

[First Reprint]  
ASSEMBLY, No. 2837

STATE OF NEW JERSEY

INTRODUCED MARCH 20, 1997

By Assemblywoman MYERS, Assemblymen AUGUSTINE,  
Bateman and Bagger

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:

6

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly AAW committee amendments adopted June 12, 1997.**

1 ensuring the economic viability of these facilities; and that waste flow  
2 control by counties and public authorities has been supported by  
3 statute, rules and regulations adopted by the Department of  
4 Environmental Protection, and franchises awarded by the Board of  
5 Public Utilities.

6 <sup>1</sup>[The Legislature further finds and declares that in the case of C &  
7 A Carbone, Inc. v. Town of Clarkstown, N.Y. the U.S. Supreme Court  
8 has held that, without unambiguous congressional authorization, a  
9 state or local government's designation of the destination to which  
10 haulers must transport solid waste for processing or disposal is a  
11 violation of the Commerce Clause of the U.S. Constitution; that the  
12 Carbone decision has been reaffirmed by the Atlantic Coast Demolition  
13 & Recycling, Inc., et al. v. Board of Chosen Freeholders of Atlantic  
14 County et al. decision, which held that New Jersey's solid waste  
15 management system, including the Department of Environmental  
16 Protection's waste flow rules, interferes with interstate commerce, and  
17 that the State cannot direct municipalities or haulers to designated  
18 solid waste facilities in New Jersey due to the unconstitutional nature  
19 of New Jersey's solid waste management system, including the waste  
20 flow rules; and that the Atlantic Coast ruling on July 15, 1996 gives  
21 the State, counties and public authorities two years from that date to  
22 implement a constitutionally acceptable system for solid waste  
23 management.]

24 The Legislature further finds and declares that in the case of C &  
25 A Carbone, Inc. v. Town of Clarkstown, N.Y. the U.S. Supreme Court  
26 held that the challenged ordinance, which mandated that haulers use  
27 the facility designated by the town for solid waste processing and  
28 disposal, impermissibly discriminated against interstate commerce in  
29 violation of the U.S. Constitution; that the holding in Carbone was  
30 subsequently interpreted by the appellate court in Atlantic Coast  
31 Demolition & Recycling, Inc., et al. v. Board of Chosen Freeholders  
32 of Atlantic County et al. to require reversal of the prior ruling in J.  
33 Filberto Sanitation; on July 15, 1996, the U.S. District Court for the  
34 district of New Jersey in its Atlantic Coast decision invalidated New  
35 Jersey's waste flow rules to the extent that they discriminate against  
36 interstate commerce; and that on May 1, 1997, the U.S. Court of  
37 Appeals in its second Atlantic Coast decision affirmed the district  
38 court's findings that New Jersey's waste flow laws, rules and  
39 regulations are unconstitutional insofar as they discriminate against  
40 out-of-state solid waste facilities, while rejecting its two-year post-  
41 appeal stay, thereby affording the State, counties and public authorities  
42 a limited interval within which to implement a constitutionally  
43 acceptable system for solid waste management.

44 The Legislature further finds that in the Waste Management of  
45 Pennsylvania, Inc. v. Shinn decision, the U.S. District Court for the  
46 district of New Jersey determined that the self-sufficiency goals used

1 by the Department of Environmental Protection in the evaluation of  
2 contracts for long-term disposal of the State's solid waste  
3 impermissibly discriminated against interstate commerce in violation  
4 of the U.S. Constitution.<sup>1</sup>

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

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

14  
15 2. As used in this act:

16 "Cost" means, in addition to the usual connotation thereof, any  
17 expenses related to the planning, acquisition, or construction of solid  
18 waste facilities, including the principal on bonds issued to finance the  
19 construction of solid waste facilities.

20 "Public authority" means any municipal or county utilities authority  
21 created pursuant to the "municipal and county utilities authorities  
22 law," P.L.1957, c.183 (C.40:14B-1 et seq.); county improvement  
23 authority created pursuant to the "county improvement authorities  
24 law," P.L.1960, c.183 (C.40:37A-44 et seq.); pollution control  
25 financing authority created pursuant to the "New Jersey Pollution  
26 Control Financing Law," P.L.1973, c.376 (C.40:37C-1 et seq.), or any  
27 other public body corporate and politic created for solid waste  
28 management purposes in any county, pursuant to the provisions of any  
29 law.

30 "Stranded investment costs" means the cost of stranded  
31 investments.

32 "Stranded investments" means any solid waste facility acquired,  
33 constructed or operated or to be acquired, constructed or operated by,  
34 or on behalf of, any person, public authority or county for, or with  
35 respect to, the implementation of a district solid waste management  
36 plan required pursuant to the provisions of the "Solid Waste  
37 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or any other  
38 act.

39  
40 3. a. The <sup>1</sup>[commissioner] Commissioner of Community Affairs<sup>1</sup>  
41 shall for each fiscal year develop a priority list for providing grants or  
42 loans to assist counties and public authorities in the payment of  
43 stranded investment costs in accordance with the priorities hereinafter  
44 established. The commissioner shall prioritize funding to counties and  
45 public authorities according to per capita stranded investment cost in  
46 the county, giving highest priority for funding to the county or public

1 authority with the greatest per capita stranded investment cost in the  
2 State. <sup>1</sup>In prioritizing funding for counties and public authorities, the  
3 commissioner shall provide all funds necessary to compensate a county  
4 or public authority for any revenue deficiency due to the abrogation of  
5 an interdistrict agreement by a sending public authority or county prior  
6 to providing any funds to any other county or public authority.<sup>1</sup>

7 b. The commissioner shall set forth a priority list for funding for  
8 each fiscal year and shall include the aggregate amount of funds to be  
9 authorized for these purposes. Eligibility of a county or public  
10 authority for a grant or loan to be included on the priority list shall be  
11 determined in accordance with the provisions of subsection a. and  
12 subsection c. of this section.

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

20 (1) the assumption by the governing body of the county of some or  
21 all of the administrative costs of implementing its district solid waste  
22 management plan;

23 (2) the proper delegation to municipalities of the costs of certain  
24 county solid waste services, including, but not limited to, recycling or  
25 household hazardous waste management, which are currently part of  
26 the solid waste charges received at the solid waste facility for solid  
27 waste disposal;

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

30 (4) any other arrangements as may be necessary to reduce the solid  
31 waste charges received at the solid waste facility for solid waste  
32 disposal; and

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

37 The plan shall include an explanation of any particular  
38 circumstances that impede the ability of the county or public authority  
39 to reduce the solid waste charges received at the solid waste facility  
40 for solid waste disposal without creating an undue fiscal burden on  
41 taxpayers or ratepayers.

42 The plan shall also include a report related to stranded investments  
43 of the public authority or county. The report shall summarize  
44 individual schedules of outstanding debt related to the stranded  
45 investment costs incurred by the public authority or county, including  
46 the status of: installment requirements for the payment of interest and

1 principal on bonds; plans to refund or refinance bonds; an updated  
2 stranded investment cost recovery analysis; and proposed debt service  
3 coverage options.

4

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

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

15

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

20

21 6. This act shall take effect immediately.

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