

ASSEMBLY, No. 2568

STATE OF NEW JERSEY

INTRODUCED DECEMBER 12, 1996

By Assemblywoman MYERS

1 **AN ACT** amending and supplementing the title and body of P.L.1985,
2 c.330 to authorize the Department of Environmental Protection to
3 use bond moneys therefrom to provide grants to assist counties and
4 public authorities with the payment of stranded investment costs;
5 providing for the submission of this act to the people at a general
6 election, and making an appropriation.

7

8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

11 1. The title of P.L.1985, c.330 is amended to read as follows:

12 **AN ACT** to authorize the creation of a debt of the State of New Jersey
13 by the issuance of bonds of the State in the aggregate principal
14 amount of \$85,000,000.00 to provide funds for [loans] grants to
15 [local government units] assist counties and public authorities [for
16 the construction of resource recovery facilities and environmentally
17 sound sanitary landfill facilities] with the payment of stranded
18 investment costs; authorizing the issuance of refunding bonds;
19 providing the ways and means to pay the interest on the bonds and
20 refunding bonds and also to pay and discharge the principal thereof;
21 providing for submission of this act to the people at a general
22 election; and providing an appropriation therefor.

23 (cf: P.L.1985, c.330, title)

24

25 2. Section 2 of P.L.1985, c.330 is amended to read as follows:

26 2. The Legislature finds and declares that [an environmentally
27 sound strategy for the disposal of solid waste is necessary for the
28 protection of the public health and safety and the preservation of the
29 State's natural resources; that the State should end its virtually
30 exclusive reliance on traditional landfills as a solid waste disposal
31 method and encourage the utilization of resource recovery facilities
32 designed to simultaneously dispose of and recover the energy
33 contained in solid waste; that for areas of the State where the
34 construction of resource recovery facilities is not a feasible economic

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 option, the State should encourage the construction of environmentally
2 sound sanitary landfill facilities equipped with state-of-the-art
3 pollution control systems; that the cost of constructing and operating
4 a resource recovery facility or an environmentally sound sanitary
5 landfill facility will significantly increase the cost of solid waste
6 disposal above the historically low rates associated with the use of
7 traditional landfills; that while the responsibility to plan for the rational
8 and environmentally sound disposal of solid waste rests with solid
9 waste management districts, the State has the responsibility to provide
10 financial assistance to solid waste management districts in order to
11 facilitate the transition to environmentally sound solid waste disposal
12 methods; and that it is therefore in the public interest for the State to
13 issue bonds and establish a Resource Recovery and Solid Waste
14 Disposal Facility Fund for the purpose of providing financial assistance
15 to local government units for the construction of resource recovery
16 facilities and environmentally sound sanitary landfill facilities] in
17 response to the need to provide for the environmentally-sound and
18 proper disposal of solid waste, the Legislature enacted the "Solid
19 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), which
20 required each county, or a public authority designated by the
21 governing body of the county, to adopt and implement a district solid
22 waste management plan for the disposal of solid waste generated
23 within its geographic boundaries.

24 The Legislature further finds and declares that several counties and
25 public authorities fulfilled this State mandate through the construction
26 and operation of capital-intensive resource recovery facilities, which
27 were partially financed through zero interest State loans from the
28 current bond act but primarily through revenue bonds supported by the
29 enforcement of State and local waste flow control directives, by which
30 the Department of Environmental Protection and the relevant county
31 required local municipalities and solid waste haulers to utilize the
32 designated solid waste facility for the disposal of solid waste generated
33 within the county.

34 The Legislature further finds and declares that the ability of each
35 county or public authority to raise revenues sufficient to provide funds
36 for repayment of the bonds issued to develop solid waste facilities, has
37 been predicated on its legal authority to direct the flow of solid waste
38 generated within the geographic boundaries of the county to
39 designated solid waste facilities, thereby ensuring the economic
40 viability of these capital-intensive facilities; and that waste flow
41 control by counties and public authorities has been supported by
42 statute, rules and regulations adopted by the Department of
43 Environmental Protection, and franchises awarded by the Board of
44 Public Utilities.

45 The Legislature further finds and declares that in the case of C &
46 A Carbone, Inc. v. Town of Clarkstown, N.Y. the U.S. Supreme Court

1 has held that, without unambiguous congressional authorization, a
2 state or local government's designation of the destination to which
3 haulers must transport solid waste for processing or disposal is a
4 violation of the Commerce Clause of the U.S. Constitution; that the
5 Carbone decision has been reaffirmed by the Atlantic Coast Demolition
6 & Recycling, Inc., et al. v. Board of Chosen Freeholders of Atlantic
7 County et al. decision, which held that New Jersey's solid waste
8 management system, including the Department of Environmental
9 Protection's waste flow rules, interferes with interstate commerce, and
10 that the State cannot direct municipalities or haulers to designated
11 solid waste facilities in New Jersey due to the unconstitutional nature
12 of New Jersey's solid waste management system, including the waste
13 flow rules; and that the Atlantic Coast ruling on July 15, 1996 gives
14 the State, counties and public authorities two years to implement a
15 constitutionally acceptable system for solid waste management.

16 The Legislature further finds and declares that counties and public
17 authorities must be able, under all circumstances, to collect revenues
18 sufficient to recover the stranded investment costs incurred in
19 developing costly resource recovery facilities for the purposes of
20 implementing State-mandated district solid waste management plans.

21 The Legislature therefore determines that it is the public policy of
22 the State of New Jersey to furnish financial assistance to counties and
23 public authorities for the payment of stranded investment costs by
24 means of a grant program hereinafter established therefor.

25 (cf: P.L.1985, c.330, s.2)

26

27 3. Section 3 of P.L.1985, c.330 is amended to read as follows:

28 3. As used in this act:

29 [a.] "Bonds" means the bonds authorized to be issued, or issued,
30 under this act;

31 [b.] "Commission" means the New Jersey Commission on Capital
32 Budgeting and Planning;

33 [c.] "Commissioner" means the Commissioner of the Department
34 of Environmental Protection;

35 [d.] "Construct" and "construction" mean, in addition to the usual
36 meanings thereof, the designing, engineering, financing, extension,
37 repair, remodeling, or rehabilitation, or any combination thereof, of a
38 resource recovery facility or an environmentally sound sanitary landfill
39 facility or any component part thereof;

40 [e.] "Cost" means the expenses incurred in connection with: the
41 acquisition by purchase, lease or otherwise, the development, and the
42 construction of any project authorized by this act; the acquisition by
43 purchase, lease or otherwise, and the development of any real or
44 personal property for use in connection with any project authorized by
45 this act, including any rights or interests therein; the execution of any
46 agreements and franchises deemed by the department to be necessary

1 or useful and convenient in connection with any project authorized by
2 this act; the procurement of engineering, inspection, planning, legal,
3 financial or other professional services, including the services of a
4 bond registrar or an authenticating agent; the issuance of bonds, or any
5 interest or discount thereon; the administrative, organizational,
6 operating or other expenses incident to the financing, completing and
7 placing into service of projects authorized by this act; the
8 establishment of a reserve fund or funds for working capital,
9 operating, maintenance or replacement expenses and for the payment
10 or security, principal or interest on bonds, as the Director of the
11 Division of Budget and Accounting in the Department of the Treasury
12 may determine; and reimbursement to any fund of the State of moneys
13 which may have been transferred or advanced therefrom to any fund
14 created by this act, or of any moneys which may have been expended
15 therefrom for or in connection with any project authorized by this act;
16 except that, in connection with stranded investments, "cost" means, in
17 addition to the aforementioned connotations thereof, any expenses
18 related to the planning, acquisition, construction, operation and
19 maintenance of resource recovery facilities, including debt service on
20 bonds issued by public authorities to finance resource recovery
21 facilities;

22 [f.] "Department" means the Department of Environmental
23 Protection;

24 [g.] "Environmentally sound sanitary landfill facility" means a
25 sanitary landfill facility which is equipped with a liner or liners, a
26 leachate control and collection system, and a groundwater pollution
27 monitoring system, or any other pollution control or other engineering
28 device required by the department pursuant to law or rule and
29 regulation, and which is identified and included in a district solid waste
30 management plan pursuant to the provisions of the "Solid Waste
31 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.);

32 [h.] "Government securities" means any bonds or other obligations
33 which as to principal and interest constitute direct obligations of, or
34 are unconditionally guaranteed by, the United States, including
35 obligations of any federal agency to the extent those obligations are
36 unconditionally guaranteed by the United States of America and any
37 certificates or any other evidences of an ownership interest in those
38 obligations of, or unconditionally guaranteed by, the United States or
39 in specified portions of those obligations, which may consist of the
40 principal of, or the interest on, those obligations;

41 [i.] "Local government unit" means a county, [municipality,
42 municipal or county utility authority,] public authority or any other
43 political subdivision of the State authorized to construct or operate a
44 resource recovery facility or an environmentally sound sanitary landfill
45 facility;

46 [j.] "Project" means any work relating to the construction of a

1 resource recovery facility or an environmentally sound sanitary landfill
2 facility by a local government unit;

3 "Public authority" means any municipal or county utilities authority
4 created pursuant to the "municipal and county utilities authorities
5 law," P.L.1957, c.183 (C.40:14B-1 et seq.); county improvement
6 authority created pursuant to the "county improvement authorities
7 law," P.L.1960, c.183 (C.40:37A-44 et seq.); pollution control
8 financing authority created pursuant to the "New Jersey Pollution
9 Control Financing Law," P.L.1973, c.376 (C.40:37C-1 et seq.), or any
10 other public body corporate and politic created for solid waste
11 management purposes in any county, pursuant to the provisions of any
12 law;

13 [k.] "Resource recovery facility" means a solid waste facility
14 constructed and operated for the incineration of solid waste for energy
15 production and the recovery of metals and other materials for reuse[.];
16 or a mechanized composting facility, or any other [solid waste] facility
17 constructed or operated for the collection, separation, recycling, and
18 recovery of metals, glass, paper, and other materials for reuse or for
19 energy production, and which is identified and included in a district
20 solid waste management plan pursuant to the provisions of the "Solid
21 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.);

22 [l.] "Sanitary landfill facility" means a solid waste facility at which
23 solid waste is deposited on or in the land as fill for the purpose of
24 permanent disposal or storage for a period exceeding six months;

25 "Solid waste facilities"means and includes the plants, structures and
26 other real and personal property acquired, constructed or operated or
27 to be acquired, constructed or operated by, or on behalf of, any
28 person, public authority or county for, or with respect to, the
29 implementation of a district solid waste management plan required
30 pursuant to the provisions of the "Solid Waste Management Act,"
31 P.L.1970, c.39 (C.13:1E-1 et seq.) or any other act, including transfer
32 stations, incinerators, resource recovery facilities, sanitary landfill
33 facilities or other plants for the disposal of solid waste, and all
34 vehicles, equipment and other real and personal property and rights
35 therein and appurtenances necessary or useful and convenient for the
36 collection or disposal of solid waste in a sanitary manner;

37 "Stranded investment costs" means the cost of stranded
38 investments;

39 "Stranded investments" means any resource recovery facility
40 acquired, constructed or operated or to be acquired, constructed or
41 operated by, or on behalf of, any person, public authority or county
42 for, or with respect to, the implementation of a district solid waste
43 management plan required pursuant to the provisions of the "Solid
44 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or any
45 other act, which resource recovery facility has been financed, in whole
46 or in part, through a zero interest State loan made from the "Resource

1 Recovery and Solid Waste Disposal Facility Fund" established
2 pursuant to section 14 of P.L.1985, c.330.

3 (cf: P.L.1985, c.330, s.3)

4

5 4. Section 4 of P.L.1985, c.330 is amended to read as follows:

6 4. The commissioner shall adopt, pursuant to law, any rules [and]
7 or regulations necessary to implement the provisions of this act, as
8 amended and supplemented by P.L. , c. (pending in the Legislature
9 as this bill). The commissioner shall review and consider the findings
10 and recommendations of the commission in implementing the
11 provisions of this act, as amended and supplemented by P.L. , c.
12 (pending in the Legislature as this bill).

13

14 5. Section 5 of P.L.1985, c.330 is amended to read as follows:

15 5. [a.] Bonds of the State of New Jersey are authorized to be
16 issued in the aggregate principal amount of \$85,000,000.00 for the
17 purpose of [making low interest or zero interest State loans to local
18 government units for financing the construction of resource recovery
19 facilities and environmentally sound sanitary landfill facilities] providing funds for grants to assist counties and public authorities with
20 the payment of stranded investment costs.

21 [b.] Payments of principal and interest on loans made from the
22 "Resource Recovery and Solid Waste Disposal Facility Fund" prior to
23 the effective date of P.L. , c. (pending in the Legislature as this
24 bill) shall be made to the "Resource Recovery and Solid Waste
25 Disposal Facility Fund."

26 (cf: P.L.1985, c.330, s.5)

27

28 6. Section 10 of P.L.1985, c.330 is amended to read as follows:

29 10. a. The bonds shall recite that they are issued for the purposes
30 set forth in section 5 of this act, that they are issued pursuant to this
31 act, that this act was submitted to the people of the State at the
32 general election held in the month of November, 1985, and that this
33 act was approved by a majority of the legally qualified voters of the
34 State voting thereon at the election. [This recital] The bonds shall also
35 recite, if issued after the effective date of P.L. , c. (pending in the
36 Legislature as this bill), that the amendments and supplements to
37 P.L.1985, c.330 were submitted to the people of the State at the
38 general election held in the month of November, 1997, and were
39 approved by a majority of the legally qualified voters of the State
40 voting thereon. These recitals shall be conclusive evidence of the
41 validity of the bonds and of the authority of the State to issue them.
42 Any bonds containing [this recital] the recitals shall, in any suit, action
43 or proceeding involving their validity, be conclusively deemed to be
44 fully authorized by this act and to have been issued, sold, executed and
45 delivered in conformity herewith and with all other provisions of laws

1 applicable thereto, and shall be incontestable for any cause.

2 b. The bonds shall be issued in [such] those denominations and in
3 [such] the form or forms, whether coupon, fully-registered or
4 book-entry, and with or without provisions for the interchangeability
5 thereof, as may be determined by the issuing officials.

6 (cf: P.L.1985, c.330, s.10)

7

8 7. Section 14 of P.L.1985, c.330 is amended to read as follows:

9 14. The proceeds from the sale of the bonds authorized pursuant to
10 section 5 of P.L.1985, c.330 shall be paid to the State Treasurer[, to
11 be held thereby] for deposit in a separate fund, which shall be known
12 as the "Resource Recovery and Solid Waste Disposal Facility Fund[.]".
13 [The proceeds of this fund shall be deposited in such depositories as
14 may be selected by the State Treasurer to the credit of the fund] for
15 use by the department as hereinafter provided.

16 The department is authorized to use moneys in the "Resource
17 Recovery and Solid Waste Disposal Facility Fund" to cover
18 administrative expenses incurred in implementing the provisions of this
19 act, as amended and supplemented by P.L. , c. (pending in the
20 Legislature as this bill), subject to the annual appropriation thereof by
21 the Legislature.

22 (cf: P.L.1985, c.330, s.14)

23

24 8. Section 15 of P.L.1985, c.330 is amended to read as follows:

25 15. a. The moneys in the "Resource Recovery and Solid Waste
26 Disposal Facility Fund" are specifically dedicated and shall be applied
27 to [the cost of] the purposes set forth in section 5 of [this act]
28 P.L.1985, c.330, and all such moneys are appropriated for those
29 purposes[, and]. However, no [such] moneys in the fund shall be
30 expended for those purposes, except as otherwise authorized by this
31 act, without the specific appropriation thereof by the Legislature, but
32 bonds may be issued as herein provided, notwithstanding that the
33 Legislature [has] shall not have then adopted an act making a specific
34 appropriation of any of the moneys. Any act appropriating moneys
35 from the "Resource Recovery and Solid Waste Disposal Facility Fund"
36 shall identify the [specific project or projects to be funded with those
37 moneys and the amount and terms and conditions of any loan made
38 from the "Resource Recovery and Solid Waste Disposal Facility
39 Fund."] county or public authority to be provided with a grant to assist
40 that local government unit with the payment of stranded investment
41 costs.

42 b. At any time prior to the issuance and sale of bonds under this
43 act, the State Treasurer is authorized to transfer from any available
44 [money] moneys in any fund of the treasury of the State to the credit
45 of the "Resource Recovery and Solid Waste Disposal Facility Fund"
46 [such] those sums as [he] the State Treasurer may deem necessary.

1 The [sum] sums so transferred shall be returned to the same fund of
2 the treasury of the State by the State Treasurer from the proceeds of
3 the sale of the first issue of bonds.

4 c. Pending their application to the purposes provided in [this act]
5 P.L.1985, c.330 or P.L. , c. (pending in the Legislature as this
6 bill), the moneys in the "Resource Recovery and Solid Waste Disposal
7 Facility Fund" may be invested and reinvested as are other trust funds
8 in the custody of the State Treasurer, in the manner provided by law.
9 Net earnings received from the investment or deposit of moneys in the
10 "Resource Recovery and Solid Waste Disposal Facility Fund" shall be
11 paid into the "Resource Recovery and Solid Waste Disposal Facility
12 Fund.

13 (cf: P.L.1985, c.330, s.15)

14

15 9. (New section) a. The commissioner shall for each fiscal year
16 develop a priority system for providing grants to assist counties and
17 public authorities in the payment of stranded investment costs and
18 shall establish the ranking criteria and funding policies therefor. The
19 commissioner shall set forth a priority list for funding for each fiscal
20 year and shall include the aggregate amount of funds to be authorized
21 for these purposes. Eligibility of a county or public authority for a
22 grant to be included on the priority list shall be determined in
23 accordance with the provisions of subsection b. of this section. The
24 priority list shall include an explanation of the manner in which
25 priorities were established. The priority system and priority list for the
26 ensuing fiscal year shall be submitted to the Legislature on or before
27 January 15 of each year.

28 b. In order to be eligible for a grant, a county or public authority
29 shall prepare a plan to reduce the solid waste charges received at the
30 resource recovery facility for solid waste disposal. The plan shall
31 include, but not necessarily be limited to, provisions concerning:

32 (1) the assumption by the governing body of the county of some or
33 all of the administrative costs of implementing its district solid waste
34 management plan;

35 (2) the proper delegation to municipalities of the costs of certain
36 county solid waste services, including, but not limited to, recycling or
37 household hazardous waste management, which are currently part of
38 the solid waste charges received at the resource recovery facility for
39 solid waste disposal;

40 (3) the refinancing of debt to reduce the solid waste charges
41 received at the resource recovery facility for solid waste disposal;

42 (4) any other arrangements as may be necessary to reduce the solid
43 waste charges received at the resource recovery facility for solid waste
44 disposal; or

45 (5) the prudent application of grant moneys to the plan prepared
46 by the county or public authority to ensure the long-term

1 competitiveness of the resource recovery facility as well as the
2 payment of debt service obligations.

3 No moneys shall be expended for grants during a fiscal year for any
4 county or public authority unless the expenditure is authorized
5 pursuant to an appropriations act.

6 c. As part of the annual submission required by this section, the
7 department shall provide a financial accounting of all expenditures
8 made in the preceding year, and of all administrative expenses incurred
9 by the department in administering the "Resource Recovery and Solid
10 Waste Disposal Facility Fund."

11

12 10. (New section) a. The provisions of any other law, or of any
13 rule or regulation adopted pursuant thereto to the contrary
14 notwithstanding, the unexpended balance of those moneys heretofore
15 appropriated to the department from the "Resource Recovery and
16 Solid Waste Disposal Facility Fund" for the purpose of providing an
17 interest-free loan to Bergen county for the design, acquisition and
18 construction of a resource recovery facility pursuant to section 2 of
19 P.L.1985, c.335, the unexpended balance of those moneys heretofore
20 appropriated to the department from the "Resource Recovery and
21 Solid Waste Disposal Facility Fund" for the purpose of providing an
22 interest-free loan to Passaic county for the design, acquisition and
23 construction of a resource recovery facility pursuant to P.L.1988,
24 c.86, the unexpended balance of those moneys heretofore appropriated
25 to the department from the "Resource Recovery and Solid Waste
26 Disposal Facility Fund" for the purpose of providing an interest-free
27 loan to the Cape May County Municipal Utilities Authority for the
28 design, acquisition and construction of a resource recovery facility
29 pursuant to P.L.1993, c.285, the unexpended balance of those moneys
30 heretofore appropriated to the department from the "Resource
31 Recovery and Solid Waste Disposal Facility Fund" for the purpose of
32 providing an interest-free loan to Burlington county for the design,
33 acquisition and construction of a resource recovery facility pursuant
34 to P.L.1993, c.352, and the unexpended balance of those moneys
35 heretofore appropriated to the department from the "Resource
36 Recovery and Solid Waste Disposal Facility Fund" for the purpose of
37 providing an interest-free loan to the Mercer County Improvement
38 Authority for the design, acquisition and construction of a resource
39 recovery facility pursuant to P.L.1993, c.369, shall revert to the
40 "Resource Recovery and Solid Waste Disposal Facility Fund," and may
41 be appropriated therefrom for any purpose authorized under P.L.1985,
42 c.330, as amended and supplemented by P.L. , c. (pending in the
43 Legislature as this bill).

44 b. On and after the effective date of P.L. , c. (pending in the
45 Legislature as this bill), all moneys accruing to the "Resource
46 Recovery and Solid Waste Disposal Facility Fund" from the repayment

1 of principal and interest on loans made pursuant to P.L.1985, c.330,
2 all moneys accruing to that fund pursuant to P.L.1985, c.331, and any
3 interest earned on the management of moneys in that fund, shall be
4 reserved for appropriation for any grants to assist counties and public
5 authorities with the payment of stranded investment costs authorized
6 under P.L. , c. (pending in the Legislature as this bill).

7 c. Nothing in this section shall be deemed to impede the State
8 Treasurer in fulfilling his responsibility under section 17 of P.L.1985,
9 c.330.

10

11 11. (New section) For the purpose of complying with the
12 provisions of the State Constitution, this amendatory and
13 supplementary act shall be submitted to the people at the general
14 election to be held in the month of November, 1997. To inform the
15 people of the contents of this amendatory and supplementary act, it
16 shall be the duty of the Secretary of State, after this section takes
17 effect, and at least 60 days prior to the election, to cause this
18 amendatory and supplementary act to be published at least once in one
19 or more newspapers of each county, if any newspapers are published
20 therein, and to notify the clerk of each county of this State of the
21 passage of this amendatory and supplementary act; and the clerks
22 respectively, in accordance with the instructions of the Secretary of
23 State, shall have printed on each of the ballots the following:

24 If you approve of the act entitled below, make a cross (X), plus (+),
25 or check (o) mark in the square opposite the word "Yes."

26 If you disapprove of the act entitled below, make a cross (X), plus
27 (+), or check (o) mark in the square opposite the word "No."

28 If voting machines are used, a vote of "Yes" or "No" shall be
29 equivalent to these markings respectively.

1		AMENDS AND SUPPLEMENTS RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY BOND ACT OF 1985
5	YES	Shall the amendments and supplementary language to the "Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985," which provide funds for grants to assist counties and public authorities with the payment of stranded investment costs associated with the construction of resource recovery facilities, and which authorize the Department of Environmental Protection to use bond moneys to cover administrative costs incurred therewith, subject to the annual appropriation thereof by the Legislature, be approved?

16

1		INTERPRETIVE STATEMENT
2		

48 The fact and date of the approval or passage of this amendatory and
49 supplementary act, as the case may be, may be inserted in the
50 appropriate place after the title in the ballot. No other requirements
51 of law of any kind or character as to notice or procedure, except as
52 herein provided, need be adhered to.

53 The votes so cast for and against the approval of this amendatory

1 and supplementary act, by ballot or voting machine, shall be counted
2 and the result thereof returned by the election officer, and a canvass
3 of the election had in the same manner as is provided for by law in the
4 case of the election of a Governor, and the approval or disapproval of
5 this act so determined shall be declared in the same manner as the
6 result of an election for a Governor, and if there is a majority of all the
7 votes cast for and against it at the election in favor of the approval of
8 this amendatory and supplementary act, then all the provisions thereof
9 not made effective theretofore shall take effect forthwith.

10

11 12. (New section) There is appropriated from the General Fund
12 the sum of \$5,000 to the Department of State for expenses in
13 connection with the publication of the notice pursuant to section 11 of
14 this act.

15

16 13. Section 11 and 12 of this act shall take effect immediately, and
17 the remainder of the act shall take effect as and when provided in
18 section 11 of this act.

19

20

STATEMENT

22

23 This bill would revise the "Resource Recovery and Solid Waste
24 Disposal Facility Bond Act of 1985," (P.L.1985, c.330) to authorize
25 the Department of Environmental Protection to use bond moneys in
26 the "Resource Recovery and Solid Waste Disposal Facility Fund"
27 established therein for grants to counties and public authorities to
28 assist these local governments in the payment of stranded investment
29 costs associated with the development of State-mandated resource
30 recovery facilities.

31 On May 16, 1994, the U.S. Supreme Court, in its first-ever waste
32 flow control case, Carbone v. Town of Clarkstown, held that, without
33 unambiguous congressional authorization, a state or local
34 government's regulation of where haulers must transport solid waste
35 for processing or disposal is a violation of the Commerce Clause of the
36 U.S. Constitution. The Carbone decision has been reaffirmed by the
37 Atlantic Coast Demolition & Recycling, Inc., et al. v. Board of Chosen
38 Freeholders of Atlantic County et al. decision, which held that New
39 Jersey's solid waste management system, including the Department of
40 Environmental Protection's waste flow rules, interferes with interstate
41 commerce, and that the State cannot direct municipalities or haulers
42 to designated solid waste facilities in New Jersey due to the
43 unconstitutional nature of New Jersey's solid waste management
44 system, including the waste flow rules; and that the Atlantic Coast
45 ruling on July 15, 1996 gives the State, counties and public authorities
46 two years to implement a constitutionally acceptable system for solid

1 waste management. Consequently, all operating and proposed resource
2 recovery facilities in New Jersey have lost the guaranteed waste flows
3 that ensure the economic viability of these solid waste incinerators,
4 and the counties and public authorities that have financed these so-
5 called "stranded investments," primarily through revenue bonds,
6 together with interest-free State loans from the "Resource Recovery
7 and Solid Waste Disposal Facility Fund," now face financial disaster.

8 In response to this crisis, and in view of the State's role in
9 mandating the development of these facilities, it is imperative that the
10 State provide financial assistance to counties and public authorities for
11 the payment of stranded investment costs by means of a grant program
12 utilizing bond moneys from the "Resource Recovery and Solid Waste
13 Disposal Facility Fund."

14 Approximately \$65 million in bond moneys are available from
15 repayments of certain loans, canceled resource recovery facility
16 projects, and cash earned from the investment of amounts in the
17 "Resource Recovery and Solid Waste Disposal Facility Fund." If
18 approved by the voters, these moneys would be used to assist counties
19 and public authorities that have incurred bonded indebtedness in
20 developing resource recovery facilities, all of which have been
21 financed, in part, from interest-free loan moneys provided to these
22 local governments under the current bond act. The grant program
23 would be administered by the Department of Environmental
24 Protection. It is proposed that the Department be permitted to cover
25 its administrative costs out of bond moneys, if the Legislature
26 appropriates the moneys each year.

27 In order to qualify for a grant, a county or public authority must
28 prepare a plan to reduce the solid waste charges ("tipping fees")
29 received at the resource recovery facility for solid waste disposal. The
30 plan must include, but not necessarily be limited to, provisions
31 concerning: (1) the assumption by the governing body of the county
32 of some or all of the administrative costs of implementing its district
33 solid waste management plan; (2) the proper delegation to
34 municipalities of the costs of certain county solid waste services,
35 including, but not limited to, recycling or household hazardous waste
36 management, which are currently part of the solid waste charges
37 received at the resource recovery facility for solid waste disposal; (3)
38 the refinancing of debt to reduce the solid waste charges received at
39 the resource recovery facility for solid waste disposal; (4) any other
40 arrangements as may be necessary to reduce the solid waste charges
41 received at the resource recovery facility for solid waste disposal; or
42 (5) the prudent application of grant moneys to the plan prepared by
43 the county or public authority to ensure the long-term competitiveness
44 of the resource recovery facility as well as the payment of debt service
45 obligations.

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3 Revises the "Resource Recovery and Solid Waste Disposal Facility
4 Bond Act of 1985," appropriates \$5,000.