

ASSEMBLY, No. 2837

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1997

By Assemblywoman MYERS and Assemblyman AUGUSTINE

1 AN ACT concerning stranded investment costs, and making an
2 appropriation.

3

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

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7 1. The Legislature finds and declares that in response to the need
8 to provide for the environmentally-sound and proper disposal of solid
9 waste, the Legislature enacted the "Solid Waste Management Act,"
10 P.L.1970, c.39 (C.13:1E-1 et seq.), which required each county, or a
11 public authority designated by the governing body of the county, to
12 adopt and implement a district solid waste management plan for the
13 disposal of solid waste generated within its geographic boundaries.

14 The Legislature further finds and declares that in furtherance of this
15 State mandate, each county or public authority has entered into
16 contracts, acquired real and personal property, incurred administrative
17 and other operating expenses, and issued debt obligations, and the
18 Department of Environmental Protection has issued waste flow orders
19 requiring constituent municipalities and local haulers to use designated
20 in-county solid waste facilities for solid waste processing or disposal,
21 all in furtherance of district solid waste management plan
22 implementation.

23 The Legislature further finds and declares that the ability of each
24 county or public authority to fulfill its lawful responsibilities with
25 respect to district solid waste management plan implementation,
26 including the ability to raise revenues sufficient to provide funds for
27 payment of the costs of developing self-sufficient solid waste
28 management systems, has been predicated on its legal authority to
29 direct the flow of solid waste generated within the geographic
30 boundaries of the county to designated solid waste facilities, thereby
31 ensuring the economic viability of these facilities; and that waste flow
32 control by counties and public authorities has been supported by
33 statute, rules and regulations adopted by the Department of
34 Environmental Protection, and franchises awarded by the Board of
35 Public Utilities.

36 The Legislature further finds and declares that in the case of C &
37 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 from that date to
15 implement a constitutionally acceptable system for solid waste
16 management.

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

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

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27 2. As used in this act:

28 "Cost" means, in addition to the usual connotation thereof, any
29 expenses related to the planning, acquisition, or construction of solid
30 waste facilities, including the principal on bonds issued to finance the
31 construction of solid waste facilities.

32 "Public authority" means any municipal or county utilities authority
33 created pursuant to the "municipal and county utilities authorities
34 law," P.L.1957, c.183 (C.40:14B-1 et seq.); county improvement
35 authority created pursuant to the "county improvement authorities
36 law," P.L.1960, c.183 (C.40:37A-44 et seq.); pollution control
37 financing authority created pursuant to the "New Jersey Pollution
38 Control Financing Law," P.L.1973, c.376 (C.40:37C-1 et seq.), or any
39 other public body corporate and politic created for solid waste
40 management purposes in any county, pursuant to the provisions of any
41 law.

42 "Stranded investment costs" means the cost of stranded
43 investments.

44 "Stranded investments" means any solid waste facility acquired,
45 constructed or operated or to be acquired, constructed or operated by,
46 or on behalf of, any person, public authority or county for, or with

1 respect to, the implementation of a district solid waste management
2 plan required pursuant to the provisions of the "Solid Waste
3 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or any other
4 act.

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6 3. a. The commissioner shall for each fiscal year develop a priority
7 list for providing grants or loans to assist counties and public
8 authorities in the payment of stranded investment costs in accordance
9 with the priorities hereinafter established. The commissioner shall
10 prioritize funding to counties and public authorities according to per
11 capita stranded investment cost in the county, giving highest priority
12 for funding to the county or public authority with the greatest per
13 capita stranded investment cost in the State.

14 b. The commissioner shall set forth a priority list for funding for
15 each fiscal year and shall include the aggregate amount of funds to be
16 authorized for these purposes. Eligibility of a county or public
17 authority for a grant or loan to be included on the priority list shall be
18 determined in accordance with the provisions of subsection a. and
19 subsection c. of this section.

20 c. In order to be eligible for funding pursuant to this section, a
21 county or public authority shall prepare, and submit to the department
22 within six months of the effective date of P.L. , c. (pending in
23 the Legislature as this bill) and annually thereafter, a plan to reduce the
24 solid waste charges received at the solid waste facility for solid waste
25 disposal. The plan shall include, but not necessarily be limited to,
26 provisions concerning:

27 (1) the assumption by the governing body of the county of some or
28 all of the administrative costs of implementing its district solid waste
29 management plan;

30 (2) the proper delegation to municipalities of the costs of certain
31 county solid waste services, including, but not limited to, recycling or
32 household hazardous waste management, which are currently part of
33 the solid waste charges received at the solid waste facility for solid
34 waste disposal;

35 (3) the refinancing of debt to reduce the solid waste charges
36 received at the solid waste facility for solid waste disposal;

37 (4) any other arrangements as may be necessary to reduce the solid
38 waste charges received at the solid waste facility for solid waste
39 disposal; and

40 (5) the prudent application of grant or loan moneys to the plan
41 prepared by the county or public authority to ensure the long-term
42 competitiveness of the solid waste facility as well as the payment of
43 principal on bonded indebtedness.

44 The plan shall include an explanation of any particular
45 circumstances that impede the ability of the county or public authority
46 to reduce the solid waste charges received at the solid waste facility

1 for solid waste disposal without creating an undue fiscal burden on
2 taxpayers or ratepayers.

3 The plan shall also include a report related to stranded investments
4 of the public authority or county. The report shall summarize
5 individual schedules of outstanding debt related to the stranded
6 investment costs incurred by the public authority or county, including
7 the status of: installment requirements for the payment of interest and
8 principal on bonds; plans to refund or refinance bonds; an updated
9 stranded investment cost recovery analysis; and proposed debt service
10 coverage options.

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12 4. a. There is created in the Department of Community Affairs a
13 nonlapsing, revolving fund entitled the "Solid Waste Stranded
14 Investment Cost Recovery Fund." This fund shall be the depository
15 for any appropriations, grants or other moneys that may be made
16 available to carry out the purposes of this act. Interest earned on these
17 deposits shall accrue to the fund.

18 b. Moneys deposited in the fund shall be used exclusively for grants
19 and interest-free loans to assist counties and public authorities in the
20 payment of stranded investment costs as provided in section 3 of this
21 act.

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23 5. There is appropriated from the General Fund to the Department
24 of Community Affairs the sum of \$20,000,000 for grants and loans to
25 counties and public authorities to assist in the payment of stranded
26 investment costs.

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28 6. This act shall take effect immediately.

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STATEMENT

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33 This bill would establish a grant and loan program to assist counties
34 and public authorities in the payment of stranded investment costs.
35 The commissioner shall prioritize funding to counties and public
36 authorities according to per capita stranded investment cost in the
37 county, giving highest priority for funding to the county or public
38 authority with the greatest per capita stranded investment cost in the
39 State.

40 In order to qualify for funding, a county or public authority must
41 prepare, and submit to the Department of Community Affairs, a plan
42 to reduce the solid waste charges ("tipping fees") received at the solid
43 waste facility for solid waste disposal. The plan must include, but not
44 necessarily be limited to, provisions concerning: (1) the assumption by
45 the governing body of the county of some or all of the administrative
46 costs of implementing its district solid waste management plan; (2) the

1 proper delegation to municipalities of the costs of certain county solid
2 waste services, including, but not limited to, recycling or household
3 hazardous waste management, which are currently part of the solid
4 waste charges received at the solid waste facility for solid waste
5 disposal; (3) the refinancing of debt to reduce the solid waste charges
6 received at the solid waste facility for solid waste disposal; (4) any
7 other arrangements as may be necessary to reduce the solid waste
8 charges received at the solid waste facility for solid waste disposal; or
9 (5) the prudent application of grant or loan moneys to the plan
10 prepared by the county or public authority to ensure the long-term
11 competitiveness of the resource recovery facility as well as the
12 payment of principal on bonded indebtedness. The plan shall also
13 include a report related to stranded investments of the public authority
14 or county.

15 The bill would appropriate \$20 million to the Department of
16 Community Affairs for the grant and loan program.

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21 Provides grants and loans to certain counties and public authorities to
22 offset solid waste stranded investment costs; appropriates \$20 million.