

ASSEMBLY, No. 2197

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblyman **KRAMER**, Assemblywoman **MURPHY** and
Assemblyman **Gibson**

1 AN ACT concerning solid waste management, amending P.L.1960,
2 c.183, and amending and repealing parts of P.L.1973, c.330.

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

6
7 1. Section 2 of P.L.1960, c.183 (C.40:37A-45) is amended to read
8 as follows:

9 2. As used in this act[, unless a different meaning clearly appears
10 from the context]:

11 (a) "Authority" shall mean a public body created pursuant to [this
12 act] the provisions of P.L.1960, c.183 (C.40:37A-44 et seq.);

13 (b) "Bond resolution" shall have the meaning ascribed thereto in
14 section 17 of P.L.1960, c.183 (C.40:37A-60);

15 (c) "Bonds" shall mean bonds, notes or other obligations issued
16 pursuant to [this act] the provisions of P.L.1960, c.183 (C.40:37A-44
17 et seq.);

18 (d) "Construct" and "construction" shall connote and include acts
19 of clearance, demolition, construction, development or redevelopment,
20 reconstruction, replacement, extension, improvement and betterment;

21 (e) "Cost" shall mean, in addition to the usual connotations thereof,
22 the cost of planning, acquisition or construction of all or any part of
23 any public facility or facilities of an authority and of all or any
24 property, rights, easements, privileges, agreements and franchises
25 deemed by the authority to be necessary or useful and convenient
26 therefor or in connection therewith, including interest or discount on
27 bonds, cost of issuance of bonds, architectural, engineering and
28 inspection costs and legal expenses, cost of financial, professional and
29 other estimates and advice, organization, administrative, operating and
30 other expenses of the authority prior to and during such acquisition or
31 construction, and all such other expenses as may be necessary or
32 incident to the financing, acquisition, construction and completion of
33 such public facility or facilities or part thereof and the placing of 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 same fully in operation or the disposition of the same, and also such
2 provision or reserves for working capital, operating, maintenance or
3 replacement expenses or for payment or security of principal of or
4 interest on bonds during or after such acquisition or construction as
5 the authority may determine, and also reimbursements to the authority
6 or any governmental unit or person of any moneys theretofore
7 expended for the purposes of the authority;

8 (f) The term "county" shall mean any county of any class of the
9 State and shall include, without limitation, the terms "the county" and
10 "beneficiary county" defined in this [act] section, and the term "the
11 county" shall mean the county which created an authority pursuant to
12 [this act] the provisions of P.L.1960, c.183 (C.40:37A-44 et seq.);

13 (g) "Development project" shall mean any lands, structures, or
14 property or facilities acquired or constructed or to be acquired or
15 constructed by an authority for the purposes of the authority described
16 in subsection (e) of section 11 of P.L.1960, c.183 (C.40:37A-54);

17 (h) "Facility charges" shall have the meaning ascribed to said term
18 in section 14 of P.L.1960, c.183 (C.40:37A-57);

19 (i) "Facility revenues" shall have the meaning ascribed to said term
20 in subsection (e) of section 20 of P.L.1960, c.183 (C.40:37A-63);

21 (j) "Governing body" shall mean, in the case of a county, the board
22 of chosen freeholders, or in the case of a county operating under
23 article 3 or 5 of the "Optional County Charter Law" (P.L.1972, c.154;
24 C.40:41A-1 et seq.) as defined thereunder, and, in the case of a
25 municipality, the commission, council, board or body, by whatever
26 name it may be known, having charge of the finances of the
27 municipality;

28 (k) "Governmental unit" shall mean the United States of America
29 or the State or any county or municipality or any subdivision,
30 department, agency, or instrumentality heretofore or hereafter created,
31 designated or established by or for the United States of America or the
32 State or any county or municipality;

33 (l) "Local bond law" shall mean chapter 2 of Title 40A,
34 Municipalities and Counties, of the New Jersey Statutes (N.J.S.) as
35 amended and supplemented;

36 (m) "Municipality" shall mean any city, borough, village, town, or
37 township of the State but not a county or a school district;

38 (n) "Person" shall mean any person, partnership, association,
39 corporation or entity other than a nation, state, county or municipality
40 or any subdivision, department, agency or instrumentality thereof;

41 (o) "Project" shall have the meaning ascribed to said term in
42 section 17 of P.L.1960, c.183 (C.40:37A-60);

43 (p) "Public facility" shall mean any lands, structures, franchises,
44 equipment, or other property or facilities acquired, constructed,
45 owned, financed, or leased by the authority or any other governmental
46 unit or person to accomplish any of the purposes of an authority

- 1 authorized by section 11 of P.L.1960, c.183 (C.40:37A-54);
- 2 (q) "Real property" shall mean lands within or without the State,
3 above or below water, and improvements thereof or thereon, or any
4 riparian or other rights or interests therein;
- 5 (r) "[Garbage and solid waste disposal] Solid waste management
6 system" shall mean the plants, structures and other real and personal
7 property acquired, constructed or operated or to be acquired,
8 constructed or operated by a county improvement authority for the
9 benefit or use by any governmental unit or person, including transfer
10 stations, incinerators, resource recovery facilities, sanitary landfill
11 facilities or other plants for the [treatment and] disposal of [garbage,]
12 solid waste [and refuse matter] and all other real and personal property
13 and rights therein and appurtenances necessary or useful and
14 convenient for the collection [and treatment], recycling or disposal of
15 solid waste in a sanitary manner [of garbage, solid waste and refuse
16 matter (but not including sewage)];
- 17 (s) "[Garbage, solid] Solid waste [or refuse matter]" shall mean
18 garbage, refuse and other discarded materials resulting from industrial,
19 commercial and agricultural operations, and from domestic and
20 community activities, and shall include all other waste materials
21 including [sludge, chemical waste, hazardous wastes and] liquids,
22 [except for liquids which are treated in public sewage treatment plants
23 and] except for solid animal and vegetable wastes collected by swine
24 producers licensed by the State Department of Agriculture to collect,
25 prepare and feed such wastes to swine on their own farms;
- 26 (t) "Blighted, deteriorated or deteriorating area" may include an
27 area determined heretofore by the municipality to be blighted in
28 accordance with the provisions of P.L.1949, c.187, repealed by
29 P.L.1992, c.79 (C.40:55-21.1 et seq.) and, in addition, areas which are
30 determined by the municipality, pursuant to the same procedures as
31 provided in said law, to be blighted, deteriorated or deteriorating
32 because of structures or improvements which are dilapidated or
33 characterized by disrepair, lack of ventilation or light or sanitary
34 facilities, faulty arrangement, location, or design, or other unhealthful
35 or unsafe conditions;
- 36 (u) "Redevelopment" may include planning, replanning,
37 conservation, rehabilitation, clearance, development and
38 redevelopment; and the construction and rehabilitation and provision
39 for construction and rehabilitation of residential, commercial,
40 industrial, public or other structures and the grant or dedication or
41 rededication of spaces as may be appropriate or necessary in the
42 interest of the general welfare for streets, parks, playgrounds, or other
43 public purposes including recreational and other facilities incidental or
44 appurtenant thereto, in accordance with a redevelopment plan
45 approved by the governing body of a municipality;
- 46 (v) "Redevelopment plan" shall mean a plan as it exists from time

1 to time for the redevelopment of all or any part of a redevelopment
2 area, which plan shall be sufficiently complete to indicate such land
3 acquisition, demolition and removal of structures, redevelopment,
4 improvements, conservation or rehabilitation as may be proposed to
5 be carried out in the area of the project, zoning and planning changes,
6 if any, land uses, maximum densities, building requirements, the plan's
7 relationship to definite local objectives respecting appropriate land
8 uses, improved traffic, public transportation, public utilities,
9 recreational and community facilities, and other public improvements
10 and provision for relocation of any residents and occupants to be
11 displaced in a manner which has been or is likely to be approved by the
12 Department of Community Affairs pursuant to the "Relocation
13 Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et seq.) and the
14 "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) and
15 rules and regulations pursuant thereto;

16 (w) "Redevelopment project" shall mean any undertakings and
17 activities for the elimination, and for the prevention of the
18 development or spread, of blighted, deteriorated, or deteriorating
19 areas and may involve any work or undertaking pursuant to a
20 redevelopment plan; such undertaking may include: (1) acquisition of
21 real property and demolition, removal or rehabilitation of buildings and
22 improvements thereon; (2) carrying out plans for a program of
23 voluntary repair and rehabilitation of buildings or other improvements;
24 and (3) installation, construction or reconstruction of streets, utilities,
25 parks, playgrounds or other improvements necessary for carrying out
26 the objectives of the redevelopment project;

27 (x) "Redeveloper" shall mean any person or governmental unit that
28 shall enter into or propose to enter into a contract with an authority
29 for the redevelopment of an area or any part thereof under the
30 provisions of [this act] P.L.1960, c.183 (C.40:37A-44 et seq.);

31 (y) "Redevelopment area" shall mean an area of a municipality
32 which the governing body thereof finds is a blighted area or an area in
33 need of rehabilitation whose redevelopment is necessary to effectuate
34 the public purposes declared in [this act] the provisions of P.L.1960,
35 c.183 (C.40:37A-44 et seq.). A redevelopment area may include
36 lands, buildings, or improvements which of themselves are not
37 detrimental to the public health, safety or welfare, but whose inclusion
38 is found necessary, with or without change in their condition, for the
39 effective redevelopment of the area of which they are a part;

40 (z) ["Sludge" shall mean any solid, semisolid, or liquid waste
41 generated from a municipal, industrial or other sewage treatment plant,
42 water supply treatment plant, or air pollution control facility, or any
43 other such waste having similar characteristics and effects, but shall
44 not include effluent; and] (Deleted by amendment, P.L. . c.)(pending
45 in the Legislature as this bill)

46 (aa) "Beneficiary county" shall mean any county that has not

1 created an authority pursuant to ~~[this act]~~the provisions of P.L.1960,
2 c.183 (C.40:37A-44 et seq.);

3 (bb) "Stranded investments" means any: (1) facilities, equipment or
4 materials utilized or consumed by an authority in the implementation
5 of a solid waste management system; (2) contracts executed by an
6 authority for, or with respect to, the provision of services relating to
7 the collection, disposal or recycling of solid waste; or (3) programs
8 undertaken and implemented by an authority for, or with respect to,
9 the provision of services relating to the collection, disposal or
10 recycling of solid waste, if the facilities, equipment or materials
11 utilized or consumed, contracts executed or programs undertaken and
12 implemented were: (i) commenced prior to May 1994; (ii) the
13 obligations of the authority relating thereto, including, without
14 limitation, the obligation to make payments with respect thereto,
15 continue beyond the date that the facilities, equipment or materials,
16 contracts or programs are no longer utilized by, or on behalf of, the
17 authority in the manner contemplated at the time the facilities,
18 equipment or materials were acquired or constructed, the contracts
19 were executed or the programs were implemented; and (iii) a
20 determination has been made by the authority, by a resolution adopted
21 by the authority therefor, that the facilities, equipment or materials,
22 contracts or programs will no longer be utilized by, or on behalf of,
23 the authority in the manner contemplated at the time the facilities,
24 equipment or materials were acquired or constructed, the contracts
25 were executed or the programs were implemented; and

26 (cc) "Stranded investment costs" means any cost incurred by an
27 authority for, or with respect to, stranded investments, regardless of
28 whether the costs have actually been paid by the authority prior to the
29 date the authority makes the determination, by a resolution adopted by
30 the authority therefor, that the facilities, equipment or materials,
31 contracts or programs will no longer be utilized by, or on behalf of,
32 the authority in the manner contemplated at the time the facilities,
33 equipment or materials were acquired or constructed, the contracts
34 were executed or the programs were implemented.

35 (cf: P.L.1994, c.76, s.1)

36

37 2. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to
38 read as follows:

39 11. The purposes of every authority shall be (a) provision within
40 the county or any beneficiary county of public facilities for use by the
41 State, the county or any beneficiary county, or any municipality in any
42 such county, or any two or more or any subdivisions, departments,
43 agencies or instrumentalities of any of the foregoing for any of their
44 respective governmental purposes, including the establishment and
45 implementation of a system to calculate, charge and collect moneys for
46 payment of stranded investment costs and establishment and

1 implementation of a program for the inspection of solid waste and a
2 program to enforce or prosecute violations or violators for the
3 purposes described in (1) and (2) of subsection (u) of section 12 of
4 P.L.1960, c.183 (C.40:37A-55). (b) provision within the county or
5 any beneficiary county of public facilities for use as convention halls,
6 or the rehabilitation, improvement or enlargement of any convention
7 hall, including appropriate and desirable appurtenances located within
8 the convention hall or near, adjacent to or over it within boundaries
9 determined at the discretion of the authority, including but not limited
10 to office facilities, commercial facilities, community service facilities,
11 parking facilities, hotel facilities and other facilities for the
12 accommodation and entertainment of tourists and visitors, (c)
13 provision within the county or any beneficiary county of structures,
14 franchises, equipment and facilities for operation of public
15 transportation or for terminal purposes, including development and
16 improvement of port terminal structures, facilities and equipment for
17 public use in counties in, along or through which a navigable river
18 flows, (d) provision within the county or any beneficiary county of
19 structures or other facilities used or operated by the authority or any
20 governmental unit in connection with, or relative to development and
21 improvement of, aviation for military or civilian purposes, including
22 research in connection therewith, and including structures or other
23 facilities for the accommodation of passengers, (e) provision within the
24 county or any beneficiary county of a public facility for a combination
25 of governmental and nongovernmental uses; provided that not more
26 than 50% of the usable space in any such facility shall be made
27 available for nongovernmental use under a lease or other agreement by
28 or with the authority, (f) acquisition of any real property within the
29 county or any beneficiary county, with or without the improvements
30 thereof or thereon or personal property appurtenant or incidental
31 thereto, from the United States of America or any department, agency
32 or instrumentality heretofore or hereafter created, designated or
33 established by or for it, and the clearance, development or
34 redevelopment, improvement, use or disposition of the acquired lands
35 and premises in accordance with the provisions and for the purposes
36 stated in this act, including the construction, reconstruction,
37 demolition, rehabilitation, conversion, repair or alteration of
38 improvements on or to said lands and premises, and structures and
39 facilities incidental to the foregoing as may be necessary, convenient
40 or desirable, (g) acquisition, construction, maintenance and operation
41 of [garbage and solid waste disposal] solid waste management
42 systems for the purpose of collecting [and], disposing or recycling of
43 [garbage,]solid waste [or refuse matter], whether owned or operated
44 by any person, the authority or any other governmental unit, within or
45 without the county or any beneficiary county, including the
46 establishment and implementation of a system to calculate, charge and

1 collect moneys for payment of stranded investment costs and
2 establishment and implementation of a program for the inspection of
3 solid waste and a program to enforce or prosecute violations or
4 violators for the purposes described in (1) and (2) of subsection (u) of
5 section 12 of P.L.1960, c.183 (C.40:37A-55). (h) the improvement,
6 furtherance and promotion of the tourist industries and recreational
7 attractiveness of the county or any beneficiary county through the
8 planning, acquisition, construction, improvement, maintenance and
9 operation of facilities for the recreation and entertainment of the
10 public, which facilities may include, without being limited to, a center
11 for the performing and visual arts, (i) provision of loans and other
12 financial assistance and technical assistance for the construction,
13 reconstruction, demolition, rehabilitation, conversion, repair or
14 alteration of buildings or facilities designed to provide decent, safe and
15 sanitary dwelling units for persons of low and moderate income in
16 need of housing, including the acquisition of land, equipment or other
17 real or personal properties which the authority determines to be
18 necessary, convenient or desirable appurtenances, all in accordance
19 with the provisions of this act, as amended and supplemented, (j)
20 planning, initiating and carrying out redevelopment projects for the
21 elimination, and for the prevention of the development or spread of
22 blighted, deteriorated or deteriorating areas and the disposition, for
23 uses in accordance with the objectives of the redevelopment project,
24 of any property or part thereof acquired in the area of such project, (k)
25 any combination or combinations of the foregoing or following, and (l)
26 subject to the prior approval of the Local Finance Board, the planning,
27 design, acquisition, construction, improvement, renovation,
28 installation, maintenance and operation of facilities or any other type
29 of real or personal property within the county or any beneficiary
30 county for a corporation or other person organized for any one or
31 more of the purposes described in subsection a. of N.J.S.15A:2-1
32 except those facilities or any other type of real or personal property
33 which can be financed pursuant to the provisions of P.L.1972, c.29
34 (C.26:2I-1 et seq.) as amended.
35 (cf: P.L.1994, c.110, s.1)

36
37 3. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to
38 read as follows:

39 12. Every authority shall be a public body politic and corporate
40 constituting a political subdivision of the State established as an
41 instrumentality exercising public and essential governmental functions
42 to provide for the public convenience, benefit and welfare and shall
43 have perpetual succession and, for the effectuation of its purposes,
44 have the following additional powers:

45 (a) To adopt and have a common seal and to alter the same at
46 pleasure;

- 1 (b) To sue and be sued;
- 2 (c) To acquire, hold, use and dispose of its facility charges and
3 other revenues and other moneys;
- 4 (d) To acquire, rent, hold, use and dispose of other personal
5 property for the purposes of the authority;
- 6 (e) Subject to the provisions of section 26 of [this act] P.L.1960,
7 c.183 (C.40:37A-69), to acquire by purchase, gift, condemnation or
8 otherwise, or lease as lessee, real property and easements or interests
9 therein necessary or useful and convenient for the purposes of the
10 authority, whether subject to mortgages, deeds of trust or other liens
11 or otherwise, and to hold and to use the same, and to dispose of
12 property so acquired no longer necessary for the purposes of the
13 authority; provided that the authority may dispose of such property at
14 any time to any governmental unit or person if the authority shall
15 receive a leasehold interest in the property for such term as the
16 authority deems appropriate to fulfill its purposes;
- 17 (f) Subject to the provisions of section 13 of [this act] P.L.1960,
18 c.183 (C.40:37A-56), to lease to any governmental unit or person, all
19 or any part of any public facility for such consideration and for such
20 period or periods of time and upon such other terms and conditions as
21 it may fix and agree upon;
- 22 (g) To enter into agreements to lease, as lessee, public facilities for
23 such term and under such conditions as the authority may deem
24 necessary and desirable to fulfill its purposes, and to agree, pursuant
25 thereto, to be unconditionally obligated to make payments for the term
26 of the lease, without set-off or counterclaim, whether or not the public
27 facility is completed, operating or operable, and notwithstanding the
28 destruction of, damage to, or suspension, interruption, interference,
29 reduction or curtailment of the availability or output of the public
30 facility to which the agreement applies;
- 31 (h) To extend credit or make loans to any governmental unit or
32 person for the planning, design, acquisition, construction, equipping
33 and furnishing of a public facility, upon the terms and conditions that
34 the loans be secured by loan and security agreements, mortgages,
35 leases and other instruments, the payments on which shall be sufficient
36 to pay the principal of and interest on any bonds issued for the purpose
37 by the authority, and upon such other terms and conditions as the
38 authority shall deem reasonable;
- 39 (i) Subject to the provisions of section 13 of [this act] P.L.1960,
40 c.183 (C.40:37A-56), to make agreements of any kind with any
41 governmental unit or person for the use or operation of all or any part
42 of any public facility for such consideration and for such period or
43 periods of time and upon such other terms and conditions as it may fix
44 and agree upon;
- 45 (j) To borrow money and issue negotiable bonds or notes or other
46 obligations and provide for and secure the payment of any bonds and

- 1 the rights of the holders thereof, and to purchase, hold and dispose of
2 any bonds;
- 3 (k) To apply for and to accept gifts or grants of real or personal
4 property, money, material, labor or supplies for the purposes of the
5 authority from any governmental unit or person, and to make and
6 perform agreements and contracts and to do any and all things
7 necessary or useful and convenient in connection with the procuring,
8 acceptance or disposition of such gifts or grants;
- 9 (l) To determine the location, type and character of any public
10 facility and all other matters in connection with all or any part of any
11 public facility which it is authorized to own, construct, establish,
12 effectuate or control;
- 13 (m) To make and enforce bylaws or rules and regulations for the
14 management and regulation of its business and affairs and for the use,
15 maintenance and operation of any public facility, and to amend the
16 same;
- 17 (n) To do and perform any acts and things authorized by [this act]
18 the provisions of P.L.1960, c.183 (C.40:37A-44 et seq.) under,
19 through or by means of its own officers, agents and employees, or by
20 contract with any governmental unit or person;
- 21 (o) To acquire, purchase, construct, lease, operate, maintain and
22 undertake any project and to fix and collect facility charges for the use
23 thereof;
- 24 (p) To mortgage, pledge or assign or otherwise encumber all or
25 any portion of its revenues and other income, real and personal
26 property, projects and facilities for the purpose of securing its bonds,
27 notes and other obligations or otherwise in furtherance of the purpose
28 of [this act] P.L.1960, c.183 (C.40:37A-44 et seq.);
- 29 (q) To extend credit or make loans to redevelopers for the
30 planning, designing, acquiring, constructing, reconstructing,
31 improving, equipping and furnishing any redevelopment project or
32 redevelopment work;
- 33 (r) To conduct examinations and investigations, hear testimony and
34 take proof, under oath at public or private hearings of any material
35 matter, require the attendance of witnesses and the production of
36 books and papers and issue commissions for the examination of
37 witnesses who are out of the State, unable to attend, or excused from
38 attendance;
- 39 (s) To authorize a committee designated by it consisting of one or
40 more members, or counsel, or any officer or employee to conduct any
41 such investigation or examination, in which case such committee,
42 counsel, officer or employee shall have power to administer oaths,
43 take affidavits and issue [subpenas] subpoenas or commissions; [and]
44 (t) To establish and implement a system to calculate, charge and
45 collect moneys for payment of stranded investment costs;
- 46 (u) To establish and implement a program for the inspection of

1 solid waste and a program to enforce or prosecute violations or
2 violators of (1) the system established pursuant to subsection (t)
3 hereinabove for payment of stranded investment costs; or (2) the
4 provisions of any agreements, contracts or instruments executed in
5 connection with the implementation of a solid waste management
6 system or use of any public facility acquired, constructed or contracted
7 for by an authority for such purpose; and

8 (v) To enter into any and all agreements or contracts, execute any
9 and all instruments, and do and perform any and all acts or things
10 necessary, convenient or desirable for the purposes of the authority or
11 to carry out any power expressly given in [this act] the provisions of
12 P.L.1960, c.183 (C.40:37A-44 et seq.) subject to P.L.1971, c.198,
13 "Local Public Contracts Law" (C.40A:11-1 et seq.).
14 (cf: P.L.1982, c.113, s. 8)

15

16 4. Section 13 of P.L.1960, c.183 (C.40:37A-56) is amended to
17 read as follows:

18 13. (1) Whenever an authority after investigation and study shall
19 plan to undertake any public facility or facilities (other than a
20 development project or redevelopment project) for the purposes of the
21 authority, the authority shall make to the governing body of the county
22 and if the public facility or facilities (including a development project
23 or redevelopment project) benefit any beneficiary county, to the
24 governing body of any such beneficiary county a detailed report
25 dealing with the proposed public facility or facilities. Notwithstanding
26 any other provision of [this act] P.L.1960, c.183 (C.40:37A-44 et
27 seq.), the authority shall not construct or acquire such public facility
28 or facilities (other than a development project or redevelopment
29 project within the county which created the authority), or make any
30 lease or other agreement relating to use by any governmental unit or
31 person of all or any part of any such public facility or facilities for a
32 term in excess of five years, until there has been filed with the
33 authority a copy of a resolution adopted by the governing body of the
34 county and, if applicable, by any beneficiary county, certified by its
35 clerk, describing such public facility or facilities in terms sufficient for
36 reasonable identification and consenting to the construction or
37 acquisition thereof by the authority or the making of such leases or
38 other agreements.

39 (2) Unless otherwise required by any agreement of the authority
40 with holders of its bonds, no authority shall sell any part of a
41 development project or make any lease or other agreement relating to
42 use by any governmental unit or person of said part for a term in
43 excess of five years (A) Until the Commissioner of Community Affairs
44 (hereinafter called the "commissioner") has approved a plan
45 (hereinafter called, with respect to such part, the "development plan")
46 prepared by the authority which provides an outline for the

1 development of said part sufficient, in the opinion of the
2 commissioner: (i) to indicate its relationship to appropriate land uses
3 in the area and proper traffic, public transportation, public utility,
4 recreational and community facilities, and other public improvements,
5 (ii) to indicate proposed land uses and building requirements and
6 restrictions in said part, and (iii) to provide reasonable assurance that
7 said part will not be in danger of becoming a blighted area and will be
8 developed in a manner reasonably designed in the public interest to
9 encourage industrial, commercial, residential or other proper uses
10 thereof or restore or increase employment opportunities for residents
11 of the State; or (B) Unless such sale, lease or other agreement, in the
12 opinion of the authority, is necessary or desirable in order to effectuate
13 and carry out the said development plan.

14 (3) Every authority shall have power, subject to the provisions of
15 subsection (2) of this section, to sell or otherwise dispose of all or any
16 part of any development project or to lease the same to any
17 governmental unit or person or make agreement of any kind with any
18 governmental unit or person for the use or operation thereof, for such
19 consideration and for such period or periods of time and upon such
20 other terms and conditions as it may fix and agree upon. In the
21 exercise of such power, the authority may make any land or structure
22 in the development project available for use by private enterprise or
23 governmental units in accordance with the development plan at its use
24 value, being the value (whether expressed in terms of rental or capital
25 price) at which the authority determines such land or structure should
26 be made available in order that it may be developed or used for the
27 purpose or purposes specified in such plan. In order to assure that
28 land or other property included in the development project is
29 developed or used in accordance with the development plan, the
30 authority, upon the sale, lease or other disposition of such land or
31 property, shall obligate purchasers, lessees or other users: (A) to use
32 the land or property for the purpose designated in such plan, (B) to
33 begin the building or installation of their improvements or other
34 property (if any), and to complete the same, within such periods of
35 time as the authority may fix as reasonable, and (C) to comply with
36 such other conditions as are necessary or desirable to carry out the
37 purposes stated in this act. Any such obligations imposed on a
38 purchaser of land shall be covenants and conditions running with the
39 land where the authority so stipulates.

40 (4) Notwithstanding the foregoing, the provisions of this section
41 shall not apply to the establishment and implementation of a system to
42 calculate, charge and collect moneys for payment of stranded

1 investment costs as authorized pursuant to (a) and (g) of section 11 of
2 P.L.1960, c.183 (C.40:37A-54).
3 (cf: P.L.1994, c.76, s.5)

4
5 5. Section 14 of P.L.1960, c.183 (C.40:37A-57) is amended to
6 read as follows:

7 14. a. Every authority is hereby authorized to charge and collect
8 tolls, rents, rates, fares, fees or other charges (in this act sometimes
9 referred to as "facility charges") in connection with, or for the use or
10 services of, or otherwise relating to, any public facility or other
11 property owned, leased or controlled by the authority. If the public
12 facility is a solid waste management system [of solid waste disposal],
13 including, but not limited to, a resource recovery facility, recycling
14 [plant] center or transfer station owned, leased or controlled by the
15 authority, the authority may charge and collect in connection with that
16 solid waste management system from any governmental unit included
17 within the jurisdiction of the authority or any governmental unit which
18 contracts for service with that authority, or from any person utilizing
19 the solid waste management system, or from any owner or occupant
20 of any real property situated in a constituent municipality or in a
21 municipality which contracts for service with that authority. [Such]
22 The facility charges may be charged to and collected from any
23 governmental unit or person and [such] the governmental unit or
24 person shall be liable for and shall pay [such] the facility charges to the
25 authority at the time when and place where [such] the facility charges
26 are due and payable.

27 In the event that the facility charges of an authority with regard to
28 any parcel of real property owned by any person, other than the State
29 or an agency or subdivision thereof, shall not be paid as and when due,
30 the unpaid balance thereof, and all interest accruing thereon, shall be
31 a lien on the parcel. The lien shall be superior and paramount to the
32 interest in the parcel of any owner, lessee, tenant, mortgagee or other
33 person except the lien of municipal taxes and shall be on a parity with
34 and deemed equal to the lien on the parcel of the municipality wherein
35 the parcel is situated for taxes thereon due in the same year and not
36 paid as and when due. Whenever the facility charges, and any interest
37 accrued thereon, shall have been fully paid to the authority, the lien
38 shall be promptly withdrawn or canceled by the authority.

39 The collector or other officer of every municipality charged by law
40 with the duty of enforcing municipal liens on real property shall
41 enforce, in the same manner as with any other municipal lien on real
42 property in the municipality, all facility charges and the lien thereof
43 shown in any statement filed with the collector or officer by an
44 authority pursuant to the provisions of this subsection, and shall pay
45 over to the authority the sums or a pro rata share of the sums realized
46 upon the enforcement or liquidation of any property acquired by the

1 municipality by virtue of the enforcement action.

2 In the event that the facility charges of an authority shall not be
3 paid as and when due, notwithstanding any other remedies available to
4 the authority, the unpaid balance thereof, and any interest accrued
5 thereon, together with attorney's fees and costs, may be recovered by
6 the authority in a civil action, and any lien on real property for the
7 facility charges, and any interest accrued thereon, may be foreclosed
8 or otherwise enforced by the authority by action or suit in equity as for
9 the foreclosure of a mortgage on the real property.

10 All rights and remedies provided in this subsection for the collection
11 and enforcement of facility charges shall be cumulative and concurrent.

12 b. Notwithstanding the provisions of any other law to the contrary
13 and in addition to the powers provided in subsection a. of this section,
14 every authority is hereby authorized to establish and implement a
15 system to calculate, charge and collect rates, fees or other charges for
16 payment of stranded investment costs.

17 These rates, fees or other charges shall constitute "facility charges"
18 as defined in subsection a. of this section and may be collected by an
19 authority in any manner reasonably established by the authority,
20 including without limitation, the collection of facility charges from:

21 (1) every solid waste generator included within the jurisdiction of
22 the authority, regardless of whether the solid waste is to be delivered
23 to the solid waste management system owned, leased or controlled by
24 the authority for disposal or recycling, through the implementation of
25 a unit charge based upon the amount of solid waste generated;

26 (2) every constituent municipality which has previously utilized the
27 authority's solid waste management system and has thereby received
28 the benefit of the stranded investments, through the implementation of
29 an assessment against the municipality based upon the aggregate
30 amount of solid waste generated within the boundaries of the
31 municipality from all sources of generation; or

32 (3) the county wherein the solid waste management system is
33 located or from any other governmental unit which has contracted with
34 the authority for the utilization of the solid waste management system,
35 through the implementation of an assessment against the county based
36 upon the aggregate amount of solid waste generated within the
37 boundaries of the county from all sources of generation.

38 Upon the establishment of a system to calculate, charge and collect
39 rates, fees or other charges for payment of stranded investment costs,
40 but prior to the implementation thereof, the authority shall hold a
41 public hearing thereon at least 20 days after notice of the proposed
42 implementation has been mailed to the clerk of each municipality
43 located within the boundaries of the county wherein the solid waste
44 management system is located, and after publication of the notice of
45 the proposed implementation and the time and place of the public

1 hearing in at least 2 newspapers of general circulation within the
2 county.

3 (cf: P.L.1988, c.140, s.1)

4

5 6. Section 15 of P.L.1960, c.183 (C.40:37A-58) is amended to
6 read as follows:

7 15. a. The facility charges fixed, charged and collected by an
8 authority with respect to any public facility shall comply with the terms
9 of any lease or other agreement of the authority with regard to [such]
10 the public facility, and the facility charges fixed, charged and collected
11 by an authority may be so adjusted that the revenues of the authority
12 will at all times be adequate to pay all expenses of the authority,
13 including the expenses of operation and maintenance of any public
14 facility or other property owned or controlled by the authority,
15 including insurance, improvements, replacements, reconstruction and
16 any other required payments, and to pay the principal of and interest
17 on any bonds, and to maintain such reserves or sinking funds for any
18 of the foregoing purposes as may be required by the terms of any
19 lease or other agreement of the authority or as may be deemed
20 necessary or convenient and desirable by the authority.

21 b. Notwithstanding the foregoing, the provisions of this section
22 shall not apply to the facility charges established and collected
23 pursuant to subsection b. of section 14 of P.L.1960, c.183
24 (C.40:37A-57). The facility charges established and collected pursuant
25 to subsection b. of section 14 of P.L.1960, c.183 (C.40:37A-57) shall,
26 to the extent applicable, comply with the terms and conditions of any
27 agreement, contract or instrument executed by the authority with any
28 county, municipality, other governmental unit or person responsible
29 for the payment of stranded investment costs, as determined by the
30 authority pursuant to subsection b. of section 14 of P.L.1960, c.183
31 (C.40:37A-57).

32 (cf: P.L.1960, c.183, s.15)

33

34 7. Section 3 of P.L.1973, c.330 (C.40:37A-100) is amended to
35 read as follows:

36 3. a. Any solid waste [disposal] management system operated by a
37 county improvement authority shall be subject to the provisions of the
38 "Solid Waste Management Act [(1970)]" (P.L.1970, c.39, C.13:1E-1
39 et seq.), and to any rules and regulations adopted [thereunder]
40 pursuant thereto by the State Department of Environmental
41 Protection, solely with respect to the environmental aspects of the
42 authority's solid waste collection, disposal or recycling operations.

43 b. Notwithstanding the provisions of P.L.1970, c.39 (C.13:1E-1 et
44 seq.), as amended and supplemented by P.L.1975, c.326, or P.L.1977,
45 c.443 (C.26:3A2-21 et seq.) to the contrary, any county improvement
46 authority is authorized to establish and implement a program for the

1 inspection of solid waste and a program to enforce or prosecute
2 violations or violators of (1) any system established pursuant to
3 subsection (t) of section 12 of P.L.1960, c.183 (C.40:37A-55) for
4 payment of stranded investment costs; or (2) the provisions of any
5 agreements, contracts or instruments executed in connection with the
6 implementation of a solid waste management system or use of any
7 public facility acquired, constructed or contracted for by a county
8 improvement authority for such purpose.

9 c. In furtherance of the provisions of this section, any county
10 improvement authority is authorized to exercise the enforcement
11 powers conferred on local boards of health or county health
12 departments pursuant to the provisions of the "County Environmental
13 Health Act," P.L.1977, c.443 (C.26:3A2-21 et seq.) and section 9 of
14 P.L.1970, c.39 (C.13:1E-9), and may exercise these powers directly
15 in the manner provided by the aforementioned acts to local boards of
16 health or county health departments.

17 (cf: P.L.1973, c.330, s.3)

18
19 8. The following are repealed:

20 Section 4 of P.L.1973 c.330 (C.40:37A-101);

21 Section 5 of P.L.1973 c.330 (C.40:37A-102);

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

23 Section 7 of P.L.1973 c.330 (C.40:37A-104);

24 Section 8 of P.L.1973 c.330 (C.40:37A-105).

25
26 9. This act shall take effect immediately.

27 28 29 STATEMENT

30
31 This bill would authorize county improvement authorities to
32 consider the costs incurred in developing and operating designated
33 solid waste facilities, which have been devalued as a result of the
34 Carbone decision, as "stranded investment costs," and empower these
35 authorities to charge and collect fees from the facility's users to
36 recover these costs.

37 On May 16, 1994, the U.S. Supreme Court, in its first-ever waste
38 flow control case, Carbone v. Town of Clarkstown, held that, without
39 unambiguous congressional authorization, a state or local
40 government's regulation of where haulers must transport solid waste
41 for processing or disposal is a violation of the Commerce Clause of the
42 U.S. Constitution. If Carbone is reaffirmed by a New Jersey-related
43 case, the legal authority of counties and public authorities to control
44 the flow of solid waste to their State-designated solid waste facilities
45 would be invalidated. Consequently, all operating solid waste
46 incinerators, landfills and transfer stations in New Jersey would lose

1 the guaranteed waste flows that ensure the economic viability of these
2 facilities, and the counties and public authorities that financed them
3 through bonded indebtedness would face financial disaster.
4 Collectively, these local governments have invested more than \$1
5 billion underwritten by 20 - 40 year revenue bonds.

6 In response to this potential invalidation of waste flow control, this
7 bill would authorize county improvement authorities that have
8 previously developed and implemented solid waste management
9 systems (through the acquisition, construction and operation of solid
10 waste facilities or through execution of contracts and implementation
11 of solid waste collection, disposal or recycling programs) to establish
12 and implement a system for the collection of fees or charges from all
13 public and private users of these systems to recover the stranded
14 investment costs incurred by the authority.

15 In addition, the bill would authorize county improvement
16 authorities to exercise sole jurisdiction to undertake enforcement
17 actions to assure compliance with the system established to recover
18 the stranded investment costs, and to assure that all solid waste
19 generated by the public and private users of an authority's solid waste
20 management system is delivered to the authority's solid waste facilities.
21 The bill would also remove county improvement authorities from the
22 rate regulation of the Department of Environmental Protection as
23 public utilities with respect to the fees or charges received at the
24 authority's solid waste facilities.

25 To these ends, the bill would exempt county improvement
26 authorities from any contrary provisions of the "County Environmental
27 Health Act," P.L.1977, c.443 (C.26:3A2-21 et seq.) or the "Solid
28 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), and
29 exclude the tipping fees charged at an authority's solid waste facilities
30 from the rate regulation of, or public utility treatment by, the
31 Department of Environmental Protection under the "Solid Waste
32 Utility Control Act," P.L.1970, c.40 (C.48:13A-1 et seq.).

33

34

35

36

37 Allows certain solid waste facilities to be treated as stranded
38 investments.