

ASSEMBLY, No. 88

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen ROONEY and ROCCO

1 AN ACT concerning regulatory reform of the solid waste collection
2 and disposal industries, and amending, supplementing and repealing
3 parts of the statutory law.

4

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

7

8 1. (New section) a. All of the functions, powers and duties
9 heretofore exercised by the Board of Public Utilities for the regulation
10 of rates and public utility aspects of solid waste collection and solid
11 waste disposal operations and facilities pursuant to P.L.1968, c.173
12 (C.48:2-59 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), P.L.1991,
13 c.381 (C.48:13A-7.1 et seq.), Title 48 of the Revised Statutes, or any
14 other law, and the responsibility and authority to review and approve
15 proposed contracts pursuant to the provisions of P.L.1985, c.38
16 (C.13:1E-136 et seq.), are hereby continued and transferred to and
17 vested in the Department of Environmental Protection and the
18 Commissioner thereof.

19 b. Whenever in any law, rule, regulation, order, contract, tariff,
20 document, judicial or administrative proceeding or otherwise relating
21 to recycling, solid waste collection or solid waste disposal, reference
22 is made to the Board of Public Utilities, the same shall mean and refer
23 to the Department of Environmental Protection and the Commissioner
24 thereof.

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

27 48:3-3. [a.] No public utility shall provide or maintain any service
28 that is unsafe, improper or inadequate, or withhold or refuse any
29 service which reasonably can be demanded or furnished when ordered
30 by the board.

31 [b. The board, upon receipt of a notification of refusal to provide
32 solid waste collection services within a municipality pursuant to

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 section 2 of P.L.1991, c.170 (C.40:66-5.2), may order the solid waste
2 collector to provide these services in accordance with the provisions
3 of R.S.48:2-23.]

4 (cf: P.L.1991, c.170, s.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 The Board of Public Utilities shall prescribe and provide upon
43 request all necessary forms for the implementation of the notification
44 requirements of this subsection.] (Deleted by amendment, P.L. ,
45 c.)

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

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

3 (2) Any solid waste collector may, without the approval of the
4 board, sell or otherwise dispose of its collection or haulage vehicles;
5 except that no solid waste collector shall, without the approval of the
6 board in the manner provided in subsection d. of this section, sell or
7 dispose of 33% or more of its collection or haulage vehicles within a
8 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.] (~~Deleted by amendment, P.L. . . , c. . .~~)
12 (cf: P.L.1991, c.381, s.35)

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14 4. Section 7 of P.L.1970, c.40 (C.48:13A-6) is amended to read as
15 follows:

16 7. a. [No person shall engage, or be permitted to engage, in the
17 business of solid waste collection or solid waste disposal until found
18 by the board to be qualified by experience, training or education to
19 engage in such business, is able to furnish proof of financial
20 responsibility, and unless that person holds a certificate of public
21 convenience and necessity issued by the Board of Public Utilities.

22 (1) No certificate shall be issued for solid waste collection or solid
23 waste disposal until the person proposing to engage in solid waste
24 collection or solid waste disposal, as the case may be, has been
25 registered with and approved by the Department of Environmental
26 Protection as provided by section 5 of P.L.1970, c.39 (C.13:1E-5).

27 (2) No certificate of public convenience and necessity shall be
28 issued by the Board of Public Utilities to any person who has been
29 denied approval of a license under the provisions of P.L.1983, c.392
30 (C.13:1E-126 et seq.), or whose license has been revoked by the
31 Department of Environmental Protection, as the case may be.]
32 (~~Deleted by amendment, P.L. . . , c. . .~~)

33 b. No person shall transport regulated medical waste until found by
34 the [Board of Public Utilities] Department of Environmental
35 Protection to be qualified by experience, training or education to
36 engage in such business, and is able to furnish proof of financial
37 responsibility[, and holds a certificate of public convenience and
38 necessity issued by the board. No certificate shall be issued for the
39 transportation of regulated medical waste until the proposed
40 transporter has obtained a registration statement required by section
41 5 of P.L.1970, c.39 (C.13:1E-5) and paid the fee imposed under
42 section 9 of P.L.1989, c.34 (C.13:1E-48.9)].

43 c. Notwithstanding the provisions of subsection b. of this section,
44 the [board] department shall not have jurisdiction over rates or charges
45 for the transportation of regulated medical waste.

46 (cf: P.L.1991, c.381, s.28)

1 5. Section 15 of P.L.1991, c.381 (C.48:13A-7.15) is amended to
2 read as follows:

3 15. The rates or charges imposed by solid waste collectors, or fees,
4 rates or charges for solid waste collection services provided by
5 persons engaged in the business of solid waste collection in this State
6 shall not be subject to the regulation of the Board of Public Utilities,
7 [except as provided in section 20 of P.L.1991, c.381 (C.48:13A-7.20).
8 Nothing herein provided shall be construed to limit the authority of the
9 board with respect to the supervision of the solid waste collection
10 industry] the Department of Environmental Protection or any other
11 State agency.

12 (cf: P.L.1991, c.381, s.15)

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14 6. Section 21 of P.L.1991, c.381 (C.48:13A-7.21) is amended to
15 read as follows:

16 21. a. There is created in the [Board of Public Utilities]
17 Department of Environmental Protection a special nonlapsing fund to
18 be known as the "Solid Waste Enforcement Fund." All monies from
19 penalties collected by the board pursuant to section 13 of P.L.1970,
20 c.40 (C.48:13A-12) shall be deposited in the fund.

21 b. Unless otherwise expressly provided by the specific
22 appropriation thereof by the Legislature, monies in the fund shall be
23 utilized exclusively by the [Division of Solid Waste in the Board of
24 Public Utilities] department for enforcement and implementation of the
25 provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and P.L.1991, c.381
26 (C.48:13A-7.1 et al.).

27 c. Unless otherwise expressly provided by the specific
28 appropriation thereof by the Legislature, on or after April 14, 1995 all
29 monies accruing to the fund, and any interest earned on the
30 management of monies in the fund, shall be paid into the General
31 Fund.

32 (cf: P.L.1991, c.381, s.21)

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34 7. Section 22 of P.L.1991, c.381 (C.48:13A-7.22) is amended to
35 read as follows:

36 22. The [Board of Public Utilities] Department of Environmental
37 Protection shall establish, in rules and regulations adopted pursuant to
38 the provisions of the "Administrative Procedure Act," P.L.1968, c.410
39 (C.52:14B-1 et seq.), uniform bid specifications for municipal solid
40 waste collection contracts.

41 (cf: P.L.1991, c.381, s.22)

42

43 8. Section 52 of P.L.1991, c.381 is amended to read as follows:

44 52. This act shall take effect on [the 90th day after enactment]
45 April 14, 1992, except that section 15 shall take effect [48 months
46 thereafter] on April 14, 1995. Sections 5 through 10 and sections 12,

1 13 and 23 of this act shall expire on [the effective date of section 15]
2 April 14, 1995.

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4 9. (New section) The disposal rates or charges received at solid
5 waste facilities, or fees, rates or charges for solid waste disposal
6 services provided by persons engaged in the business of solid waste
7 disposal in this State shall not be subject to the regulation of the Board
8 of Public Utilities, the Department of Environmental Protection or any
9 other State agency.

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11 10. The following are repealed:

12 Section 6 of P.L.1973, c.330 (C.40:37A-103);

13 Section 1 of P.L.1989, c.236 (C.40A:11-16.5);

14 Sections 1 through 3 inclusive of P.L.1970, c.40
15 (C.48:13A-1 through 48:13A-3);

16 Sections 5 and 6 of P.L.1970, c.40 (C.48:13A-4 and
17 48:13A-5);

18 Section 1 of P.L.1981, c.221 (C.48:13A-6.1)

19 Section 2 of P.L.1990, c.113 (C.48:13A-6.2)

20 Section 1 of P.L.1991, c.35 (C.48:13A-6.3)

21 Section 8 of P.L.1970, c.40 (C.48:13A-7);

22 Sections 1 through 4 inclusive of P.L.1991, c.381
23 (C.48:13A-7.1 through 48:13A-7.4);

24 Section 11 of P.L.1991, c.381 (C.48:13A-7.11);

25 Section 14 of P.L.1991, c.381 (C.48:13A-7.14);

26 Sections 16 through 20 inclusive of P.L.1991, c.381
27 (C.48:13A-7.16 through 48:13A-7.20);

28 Sections 9 through 14 inclusive of P.L.1970, c.40

29 (C.48:13A-8 through 48:13A-13); and

30 Section 2 of P.L.1989, c.236, (C.52:34-13.1).

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32 11. (New section) The provisions of any statute which are
33 inconsistent with P.L. , c. (C.) (pending in the Legislature as
34 this bill) shall be null and void.

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36 12. This act shall take effect upon the enactment into law of
37 P.L. , c. (C.) (pending in the Legislature as Assembly Bill No.
38 2626 of 1995), except that section 1 shall take effect immediately and
39 shall be retroactive to August 14, 1991, and section 9 shall take effect
40 on April 14, 1995, but the Commissioner of the Department of
41 Environmental Protection may take such anticipatory administrative
42 action in advance as shall be necessary for the implementation of the
43 act.

STATEMENT

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3 This bill provides for the termination of public utility rate regulation
4 of solid waste collection and solid waste disposal. After April 14,
5 1995, The rates or charges imposed by solid waste collectors, or the
6 fees, rates or charges for solid waste collection services provided by
7 persons engaged in the business of solid waste collection in New
8 Jersey will not be subject to the regulation of the Department of
9 Environmental Protection or any other State agency.

10 The bill also provides that, after April 14, 1995, the disposal rates
11 or charges received at solid waste facilities in New Jersey, or the
12 tipping fees for solid waste disposal services provided by persons
13 engaged in the solid waste disposal business in this State will not be
14 subject to the regulation of the Department of Environmental
15 Protection or any other State agency.

16 The remainder of the bill will take effect upon the enactment into
17 law of Assembly Bill No. 2626 of 1995, a companion measure that
18 requires every municipality in this State to assume primary
19 responsibility for the collection and disposal of solid waste from its
20 municipal solid waste stream.

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25 Provides for the termination of public utility rate regulation of solid
26 waste collection and solid waste disposal.