

[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:

¹ 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 ¹[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.¹

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 ¹[commissioner] Commissioner of Community Affairs¹
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. ¹In 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.¹

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.