

SENATE, No. 518

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Senator BASSANO

1 **AN ACT** authorizing the Port Authority of New York and New Jersey
2 to construct and maintain a confined facility for the disposal of
3 contaminated dredged materials and supplementing Title 32 of the
4 Revised Statutes.

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6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. This act shall be known and may be cited as the "Port Authority
10 Confined Disposal Facility Act of 1996."

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12 2. The Legislature finds and declares that the flow of foreign and
13 domestic cargoes to and from the ports of New York and New Jersey
14 is vital and essential to the preservation of the economic well-being of
15 the northern New Jersey-New York metropolitan area; that, in order
16 to maintain this vital flow of trade and commerce, it is necessary to
17 dredge periodically the various navigational channels and ship berths
18 to allow safe passage of vessels; that efforts to maintain these channels
19 have revealed unacceptable levels of harmful and dangerous
20 substances, including polychlorinated biphenyls, heavy metals, and
21 petroleum hydrocarbons, as well as the highly-toxic chlorinated
22 hydrocarbon known as dioxin, that have been discharged from various
23 industrial sources into the waterways flowing into the port area; and
24 that ocean disposal of this dredged material at the so-called Mud
25 Dump Site, located approximately six nautical miles east of Sea
26 Bright, New Jersey, may result in adverse environmental impacts such
27 as a reduction of dissolved oxygen levels at the disposal site, increased
28 disease and mortality in fish and shellfish, and the presence of elevated
29 levels of toxic compounds and bacteria, which could adversely affect
30 the State's travel and tourism, fishing, and other water-dependent
31 industries located in the coastal area.

32 The Legislature further finds and declares that, from 1973 to 1982,
33 an average of 8.1 million cubic yards of dredged material was disposed
34 of annually at the Mud Dump Site, and, from 1982 to 1989 an average
35 of six million cubic yards has been disposed at the site, with the result
36 that the site has a useful life of only six to eight years or 70 million
37 cubic yards before the mound of material becomes a hazard to

1 navigation; that although the Congress of the United States, through
2 the amendments to the "Water Resources Development Act of 1986,"
3 repealed the requirement that the United States Environmental
4 Protection Agency halt the dumping of contaminated dredged material
5 at the "Mud Dump Site" by 1989, and designate a new site within
6 twenty miles of the coast, such actions nevertheless should be ended
7 because the continued dumping of contaminated dredged material off
8 the coast of New Jersey poses a potentially serious threat to the health
9 and safety of the citizens of New Jersey and New York and the
10 millions of persons who visit the Atlantic shore annually, pollutes the
11 environment, and adversely affects the tourism and fishing industries
12 of New Jersey; and that the use of confined disposal facilities has been
13 demonstrated to be an effective method of disposing of dredged
14 materials in other states, including Maryland, Virginia and Texas, and
15 in the Great Lakes.

16 The Legislature therefore determines that the creation of a confined
17 disposal facility in Lower New York Bay to serve the contaminated
18 dredged material disposal needs of the ports and channels of New
19 Jersey and New York would serve the public interest by maintaining
20 the economic health of the region while eliminating the environmental
21 threat posed by continued ocean dumping of these contaminated
22 sediments; and that the Port Authority of New York and New Jersey,
23 which has managed various programs and facilities for the promotion
24 and protection of commerce and trade moving through the port
25 district, is the appropriate agency to effectuate, in consultation with
26 the United States Army Corps of Engineers, the construction and
27 operation of a confined facility for the disposal of contaminated
28 materials dredged from the ports of New Jersey and New York.

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30 3. As used in this act:

31 "Bonds" shall mean bonds, notes, securities or other obligations or
32 evidences of indebtedness;

33 "Contaminated dredged materials" mean materials dredged from the
34 ports or harbors of New Jersey or New York, the ocean disposal of
35 which would have an unacceptable adverse effect on shellfish beds and
36 fishery areas (including spawning and breeding areas), wildlife or
37 recreational areas;

38 "Facility" means an upland or in-water confined disposal facility
39 that shall consist of an artificially constructed island, a diked extension
40 of an existing island, or a diked extension of land located landward of
41 the mean high water line of tidal waters, the construction, operation
42 and maintenance of which is approved by the Secretary of the Army,
43 acting through the Chief of Engineers of the United States Army
44 Corps of Engineers, and which is constructed solely for the disposal
45 of contaminated dredged materials;

46 "Municipality" means a county, city, borough, village, town,

1 township, public agency, public authority or political subdivision of
2 New York or New Jersey;

3 "Port Authority" means the Port Authority of New York and New
4 Jersey;

5 "Purposes of this act" means the effectuation of the construction,
6 operation and maintenance of the facility defined pursuant to this act;

7 "Real property" means lands, structures, franchises and interests in
8 land, waters, lands under water and riparian rights, and includes not
9 only fees simple absolute but also any and all lesser interests, including
10 but not limited to easements, rights-of-way, uses, leases, licenses and
11 all other incorporeal hereditaments and every estate, interest or right,
12 legal or equitable, including terms for years, and liens thereon by way
13 of judgments, mortgages or otherwise.

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15 4. The Port Authority is hereby authorized and shall proceed as
16 rapidly as may be practicable to construct, operate and maintain a
17 facility within the constraints imposed by this act.

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19 5. The Port Authority is authorized to enter into an agreement or
20 agreements upon such terms or conditions as it may deem in the public
21 interest with the United States, the United States Army Corps of
22 Engineers, the State of New Jersey, the State of New York, or any
23 agency, department, commission, public authority, board or division
24 of any of the foregoing, or any municipality or other public
25 corporation in either state, or any person, firm, partnership,
26 association, company or corporation, or other legal entity, or any two
27 or more of the foregoing, to effectuate the purposes of this act.

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29 6. The Port Authority shall enter into an agreement with the United
30 States Army Corps of Engineers, the New Jersey Department of
31 Environmental Protection and the New York Department of
32 Environmental Conservation, for the purpose of conducting a
33 feasibility study of the various sites upon which a facility could be
34 constructed. The Port Authority shall request the United States Army
35 Corps of Engineers to conduct the study, which shall consider the
36 economic costs and benefits as well as any real or potential
37 environmental impacts associated with such construction. Based upon
38 the results of the study, the Port Authority shall request the United
39 States Army Corps of Engineers and the United States Environmental
40 Protection Agency to designate, with the advice and consent of the
41 state departments named in this section, a site for the construction of
42 the facility.

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44 7. The facility shall only accept for disposal contaminated dredged
45 material, as determined by testing procedures that meet all standards

1 and requirements of applicable federal and state laws, rules or
2 regulations.

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4 8. Prior to the construction, operation or maintenance of the
5 facility, the Port Authority shall first obtain any licenses or permits
6 required by federal or state law, including any applicable permits
7 required pursuant to section 404 of the "Clean Water Act of 1972" (33
8 U.S.C. §1344) and any state certification required pursuant to section
9 401 of the "Clean Water Act of 1972" (33 U.S.C. §1341).

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11 9. When the facility has reached capacity and can no longer
12 function as a disposal site for contaminated dredged materials, as
13 determined and certified by the United States Army Corps of
14 Engineers, ownership of the facility shall be transferred to either the
15 State of New York or the State of New Jersey, depending upon the
16 territorial location of the facility.

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18 10. The Port Authority is hereby authorized and empowered to
19 issue bonds for any of the purposes of this act, to exercise all
20 appropriate powers heretofore or hereafter delegated to it by the
21 States of New Jersey and New York, including, but not limited to,
22 those expressly set forth in this act, and to provide for payment of the
23 bonds, with interest upon and the amortization and retirement of the
24 bonds, and to secure all or any portion of the bonds by a pledge of the
25 fees and other charges assessed the users of the facility.

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27 11. No disposal fee for the disposal of contaminated dredged
28 materials at the facility shall be established or increased until after a
29 public hearing shall have been held, at which persons affected thereby
30 shall be given adequate opportunity to be heard. Notice of the hearing
31 shall be published in a newspaper or newspapers of general circulation
32 within the port district not less than 10 days prior to the convening of
33 the hearing.

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35 12. Unless expressly authorized by the states of New Jersey and
36 New York, the Port Authority shall not permit another entity to
37 operate the facility.

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39 13. This act shall take effect upon the enactment by the State of
40 New York of substantially similar legislation.

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43 STATEMENT

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45 This bill would authorize the Port Authority of New York and New
46 Jersey to construct, operate and maintain a confined facility for the

1 disposal of contaminated dredged materials. To accomplish this goal,
2 the bill requires the authority to enter into an agreement with the
3 United States Army Corps of Engineers, the New Jersey Department
4 of Environmental Protection and the New York Department of
5 Environmental Conservation to conduct a feasibility study to
6 determine the location of the facility. Under the bill, the U.S. Army
7 Corps of Engineers would designate, with the advice and consent of
8 the state departments noted above, a site for facility construction.

9 The facility would only be authorized to accept contaminated
10 dredged materials, as defined in the bill, and any dredged material
11 testing to determine the level of contamination would have to meet all
12 standards and requirements of applicable federal and state law. When
13 the facility reaches capacity, ownership would revert back to either the
14 state of New York or the state of New Jersey, depending on the
15 ultimate site of the facility.

16 The bill authorizes the authority to issue bonds to effectuate the
17 purposes of the act, which would be secured in whole or in part by a
18 pledge of the fees and charges assessed the users of the facility. A
19 public hearing would be required before disposal fees for disposal of
20 contaminated dredged materials at the facility could be established or
21 increased.

22 The bill would require that the facility be operated by the Port
23 Authority, and that no other entity could operate the facility without
24 prior consent of the two states. The bill would take effect upon
25 enactment of substantially similar legislation by the State of New
26 York.

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31 Authorizes Port Authority of New York and New Jersey to construct
32 and maintain a confined facility for disposal of contaminated dredged
33 material.