

ASSEMBLY, No. 1135

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman MURPHY and Assemblyman GIBSON

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.1991, c.381 (C.48:13A-7.1) is amended to read
8 as follows:

9 1. Sections 1 through 23 inclusive of [this amendatory and
10 supplementary act] P.L.1991, c.381 (C.48:13A-7.1 et al.) shall be
11 known and may be cited as the "Solid Waste Collection [Regulatory
12 Reform] Consumer Protection Act."
13 (cf: P.L.1991, c.381, s.1)

14
15 2. Section 2 of P.L.1991, c.381 (C.48:13A-7.2) is amended to read
16 as follows:

17 2. The Legislature finds and declares that the collection of solid
18 waste is an activity thoroughly affected with the public interest; that
19 the health, safety and welfare of the people of this State require
20 efficient and reasonable solid waste collection services; and that
21 efficient solid waste collection services at competitive rates will more
22 likely be achieved if the solid waste collection industry is under the
23 supervision of, but not subject to traditional public utility rate
24 regulation [by, the Board of Public Utilities].

25 The Legislature further finds and declares that it is imperative that
26 the State ensure the economic viability and competitiveness of the
27 solid waste collection industry in order to safeguard the integrity of
28 the State's long-term solid waste management strategy; that it is
29 equally imperative to safeguard the interests of consumers as well as
30 the interests of those providing solid waste collection services; that to
31 provide for ratepayer and consumer protection it is necessary to foster
32 competition within the industry and to establish a responsible State

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 supervisory role to ensure safe, adequate and proper solid waste
2 collection service at competitive rates[; and that to achieve these ends
3 in the most efficient and reasonable manner, it is necessary to establish
4 procedures for regulatory reform and the eventual termination of
5 traditional public utility rate regulation of the solid waste collection
6 industry].

7 The Legislature further finds and declares that complete termination
8 of traditional public utility rate regulation will not discourage
9 anti-competitive activity, support waste flow regulation or give the
10 State the flexibility to set a standard of economic behavior; and that
11 transitional regulation under the "Solid Waste Collection Regulatory
12 Reform Act" did not adequately promote greater competition within
13 the solid waste collection industry nor did it satisfactorily safeguard
14 the interests of consumers and the collectors. Additionally, the
15 Legislature finds and declares that further steps are necessary to assure
16 compliance with the State's waste flow rules which serve as the
17 foundation of the State's efforts to achieve self-sufficiency in solid
18 waste disposal; and that economic regulation is a needed component
19 to assuring compliance with the State's waste flow rules.

20 The Legislature further finds and declares that although the
21 Legislature through enactment of P.L.1983, c.392 (C.13:1E-126 et
22 seq.) has established a licensing system which is designed to prevent
23 persons with criminal backgrounds from engaging in the solid waste
24 collection business, thereby promoting free and open competition
25 within the solid waste collection industry, approximately 50 percent of
26 waste collectors have not yet been licensed[; and that terminating
27 traditional public utility rate regulation of the solid waste collection
28 industry can be achieved without compromising the State's role in
29 protecting the public interest].

30 The Legislature therefore determines that to ensure the economic
31 viability and competitiveness of the solid waste collection industry in
32 order to safeguard the integrity of the State's long-term solid waste
33 management strategy while safeguarding the interests of both
34 consumers and those providing solid waste collection services, it is in
35 the public interest to establish procedures for the [eventual termination
36 of public utility] implementation of a more flexible form of rate
37 regulation of solid waste collectors while at the same time maintaining
38 [Board of Public Utilities] supervision over the solid waste collection
39 industry by the Solid Waste Collection Review Rate Board in but not
40 of the Department of Environmental Protection.

41 (cf: P.L.1991, c.381, s.2)

42

43 3. Section 3 of P.L.1991, c.381 (C.48:13A-7.3) is amended to read
44 as follows:

45 3. As used in sections 1 through 23 of P.L.1991, c.381
46 (C.48:13A-7.1 et al.):

1 ["Applicant" means any person seeking to obtain an initial
2 certificate of public convenience and necessity pursuant to sections 7
3 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9) in order to
4 provide solid waste collection services in this State.

5 "Board" means the Board of Public Utilities.]

6 "Department" means the Department of Environmental Protection.

7 "Materials recovery" means the processing and separation of solid
8 waste utilizing manual or mechanical methods for the purposes of
9 recovering recyclable materials for disposition and recycling prior to
10 the disposal of the residual solid waste at an authorized solid waste
11 facility.

12 "Materials recovery facility" means a transfer station or other
13 authorized solid waste facility at which nonhazardous solid waste,
14 which material is not source separated by the generator thereof prior
15 to collection, is received for onsite processing and separation utilizing
16 manual or mechanical methods for the purposes of recovering
17 recyclable materials for disposition and recycling prior to the disposal
18 of the residual solid waste at an authorized solid waste facility.

19 "Review board" means the Solid Waste Rate Review Board
20 established pursuant to section 4 of P.L. .c. (C.) (now before
21 the Legislature as this bill).

22 "Septic waste" means pumpings from septic tanks and cesspools,
23 but shall not include wastes from a sewage treatment plant.

24 "Solid waste" means garbage, refuse, and other discarded materials
25 resulting from industrial, commercial and agricultural operations, and
26 from domestic and community activities, and shall include all other
27 waste materials including liquids, except for solid animal and vegetable
28 wastes collected by swine producers licensed by the State Department
29 of Agriculture to collect, prepare and feed such wastes to swine on
30 their own farms.

31 "Solid waste collection" means the activity related to pickup and
32 transportation of solid waste from its source or location to an
33 authorized solid waste facility, but does not include activity related to
34 the pickup, transportation or unloading of septic waste.

35 "Solid waste collection services" means the services provided by
36 persons engaging in the business of solid waste collection.

37 "Solid waste collector" means a person engaged in the collection of
38 solid waste and holding a certificate of public convenience and
39 necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6
40 and 48:13A-9).

41 "Solid waste container" means a receptacle, container or bag
42 suitable for the depositing of solid waste.

43 "Solid waste disposal" means the storage, treatment, utilization,
44 processing, or final disposal of solid waste.

45 "Solid waste disposal services" means the services provided by
46 persons engaging in the business of solid waste disposal.

1 "Solid waste facilities" mean and include the plants, structures and
2 other real and personal property acquired, constructed or operated or
3 to be acquired, constructed or operated by any person pursuant to the
4 provisions of P.L.1970 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40
5 (C.48:13A-1 et seq.) or any other act, including transfer stations,
6 incinerators, resource recovery facilities, sanitary landfill facilities or
7 other plants for the disposal of solid waste, and all vehicles, equipment
8 and other real and personal property and rights therein and
9 appurtenances necessary or useful and convenient for the collection or
10 disposal of solid waste in a sanitary manner.

11 ["Transition year" means any of the four successive 12-month
12 periods commencing on the effective date of P.L.1991, c.381
13 (C.48:13A-7.1 et al.).]

14 (cf: P.L.1991, c.381, s.3)

15

16 4. Section 4 of P.L.1991, c.381 (C.48:13A-7.4) is amended to read
17 as follows:

18 4. a. There is established, in but not of the Department of
19 Environmental Protection, the Solid Waste Rate Review Board,
20 hereinafter designated as the review board.

21 (1) The review board shall consist of five members as follows: the
22 Commissioner of Environmental Protection, or his designee, who shall
23 serve ex officio; two members, appointed by the Governor, with the
24 advice and consent of the Senate, one of whom shall be employed by
25 county or municipal government and one of whom shall be at-large;
26 two members, of whom one each shall be appointed by the President
27 of the Senate and Speaker of the General Assembly each of whom
28 shall be employed in the solid waste collection industry. Commission
29 members shall be appointed within 60 days of the effective date of
30 P.L. , c. (C.) (now before the Legislature as this bill) and
31 Commission members, with the exception of the ex officio member,
32 shall be appointed for terms of four years, except that of the members
33 first appointed, two shall be appointed for terms of four years and two
34 shall be appointed for terms of three years. The terms of office of the
35 members of the review board shall continue until their successors are
36 appointed and qualified. Not more than three of the members of the
37 review board shall be members of the same political party. All
38 vacancies, except through the expiration of term, shall be filled for the
39 unexpired term only. The review board shall organize as soon as
40 practicable after the appointment of all of its members.

41 (2) The Governor shall designate one of the members of the review
42 board as chairperson. Any member of the review board so designated
43 shall serve as such chairperson at the pleasure of the Governor
44 designating him until a successor has been designated. The
45 chairperson of the review board shall be its presiding officer. The
46 chairperson shall devote his entire time to the duties of the review

1 board and shall not engage in any occupation, profession or other
2 gainful employment. The chairperson shall receive a salary in an
3 amount as specified for officers in section 1 of P.L.1974, c.55
4 (C.52:14-15.107). The members, other than the chairperson and the
5 ex officio member, shall serve without compensation, but shall be
6 entitled to reimbursement for expenses in attendance at meetings of
7 the review board and in their performance of their duties as members
8 thereof.

9 (3) The review board may adopt, pursuant to the provisions of the
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
11 adopt rules and regulations necessary for its operation.

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

22 (5) Whenever in any law, rule, regulation, order, contract, tariff,
23 document, judicial or administrative proceeding or otherwise relating
24 to recycling, solid waste collection or solid waste disposal, reference
25 is made to the Board of Public Utilities, the same shall mean and refer
26 to the review board.

27 b. Every solid waste collector shall pay to the review board an
28 annual fee of \$100.00 to cover the costs of supervising the solid waste
29 collection industry. The fee imposed pursuant to this section shall be
30 in addition to the annual assessment made by the review board
31 pursuant to P.L.1968, c.173 (C.48:2-59 et seq.).

32 [b.]c. The provisions of section 1 of P.L.1959, c.43 (C.48:2-56) or
33 any rules or regulations adopted pursuant thereto to the contrary
34 notwithstanding, the review board may charge and collect a filing fee
35 of up to \$500.00 per applicant from persons seeking to obtain a
36 certificate of public convenience and necessity pursuant to sections 7
37 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

38 (cf: P.L.1991, c.381, s.4)

39
40 5. Section 5 of P.L.1991, c.381 (C.48:13A-7.5) is amended to read
41 as follows:

42 5. [The board may direct any applicant to furnish proof that the
43 rates or charges to be received for solid waste collection services do
44 not exceed just and reasonable rates or charges. Should the board find,
45 subsequent to the issuance of a certificate of public convenience and
46 necessity, that the rates or charges received for solid waste collection

1 services are excessive, then it may order the solid waste collector
2 charging such excessive rates or charges to make an adjustment in the
3 tariff or contract to a sum which shall result in just and reasonable
4 rates or charges] All collectors shall charge rates conforming to the
5 maximum and minimum rates set by the review board pursuant to
6 Section 8 of P.L. , c. , (C.) (now before the Legislature as this
7 bill).

8 (cf: P.L.1991, c.381, s.5)

9
10 6. Section 7 of P.L.1991, c.381 (C.48:13A-7.7) is amended to read
11 as follows:

12 7. a. Any solid waste collector proposing to extend solid waste
13 collection services into any area where that person is not actively
14 engaged in solid waste collection, and the proposed extension of
15 services is not set forth in a [tariff] schedule of services previously
16 filed with and accepted by the review board, shall file with the board
17 appropriate revised [tariff] schedule of services sheets which reflect
18 the proposed changes in areas to be served.

19 b. Any solid waste collector proposing to expand his solid waste
20 collection business for the purpose of providing new solid waste
21 collection services, and the proposed expansion of services is not set
22 forth in a [tariff] schedule of services previously filed with and
23 accepted by the review board, shall file with the review board
24 appropriate revised [tariff] schedule of services sheets which reflect
25 the proposed changes in services to be provided.

26 c. [Should the board find, subsequent to its review of a revised
27 tariff, that the rates or charges set forth therein are excessive, then it
28 may order the solid waste collector charging such excessive rates or
29 charges to make an adjustment in the tariff or contract to a sum which
30 shall result in just and reasonable rates or charges] Any rates set by
31 a solid waste collector in conjunction with any extension or expansion
32 of solid waste collection services in accordance with this section shall
33 be set in accordance with Section 11 of P.L. , c. , (C.) (now
34 before the Legislature as this bill).

35 (cf: P.L.1991, c.381, s.7)

36
37 7. Section 8 of P.L.1991, c.381 (C.48:13A-7.8) is amended to read
38 as follows:

39 8. a. Every collector must file with the review board a schedule of
40 services setting forth territory served, standard terms and conditions,
41 types of service provided and other information required by the review
42 board.

43 b. Every collector must separately set forth the service charge and
44 disposal charge components of the total rate in its bills to customers.
45 Every collector must collect from its customers a disposal charge
46 which reflects the disposal fee in effect at the county disposal site

1 designated by the Commissioner of the Department pursuant to the
2 waste flow orders for the disposal of waste based upon its origin. Any
3 solid waste collector who fails to collect the proper disposal fee is
4 guilty of a crime of the fourth degree and shall be punished by
5 imprisonment of not more than 18 months or by a fine of not more
6 than \$50,000 or both, if an individual, or \$100,000 if a corporation.
7 In addition, any collector who fails to collect the disposal fee of the
8 specified county disposal site shall be liable to pay a penalty of not
9 more than \$10,000 for the first offense, not more than \$25,000 for the
10 second offense and not more than \$50,000 for a third and every
11 subsequent offense. If the violation is of a continuing nature, each
12 during which it continues shall constitute an additional, separate and
13 distinct offense. The penalties herein provided shall be enforced by
14 summary proceedings instituted by the review board under "the
15 penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior
16 Court and the municipal courts shall all have jurisdiction to enforce
17 "the penalty enforcement law" in connection with this act.

18 c. All services provided by a collector shall be in accord with its
19 schedule of services approved by the review board.

20 d. Any increase or decrease in the disposal rates or charges
21 received at authorized solid waste facilities in this State shall be
22 automatically adjusted for in the [uniform tariff for solid waste
23 collection established by the Board of Public Utilities in rules and
24 regulations adopted pursuant to the "Administrative Procedure Act,"
25 P.L.1968, c.410 (C.52:14B-1 et seq.).

26 (1) Any solid waste collector seeking an adjustment to the rates or
27 charges set forth in the uniform tariff solid waste disposal charges shall
28 file with the board appropriate revised tariff sheets which reflect
29 changes in the disposal rates or charges received at an authorized solid
30 waste facility.

31 (2) No adjustment in the disposal rate shall be implemented until
32 such time as revised tariff sheets and verification forms have been filed
33 with the board. Every solid waste collector shall file these documents
34 with the board within five days of any decrease in the disposal rates or
35 charges received at an authorized solid waste facility.

36 b. (1) Any net savings in the payment of disposal rates or charges
37 at authorized solid waste facilities realized by a solid waste collector
38 due to decreased waste flows resulting from materials recovery, or the
39 revenues generated thereby, may be adjusted for in the rates or charges
40 set forth in the uniform tariff solid waste disposal charges.

41 (2) Any solid waste collector seeking an adjustment to the rates or
42 charges set forth in the uniform tariff solid waste disposal charges shall
43 file with the board appropriate revised tariff sheets which reflect net
44 savings in the payment of disposal rates or charges at an authorized
45 solid waste facility. No adjustment in the disposal rate shall be
46 implemented until such time as revised tariff sheets and verification

1 forms have been filed with the board.

2 c. Every solid waste collector shall file with the board rates or
3 charges for solid waste collection services conforming to the uniform
4 tariff for solid waste collection established by the board. Every person
5 engaged in the business of solid waste collection in this State shall be
6 subject to the provisions of this subsection and shall file with the board
7 a uniform tariff] fees charged to customers by solid waste collectors.
8 (cf: P.L.1991, c.381, s.8)

9

10 8. Section 9 of P.L.1991, c.381 (C.48:13A-7.9) is amended to read
11 as follows:

12 9. a. The provisions of any other law, or of any rule, regulation or
13 administrative order adopted or issued pursuant thereto, to the
14 contrary notwithstanding, [during the 48-month transition from
15 economic regulation to the termination of Board of Public Utilities rate
16 regulation of the solid waste collection industry,]the rates or charges
17 that may be imposed by solid waste collectors for solid waste
18 collection services in this State shall be determined in accordance with
19 the provisions of [P.L.1991, c.381 (C.48:13A-7.1 et al.)]this section.

20 [a. The Board of Public Utilities shall establish, in rules and
21 regulations adopted pursuant to the "Administrative Procedure Act,"
22 solid waste collection rate bands governing the rates or charges that
23 may be imposed by solid waste collectors for solid waste collection
24 services in this State during each transition year.

25 The solid waste collection rate bands shall provide for the maximum
26 adjustment that any solid waste collector may make to the rates or
27 charges set forth as solid waste collection service charges in the
28 uniform tariff filed with and accepted by the board after the effective
29 date of this amendatory and supplementary act for any residential,
30 commercial, industrial or institutional customer during a specified
31 transition year.

32 b. The solid waste collection rate bands shall conform to the
33 following schedule:

34 (1) During the first transition year, the rates or charges set forth as
35 solid waste collection service charges in the uniform tariff may be
36 adjusted by an amount within a rate band the upper and lower limits
37 of which shall not exceed the sum of 5% plus the annual percentage
38 change in the Consumer Price Index, multiplied by the rates or
39 charges;

40 (2) During the second transition year, the rates or charges set forth
41 as solid waste collection service charges in the uniform tariff may be
42 adjusted by an amount within a rate band the upper and lower limits
43 of which shall not exceed the sum of 5% plus the annual percentage
44 change in the Consumer Price Index, plus the sum authorized pursuant
45 to paragraph (1), multiplied by the rates or charges;

46 (3) During the third transition year, the rates or charges set forth

1 as solid waste collection service charges in the uniform tariff may be
2 adjusted by an amount within a rate band the upper and lower limits
3 of which shall not exceed the sum of 10% plus the annual percentage
4 change in the Consumer Price Index, plus the sum authorized pursuant
5 to paragraph (2), multiplied by the rates or charges; and

6 (4) During the fourth transition year, the rates or charges set forth
7 as solid waste collection service charges in the uniform tariff may be
8 adjusted by an amount within a rate band the upper and lower limits
9 of which shall not exceed the sum of the annual percentage change in
10 the Consumer Price Index plus the sum authorized pursuant to
11 paragraph (3), multiplied by the rates or charges.

12 Any adjustments to the uniform tariff authorized pursuant to this
13 subsection may be made on an individual customer basis.

14 For the purposes of this subsection, "Consumer Price Index" means
15 the consumer price index for all urban consumers in the New York
16 City and the Philadelphia areas as reported by the United States
17 Department of Labor.

18 c. Prior to the close of each transition year, the board shall, by
19 order in writing, revise the solid waste collection rate bands for the
20 forthcoming transition year to conform to the schedule established
21 pursuant to subsection b. of this section for the pricing of solid waste
22 collection services.]

23 b. The review board shall, by order in writing within 90 days of
24 their organizational meeting, divide the State into two or more regions
25 according to generally accepted economic and demographic data
26 including, but not limited to, cost of living and population density.

27 c. Within 90 days of the organizational meeting of the review board
28 and by December 15 of each year thereafter, the review board shall
29 after hearing by order in writing establish a minimum and maximum
30 solid waste collection service charge for each region of the State as
31 established pursuant to subsection b. of this section within which solid
32 waste collectors shall charge their customers in those regions as
33 service charges during the next calendar year. Within five business
34 days of the date of the order, the review board shall notify by mail all
35 collectors having a schedule of services on file with the review board
36 of the allowable minimum and maximum service charges for each
37 region.

38 d. The rates charged by all collectors within 90 days of the
39 organizational meeting of the review board shall conform to the
40 requirements of subsection c. of this section.

41 (cf: P.L.1991, c.381, s.9)

42

43 9. Section 10 of P.L.1991, c.381 (C.48:13A-7.10) is amended to
44 read as follows:

45 10. a. The review board shall receive complaints regarding service,
46 fees, waste flow or other matters pertaining to the review board's

1 authority. The review board shall investigate and review complaints
2 and take appropriate action, in writing, within 90 days of receipt.

3 b. The review board shall at least once annually, compile a report
4 utilizing county disposal records and collector disposal records. This
5 report shall analyze said records for the purpose of determining and
6 identifying collectors that may be violating the State's waste flow
7 rules.

8 [Upon filing with the Board of Public Utilities a uniform tariff, any
9 solid waste collector may adjust the rates or charges set forth as solid
10 waste collection service charges in the uniform tariff as provided in the
11 solid waste collection rate bands established pursuant to section 9 of
12 P.L.1991, c.381 (C.48:13A-7.9).

13 b. (1) Any solid waste collector may adjust the rates or charges set
14 forth in the uniform tariff filed with the board as provided in the solid
15 waste collection rate bands unless those rates or charges have been
16 expressly rejected by the board.

17 (2) Should the board find, subsequent to its review of a uniform
18 tariff filed by a solid waste collector and the adjusted rates or charges
19 imposed by that solid waste collector, that the rates or charges
20 imposed by that solid waste collector are excessive, then it may order
21 the solid waste collector to refund, at an interest rate to be determined
22 by the board, any difference between the adjusted rates or charges
23 imposed by the solid waste collector and the rates or charges accepted
24 by the board following readjustment of the uniform tariff and the solid
25 waste collection rate bands governing the rates or charges that may be
26 imposed by the solid waste collector.

27 c. (1) During the first and second transition years, every solid
28 waste collector shall, at least once every six months, file with the
29 board a report describing the amount and frequency of variation from
30 the rates or charges set forth in the uniform tariff for each class of
31 residential, commercial, industrial or institutional customers. The
32 report shall include the percentage of each class of solid waste
33 collection services for which adjustments have been made, and the
34 specified percentage increase or decrease to the rates or charges made
35 to that customer class.

36 (2) During the third and fourth transition years, every solid waste
37 collector shall, at least once every 12 months, file with the board a
38 report describing the amount and frequency of variation from the rates
39 or charges set forth in the uniform tariff for each class of residential,
40 commercial, industrial or institutional customers. The report shall
41 include the percentage of each class of solid waste collection services
42 for which adjustments have been made, and the specified percentage
43 increase or decrease to the rates or charges made to that customer
44 class.

45 d. Whenever a solid waste collector makes an adjustment to the
46 uniform tariff pursuant to this section, the solid waste collector shall

1 notify every customer to be affected thereby at least 10 days prior to
2 the implementation of that adjustment. The solid waste collector shall
3 attach a copy of the applicable rate schedule to the notice.]

4 (cf: P.L.1991, c.381, s.10)

5
6 10. Section 11 of P.L.1991, c.381 (C.48:13A-7.11) is amended to
7 read as follows:

8 11. Within 180 days of the organizational meeting of the review
9 board, the review board shall adopt, pursuant to the "Administrative
10 Procedure Act", rules and regulations establishing a Solid Waste
11 Collection Customer Bill of Rights. The Solid Waste Collection
12 Customer Bill of Rights shall include, but not be limited to,
13 notification of the following:

14 a. That the customer may direct any complaints pertaining to the
15 adequacy of existing solid waste collection services or any difficulties
16 in securing solid waste services to the review board;

17 b. That the customer is entitled to know the maximum and
18 minimum service charges set by the review board for that calendar
19 year;

20 c. That each solid waste collector's schedule of services is available
21 for public review in the office of the review board.

22 d. That customers have a choice of solid waste collection services
23 on a competitive basis.

24 Every solid waste collector shall [notify customers at least once
25 every year that solid waste collection services in this State are
26 available on a competitive basis, as provided in the customer bill of
27 rights established by the board in rules and regulations adopted
28 pursuant to the "Administrative Procedure Act," and] provide every
29 customer with a copy [thereof] of the Solid Waste Collection
30 Customer Bill of Rights at least once each year.

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

32
33 11. Section 13 of P.L.1991, c.381 (C.48:13A-7.13) is amended to
34 read as follows:

35 13. a. The [Board of Public Utilities] review board shall, within 12
36 months of [the effective date of this amendatory and supplementary
37 act] their organizational meeting and at least once every six months
38 thereafter, publish a notice containing the [rate schedule set forth in
39 the uniform tariff of every solid waste collector serving a particular
40 region of the State in at least one newspaper of general circulation
41 within that region and at least one newspaper of statewide circulation.
42 The rate schedule shall be accompanied by a notice advising the public
43 of the current solid waste collection rate band] maximum and
44 minimum service charges in effect on that date and stating that any
45 difficulties in securing solid waste collection services, or any
46 complaints pertaining to the adequacy of existing solid waste

1 collection services, may be referred to the review board. This notice
2 shall be published in newspapers of statewide circulation.

3 b. Each collector shall provide notice to each of its customers of
4 the minimum and maximum rates for the customer at least annually.

5 (cf: P.L.1991, c.381, s.13)

6

7 12. Section 16 of P.L.1991, c.381 (C.48:13A-7.16) is amended to
8 read as follows:

9 16. a. The review board may compel any person engaged in the
10 business of solid waste collection or otherwise providing solid waste
11 collection services to furnish and file with the review board a
12 consolidated annual report or other documents as may be necessary to
13 enable the review board to administer its duties as prescribed by law
14 and this act.

15 b. Should any person engaged in the business of solid waste
16 collection or otherwise providing solid waste collection services fail
17 or refuse to comply with any provision of this section, the review
18 board may revoke or suspend the certificate of public convenience and
19 necessity issued to that person.

20 (cf: P.L.1991, c.381, s.16)

21

22 13. Section 17 of P.L.1991, c.381 (C.48:13A-7.17) is amended to
23 read as follows:

24 17. a. The review board may compel any solid waste collector to
25 furnish and file with the review board any records, including, but not
26 limited to, manifests, origin and destination forms, customer lists,
27 financial or operational information, contracts, books, accounts and
28 records of affiliated business concerns, including any affiliated or
29 parent corporation or organization, or any wholly or partially owned
30 subsidiary thereof, directly or indirectly involved therewith, or having
31 a direct or indirect financial interest in the solid waste collection
32 services provided by the solid waste collector, and all financial
33 transactions between these parties related to the solid waste collection
34 services provided by the solid waste collector, and any other
35 documents related to solid waste collection or solid waste disposal
36 activities, at any time or place in order to determine compliance with
37 the provisions of this act or P.L.1970, c.40 (C.48:13A-1 et seq.) or
38 any rule, regulation or administrative order adopted or issued pursuant
39 thereto, and to enable the review board to administer its duties as
40 prescribed by law and this act.

41 b. Should any solid waste collector fail or refuse to comply with
42 any provision of this section, the review board may revoke or suspend
43 the certificate of public convenience and necessity issued to that
44 person.

45 (cf: P.L.1991, c.381, s.17)

46

1 14. Section 18 of P.L.1991, c.381 (C.48:13A-7.18) is amended to
2 read as follows:

3 18. a. Should any person engaged in the solid waste collection
4 business fail or refuse to complete, execute or perform any contract or
5 agreement obligating such person to provide solid waste collection
6 services, the review board may order any solid waste collector to
7 extend solid waste collection services into any area where the
8 collection of solid waste has been discontinued.

9 b. Should the review board find that any class of customers within
10 a specific geographic area is unable to secure solid waste collection
11 services, or that any person seeking a specific type of solid waste
12 collection service is unable to secure solid waste collection services,
13 or that the review board has received complaints pertaining to the
14 adequacy of existing solid waste collection services, the review board
15 may order any solid waste collector to extend solid waste collection
16 services to that geographic area, class of customers or person.

17 c. [(1) Prior to the effective date of section 15 of P.L.1991, c.381
18 (C.48:13A-7.15), should] Should the review board order any solid
19 waste collector to extend solid waste collection services to any area,
20 class of customers or person, the rates and charges for the extended
21 solid waste collection services shall be determined in accordance with
22 the provisions of [sections 7, 9 and 10 of P.L.1991, c.381
23 (C.48:13A-7.7, 48:13A-7.9 and 48:13A-7.10).

24 (2) After the effective date of section 15 of P.L.1991, c.381
25 (C.48:13A-7.15), should the board order any solid waste collector to
26 extend solid waste collection services to any area, class of customers
27 or person, the rates and charges for the extended solid waste
28 collection services shall be determined by the person ordered by the
29 board to extend those services] section 8 of P.L. _____, c. _____, (C. _____)
30 (now before the Legislature as this bill.).

31 d. Should any solid waste collector fail or refuse to comply with
32 any provision of this section, the review board may revoke or suspend
33 the certificate of public convenience and necessity issued to that
34 person.

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

36

37 15. Section 19 of P.L.1991, c.381 (C.48:13A-7.19) is amended to
38 read as follows:

39 19. Within 180 days of [the effective date of this amendatory and
40 supplementary act] their organizational meeting, the [Board of Public
41 Utilities] review board shall establish, in rules and regulations adopted
42 pursuant to the provisions of the "Administrative Procedure Act," the
43 criteria and procedures to be utilized by the review board in making a
44 determination of effective competition.

45 a. The review board shall utilize the criteria in making a
46 determination as to whether a lack of effective competition is likely to

1 occur if the review board approves a transaction pursuant to the
2 provisions of R.S.48:3-7, or in making a determination as to whether
3 a lack of effective competition exists within a specific geographic area,
4 class of customers or type of solid waste collection services.

5 b. The criteria shall include, but need not be limited to, the
6 following:

7 (1) the existence of barriers to entry of persons seeking to provide
8 solid waste collection services within a specific geographic area, class
9 of customers or type of service;

10 (2) the structure of the solid waste collection industry within a
11 specific geographic area, class of customers or type of service,
12 including the number of participating solid waste collectors, the
13 intensity of competition, or the concentration in ownership of
14 collection or haulage vehicles or other equipment; and

15 (3) the existence of patterns of anti-competitive behavior by
16 persons providing solid waste collection services within a specific
17 geographic area, class of customers or type of service.

18 c. The review board shall utilize the criteria in conjunction with
19 generally accepted economic indicators which shall be identified in
20 rules and regulations adopted pursuant to the provisions of the
21 "Administrative Procedure Act." These indicators may include an
22 evaluation of capital investment costs, economies of scale,
23 differentiation of service, technological barriers facing entrants,
24 financial requirements, including capital entry or exit costs, regulatory
25 barriers, and business characteristics, including number of customers,
26 customer turnover, annual gross revenues, class or type of service
27 provided, and annual net income.

28 d. The review board shall establish procedures to be utilized in
29 reviewing the rates or charges received by a solid waste collector
30 pursuant to [sections 6 and 20] section 16 of [P.L.1991, c.381
31 (C.48:13A-7.6 and 48:13A-7.20)]P.L. , c. (C.) (now before
32 the Legislature as this bill).

33 (cf: P.L.1991, c.381, s.19)

34

35 16. Section 20 of P.L.1991, c.381 (C.48:13A-7.20) is amended to
36 read as follows:

37 20. a. [(1)]Whenever, on the basis of available information, the
38 review board has reasonable grounds for belief [in the existence of
39 facts warranting further investigation that a solid waste collector is
40 charging rates or charges for solid waste collection services which
41 exceed rates or charges that would have resulted from effective
42 competition, the board shall transmit a notice to the solid waste
43 collector stating that the board intends to review the rates or charges
44 received by that solid waste collector. The notice shall enumerate the
45 reasons for the review and the criteria utilized by the board in making
46 a determination that a lack of effective competition exists.

1 (2) The board may, within 30 days following the date of notice,
2 request that the solid waste collector submit any additional information
3 needed to assist in its review. In the event that additional information
4 is requested, the board shall outline, in writing, why it deems such
5 information necessary to make an informed determination on whether
6 the collector is charging rates or charges for solid waste collection
7 services which exceed rates or charges that would have resulted from
8 effective competition. The board shall complete its review of the rates
9 or charges received by the solid waste collector no later than 60 days
10 following the date of the notice, except if the board requests additional
11 information from the solid waste collector, the board shall complete its
12 review within 60 days of receipt of all requested information.

13 (3) Upon completing its review, the board may, after hearing, by
14 order in writing, issue an order to the solid waste collector charging
15 such excessive rates or charges to reduce the rates or charges received
16 for solid waste collection services to a sum which would result from
17 effective competition.

18 b. The board may issue an order to any person engaged in the
19 business of solid waste collection to reduce the rates or charges
20 received for solid waste collection services to a sum which would
21 result from effective competition if the following conditions are met:

22 (1) the board has determined that a lack of effective competition
23 exists within a specific geographic area, or within a specific class of
24 customers or type of solid waste collection services; and

25 (2) the board has determined that the lack of effective competition
26 has resulted in rates or charges received for solid waste collection
27 services which exceed rates or charges that would have resulted from
28 effective competition.

29 In making a determination pursuant to paragraph (1) of this
30 subsection, the board shall not consider technical or economic factors
31 that are not directly related to the provision of solid waste collection
32 services.

33 In making a determination pursuant to paragraph (2) of this
34 subsection, the board shall compare the rates or charges received by
35 the solid waste collector charging such excessive rates or charges with
36 those received by other solid waste collectors for solid waste
37 collection services within a comparable geographic area, class of
38 customers or type of service. The board, if it deems that such
39 information is necessary, may review the revenues, income or
40 expenditures of the solid waste collector charging such excessive rates
41 or charges, except that the board shall not consider any revenues,
42 income or expenditures derived from recycling activities.

43 Any order issued by the board pursuant to this subsection shall
44 expire no later than the first day of the seventh month following the
45 effective date of the order, except that an order may remain in effect
46 pending the adjudication of a contested case.

1 c. In issuing an order pursuant to subsection b. of this section, the
2 board may:

3 (1) direct the solid waste collector to refund, at an interest rate to
4 be determined by the board, the difference between the excessive rates
5 or charges and the competitive rates or charges ordered by the board
6 as of the date of the notice of the board's intention to review the rates
7 or charges received by that solid waste collector;

8 (2) take other actions pursuant to law as may be needed to restore
9 or promote effective competition within the affected geographic area,
10 class of customers or type of service; or

11 (3) make recommendations as to the steps needed to restore or
12 promote effective competition within the affected geographic area,
13 class of customers or type of service.

14 d. (1) No later than 6 months after issuing an order pursuant to
15 subsection b. of this section, the board shall review the actions taken
16 pursuant thereto and make a determination as to whether a lack of
17 effective competition still exists within the affected geographic area,
18 class of customers or type of service, or whether the continued lack of
19 effective competition has resulted in rates or charges received for solid
20 waste collection services which exceed rates or charges that would
21 have resulted from effective competition.

22 (2) The board shall, upon a determination that effective
23 competition exists within the affected geographic area, class of
24 customers or type of service, rescind any such order and cease any
25 further rate setting activity with respect to the solid waste collector
26 subject to that order.

27 (3) The board may, upon a written determination that a lack of
28 effective competition still exists within the affected geographic area,
29 class of customers or type of service, and that the continued lack of
30 effective competition has resulted in rates or charges received for solid
31 waste collection services which exceed rates or charges that would
32 have resulted from effective competition, issue a new order pursuant
33 to subsection b. of this section and continue rate setting activity with
34 respect to the solid waste collector subject to that order as provided
35 in subsection c. of this section] that a solid waste collector has gained
36 excessive market share within the solid waste collection industry, is
37 otherwise operating in an anti-competitive manner, or is violating the
38 rules of the review board or the department, the review board, upon
39 complaint or its own initiative may direct any solid waste collector to
40 furnish proof that its rates are reasonable or that it is operating in a
41 manner consistent with effective competition.

42 b. Should the review board find, after hearing, that the solid waste
43 collector has gained excessive market share, is charging unreasonable
44 rates, or is otherwise operating in a manner inconsistent with effective
45 competition, the review board shall issue an order setting all service
46 charges to be charged and collected by the solid waste collector for a

1 period of two years from the date of the order. The review board also
2 shall direct the solid waste collector to refund, at an interest rate to be
3 determined by the review board, the difference between the excessive
4 rates and the reasonable rates ordered by the review board. The
5 review board shall also take other actions pursuant to law it deems
6 necessary to restore or promote effective competition within the
7 affected region, class of customers or type of service.

8 c. No later than two years after issuing an order pursuant to
9 subsection b. of this section, the review board shall review the actions
10 taken pursuant thereto and determine whether effective competition
11 has been restored and whether anti-competitive activities have ceased.
12 The review board, upon a written determination that a lack of effective
13 competition still exists, may extend the order.

14 (cf: P.L.1991, c.381, s.20)

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

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

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

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

31
32 18. Section 22 of P.L.1991, c.381 (C.48:13A-7.22) is amended to
33 read as follows:

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

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

40
41 19. Section 23 of P.L.1991, c.381 (C.48:13A-7.23) is amended to
42 read as follows:

43 23. a. (1) Whenever the governing body of a municipality adopts
44 an ordinance to provide for the collection or disposal of solid waste
45 within its municipal boundaries by imposing solid waste charges based
46 on the number of solid waste containers processed per household

1 pursuant to subsection b. of R.S.40:66-5, the governing body shall
2 transmit to the [Board of Public Utilities] review board, by certified
3 mail and within 90 days of the effective date of the ordinance, a copy
4 of the proposed rate schedule and the contract awarded pursuant to
5 subsection a. of R.S.40:66-4. The review board, within 60 days of
6 receipt of the proposed rate schedule and contract and if requested to
7 do so by the municipality or the relevant solid waste collector, as the
8 case may be, may review these documents to determine whether the
9 solid waste charges are equitable and to accept, reject or modify the
10 rate schedule. If the review board finds the solid waste charges to be
11 equitable, the review board shall accept the rate schedule and contract
12 and issue an appropriate order therefor. In issuing this order, the board
13 shall be exempt from the provisions of R.S.48:2-21.

14 (2) Should the review board find, subsequent to the issuance of any
15 order pursuant to this subsection, that the rates or charges received for
16 the collection of solid waste contained within a contract entered into
17 prior to the effective date of that order require adjustment, then it may
18 order the person charging these rates or charges to make an
19 adjustment in the contract to a sum which shall result in equitable rates
20 or charges. In issuing this order, the review board shall be exempt
21 from the provisions of R.S.48:2-21.

22 b. (1) The board may issue an appropriate order establishing an
23 equitable rate schedule based on the number of solid waste containers
24 processed per household for the solid waste collection tariffs of
25 persons engaging in private solid waste collection services in any
26 municipality in which solid waste collection services are contracted for
27 and provided on an individual household basis. In issuing this order,
28 the board shall be exempt from the provisions of R.S.48:2-21.

29 (2) Any person engaged in private solid waste collection services
30 in this State and utilizing a rate schedule based on the number of solid
31 waste containers processed per household as provided in this
32 subsection may provide customers with the opportunity to purchase,
33 on a prepaid basis, one or more solid waste containers, or a voucher
34 or sticker therefor, to facilitate the provision of solid waste collection
35 services on a per container basis.

36 (cf: P.L.1991, c.381, s.23)

37

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

39 52. This act shall take effect on the 90th day after enactment,
40 except that section 15 shall take effect 48 months thereafter.
41 [Sections 5 through 10 and sections 12, 13 and 23 of this act shall
42 expire on the effective date of section 15.]

43 (cf: P.L.1991, c.381,c.52)

44

45 21. The following are repealed:

46 Section 6 of P.L.1991, c.381 (C.48:13A-7.6)

1 Section 12 of P.L.1991, c.381 (C.48:13A-7.12)

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

3 Section 15 of P.L.1991, c.381 (C.48:13A-7.15)

4

5 22. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill amends and repeals sections of the Solid Waste Collection
11 Regulatory Reform Act" that provides for the eventual termination of
12 traditional public utility rate regulation of the solid waste collection
13 industry. The Legislature finds that the solid waste collection industry
14 requires a form of continuing economic regulation to assure that
15 consumers do not pay exorbitant fees, and it is necessary to provide
16 for the continued development of a competitive solid waste collection
17 industry. The Legislature further finds that a return to traditional rate
18 regulation will not permit an appropriate level of flexibility to
19 collectors.

20 A continuing form of economic regulation and oversight is
21 necessary to assure compliance with New Jersey's waste flow rules.
22 New Jersey's waste flow rules are a foundation to the state's efforts to
23 achieving self-sufficiency in solid waste disposal. The economic
24 regulation provided for in this bill will promote greater compliance
25 with these rules and enhanced enforcement of the waste flow rules.

26 Specifically, this bill provides for the implementation of a more
27 flexible form of rate regulation of the solid waste collection industry.
28 The bill mandates the creation of a five-member Solid Waste Rate
29 Review Board in but not of the Department of Environmental
30 Protection to which would be transferred all powers and authority
31 over the economic regulation of solid waste collection and disposal.
32 The review board must, within 90 days of their organizational meeting,
33 divide the State into regions according to generally accepted economic
34 and demographic data. Also within 90 days of their organizational
35 meeting, the review board must after hearing by order in writing
36 establish minimum and maximum solid waste collection service charges
37 for each region within which collectors must charge their customers.

38 The bill provides the review board with additional authority over
39 solid waste collectors who gain excessive market share, operate in a
40 manner inconsistent with effective competition or violate rules of the
41 review board or the Department. The bill empowers the review board
42 to direct the collector to furnish proof that its rates are reasonable or
43 that it is operating in a manner consistent with effective competition.
44 Should the review board find that the collector has gained excessive
45 market share, is charging unreasonable rates or is otherwise operating
46 in an anti-competitive manner, the review board shall issue an order

1 setting all charges to be charged and collected by the collector under
2 its uniform tariff for two years; directing a refund with interest of the
3 difference between the excessive rates and the ordered rates; and
4 taking other actions permitted by law that are necessary to restore or
5 promote effective competition. The review board shall review the
6 order no later than two years after its issuance to determine whether
7 effective competition has been restored; if the review board determines
8 that it has not been restored, the review board may extend the order.

9 Other major provisions of this bill include a requirement that all
10 collectors change the disposal fee of the county where the waste
11 originated and the institution of penalties for solid waste collectors
12 who fail to collect from their customers the disposal fee in effect at the
13 county disposal site designated by Departmental waste flow orders.
14 Any collector who fails to collect the proper disposal fee is guilty of
15 a crime of the fourth degree and will be punished by imprisonment for
16 not more than 18 months or by a fine of not more than \$50,000 or
17 both, if an individual, or \$100,000 if a corporation. Additionally, the
18 collectors will be liable to pay a penalty of not more than \$10,000 for
19 the first offense, not more than \$25,000 for the second offense and not
20 more than \$50,000 for the third offense.

21

22

23

24

25 Revises the "Solid Waste Collection Regulatory Reform Act."