

ASSEMBLY, No. 2627

STATE OF NEW JERSEY

INTRODUCED JANUARY 9, 1997

By Assemblywoman MYERS

1 AN ACT authorizing the creation of a debt of the State of New Jersey
2 by the issuance of bonds of the State in the aggregate principal
3 amount of \$200,000,000 for the purpose of providing grants to
4 counties and public authorities for the payment of stranded
5 investment costs associated with the construction and operation of
6 resource recovery facilities; providing the ways and means to pay
7 and discharge the principal of and interest on the bonds; providing
8 for the submission of this act to the people at a general election;
9 and making an appropriation therefor.

10

11 **BE IT ENACTED** by the Senate and General Assembly of the
12 State of New Jersey:

13

14 1. This act shall be known and may be cited as the "Resource
15 Recovery Facility Stranded Investment Cost Recovery Bond Act."

16

17 2. The Legislature finds and declares that in response to the need
18 to protect and enhance the quality of the State's environment, and to
19 provide for the environmentally-sound disposal of solid waste, the
20 Legislature in 1970 made a determination that these goals would be
21 best achieved through the development of a comprehensive Statewide
22 solid waste management strategy; that in furtherance of these
23 environmental goals and policies, and to provide for a regulatory
24 framework for the implementation thereof on a Statewide basis, the
25 Legislature enacted the "Solid Waste Management Act," P.L.1970,
26 c.39 (C.13:1E-1 et seq.), which designated every county and the
27 Hackensack Meadowlands District as a solid waste management
28 district for planning and implementation purposes and required each
29 county, or a public authority designated by the governing body of the
30 county, to develop, adopt and implement a district solid waste
31 management plan for disposal of solid waste generated within its
32 geographic boundaries.

33 The Legislature further finds and declares that in furtherance of this
34 State mandate, each county or public authority has entered into
35 contracts, acquired real and personal property, incurred administrative
36 and other operating expenses, and issued debt obligations, and the
37 Department of Environmental Protection has issued waste flow orders

1 directing constituent municipalities and local haulers to designated in-
2 county solid waste facilities for processing or disposal, all in the
3 service of district solid waste management plan implementation.

4 The Legislature further finds and declares that the ability of each
5 county or public authority to fulfill its lawful responsibilities with
6 respect to district solid waste management plan implementation,
7 including the ability to raise revenues sufficient to provide funds for
8 payment of the costs of developing self-sufficient solid waste
9 management systems, has been predicated on its legal authority to
10 direct the flow of solid waste generated within the geographic
11 boundaries of the county to designated solid waste facilities, thereby
12 ensuring the economic viability of these facilities; and that waste flow
13 control by counties and public authorities has been supported by
14 statute, rules and regulations adopted by the Department of
15 Environmental Protection, and franchises awarded by the Board of
16 Public Utilities.

17 The Legislature further finds and declares that in the case of C &
18 A Carbone, Inc. v. Town of Clarkstown, N.Y. the U.S. Supreme Court
19 has held that, without unambiguous congressional authorization, a
20 state or local government's designation of the destination to which
21 haulers must transport solid waste for processing or disposal is a
22 violation of the Commerce Clause of the U.S. Constitution; that the
23 Carbone decision has been reaffirmed by the Atlantic Coast Demolition
24 & Recycling, Inc., et al. v. Board of Chosen Freeholders of Atlantic
25 County et al. decision, which held that New Jersey's solid waste
26 management system, including the Department of Environmental
27 Protection's waste flow rules, interferes with interstate commerce, and
28 that the State cannot direct municipalities or haulers to designated
29 solid waste facilities in New Jersey due to the unconstitutional nature
30 of New Jersey's solid waste management system, including the waste
31 flow rules; and that the Atlantic Coast ruling on July 15, 1996 gives
32 the State, counties and public authorities two years to implement a
33 constitutionally acceptable system for solid waste management.

34 The Legislature further finds and declares that counties and public
35 authorities must be able, under all circumstances, to collect revenues
36 sufficient to recover the environmental investment costs incurred in
37 developing and implementing State-mandated district solid waste
38 management plans through the construction and operation of capital-
39 intensive resource recovery facilities for the environmentally-sound
40 incineration of municipal solid waste.

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

45

46 3. As used in this act:

1 "Bonds" mean the bonds authorized to be issued, or issued, under
2 this act;

3 "Commission" means the New Jersey Commission on Capital
4 Budgeting and Planning;

5 "Commissioner" means the Commissioner of Environmental
6 Protection;

7 "Construct" and "construction" mean, in addition to the usual
8 meanings thereof, the designing, engineering, financing, extension,
9 repair, remodeling, or rehabilitation, or any combination thereof, of a
10 resource recovery facility or any component part thereof;

11 "Cost" means the expenses incurred in connection with: the
12 execution of any agreements and franchises deemed by the department
13 to be necessary or useful and convenient in connection with any grant
14 authorized by this act; the procurement of engineering, inspection,
15 planning, legal, financial, or other professional services, including the
16 services of a bond registrar or an authenticating agent; the issuance of
17 bonds, or any interest or discount thereon; the administrative,
18 organizational, operating, or other expenses incident to the awarding
19 of any grant authorized by this act; the establishment of a reserve fund
20 or funds for working capital, operating, maintenance, or replacement
21 expenses and for the payment or security of principal or interest on
22 bonds, as the Director of the Division of Budget and Accounting in the
23 Department of the Treasury may determine; and reimbursement to any
24 fund of the State of moneys which may have been transferred or
25 advanced therefrom to any fund created by this act, or of any moneys
26 which may have been expended therefrom for, or in connection with,
27 any grant authorized by this act; except that, in connection with
28 stranded investments, "cost" means, in addition to the aforementioned
29 connotations thereof, any expenses related to the planning, acquisition,
30 construction, operation and maintenance of resource recovery
31 facilities, including debt service on bonds issued by public authorities
32 to finance resource recovery facilities;

33 "Department" means the New Jersey Department of Environmental
34 Protection or any agency or department successor to its power and
35 responsibilities;

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

45 "Public authority" means any municipal or county utilities authority
46 created pursuant to the "municipal and county utilities authorities

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

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

18 "Stranded investment costs" means the cost of stranded
19 investments;

20 "Stranded investments" means any resource recovery facility
21 acquired, constructed or operated or to be acquired, constructed or
22 operated by, or on behalf of, any person, public authority or county
23 for, or with respect to, the implementation of a district solid waste
24 management plan required pursuant to the provisions of the "Solid
25 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or any
26 other act, which resource recovery facility has been financed, in whole
27 or in part, through a zero interest State loan made from the "Resource
28 Recovery and Solid Waste Disposal Facility Fund" established
29 pursuant to section 14 of P.L.1985, c.330.

30

31 4. The commissioner shall adopt, pursuant to the "Administrative
32 Procedure Act," P.L.1968 c.410 (C.52:14B-1 et seq.), rules and
33 regulations necessary to implement the provisions of this act. The
34 commissioner shall review and consider the findings and
35 recommendations of the commission in the administration of the
36 provisions of this act.

37

38 5. a. Bonds of the State of New Jersey are authorized to be issued
39 in the aggregate principal amount of \$200,000,000 for the purpose of
40 providing grants to counties and public authorities for the payment of
41 stranded investment costs associated with the construction and
42 operation of resource recovery facilities.

43 b. Procedures for the review and approval of, and eligibility criteria
44 for the awarding of grants shall be established by the commissioner
45 pursuant to section 23 of this act.

1 6. The bonds authorized under this act shall be serial bonds, term
2 bonds, or a combination thereof, and shall be known as "Resource
3 Recovery Facility Stranded Investment Cost Recovery Bonds." They
4 shall be issued from time to time as the issuing officials herein named
5 shall determine and may be issued in coupon form, fully-registered
6 form or book-entry form. The bonds may be subject to redemption
7 prior to maturity and shall mature and be paid not later than 35 years
8 from the respective dates of their issuance.

9
10 7. The Governor, the State Treasurer and the Director of the
11 Division of Budget and Accounting in the Department of the Treasury,
12 or any two of these officials, herein referred to as "the issuing
13 officials," are authorized to carry out the provisions of this act relating
14 to the issuance of bonds, and shall determine all matters in connection
15 therewith, subject to the provisions of this act. If an issuing official is
16 absent from the State or incapable of acting for any reason, the powers
17 and duties of that issuing official shall be exercised and performed by
18 the person authorized by law to act in an official capacity in the place
19 of that issuing official.

20
21 8. Bonds issued in accordance with the provisions of this act shall
22 be a direct obligation of the State of New Jersey, and the faith and
23 credit of the State are pledged for the payment of the interest and
24 redemption premium thereon, if any, when due, and for the payment
25 of the principal thereof at maturity or earlier redemption date. The
26 principal of and interest on the bonds shall be exempt from taxation by
27 the State or by any county, municipality or other taxing district of the
28 State.

29
30 9. The bonds shall be signed in the name of the State by means of
31 the manual or facsimile signature of the Governor under the Great Seal
32 of the State, which seal may be by facsimile or by way of any other
33 form of reproduction on the bonds, and attested by the manual or
34 facsimile signature of the Secretary of State, or an Assistant Secretary
35 of State, and shall be countersigned by the facsimile signature of the
36 Director of the Division of Budget and Accounting in the Department
37 of the Treasury and may be manually authenticated by an
38 authenticating agent or bond registrar, as the issuing official shall
39 determine. Interest coupons, if any, attached to the bonds shall be
40 signed by the facsimile signature of the Director of the Division of
41 Budget and Accounting in the Department of the Treasury. The bonds
42 may be issued notwithstanding that an official signing them or whose
43 manual or facsimile signature appears on the bonds or coupons has
44 ceased to hold office at the time of issuance, or at the time of the
45 delivery of the bonds to the purchaser thereof.

1 10. a. The bonds shall recite that they are issued for the purposes
2 set forth in section 5 of this act, that they are issued pursuant to this
3 act, that this act was submitted to the people of the State at the
4 general election held in the month of November, 1997, and that this
5 act was approved by a majority of the legally qualified voters of the
6 State voting thereon at the election. This recital shall be conclusive
7 evidence of the authority of the State to issue the bonds and their
8 validity. Any bonds containing this recital shall, in any suit, action or
9 proceeding involving their validity, be conclusively deemed to be fully
10 authorized by this act and to have been issued, sold, executed and
11 delivered in conformity herewith and with all other provisions of laws
12 applicable hereto, and shall be incontestable for any cause.

13 b. The bonds shall be issued in those denominations and in the form
14 or forms, whether coupon, fully-registered or book-entry, and with or
15 without provisions for interchangeability thereof, as may be
16 determined by the issuing officials.

17

18 11. When the bonds are issued from time to time, the bonds of
19 each issue shall constitute a separate series to be designated by the
20 issuing officials. Each series of bonds shall bear such rate or rates of
21 interest as may be determined by the issuing officials, which interest
22 shall be payable semiannually; except that the first and last interest
23 periods may be longer or shorter, in order that intervening semiannual
24 payments may be at convenient dates.

25

26 12. The bonds shall be issued and sold at the price or prices and
27 under the terms, conditions and regulations as the issuing officials may
28 prescribe, after notice of the sale, published at least once in at least
29 three newspapers published in this State, and at least once in a
30 publication carrying municipal bond notices and devoted primarily to
31 financial news, published in this State or in the city of New York, the
32 first notice to appear at least five days prior to the day of bidding. The
33 notice of sale may contain a provision to the effect that any bid in
34 pursuance thereof may be rejected. In the event of rejection or failure
35 to receive any acceptable bid, the issuing officials, at any time within
36 60 days from the date of the advertised sale, may sell the bonds at a
37 private sale at such price or prices under the terms and conditions as
38 the issuing officials may prescribe. The issuing officials may sell all or
39 part of the bonds of any series as issued to any State fund or to the
40 federal government or any agency thereof, at a private sale, without
41 advertisement.

42

43 13. Until permanent bonds are prepared, the issuing officials may
44 issue temporary bonds in the form and with those privileges as to their
45 registration and exchange for permanent bonds as may be determined
46 by the issuing officials.

1 14. The proceeds from the sale of bonds used to provide grants to
2 counties and public authorities for the payment of stranded investment
3 costs associated with the construction and operation of resource
4 recovery facilities shall be paid to the State Treasurer and be held by
5 the State Treasurer in a separate fund, and be deposited in such
6 depositories as may be selected by the State Treasurer to the credit of
7 the fund, which fund shall be known as the "Resource Recovery
8 Facility Stranded Investment Cost Recovery Bond Fund."
9

10 15. a. The moneys in the "Resource Recovery Facility Stranded
11 Investment Cost Recovery Bond Fund" are specifically dedicated and
12 shall be applied to the cost of grants to counties and public authorities
13 for the payment of stranded investment costs associated with the
14 construction and operation of resource recovery facilities as set forth
15 in section 5 of this act. However, no moneys in the fund shall be
16 expended for those purposes, except as otherwise authorized by this
17 act, without the specific appropriation thereof by the Legislature, but
18 bonds may be issued as herein provided, notwithstanding that the
19 Legislature shall not have then adopted an act making a specific
20 appropriation of any of the moneys. Any act appropriating moneys
21 from the "Resource Recovery Facility Stranded Investment Cost
22 Recovery Bond Fund" shall identify the county or public authority to
23 be awarded a grant by the moneys.

24 b. At any time prior to the issuance and sale of bonds under this
25 act, the State Treasurer is authorized to transfer from any available
26 moneys in any fund of the treasury of the State to the credit of the
27 "Resource Recovery Facility Stranded Investment Cost Recovery
28 Bond Fund" those sums as the State Treasurer may deem necessary.
29 The sums so transferred shall be returned to the same fund of the
30 treasury of the State by the State Treasurer from the proceeds of the
31 sale of the first issue of bonds.

32 c. Pending their application to the purposes provided in this act,
33 the moneys in the "Resource Recovery Facility Stranded Investment
34 Cost Recovery Bond Fund" may be invested and reinvested as are
35 other trust funds in the custody of the State Treasurer, in the manner
36 provided by law. Net earnings received from the investment or deposit
37 of moneys in the "Resource Recovery Facility Stranded Investment
38 Cost Recovery Bond Fund" shall be paid into the General Fund.
39

40 16. If any coupon bond, coupon or registered bond is lost,
41 mutilated or destroyed, a new bond or coupon shall be executed and
42 delivered of like tenor, in substitution for the lost, mutilated or
43 destroyed bond or coupon, upon the owner furnishing to the issuing
44 officials evidence satisfactory to them of the loss, mutilation or
45 destruction of the bond or coupon, the ownership thereof, and

1 security, indemnity and reimbursement for expenses connected
2 therewith, as the issuing officials may require.

3
4 17. The accrued interest, if any, received upon the sale of the
5 bonds shall be applied to the discharge of a like amount of interest
6 upon the bonds when due. Any expense incurred by the issuing
7 officials for advertising, engraving, printing, clerical, authenticating,
8 registering, legal or other services necessary to carry out the duties
9 imposed upon them by the provisions of this act shall be paid from the
10 proceeds of the sale of the bonds by the State Treasurer, upon the
11 warrant of the Director of the Division of Budget and Accounting in
12 the Department of the Treasury, in the same manner as other
13 obligations of the State are paid.

14
15 18. Bonds of each series issued hereunder shall mature, including
16 any sinking fund redemptions, not later than the 35th year from the
17 date of issue of that series, and in amounts as shall be determined by
18 the issuing officials. The issuing officials may reserve to the State by
19 appropriate provision in the bonds of any series the power to redeem
20 any of the bonds prior to maturity at the price or prices and upon the
21 terms and conditions as may be provided in the bonds.

22
23 19. Any bond or bonds issued hereunder which are subject to
24 refinancing pursuant to the "Refunding Bond Act of 1985," P.L.1985,
25 c.74 as amended by P.L.1992, c.182 (C.49:2B-1 et seq.), shall no
26 longer be deemed to be outstanding, shall no longer constitute a direct
27 obligation of the State of New Jersey, and the faith and credit of the
28 State shall no longer be pledged to the payment of the principal of,
29 redemption premium, if any, and interest on the bonds, and the bonds
30 shall be secured solely by and payable solely from moneys and
31 government securities deposited in trust with one or more trustees or
32 escrow agents, which trustees and escrow agents shall be trust
33 companies or national or state banks having powers of a trust
34 company, located either within or without the State, as provided
35 herein, whenever there shall be deposited in trust with the trustees or
36 escrow agents, as provided herein, either moneys or government
37 securities, including government securities issued or held in book-entry
38 form on the books of the Department of Treasury of the United States,
39 the principal of and interest on which when due will provide money
40 which, together with the moneys, if any, deposited with the trustees or
41 escrow agents at the same time, shall be sufficient to pay when due the
42 principal of, redemption premium, if any, and interest due and to
43 become due on the bonds on or prior to the redemption date or
44 maturity date thereof, as the case may be; provided the government
45 securities shall not be subject to redemption prior to their maturity
46 other than at the option of the holder thereof. The State of New

1 Jersey hereby covenants with the holders of any bonds for which
2 government securities or moneys shall have been deposited in trust
3 with the trustees or escrow agents as provided in this section that,
4 except as otherwise provided in this section, neither the government
5 securities nor moneys so deposited with the trustees or escrow agents
6 shall be withdrawn or used by the State for any purpose other than,
7 and shall be held in trust for, the payment of the principal of,
8 redemption premium, if any, and interest to become due on the bonds;
9 provided that any cash received from the principal or interest payments
10 on the government securities deposited with the trustees or escrow
11 agents, to the extent the cash will not be required at any time for that
12 purpose, shall be paid over to the State, as received by the trustees or
13 escrow agents, free and clear of any trust, lien, pledge or assignment
14 securing the bonds; and to the extent the cash will be required for that
15 purpose at a later date, shall, to the extent practicable and legally
16 permissible, be reinvested in government securities maturing at times
17 and in amounts sufficient to pay when due the principal of, redemption
18 premium, if any, and interest to become due on the bonds on and prior
19 to the redemption date or maturity date thereof, as the case may be,
20 and interest earned from the reinvestments shall be paid over to the
21 State, as received by the trustees or escrow agents, free and clear of
22 any trust, lien or pledge securing the bonds. Notwithstanding anything
23 to the contrary contained herein: a. the trustees or escrow agents
24 shall, if so directed by the issuing officials, apply moneys on deposit
25 with the trustees or escrow agents pursuant to the provisions of this
26 section, and redeem or sell government securities so deposited with
27 the trustees or escrow agents, and apply the proceeds thereof to (1)
28 the purchase of the bonds which were refinanced by the deposit with
29 the trustees or escrow agents of the moneys and government securities
30 and immediately thereafter cancel all bonds so purchased, or (2) the
31 purchase of different government securities; provided however, that
32 the moneys and government securities on deposit with the trustees or
33 escrow agents after the purchase and cancellation of the bonds or the
34 purchase of different government securities shall be sufficient to pay
35 when due the principal of, redemption premium, if any, and interest on
36 all other bonds in respect of which the moneys and government
37 securities were deposited with the trustees or escrow agents on or
38 prior to the redemption date or maturity date thereof, as the case may
39 be; and b. in the event that on any date, as a result of any purchases
40 and cancellations of bonds or any purchases of different government
41 securities, as provided in this sentence, the total amount of moneys
42 and government securities remaining on deposit with the trustees or
43 escrow agents is in excess of the total amount which would have been
44 required to be deposited with the trustees or escrow agents on that
45 date in respect of the remaining bonds for which the deposit was made
46 in order to pay when due the principal of, redemption premium, if any,

1 and interest on the remaining bonds, the trustees or escrow agents
2 shall, if so directed by the issuing officials, pay the amount of the
3 excess to the State, free and clear of any trust, lien, pledge or
4 assignment securing the refunding bonds.

5
6 20. Refunding bonds issued pursuant to P.L.1985, c.74 as amended
7 by P.L.1992, c.182 (C.49:2B-1 et seq.) may be consolidated with
8 bonds issued pursuant to section 5 of this act or with bonds issued
9 pursuant to any other act for purposes of sale.

10
11 21. To provide funds to meet the interest and principal payment
12 requirements for the bonds and refunding bonds issued under this act
13 and outstanding, there is appropriated in the order following:

14 a. Revenue derived from the collection of taxes under the "Sales
15 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), or so much
16 thereof as may be required; and

17 b. If, at any time, funds necessary to meet the interest, redemption
18 premium, if any, and principal payments on outstanding bonds issued
19 under this act are insufficient or not available, there shall be assessed,
20 levied and collected annually in each of the municipalities of the
21 counties of this State, a tax on the real and personal property upon
22 which municipal taxes are or shall be assessed, levied and collected,
23 sufficient to meet the interest on all outstanding bonds issued
24 hereunder and on the bonds proposed to be issued under this act in the
25 calendar year in which the tax is to be raised and for the payment of
26 bonds falling due in the year following the year for which the tax is
27 levied. The tax shall be assessed, levied and collected in the same
28 manner and at the same time as are other taxes upon real and personal
29 property. The governing body of each municipality shall cause to be
30 paid to the county treasurer of the county in which the municipality is
31 located, on or before December 15 in each year, the amount of tax
32 herein directed to be assessed and levied, and the county treasurer
33 shall pay the amount of the tax to the State Treasurer on or before
34 December 20 in each year.

35 If on or before December 31 in any year, the issuing officials, by
36 resolution, determine that there are moneys in the General Fund
37 beyond the needs of the State, sufficient to pay the principal of bonds
38 falling due and all interest and redemption premium, if any, payable in
39 the ensuing calendar year, the issuing officials shall file the resolution
40 in the office of the State Treasurer, whereupon the State Treasurer
41 shall transfer the moneys to a separate fund to be designated by the
42 State Treasurer, and shall pay the principal, redemption premium, if
43 any, and interest out of that fund as the same shall become due and
44 payable, and the other sources of payment of the principal, redemption
45 premium, if any, and interest provided for in this section shall not then
46 be available, and the receipts for the year from the tax specified in

1 subsection a. of this section shall be considered and treated as part of
2 the General Fund, available for general purposes.

3
4 22. Should the State Treasurer, by December 31 of any year, deem
5 it necessary, because of the insufficiency of funds collected from the
6 sources of revenues as provided in this act, to meet the interest and
7 principal payments for the year after the ensuing year, then the State
8 Treasurer shall certify to the Director of the Division of Budget and
9 Accounting in the Department of the Treasury the amount necessary
10 to be raised by taxation for those purposes, the same to be assessed,
11 levied and collected for and in the ensuing calendar year. The
12 director shall, on or before March 1 following, calculate the amount
13 in dollars to be assessed, levied and collected in each county as herein
14 set forth. This calculation shall be based upon the corrected assessed
15 valuation of each county for the year preceding the year in which the
16 tax is to be assessed, but the tax shall be assessed, levied and collected
17 upon the assessed valuation of the year in which the tax is assessed
18 and levied. The director shall certify the amount to the county board
19 of taxation and the treasurer of each county. The county board of
20 taxation shall include the proper amount in the current tax levy of the
21 several taxing districts of the county in proportion to the ratables as
22 ascertained for the current year.

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

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

41 (1) the assumption by the governing body of the county of some or
42 all of the administrative costs of implementing its district solid waste
43 management plan;

44 (2) the proper delegation to municipalities of the costs of certain
45 county solid waste services, including, but not limited to, recycling or
46 household hazardous waste management, which are currently part of

1 the solid waste charges received at the resource recovery facility for
2 solid waste disposal;

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

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

8 (5) the prudent application of grant moneys to the plan prepared
9 by the county or public authority to ensure the long-term
10 competitiveness of the resource recovery facility as well as the
11 payment of debt service obligations.

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

15 c. As part of the annual submission required by this section, the
16 department shall provide a financial accounting of all expenditures
17 made in the preceding year, and of all administrative expenses incurred
18 by the department in administering the "Resource Recovery Facility
19 Stranded Investment Cost Recovery Bond Fund."
20

21 24. For the purpose of complying with the provisions of the State
22 Constitution, this act shall be submitted to the people at the general
23 election next occurring at least 70 days after enactment. To inform the
24 people of the contents of this act, it shall be the duty of the Secretary
25 of State, after this section takes effect, and at least 60 days prior to the
26 election, to cause this act to be published at least once in one or more
27 newspapers of each county, if any newspapers be published therein and
28 to notify the clerk of each county of this State of the passage of this
29 act; and the clerks respectively, in accordance with the instructions of
30 the Secretary of State, shall have printed on each of the ballots the
31 following:

32 If you approve of the act entitled below, make a cross (x), plus (+),
33 or check (T) mark in the square opposite the word "Yes."

34 If you disapprove of the act entitled below, make a cross (x), plus
35 (+), or check (T) mark in the square opposite the word "No."

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

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>YES</p>	<p style="text-align: center;">RESOURCE RECOVERY FACILITY STRANDED INVESTMENT COST RECOVERY BOND ISSUE</p> <p>Shall the "Resource Recovery Facility Stranded Investment Cost Recovery Bond Act," which authorizes the State to issue bonds in the amount of \$200,000,000 for the purpose of providing grants to counties and public authorities for the payment of stranded investment costs associated with the construction and operation of resource recovery facilities and providing the ways and means to pay the interest on the debt and also to pay and discharge the principal thereof, be approved?</p>
<p>16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45</p>	<p>NO</p>	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>Approval of this act would authorize the sale of \$200,000,000 in State general obligation bonds to be used for the purpose of providing grants to counties and public authorities for the payment of stranded investment costs resulting from the construction and operation of resource recovery facilities.</p> <p>Resource recovery facilities are expensive to construct and operate, and a significant public debt resulted. The fees and charges received at these facilities were calculated to pay off this debt, and when the State was able to direct solid waste generated within county borders to a county facility, the debt payment through the fees and charges was secure. But, the United States Supreme Court has ruled that state and local governments cannot require the use of in-state facilities to dispose of local solid waste. Now resource recovery facilities cannot compete with less expensive out-of-state solid waste disposal facilities. This places the large public investment in resource recovery facilities at risk. These bond funds would help counties and public authorities meet a portion of the debt that would be borne by users of resource recovery facilities, thus improving the financial situation of these facilities while protecting the public funds already invested in them.</p>

1 The fact and date of the approval or passage of this act, as the case
2 may be, may be inserted in the appropriate place after the title in the
3 ballot. No other requirements of law of any kind or character as to
4 notice or procedure, except as herein provided, need be adhered to.

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

15
16 25. There is appropriated the sum of \$5,000 to the Department of
17 State for expenses in connection with the publication of notice
18 pursuant to section 24 of this act.

19
20 26. The commissioner shall submit to the State Treasurer and the
21 commission with the department's annual budget request a plan for the
22 expenditure of funds from the "Resource Recovery Facility Stranded
23 Investment Cost Recovery Bond Fund" for the upcoming fiscal year.
24 This plan shall include the following information: a performance
25 evaluation of the expenditures made from the funds to date; a
26 description of programs planned during the upcoming fiscal year; a
27 copy of the regulations in force governing the operation of programs
28 that are financed, in part or in whole, by funds from the "Resource
29 Recovery Facility Stranded Investment Cost Recovery Bond Fund;"
30 and an estimate of expenditures for the upcoming fiscal year.

31
32 27. Immediately following the submission to the Legislature of the
33 Governor's annual budget message, the commissioner shall submit to
34 the Senate Environment Committee and the Assembly Agriculture and
35 Waste Management Committee, or their designated successors, and to
36 the Joint Budget Oversight Committee, or its successor, a copy of the
37 plan called for under section 26 of this act, together with such changes
38 therein as may have been required by the Governor's budget message.

39
40 28. All appropriations from the "Resource Recovery Facility
41 Stranded Investment Cost Recovery Bond Fund" shall be made to a
42 specific county or public authority, and any transfer of any funds so
43 appropriated shall require the approval of the Joint Budget Oversight
44 Committee, or its successor.

45
46 29. This section and sections 24 and 25 of this act shall take effect

1 immediately and the remainder of this act shall take effect as and when
2 provided in section 24.

3

4

5

STATEMENT

6

7 This bill, entitled the "Resource Recovery Facility Stranded
8 Investment Cost Recovery Bond Act," authorizes the issuance of \$200
9 million in State general obligation bonds for the purpose of providing
10 grants to counties and public authorities for the payment of stranded
11 investment costs associated with the construction and operation of
12 resource recovery facilities.

13 On May 16, 1994, the U.S. Supreme Court, in its first-ever waste
14 flow control case, Carbone v. Town of Clarkstown, held that, without
15 unambiguous congressional authorization, a state or local
16 government's regulation of where haulers must transport solid waste
17 for processing or disposal is a violation of the Commerce Clause of the
18 U.S. Constitution. The Carbone decision has been reaffirmed by the
19 Atlantic Coast Demolition & Recycling, Inc., et al. v. Board of Chosen
20 Freeholders of Atlantic County et al. decision, which held that New
21 Jersey's solid waste management system, including the Department of
22 Environmental Protection's waste flow rules, interferes with interstate
23 commerce, and that the State cannot direct municipalities or haulers
24 to designated solid waste facilities in New Jersey due to the
25 unconstitutional nature of New Jersey's solid waste management
26 system, including the waste flow rules; and that the Atlantic Coast
27 ruling on July 15, 1996 gives the State, counties and public authorities
28 two years to implement a constitutionally acceptable system for solid
29 waste management. Consequently, all operating and proposed resource
30 recovery facilities in New Jersey have lost the guaranteed waste flows
31 that ensure the economic viability of these solid waste incinerators,
32 and the counties and public authorities that have financed these so-
33 called "stranded investments," primarily through revenue bonds,
34 together with interest-free State loans from the "Resource Recovery
35 and Solid Waste Disposal Facility Fund," established pursuant to the
36 "Resource Recovery and Solid Waste Disposal Facility Bond Act of
37 1985," (P.L.1985, c.330), now face financial disaster.

38 In response to this crisis, and in view of the State's role in
39 mandating the development of these facilities, it is imperative that the
40 State provide financial assistance to counties and public authorities for
41 the payment of stranded investment costs by means of a grant program
42 utilizing bond moneys authorized pursuant to this act.

43 A companion measure, Assembly Bill No. of 1996, would revise
44 the "Resource Recovery and Solid Waste Disposal Facility Bond Act
45 of 1985," (P.L.1985, c.330) to authorize the Department of
46 Environmental Protection to use bond moneys in the "Resource

1 Recovery and Solid Waste Disposal Facility Fund" established therein
2 for grants to counties and public authorities to assist these local
3 governments in the payment of stranded investment costs associated
4 with the development of State-mandated resource recovery facilities.
5 Approximately \$65 million in bond moneys are available from
6 repayments of certain loans, canceled resource recovery facility
7 projects, and cash earned from the investment of amounts in the
8 "Resource Recovery and Solid Waste Disposal Facility Fund."

9 If approved by the voters, the \$65 million in the "Resource
10 Recovery and Solid Waste Disposal Facility Fund," and the \$200
11 million to be deposited in the "Resource Recovery Facility Stranded
12 Investment Cost Recovery Bond Fund" proposed under this bill would
13 be used for the purpose of providing \$265 million for grants to
14 counties and public authorities that have incurred bonded indebtedness
15 in developing resource recovery facilities, all of which have been
16 financed, in part, from interest-free loan moneys provided to these
17 local governments under the "Resource Recovery and Solid Waste
18 Disposal Facility Bond Act of 1985," P.L.1985, c.330. The grant
19 program would be administered by the Department of Environmental
20 Protection. It is proposed that the Department be permitted to cover
21 its administrative costs out of bond moneys, if the Legislature
22 appropriates the moneys each year.

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

42 The bill provides that the bond act is to be submitted to the people
43 for approval at the general election to be held at least 70 days after
44 enactment and appropriates \$5,000 to the Department of State for
45 expenses in connection with the publication of the public question.

1

2

3 "Resource Recovery Facility Stranded Investment Cost Recovery

4 Bond Act," authorizes bonds for \$200 million and appropriates \$5000.