

## ASSEMBLY RESOLUTION No. 118

# STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Assemblyman ROONEY

- 1 AN ASSEMBLY RESOLUTION urging the Attorney General to withdraw any  
2 appeal of the United States District Court ruling in Atlantic Coast  
3 Demolition & Recycling, Inc., et al. v. Board of Chosen Freeholders of  
4 Atlantic County, et al., which declared portions of the New Jersey waste  
5 flow regulations unconstitutional.
- 6
- 7 WHEREAS, On May 16, 1994, the U.S. Supreme Court, in its first-ever waste  
8 flow control case, C & A Carbone, Inc. v. Town of Clarkstown, N.Y.,  
9 held that, without unambiguous congressional authorization, a state or local  
10 government's regulation of where haulers must transport solid waste for  
11 processing or disposal is a violation of the Commerce Clause of the U.S.  
12 Constitution; and
- 13 WHEREAS, The United States District Court ruled on July 15, 1996, in Atlantic  
14 Coast Demolition & Recycling, Inc., et al. v. Board of Chosen Freeholders  
15 of Atlantic County, et al., that portions of the New Jersey waste flow  
16 regulations "are unconstitutional to the extent that they discriminate against  
17 interstate commerce by operating to deprive out-of-state disposal facilities  
18 the opportunity to compete for New Jersey disposal business"; and
- 19 WHEREAS, Judge Joseph E. Irenas further ordered that the Department of  
20 Environmental Protection (DEP) would not be permitted to enforce waste  
21 flow regulations to the extent their application discriminates against  
22 interstate commerce, except that to give the State time to develop and  
23 implement an alternative solid waste management system, Judge Irenas  
24 delayed the effective date of the order for two years following the  
25 exhaustion of all appeals; and
- 26 WHEREAS, Judge Irenas was extremely critical of the State in his ruling, saying  
27 that the State had "not even attempted to present a feasible non-  
28 discriminatory alternative to the Court, but [has] merely caricatured each  
29 of the tools that may be used in building a new system"; and
- 30 WHEREAS, The statewide average cost for solid waste disposal is \$87 per ton,  
31 which is more than double the national average of \$36 per ton; and
- 32 WHEREAS, Replacing mandatory waste flow regulation with the free market,  
33 thereby making available cheap out-of-state disposal facilities coupled with  
34 some intrastate competition, holds the promise of reduced solid waste  
35 disposal costs and lower property taxes for all New Jersey residents; and

1 **WHEREAS**, A broad coalition of organizations, including a group of 240  
2 mayors that includes the mayors of seven of the 10 largest cities in New  
3 Jersey, the New Jersey Chamber of Commerce, Hands Across New  
4 Jersey, United Taxpayers, and the New Jersey Environmental Federation,  
5 has joined to fight the waste flow regulations; and

6 **WHEREAS**, Persisting in this course of delay in devising a viable solution also  
7 continues to threaten the fiscal stability of public agencies saddled with a  
8 huge public debt invested to support solid waste incinerators, landfills and  
9 transfer stations when these facilities could legally be guaranteed waste  
10 flow; and

11 **WHEREAS**, It is completely indefensible for the State to continue to waste  
12 taxpayers money and time and do anything other than work quickly  
13 towards a solution to the challenges posed by the definitive ruling by the  
14 courts dismissing State control of waste flow; now, therefore,

15

16 **BE IT RESOLVED** by the General Assembly of the State of New Jersey:

17

18 1. The Attorney General is urged to withdraw any appeal of the United  
19 States District Court ruling in Atlantic Coast Demolition & Recycling, Inc., et  
20 al. v. Board of Chosen Freeholders of Atlantic County, et al., which declared  
21 portions of the New Jersey waste flow regulations unconstitutional.

22

23 2. Duly authenticated copies of this resolution, signed by the Speaker of  
24 the General Assembly and attested by the Clerk of the General Assembly,  
25 shall be forwarded to the Governor and the Attorney General.

26

27

STATEMENT

28

29 This resolution would urge the Attorney General to withdraw any appeal  
30 of the United States District Court ruling in Atlantic Coast Demolition &  
31 Recycling, Inc., et al. v. Board of Chosen Freeholders of Atlantic County, et  
32 al., which declared portions of the New Jersey waste flow regulations  
33 unconstitutional.

34

35

36

37 Urges Attorney General to withdraw any appeal of U.S. District Court waste  
38 flow decision.