shall
28 publish, in a manner designed to reach the maximum number of
29 affected people, interim reports on the progress of its analysis of the
30 proposed facility. No later than 9 months after receipt of a notice of
31 intent, the [department] division shall publish a comprehensive report
32 presenting its preliminary assessment concerning the proposed facility.
33 The report shall address the major concerns expressed during the early
34 assessment stage, and compare the proposed facility with feasible
35 alternatives thereto.

36 (cf: P.L.1983, c.115, s.5)

37

38 35. Section 6 of P.L.1983, c.115 (C.48:7-21) is amended to read
39 as follows:

40 6. A certificate of need shall be issued only if the [commissioner]
41 director determines that the proposed facility is necessary to meet the
42 projected need for electricity in the area to be served, and that no
43 more efficient, economical, or environmentally sound alternative is
44 available. The [commissioner] director shall make these
45 determinations only if he finds that:

46 a. The probable result of denial of a certificate of need would

1 adversely affect the future adequacy, reliability, or efficiency of the
2 electric energy supply to the public utility's customers, or to the people
3 of New Jersey, taking into account:

4 (1) The accuracy of the public utility's demand forecast for the
5 level of electric energy that would be supplied by the proposed facility;

6 (2) The probable effects of existing or prospective State and
7 federal conservation programs;

8 (3) The effect of promotional practices of the public utility which
9 may have given rise to the demand for this facility;

10 (4) The ability of current and planned facilities not requiring
11 certificates of need, and to which the public utility has access, to meet
12 the future demand; and

13 (5) The effect of the proposed facility in making efficient use of
14 resources.

15 b. The consequences of issuing the certificate of need outweigh the
16 consequences of denying the certificate, taking into account:

17 (1) The relationship of the proposed facility to overall State energy
18 needs as determined by the State Energy Master Plan adopted
19 pursuant to the "Department of Energy Act," P.L.1977, c.146
20 (C.52:27F-1 et seq.);

21 (2) The role of the proposed facility in inducing future
22 development; and

23 (3) The socially beneficial uses of the output of the proposed
24 facility, including its uses to protect or enhance environmental quality.

25 c. There is not a more reasonable and prudent alternative to the
26 proposed facility, taking into account:

27 (1) The appropriateness of the size, type, and timing of the
28 proposed facility compared to those of reasonable alternatives;

29 (2) The cost of the proposed facility and the cost of electric energy
30 to be supplied by the proposed facility compared to the costs of
31 reasonable alternatives and the cost of electric energy that would be
32 supplied by reasonable alternatives;

33 (3) The impact of the proposed facility upon the social, economic,
34 and health environments compared to the impact of reasonable
35 alternatives; and

36 (4) The expected reliability of the proposed facility compared to
37 the expected reliability of reasonable alternatives.

38 d. The design, construction, and operation of the proposed facility
39 would comply with all relevant State and federal laws, rules,
40 regulations and policies.

41 (cf: P.L.1983, c.115, s.6)

42

43 36. Section 7 of P.L.1983, c.115 (C.48:7-22) is amended to read
44 as follows:

45 7. a. Application for a certificate of need shall be made to the
46 [department] division, and shall be in such form and contain such

1 information as the [department] division may prescribe. The
2 [department] division may charge and collect a non-returnable fee of
3 not more than \$250,000[.00] for the filing, processing, and review of
4 an application for a certificate of need. This fee shall cover the costs
5 of the [department's] division's review of applications for a renewal of
6 a certificate of need.

7 b. Upon receipt of a completed application, the [department]
8 division shall forward copies thereof to the board and to other
9 appropriate State departments, agencies and instrumentalities for their
10 review. These departments, agencies, and instrumentalities shall
11 provide adequate mechanisms for full consideration of these
12 applications, and for developing recommendations thereon. These
13 recommendations shall be forwarded to the [commissioner] director
14 and to the applicant within 120 days of the date of referral.
15 Recommendations concerning certificates of need shall be governed
16 and based upon the principles and criteria set forth in section 6 of [this
17 act] P.L.1983, c.115 (C.48:7-21).

18 (cf: P.L.1983, c.115, s.7)

19

20 37. Section 8 of P.L.1983, c.115 (C.48:7-23) is amended to read
21 as follows:

22 8. a. Upon receipt of a completed application for a certificate of
23 need, the [department] division shall transmit the application and all
24 supporting documents, including the [department's] division's early
25 assessment report, to the Office of Administrative Law, which shall
26 conduct a hearing on the application pursuant to the provisions of
27 P.L.1978, c.67 (C.52:14F-1 et seq.). This hearing shall be an
28 adjudicatory proceeding, and shall be conducted as a contested case
29 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
30 (C.52:14B-1 et seq.). The Division of Rate Counsel in the Department
31 of the Public Advocate shall be deemed to be a party of interest in this
32 proceeding and the Division of Rate Counsel shall be entitled to assess
33 the applicant utility in the manner set forth in section 20 of P.L.1974,
34 c.27 (C.52:27E-19). Intervention in this hearing by any other person
35 shall be as provided in the "Administrative Procedure Act."

36 b. The provisions of the "Administrative Procedure Act" to the
37 contrary notwithstanding, within 6 months of receipt of the decision
38 of the presiding administrative law judge, the [department] division
39 shall approve, conditionally approve, or deny the application. The
40 [department] division shall base its decision on the criteria set forth in
41 section 6 of [this act] P.L.1983, c.115 (C.48:7-21), and shall support
42 its decision with a written report. The report shall address the issues
43 raised and arguments advanced in the materials and information
44 compiled during the early assessment stage, in the [department's]
45 division's preliminary assessment report, in the materials and
46 information developed by State agencies, departments, and

1 instrumentalities, in the analyses of outside consultants retained by the
2 department, in the record of the adjudicatory proceeding conducted by
3 the administrative law judge, and in the written decision of the
4 presiding administrative law judge.

5 c. In the case of a conditional approval of an application, the
6 [department] division shall provide the applicant utility with a clear
7 statement of the conditions to be met, including any modifications in
8 the proposed electric facility.

9 d. The provisions of any law, rule or regulation to the contrary
10 notwithstanding, the [department's] division's action on an application
11 shall be considered the final agency action thereon for the purposes of
12 the "Administrative Procedure Act," and shall be subject only to
13 judicial review as provided in the Rules of Court.

14 (cf: P.L.1983, c.115, s.8)

15
16 38. Section 9 of P.L.1983, c.115 (C.48:7-24) is amended to read
17 as follows:

18 9. A certificate of need shall be valid for 3 years, and shall be
19 renewable subject to review by the [commissioner] director; provided,
20 however, that no renewal shall be denied without the approval of the
21 board. In the event that the [commissioner] director and the board
22 cannot agree on any renewal decision, a designee of the Governor shall
23 arbitrate the matter, and his decision shall be binding. If any renewal
24 is denied, the holder of the certificate shall have the option of
25 continuing the project, or to terminate or alter the project under terms
26 and conditions, established by the division, which equitably balance the
27 interests of the stockholders, the ratepayers, and the public utility.

28 (cf: P.L.1983, c.115, s.9)

29
30 39. Section 10 of P.L.1983, c.115 (C.48:7-25) is amended to read
31 as follows:

32 10. The [department shall, within 90 days of the effective date of
33 this act and] division shall adopt, pursuant to the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
35 regulations necessary to carry out the provisions of sections 1 through
36 9 of [this act] P.L.1983, c.115 (C.48:7-21).

37 (cf: P.L.1983, c.115, s.10)

38
39 40. Section 6 of P.L.1970, c.40 (C.48:13A-5) is amended to read
40 as follows:

41 6. a. The [Board of Public Utilities] Department of Environmental
42 Protection may, by order in writing, when it finds that the public
43 interest requires, award a franchise to any person or persons engaged
44 in solid waste disposal at rates and charges published in tariffs or
45 contracts accepted or to be accepted for filing by the [board]
46 department; provided, however, that the proposed franchise for solid

1 waste disposal conforms to the district solid waste management plan
2 of the district or districts in which such service is to be located, as
3 such plan shall have been approved by the Department of
4 Environmental Protection.

5 b. Franchises awarded pursuant to this section shall be of sufficient
6 area and duration to support the estimated technical and economic
7 needs of the disposal facility which is to serve the district or districts.

8 c. For the purposes of this section, "franchise" shall mean the
9 exclusive right to control and provide for the disposal of solid waste,
10 except for recyclable material whenever markets for those materials
11 are available, within a district or districts as awarded by the [Board of
12 Public Utilities] Department of Environmental Protection.

13 d. In no event shall the [board] department award a franchise to
14 any person required to be listed in the disclosure statement, or
15 otherwise shown to have a beneficial interest in the business of the
16 applicant, permittee or the licensee as defined in section 2 of P.L.1983,
17 c.392 (C.13:1E-127), if the [board] department determines that there
18 is a reasonable suspicion to believe that the person does not possess
19 a reputation for good character, honesty and integrity, and that person
20 or the applicant, permittee or licensee fails, by clear and convincing
21 evidence, to establish his reputation for good character, honesty and
22 integrity.

23 e. Nothing in section 11 of P.L.1970, c.40 (C.48:13A-10) shall be
24 interpreted to prevent the implementation of this section by the [Board
25 of Public Utilities] Department of Environmental Protection.

26 (cf: P.L.1991, c.269, s.11)

27

28 41. Section 2 of P.L.1990, c.113, (C.48:13A-6.2) is amended to
29 read as follows:

30 2. a. The provisions of P.L.1957, c.183 (C.40:14B-1 et seq.),
31 P.L.1985, c.38 (C.13:1E-136 et al.) or any other law, or any rules and
32 regulations adopted pursuant thereto to the contrary notwithstanding,
33 any transfer station constructed or operated in this State shall be
34 deemed a public utility and shall be subject to the rate regulation and
35 continuing jurisdiction of the [Board of Public Utilities] Department
36 of Environmental Protection. No transfer station shall commence or
37 continue solid waste transfer operations and no person may own or
38 operate a transfer station in this State unless the person has:

39 (1) filed a registration statement and engineering design application
40 and obtained approval thereof from the Department of Environmental
41 Protection as required by section 5 of P.L.1970, c.39 (C.13:1E-5);

42 (2) obtained a certificate of public convenience and necessity from
43 the [Board of Public Utilities] Department of Environmental
44 Protection as required by section 7 of P.L.1970, c.40 (C.48:13A-6);
45 and

46 (3) filed an initial tariff or lawfully negotiated contract for solid

1 waste transfer operations and obtained approval thereof from the
2 [Board of Public Utilities] Department of Environmental Protection,
3 which tariff or contract shall include the formulas to be used to
4 determine the charges, rates, or fees to be charged for the utilization
5 of the transfer station, and the methodology or methodologies used to
6 develop these formulas.

7 b. It shall remain the continuing responsibility of the owner or
8 operator of every transfer station to file a revised tariff, or any
9 proposed revisions to a lawfully negotiated contract for solid waste
10 transfer operations, and obtain approval thereof from the [Board of
11 Public Utilities] Department of Environmental Protection, whenever
12 the owner or operator of a transfer station seeks to adjust the charges,
13 rates, or fees charged for the utilization of the transfer station.

14 c. No adjustment to the charges, rates, or fees charged for the
15 utilization of any transfer station operated in this State shall take effect
16 prior to the approval thereof by the [Board of Public Utilities]
17 Department of Environmental Protection.

18 (cf: P.L.1990, c.113, s.2)

19

20 42. Section 1 of P.L.1991, c.35, (C.48:13A-6.3) is amended to
21 read as follows:

22 1. a. The [Board of Public Utilities] Department of Environmental
23 Protection may, in accordance with the provisions of P.L.1970, c.40
24 (C.48:13A-1 et seq.) and upon receipt of a petition therefor, issue an
25 appropriate order increasing current tariffs established pursuant to law
26 for the solid waste disposal operations of a publicly owned or operated
27 solid waste facility subject to its jurisdiction as may be necessary to
28 recover the costs associated with implementing a district solid waste
29 management plan required pursuant to the provisions of the "Solid
30 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or a
31 district recycling plan required pursuant to section 3 of P.L.1987,
32 c.102 (C.13:1E-99.13). These costs shall include, but need not be
33 limited to:

34 (1) Capital expenditures reasonably incurred for the construction
35 of a recycling center as defined in section 2 of P.L.1987, c.102
36 (C.13:1E-99.12);

37 (2) Expenditures for the collection, processing, disposition or
38 marketing of recyclable materials as defined in section 2 of P.L.1987,
39 c.102 (C.13:1E-99.12); or

40 (3) Expenditures for the disposal of nonrecyclable household
41 hazardous waste recovered from the municipal solid waste stream.

42 b. [For the purposes of this section, all municipal, county, and
43 State contracts for solid waste collection or disposal shall be
44 considered tariffs for solid waste collection, and shall be subject to any
45 adjustment of tariffs resulting from the provisions of subsection a. of
46 this section.

1 c. In issuing any order pursuant to this section, the Board of Public
2 Utilities shall be exempt from the provisions of R.S.48:2-21.]

3 For the purposes of this section, "household hazardous waste"
4 means any solid or other waste determined by the Department of
5 Environmental Protection to be hazardous pursuant to section 6 of
6 P.L.1970, c.39 (C.13:1E-6) or any other law, containing reactive,
7 combustible, corrosive or toxic substances, including pesticides and
8 herbicides, which waste is generated by residential units; and
9 "municipal solid waste stream" means all residential, commercial and
10 institutional solid waste generated within the boundaries of any
11 municipality.

12 (cf: P.L.1991, c.35, s.1)

13
14 43. Section 10 of P.L.1970, c.40 (C.48:13A-9) is amended to read
15 as follows:

16 10. The [board, on its own initiative or upon complaint by the]
17 Department of Environmental Protection shall revoke or suspend the
18 certificate of public convenience and necessity issued to any person
19 engaged in the solid waste collection business or the solid waste
20 disposal business upon the finding that such person:

21 a. Has violated any provision of P.L.1970, c.40 (C.48:13A-1 et
22 seq.) or P.L.1991, c.381 (C.), or any rule, regulation or
23 administrative order adopted or issued pursuant thereto; or

24 b. Has violated any provision of any laws related to pollution of the
25 air, water or lands of this State; or

26 c. Has refused or failed to comply with any lawful order of the
27 [board] department; or

28 d. Has had its registration revoked by the [Department of
29 Environmental Protection] department; or

30 e. Has been denied approval of a license under the provisions of
31 P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license revoked
32 by the [Department of Environmental Protection] department, as the
33 case may be.

34 (cf: P.L.1991, c.381, s.31)

35
36 44. Section 12 of P.L.1970, c.40 (C.48:13A-11) is amended to
37 read as follows:

38 12. a. The [board] department may compel the attendance of
39 witnesses and the production of tariffs, contracts, papers, books,
40 accounts and all the documents necessary to enable the [board]
41 department to administer its duties as prescribed by law and this act.

42 b. The [board] department may compel any person engaged in the
43 business of solid waste collection or solid waste disposal or otherwise
44 providing solid waste collection or transfer, transportation or disposal
45 services in this State to furnish and file with the [board] department
46 any annual reports, federal or State tax returns, contracts, papers,

1 books, accounts, customer lists, financial or operational information,
2 or contracts, books, accounts and records of affiliated business
3 concerns, including any affiliated or parent corporation or
4 organization, or any wholly or partially owned subsidiary thereof,
5 directly or indirectly involved therewith, or having a direct or indirect
6 financial interest in the solid waste disposal services provided by that
7 person, and all financial transactions between these parties related to
8 the solid waste disposal services provided by that person, or other
9 documents as may be necessary to enable the [board] department to
10 administer its duties as prescribed by law and this act.

11 c. Should any person engaged in the business of solid waste
12 collection or solid waste disposal or otherwise providing solid waste
13 collection or transfer, transportation or disposal services fail or refuse
14 to comply with any provision of this section, or any applicable
15 provision of Title 48 of the Revised Statutes, the [board] department
16 may revoke or suspend the certificate of public convenience and
17 necessity issued to that person.

18 (cf: P.L.1991, c.381, s.33)

19

20 45. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read
21 as follows:

22 12. The department shall formulate comprehensive policies for the
23 conservation of the natural resources of the State, the promotion of
24 environmental protection and the prevention of pollution of the
25 environment of the State. The department shall in addition to the
26 powers and duties vested in it by this act or by any other law have the
27 power to:

28 a. Conduct and supervise research programs for the purpose of
29 determining the causes, effects and hazards to the environment and its
30 ecology;

31 b. Conduct and supervise Statewide programs of education,
32 including the preparation and distribution of information relating to
33 conservation, environmental protection and ecology;

34 c. Require the registration of persons engaged in operations which
35 may result in pollution of the environment and the filing of reports by
36 them containing such information as the department may prescribe to
37 be filed relative to pollution of the environment, all in accordance with
38 applicable codes, rules or regulations established by the department;

39 d. Enter and inspect any building or place for the purpose of
40 investigating an actual or suspected source of pollution of the
41 environment and ascertaining compliance or noncompliance with any
42 codes, rules and regulations of the department. Any information
43 relating to secret processes concerning methods of manufacture or
44 production, obtained in the course of such inspection, investigation or
45 determination, shall be kept confidential, except this information shall
46 be available to the department for use, when relevant, in any

1 administrative or judicial proceedings undertaken to administer,
2 implement, and enforce State environmental law, but shall remain
3 subject only to those confidentiality protections otherwise afforded by
4 federal law and by the specific State environmental laws and
5 regulations that the department is administering, implementing and
6 enforcing in that particular case or instance. In addition, this
7 information shall be available upon request to the United States
8 Government for use in administering, implementing, and enforcing
9 federal environmental law, but shall remain subject to the
10 confidentiality protection afforded by federal law. If samples are taken
11 for analysis, a duplicate of the analytical report shall be furnished
12 promptly to the person suspected of causing pollution of the
13 environment;

14 e. Receive or initiate complaints of pollution of the environment,
15 including thermal pollution, hold hearings in connection therewith and
16 institute legal proceedings for the prevention of pollution of the
17 environment and abatement of nuisances in connection therewith and
18 shall have the authority to seek and obtain injunctive relief and the
19 recovery of fines and penalties in summary proceedings in the Superior
20 Court;

21 f. Prepare, administer and supervise Statewide, regional and local
22 programs of conservation and environmental protection, giving due
23 regard for the ecology of the varied areas of the State and the
24 relationship thereof to the environment, and in connection therewith
25 prepare and make available to appropriate agencies in the State
26 technical information concerning conservation and environmental
27 protection, cooperate with the Commissioner of Health in the
28 preparation and distribution of environmental protection and health
29 bulletins for the purpose of educating the public, and cooperate with
30 the Commissioner of Health in the preparation of a program of
31 environmental protection;

32 g. Encourage, direct and aid in coordinating State, regional and
33 local plans and programs concerning conservation and environmental
34 protection in accordance with a unified Statewide plan which shall be
35 formulated, approved and supervised by the department. In reviewing
36 such plans and programs and in determining conditions under which
37 such plans may be approved, the department shall give due
38 consideration to the development of a comprehensive ecological and
39 environmental plan in order to be assured insofar as is practicable that
40 all proposed plans and programs shall conform to reasonably
41 contemplated conservation and environmental protection plans for the
42 State and the varied areas thereof;

43 h. Administer or supervise programs of conservation and
44 environmental protection, prescribe the minimum qualifications of all
45 persons engaged in official environmental protection work, and
46 encourage and aid in coordinating local environmental protection

- 1 services;
- 2 i. Establish and maintain adequate bacteriological, radiological and
3 chemical laboratories with such expert assistance and such facilities as
4 are necessary for routine examinations and analyses, and for original
5 investigations and research in matters affecting the environment and
6 ecology;
- 7 j. Administer or supervise a program of industrial planning for
8 environmental protection; encourage industrial plants in the State to
9 undertake environmental and ecological engineering programs; and
10 cooperate with the State Departments of Health, Labor, and
11 Commerce and Economic Development in formulating rules and
12 regulations concerning industrial sanitary conditions;
- 13 k. Supervise sanitary engineering facilities and projects within the
14 State, authority for which is now or may hereafter be vested by law in
15 the department, and shall, in the exercise of such supervision, make
16 and enforce rules and regulations concerning plans and specifications,
17 or either, for the construction, improvement, alteration or operation
18 of all public water supplies, all public bathing places, landfill
19 operations and of sewerage systems and disposal plants for treatment
20 of sewage, wastes and other deleterious matter, liquid, solid or
21 gaseous, require all such plans or specifications, or either, to be first
22 approved by it before any work thereunder shall be commenced,
23 inspect all such projects during the progress thereof and enforce
24 compliance with such approved plans and specifications;
- 25 l. Undertake programs of research and development for the
26 purpose of determining the most efficient, sanitary and economical
27 ways of collecting, disposing, utilizing or [utilizing] recycling of solid
28 waste;
- 29 m. [Construct and operate, on an experimental basis, incinerators
30 or other facilities for the disposal of solid waste, provide the various
31 municipalities and counties of this State, the Board of Public Utilities,
32 and the Division of Local Government Services in the Department of
33 Community Affairs with statistical data on costs and methods of solid
34 waste collection, disposal and utilization;] Provide the various
35 municipalities and counties of this State and the Division of Local
36 Government Services in the Department of Community Affairs with
37 statistical data on costs and methods of solid waste collection,
38 disposal, utilization and recycling;
- 39 n. Enforce the State air pollution, water pollution, conservation,
40 environmental protection, solid and hazardous waste [and refuse
41 disposal] management laws, rules and regulations, including the
42 making and signing of a complaint and summons for their violation by
43 serving the summons upon the violator and thereafter filing the
44 complaint promptly with a court having jurisdiction;
- 45 o. [Acquire by purchase, grant, contract or condemnation, title to
46 real property, for the purpose of demonstrating new methods and

1 techniques for the collection or disposal of solid waste;] (deleted by
2 amendment, P.L. , c.)

3 p. Purchase, operate and maintain, pursuant to the provisions of
4 this act, any facility, site, laboratory, equipment or machinery
5 necessary to the performance of its duties pursuant to this act;

6 q. Contract with any other public agency or corporation
7 incorporated under the laws of this or any other state for the
8 performance of any function under this act;

9 r. With the approval of the Governor, cooperate with, apply for,
10 receive and expend funds from, the federal government, the State
11 Government, or any county or municipal government or from any
12 public or private sources for any of the objects of this act;

13 s. Make annual and such other reports as it may deem proper to the
14 Governor and the Legislature, evaluating the demonstrations
15 conducted during each calendar year;

16 t. Keep complete and accurate minutes of all hearings held before
17 the commissioner or any member of the department pursuant to the
18 provisions of this act. All such minutes shall be retained in a permanent
19 record, and shall be available for public inspection at all times during
20 the office hours of the department;

21 u. Require any person subject to a lawful order of the department,
22 which provides for a period of time during which such person subject
23 to the order is permitted to correct a violation, to post a performance
24 bond or other security with the department in such form and amount
25 as shall be determined by the department. Such bond need not be for
26 the full amount of the estimated cost to correct the violation but may
27 be in such amount as will tend to insure good faith compliance with
28 said order. The department shall not require such a bond or security
29 from any public body, agency or authority. In the event of a failure to
30 meet the schedule prescribed by the department, the sum named in the
31 bond or other security shall be forfeited unless the department shall
32 find that the failure is excusable in whole or in part for good cause
33 shown, in which case the department shall determine what amount of
34 said bond or security, if any, is a reasonable forfeiture under the
35 circumstances. Any amount so forfeited shall be utilized by the
36 department for the correction of the violation or violations, or for any
37 other action required to insure compliance with the order.

38 (cf: P.L.1984, c.5, s.1)

39

40 46. Section 1 of P.L.1984, c.221 (C.13:1E-5.3) is amended to read
41 as follows:

42 1. a. Notwithstanding the provisions of any law, rule or regulation
43 to the contrary, the Commissioner of the Department of Environmental
44 Protection shall not approve a registration statement and engineering
45 design which authorizes a sanitary landfill facility located on the
46 property of any State college whose charter was filed prior to 1920 to

1 receive municipal waste, as defined by the Department of
2 Environmental Protection pursuant to rule or regulation. For the
3 purposes of this act, "sanitary landfill facility" means a solid waste
4 facility at which solid waste is deposited on or in the land as fill for the
5 purpose of permanent disposal or storage for a period exceeding six
6 months, but shall not include a facility engaged in composting
7 vegetative waste.

8 b. Any existing contract right or regulatory approval to operate a
9 sanitary landfill facility on the property of a State college not
10 otherwise terminated in accordance with law shall, upon the effective
11 date of this act, be void and the State Treasurer, after review of all
12 records and documents in the possession of the current holder of the
13 approved registration statement and engineering design which the
14 treasurer deems necessary for making his determination, and upon the
15 advice and consent of the Department of Environmental Protection
16 [and the Board of Public Utilities] shall, within 60 days of the effective
17 date of this act, determine an amount which would fairly and properly
18 reimburse the current holder of the certificate of approved registration
19 statement and engineering design for all verifiable and reasonable
20 expenses directly related to the maintenance of the certificate of
21 approved registration statement and engineering design and its
22 rescission, plus interest on the amount of these expenses. The interest
23 shall be calculated from the date upon which payment of these
24 expenses was made. The rate of interest shall be at the rates provided
25 by the Rules Governing the Courts of the State of New Jersey for the
26 applicable period of time.

27 c. The amount determined fair and properly payable by the
28 treasurer shall be paid to the current holder of the certificate of
29 approved registration statement and engineering design upon an
30 appropriation in that amount and for that purpose being made by the
31 Legislature to the State college on whose property the sanitary landfill
32 is located. However, by this action the State college and the State
33 shall in no way incur liability for third party obligations which are or
34 shall become the responsibility of the current holder of the certificate
35 of approved registration statement and engineering design.

36 d. If the current holder of the certificate of approved registration
37 statement and engineering design does not agree that the amount
38 determined by the treasurer constitutes full reimbursement for all these
39 expenses and files with the treasurer a letter containing the reasons
40 therefor within 10 days of the treasurer's determination, the treasurer,
41 within five days of the receipt of that letter, shall submit all records
42 and documents relevant to the matter to the Office of Administrative
43 Law which, within 30 days of receiving these records and documents,
44 shall commence a hearing to be conducted as a contested case
45 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
46 (C.52:14B-1 et seq.), and P.L.1978, c.67 (C.52:14F-1 et seq.).

1 e. Notwithstanding the provisions of section 10 of P.L.1968, c.410
2 (C.52:14B-10) to the contrary, within 15 days of the receipt of the
3 recommendations of the administrative law judge, the treasurer shall
4 adopt, reject, or modify the recommendations. The final decision of
5 the treasurer is considered the final agency action thereon for the
6 purposes of the "Administrative Procedure Act" and is subject only to
7 judicial review as provided in the Rules of Court.

8 (cf: P.L.1984, c.221, s.1)

9
10 47. Section 6 of P.L.1970, c.39 (C.13:1E-6) is amended to read as
11 follows:

12 6. a. The department shall[, in addition to such other powers as it
13 may possess by law]:

14 (1) Undertake a program of research and development for the
15 purpose of determining the most efficient, sanitary,
16 environmentally-sound and economical way of collecting, disposing
17 [and], utilizing composting or recycling solid waste.

18 (2) Formulate and [promulgate] adopt, amend and repeal codes,
19 rules and regulations concerning solid waste collection and solid waste
20 disposal activities. [Such] These codes, rules and regulations shall
21 establish the procedures relating to the preparation and submission of
22 environmental impact statements prior to the construction, acquisition,
23 or operation of any solid waste facility, and shall establish standards
24 for the construction and operation of solid waste facilities, which
25 standards shall include, but need not be limited to, provisions
26 requiring: the maintenance of ground water quality monitoring wells
27 to check water pollution; periodic monitoring of water quality by
28 chemical analysis; measures to monitor methane gas production at
29 sanitary landfills; plans for erosion control; revegetation procedures
30 and plans for the maintenance, upkeep, and reuse of any sanitary
31 landfill facility site; adequate cover material; safety measures; rodent,
32 insect, bird, dust, fire and odor control programs; and such other
33 measures as shall be deemed necessary to protect the public health and
34 safety and the natural environment.

35 All codes, rules and regulations heretofore adopted by the Public
36 Health Council relating to refuse disposal shall continue in full force
37 and effect and be enforceable by the department, subject to its power
38 as herein provided to amend or repeal the same.

39 (3) Develop, formulate, [promulgate] adopt and review for the
40 purpose of revising or updating not less than once every 2 years, a
41 Statewide solid waste management plan which shall [encourage the
42 maximum practicable use of resource recovery procedures] encourage
43 the maximum practicable use of source reduction, composting, source
44 separation and recycling techniques, resource recovery procedures or
45 landfilling technologies, and which shall provide the objectives, criteria
46 and standards for the evaluation of district solid waste management

1 plans prepared pursuant to the provisions of [this amendatory and
2 supplementary act] P.L.1970, c.39 (C.13:1E-1 et seq.) for solid waste
3 management districts in this State; and to the extent practicable,
4 encourage and assist in the development and formulation of [such]
5 district solid waste management plans and guidelines to implement
6 such plans. [Such objectives, criteria and standards shall be
7 promulgated within 180 days of the effective date of this act; provided,
8 however, that general guidelines sufficient to initiate the solid waste
9 management planning process by solid waste management districts in
10 this State shall be promulgated within 30 days of the effective date of
11 this act.]In the development and formulation of the Statewide solid
12 waste management plan the department shall consult with relevant
13 agencies and instrumentalities of the Federal Government, and the
14 aforesaid objectives, criteria and standards provided by said Statewide
15 solid waste management plan shall conform, to the extent practicable,
16 or as may be required, to the provisions of any Federal law concerning
17 such objectives, criteria and standards.

18 (4) Make an annual report to the Governor and the Legislature
19 evaluating the operation of [this amendatory and supplementary act]
20 P.L.1970, c.39 (C.13:1E-1 et seq.), including any recommendations
21 deemed necessary by the department to better effectuate the purposes
22 hereof.

23 b. The department may, in addition:

24 (1) Order any district, pursuant to the Statewide solid waste
25 management plan, the objectives, criteria and standards contained
26 therein, the environmental and economic studies conducted by the
27 department therefor and in a manner designed to enhance the
28 environment within the concerned districts[.];

29 (a) to plan for the construction of resource recovery facilities[.];

30 (b) to specify what processes should be utilized therein[.];

31 (c) to develop a joint program with one or more [adjacent] districts
32 for providing resource recovery facilities[, and]; or

33 (d) for those districts affected by the guarantee provided in section
34 9.1 of P.L.1968, c.404[, s.9.1] (C.13:17-10), to cooperate on a
35 continuing basis with the department and with the other districts so
36 affected in the development of a combined approach to solid waste
37 management in northeastern New Jersey and make the final
38 determination in the event of any overlap or conflict between the
39 Hackensack Commission and any board of chosen freeholders pursuant
40 to their respective responsibilities under [this amendatory and
41 supplementary act] P.L.1970, c.39 (C.13:1E-1 et seq.) or pursuant to
42 the Hackensack Commission's responsibilities under P.L.1968, c.404
43 (C.13:17-1 et seq.)[.];

44 (2) Acquire, by purchase, grant, contract or condemnation, title to
45 real property, for the purpose of demonstrating new methods and
46 techniques for the collection, disposal [and] ,utilization .composting

1 or recycling of solid waste;

2 (3) Purchase, operate and maintain, pursuant to the provisions of
3 this act, any facility, site, laboratory equipment or machinery necessary
4 to the performance of its duties pursuant to this act;

5 (4) Apply for, receive and expend funds from any public or private
6 source; or

7 (5) Contract with any other public agency, including a local board
8 of health or county [and municipal boards of] health department, or
9 corporation incorporated under the laws of this or any other state for
10 the performance of any function under this act. Any such contract with
11 a local board of health or county [or municipal board of] health
12 department may provide for the inspection and monitoring of solid
13 waste facilities; the enforcement of the department's standards
14 therefor; and the training of county or [municipal] local health officers
15 engaged in such inspection, monitoring or enforcement[;

16 (6) Make grants to assist in experimenting with new methods of
17 solid waste collection, disposal, or utilization, pursuant to the
18 provisions of sections 21 through 25 of this amendatory and
19 supplementary act;

20 (7) Construct and operate, on an experimental basis, incinerators
21 or other facilities for the disposal or utilization of solid waste, to
22 provide the various municipalities and counties of this State, the Board
23 of Public Utility Commissioners, the Hackensack Commission, and the
24 Division of Local Government Services in the Department of
25 Community Affairs with statistical data on costs and methods of solid
26 waste collection and disposal;

27 (8) Make annual and such other reports as it may deem proper to
28 the Governor and the Legislature evaluating the demonstrations and
29 experiments conducted during each calendar year].

30 (cf: P.L.1975, c.326, s.7)

31

32 48. Section 7 of P.L.1970, c.39 (C.13:1E-7) is amended to read as
33 follows:

34 7. a. There is hereby created in the department an Advisory
35 Council on Solid Waste Management which shall consist of [14] 13
36 members, [four] three of whom shall be [the President of the Board of
37 Public Utilities,]the Commissioner of Community Affairs, the
38 Secretary of Agriculture and the Commissioner of Health, or their
39 designees, who shall serve ex officio, and ten citizens of the State, four
40 of whom shall be actively engaged in the solid waste collection,
41 recycling or solid waste disposal industries, of whom one shall be a
42 representative of the Institute for Scrap Recycling Industries who shall
43 represent the scrap recycling or processing industry in the State, two
44 health professionals of whom one shall be a representative of the New
45 Jersey Hospital Association and the other a licensed practitioner
46 selected from the medical or dental communities in the State who shall

1 represent the regulated medical waste generators in the State, and four
2 of whom shall be representing the general public to be appointed by
3 the Governor, with the advice and consent of the Senate. The
4 Governor shall designate a chairman and vice chairman of the council
5 from the public members who shall serve at the will of the Governor.

6 b. All public members shall be appointed for terms of 4 years. All
7 appointed members shall serve after the expiration of their terms until
8 their respective successors are appointed and shall qualify, and any
9 vacancy occurring in the appointed membership of the council by
10 expiration of term or otherwise, shall be filled in the same manner as
11 the original appointment for the unexpired term only, notwithstanding
12 that the previous incumbent may have held over and continued in
13 office as aforesaid.

14 c. Members of the council shall serve without compensation but
15 shall be reimbursed for expenses actually incurred in attending
16 meetings of the council and in performance of their duties as members
17 thereof.

18 (cf: P.L.1991, c.292, s.1)

19

20 49. Section 2 of P.L.1989, c.118 (C.13:1E-9.3) is amended to read
21 as follows:

22 2. a. No person shall, regardless of intent, engage, or be permitted
23 to engage, in the collection or disposal of solid waste in excess of
24 0.148 cubic yards of solids or 30 United States gallons of liquids,
25 whether for profit or otherwise, except at a disposal site or any other
26 place which has authorization from the Department of Environmental
27 Protection [or the Board of Public Utilities] to accept solid waste.

28 b. No person shall, regardless of intent, transport or cause or
29 permit to be transported any solid waste in excess of 0.148 cubic yards
30 of solids or 30 United States gallons of liquids, whether for profit or
31 otherwise, to a disposal site or any other place which does not have
32 authorization from the Department of Environmental Protection [or
33 the Board of Public Utilities] to accept solid waste.

34 c. The provisions of this section shall be enforced by the
35 Department of Environmental Protection [or the Board of Public
36 Utilities] and by every municipality, local board of health, or county
37 health department, as the case may be.

38 (cf: P.L.1989, c.118, s.2)

39

40 50. Section 15 of P.L.1975, c.326 (C.13:1E-24) is amended to
41 read as follows:

42 15. a. Upon receipt by the commissioner of a district solid waste
43 management plan adopted in its entirety, and a copy of the transcript
44 of every public hearing held thereon, as required pursuant to section
45 14 of [this amendatory and supplementary act] P.L.1975, c.326
46 (C.13:1E-23), [he] the commissioner shall:

1 (1) Study and review the district solid waste management plan
2 according to the objectives, criteria and standards developed in the
3 Statewide solid waste management plan developed and formulated by
4 the department pursuant to the provisions of section 6 of [the act to
5 which this act is amendatory and supplementary] P.L.1970, c.39
6 (C.13:1E-6); and

7 (2) Submit a copy of said plan for review and recommendations to
8 the Advisory Council on Solid Waste Management in the department,
9 and to the agencies, bureaus and divisions within the department
10 concerned with, or responsible for, environmental quality, including,
11 but not limited to, the [Bureau] Division of Solid Waste Management,
12 Bureau of Air Pollution Control, Bureau of Geology, and the Bureau
13 of Water Pollution Control, or their successors[; and

14 (3) Submit a copy of said plan to the Board of Public Utility
15 Commissioners for review and recommendations on the economic
16 aspect of the plan].

17 b. After completing [his] the study and review of the district solid
18 waste management plan, and upon receipt of the recommendations
19 thereon provided for in subsection a. (2) of this section, if any, but in
20 no event later than 150 days after [his] the receipt of said plan, the
21 commissioner shall determine whether to approve, modify, or reject
22 [any such] the district solid waste management plan, and shall certify
23 such determination to the board of chosen freeholders or to the
24 Hackensack Commission, as the case may be, which submitted [such]
25 the plan.

26 c. If the commissioner determines to approve [any] a district solid
27 waste management plan, or if the commissioner has made no
28 determination within 150 days after [his] the receipt of [any such] the
29 plan, the board of chosen freeholders or the Hackensack Commission,
30 as the case may be, shall proceed, pursuant to the requirements of [this
31 amendatory and supplementary act] P.L.1970, c.39 (C.13:1E-1 et
32 seq.), to implement [such] the district solid waste management plan in
33 the relevant solid waste management district.

34 d. If the commissioner determines to modify or reject any district
35 solid waste management plan, or any part thereof, the certification
36 required of [him herein] the commissioner shall be accompanied by a
37 detailed statement prepared by the commissioner indicating the reasons
38 for any modification or rejection, and outlining the action to be taken
39 thereon. In outlining such action the commissioner shall direct the
40 board of chosen freeholders or the Hackensack Commission, as the
41 case may be, to make any modification in, or replace any rejected part
42 of, a district solid waste management plan, either with or without
43 holding another public hearing in the solid waste management district.
44 Such direction shall be based upon the commissioner's determination,
45 in his discretion, that such modification, or the part rejected, is or is
46 not minor, and that such modification or replacement may or may not

1 be made without substantially modifying or altering other aspects of
2 the district solid waste management plan; provided, however, that a
3 public hearing shall be required upon a rejection by the commissioner
4 of any district solid waste management plan in its entirety.

5 e. (1) If the commissioner directs the holding of another public
6 hearing in the solid waste management district, such hearing shall be
7 held within 45 days after such direction and shall be conducted
8 pursuant to the procedures contained in section 14 of [this amendatory
9 and supplementary act] P.L.1975, c.326 (C.13:1E-23) for the conduct
10 of public hearings held prior to the adoption of district solid waste
11 management plans. Following any such public hearing on any
12 modification to, or replacement of, any district solid waste
13 management plan, or any part thereof, the board of chosen freeholders
14 or the Hackensack Commission, as the case may be, holding same shall
15 formally adopt a modification to, or replacement of, the district solid
16 waste management plan, or any part thereof, and shall submit same to
17 the commissioner within the time limit set by the commissioner in the
18 public hearing order.

19 (2) If the commissioner directs that the modification or
20 replacement may be made without the holding of another public
21 hearing, the board of chosen freeholders or the Hackensack
22 Commission, as the case may be, shall have 45 days after such
23 direction within which to adopt any such modification or replacement,
24 and to submit same to the commissioner.

25 f. The commissioner shall have 30 days from the date of receipt of
26 any submission under subsection e. herein to approve such
27 modification or replacement or to reject same, and [he] the
28 commissioner shall certify such approval or rejection to the board of
29 chosen freeholders or the Hackensack Commission, as the case may
30 be, which submitted same. If the commissioner approves such
31 modification or replacement, or if the commissioner has made no such
32 certification within 30 days after [his] the receipt thereof, the board of
33 chosen freeholders or the Hackensack Commission, as the case may
34 be, shall proceed, pursuant to the requirements of [this amendatory
35 and supplementary act] P.L.1970, c.39 (C.13:1E-1 et seq.), to
36 implement the district solid waste management plan in the relevant
37 solid waste management district. Upon a rejection of any modification
38 or replacement submitted to [him] the commissioner pursuant to this
39 section, or upon the failure of a board of chosen freeholders or the
40 Hackensack Commission, as the case may be, to submit any
41 modification or replacement as required herein, the commissioner shall
42 have the power to adopt and promulgate any modification or
43 replacement [he] the commissioner deems necessary with respect to
44 the district solid waste management plan, and upon the certification of
45 the commissioner, the board of chosen freeholders or the Hackensack
46 Commission, as the case may be, shall proceed, pursuant to the

1 requirements of [this amendatory and supplementary act] P.L.1970,
2 c.39 (C.13:1E-1 et seq.), to implement the district solid waste
3 management plan in the relevant solid waste management district with
4 the modifications or replacements adopted by the commissioner.

5 g. The commissioner shall maintain on file in the department a copy
6 of [the Statewide] every district solid waste management plan
7 developed proved pursuant to [this amendatory and supplementary
8 act] P.L.1970, c.39 (C.13:1E-1 et seq.), and a copy of the Statewide
9 solid waste management plan developed and formulated by the
10 department pursuant to section 6 of P.L.1970, c.39 (C.13:1E-6).
11 [Such] These plans are hereby declared to be public records and shall
12 be subject to all the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.)
13 concerning such public records.

14 (cf: P.L.1975, c.326, s.15)

15

16 51. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to
17 read as follows:

18 18. Any solid waste facility constructed, acquired or operated
19 pursuant to the provisions of the "Solid Waste Management Act,"
20 P.L.1970, c.39 (C.13:1E-1 et seq.) shall be deemed a public utility and
21 shall be subject to such rules and regulations as may be adopted by the
22 [Board of Public Utilities] department in accordance with the
23 provisions of the "Solid Waste Utility Control Act," P.L.1970, c.40
24 (C.48:13A-1 et seq.) and P.L.1991, c.381 (C.48:13A-7.1 et al.).
25 (cf: P.L.1991, c.381, s.38)

26

27 52. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to
28 read as follows:

29 19. a. Any municipality within which a sanitary landfill facility is
30 located pursuant to an adopted and approved district solid waste
31 management plan shall be entitled to an annual economic benefit not
32 less than the equivalent of \$1.00 per ton of solids on all solid waste
33 accepted for disposal at the sanitary landfill facility during the previous
34 calendar year as determined by the department.

35 The owner or operator of the sanitary landfill facility shall annually
36 pay to the relevant municipality the full amount due under this
37 subsection and each relevant municipality is empowered to anticipate
38 this amount for the purposes of preparing its annual budget. For the
39 purposes of calculating the payments, the owner or operator of the
40 sanitary landfill facility may, subject to the prior agreement of the
41 relevant municipality and the approval of the [Board of Public
42 Utilities] department, provide the municipality with any of the
43 following benefits in consideration for the use of land within its
44 municipal boundaries as the location of a sanitary landfill facility:

45 (1) The receipt of annual sums of money in lieu of taxes on the
46 land used for the sanitary landfill facility;

1 (2) The exemption from all fees and charges for the disposal of
2 solid waste generated within its boundaries;

3 (3) The receipt of a lump sum cash payment; or

4 (4) Any combination thereof.

5 b. Every owner or operator of a sanitary landfill facility required
6 to make annual payments to a municipality pursuant to subsection a.
7 of this section may petition the [Board of Public Utilities] department
8 for an increase in its tariff which reflects these payments. The [board]
9 department, within 60 days of the receipt of the petition, shall issue an
10 appropriate order that these payments shall be passed along to the
11 users of the sanitary landfill facility as an automatic surcharge on any
12 tariff filed with, and recorded by, the [board] department for the solid
13 waste disposal operations of the facility.

14 c. [In issuing any order required by this section, the Board of
15 Public Utilities shall be exempt from the provisions of
16 R.S.48:2-21.](deleted by amendment, P.L. , c.)
17 (cf: P.L.1991, c.381, s.39)

18

19 53. Section 2 of P.L.1987, c.449 (C.13:1E-28.1) is amended to
20 read as follows:

21 2. a. Any municipality within which a transfer station is located
22 pursuant to an adopted and approved district solid waste management
23 plan shall be entitled to an annual economic benefit to be paid or
24 adjusted not less than quarterly in an amount established by agreement
25 with the owner or operator of the transfer station or by order of the
26 [Board of Public Utilities] department, but not less than the equivalent
27 of \$0.50 per ton of all solid waste accepted for transfer at the transfer
28 station during the 1987 calendar year and each year thereafter.

29 The owner or operator of the transfer station shall, not less
30 frequently than quarterly, pay to the relevant municipality the full
31 amount due under this subsection and each relevant municipality is
32 empowered to anticipate this amount for the purposes of preparing its
33 annual budget. For the purposes of calculating the payments, the
34 owner or operator of the transfer station may, subject to the prior
35 agreement of the relevant municipality and the approval of the [Board
36 of Public Utilities] department, provide the municipality with any of
37 the following benefits in consideration for the use of land within its
38 municipal boundaries as the location of a transfer station:

39 (1) The receipt of quarterly payments of annual sums of money in
40 lieu of taxes on the land used for the transfer station;

41 (2) The exemption from all fees and charges for the acceptance for
42 transfer of solid waste generated within its boundaries;

43 (3) The receipt of quarterly lump sum cash payments; or

44 (4) Any combination thereof.

45 b. Every owner or operator of a transfer station required to make
46 payments not less frequently than quarterly to a municipality pursuant

1 to subsection a. of this section may petition the [Board of Public
2 Utilities] department for an increase in its tariff which reflects these
3 payments. The [board] department, within 60 days of the receipt of
4 the petition, shall issue an order that these payments shall be passed
5 along to the users of the transfer station as an automatic surcharge on
6 any tariff filed with, and recorded by, the [board] department for the
7 solid waste disposal operations of the transfer station.

8 c. [In issuing any order required by this section, the Board of
9 Public Utilities shall be exempt from the provisions of
10 R.S.48:2-21.]deleted by amendment, P.L. , c.)

11 (cf: P.L.1991, c.381, s.40)

12
13 54. Section 21 of P.L.1975, c.326 (C.13:1E-30) is amended to
14 read as follows:

15 21. a. The commissioner may make, or contract to make, a State
16 grant to any person engaged in solid waste collection, disposal or
17 utilization activities, to assist said person in experimenting with new
18 methods of solid waste collection, disposal or utilization, including but
19 not limited to, material recycling and energy recovery demonstration
20 projects, intermunicipal waste collection and disposal systems projects,
21 and coordinated multiusage of terminated sanitary landfill disposal
22 sites projects. Any person engaged in solid waste collection, disposal
23 or utilization activities may apply to the commissioner for a State
24 grant; provided, however, that the application has been approved by
25 the board of chosen freeholders, or the Hackensack Commission, as
26 the case may be, as in conformity with the adopted and approved
27 district solid waste management plan of the solid waste management
28 district within which the experimental project is to be undertaken. The
29 applicant shall submit a copy of the plan for any solid waste collection,
30 disposal or utilization experimental project for which a State grant is
31 sought and such other detailed information concerning the project,
32 including maps, data, plans, estimated costs, and method of financing,
33 as the commissioner may require by rules and regulations
34 [promulgated hereunder] adopted pursuant to P.L.1970, c.39
35 (C.13:1E-1 et seq.). [At the request of the] The commissioner[, the
36 Board of Public Utility Commissioners] may exempt any
37 demonstration project from the provisions of P.L.1970,
38 c.40[(C.4:13A-1 et seq.)](C.48:13A-1 et seq.).

39 b. The commissioner shall review and evaluate all applications
40 submitted [to him] pursuant to subsection a. of this section, and shall
41 establish such priorities for making grants pursuant to this
42 [amendatory and supplementary act] section as shall give due regard
43 to the degree to which the experimental project for which a State grant
44 is sought will have a beneficial and long term effect on solid waste
45 collection, disposal and utilization methods in this State.

46 (cf: P.L.1975, c.326, s.21)

1 55. Section 1 of P.L.1976, c.99 (C.13:1E-38) is amended to read
2 as follows:

3 1. As used in this act[, the following words and phrases shall have
4 the following meanings, unless the context clearly requires another
5 meaning]:

6 a. "Bulk liquids" means liquid or semiliquid waste, including
7 petroleum products, which is contained within, or is discharged from,
8 any one vessel, tank or other container which has a capacity of 20 or
9 more gallons;

10 b. "Chemical waste" means a material normally generated by or
11 used in chemical, petrochemical, plastic, pharmaceutical, biochemical
12 or microbiological manufacturing processes or petroleum refining
13 processes, which has been selected for waste disposal and which is
14 known to hydrolize, ionize or decompose, which is soluble, burns or
15 oxidizes, or which may react with any of the waste materials which are
16 introduced into the landfill, or which is buoyant on water, or which has
17 a viscosity less than that of water or which produces a foul odor.
18 Chemical waste may be either hazardous or nonhazardous.

19 c. "Hazardous waste" means any waste or any combination of
20 waste which poses a present or potential threat to human health, living
21 organisms or the environment. "Hazardous waste" shall include, but
22 not be limited to, waste material that is toxic, corrosive, irritating,
23 sensitizing, radioactive, biologically infectious, explosive or
24 flammable;

25 d. "Leachate" is a liquid that has been in contact with solid waste
26 and contains dissolved or suspended materials from that solid waste.

27 e. "Pesticide" means and includes any substance or mixture of
28 substances labeled, designed, intended for or capable of use in
29 preventing, destroying, repelling, sterilizing or mitigating any insects,
30 rodents, nematodes, predatory animals, fungi, weeds and other forms
31 of plant or animal life or viruses, except viruses on or in living man or
32 other animals. "Pesticide" shall also include any substance or mixture
33 of substances labeled, designed or intended for use as a defoliant,
34 desiccant or plant regulator.

35 f. "Commercial solid waste facility" means any solid waste facility
36 operated for profit which accepts any solid waste generated from any
37 other source and is subject to the [jurisdiction of the Board of Public
38 Utilities pursuant to the] provisions of P.L.1970, c.40 (C.48:13A-1 et
39 seq.).

40 (cf: P.L.1979, c.395, s.2)

41

42 56. Section 3 of P.L.1989, c.34 (C.13:1E-48.3) is amended to read
43 as follows:

44 3. As used in sections 1 through 25 of [this act] P.L.1989, c.34
45 (C.13:1E-48.1 through 13:1E-48.25):

46 ["Board" means the Board of Public Utilities.]

1 "Collection" means the activity related to pick-up and
2 transportation of regulated medical waste from a generator, or from
3 an intermediate location, to a facility, or to a site outside the State, for
4 disposal.

5 "Commissioners" means the Commissioner of Environmental
6 Protection and the Commissioner of Health.

7 "Departments" means the Department of Environmental Protection
8 and the Department of Health.

9 "Dispose" or "disposal" means the storage, treatment, utilization,
10 processing, resource recovery of, or the discharge, deposit, injection,
11 dumping, spilling, leaking, or placing of any regulated medical waste
12 into or on any land or water so that the regulated medical waste or any
13 constituent thereof may enter the environment or be emitted into the
14 air or discharged into any waters, including groundwaters.

15 "Facility" means a solid waste facility as defined in section 3 of
16 P.L.1970, c.39 (C.13:1E-3); or any other incinerator or commercial or
17 noncommercial regulated medical waste disposal facility in this State
18 that accepts regulated medical waste for disposal.

19 "Federal Act" means the "Medical Waste Tracking Act of 1988" (42
20 U.S.C. 6903 et seq.), or any rule or regulation adopted pursuant
21 thereto.

22 "Generator" means an ambulatory surgical or care facility,
23 community health center, medical doctor's office, dentist's office,
24 podiatrists offices, home health care agencies, health care facility,
25 hospital, medical clinic, morgue, nursing home, urgent care center,
26 veterinary office or clinic, animal, biological, clinical, medical,
27 microbiological, or pathological diagnostic or research laboratory, any
28 of which generates regulated medical waste, or any other facility
29 identified by the departments that generates regulated medical waste.
30 "Generator" shall not include individual households utilizing home
31 self-care.

32 "Regulated medical waste" means blood vials; cultures and stocks
33 of infectious agents and associated biologicals, including cultures from
34 medical and pathological laboratories, cultures and stocks of infectious
35 agents from research and industrial laboratories, wastes from the
36 production of biologicals, discarded live and attenuated vaccines, and
37 culture dishes and devices used to transfer, inoculate, and mix
38 cultures; pathological wastes, including tissues, organs, and body parts
39 that are removed during surgery or autopsy; waste human blood and
40 products of blood, including serum, plasma, and other blood
41 components; sharps that have been used in patient care or in medical,
42 research, or industrial laboratories engaged in medical research,
43 testing, or analysis of diseases affecting the human body, including
44 hypodermic needles, syringes, pasteur pipettes, broken glass, and
45 scalpel blades; contaminated animal carcasses, body parts, and bedding
46 of animals that were exposed to infectious agents during research,

1 production of biologicals, or testing of pharmaceuticals; any other
2 substance or material related to the transmission of disease as may be
3 deemed appropriate by the departments; and any other substance or
4 material as may be required to be regulated by, or permitted to be
5 exempted from, the Federal Act. The departments may adopt, by rule
6 or regulation and pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), a more specific definition of
8 regulated medical waste upon the expiration of the demonstration
9 program established under the Federal Act.

10 "Noncommercial facility" means a facility or on-site generator, as
11 the case may be, which accepts regulated medical waste from other
12 generators for on-site disposal for a cost-based fee not in excess of the
13 costs actually incurred by the facility or on-site generator for the
14 treatment or disposal of the regulated medical waste.

15 "Transporter" means a person engaged in the collection or
16 transportation of regulated medical waste.

17 (cf: P.L.1989, c.34, s.3)

18

19 57. Section 8 of P.L.1989, c.34 (C.13:1E-48.8) is amended to read
20 as follows:

21 8. a. No person may transport regulated medical waste unless the
22 person has:

23 (1) satisfied all requirements prescribed by the Department of
24 Environmental Protection, and filed a registration statement and
25 obtained approval thereof from the department on a form provided,
26 and containing all information requested by the department;

27 (2) paid an annual registration fee in an amount set by the
28 Department of Environmental Protection pursuant to a rule or
29 regulation adopted in accordance with the "Administrative Procedure
30 Act;"

31 (3) received written instruction from the departments on the proper
32 and safe tracking, identification, packaging, storage, control,
33 monitoring, handling, collection, and disposal of regulated medical
34 waste;

35 (4) obtained a registration statement required by section 5 of
36 P.L.1970, c.39 (C.13:1E-5);

37 (5) obtained a certificate of public convenience and necessity
38 required by section 7 of P.L.1970, c.40 (C.48:13A-6);

39 (6) complied with the requirements of P.L.1983, c.392
40 (C.13:1E-126 et seq.); and

41 (7) paid an annual fee to, and in an amount set by, the [Board of
42 Public Utilities] Department of Environmental Protection pursuant to
43 section 9 of [this act] P.L.1989, c.34 (C.13:1E-48.9).

44 b. The provisions of subsection a. of this section shall not apply to
45 a generator who generates less than three cubic feet of regulated
46 medical waste per month and who transports that regulated medical

1 waste to another generator for storage or disposal.
2 (cf: P.L.1989, c.34, s.8)

3
4 58. Section 9 of P.L.1989, c.34 (C.13:1E-48.9) is amended to read
5 as follows:

6 9. Every transporter shall submit an application for a certificate of
7 public convenience and necessity to the [Board of Public Utilities]
8 Department of Environmental Protection on a form prescribed by the
9 [board] department, and pay an initial and annual renewal fee in an
10 amount set by the [board] department as may be necessary to cover
11 the costs of reviewing the qualifications of applicants, including
12 background investigations, and the costs of compliance monitoring and
13 administration.

14 (cf: P.L.1989, c.34 s.9)

15
16 59. Section 12 of P.L.1989, c.34 (C.13:1E-48.12) is amended to
17 read as follows:

18 12. a. The Department of Environmental Protection[, in
19 conjunction with the Board of Public Utilities,]shall adopt appropriate
20 rules or regulations or issue administrative orders providing for the
21 interdistrict or intradistrict flow of regulated medical waste. The rules,
22 regulations, or administrative orders shall establish the manner in
23 which the department [and the board jointly] will direct the flow of
24 regulated medical waste in this State pursuant to P.L.1970, c.39
25 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.) and the
26 provisions of this act, and determine where regulated medical waste
27 may be disposed.

28 b. The [Board of Public Utilities] department shall have jurisdiction
29 over rates or charges for the disposal of regulated medical waste
30 received by any commercial incinerator or commercial facility in this
31 State that accepts regulated medical waste for disposal. The
32 department[, in conjunction with the board,]may require any solid
33 waste facility to accept for disposal regulated medical waste prepared
34 for that purpose in accordance with the provisions of this act, and any
35 rule or regulation adopted pursuant thereto, on the same terms and
36 under the same conditions as ordinary solid waste.

37 c. The [Board of Public Utilities] department shall not have
38 jurisdiction over rates or charges for the disposal of regulated medical
39 waste imposed by any noncommercial facility in this State that accepts
40 regulated medical waste for disposal, without regard to whether the
41 regulated medical waste was generated onsite or otherwise.

42 d. (1) The Commissioner of Health shall recommend to the
43 Hospital Rate Setting Commission adjustments to the reimbursement
44 rates for affected generators for activities that are required under this
45 act, but that are not currently reimbursed under the rate setting system
46 established by section 5 of P.L.1978, c.83 (C.26:2H-4.1). The Division

1 of Medical Assistance and Health Services shall recommend to the
2 Commissioner of Human Services adjustments to the reimbursement
3 rates under Medicaid for affected generators for activities that are
4 required under this act, but that are not currently reimbursed under the
5 Medicaid rate setting system.

6 (2) The Commissioner of Health shall develop and implement a
7 generic appeal process, under which any hospital may petition the
8 Hospital Rate Setting Commission under the appropriate appeal option
9 for the expeditious reimbursement of the costs incurred in complying
10 with the provisions of this act, including the amount of the annual
11 registration fee paid to the department by generators of regulated
12 medical waste pursuant to section 7 of P.L.1989, c.34 (C.13:1E-48.7),
13 to the extent that these costs and the annual fee is not currently
14 reimbursed under the rate setting system established by P.L.1971,
15 c.136 (C.26:2H-1 et seq.) or section 5 of P.L.1978, c.83
16 (C.26:2H-4.1), as the case may be.

17 (cf: P.L.1989, c.240, s.2)

18

19 60. Section 13 of P.L.1989, c.34 (C.13:1E-48.13) is amended to
20 read as follows:

21 13. a. The departments shall study the issue of regulated medical
22 waste in the State and prepare a comprehensive State regulated
23 medical waste management plan addressing the immediate, interim,
24 and long-term needs of the State with respect to the disposal of
25 regulated medical waste in a manner that will protect the public health
26 and the environment. The departments, [within one year of the
27 effective date of this act] no later than March 6, 1990, shall transmit
28 to the Governor and the Legislature the comprehensive State regulated
29 medical waste management plan.

30 b. The comprehensive State regulated medical waste management
31 plan shall include:

32 (1) an inventory of the number and types of generators of regulated
33 medical waste within the State, and of the composition and quantities
34 of regulated medical waste generated thereby, together with a
35 recommendation with respect to the advisability, practicability and
36 feasibility of exempting certain small quantity generators from the
37 manifest requirements imposed by this act;

38 (2) a projection of the number and types of generators of regulated
39 medical waste within the State for the next 30 years following
40 enactment of this act, and the composition and quantities of regulated
41 medical waste to be generated thereby;

42 (3) an evaluation of the impact of out-of-state generators upon the
43 present and future regulated medical waste disposal capacity within the
44 State;

45 (4) an evaluation[, to be undertaken in conjunction with the Board
46 of Public Utilities,]of the status of the regulated medical waste

1 collection and disposal industries, and whether they are of sufficient
2 size and competitiveness to meet the needs of the State, and, if not,
3 recommendations of ways to increase the size and competitiveness
4 thereof;

5 (5) an inventory and appraisal, including the identity, location, and
6 life expectancy, of all existing and approved incineration or
7 non-incineration disposal capacity which is anticipated to be available
8 to each county in this State for its regulated medical waste disposal
9 needs, including all commercial and noncommercial regulated medical
10 waste disposal facilities, and solid waste facilities within the State and
11 in nearby states permitted to accept regulated medical waste for
12 disposal;

13 (6) an updated projection of the anticipated regulated medical
14 waste disposal capacity shortfall in each county in this State in the next
15 5 years from the date of enactment of this act;

16 (7) a recommendation of the regulated medical waste disposal
17 strategy to be applied in the State, which strategy shall include the
18 maximum practicable use of existing and approved incineration
19 capacity for regulated medical waste, particularly pathology
20 specimens, resource recovery procedures, recycling, and consideration
21 of the establishment of regional regulated medical waste disposal
22 facilities;

23 (8) recommendations of any statutory and regulatory changes
24 deemed necessary to implement the comprehensive State regulated
25 medical waste management plan and assure utilization of the most
26 sanitary, efficient, and economical methods for the tracking,
27 identification, packaging, storage, control, monitoring, handling,
28 collection, and disposal of regulated medical waste; and

29 (9) an evaluation of the environmental and public health impacts of
30 all reasonably available regulated medical waste treatment and disposal
31 technologies, and a recommendation concerning the extent to which
32 non-incineration technologies may be utilized as an alternative to

1 incineration technologies.
2 (cf: P.L.1989, c.34, s.13)

3

4 61. Section 15 of P.L.1989, c.34 (C.13:1E-48.15) is amended to
5 read as follows:

6 15. a. Upon the submission to the Governor and the Legislature
7 of the comprehensive State regulated medical waste management plan
8 prepared by the departments pursuant to section 13 of [this act]
9 P.L.1989, c.34 (C.13:1E-48.13), the Department of Environmental
10 Protection shall:

11 (1) transmit, by certified mail, a written determination of need to
12 the governing body of each county in this State in which the
13 department has determined that there exists or impends an anticipated
14 regulated medical waste disposal capacity shortfall; and

15 (2) issue[, in conjunction with the Board of Public
16 Utilities,]appropriate administrative orders providing for the
17 interdistrict or intradistrict flow of regulated medical waste. The
18 administrative orders shall direct the flow of regulated medical waste
19 generated within each county in this State to designated commercial
20 regulated medical waste disposal facilities and, subject to the prior
21 approval of the owner or operator thereof, to designated
22 noncommercial facilities for disposal.

23 b. In the event that appropriate rules and regulations to implement
24 the Federal Act have not been adopted by the United States
25 Environmental Protection Agency prior to the submission to the
26 Governor and the Legislature of the comprehensive State regulated
27 medical waste management plan, the departments may adopt, by rule
28 or regulation, regulated medical waste management requirements to
29 provide for the proper and safe segregation, identification, packaging,
30 storage, labeling, control, monitoring, handling, collection, and
31 disposal of regulated medical waste consistent with those set forth in
32 this act.

33 (cf: P.L.1989, c.34, s.15)

34

35 62. Section 18 of P.L.1989, c.34 (C.13:1E-48.18) is amended to
36 read as follows:

37 18. a. Any county within which a solid waste facility is located
38 pursuant to an adopted and approved district solid waste management
39 plan, which facility is a designated recipient of regulated medical waste
40 pursuant to an interdistrict or intradistrict waste flow order issued by
41 the [Board of Public Utilities, in conjunction with the] Department of
42 Environmental Protection, may be entitled to an annual economic
43 benefit in an amount established by agreement with the owner or
44 operator of the solid waste facility. The governing body of the relevant
45 county may negotiate with the owner or operator of the solid waste
46 facility for the payment of an annual economic benefit.

1 b. If the parties reach an agreement on the amount of an annual
2 economic benefit, the owner or operator of the solid waste facility
3 shall petition the [board] department for an adjustment in its disposal
4 tariff. The petition shall be accompanied by a copy of the agreement
5 which reflects the proposed annual payments and shall be filed with the
6 [board] department prior to its implementation. The [board]
7 department, within 60 days of the receipt of the petition, shall issue an
8 appropriate order that these payments shall be paid by the users of the
9 facility as an automatic surcharge on any tariff filed with, and recorded
10 by, the [board] department for the regulated medical waste disposal
11 operations of the facility. The surcharge shall be calculated and
12 itemized in all appropriate tariffs on a per ton basis. In the event that
13 any regulated medical waste is measured, upon acceptance for
14 disposal, by other than tons, the surcharge shall be calculated and
15 itemized by using the equivalents thereof as shall be determined by the
16 [board] department.

17 c. [In issuing any order required by this section, the Board of Public
18 Utilities shall be exempt from the provisions of R.S.48:2-21.](~~deleted~~
19 ~~by amendment, P.L. , c.)~~
20 (cf: P.L.1989, c.34, s.18)

21
22 63. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to
23 read as follows:

24 20. a. This act, and any rule or regulation adopted pursuant
25 thereto, shall be enforced by the departments and by every local board
26 of health, or county health department, as the case may be.

27 The departments and the local board of health, or the county health
28 department, as the case may be, shall have the right to enter the
29 premises of a generator, transporter, or facility at any time in order to
30 determine compliance with this act.

31 The municipal attorney or an attorney retained by a municipality in
32 which a violation of this act is alleged to have occurred shall act as
33 counsel to a local board of health.

34 The county counsel or an attorney retained by a county in which a
35 violation of this act is alleged to have occurred shall act as counsel to
36 the county health department.

37 All enforcement activities undertaken by county health departments
38 pursuant to this subsection shall conform to all applicable performance
39 and administrative standards adopted pursuant to section 10 of the
40 "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-28).

41 b. Whenever the Commissioner of Environmental Protection or the
42 Commissioner of Health finds that a person has violated this act, or
43 any rule or regulation adopted pursuant thereto, that commissioner
44 shall:

45 (1) issue an order requiring the person found to be in violation to
46 comply in accordance with subsection c. of this section;

1 (2) bring a civil action in accordance with subsection d. of this
2 section;

3 (3) levy a civil administrative penalty in accordance with subsection
4 e. of this section;

5 (4) bring an action for a civil penalty in accordance with subsection
6 f. of this section; or

7 (5) petition the Attorney General to bring a criminal action in
8 accordance with subsections g. through l. of this section.

9 Pursuit of any of the remedies specified under this section shall not
10 preclude the seeking of any other remedy specified.

11 c. Whenever the Commissioner of Environmental Protection or the
12 Commissioner of Health finds that a person has violated this act, or
13 any rule or regulation adopted pursuant thereto, that commissioner
14 may issue an order specifying the provision or provisions of this act,
15 or the rule or regulation adopted pursuant thereto, of which the person
16 is in violation, citing the action that constituted the violation, ordering
17 abatement of the violation, and giving notice to the person of the
18 person's right to a hearing on the matters contained in the order. The
19 ordered party shall have 20 days from receipt of the order within
20 which to deliver to the commissioner a written request for a hearing.
21 After the hearing and upon finding that a violation has occurred, the
22 commissioner may issue a final order. If no hearing is requested, the
23 order shall become final after the expiration of the 20-day period. A
24 request for hearing shall not automatically stay the effect of the order.

25 d. The Commissioner of Environmental Protection, the
26 Commissioner of Health, a local board of health, or a county health
27 department may institute an action or proceeding in the Superior Court
28 for injunctive and other relief, including the appointment of a receiver
29 for any violation of this act, or of any rule or regulation adopted
30 pursuant thereto, and the court may proceed in the action in a
31 summary manner. In any such proceeding the court may grant
32 temporary or interlocutory relief.

33 Such relief may include, singly or in combination:

34 (1) a temporary or permanent injunction;

35 (2) assessment of the violator for the costs of any investigation,
36 inspection, or monitoring survey that led to the establishment of the
37 violation, and for the reasonable costs of preparing and litigating the
38 case under this subsection;

39 (3) assessment of the violator for any cost incurred by the State in
40 removing, correcting, or terminating the adverse effects upon
41 environmental quality or public health resulting from any violation of
42 this act, or any rule or regulation adopted pursuant thereto, for which
43 the action under this subsection may have been brought;

44 (4) assessment against the violator of compensatory damages for
45 any loss or destruction of wildlife, fish or aquatic life, and for any
46 other actual damages caused by any violation of this act, or any rule

1 or regulation adopted pursuant thereto, for which the action under this
2 subsection may have been brought.

3 Assessments under this subsection shall be paid to the State
4 Treasurer, or to the local board of health, or to the county health
5 department, as the case may be, except that compensatory damages
6 may be paid by specific order of the court to any persons who have
7 been aggrieved by the violation.

8 If a proceeding is instituted by a local board of health or county
9 health department, notice thereof shall be served upon the
10 commissioners in the same manner as if the commissioners were named
11 parties to the action or proceeding. Either of the departments may
12 intervene as a matter of right in any proceeding brought by a local
13 board of health or county health department.

14 e. Either of the commissioners, as the case may be, may assess a
15 civil administrative penalty of not more than \$50,000 for each
16 violation. Each day that a violation continues shall constitute an
17 additional, separate, and distinct offense. A commissioner may not
18 assess a civil administrative penalty in excess of \$25,000 for a single
19 violation, or in excess of \$2,500 for each day during which a violation
20 continues, until the departments have respectively adopted, pursuant
21 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
22 et seq.), regulations requiring the appropriate commissioner, in
23 assessing a civil administrative penalty, to consider the operational
24 history of the violator, the severity of the violation, the measures taken
25 to mitigate or prevent further violations, and whether the penalty will
26 maintain an appropriate deterrent. No assessment may be levied
27 pursuant to this section until after the violator has been notified by
28 certified mail or personal service. The notice shall include a reference
29 to the section of the statute, rule, regulation, or order violated, a
30 concise statement of the facts alleged to constitute a violation, a
31 statement of the amount of the civil administrative penalties to be
32 imposed, and a statement of the party's right to a hearing. The ordered
33 party shall have 20 calendar days from receipt of the notice within
34 which to deliver to the appropriate commissioner a written request for
35 a hearing. After the hearing and upon finding that a violation has
36 occurred, that commissioner may issue a final order after assessing the
37 amount of the fine specified in the notice. If no hearing is requested,
38 the notice shall become a final order after the expiration of the 20-day
39 period. Payment of the assessment is due when a final order is issued
40 or the notice becomes a final order. The authority to levy a civil
41 administrative penalty is in addition to all other enforcement
42 provisions in this act, and the payment of any assessment shall not be
43 deemed to affect the availability of any other enforcement provisions
44 in connection with the violation for which the assessment is levied.
45 Each department may compromise any civil administrative penalty
46 assessed under this section in an amount the department determines

1 appropriate.

2 f. A person who violates this act, or any rule or regulation adopted
3 pursuant thereto, shall be liable for a penalty of not more than \$50,000
4 per day, to be collected in a civil action commenced by the
5 Commissioner of Environmental Protection, the Commissioner of
6 Health, a local board of health, or a county health department.

7 A person who violates an administrative order issued pursuant to
8 subsection c. of this section, or a court order issued pursuant to
9 subsection d. of this section, or who fails to pay an administrative
10 assessment in full pursuant to subsection e. of this section is subject
11 upon order of a court to a civil penalty not to exceed \$100,000 per
12 day of each violation.

13 Of the penalty imposed pursuant to this subsection, 10% or \$250,
14 whichever is greater, shall be paid to the appropriate department from
15 the General Fund if the Attorney General determines that a person is
16 entitled to a reward pursuant to section 24 of [this act] P.L.1989, c.34
17 (C.13:1E-48.24).

18 Any penalty imposed pursuant to this subsection may be collected,
19 with costs, in a summary proceeding pursuant to "the penalty
20 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and the
21 municipal court shall have jurisdiction to enforce the provisions of "the
22 penalty enforcement law" in connection with this act.

23 g. A person who purposely or knowingly:

24 (1) disposes or stores regulated medical waste without
25 authorization from either the Department of Environmental Protection
26 or the Department of Health, as appropriate, or in violation of this act,
27 or any rule or regulation adopted pursuant thereto;

28 (2) makes any false or misleading statement to any person who
29 prepares any regulated medical waste application, registration, form,
30 label, certification, manifest, record, report, or other document
31 required by this act, or any rule or regulation adopted pursuant
32 thereto;

33 (3) makes any false or misleading statement on any regulated
34 medical waste application, registration, form, label, certification,
35 manifest, record, report, or other document required by this act, or any
36 rule or regulation adopted pursuant thereto; or

37 (4) fails to properly treat certain types of regulated medical waste
38 designated by the Department of Health in a prescribed manner; shall,
39 upon conviction, be guilty of a crime of the third degree and,
40 notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a
41 fine of not more than \$50,000 for the first offense, and not more than
42 \$100,000 for each subsequent offense, and restitution, in addition to
43 any other appropriate disposition authorized by subsection b. of
44 N.J.S.2C:43-2.

45 h. A person who recklessly or negligently:

46 (1) disposes or stores regulated medical waste without

1 authorization from either the Department of Environmental Protection
2 or the Department of Health, as appropriate, or in violation of this act,
3 or any rule or regulation adopted pursuant thereto;

4 (2) makes any false or misleading statement to any person who
5 prepares any regulated medical waste application, registration, form,
6 label, certification, manifest, record, report, or other document
7 required by this act, or any rule or regulation adopted pursuant
8 thereto;

9 (3) makes any false or misleading statement on any regulated
10 medical waste application, registration, form, label, certification,
11 manifest, record, report, or other document required by this act, or any
12 rule or regulation adopted pursuant thereto; or

13 (4) fails to properly treat certain types of regulated medical waste
14 designated by the Department of Health in a manner prescribed
15 thereby;

16 shall, upon conviction, be guilty of a crime of the fourth degree.

17 i. A person who, regardless of intent:

18 (1) transports any regulated medical waste to a facility or any other
19 place in the State that does not have authorization from the
20 Department of Environmental Protection [and the Board of Public
21 Utilities] to accept such waste, or in violation of this act, or any rule
22 or regulation adopted pursuant thereto; or

23 (2) transports, or receives transported, regulated medical waste
24 without completing and submitting a manifest in accordance with this
25 act, or any rule or regulation adopted pursuant thereto;

26 shall, upon conviction, be guilty of a crime of the fourth degree.

27 j. A person who purposely, knowingly, or recklessly:

28 (1) generates and causes or permits to be transported any regulated
29 medical waste to a facility or any other place in the State that does not
30 have authorization from the Department of Environmental Protection
31 [and the Board of Public Utilities] to accept such waste, or in violation
32 of this act, or any rule or regulation adopted pursuant thereto; or

33 (2) violates any other provision of this act, or any rule or
34 regulation adopted pursuant thereto, for which no other criminal
35 penalty has been specifically provided for; shall, upon conviction, be
36 guilty of a crime of the fourth degree.

37 k. All conveyances used or intended for use in the willful
38 discharge, in violation of this act, or any rule or regulation adopted
39 pursuant thereto, of regulated medical waste are subject to forfeiture
40 to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

41 l. The provisions of N.J.S.2C:1-6 to the contrary notwithstanding,
42 a prosecution for violation of subsection g., subsection h., subsection
43 i., or subsection j. of this section shall be commenced within five years
44 of the date of discovery of the violation.

45 m. No prosecution for a violation under this act shall be deemed to
46 preclude a prosecution for the violation of any other applicable statute.

1 (cf: P.L.1989, c.34, s.20)

2

3 64. Section 13 of P.L.1987, c.102 (C.13:1E-99.21) is amended to
4 read as follows:

5 13. a. After April 20, 1989, all leaves collected by a municipality
6 pursuant to the provisions of section 14 of P.L.1987, c.102
7 (C.13:1E-99.22) shall be transported to a leaf composting facility,
8 vegetative waste composting facility or recycling center authorized or
9 approved by the department. Each district recycling plan shall identify
10 the leaf composting facility, vegetative waste composting facility or
11 recycling center to be utilized by each municipality within the county.
12 Any two or more counties may negotiate an interdistrict agreement for
13 the development or use of a regional leaf composting facility,
14 vegetative waste composting facility or recycling center.
15 Notwithstanding the provisions of section 18 of P.L.1975, c.326
16 (C.13:1E-27) or any other law, rule or regulation to the contrary, the
17 [Board of Public Utilities] department shall not have jurisdiction over,
18 or otherwise regulate the tariffs or return of, a leaf composting facility,
19 vegetative waste composting facility or recycling center authorized or
20 approved by the department.

21 b. No solid waste facility in this State, other than a leaf composting
22 facility, vegetative waste composting facility or recycling center, shall
23 accept for final disposal truckloads or roll-off containers of solid waste
24 containing leaves at any time, except that leaves source separated from
25 solid waste may be accepted by a sanitary landfill facility in those
26 instances where the facility has provided and maintains for that
27 purpose separate leaf composting facilities, and the composted leaves
28 are utilized as part of the final vegetative cover for the landfill, or for
29 other uses as a soil conditioning material.

30 c. No person shall transport leaves to an out-of-state facility except
31 in those instances where the out-of-state facility is designed and
32 operated for the purpose of accepting leaves for recycling and the
33 facility is designated in the district recycling plan required pursuant to
34 section 3 of P.L.1987, c.102 (C.13:1E-99.13).

35 (cf: P.L.1989, c.151, s.2)

36

37 65. Section 11 of P.L.1989, c.151 (C.13:1E-99.21e) is amended to
38 read as follows:

39 11. Notwithstanding the provisions of P.L.1970, c.40 (C.48:13A-1
40 et seq.) or any other law, rule or regulation to the contrary, the [Board
41 of Public Utilities] Department of Environmental Protection shall not
42 have jurisdiction over charges or rates for services provided by
43 persons engaging in the transportation of leaves to a leaf composting
44 facility, vegetative waste composting facility, recycling center or lands
45 owned or operated by a recognized academic institution authorized or
46 approved by the Department of Environmental Protection pursuant to

1 P.L.1989, c.151[(C.)]. The revenues generated by persons
2 engaging in the transportation of leaves shall not be included within
3 the computation of current or adjusted tariffs established pursuant to
4 law for solid waste collection.

5 (cf: P.L.1989, c.151, s.11)

6

7 66. Section 23 of P.L.1987, c.102 (C.13:1E-99.31) is amended to
8 read as follows:

9 23. a. The provisions of section 6 of P.L.1970, c.40 (C.48:13A-5)
10 to the contrary notwithstanding, on or after July 1, 1987 the [Board
11 of Public Utilities] Department of Environmental Protection shall not
12 award a franchise to any person or party proposing to construct, own
13 or operate a resource recovery facility unless the person or party
14 proposing to construct, own or operate the facility submits written
15 documentation and any other evidence the [board] department may
16 require demonstrating to the satisfaction of the [board] department
17 that the goals of the relevant district recycling plan required by section
18 3 of [this amendatory and supplementary act] P.L.1987, c.102
19 (C.13:1E-99.13) have been incorporated into the plans for the
20 proposed resource recovery facility.

21 b. The [board] department may adopt, pursuant to the provisions
22 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
23 et seq.), any rules and regulations necessary to implement the
24 provisions of this section.

25 (cf: P.L.1987, c.102, s.23)

26

27 67. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended to
28 read as follows:

29 40. a. Any person engaged in the business of solid waste collection
30 or solid waste disposal in accordance with the provisions of P.L.1970,
31 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.),
32 P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act may engage in
33 recycling or otherwise provide recycling services in this State.

34 b. The [Board of Public Utilities] department shall not have
35 jurisdiction over charges or rates for recycling or services provided by
36 persons engaging in the business of recycling or otherwise providing
37 recycling services in this State.

38 (cf: P.L.1991, c.381, s.42)

39

40 68. Section 3 of P.L.1981, c.306 (C.13:1E-102) is amended to
41 read as follows:

42 3. As used in this act:

43 a. "Closing costs" or "closure" means all activities and costs
44 associated with the design, purchase, construction or maintenance of
45 all measures required by the department, pursuant to law, in order to
46 prevent, minimize or monitor pollution or health hazards resulting

1 from sanitary landfill facilities subsequent to the termination of
2 operations at any portion thereof, including, but not necessarily limited
3 to, the costs of the placement of earthen or vegetative cover, the
4 installation of methane gas vents or monitors and leachate monitoring
5 wells or collection systems at the site of any sanitary landfill facility,
6 and the cost of general liability insurance, including environmental
7 impairment liability insurance, or an amount sufficient to create a
8 self-insurance fund as may be determined by the [Board of Public
9 Utilities] Department of Environmental Protection pursuant to section
10 10 of P.L.1981, c.306 (C.13:1E-109), to fund potential claims against
11 the owner or operator of the sanitary landfill facility during the closure
12 and post-closure period.

13 b. "Owner or operator" means and includes, in addition to the usual
14 meanings thereof, every owner of record of any interest in land
15 whereon a sanitary landfill facility is or has been located, and any
16 person or corporation which owns a majority interest in any other
17 corporation which is the owner or operator of any sanitary landfill
18 facility.

19 c. "Division" means the Division of Taxation in the Department of
20 the Treasury.

21 d. "Director" means the Director of the Division of Taxation in the
22 Department of the Treasury.

23 e. "Tax period" means every calendar month, or any other period
24 as may be prescribed by rule and regulation adopted by the director,
25 on the basis of which the owner or operator of a sanitary landfill
26 facility is required to report to the director pursuant to this act.

27 f. "Taxpayer" means the owner or operator of a sanitary landfill
28 facility subject to the tax provisions of this act.

29 (cf: P.L.1987, c.347, s.1)

30

31 69. Section 10 of P.L.1981, c.306 (C.13:1E-109) is amended to
32 read as follows:

33 10. a. The owner or operator of every sanitary landfill facility shall
34 deposit, on a monthly basis in an interest-bearing account with an
35 accredited financial institution, an amount equal to \$1.00 per ton of all
36 solid waste accepted for disposal during the preceding month at the
37 sanitary landfill facility. In the event that any solid waste is measured,
38 upon acceptance for disposal, by other than tons, the amount to be
39 deposited shall be calculated by using the equivalents thereof as shall
40 be determined by the division.

41 The account established pursuant to this subsection shall constitute
42 an escrow account for the closure of the particular sanitary landfill
43 facility, and no withdrawals therefrom may be made without written
44 approval of the department, except as otherwise authorized by the
45 department.

46 b. Any owner or operator of a sanitary landfill facility who shall fail

1 to deposit funds into an escrow account, as provided herein, or uses
2 those funds for any purpose other than closing costs, as approved by
3 the department, shall be guilty of a crime of the third degree.

4 c. The [Board of Public Utilities] department may, in accordance
5 with the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.), issue an
6 appropriate order increasing current tariffs established pursuant to law
7 for the solid waste disposal operations of a sanitary landfill facility as
8 may be necessary to purchase general liability insurance, including
9 environmental impairment liability insurance, or to create a
10 self-insurance fund sufficient to meet anticipated present and future
11 obligations for the closure and post-closure period. Any additional
12 revenues specifically collected for this insurance or fund shall be
13 deposited in the escrow account established pursuant to subsection a.
14 of this section for the closure of the facility and shall be withdrawn
15 only for the purchase of insurance or the payment of claims or claims
16 costs made against the owner or operator of the sanitary landfill
17 facility, as authorized by the department. No withdrawals from an
18 escrow account shall be made for insurance costs, claims or claims
19 costs unless and until the [board] department issues an appropriate
20 order increasing the relevant tariff to provide specifically for these
21 costs.

22 (cf: P.L.1987, c.347, s.2)

23

24 70. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to
25 read as follows:

26 13. a. The provisions of any law to the contrary notwithstanding,
27 the owner or operator of any sanitary landfill facility may collect the
28 tax imposed pursuant to section 5 of P.L.1981, c.306 (C.13:1E-104),
29 and the escrow account payments required by section 10 of P.L.1981,
30 c.306 (C.13:1E-109), as a surcharge on any tariff established pursuant
31 to law for the solid waste disposal operations of the facility.

32 b. The [Board of Public Utilities] department may direct the owner
33 or operator of a sanitary landfill facility to reduce the rate of payments
34 to an escrow account required by section 10 of P.L.1981, c.306
35 (C.13:1E-109), but only to the extent that:

36 (1) The current tariff established pursuant to law for the solid
37 waste disposal operations of the facility specifically allocates a portion
38 thereof for closing costs; and

39 (2) The amount collected for closing costs pursuant to this tariff
40 are deposited, on a monthly basis, in the escrow account for the
41 facility.

42 c. (deleted by amendment, P.L.1991, c.381)

43 (cf: P.L.1991, c.381, s.43)

44

45 71. Section 2 of P.L.1983, c.93 (C.13:1E-118) is amended to read
46 as follows:

1 2. a. The [Board of Public Utilities] department shall, in
2 accordance with the provisions of the "Solid Waste Utility Control Act
3 [of 1970]" (P.L.1970, c.40; C.48:13A-1 et seq.), establish an equitable
4 rate schedule based upon weight for the solid waste disposed of at all
5 solid waste facilities required to install scales pursuant to [this act]
6 P.L.1983, c.93 (C.13:1E-117 et seq.).

7 b. In instances where solid waste to be disposed is of substantially
8 higher or lower density than normal, the solid waste facility shall
9 weigh the waste, but the [board] department, at its discretion, or upon
10 petition, may require the amendment of any tariff to provide for rates
11 based on factors in addition to weight.

12 (cf: P.L.1983, c.93, s.2)

13

14 72. Section 3 of P.L.1983, c.93 (C.13:1E-119) is amended to read
15 as follows:

16 3. Any solid waste facility required to install scales pursuant to
17 [this act] P.L.1983, c.93 (C.13:1E-117 et seq.) may petition the
18 [Board of Public Utilities] department for an increase in its tariff
19 which reflects the costs reasonably incurred by the facility in
20 complying with this act. The [board] department, within 60 days of
21 the receipt of such a petition, shall determine the extent to which these
22 costs shall be passed along to the users of the solid waste facility as an
23 automatic surcharge on any tariff filed with, and recorded by, the
24 [board] department for the operation of the solid waste facility.

25 (cf: P.L.1991, c.381, s.44)

26

27 73. Section 2 of P.L.1985, c.38 (C.13:1E-137) is amended to read
28 as follows:

29 2. As used in this [amendatory and supplementary] act:

30 [a.]"Contract file" means a file established and maintained by a
31 contracting unit, in which the contracting unit shall maintain a copy of
32 its request for qualifications issued pursuant to section 19 of [this
33 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-154), a
34 list of vendors responding to its request for qualifications, a copy of
35 its request for proposals issued pursuant to section 20 of [this
36 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-155), a
37 list of qualified vendors submitting proposals, and a document
38 outlining the general criteria used by the contracting unit in selecting
39 a proposal;

40 [b.]"Contracting unit" means any county; any municipality; any
41 bistate authority; or any [board, commission, committee, authority or
42 agency, which is not a State board, commission, committee, authority or
43 agency, and which has administrative jurisdiction over any district
44 other than a school district, project, or facility, included or operating
45 in whole or in part, within the territorial boundaries of any county or
46 municipality, which exercises functions which are appropriate for the

1 exercise by one or more units of local government, and] public
2 authority which has statutory power to [make purchases and] enter
3 into contracts or agreements [for the performance of any work or the
4 furnishing or hiring of any materials or supplies usually required] for
5 the design, financing, construction, operation, or maintenance, or any
6 combination thereof, of a resource recovery facility;

7 [c.]"County" means any county of this State of whatever class;

8 [d.]"Department" means the Department of Environmental
9 Protection;

10 [e.]"Director" means the Director of the Division of Taxation in the
11 Department of Treasury;

12 [f.]"District" means a solid waste management district as designated
13 by section 10 of P.L.1975, c.326 (C.13:1E-19), except that, as used
14 in the provisions of [this amendatory and supplementary act] sections
15 3 through 17 of P.L.1985, c.38 (C.13:1E-138 through 13:1E-152),
16 "district" shall not include the Hackensack Meadowlands District;

17 [g.]"District investment tax fund" means a District Resource
18 Recovery Investment Tax Fund established pursuant to subsection a.
19 of section 15 of [this amendatory and supplementary act] P.L.1985,
20 c.38 (C.13:1E-150);

21 [h.]"Division" means the Division of Taxation in the Department of
22 Treasury;

23 [i.]"Division of Local Government Services" means the Division of
24 Local Government Services in the Department of Community Affairs;

25 [j.]"Division of Rate Counsel" means the Division of Rate Counsel
26 in the Department of the Public Advocate;

27 [k.]"Franchise" means the exclusive right to control and provide for
28 the disposal of solid waste, except for designated recyclable materials
29 as defined in section 2 of P.L.1987, c.102 (C.13:1E-99.12) or any
30 other recyclable material whenever markets for those other materials
31 are available, within a district or districts as awarded by the [Board of
32 Public Utilities] department;

33 [l.]"Independent public accountant" means a certified public
34 accountant, a licensed public accountant or a registered municipal
35 accountant;

36 [m.]"Investment tax" means the resource recovery investment tax
37 imposed pursuant to subsection b. of section 3 of [this amendatory and
38 supplementary act] P.L.1985, c.38 (C.13:1E-138);

39 [n.]"Investment tax fund" means the Resource Recovery Investment
40 Tax Fund containing sub-accounts for each county established
41 pursuant to the provisions of section 14 of [this amendatory and
42 supplementary act] P.L.1985, c.38 (C.13:1E-149);

43 [o.]"Out-of-district solid waste" means any solid waste accepted for
44 disposal in a district which was generated outside the receiving
45 district;

46 [p.]"Person or party" means any individual, public or private

1 corporation, company, partnership, firm, association, political
2 subdivision of this State, or any State, bistate, or interstate agency or
3 public authority;

4 [q.] "Proposed contract" means a contract negotiated by a
5 contracting unit pursuant to the provisions of [this amendatory and
6 supplementary act] P.L.1985, c.38 (C.13:1E-136 et al.), or a
7 substantial renegotiation of a contract previously approved pursuant
8 to the provisions of [this amendatory and supplementary act] section
9 28 of P.L.1985, c.38 (C.13:1E-163) if the renegotiation is determined
10 to be substantial by the department[, the Board of Public Utilities,] or
11 the Division of Local Government Services;

12 "Public authority" means any solid waste management authority
13 created pursuant to the "solid waste management authorities law,"
14 P.L.1968, c.249 (C.40:66A-32 et seq.); municipal or county utilities
15 authority created pursuant to the "municipal and county utilities
16 authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); incinerator
17 authority created pursuant to the "incinerator authorities law,"
18 P.L.1948, c.348 (C.40:66A-1 et seq.); county improvement authority
19 created pursuant to the "county improvement authorities law,"
20 P.L.1960, c.183 (C.40:37A-44 et seq.); pollution control financing
21 authority created pursuant to the "New Jersey Pollution Control
22 Financing Law," P.L.1973, c.376 (C.40:37C-1 et seq.), or any other
23 public body corporate and politic created for solid waste management
24 purposes in any county or municipality, pursuant to the provisions of
25 any law;

26 [r.] "Qualified vendor" means any person or party financially
27 qualified for, and technically and administratively capable of,
28 undertaking the design, financing, construction, operation, or
29 maintenance, or any combination thereof, of a resource recovery
30 facility or of providing resource recovery services, as provided in
31 section 19 of [this amendatory and supplementary act] P.L.1985, c.38
32 (C.13:1E-154);

33 [s.] "Recyclable material" means those materials which would
34 otherwise become solid waste, which may be collected, separated or
35 processed and returned to the economic mainstream in the form of raw
36 materials or products;

37 [t.] "Recycling" means any process by which materials which would
38 otherwise become solid waste are collected, separated or processed
39 and returned to the economic mainstream in the form of raw materials
40 or products;

41 [u. "Recycling facility" means a facility at which materials which
42 would otherwise become solid waste are collected, separated or
43 processed and returned to the economic mainstream in the form of raw
44 materials or products;]

45 "Residual ash" means the bottom ash, fly ash, or any combination
46 thereof, resulting from the combustion of solid waste at a resource

1 recovery facility.

2 [v.] "Resource recovery facility" means a solid waste facility
3 constructed and operated for the incineration of solid waste for energy
4 production and the recovery of metals and other materials for reuse;
5 or a mechanized composting facility, or any other solid waste facility
6 constructed or operated for the collection, separation, recycling, and
7 recovery of metals, glass, paper, and other materials for reuse or for
8 energy production;

9 [w.] "Sanitary landfill facility" means a solid waste facility at which
10 solid waste is deposited on or in the land as fill for the purpose of
11 permanent disposal or storage for a period exceeding six months,
12 except that it shall not include any waste facility approved for disposal
13 of hazardous waste;

14 [x.] "Services tax" means the solid waste services tax imposed
15 pursuant to subsection a. of section 3 of [this amendatory and
16 supplementary act] P.L.1985, c.38 (C.13:1E-138);

17 [y.] "Services tax fund" means the Solid Waste Services Tax Fund
18 established pursuant to section 12 of [this amendatory and
19 supplementary act] P.L.1985, c.38 (C.13:1E-147);

20 [z.] "Vendor" means any person or party proposing to undertake
21 the design, financing, construction, operation, or maintenance, or any
22 combination thereof, of a resource recovery facility or of providing
23 resource recovery services;

24 [aa.] "Waste importation tax" means the solid waste importation tax
25 imposed pursuant to subsection c. of section 3 of [this amendatory and
26 supplementary act] P.L.1985, c.38 (C.13:1E-138).

27 (cf: P.L.1985, c.38, s.2)

28

29 74. Section 11 of P.L.1985, c.38 (C.13:1E-146) is amended to
30 read as follows:

31 11. a. Each county, in consultation with the department, may
32 conduct a study to determine the investment tax rate estimated to be
33 necessary to be paid into the district investment tax fund so as to
34 lower the cost of resource recovery facility services to a level which
35 is competitive with the cost of disposal in a sanitary landfill facility
36 utilized by the county, or to finance the closing costs for the proper
37 closure of any terminated sanitary landfill facility located within the
38 county, except that only the additional tax revenues generated by an
39 investment tax rate adjustment may be expended for closing costs.

40 b. After completion of the study, the county, by resolution of its
41 governing body, and after review of the study by the Local Finance
42 Board in the Division of Local Government Services in the
43 Department of Community Affairs, may adjust the investment tax rate
44 set forth in subsection b. of section 3 of [this amendatory and
45 supplementary act] P.L.1985, c.38 (C.13:1E-138) to a rate, not to
46 exceed \$10.00 per ton of solids and \$0.04 per gallon of liquids, or the

1 equivalent thereof, which is consistent with the conclusions of the
2 study and with the plan developed pursuant to subsection c. of section
3 15 of [this amendatory and supplementary act] P.L.1985, c.38
4 (C.13:1E-150). The county, by resolution of its governing body, and
5 after review of the study and any additional information received
6 during the previous year by the Local Finance Board in the Division of
7 Local Government Services in the Department of Community Affairs,
8 may adjust the investment tax rate, up to the maximum rate, on an
9 annual basis. Any adjustment in the investment tax rate made pursuant
10 to this subsection shall take effect on the first day of the first calendar
11 year following the adjustment, provided that notice of the adjustment
12 shall be made to the director no later than 90 days prior to the first day
13 of a calendar year.

14 c. Upon approval by the department, two or more counties may
15 conduct a joint study and establish a single investment tax rate for the
16 districts in the manner provided in subsection b. of this section.

17 d. [The department, upon an investment tax rate adjustment by a
18 county made in the manner provided in subsection b. of this section,
19 shall notify the Board of Public Utilities of the investment tax rate
20 adjustment in that county.](deleted by amendment, P.L. , c.)
21 (cf: P.L.1985, c.38, s.11)
22

23 75. Section 18 of P.L.1985, c.38 (C.13:1E-153) is amended to
24 read as follows:

25 18. The provisions of any other law, rule or regulation to the
26 contrary notwithstanding, and as an alternative to any other procedure
27 provided for by law [or by order of the Board of Public Utilities], a
28 contracting unit may enter into a contract with a vendor for the design,
29 financing, construction, operation or maintenance, or any combination
30 thereof, of a resource recovery facility, or for the provision of
31 resource recovery services, pursuant to the provisions of [this
32 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-136 et
33 al.). Any contracting unit intending to enter into a contract with a
34 vendor pursuant to the provisions of [this amendatory and
35 supplementary act] P.L.1985, c.38 shall establish a contract file, which
36 shall be open to members of the public for inspection at the offices of
37 the contracting unit. Any contract entered into pursuant to the
38 provisions of [this amendatory and supplementary act] P.L.1985, c.38
39 may be awarded for a period not to exceed 40 years.

40 (cf: P.L.1985, c.38, s.18)
41

42 76. Section 23 of P.L.1985, c.38 (C.13:1E-158) is amended to
43 read as follows:

44 23. [a.]A contracting unit shall submit any proposed contract
45 negotiated with a qualified vendor pursuant to the provisions of [this
46 act] P.L.1985, c.38 (C.13:1E-136 et al.) to the Division of Rate

1 Counsel for review, and to the department[, the Board of Public
2 Utilities,]and the Division of Local Government Services for review
3 and approval pursuant to the provisions of section [24] 25 through
4 section 28 of [this amendatory and supplementary act] P.L.1985, c.38
5 (C.13:1E-160 through 13:1E-163).
6 (cf: P.L.1985, c.38, s.23)
7

8 77. Section 24 of P.L.1985, c.38 (C.13:1E-159) is amended to read
9 as follows:

10 24. Any contracting unit intending to submit a proposed contract
11 to the department[, the Board of Public Utilities,]and the Division of
12 Local Government Services for review and approval pursuant to the
13 provisions of [this amendatory and supplementary act] section 25
14 through section 28 of P.L.1985, c.38 (C.13:1E-160 through
15 13:1E-163) shall notify the department, [the Board of Public
16 Utilities,]the Division of Local Government Services, and the Division
17 of Rate Counsel of its intention to submit its proposed contract for
18 review and approval at least 10 days prior to the submission.
19 (cf: P.L.1985, c.38, s.24)
20

21 78. Section 25 of P.L.1985, c.38 (C.13:1E-160) is amended to
22 read as follows:

23 25. The department, [the Board of Public Utilities,]the Division of
24 Local Government Services, and the Division of Rate Counsel shall
25 have 15 days from the date of receipt of a proposed contract submitted
26 by a contracting unit for review and approval pursuant to the
27 provisions of [this amendatory and supplementary act] P.L.1985, c.38
28 (C.13:1E-136 et al.) to request the contracting unit to supply
29 additional information or documentation concerning the proposed
30 contract. The contracting unit shall provide written responses to these
31 requests within 10 days of receipt of the request. Any supplemental
32 requests for information shall be made within five days of receipt of
33 the written responses to the initial requests. The contracting unit shall
34 provide written responses to any supplemental requests within 10 days
35 of receipt of the supplemental requests. The schedule may be modified
36 by the mutual consent of the contracting unit and the department, the
37 Division of Local Government Services, [the Board of Public
38 Utilities,]or the Division of Rate Counsel, as the case may be.
39 (cf: P.L.1985, c.38, s.25)
40

41 79. Section 26 of P.L.1985, c.38 (C.13:1E-161) is amended to
42 read as follows:

43 26. a. A contracting unit shall hold a public hearing on a proposed
44 contract submitted to the department[, the Board of Public Utilities]
45 and the Division of Local Government Services for review and
46 approval pursuant to the provisions of [this amendatory and

1 supplementary act] P.L.1985, c.38 (C.13:1E-136 et al.) no sooner than
2 30 days nor later than 45 days following submission of the proposed
3 contract for review and approval. This public hearing shall be held in
4 the area to be served under the terms of the proposed contract.

5 b. The contracting unit shall provide at least 20 days' advance
6 written notice of a public hearing to be held on a proposed contract
7 pursuant to the provisions of this section to the department, [the
8 Board of Public Utilities,]the Division of Local Government Services,
9 the Division of Rate Counsel, the clerk of each municipality within the
10 area to be served under the terms of the proposed contract, and to the
11 county clerk of each county in whole or in part within the area to be
12 served under the terms of the proposed contract.

13 c. A contracting unit shall provide advance notice to the public of
14 a public hearing to be held on a proposed contract pursuant to the
15 provisions of this section. This notice shall be published once a week
16 for two consecutive weeks in at least one newspaper of general
17 circulation in the area to be served under the terms of the proposed
18 contract. The second notice shall be published at least 10 days prior to
19 the date of the public hearing. These notices shall include the date,
20 time and location of the public hearing, a general description of the
21 proposed contract, and shall inform the public of the availability of
22 copies of the proposed contract for inspection by any interested party
23 at the offices of the contracting unit. Upon request, the contracting
24 unit shall provide any interested party with a copy of the proposed
25 contract at a cost not to exceed the actual cost of reproducing the
26 proposed contract and any supporting documentation.

27 (cf: P.L.1985, c.38, s.26)

28

29 80. Section 27 of P.L.1985, c.38 (C.13:1E-162) is amended to
30 read as follows:

31 27. a. At the public hearing on the proposed contract held by the
32 contracting unit pursuant to the provisions of section 26 of [this
33 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-161) any
34 interested party may present statements or questions concerning the
35 terms and conditions of the proposed contract. Prior to the conclusion
36 of the public hearing, the contracting unit shall respond to questions
37 concerning the proposed contract raised by any interested party. The
38 contracting unit shall provide that a verbatim record be kept of the
39 public hearing. The record of the public hearing shall be kept open for
40 a period of 15 days following the conclusion of the hearing, during
41 which interested parties may submit written statements to be included
42 in the hearing record. The contracting unit shall provide that a hearing
43 report be printed, which shall include the verbatim record of the public
44 hearing, written statements submitted by interested parties, and a
45 statement prepared by the contracting unit summarizing the major
46 issues raised at the public hearing and the contracting unit's specific

1 response to these issues. The contracting unit shall make copies of the
2 transcript of the hearing report available to interested parties upon
3 request at a cost not to exceed the actual cost of printing.

4 b. Within 45 days of the close of a public hearing on a proposed
5 contract held pursuant to this section, the contracting unit shall submit
6 a copy of the hearing report to the department, [the Board of Public
7 Utilities,]the Division of Local Government Services, and the Division
8 of Rate Counsel.

9 (cf: P.L.1985, c.38, s.27)

10

11 81. Section 28 of P.L.1985, c.38 (C.13:1E-163) is amended to
12 read as follows:

13 28. a. (1) Within 30 days of receipt of the hearing report
14 submitted by a contracting unit pursuant to the provisions of
15 subsection b. of section 27 of [this amendatory and supplementary act]
16 P.L.1985, c.38 (C.13:1E-162), the department shall approve or
17 conditionally approve the proposed contract submitted for review by
18 the contracting unit pursuant to the provisions of [this amendatory and
19 supplementary act] P.L.1985, c.38 (C.13:1E-136 et al.). The
20 department shall approve the proposed contract if it finds that the
21 terms of the proposed contract are consistent with the district solid
22 waste management plan adopted pursuant to the provisions of the
23 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.)
24 by the [solid waste] district or districts to be served under the terms
25 of the proposed contract. If the department conditionally approves the
26 proposed contract, it shall state in writing the revisions which must be
27 made to the proposed contract to receive approval, and the contracting
28 unit may prepare and submit to the department a revised proposed
29 contract. If the department determines that the revisions are
30 substantial, the contracting unit shall hold a public hearing on the
31 revisions pursuant to the provisions of section 26 and section 27 of
32 [this amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-161
33 and 13:1E-162). In the alternative, the district solid waste management
34 plan or plans may be amended pursuant to law so as to be consistent
35 with the terms of the proposed contract.

36 (2) In reviewing and approving the contract, the department shall
37 not determine a rate base for, or otherwise regulate the tariffs or
38 return of, the proposed resource recovery facility.

39 (3) Notwithstanding the provisions of paragraph (2) of this
40 subsection, all parties to any contract may request the department to
41 determine a rate base for the proposed resource recovery facility, in
42 which case the department may make that determination and the terms
43 of any contract so approved shall remain subject to the continuing
44 jurisdiction of the department.

45 b. Within 30 days of receipt of the hearing report submitted by a
46 contracting unit pursuant to the provisions of subsection b. of section

1 27 of [this amendatory and supplementary act] P.L.1985, c.38
2 (C.13:1E-162), the Division of Local Government Services shall
3 approve or conditionally approve the proposed contract submitted by
4 the contracting unit pursuant to the provisions of [this amendatory and
5 supplementary act] P.L.1985, c.38 (C.13:1E-136 et al.). The division
6 shall approve the proposed contract if it finds in writing that the terms
7 of the proposed contract are in compliance with the provisions of
8 section 29 of [this amendatory and supplementary act] P.L.1985, c.38
9 (C.13:1E-164), [and] that the terms of the proposed contract will
10 result in the provision of services or facilities necessary for the health,
11 safety, welfare, convenience or betterment of the recipients or users of
12 these services or facilities, that the terms and provisions of the
13 proposed contract are not unreasonable, exorbitant or impracticable,
14 would not impose an undue and unnecessary financial burden on the
15 citizens residing in or served by the contracting unit, and will not
16 materially impair the ability of the contracting unit to punctually pay
17 the principal and interest on its outstanding indebtedness and to supply
18 other essential public improvements and services, except that the
19 division, in its review of the proposed contract, shall be bound by any
20 applicable findings or determinations of the Local Finance Board made
21 pursuant to the provisions of subsection d. of N.J.S.40A:2-7 or section
22 7 of P.L.1983, c.313 (C.40A:5A-7). If the division conditionally
23 approves the proposed contract, it shall state in writing the revisions
24 which must be made to the proposed contract to receive approval, and
25 the contracting unit may prepare and submit to the division a revised
26 proposed contract. If the division determines that revisions are
27 substantial, the contracting unit shall hold a public hearing on the
28 revisions pursuant to the provisions of section 26 and section 27 of
29 [this amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-161
30 and 13:1E-162).

31 c. [Within 30 days of receipt of the hearing report submitted by a
32 contracting unit pursuant to the provisions of subsection b. of section
33 27 of this amendatory and supplementary act, the Board of Public
34 Utilities shall approve or conditionally approve the proposed contract
35 submitted by the contracting unit pursuant to the provisions of this
36 amendatory and supplementary act. The board shall approve the
37 proposed contract if it finds in writing that the terms of the proposed
38 contract are in the public interest. If the board conditionally approves
39 the proposed contract it shall state in writing the revisions which must
40 be made to the proposed contract to receive approval, and the
41 contracting unit may prepare and submit to the board a revised
42 proposed contract. If the board determines that the revisions are
43 substantial, the contracting unit shall hold a public hearing on the
44 revisions pursuant to the provisions of section 26 and section 27 of
45 this amendatory and supplementary act. In reviewing and approving
46 the contract, the Board of Public Utilities shall not determine a rate

1 base for, or otherwise regulate the tariffs or return of, the proposed
2 resource recovery facility. The board shall not, thereafter, conduct any
3 further review of the contract.](~~deleted by amendment, P.L. , c.)~~

4 d. [Notwithstanding the provisions of subsection c. of this section,
5 all parties to any contract may request the board to determine a rate
6 base for the proposed resource recovery facility, in which case the
7 board may make that determination and the terms of any contract so
8 approved shall remain subject to the continuing jurisdiction of the
9 board.](~~deleted by amendment, P.L. , c.)~~

10 (cf: P.L.1985, c.38, s.28)

11
12 82. Section 30 of P.L.1985, c.38 (C.13:1E-165) is amended to
13 read as follows:

14 30. Whenever the Division of Rate Counsel represents the public
15 interest in a proceeding held pursuant to the provisions of [this
16 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-136 et
17 al.) to consider a proposed contract, the Director of the Division of
18 Rate Counsel may assess the vendor pursuant to the provisions of this
19 section. Whenever a contracting unit shall first submit a proposed
20 contract to the department[, the Board of Public Utilities,]and the
21 Division of Local Government Services for review and approval
22 pursuant to the provisions of [this amendatory and supplementary act]
23 P.L.1985, c.38 (C.13:1E-136 et al.), the vendor shall be assessed an
24 amount equal to one-tenth of 1% of the estimated gross revenues of
25 the resource recovery facility in the first year of its operation.
26 Thereafter, the vendor shall be assessed in the manner provided for in
27 section 20 of P.L.1974, c.27 (C.52:27E-19).

28 (cf: P.L.1985, c.38, s.30)

29
30 83. Section 31 of P.L.1985, c.38 (C.13:1E-166) is amended to read
31 as follows:

32 31. a. Any contracting unit which has issued a request for
33 qualifications, a request for proposals, or both, as the case may be, or
34 has initiated formal negotiations with a qualified vendor or two or
35 more qualified vendors, within 30 days after [the effective date of this
36 amendatory and supplementary act] February 4, 1985, may petition the
37 department for an exemption from the provisions of section 19, section
38 20, and section 21 of [this amendatory and supplementary act]
39 P.L.1985, c.38 (C.13:1E-154, 13:1E-155 and 13:1E-156). Upon
40 receiving an exemption authorized pursuant to this subsection, a
41 contracting unit may negotiate a proposed contract with a vendor
42 pursuant to the provisions of section 22 of [this amendatory and
43 supplementary act] P.L.1985, c.38 (C.13:1E-157, and shall submit the
44 proposed contract for review and approval pursuant to the provisions
45 of section 23 through section 28 of [this amendatory and
46 supplementary act] P.L.1985, c.38 (C.13:1E-158 through 13:1E-163).

1 b. Any contracting unit which has negotiated a contract for
2 resource recovery facilities or services with a vendor prior to [the
3 effective date of this amendatory and supplementary act] February 4,
4 1985, and has held a public hearing on the contract, may petition the
5 department for an exemption from the provisions of section 19
6 through section 27 of [this amendatory and supplementary act]
7 P.L.1985, c.38 (C.13:1E-154 through 13:1E-162). Upon receiving an
8 exemption authorized pursuant to this subsection, the contracting unit
9 shall submit the contract to the department[,]and the Division of Local
10 Government Services[, and the Board of Public Utilities] for the
11 review and approvals required pursuant to section 28 of [this
12 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-163).
13 The provisions of section 28 of [this amendatory and supplementary
14 act] P.L.1985, c.38 (C.13:1E-163) to the contrary notwithstanding,
15 the department[,] and the Division of Local Government Services[,
16 and the Board of Public Utilities] shall approve or conditionally
17 approve a contract submitted for review pursuant to the provisions of
18 this subsection within 60 days of the receipt of the contract. If the
19 department[,]or the Division of Local Government Services[, or the
20 Board of Public Utilities] conditionally approves the proposed
21 contract, the department[,]or the Division of Local Government
22 Services, [or the Board of Public Utilities,]as the case may be, shall
23 state in writing the revisions which must be made to the proposed
24 contract to receive approval, and the contracting unit may prepare and
25 submit a revised proposed contract. If the department[,]or the
26 Division of Local Government Services, [or the Board of Public
27 Utilities,]as the case may be, determines that the necessary revisions
28 are substantial, the contracting unit shall hold a public hearing on the
29 revisions.

30 (cf: P.L.1985, c.38, s.31)

31

32 84. Section 33 of P.L.1985, c.38 (C.13:1E-168) is amended to
33 read as follows:

34 33. a. (1) The department may adopt, pursuant to the provisions
35 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
36 et seq.), any rules and regulations necessary to implement the
37 provisions of [this amendatory and supplementary act] P.L.1985, c.38
38 (C.13:1E-136 et al.).

39 (2) The department shall adopt rules and regulations for the
40 engineering design of resource recovery facilities, to include a
41 requirement that state-of-the-art air emission technology be installed
42 to control the emission of hydrocarbons, particulates, dioxins, nitrogen
43 oxides, carbon monoxide, heavy metals, hydrochloric acid, sulfur
44 oxides and other acid gases and pollutants from each resource
45 recovery facility which is expected to emit these pollutants.

46 b. [The Board of Public Utilities may adopt, pursuant to the

1 provisions of the "Administrative Procedure Act," P.L.1968, c.410
2 (C.52:14B-1 et seq.), any rules and regulations necessary to implement
3 the provisions of this amendatory and supplementary act.](deleted by
4 amendment, P.L. , c.)

5 c. The Division of Local Government Services may adopt, pursuant
6 to the provisions of the "Administrative Procedure Act," P.L.1968,
7 c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to
8 implement the provisions of [this amendatory and supplementary act]
9 P.L.1985, c.38 (C.13:1E-136 et al.).
10 (cf: P.L.1985, c.38, s.33)

11

12 85. Section 5 of P.L.1985, c.368 (C.13:1E-173) is amended to
13 read as follows:

14 5. a. The commissioner shall apply the criteria set forth in this
15 section in determining the eligibility of owners and operators of
16 sanitary landfill facilities for grants or loans to pay the closure costs of
17 landfill closure projects. No owner or operator of a sanitary landfill
18 facility shall be eligible for a grant or loan under [this act] P.L.1985,
19 c.368 (C.13:1E-169 et seq.) prior to the submission for approval to
20 the department of a financial plan for closure as required by section 8
21 of [this act] P.L.1985, c.368 (C.13:1E-176).

22 b. Where [the Board of Public Utilities has issued an order
23 increasing] the rates and charges for solid waste disposal on the
24 relevant tariff [filed with and approved by the board] established
25 pursuant to law for the solid waste disposal operations of a sanitary
26 landfill facility have increased, and where this increase, or a portion
27 thereof, is allocated specifically in the tariff for the closure costs of the
28 sanitary landfill facility, and where the facility has accepted for final
29 disposal out-of-State solid waste prior to October 1, 1984, any local
30 government unit which is required to pay a portion of the closure costs
31 through payment of rates or charges for disposal of solid waste at the
32 facility shall be eligible to apply for a grant for the payment of a
33 portion of the closure costs, to the extent that the closure costs would
34 have been borne by the out-of-State solid waste generators who had
35 previously, but no longer, utilized the facility.

36 c. Where the [Board of Public Utilities has issued an order
37 increasing] the rates and charges for solid waste disposal on the
38 relevant tariff [filed with and approved by the board] established
39 pursuant to law for the solid waste disposal operations of a sanitary
40 landfill facility have increased, and where this increase, or a portion
41 thereof, is specifically allocated in the tariff for the closure costs of the
42 facility, any local government unit which is required to pay any portion
43 of the closure costs through the payment of rates or charges for
44 disposal of solid waste at the facility shall be eligible to apply for a
45 loan for the payment of a portion of the closure costs.

46 d. Upon the final approval by the [Board of Public Utilities]

1 department of increases in the solid waste disposal tariff with respect
2 to a sanitary landfill facility, as set forth in this section, the [board]
3 department shall file [with] and maintain in the department a copy of
4 the order increasing the solid waste tariff, including the projected
5 amounts thereof specifically allocated for closure costs to be generated
6 from local government units required to pay a portion of the closure
7 costs through the payment of rates or charges for the disposal of solid
8 waste at the sanitary landfill facility and the proportionate amounts
9 thereof specifically allocated for closure costs which would have been
10 generated from the out-of-State solid waste generators who had
11 previously, but no longer, utilized the facility.

12 e. Where [the Board of Public Utilities has not issued] an order
13 increasing the rates or charges for solid waste disposal on the relevant
14 tariff with respect to solid waste disposal operations of a sanitary
15 landfill facility has not been issued, or, where the [Board of Public
16 Utilities] department does not exercise rate setting jurisdiction or has
17 denied a request for an order increasing the rates or charges for solid
18 waste disposal on the relevant tariff with respect to solid waste
19 disposal operations of a sanitary landfill facility, any owner or operator
20 thereof shall be eligible to apply for a loan to pay closure costs of the
21 sanitary landfill facility, if the commissioner determines that funds
22 currently available in the escrow account established for the facility
23 pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.), or otherwise
24 legally available from the owner or operator thereof, are inadequate to
25 cover the required closure costs for the sanitary landfill facility.
26 (cf: P.L.1985, c.368, s.5)

27

28 86. Section 8 of P.L.1985, c.368 (C.13:1E-176) is amended to
29 read as follows:

30 8. [It] The provisions of any other law, or of any rule or regulation
31 adopted pursuant thereto, to the contrary notwithstanding, it shall
32 remain the continuing responsibility of the owner or operator of every
33 sanitary landfill facility to insure that the rates or charges received at
34 the facility[, whether or not these rates or charges are subject to the
35 jurisdiction of the Board of Public Utilities pursuant to P.L.1970, c.40
36 (C.48:13A-1 et seq.),] will provide sufficient revenues for all costs,
37 including closure costs, likely to be incurred by the facility. In order
38 to insure the integrity of financial planning for closure, the owner or
39 operator of every sanitary landfill facility[, whether or not the rates or
40 charges received by the facility are subject to the jurisdiction of the
41 Board of Public Utilities,] shall submit for approval to the department
42 [and, where relevant, the board,] a financial plan addressing all aspects
43 of closure. The owner or operator of every existing sanitary landfill
44 facility for which a registration statement and engineering design have
45 been filed with, and approved by, the department prior to June 1, 1985
46 shall submit a financial plan for closure [within 180 days of the

1 effective date of this act] by May 12, 1986, except that the
2 department[, or the board, as the case may be,] may grant an extension
3 [of up to 180 days] until November 12, 1986, if sufficient reason
4 exists to grant the extension. The owner or operator of every new
5 sanitary landfill facility for which a registration statement and
6 engineering statement have been filed with the department subsequent
7 to June 1, 1985 shall submit for approval to the department [and,
8 where relevant, the board,] a financial plan for closure prior to
9 commencement of operations, except that the department[, or the
10 board, as the case may be,] may grant an extension [of up to 180 days]
11 until May 12, 1986, if sufficient reason exists to grant the extension.
12 (cf: P.L.1985, c.368, s.8)

13

14 87. Section 3 of P.L.1989, c.236 (C.27:2-9) is amended to read as
15 follows:

16 3. Any person awarded a contract by the Commissioner of
17 Transportation for the construction, reconstruction or resurfacing of
18 any State, county or municipal road, street or highway, or portion
19 thereof, which contract requires the contractor to provide for the
20 disposal of solid waste, shall have the right to renegotiate the contract
21 to reflect any increase in solid waste disposal costs whenever:

22 a. the increase occurred as a result of compliance with an order
23 issued by the Department of Environmental Protection[, in conjunction
24 with the Board of Public Utilities,] directing the solid waste be
25 disposed at a solid waste facility other than the facility previously
26 utilized by the person to whom the contract has been awarded; or

27 b. the increase in solid waste disposal costs occurred as a result of
28 lawful increases in the rates, fees or charges imposed on the disposal
29 of solid waste at the solid waste facility utilized by the person to whom
30 the contract has been awarded.

31 (cf: P.L.1989, c.236, s.3)

32

33 88. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to
34 read as follows:

35 6. Any solid waste facilities owned or operated by a county
36 improvement authority pursuant to the provisions of this amendatory
37 and supplementary act, shall be deemed a public utility and shall be
38 subject to such rules and regulations as may be adopted by the [Board
39 of Public Utilities] Department of Environmental Protection in
40 accordance with the provisions of the "Solid Waste Utility Control
41 Act" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement
42 authority's application to operate any solid waste facility shall be
43 considered at a public hearing by the [Board of Public Utilities]
44 Department of Environmental Protection.

45 (cf: P.L.1991, c.381, s.46)

46

1 89. Section 2 of P.L.1991, c.170 (C.40:66-5.2) is amended to read
2 as follows:

3 2. a. The provisions of any other law, rule or regulation to the
4 contrary notwithstanding, the governing body of any municipality may
5 request that every solid waste collector engaging in private solid waste
6 collection services within the municipality who is registered pursuant
7 to sections 4 and 5 of P.L.1970, c.39 (C.13:1E-4 and 13:1E-5) and
8 holds a certificate of public convenience and necessity pursuant to
9 sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9)
10 provide all responsible solid waste generators with the opportunity to
11 contract for, on an individual basis, regular solid waste collection
12 services, if the responsible solid waste generator is required to do so
13 by a proof of service ordinance adopted pursuant to section 1 of
14 P.L.1991, c.170 (C.40:66-5.1).

15 b. The governing body of any municipality may request any solid
16 waste collector engaging in private solid waste collection services
17 within the municipality to assist the municipality in identifying those
18 responsible solid waste generators who fail to comply with the
19 provisions of section 1 of P.L.1991, c.170 (C.40:66-5.1).

20 c. Whenever the governing body adopts a proof of service
21 ordinance pursuant to section 1 of P.L.1991, c.170 (C.40:66-5.1), or
22 requests a solid waste collector to provide all responsible solid waste
23 generators with the opportunity to contract for regular solid waste
24 collection services pursuant to subsection a. of this section, the
25 governing body shall notify the [Board of Public Utilities] Department
26 of Environmental Protection of these actions by certified mail.

27 d. In the event that a solid waste collector refuses any request to
28 provide responsible solid waste generators with the opportunity to
29 contract for regular solid waste collection services pursuant to
30 subsection a. of this section, the governing body shall notify the
31 [Board of Public Utilities] Department of Environmental Protection of
32 this refusal by certified mail.

33 e. Whenever the governing body of a municipality adopts a proof
34 of service ordinance pursuant to section 1 of P.L.1991, c.170
35 (C.40:66-5.1), the governing body shall notify the owner or operator
36 of every solid waste facility utilized by the municipality of this action
37 by certified mail.

38 (cf: P.L.1991, c.170, s.2)

39

40 90. N.J.S.40A:2-22 is amended to read as follows:

41 40A:2-22. The governing body of the local unit shall determine the
42 period of usefulness of any purpose according to its reasonable life
43 computed from the date of the bonds, which period shall not be
44 greater than the following:

45 a. Buildings and structures.

46 1. Bridges, including retaining walls and approaches, or permanent

- 1 structures of brick, stone, concrete or metal, or similar durable
2 construction, 30 years.
- 3 2. Buildings, including the original furnishings and equipment
4 therefor:
- 5 Class A: A building, of which all walls, floors, partitions, stairs and
6 roof are wholly of incombustible material, except the window frames,
7 doors, top flooring and wooden handrails on the stairs, 40 years;
- 8 Class B: A building, the outer walls of which are wholly of
9 incombustible material, except the window frames and doors, 30 years;
- 10 Class C: A building which does not meet the requirements of Class
11 A or Class B, 20 years.
- 12 3. Buildings or structures acquired substantially reconstructed or
13 additions thereto, one-half the period fixed in this subsection for such
14 buildings or structures.
- 15 4. Additional furnishings, five years.
- 16 b. Marine improvements.
- 17 1. Harbor improvements, docks or marine terminals, 40 years.
- 18 2. Dikes, bulkheads, jetties or similar devices of stone, concrete or
19 metal, 15 years; of wood or partly of wood, 10 years.
- 20 c. Additional equipment and machinery.
- 21 1. Additional or replacement equipment and machinery, 15 years.
- 22 2. Voting machines, 15 years.
- 23 d. Real property.
- 24 1. Acquisition for any public purpose of lands or riparian rights, or
25 both, and the original dredging, grading, draining or planting thereof,
26 40 years.
- 27 2. Improvement of airport, cemetery, golf course, park,
28 playground, 15 years.
- 29 3. Stadia of concrete or other incombustible materials, 20 years.
- 30 e. Streets or thoroughfares.
- 31 1. Elimination of grade crossings, 35 years.
- 32 2. Streets or roads:
- 33 Class A: Rigid pavement. A pavement of not less than eight inches
34 of cement concrete or a six-inch cement concrete base with not less
35 than three-inch bituminous concrete surface course, or equivalent
36 wearing surface, 20 years.
- 37 Flexible pavement. A pavement not less than 10 inches in depth
38 consisting of five-inch macadam base, three-inch modified penetration
39 macadam and three-inch bituminous concrete surface course or other
40 pavements of equivalent strength, in accordance with the findings of
41 the American Association of State Highway Officials (AASHO) Road
42 Test, 20 years.
- 43 Class B: Mixed surface-treated road. An eight-inch surface of
44 gravel, stone or other selected material under partial control mixed
45 with cement or lime and fly ash, six inches in compacted thickness with
46 bituminous surface treatment and cover, 10 years.

1 Bituminous penetration road. A five-inch gravel or stone base
2 course and a three-inch course bound with a bituminous or equivalent
3 binder, 10 years. Class C: Mixed bituminous road. An eight-inch
4 surface of gravel, stone, or other selected material under partial
5 control mixed with bituminous material one inch or more in compacted
6 thickness, five years.

7 Penetration macadam road. A road of sand, gravel or water-bound
8 macadam, or surfacing with penetration macadam, five years.

9 3. Sidewalks, curbs and gutters of stone, concrete or brick, 10
10 years.

11 The period of usefulness in this subsection shall apply to
12 construction and reconstruction of streets and thoroughfares.

13 f. Utilities and municipal systems.

14 1. Sewerage system, whether sanitary or storm water, water supply
15 or distribution system, 40 years.

16 2. Electric light, power or gas systems, garbage, refuse or ashes
17 incinerator or disposal plant, 25 years.

18 3. Communication and signal systems, 10 years.

19 4. House connections to publicly-owned gas, water or sewerage
20 systems from the service main in the street to the curb or property
21 lines where not part of original installation, five years.

22 g. Vehicles and apparatus.

23 1. Fire engines, apparatus and equipment, when purchased new,
24 but not fire equipment purchased separately, 10 years.

25 2. Automotive vehicles, including original apparatus and equipment
26 (other than passenger cars and stationwagons), when purchased new,
27 five years.

28 3. Major repairs, reconditioning or overhaul of fire engines and
29 apparatus, which may reasonably be expected to extend for at least
30 five years the period of usefulness thereof, five years.

31 h. The closure of a sanitary landfill facility utilized, owned or
32 operated by a county or municipality, 15 years; provided that the
33 closure has been approved by the [Board of Public Utilities and the]
34 Department of Environmental Protection. For the purposes of this
35 subsection "closure" means all activities associated with the design,
36 purchase or construction of all measures required by the Department
37 of Environmental Protection, pursuant to law, in order to prevent,
38 minimize or monitor pollution or health hazards resulting from sanitary
39 landfill facilities subsequent to the termination of operations at any
40 portion thereof, including, but not necessarily limited to, the costs of
41 the placement of earthen or vegetative cover, and the installation of
42 methane gas vents or monitors and leachate monitoring wells or
43 collection systems at the site of any sanitary landfill facility.

44 i. Any purpose, except vehicles, not included in the foregoing, for
45 which obligations may be issued, 15 years.

46 (cf: P.L.1985, c.153, s.2)

1 91. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
2 read as follows:

3 15. Duration of certain contracts. All purchases, contracts or
4 agreements for the performing of work or the furnishing of materials,
5 supplies or services shall be made for a period not to exceed 12
6 consecutive months, except that contracts or agreements may be
7 entered into for longer periods of time as follows:

8 (1) Supplying of:

9 (a) Fuel for heating purposes, for any term not exceeding in the
10 aggregate, two years;

11 (b) Fuel or oil for use of airplanes, automobiles, motor vehicles or
12 equipment for any term not exceeding in the aggregate, two years;

13 (c) Thermal energy produced by a cogeneration facility, for use for
14 heating or air conditioning or both, for any term not exceeding 40
15 years, when the contract is approved by the [Board of Public Utilities]
16 Division of Energy Planning and Conservation in the Public Utility
17 Commission. For the purposes of this paragraph, "cogeneration"
18 means the simultaneous production in one facility of electric power
19 and other forms of useful energy such as heating or process steam;

20 (2) (Deleted by amendment; P.L.1977, c.53.)

21 (3) The collection [and] , recycling, or disposal of municipal solid
22 waste, or the disposal of sewage sludge, for any term not exceeding in
23 the aggregate, five years;

24 (4) The collection and recycling of methane gas from a sanitary
25 landfill facility, for any term not exceeding 25 years, when such
26 contract is in conformance with a district solid waste management plan
27 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
28 approval of the Division of Local Government Services and the
29 Department of Environmental Protection. The contracting unit shall
30 award the contract to the highest responsible bidder, notwithstanding
31 that the contract price may be in excess of the amount of any
32 necessarily related administrative expenses; except that if the contract
33 requires the contracting unit to expend funds only, the contracting unit
34 shall award the contract to the lowest responsible bidder. The
35 approval by the Division of Local Government Services of public
36 bidding requirements shall not be required for those contracts
37 exempted therefrom pursuant to section 5 of P.L.1971, c.198
38 (C.40A:11-5);

39 (5) Data processing service, for any term of not more than three
40 years;

41 (6) Insurance, for any term of not more than three years;

42 (7) Leasing or servicing of automobiles, motor vehicles, machinery
43 and equipment of every nature and kind, for a period not to exceed
44 three years; provided, however, such contracts shall be entered into
45 only subject to and in accordance with the rules and regulations
46 promulgated by the Director of the Division of Local Government

- 1 Services of the Department of Community Affairs;
- 2 (8) The supplying of any product or the rendering of any service
3 by a telephone company which is subject to the jurisdiction of the
4 Board of Public [Utilities] Utility Commissioners for a term not
5 exceeding five years;
- 6 (9) Any single project for the construction, reconstruction or
7 rehabilitation of any public building, structure or facility, or any public
8 works project, including the retention of the services of any architect
9 or engineer in connection therewith, for the length of time authorized
10 and necessary for the completion of the actual construction;
- 11 (10) The providing of food services for any term not exceeding
12 three years;
- 13 (11) On-site inspections undertaken by private agencies pursuant
14 to the "State Uniform Construction Code Act" (P.L.1975, c.217;
15 C.52:27D-119 et seq.) for any term of not more than three years;
- 16 (12) The performance of work or services or the furnishing of
17 materials or supplies for the purpose of conserving energy in buildings
18 owned by, or operations conducted by, the contracting unit, the entire
19 price of which to be established as a percentage of the resultant
20 savings in energy costs, for a term not to exceed 10 years; provided,
21 however, that such contracts shall be entered into only subject to and
22 in accordance with rules and regulations [promulgated] adopted by the
23 [Department of Energy] Division of Energy Planning and
24 Conservation in the Public Utility Commission, establishing a
25 methodology for computing energy cost savings;
- 26 (13) The performance of work or services or the furnishing of
27 materials or supplies for the purpose of elevator maintenance for any
28 term not exceeding three years;
- 29 (14) Leasing or servicing of electronic communications equipment
30 for a period not to exceed five years; provided, however, such contract
31 shall be entered into only subject to and in accordance with the rules
32 and regulations promulgated by the Director of the Division of Local
33 Government Services of the Department of Community Affairs;
- 34 (15) Leasing of motor vehicles, machinery and other equipment
35 primarily used to fight fires, for a term not to exceed seven years,
36 when the contract includes an option to purchase, subject to and in
37 accordance with rules and regulations promulgated by the Director of
38 the Division of Local Government Services of the Department of
39 Community Affairs;
- 40 (16) The provision of water supply services or the designing,
41 financing, construction, operation, or maintenance, or any combination
42 thereof, of a water supply facility, or any component part or parts
43 thereof, including a water filtration system, for a period not to exceed
44 40 years, when the contract for these services is approved by the
45 Division of Local Government Services in the Department of
46 Community Affairs, the Board of Public [Utilities] Utility

1 Commissioners, and the Department of Environmental Protection
2 pursuant to P.L.1985, c.37 (C.58:26-1 et seq.). For the purposes of
3 this subsection, "water supply services" means any service provided by
4 a water supply facility; "water filtration system" means any equipment,
5 plants, structures, machinery, apparatus, or land, or any combination
6 thereof, acquired, used, constructed, rehabilitated, or operated for the
7 collection, impoundment, storage, improvement, filtration, or other
8 treatment of drinking water for the purposes of purifying and
9 enhancing water quality and insuring its potability prior to the
10 distribution of the drinking water to the general public for human
11 consumption, including plants and works, and other personal property
12 and appurtenances necessary for their use or operation; and "water
13 supply facility" means and refers to the real property and the plants,
14 structures, interconnections between existing water supply facilities,
15 machinery and equipment and other property, real, personal and
16 mixed, acquired, constructed or operated, or to be acquired,
17 constructed or operated, in whole or in part by or on behalf of a
18 political subdivision of the State or any agency thereof, for the
19 purpose of augmenting the natural water resources of the State and
20 making available an increased supply of water for all uses, or of
21 conserving existing water resources, and any and all appurtenances
22 necessary, useful or convenient for the collecting, impounding, storing,
23 improving, treating, filtering, conserving or transmitting of water and
24 for the preservation and protection of these resources and facilities and
25 providing for the conservation and development of future water supply
26 resources;

27 (17) The provision of solid waste disposal services by a resource
28 recovery facility, the furnishing of products of a resource recovery
29 facility, the disposal of the solid waste delivered for disposal which
30 cannot be processed by a resource recovery facility or the waste
31 products resulting from the operation of a resource recovery facility,
32 including hazardous waste and recovered metals and other materials
33 for reuse, or the design, financing, construction, operation or
34 maintenance of a resource recovery facility for a period not to exceed
35 40 years when the contract is approved by the Division of Local
36 Government Services in the Department of Community Affairs[, the
37 Board of Public Utilities,]and the Department of Environmental
38 Protection; and when the resource recovery facility is in conformance
39 with a district solid waste management plan approved pursuant to
40 P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this
41 subsection, "resource recovery facility" means a solid waste facility
42 constructed and operated for the incineration of solid waste for energy
43 production and the recovery of metals and other materials for reuse;
44 or a mechanized composting facility, or any other solid waste facility
45 constructed or operated for the collection, separation, recycling, and
46 recovery of metals, glass, paper, and other materials for reuse or for

1 energy production;

2 (18) The sale of electricity or thermal energy, or both, produced by
3 a resource recovery facility for a period not to exceed 40 years when
4 the contract is approved by the Board of Public [Utilities] Utility
5 Commissioners, and when the resource recovery facility is in
6 conformance with a district solid waste management plan approved
7 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of
8 this subsection, "resource recovery facility" means a solid waste
9 facility constructed and operated for the incineration of solid waste for
10 energy production and the recovery of metals and other materials for
11 reuse; or a mechanized composting facility, or any other solid waste
12 facility constructed or operated for the collection, separation,
13 recycling, and recovery of metals, glass, paper, and other materials for
14 reuse or for energy production;

15 (19) The provision of wastewater treatment services or the
16 designing, financing, construction, operation, or maintenance, or any
17 combination thereof, of a wastewater treatment system, or any
18 component part or parts thereof, for a period not to exceed 40 years,
19 when the contract for these services is approved by the Division of
20 Local Government Services in the Department of Community Affairs
21 and the Department of Environmental Protection pursuant to
22 P.L.1985, c.72 (C.58:27-1 et seq.). For the purposes of this
23 subsection, "wastewater treatment services" means any service
24 provided by a wastewater treatment system, and "wastewater
25 treatment system" means equipment, plants, structures, machinery,
26 apparatus, or land, or any combination thereof, acquired, used,
27 constructed, or operated for the storage, collection, reduction,
28 recycling, reclamation, disposal, separation, or other treatment of
29 wastewater or sewage sludge, or for the final disposal of residues
30 resulting from the treatment of wastewater, including, but not limited
31 to, pumping and ventilating stations, facilities, plants and works,
32 connections, outfall sewers, interceptors, trunk lines, and other
33 personal property and appurtenances necessary for their operation;

34 (20) The supplying of materials or services for the purpose of
35 lighting public streets, for a term not to exceed five years, provided
36 that the rates, fares, tariffs or charges for the supplying of electricity
37 for that purpose are approved by the Board of Public [Utilities] Utility
38 Commissioners;

39 (21) In the case of a contracting unit which is a county or
40 municipality, the provision of emergency medical services by a hospital
41 to residents of a municipality or county as appropriate for a term not
42 to exceed five years;

43 (22) Towing and storage contracts, awarded pursuant to paragraph
44 u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for
45 any term not exceeding three years;

46 (23) Fuel for the purpose of generating electricity for a term not to

1 exceed eight years;

2 (24) The purchase of electricity or administrative or dispatching
3 services related to the transmission of such electricity, from a public
4 utility company subject to the jurisdiction of the Board of Public
5 [Utilities] Utility Commissioners, a similar regulatory body of another
6 state, or a federal regulatory agency, or from a qualifying small power
7 producing facility or qualifying cogeneration facility, as defined by 16
8 U.S.C. §796, by a contracting unit engaged in the generation of
9 electricity for retail sale, as of the date of this amendatory act, for a
10 term not to exceed 40 years;

11 (25) Basic life support services, for a period not to exceed five
12 years. For the purposes of this subsection, "basic life support" means
13 a basic level of prehospital care, which includes but need not be limited
14 to patient stabilization, airway clearance, cardiopulmonary
15 resuscitation, hemorrhage control, initial wound care and fracture
16 stabilization;

17 (26) Claims administration services, for any term not to exceed
18 three years;

19 (27) The provision of transportation services to elderly, disabled
20 or indigent persons for any term of not more than three years. For the
21 purposes of this subsection, "elderly persons" means persons who are
22 60 years of age or older. "Disabled persons" means persons of any age
23 who, by reason of illness, injury, age, congenital malfunction, or other
24 permanent or temporary incapacity or disability, are unable, without
25 special facilities or special planning or design to utilize mass
26 transportation facilities and services as effectively as persons who are
27 not so affected. "Indigent persons" means persons of any age whose
28 income does not exceed 100 percent of the poverty level, adjusted for
29 family size, established and adjusted under section 673(2) of subtitle
30 B, the "Community Services Block Grant Act," Pub.L.97-35 (42
31 U.S.C. §9902 (2));

32 (28) The supplying of liquid oxygen or other chemicals, for a term
33 not to exceed five years, when the contract includes the installation of
34 tanks or other storage facilities by the supplier, on or near the
35 premises of the contracting unit.

36 All multi-year leases and contracts entered into pursuant to this
37 section, except contracts for the leasing or servicing of equipment
38 supplied by a telephone company which is subject to the jurisdiction
39 of the Board of Public [Utilities] Utility Commissioners, contracts
40 involving the supplying of electricity for the purpose of lighting public
41 streets and contracts for thermal energy authorized pursuant to
42 subsection (1) above, construction contracts authorized pursuant to
43 subsection (9) above, contracts and agreements for the provision of
44 work or the supplying of equipment to promote energy conservation
45 authorized pursuant to subsection (12) above, contracts for water
46 supply services or for a water supply facility, or any component part

1 or parts thereof authorized pursuant to subsection (16) above,
2 contracts for resource recovery services or a resource recovery facility
3 authorized pursuant to subsection (17) above, contracts for the sale of
4 energy produced by a resource recovery facility authorized pursuant
5 to subsection (18) above, contracts for wastewater treatment services
6 or for a wastewater treatment system or any component part or parts
7 thereof authorized pursuant to subsection (19) above, contracts for the
8 purchase of electricity or administrative or dispatching services related
9 to the transmission of such electricity authorized pursuant to
10 subsection (24) above, shall contain a clause making them subject to
11 the availability and appropriation annually of sufficient funds as may
12 be required to meet the extended obligation, or contain an annual
13 cancellation clause.

14 The Division of Local Government Services shall adopt and
15 promulgate rules and regulations concerning the methods of
16 accounting for all contracts that do not coincide with the fiscal year.
17 (cf: P.L.1991, c.451, s.1)

18

19 92. Section 1 of P.L.1989, c.236 (C.40A:11-16.5) is amended to
20 read as follows:

21 1. Any person entering into a contract with a contracting unit
22 pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.),
23 which contract requires the contractor to provide for the disposal of
24 solid waste, shall have the right to renegotiate the contract to reflect
25 any increase in solid waste disposal costs whenever:

26 a. the increase occurred as a result of compliance with an order
27 issued by the Department of Environmental Protection[, in conjunction
28 with the Board of Public Utilities,] directing the solid waste be
29 disposed at a solid waste facility other than the facility previously
30 utilized by the person to whom the contract has been awarded; or

31 b. the increase in solid waste disposal costs occurred as a result of
32 lawful increases in the rates, fees or charges imposed on the disposal
33 of solid waste at the solid waste facility utilized by the person to whom
34 the contract has been awarded.

35 (cf: P.L.1989, c.236, s.1)

36

37 93. Section 2 of P.L.1989, c.236, (C.52:34-13.1) is amended to
38 read as follows:

39 2. Any person entering into a contract with the State pursuant to
40 the provisions of P.L.1954, c.48 (C.52:34-6 et seq.), or with an
41 independent State authority, which contract requires the contractor to
42 provide for the disposal of solid waste, shall have the right to
43 renegotiate the contract to reflect any increase in solid waste disposal
44 costs whenever:

45 a. the increase occurred as a result of compliance with an order
46 issued by the Department of Environmental Protection[, in conjunction

1 with the Board of Public Utilities,] directing the solid waste be
2 disposed at a solid waste facility other than the facility previously
3 utilized by the person to whom the contract has been awarded; or

4 b. the increase in solid waste disposal costs occurred as a result of
5 lawful increases in the rates, fees or charges imposed on the disposal
6 of solid waste at the solid waste facility utilized by the person to whom
7 the contract has been awarded.

8 For the purposes of this section, "independent State authority"
9 means an authority, board, bureau, office, commission, committee,
10 council, instrumentality or agency of the State, which is a public body
11 corporate and politic established pursuant to law, having the power to
12 sue and be sued and to issue bonds, but shall not include the New
13 Jersey Transit Corporation established pursuant to P.L.1979, c.150
14 (C.27:25-1 et seq.).

15 (cf: P.L.1989, c.236, s.2)

16

17 94. Section 3 of P.L.1977, c.146 (C.52:27F-3) is amended to read
18 as follows:

19 3. As used in this act:

20 [a. "Commissioner" means the Commissioner of the Department of
21 Energy;

22 b. "Department" means the Department of Energy established by
23 this act;

24 c.] "Administrator" means the administrator and chief executive
25 officer of the Public Utility Commission;

26 "Director" means the director of the Division of Energy Planning
27 and Conservation in the Public Utility Commission;

28 "Distributor" means and includes each person, wherever resident or
29 located, who imports into this State fuels for use, distribution, storage,
30 or sale in this State after the same shall reach this State; and also each
31 person who produces, refines, manufactures, blends, or compounds
32 fuels and sells, uses, stores, or distributes the same within this State.
33 In no case, however, shall a retail dealer be construed to be a
34 distributor;

35 [d.] "Division" means the Division of Energy Planning and
36 Conservation in the Public Utility Commission;

37 "Energy" means all power derived from, or generated by, any
38 natural or man-made agent, including, but not limited to, petroleum
39 products, gases, solar radiation, atomic fission or fusion, mineral
40 formations, thermal gradients, wind, or water.

41 [e.] "Energy facility" means any plant or operation which produces,
42 converts, distributes or stores energy or converts one form of energy
43 to another; in no case, however, shall an operation conducted by a
44 person acting only as a retail dealer be construed as an energy facility;

45 [f.] "Energy information" means any statistic, datum, fact, or item
46 of knowledge and all combinations thereof relating to energy;

1 [g.] "Energy information system" means the composite of energy
2 information collected by the office;

3 [h.] "Energy industry" means any person, company, corporation,
4 business, institution, establishment or other organization of any nature
5 engaged in the exploration, extraction, transportation, transmission,
6 refining, processing, generation, distribution, sale or storage of energy;

7 [i.] "Fuel" means coal, petroleum products, gases and nuclear fuel,
8 including enriched uranium, U235 and U238, and plutonium, U239;

9 [j.] "Gases" means natural gas, methane, liquefied natural gas,
10 synthetic natural gas, coal gas and other manufactured gases;

11 [k.] "Person" means natural persons, partnerships, firms,
12 associations, joint stock companies, syndicates and corporations, and
13 any receiver, trustee, conservator or other officer appointed pursuant
14 to law or by any court, State or Federal; "person" also means the State
15 of New Jersey, counties, municipalities, authorities, other political
16 subdivisions, and all departments and agencies within the
17 aforementioned governmental entities;

18 [l.] "Petroleum products" means and includes motor gasoline,
19 middle distillate oils, residual fuel oils, aviation fuel, propane, butane,
20 natural gasoline, naphtha, gas oils, lubricating oils and any other
21 similar or dissimilar liquid hydrocarbons;

22 [m.] "Public building" means any building, structure, facility or
23 complex used by the general public, including, but not limited to,
24 theaters, concert halls, auditoriums, museums, schools, libraries,
25 recreation facilities, public transportation terminals and stations,
26 factories, office buildings, business establishments, passenger vehicle
27 service stations, shopping centers, hotels or motels and public eating
28 places, owned by any State, county or municipal government agency
29 or instrumentality or any private individual, partnership, association or
30 corporation;

31 [n.] "Purchase" means and includes, in addition to its ordinary
32 meaning, any acquisition of ownership or possession, including, but
33 not limited to, condemnation by eminent domain proceedings;

34 [o.] "Retail dealer" means any person who engages in the business
35 of selling fuels from a fixed location such as a service station, filling
36 station, store, or garage directly to the ultimate users of said fuel;

37 [p.] "Sale" means and includes, in addition to its ordinary meaning,
38 any exchange, gift, theft, or other disposition. In such case where
39 fuels are exchanged, given, stolen, or otherwise disposed of, they shall
40 be deemed to have been sold;

41 [q.] "Supplier of fuel" means any refiner, importer, marketer,
42 jobber, distributor, terminal operator, firm, corporation, wholesaler,
43 broker, cooperative or other person who supplies, sells, consigns,
44 transfers, or otherwise furnishes fuel. In no case, however, shall a
45 retail dealer be construed to be a supplier of fuel;

46 [r.] "Trade secret" means the whole or any portion or phase of any

1 scientific, technical or otherwise proprietary information, design,
2 process, procedure, formula or improvement which is used in one's
3 business and is secret and of value; and a trade secret shall be
4 presumed to be secret when the owner takes measures to prevent it
5 from becoming available to persons other than those selected by the
6 owner to have access thereto for limited purposes;

7 [s.] "Wholesale dealer" means any person who engages in the
8 business of selling fuels to other persons who resell the said fuel. In no
9 case shall a retail dealer be considered as a wholesale dealer.

10 [t.] "Cogeneration" means the simultaneous production in one
11 facility of electric power and other useful forms of energy such as
12 heating or process steam.

13 (cf: P.L.1978, c.80, s.1)

14

15 95. Section 9 of P.L.1977, c.146 (C.52:27F-11) is amended to read
16 as follows:

17 9. The [commissioner] director shall[, on behalf of the department
18 through the Division of Energy Planning and Conservation]:

19 a. Manage the [department] division as the central repository
20 within the State Government for the collection of energy information;

21 b. Collect and analyze data relating to present and future demands
22 and resources for all forms of energy;

23 c. Have authority to require all persons, firms, corporations or
24 other entities engaged in the production, processing, distribution,
25 transmission or storage of energy in any form or in the use of steam in
26 quantities greater than 50,000 pounds per hour to submit reports
27 setting forth such information as shall be required to carry out the
28 provisions of this act;

29 d. Have authority to require any person to submit information
30 necessary for determining the impact of any construction or
31 development project on the energy and fuel resources of this State;

32 e. [Charge] Cooperate with other State Government departments
33 and agencies involved in energy-related activities, including the Board
34 of Public [Utilities, with specific information gathering goals and
35 require that said goals be fulfilled] Utility Commissioners, in gathering
36 energy information;

37 f. Establish an energy information system which will provide all
38 data necessary to insure a fair and equitable distribution of available
39 energy, to permit a more efficient and effective use of available energy,
40 and to provide the basis for long-term planning related to energy
41 needs;

42 g. Design, implement, and enforce a program for the conservation
43 of energy in commercial, industrial, and residential facilities, which
44 program shall provide for the evaluation of energy systems as they
45 relate to lighting, heating, refrigeration, air-conditioning, building
46 design and operation, elective cogeneration and process steam

1 production associated with cogeneration facilities, and appliance
2 manufacturing and operation; and may include, but shall not be limited
3 to, the requiring of an annual inspection and adjustment, if necessary,
4 of oil-fired heating systems in residential, commercial and industrial
5 buildings so as to bring such systems into conformity with efficiency
6 standards therefor prescribed by the department; the setting of lighting
7 efficiency standards for public buildings; the establishment of
8 mandatory thermostat settings and the use of seven-day, day-night
9 thermostats in public buildings; the development of standards for
10 efficient boiler operation; consider the establishment of cogeneration
11 facilities to simultaneously produce electricity and steam to conserve
12 fuel; and, the preparation of a plan to insure the phased retrofitting of
13 existing gas furnaces with electric ignition systems and to require that
14 new gas ranges and dryers be equipped with electric ignition systems,
15 and new gas furnaces with electric ignition systems and automatic
16 vent-dampers;

17 h. Conduct and supervise a State-wide program of education
18 including the preparation and distribution of information relating to
19 energy conservation;

20 i. Monitor prices charged for energy within the State, evaluate
21 policies governing the establishment of rates and prices for energy, and
22 make recommendations for necessary changes in such policies to other
23 concerned Federal and State agencies, including the Board of Public
24 [Utilities] Utility Commissioners, and to the Legislature;

25 j. Have authority to conduct and supervise research projects and
26 programs for the purpose of increasing the efficiency of energy use,
27 developing new sources of energy, evaluating energy conservation
28 measures, and meeting other goals consistent with the intent of this
29 act;

30 k. Have authority to distribute and expend funds made available for
31 the purpose of research projects and programs;

32 l. Have authority to enter into interstate compacts in order to carry
33 out energy research and planning with other states or the Federal
34 Government where appropriate;

35 m. Have authority to apply for, accept, and expand grants-in-aid
36 and assistance from private and public sources for energy programs;
37 notwithstanding any other law to the contrary, the [commissioner]
38 director is designated as the State official to apply for, receive, and
39 expend Federal and other funding made available to the State for the
40 purposes of this act;

41 n. Require the annual submission of energy utilization reports and
42 conservation plans by State Government departments and agencies,
43 including the Board of Public [Utilities] Utility Commissioners,
44 evaluate said plans and the progress of the departments and agencies
45 in meeting these plans, and order changes in the plans or improvement
46 in meeting the goals of the plans;

- 1 o. Carry out all duties given [him] the director under other sections
2 of this act or any other acts;
- 3 p. Have authority to conduct hearings and investigations in order
4 to carry out the purposes of this act and to issue subpoenas in
5 furtherance of such power. Said power to conduct investigations shall
6 include, but not be limited to, the authority to enter without delay and
7 at reasonable times the premises of any energy industry in order to
8 obtain or verify any information necessary for carrying out the
9 purposes of this act;
- 10 q. Have authority to adopt, amend or repeal, pursuant to the
11 "Administrative Procedure Act" (C.52:14B-1 et seq.) such rules and
12 regulations necessary and proper to carry out the purposes of this act;
- 13 r. Administer such Federal energy regulations as are applicable to
14 the states, including, but not limited to, the mandatory petroleum
15 allocation regulations and State energy conservation plans.
- 16 s. Have authority to sue and be sued;
- 17 t. Have authority to acquire by purchase, grant, contract or
18 eminent domain title to real property for the purpose of demonstrating
19 facilities which improve the efficiency of energy use, conserve energy
20 or generate energy in new and efficient ways;
- 21 u. Have authority to construct and operate, on an experimental or
22 demonstration basis, facilities which improve the efficiency of energy
23 use, conserve energy or generate power in new and efficient ways;
- 24 v. Have authority to contract with any other public agency or
25 corporation incorporated under the laws of this or any other state for
26 the performance of any function under this act;
- 27 w. Determine the effect of energy and fuel shortages upon
28 consumers, and formulate proposals designed to encourage the lowest
29 possible cost of energy and fuels consumed in the State consistent with
30 the conservation and efficient use of energy;
- 31 x. Keep complete and accurate minutes of all hearings held before
32 the [commissioner] director or any member of the Division of Energy
33 Planning and Conservation pursuant to the provisions of this act. All
34 such minutes shall be retained in a permanent record and shall be
35 available for public inspection at all times during the office hours of
36 the department.
37 (cf: P.L.1978, c.80, s.2)
38
- 39 96. Section 11 of P.L.1977, c.146 (C.52:27F-13) is amended to
40 read as follows:
- 41 11. The Advisory Council on Energy Planning and Conservation is
42 empowered to:
- 43 a. Request from the [commissioner and from the Director] director
44 of the Division of Energy Planning and Conservation such energy
45 information as it may deem necessary;
- 46 b. Consider any matter relating to the production, distribution,

1 consumption or conservation of energy;

2 c. From time to time submit to the [commissioner] director any
3 recommendations which it deems necessary for the long-term planning
4 and management of energy;

5 d. Study energy programs and make its recommendations thereon
6 to the [commissioner] director;

7 e. Review, prior to their promulgation, proposed rules and
8 regulations of the [department] division, and make its
9 recommendations thereupon, except such rules and regulations
10 determined by the [commissioner] director to be emergency measures
11 essential to preserve the public health, safety, or welfare.

12 f. Hold public hearings in regard to existing statutes and
13 regulations governing the production, distribution, consumption or
14 conservation of energy.

15 (cf: P.L.1977, c.146, s.11)

16

17 97. Section 12 of P.L.1977, c.146 (C.52:27F-14) is amended to
18 read as follows:

19 12. a. There is established an Energy Master Plan Committee
20 (hereinafter "Committee") which shall be composed of the president
21 of the Board of Public Utility Commissioners or his designee and the
22 heads of the following principal departments or their designees:
23 Commerce[, Energy] and Economic Development; Community Affairs;
24 Environmental Protection; Health; Human Services; Transportation;
25 and Treasury. The [Commissioner of Commerce, Energy and
26 Economic Development] president of the Board of Public Utility
27 Commissioners or his designee shall be the chairperson of the
28 committee. The committee shall be responsible for the preparation,
29 adoption and revision of master plans regarding the production,
30 distribution, and conservation of energy in this State.

31 b. The committee [within one year of the effective date of this act]
32 shall prepare or cause to be prepared, and, after public hearings as
33 hereinafter provided, adopt a master plan for a period of 10 years on
34 the production, distribution, consumption and conservation of energy
35 in this State. Such plan shall be revised and updated at least once
36 every three years. The plan shall include long-term objectives but shall
37 provide for the interim implementation of measures consistent with
38 said objectives. The committee may from time to time and after public
39 hearings amend the master plan. In preparing the master plan or any
40 portion thereof or amendment thereto the [department] committee
41 shall give due consideration to the energy needs and supplies in the
42 several geographic areas of the State, and shall consult and cooperate
43 with any federal or State agency having an interest in the production,
44 distribution, consumption or conservation of energy.

45 c. Upon preparation of such master plan, and each revision thereof,
46 the committee shall cause copies thereof to be printed, shall transmit

1 sufficient copies thereof to the Governor and the Legislature, for the
2 use of the members thereof, and shall advertise, in such newspapers as
3 the [commissioner] committee determines appropriate to reach the
4 greatest possible number of citizens of New Jersey, the existence and
5 availability of such draft plan from the offices of the committee for the
6 use of such citizens as may request same. In addition, the
7 [department] committee shall:

8 (1) Fix dates for the commencement of a series of public hearings,
9 at least one of which shall be held in each geographical area delineated
10 in the master plan. Each such public hearing shall concern the overall
11 content of the plan and those aspects thereof that have relevance to the
12 specific geographical area in which each such public hearing is being
13 held;

14 (2) At least 60 days prior to each public hearing held pursuant to
15 this section, notify each energy industry and each State department,
16 commission, authority, council, agency, or board charged with the
17 regulation, supervision or control of any business, industry or utility
18 engaged in the production, processing, distribution, transmission, or
19 storage of energy in any form of the time and place for the hearing and
20 shall publish such notice in a newspaper of general circulation in the
21 region where the hearing is to be held, and in such newspapers of
22 general circulation in the State as the [commissioner] committee
23 determines appropriate to reach the greatest possible number of
24 citizens of New Jersey.

25 d. Upon the completion of the requirements of subsection c. of this
26 section, the committee shall consider the testimony presented at all
27 such public hearings and adopt the energy master plan, together with
28 any additions, deletions, or revisions it shall deem appropriate.

29 e. Upon the adoption of the energy master plan, and upon each
30 revision thereof, the committee shall cause copies thereof to be printed
31 and shall transmit sufficient copies thereof to the Governor and the
32 Legislature, for the use of the members thereof, and to each State
33 department, commission, authority, council, agency, division or board
34 charged with the regulation, supervision or control of any business,
35 industry or utility engaged in the production, processing, distribution,
36 transmission, or storage of energy in any form. In addition, the
37 committee shall advertise in the manner provided in subsection c. of
38 this section the existence and availability of the energy master plan
39 from the offices of the committee for the use of such citizens of New
40 Jersey as may request same; provided, however, that the committee
41 may charge a fee for such copies of the energy master plan sufficient
42 to cover the costs of printing and distributing same.

43 (cf: P.L.1987, c.365, s.14)

44

45 98. Section 13 of P.L.1977, c.146 (C.52:27F-15) is amended to
46 read as follows:

1 13. a. The Division of Energy Planning and Conservation is
2 empowered and directed to intervene in any proceedings before, and
3 appeals from, any State department, division, commission, authority,
4 council, agency or board (hereinafter referred to as "State
5 instrumentalities") including the Board of Public [Utilities] Utility
6 Commissioners charged with the regulation, supervision or control of
7 any business, industry or utility engaged in the production, processing,
8 distribution, transmission or storage of energy in any form, when, in
9 the discretion of the [commissioner] director, such intervention is
10 necessary to insure the proper consideration by such State
11 instrumentalities of the State energy master plan, or any part or aspect
12 thereof, adopted by the [department] division pursuant to section 12
13 of [this act] P.L.1977, c.146 (C.52:27F-14), or any rule or regulation
14 promulgated by the [department] division pursuant to the provisions
15 of this act. To facilitate the intervention provisions of this section,
16 each such State instrumentality shall consider the [department]
17 division a party of interest in any proceedings before such
18 instrumentality with respect to energy and shall give the same notice
19 to the [department] division as is given to every other party of interest
20 in such proceedings of any meeting, public hearing or other proceeding
21 of such instrumentality in implementing its regulatory, supervisory or
22 control powers, responsibilities and duties with respect to such
23 businesses, industries or utilities.

24 b. It being the intention of the Legislature that the actions,
25 decisions, determinations and rulings of the State Government with
26 respect to energy shall to the maximum extent practicable and feasible
27 conform with the energy master plan adopted by the [department]
28 division pursuant to section 12 of [this act] P.L.1977, c.146
29 (C.52:27F-14), the [department] division shall prepare, periodically
30 revise and distribute to each State instrumentality charged with the
31 regulation, supervision or control of any business, industry or utility
32 engaged in the production, processing, distribution, transmission or
33 storage of energy in any form, such guidelines as the [department]
34 division determines to be relevant to assist each such instrumentality
35 in conforming with said energy master plan in implementing its
36 regulatory, supervisory or control powers, responsibilities and duties
37 with respect to such businesses, industries or utilities.

38 c. With respect to the siting of any energy facility in any part of
39 New Jersey, the [department] division shall, the provisions of any law
40 to the contrary notwithstanding, have jurisdiction coextensive with
41 that of any other State instrumentality, and to that end, no State
42 instrumentality with the power to grant or deny any permit for the
43 construction or location of any energy facility shall exercise its powers
44 without referring to the Division of Energy Planning and Conservation,
45 for its review and comments, a copy of such application and all papers,
46 documents and materials appurtenant thereto filed by the applicant

1 with such State instrumentality. Prior to making a final decision with
2 respect to any such application, the State instrumentality with power
3 of approval over such application shall solicit the views of the
4 [department] division thereupon. Such views shall be communicated
5 to the State instrumentality with the power of approval over such
6 application in the form of a report describing the findings of the
7 [department] division with respect to such application. Such report
8 shall be prepared by the Director of the Division of Energy Planning
9 and Conservation and shall be signed by said director[and by the
10 commissioner]. In the event that such report is not prepared and
11 transmitted to the State instrumentality with power of approval over
12 such application within 90 days after the [department's] division's
13 receipt of such application, such State instrumentality shall act upon
14 such application pursuant to the law providing its power of approval
15 thereof. In the event that the views of the [department] division, as
16 contained in its report, with respect to any such application differ from
17 the views of the State instrumentality with the power of approval over
18 such application, there shall be established an Energy Facility Review
19 Board which shall consist of the Director of the Division of Energy
20 Planning and Conservation, the director or chief executive officer of
21 the State instrumentality with the power of approval over such
22 application, and a designee of the Governor. The decision of the
23 Energy Facility Review Board created with respect to a specific energy
24 facility application shall be binding with respect to such facility and
25 shall be implemented forthwith by the State instrumentality with the
26 power of approval over such application.

27 In implementing its responsibilities pursuant to this subsection, the
28 [department] division shall have the power to adopt, by regulation, a
29 fee schedule for reviewing applications for the construction or
30 location of energy facilities; provided, however, that fees shall be
31 charged to applicants for permits to construct or locate energy
32 facilities only in those instances where the nature and extent of the
33 proposed energy facility are such as to necessitate the employment of
34 consultants or other expert personnel from without the [department]
35 division before the [department] division can make its determination
36 with respect to any such application, and that such fees shall in any
37 event be the minimum amount necessary to permit the [department]
38 division to fulfill its responsibilities under this section.

39 The provisions of this section shall not be regarded as to be in
40 derogation of any powers now existing and shall be regarded as
41 supplemental and in addition to powers conferred by other laws,
42 including municipal zoning authority.

43 (cf: P.L.1977, c.146, s.13)

44

45 99. Section 14 of P.L.1977, c.146 (C.52:27F-16) is amended to
46 read as follows:

1 14. The [commissioner] director shall prepare and adopt an
2 emergency allocation plan specifying actions to be taken in the event
3 of an impending serious shortage of energy which poses grave threats
4 to the public health, safety, or welfare. The [commissioner] director
5 shall direct all State Government departments and agencies, including
6 the Board of Public [Utilities] Utility Commissioners, to develop,
7 subject to his approval, contingency plans for dealing with said
8 emergencies.

9 (cf: P.L.1977, c.146, s.14)

10
11 100. Section 1 of P.L.1983, c.559 (C.52:27F-16.1) is amended to
12 read as follows:

13 1. The Legislature finds and determines that the prospects of the
14 occurrence of periodic energy emergencies due to the volatility and
15 unpredictability of energy markets necessitates the systematic
16 preparation for such emergencies; that the [Department of Energy]
17 Division of Energy Planning and Conservation possesses the expertise
18 and ability to plan for such emergencies; and that formulation of
19 energy emergency preparedness plans will contribute to the security of
20 the State of New Jersey in energy matters.

21 The Legislature, therefore, declares it to be in the best interest of
22 the citizens of this State to require the [Department of Energy]
23 Division of Energy Planning and Conservation to periodically review
24 the situation with regard to the energy preparedness of the State and
25 to prepare and submit a report thereon to the Governor and the
26 Legislature.

27 (cf: P.L.1983, c. 559, s.1)

28
29 101. Section 2 of P.L.1983, c.559 (C.52:27F-16.2) is amended to
30 read as follows:

31 2. In order to evaluate the energy preparedness of the State, the
32 [commissioner] director shall, within 1 year of the effective date of
33 this act and at least once every 3 years thereafter, prepare and submit
34 to the Governor and the Legislature a comprehensive report on the
35 status of the emergency allocation plan adopted pursuant to section 14
36 of P.L.1977, c.146 (C.52:27F-16). The report shall provide for:

37 a. A means to identify, monitor and evaluate situations and
38 conditions which may give rise to a critical energy shortage, which
39 shall include but not be limited to methods of evaluating supply and
40 demand conditions which may trigger a critical energy shortage;

41 b. The evaluation of various emergency response measures, based
42 on the relative technical and economic impact and effectiveness of
43 each;

44 c. The evaluation of existing emergency response plans of other
45 agencies and instrumentalities of the State government, including the
46 Board of Public [Utilities] Utility Commissioners. The

1 [commissioner] director shall have the authority to require these plans
2 to conform with the conclusions and recommendations of the report,
3 and to require the development or modification of those plans or
4 portions thereof which do not comply with the report;

5 d. A means for establishing a comprehensive energy information
6 service to function during an energy emergency;

7 e. The development, in advance of and during an energy
8 emergency, of a coordinated public and private sector plan to mitigate
9 the effects of an energy emergency.

10 (cf: P.L.1983, c.559, s.2)

11

12 102. Section 3 of P.L.1983, c.559 (C.52:27F-16.3) is amended to
13 read as follows:

14 3. In order to implement the responsibilities required by section 2
15 of this act, the [commissioner] director shall:

16 a. Review and evaluate, every 3 years, existing State programs and
17 policies concerning energy emergency preparedness; and

18 b. Hold public hearings, as the [commissioner] director deems
19 necessary, concerning energy supply shortages, energy emergency
20 preparedness and related matters.

21 (cf: P.L.1983, c.559, s.3)

22

23 103. Section 15 of P.L.1977, c.146 (C.52:27F-17) is amended to
24 read as follows:

25 15. a. Upon a finding by the [commissioner] director that there
26 exists or impends an energy supply shortage of a dimension which
27 endangers the public health, safety, or welfare in all or any part of the
28 State, the Governor is authorized to proclaim by executive order a
29 state of energy emergency for a period of up to 6 months. The
30 Governor may limit the applicability of any such state of emergency to
31 specific kinds of energy forms or to specific areas of the State in which
32 such a shortage exists or impends.

33 b. During the duration of a state of energy emergency the
34 [commissioner] director to the extent not in conflict with applicable
35 Federal law or regulation but notwithstanding any State or local law
36 or contractual agreement, shall be empowered to:

37 (1) Order any person to reduce by a specified amount the use of
38 any energy form; to make use of an alternate energy form, where
39 possible; or to cease the use of any energy form;

40 (2) Order any person engaged in the distribution of any energy
41 form to reduce or increase by a specified amount or to cease the
42 distribution of such energy form; to distribute a specified amount and
43 type of energy form to certain users as specified by the
44 [commissioner] director; or to share supplies of any energy form with
45 other distributors thereof;

46 (3) Establish priorities for the distribution of any energy form;

- 1 (4) Regulate and control the distribution and sale of any energy
2 form by:
- 3 (a) Establishing such limitations, priorities, or rationing procedures
4 as shall be necessary to insure a fair and equitable distribution of
5 available supplies;
- 6 (b) Establishing minimum and maximum quantities to be sold to
7 any purchaser;
- 8 (c) Fixing the days and hours of access to retail dealers;
- 9 (d) Compelling sales to members of the general public during times
10 when a retail dealer is open for the sale of an energy form;
- 11 (e) Establishing methods for notifying the public by flags, symbols,
12 or other appropriate means whether such retail dealers are open and
13 selling the subject energy form;
- 14 (5) Direct the heads of those departments and agencies within
15 State Government that were ordered to develop contingency plans
16 pursuant to section 14 of this act to implement said plans;
- 17 (6) Adopt and promulgate such rules and regulations as are
18 necessary and proper to carry out the purposes of this section.
- 19 c. During the existence of a state of energy emergency, the
20 Governor may order the suspension of any laws, rules, regulations, or
21 orders of any department or agency in State Government or within any
22 political subdivision which deal with or affect energy and which
23 impede his ability to alleviate or terminate a state of energy
24 emergency.
- 25 d. Any aggrieved person, upon application to the [commissioner]
26 director shall be granted a review of whether the continuance of any
27 order issued by the commissioner pursuant to this section is
28 unreasonable in light of then prevailing conditions of emergency.
- 29 e. During a state of energy emergency the [commissioner] director
30 may require any other department or other agency within State
31 Government to provide such information, assistance, resources, and
32 personnel as shall be necessary to discharge his functions and
33 responsibilities under this act, rules and regulations adopted hereunder,
34 or applicable Federal law and regulations.
- 35 f. The powers granted to the Governor and the [commissioner]
36 director under this section shall be in addition to and not in limitation
37 of any emergency powers now or hereafter vested in the Governor, the
38 [commissioner] director, or any other State Government department
39 or agency pursuant to any other laws, including but not limited to any
40 power vested in the Board of Public [Utilities] Utility Commissioners
41 to require utility companies to allocate available supplies of energy;
42 provided, however, that upon declaring a state of energy emergency,
43 the Governor may supersede any other such emergency powers.
- 44 g. The state of energy emergency declared by the Governor
45 pursuant to this section shall remain in effect until the Governor
46 declares by a subsequent executive order that the state of energy

1 emergency has terminated.
2 (cf: P.L.1977, c.146, s.15)

3
4 104. Section 16 of P.L.1977, c.146 (C.52:27F-18) is amended to
5 read as follows:

6 16. a. The [commissioner] director shall adopt rules and
7 regulations requiring the periodic reporting by energy industries of
8 energy information which shall include but not be limited to the
9 following:

10 (1) Electrical generating capacity in the State; long-range plans for
11 additions to said capacity; efficiency of electrical generation; price and
12 cost factors in electrical generation; types and quantities of fuels used;
13 projections of future demand, consumption of electricity by sectors;
14 times, duration, and levels of peak demand;

15 (2) Petroleum refining capacity; amount and type of fuel produced;
16 amount and type of fuel sold; interstate transfers of fuel; price and cost
17 factors in refining, production, and sale; long-term plans for alterations
18 or additions to refining capacity; location, amount, and type of fuel
19 storage;

20 (3) Storage capacity for gases; amount and end uses of gases sold;
21 price and cost factors in the sale and use of gases; and

22 (4) Such other information as the [commissioner] director may
23 determine necessary for carrying out the purposes of this act.

24 b. The [commissioner] director shall at least annually publish a
25 report analyzing all energy information collected.

26 c. The [commissioner] director shall have the discretion to obtain
27 energy information from an affiliate of any energy industry or from an
28 association or organization of industries of which any such energy
29 industry is a member. Whenever energy information supplied by an
30 energy industry is so obtained by the [commissioner] director, the
31 energy industry to which such information pertains shall be promptly
32 notified of the energy information so obtained and shall be given an
33 opportunity to correct or amplify such information.

34 d. Trade secrets collected under this section shall be exempt from
35 the requirements of P.L.1963, c.73 (C.47:1A-1 et seq.). The
36 [commissioner] director shall promulgate rules and regulations for the
37 conduct of administrative hearings on the issue of whether certain
38 energy information should not be disclosed to the public.

39 (cf: P.L.1977, c.146, s.16)

40

41 105. Section 17 of P.L.1977, c.146 (C.52:27F-19) is amended to
42 read as follows:

43 17. No person who is an official or employee of the [department]
44 division shall participate in any manner in any decision or action of the
45 [department] division wherein he has a direct or indirect financial
46 interest.

1 (cf: P.L.1977, c.146, s.17)

2

3 106. Section 18 of P.L.1977, c.146 (C.52:27F-20) is amended to
4 read as follows:

5 18. The [commissioner] director may issue subpoenas requiring the
6 attendance and testimony of witnesses and the production of books,
7 documents, papers, statistics, data, information, and records for the
8 purpose of carrying out any of his responsibilities under this act.
9 Whenever there arises a refusal to honor his subpoena, the
10 [commissioner] director may petition a court of competent jurisdiction
11 for an order requiring the attendance and testimony of a witness or the
12 production of the requested books, documents, papers, statistics,
13 data, information, and records. Any failure to obey such an order
14 issued by a court shall be punished by the court as a contempt thereof.
15 (cf: P.L.1977, c.146, s.18)

16

17 107. Section 19 of P.L.1977, c.146 (C.52:27F-21) is amended to
18 read as follows:

19 19. a. Upon a violation of this act or of any rules, regulations, or
20 orders promulgated hereunder, the [commissioner] director, the
21 county prosecutor of the county in which the violation occurs if he has
22 the approval of the [commissioner] director, or any aggrieved person
23 shall be entitled to institute a civil action in a court of competent
24 jurisdiction for injunctive relief to restrain such violation and for such
25 other relief as the court shall deem proper. The court may proceed in
26 a summary manner.

27 b. Except as otherwise specifically provided, any person who
28 violates the provisions of this act or any rule, regulation or order
29 adopted pursuant to this act shall be liable to a penalty of not more
30 than \$300[.00] for the first offense and not more than \$3,000[.00] for
31 the second or any subsequent offense, to be collected in a civil action
32 by a summary proceeding under "the penalty enforcement law"
33 (N.J.S.2A:58-1 et seq.), or in any case before a court of competent
34 jurisdiction wherein injunctive relief has been requested. The Superior
35 Court shall also have jurisdiction to enforce "the penalty enforcement
36 law." If the violation is of a continuing nature, each day during which
37 it continues shall constitute an additional, separate and distinct
38 offense.

39 c. The [department] division may compromise and settle any claim
40 for a penalty under this section in such amount in the discretion of the
41 department as may appear appropriate and equitable under all of the
42 circumstances.

43 (cf: P.L.1980, c.152, s.1)

44

45 108. Section 22 of P.L.1977, c.146 (C.52:27F-24) is amended to
46 read as follows:

1 22. a. Any person who violates any provision of section 15
2 (C.52:27F-17) of this act, or any rule, regulation or order adopted
3 pursuant thereto, shall be liable to a penalty of not more than
4 \$500[.00] for the first offense and not more than \$5,000[.00] for the
5 second or any subsequent offense.

6 b. In addition to any other penalties provided under this or any
7 other act, the [commissioner] director may recommend to the
8 appropriate agency the suspension or revocation of the license of any
9 retail dealer, gasoline jobber, wholesale dealer, distributor, or supplier
10 of fuel, who has violated this act or any rules, regulations, or orders
11 promulgated hereunder.

12 c. All penalties imposed pursuant to this section shall be collected
13 in a civil action by a summary proceeding under the "penalty
14 enforcement law" (N.J.S.2A:58-1 et seq.). If the violation is of a
15 continuing nature, each day during which it continues shall constitute
16 an additional and separate offense. In addition to the jurisdiction
17 conferred by N.J.S.2A:58-2, the municipal court and the Superior
18 Court shall have jurisdiction of proceedings initiated on or after June
19 20, 1979 for the enforcement of the penalties provided by this section.

20 d. The [department] division may compromise and settle any claim
21 for a penalty under this section in such amount in the discretion of the
22 department as may appear appropriate and equitable under all of the
23 circumstances.

24 (cf: P.L.1980, c.152, s.2)

25
26 109. Section 2 of P.L.1981, c.122 (C.52:27H-2) is amended to
27 read as follows:

28 2. The Legislature finds and determines that the well-being of the
29 people of New Jersey, and of their institutions, including government,
30 is directly related to the well-being of New Jersey's business and
31 industrial enterprises, including the housing industry and small
32 business enterprises, which provide the economic base of employment
33 and taxes upon which all other institutions of society depend.

34 [The Legislature further finds and determines that a secure, stable
35 and adequate supply of energy at reasonable prices is vital to the
36 State's economy and for the promotion of economic opportunity in the
37 State, as well as for ensuring the public health, safety and welfare. The
38 Legislature further finds that reducing energy costs is essential to
39 reducing the costs of doing business in this State, which in turn will
40 promote and maximize economic growth, speed business development,
41 promote employment and ensure general prosperity in the State.

42 The Legislature further finds and determines that the principal
43 methods for achieving the goals of this act include: the widespread
44 use of alternative energy sources, including electric cogeneration of
45 energy, with independent power producers selling excess power to
46 utilities; the fullest possible cost-effective implementation of energy

1 conservation programs; and the introduction of market-based pricing
2 principles and competition in the setting of rates for electricity, natural
3 gas and other energy forms.

4 The Legislature further finds that the original mission of a separate
5 Department of Energy--to address and solve the problems caused by
6 threatened catastrophic loss of near-and-long-term energy sources--no
7 longer justifies retaining a separate Department of Energy as a
8 principal department within the Executive Branch. The Legislature
9 further finds that it is in the best interests of the citizens of this State
10 that a single principal department within the Executive Branch of this
11 State coordinate the promotion of the State's economy and serve as a
12 focus for business and industrial concerns, promote the availability of
13 energy at reasonable prices to all consumers and integrate the State's
14 economic, business and energy policies and programs to retain and to
15 enhance this State's economic health and to ensure that the State's
16 economy remains competitive. The Legislature further finds and
17 determines that an important method to achieve these goals is to
18 promote and assist the development and utilization of cogeneration of
19 energy and programs of energy conservation.]

20 The Legislature further finds and determines that New Jersey's
21 economy has deteriorated in recent years from its one-time position of
22 national prominence and leadership in many fields of business and
23 industry, a trend particularly evident in the almost continuous decline
24 of manufacturing employment over a span of a decade or more, a fact
25 which has had significant and deleterious effects upon the economy of
26 the State, impacting adversely upon a broad cross-section of New
27 Jersey's citizenry.

28 The Legislature further finds and determines that the variety and
29 magnitude of New Jersey's economic development programs have now
30 reached a level that warrants their consolidation into a separate
31 cabinet-level administrative department devoted exclusively to
32 monitoring the interests and concerns of business and industry,
33 maintaining continuous liaison with the business community and its
34 leadership for the purpose of assisting in the formulation and direction
35 of economic policy so as to provide business and industry the optimum
36 climate within which enterprises may grow and prosper to the benefit
37 of society as a whole. The Legislature also finds that the variety and
38 complexity of programs which serve to protect the occupational health
39 and safety of workers at the work place, to provide skill development
40 and training programs, to provide employability development and
41 employment placement programs, to administer the programs designed
42 to protect the income security of our workers, to assist in the
43 development and preservation of sound labor management relations
44 and to maintain continuing liaison with organized labor and its
45 leadership for the purpose of assisting in the formulation and direction
46 of policy so as to provide the optimum climate within which organized

1 labor can serve the needs of New Jersey's working men and women,
2 warrants a cabinet level department devoted exclusively to this
3 purpose which shall be known as the Department of Labor.

4 The Legislature, therefore, declares it to be in the best interest of
5 the citizens of this State to establish a principal department within the
6 Executive Branch to serve as a focus for business and industrial
7 problems and concerns; as a center for gathering and disseminating
8 appropriate data and information of significance to the business
9 community; to continually analyze such data and to help formulate
10 economic policies of the State on the basis thereof; to serve as a major
11 focal point for economic development activities in cooperation with
12 other entities, public and private, active in this field; to serve as a
13 voice for and advocate of the interests of the business sector, not only
14 within the highest councils of the Executive Branch but also before the
15 Legislature and the general public; to assist in translating input it
16 receives into programs and policies of the State itself to the end that
17 New Jersey citizens shall enjoy optimum economic security and the
18 highest possible standard of living; to assist in coordinating authority,
19 regulation and planning by the State in matters related to the economy.
20 (cf: P.L.1987, c.365, s.1)

21

22 110. Section 3 of P.L.1981, c.122 (C.52:27H-3) is amended to
23 read as follows:

24 3. As used in this act:

25 a. "Commissioner" means the Commissioner of the Department of
26 Commerce[, Energy] and Economic Development.

27 b. "Department" means the Department of Commerce[, Energy]
28 and Economic Development established by this act.

29 (cf: P.L.1987, c.365, s.2)

30

31 111. Section 4 of P.L.1981, c.122 (C.52:27H-4) is amended to
32 read as follows:

33 4. There is established in the Executive Branch of the State
34 Government a principal department which shall be known as the
35 Department of Commerce[, Energy] and Economic Development.

36 (cf: P.L.1987, c.365, s.3)

37

38 112. Section 5 of P.L.1981, c.122 (C.52:27H-5) is amended to
39 read as follows:

40 5. The administrator and chief executive officer of the department
41 shall be a commissioner, who shall be known as the Commissioner of
42 Commerce[, Energy] and Economic Development, and who shall be
43 a person qualified by training and experience to perform the duties of
44 his office. The commissioner shall be appointed by the Governor, with
45 the advice and consent of the Senate, and shall serve at the pleasure of
46 the Governor during the Governor's term of office and until the

1 appointment and qualification of the commissioner's successor. He
2 shall devote his entire time to the duties of the office and shall receive
3 such salary as shall be provided by law. Any vacancy occurring in the
4 office of the commissioner shall be filled in the same manner as the
5 original appointment.

6 (cf: P.L.1987, c.365, s.4)

7

8 113. Section 10 of P.L.1987, c.365 (C.52:27H-20.3) is amended
9 to read as follows:

10 10. a. The New Jersey Public Broadcasting Authority, allocated
11 within the Department of Energy pursuant to P.L.1977, c.146
12 (C.52:27F-1 et seq.), together with all its functions, powers and duties
13 is continued and is transferred to and constituted the New Jersey
14 Public Broadcasting Authority in but not of the Department of
15 Commerce[, Energy] and Economic Development. Notwithstanding
16 this allocation, the authority shall be independent of any supervision
17 or control by the Department of Commerce[, Energy] and Economic
18 Development or by any officer or employee thereof. This act shall not
19 affect the terms of office of, nor the salaries received by, the present
20 members of the New Jersey Public Broadcasting Authority, or of any
21 officers or employees thereof.

22 b. Whenever in any law, rule, regulation, order, contract,
23 document, judicial or administrative proceeding or otherwise,
24 reference is made to the New Jersey Public Broadcasting Authority in
25 the Department of Energy, the same shall mean and refer to the New
26 Jersey Public Broadcasting Authority in the Department of
27 Commerce[, Energy] and Economic Development.

28 (cf: P.L.1987, c.365, s.10)

29

30 114. (New section) The provisions of any statute which are
31 inconsistent with P.L. , c. (C.) (pending in the Legislature as
32 this bill) shall be null and void.

33

34 115. This act shall take effect immediately.

35

36

37

STATEMENT

38

39 The bill would reorganize and transfer the Board of Regulatory
40 Commissioners and the energy planning functions in the Department
41 of Environmental Protection into an independent Board of Public
42 Utility Commissioners in but not of the Department of the Treasury.
43 The bill would invalidate many provisions of Reorganization Plan No.
44 002-1991.

45 The board would not be subject to the provisions of the "Executive
46 Reorganization Act," and hence could not be transferred except by

1 legislative action. The principal office of the board would be in
2 Newark, and decisions concerning board offices would be made by the
3 board rather than the Governor. The board would be mandated to hire
4 its own counsel for administrative purposes.

5 The bill also codifies the 1991 reorganization plan transfer to the
6 DEP of the board's authority in rate making and public utility aspects
7 of solid waste collection and disposal facilities and operations under
8 the "Solid Waste Utility Control Act," P.L.1970, c.40 (C.48:13A-1 et
9 seq.).

10 The Division of Energy Planning and Conservation, which was
11 abolished by the 1991 reorganization plan, is reestablished in the
12 Board of Public Utility Commissioners. The Advisory Council on
13 Energy Planning and Conservation, and all energy planning functions
14 that were transferred to the DEP, are transferred back to the division.
15 The director of the division is given essentially the same regulatory
16 authority as the former Commissioner of Energy, and is charged with
17 cooperating with the board in the collection of energy information.
18 The Office of Energy Planning created in the DEP by the
19 reorganization plan is continued and shall perform such functions as
20 the Commissioner of Environmental Protection shall prescribe.

21 The bill also amends many sections of law to conform them to the
22 transfers made in the bill. The board is uniformly renamed the Board
23 of Public Utility Commissioners throughout chapters 2 and 3 of Title
24 48. The Department of Commerce, Energy and Economic
25 Development is renamed the Department of Commerce and Economic
26 Development to reflect its current purpose. The Department of
27 Environmental Protection and Energy, as it is denominated in the
28 reorganization plan, is formally renamed the Department of
29 Environmental Protection.

30

31

32

33

34 Reorganizes public utility and energy regulation.