

13:1E-136 to 13:1E-168

LEGISLATIVE HISTORY CHECKLIST

NJSA: 13:1E-136 to 13:1E-168 (Solid waste-resource recovery investment tax)

LAWS OF: 1985 CHAPTER: 38

Bill No: A1778

Sponsor(s): McEnroe and others

Date Introduced: March 15, 1984

Committee: Assembly: County Government and Regional Authorities

Senate: Energy and Environment

Amended during passage: Yes * Substituted for S1762, Substitute attached.

Date of Passage: Assembly: Jun. 25, 1984

Senate: Dec. 17, 1984

Date of Approval: February 4, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. Senate. Energy and Environment Committee.
P777 Public hearing, held 7-16-84.
1984e Trenton, 1984.

(over)

* THE SENATE COMMITTEE AMENDMENTS DELETED THE ENTIRE TEXT OF A1778 (OCR) & REPLACED IT WITH NEW TEXT - SEE P. 1-25 OF 2D OCR (cf. p. 25-55)

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974.90 New Jersey. Legislature. Assembly. County Government Committee.
P777 Public held 4-5-84, 4-26-84, and 5-14-84. Trenton and
1984b Salem City, NJ, 1984.

See newspaper clipping, 12-18-84--Trenton Times, "Bill will help resource
recovery plants"--attached.

2-4-85

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1778

STATE OF NEW JERSEY

INTRODUCED MARCH 15, 1984

By Assemblymen McENROE, VAINIERI, HENDRICKSON,
 ZECKER, Assemblywoman COOPER, Assemblyman ROD,
 Assemblywoman OGDEN, Assemblymen FORTUNATO, OTLOW-
 SKI, GALLO, LARocca, Assemblywoman KALIK, Assembly-
 men LONG and PANKOK

AN ACT concerning solid waste disposal and resource recovery,
 amending P. L. 1975, c. 326, P. L. 1970, e. 40 and P. L. 1971, c.
 198**,** and supplementing P. L. 1970, e. 39 and P. L. 1976, c. 68.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 ****[1.** (New section) The Legislature finds and declares that the
 2 State's capacity to safely dispose of solid waste at sanitary landfills
 3 is rapidly diminishing; that the recovery of any potential resource
 4 in solid waste, especially its conversion to useable energy, is in the
 5 public interest; that the acquisition, construction or operation of
 6 resource recovery facilities is characterized by high initial capital
 7 expenditures and initially high costs of disposal which may be
 8 stabilized or decreased based upon a return on energy generated,
 9 all of which require long-term financial arrangements and a steady
 10 and secure flow of waste; that to encourage the use of resource
 11 recovery it is necessary to attain the most advantageous financing
 12 and ownership structures for implementation of resource recovery
 13 projects by units of local government while maintaining strict
 14 financial and programmatic scrutiny by agencies of State govern-
 15 ment; and that it is necessary to provide for funding of the solid
 16 waste management programs of the State and of the solid waste
 17 management districts, all as hereinafter provided.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
 is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted June 18, 1984.

**—Senate committee amendments adopted December 13, 1984.

- 1 2. (New section) As used in this act:
- 2 a. "Contracting unit" means any county; any municipality; **any*
3 *bi-State authority*;^{*} or any board, commission, committee, au-
4 thority or agency, which is not a State board, commission, com-
5 mittee, authority or agency, and which has administrative jurisdic-
6 tion over any district other than a school district, project, or
7 facility, included or operating in whole or in part, within the terri-
8 torial boundaries of any county or municipality which exercises
9 functions which are appropriate for the exercise by one or more
10 units of local government, and which has statutory power to make
11 purchases and enter into contracts or agreements for the per-
12 formance of any work or the furnishing or hiring of any materials
13 or supplies usually required, the contract price of which is to be
14 paid with or out of public funds;
- 14A b. "County" means any county of this State of whatever class;
- 15 c. "Department" means the Department of Environmental
16 Protection;
- 17 d. "Director" means the Director of the Division of Taxation
18 in the Department of Treasury;
- 19 e. "District" means a solid waste management district as desig-
20 nated by section 10 of P. L. 1975, c. 326 (C. 13:1E-19);
- 21 f. "District investment tax fund" means a District Resource
22 Recovery Investment Tax Fund established pursuant to subsection
23 b. of section 15 of this act;
- 24 g. "Division" means the Division of Taxation in the Department
25 of Treasury;
- 26 h. "Franchise" means the exclusive right to control the disposal
27 of solid waste within a district as awarded by the Board of Public
28 Utilities*[:]* *;*^{*}
- 29 i. "Independent public accountant" means a certified public
30 accountant, a licensed public accountant or a registered municipal
31 accountant;
- 32 j. "Investment tax" means the resource recovery investment tax
33 imposed pursuant to subsection b. of section 3 of this act;
- 34 k. "Investment tax fund" means the Resource Recovery Invest-
35 ment Tax Fund containing subaccounts for each county pursuant to
36 the provisions of section 14 of this act;
- 37 l. "Out-of-district solid waste" means any solid waste accepted
38 for disposal in a district which was generated outside the receiving
39 district;
- 40 m. "Person or party" means any individual, public or private
41 corporation, company, partnership, firm, association, political sub-

42 division of this State, or any State, bi-state, or interstate agency or
43 authority;

43A **n. "Recycling facility" means a facility at which materials*
43B *which would otherwise become solid waste are collected, separated*
43C *or processed and returned to the economic mainstream in the form*
43D *of raw materials or products;**

44 **[n.]* *o.* "Resource recovery facility" means a solid waste*
44A *facility constructed and operated for the collection, separation,*
44B *recycling, and recovery of metals, glass, paper, and other materials*
44C *for reuse or for energy production;*

44D **[o.]* *p.* "Sanitary landfill facility" means a solid waste*
45 *facility at which solid waste is deposited on or in the land as fill for*
46 *the purpose of permanent disposal or storage for a period exceed-*
47 *ing six months, except that it shall not include any waste facility*
48 *approved for disposal of hazardous waste;*

49 **[p.]* *q.* "Services tax" means the solid waste services tax im-*
50 *posed pursuant to subsection a. of section 3 of this act;*

51 **[q.]* *r.* "Services tax fund" means the Solid Waste Services*
52 *Tax Fund established pursuant to section 12 of this act in which the*
53 *receipts from the services tax and any interest thereon will be*
54 *deposited;*

55 **[r.]* *s.* "Subfranchise" means the exclusive right, as awarded*
56 *by a district, of a vendor to control the disposal of solid waste within*
57 *all or any portion of a district; and*

58 **[s.]* *t.* "Vendor" means any person or party financially*
59 *qualified for, and technically and administratively capable of,*
60 *undertaking the design, financing, construction, operation, or*
61 *maintenance of a resource recovery facility or of providing re-*
62 *source recovery services.*

1 3. (New section) a. There is levied upon the owner or operator
2 of every sanitary landfill facility a solid waste services tax. The
3 services tax shall be imposed on the owner or operator at the
4 initial rate of \$0.25 per cubic yard of solids and \$0.003 per gallon
5 of liquids on all solid waste accepted for disposal at a sanitary
6 landfill facility. On the first day of the 13th month following the
7 imposition of the services tax and annually thereafter, the rate of
8 the services tax shall be increased by \$0.01 per cubic yard of solids.

9 b. (1) There is levied upon the owner or operator of every
10 sanitary landfill facility a resource recovery investment tax. The
11 investment tax shall be levied on the owner or operator at an
12 initial rate of \$0.28 per cubic yard of solids and \$0.004 per gallon
13 of liquids on all solid waste, other than waste products resulting

14 from the operation of a resource recovery facility, accepted for
15 disposal at a sanitary landfill facility.

16 (2) Unless the rate is otherwise adjusted pursuant to section 11
17 of this act, the rate of the investment tax shall be increased pur-
18 suant to the following schedule:

19 (a) On the first day of the 18th month following the imposi-
20 tion of the investment tax, the rate of the investment tax shall
21 increase to \$0.56 per cubic yard of solids;

22 (b) On the first day of the 30th month following the imposi-
23 tion of the investment tax, the rate of the investment tax shall
24 increase to \$0.84 per cubic yard of solids; and

25 (c) On the first day of the 42nd month following the imposi-
26 tion of the investment tax, the rate of the investment tax shall
27 increase to \$1.12 per cubic yard of solids.

28 The investment tax shall no longer be levied on the owner or
29 operator of a sanitary landfill facility on and after the first day of
30 the first month of the 11th year following the imposition of the
31 investment tax.

32 c. (1) There is levied upon the owner or operator of every sani-
33 tary landfill facility **which accepts out-of-district solid waste** a
34 surcharge on the investment tax. The surcharge shall be imposed
35 on the owner or operator at a rate of \$0.21 per cubic yard of solids
36 and \$0.003 per gallon of liquids on all out-of-district solid waste,
37 other than waste products resulting from the operation of a re-
38 source recovery facility, accepted for disposal at a sanitary landfill
38A facility.

39 (2) If the department shall determine that a district has failed
40 to fulfill its solid waste management planning responsibilities
41 pursuant to section 17 of this act, the rate of the surcharge on the
42 investment tax levied pursuant to paragraph (1) of this subsection
43 shall, upon notification to the Board of Public Utilities and to the
44 director, immediately be increased to a rate determined by the
45 department, not to exceed \$0.42 per cubic yard of solids or \$0.006
46 per gallon of liquids.

47 d. If any owner or operator of a sanitary landfill measures the
48 solid waste accepted for disposal by a measure other than cubic
49 yards or gallons, the taxes and surcharges imposed by the provi-
50 sions of this section shall be levied at a rate equivalent thereof as
51 determined by the director.

52 e. No taxes or surcharges shall be levied on the owner or operator
53 of a sanitary landfill facility for the acceptance of solid waste
54 generated exclusively by any agency of the federal government if

55 a solid waste collector submits to the owner or operator **an itemized*
 56 *invoice, signed and verified by an authorized officer of the federal*
 57 *agency, indicating the number of cubic yards of solid waste to be*
 58 *disposed of and** a copy of the contract with the federal agency
 59 indicating the effective date of the contract was before the effective
 60 date of this act. Taxes and surcharges shall be levied on the owner
 61 or operator for acceptance of solid waste generated by a federal
 62 agency if the contract between the federal agency and the solid
 63 waste collector was entered into, or renewed, on or after the effec-
 64 tive date of this act.

1 4. (New section) a. Every owner or operator of a sanitary land-
 2 fill facility which accepts solid waste for disposal and which is
 3 subject to the taxes and surcharges imposed pursuant to section 3
 4 of this act, shall register with the director on forms prescribed by
 5 him within 20 days after the first acceptance of that waste.

6 b. The director shall prepare and transmit to each owner or
 7 operator of a sanitary landfill facility forms for the rendering of a
 8 tax return. The form shall be structured in a manner and form
 9 determined by the director and shall provide for the following
 10 information, and any other information he may deem necessary
 11 to be rendered in the return:

12 (1) The total number of cubic yards of solids and gallons of
 13 liquids accepted for disposal during the previous month;

14 (2) The number of cubic yards of solids and gallons of
 15 liquids accepted and place of origin of out-of-district waste
 16 accepted for disposal during the previous month; and

17 (3) The amount of each tax or surcharge paid according to
 18 the amount of solid waste accepted.

19 The director may prescribe a consolidated form for reporting the
 20 taxes and surcharges imposed under this act and the taxes imposed
 21 pursuant to P. L. 1981, c. 278 (C. 13:1E-91 et seq.) and P. L. 1981,
 22 c. 306 (C. 13:1E-100 et seq.).

1 5. (New section) Every owner or operator of a sanitary landfill
 2 facility shall, on or before the 20th day of each month, render a
 3 return under oath to the director and pay the full amount of taxes
 4 and surcharges due as stated in the return.

1 6. (New section) a. If a return required by this act is not filed, or
 2 if a return when filed is incorrect or insufficient in the opinion of
 3 the director, the amount of tax due shall be determined by the
 4 director from such information as may be available. Notice of such
 5 determination shall be given to the taxpayer liable for the payment
 6 of the tax. Such determination shall finally and irrevocably fix the

7 tax unless the person against whom it is assessed, within 30 days
8 after receiving notice of such determination, shall apply to the
9 director for a hearing, or unless the director on his own motion
10 shall redetermine the same. After such hearing, the director shall
11 give notice of his determination to the person to whom the tax is
12 assessed.

13 b. Any taxpayer who shall fail to file his return when due or to
14 pay any tax when the same becomes due, as herein provided, shall
15 be subject to such penalties and interest as provided in the "state
16 tax uniform procedure law," Subtitle 9 of Title 54 of the Revised
17 Statutes. If the director determines that the failure to comply with
18 any provision of this section was excusable under the circum-
19 stances, it may remit such part or all of the penalty as shall be
20 appropriate under such circumstances.

21 c. (1) Any person failing to file a return, failing to pay the tax,
22 or filing or causing to be filed, or making or causing to be made, or
23 giving or causing to be given any return, certificate, affidavit,
24 representation, information, testimony or statement required or
25 authorized by this act, or rules or regulations adopted hereunder
26 which is willfully false, or failing to keep any records required by
27 this act or rules and regulations adopted hereunder, shall, in addi-
28 tion to any other penalties herein or elsewhere prescribed, be
29 guilty of a crime of the fourth degree.

30 (2) The certificate of the director to the effect that a tax has
31 not been paid, that a return has not been filed, that information has
32 not been supplied or that inaccurate information has been supplied
33 pursuant to the provisions of this act or rules or regulations
34 adopted hereunder shall be presumptive evidence thereof.

1 7. (New section) In addition to any other powers authorized by
2 this act, the director shall have the following powers:

3 a. To delegate to any officer or employee of the division any
4 powers or responsibilities required by this act as he may deem
5 necessary;

6 b. To promulgate and distribute any forms necessary for the
7 implementation of this act; and

8 c. To adopt any rules and regulations pursuant to the
9 "Administrative Procedure Act," P. L. 1968, c. 410 (C.
10 52:14B-1 et seq.) as he may deem necessary to effectuate the
11 purposes of this act.

1 8. (New section) The taxes imposed by this act shall be governed
2 in all respects by the provisions of the "state tax uniform pro-
3 cedure law," Subtitle 9 of Title 54 of the Revised Statutes, but only

4 to the extent that a specific provision of this act or any rule or
5 regulation required to be promulgated by this act may be in con-
6 flict therewith.

1 9. a. (New section) Notwithstanding the provisions of any law
2 to the contrary, the owner or operator of a sanitary landfill facility
3 may collect the taxes and surcharges levied and imposed pursuant
4 to this act by imposing an automatic surcharge on any tariff estab-
5 lished pursuant to law for the solid waste disposal operations of
6 the sanitary landfill facility.

7 b. For the purposes of this act, all municipal, county, and State
8 contracts for solid waste collection and disposal shall be considered
9 tariffs for solid waste collection, and shall be subject to any adjust-
10 ment of tariffs resulting from the provisions of this act.

1 10. (New section) a. The Board of Public Utilities shall, within
2 60 days of the effective date of this act, issue an order adjusting
3 the tariffs established pursuant to law for solid waste collection
4 operations by an amount equal to the total amount of the increase
5 in the adjusted tariffs for solid waste disposal operations to take
6 effect on the date on which the tax is imposed.

7 b. The Board of Public Utilities shall, by the date of any increase
8 in the services tax or the investment tax required in subsection a.
9 **or subsection b.** of section 3 of this act, issue an order adjusting
10 the tariffs established pursuant to law for solid waste collection
11 operations by an amount equal to the total amount of the increase
12 in the tariffs for solid waste disposal operations that shall be
12A adjusted on that date.

13 c. The Board of Public Utilities shall, within 60 days of notifica-
14 tion by the department that an additional surcharge shall be
15 imposed on an owner or operator of a sanitary landfill facility or
16 that the investment tax rate shall be adjusted in a manner other
17 than by the rate adjustments provided in subsection b. of section 3
18 of this act, issue an order adjusting the tariffs established pursuant
19 to law for solid waste collection operations by an amount equal
20 to the total amount of the increase in the tariffs for solid waste
21 disposal operations.

22 d. In issuing any order required by this section, the Board of
23 Public Utilities shall be exempt from the provisions of R. S.
24 48:2-21.

1 11. (New section) a. Each district, in consultation with the
2 department, may conduct a study to determine the **investment**
3 tax rate estimated to be necessary to be paid into the district
4 investment tax fund so as to lower the cost of resource recovery

5 facility services to a level which is competitive with the cost of
6 disposal in a sanitary landfill utilized by the district.

7 b. After completion of the study, the district may request the
8 department to adjust the investment tax rate set forth in section 3
9 of this act to a rate, not to exceed \$2.80 per cubic yard, or the
10 equivalent thereof, which is consistent with the conclusions drawn
11 in the study and with the plan developed pursuant to subsection d.
12 of section 15. The district may request the department to adjust
13 the rate, subject to that maximum rate, on an annual basis in
14 accordance with the conclusions drawn as a result of a review of
15 the study and any additional information gained during the pre-
16 vious year.

17 c. The provisions of any law to the contrary notwithstanding,
18 two or more districts may conduct a joint study and establish a
19 single investment tax rate for the districts.

20 d. The department shall, upon approval of a request by a dis-
21 trict, notify the Board of Public Utilities and the director of the
22 investment tax rate adjustment in that district.

1 12. (New section) There is created a nonlapsing Solid Waste
2 Services Tax Fund to be the depository for the services tax moneys,
3 and any interest thereon, paid to the director pursuant to this act
4 and disbursed as provided herein.

1 13. (New section) a. Before any moneys in the services tax fund
2 are appropriated as provided hereunder, the cost of administration
3 and collection of the tax shall be paid out of that fund *, *except that*
3A *the cost of administration and collection shall not exceed 2% of the*
3B *total amount in the fund*.*

4 b. The moneys collected in the services tax fund shall be appro-
5 priated to the Department of Environmental Protection and shall
6 be used only in the following manner:

7 (1) By the department for solid waste planning, permitting,
8 regulation, enforcement and research, pursuant to the provisions
9 of the "Solid Waste Management Act," P. L. 1970, c. 39 (C. 13:1E-1
10 et seq.):

11 (2) By the department for reviewing the economic aspects of
12 solid waste management;

13 (3) By the department for administering the services tax fund*.
14 *No more than 2% of the fund shall be used for the costs of admin-*
14A *istering the fund*; ***[and]****

14B **(4) By the department for recycling research and planning;*
14C *and**

15 ****[(4)]*** *(5)* To provide State aid to solid waste management*

16 districts for preparing, revising, and implementing solid waste
 17 management plans*, including the implementation of the goals of
 18 the State Recycling Plan. The moneys may also be used by the
 19 districts to support community oversight projects and to establish
 20 a citizens' advisory committee. A district receiving State aid shall
 21 not use more than 2% of the aid for the costs of administering the
 22 aid*. At least 50% of the annual balance of the services tax fund
 23 shall be used for State aid and shall be distributed in amounts
 24 proportionate to the population of each district, except that no
 25 district shall receive less than 2% of the amount apportioned to
 26 aid all districts. In the event that the department determines pur-
 27 suant to section 17 of this act that any district shall fail to fulfill
 28 its solid waste management planning responsibilities, the depart-
 29 ment may withhold for the entire year or until the district fulfills
 30 its responsibilities, all or a portion of the amount of moneys that
 31 district would have received in any year pursuant to this para-
 32 graph. Any moneys withheld for the entire year shall be distributed
 33 among the remaining districts in the same proportion as the other
 34 moneys were distributed.

35 *c. The district may appoint a citizens' advisory committee to
 36 consist of interested local officials and citizens. An appointed
 37 citizens' advisory committee or an existing advisory solid waste
 38 committee may develop and implement oversight projects and
 39 conduct community awareness programs regarding resource re-
 40 covery facilities in a district.

41 d. The department shall issue a report to the Governor and the
 42 Legislature detailing how moneys received pursuant to this act
 43 were spent by June 1 of each year in which moneys are received.*

1 14. (New section) There is created a Resource Recovery Invest-
 2 ment Tax Fund to contain ***[subaccounts]*** *sub-accounts* for
 3 each district to be held by the State Treasurer, to be the depository
 3A for:

4 a. The investment tax revenues collected by the director
 5 resulting from the amount of solid waste generated from within
 6 each county;

7 b. The surcharge revenues collected by the director resulting
 8 from the acceptance of out-of-district waste;

9 c. The investment tax revenues collected by the director not
 10 otherwise deposited in another investment tax fund ***[sub-**
 11 **account]*** *sub-account* pursuant to subsections a. and b. of
 12 this section shall be deposited in the receiving district's ***[sub-**
 12A **account]*** *sub-account*; and

13 d. Any interest thereon.

14 The moneys deposited in each district ***[subaccount]*** *sub-
15 *account** fund shall be disbursed as provided herein.

1 15. (New section) a. Before the moneys in each investment tax
2 fund ***[subaccount]*** *sub-account* are appropriated as provided
3 hereunder, the cost of administration and collection of the tax and
4 surcharge shall be paid by the moneys in the ***[subaccounts]***
4A *sub-accounts, except that the cost of administration and collection
4B shall not exceed 2% of the total amount in all the sub-accounts*.

5 b. Each district shall create a District Resource Recovery In-
6 vestment Tax Fund, to be the depository of the moneys appropriated
7 to each district pursuant to this section to be administered by the
8 governing body of each county, and the Hackensack Commission, in
9 the case of the Hackensack Meadowlands District.

10 c. The moneys collected in each investment tax fund ***[sub-**
11 **account]*** *sub-account* shall be appropriated to each district for
12 deposit in its district investment tax fund and shall be used only in
13 accordance with a plan prepared and approved pursuant to sub-
14 section d. of this section and only for the following purposes:

15 (1) To reduce the rates charged by a resource recovery facility
16 serving the district in order to provide gradual transition between
17 resource recovery facility rates and sanitary landfill facility rates.
18 Any reductions may be achieved through use of investment tax
19 fund money***[;]*** to pay construction costs and related facility
20 start-up costs, or to pay directly part of the fees charged for dis-
21 posal at a resource recovery facility.

22 (2) To cover any expenses directly related to the planning, design-
23 ing, financing, construction, operation or maintenance of a resource
24 recovery facility*, *including a composting or recycling facility**, or
25 the acquisition of the services of a resource recovery facility,
26 including expenses incurred if a study is conducted pursuant to
26A section 11 of this act;

27 (3) To design, finance, construct, operate***[,]*** *or** maintain
28 environmentally sound sanitary landfill facilities to be utilized for:

29 (a) Disposing of those solid wastes which cannot be pro-
30 cessed by a resource recovery facility or which result from the
31 operation of a resource recovery facility;

32 (b) Disposal of solid waste, on an interim basis, until a
33 resource recovery facility becomes operational; and

34 (c) Disposal of solid waste, on a long term basis, in those
35 districts which demonstrate to the satisfaction of the depart-
36 ment that utilization of a resource recovery facility is not
37 feasible for disposal of the solid waste generated in that dis-
38 trict; and

39 (4) To administer the investment tax fund, provided that not
40 more than two percent of the annual balance shall be used for
41 administration.

42 d. Within two years of the effective date of this act, and prior to
43 the disbursal of any funds **by the district**, each district shall pre-
44 pare a plan, including a schedule, which shall outline the proposed
45 uses of the moneys in the district investment tax fund as well as
46 describe the manner in which those moneys will be disbursed. Each
47 plan shall be adopted as an amendment to the district solid waste
48 management plan required pursuant to the provisions of the "Solid
49 Waste Management Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.). This
50 plan may be amended, as necessary, in accordance with the pro-
51 cedures provided therefor pursuant to the "Solid Waste Manage-
52 ment Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.).

53 e. Each district shall, by October 31 of each year in which moneys
54 remain in its district investment tax fund, file an audit of the
55 district investment tax fund and any expenditures therefrom with
56 the Local Finance Board in the Division of Local Government
57 Services in the Department of Community Affairs. The audit shall
58 be conducted by an independent public accountant.

59 f. Upon approval by the department, two or more districts may
60 establish a joint investment tax fund to receive the investment tax
61 fund revenues and any surcharge collected pursuant to section
62 3 of this act.

1 16. (New section) If the department shall determine that a dis-
2 trict has failed to fulfill its solid waste management planning re-
3 sponsibilities pursuant to section 17 of this act, the department
4 may assume the administration of the district investment tax fund
5 of that district and may use the moneys in the fund for the pur-
6 poses permitted in subsection c. of section 15 of this act for the
7 benefit of that district.

1 17. (New section) The department may determine that a district
2 has failed to fulfill its solid waste management planning responsi-
3 bilities*, *which may include failure to implement the State Recycl-*
4 *ing Plan goals,** as required by sections 11 and 12 of P. L. 1975,
5 c. 326 (C. 13:1E-20 and 13:1E-21) and by subsection d. of section
6 15 of this act. A determination ***[of failure shall include]*** **by the*
7 *department that the district has failed to fulfill its planning*
8 *responsibilities may be based upon** a finding that the district has
9 not made a good faith effort toward ***[fulfilling its planning**
10 **responsibilities]*** **identifying sufficient available suitable sites for*
11 *solid waste facilities within the district, or negotiating interdistrict*
12 *agreements, to provide for the disposal needs of the district*.*

1 18. (New section) Notwithstanding the provisions of any law,
 2 rule or regulation to the contrary, as an alternative to any other
 3 procedure provided for by law, the design, financing, construction,
 4 operation or maintenance, or any combination thereof, of a resource
 5 recovery facility or the provision of resource recovery facility
 6 services may be procured by a contracting unit in accordance with
 7 the provisions of sections 19 through 27 of this act.

1 19. (New section) Any contract between a vendor and a con-
 2 tracting unit for the design, financing, construction, operation or
 3 maintenance, or any combination thereof, of a resource recovery
 4 facility or for the provision of the services of such a facility may
 5 be awarded for a period not to exceed 40 years.

1 20. (New section) a. The contracting unit shall issue a request
 2 for qualifications of vendors which shall include the date, time of
 3 day and place by which qualifications shall be received and the
 4 minimum acceptable qualifications, and which shall be made avail-
 5 able to all potential vendors through adequate public notice which
 6 shall include publication in at least one appropriate trade or pro-
 7 fessional journal and a newspaper of general circulation in the
 8 jurisdiction of the contracting unit. In addition to all other factors
 9 bearing on qualification, the contracting unit may consider infor-
 10 mation which might result in debarment or suspension of a vendor
 11 from State contracting and may disqualify a vendor if the vendor
 12 has been debarred or suspended by any State agency.

13 b. The contracting unit shall publish, in the same publications
 14 in which notice of the request for qualifications appeared, a list
 15 of qualified vendors and a statement setting forth the basis for
 16 their selection.

1 21. (New section) a. The contracting unit shall issue a request
 2 for proposals to the qualified vendors which shall include a de-
 3 scription of the services and facilities required, the specific infor-
 4 mation and data required, and a statement as to the relative im-
 5 portance of price and other evaluation factors.

6 b. The contracting unit shall fix a date, time of day and place
 7 by which proposals shall be received and shall specify the format
 8 and procedure for submission of proposals. The contracting unit
 9 may ***[extent]*** **extend** the time for submission of proposals
 10 provided that any extension shall apply to all qualified vendors
 11 and the contracting unit shall provide simultaneous written notice
 12 of any extension to all qualified vendors.

1 22. (New section) a. Proposals shall be reviewed by the con-
 2 tracting unit so as to avoid disclosure of contents to competing

3 vendors during the process of proposal review. A list of proposals
 4 shall be prepared and shall be open for public inspection in the
 5 offices of the contracting unit at reasonable hours for at least 30
 6 days after the contract award.

7 b. As shall be provided in the request for proposals, discussions
 8 may be conducted with qualified vendors who submit proposals
 9 for the purpose of clarification to assure full understanding of, and
 10 responsiveness to, the solicitation requirements. Any revisions in
 11 the request for proposals which may be developed in the course
 12 of those discussions shall immediately be communicated to all quali-
 13 fied vendors. Revisions to proposals may be permitted after sub-
 14 missions and prior to award for the purpose of obtaining best and
 15 final offers. In conducting discussions, there shall be no disclosure
 16 of any information derived from proposals submitted by competing
 17 vendors.

1 23. (New section) a. The contracting unit shall designate the
 2 qualified vendor, or two vendors if simultaneous negotiation is to
 3 be conducted, whose proposal or proposals are determined in writ-
 4 ing to be the most advantageous to the public, taking into considera-
 5 tion price and the evaluation factors set forth in the request for
 6 proposals. No other factors or criteria shall be used in the evalua-
 7 tion. The contract file shall include the basis on which the desig-
 8 nation is made.

9 b. The contracting unit may negotiate a proposed contract, which
 10 shall include the accepted proposal, with the designated vendor.

1 24. (New section) Any contract to be awarded to a vendor pur-
 2 suant to the provisions of sections 19 through 27 of this act or pur-
 3 suant to the "Local Public Contracts Law," P. L. 1971, c. 198
 4 (C. 40A:11-1 et seq.) or any other contracting procedure authorized
 5 by law for resource recovery facilities, shall include where applica-
 6 ble, but not be limited to, provisions concerning:

7 a. Allocation of the risks of financing and constructing a resource
 8 recovery facility, such risks to include:

- 9 (1) Delays in project completion;
- 10 (2) Construction cost overruns and change orders;
- 11 (3) Changes necessitated by revisions in laws, rules or regu-
 12 lations;
- 13 (4) Failure to achieve the required operating performance;
- 14 (5) Loss of tax benefits; and
- 15 (6) The need for additional equity contributions.

16 b. Allocation of the risks of operating and maintaining a re-
 17 source recovery facility, such risks to include:

- 18 (1) Excess downtime or technical failure;
- 19 (2) Excess labor or materials costs due to underestimation;
- 20 (3) Changes in operating procedure necessitated by revisions in laws, rules or regulations;
- 21 (4) Changes in the amount or composition of the solid waste delivered for disposal;
- 22 (5) Excess operation or maintenance costs due to poor management; and
- 23 (6) Increased costs of disposal of the resource recovery facility residue.

24 c. Allocation of the risks associated with circumstances beyond
25 the control of any party to the contract;

26 d. Allocation of the revenues from the sale of energy;

27 e. Default and termination of the contract;

28 f. The periodic preparation by the vendor of an operating performance report and an audited ***[financial]*** **balance** statement
29 of the facility which shall be submitted to the contracting unit, the department and the Division of Local Government Services in the
30 Department of Community Affairs;

31 g. The intervals at which the contract shall be renegotiated; and

32 h. Employment of current employees of the contracting unit
33 whose positions will be affected by the terms of the contract.

34 25. (New section) Any new or substantially renegotiated contract to be awarded to a vendor pursuant to **sections 20 through 24 of** this act shall be the subject of a public hearing to be held
35 by the contracting unit in the jurisdiction of the contracting unit,
36 prior to submission of the contract for the approvals required in
37 section 26 of this act, in accordance with the following procedure:

38 a. The contracting unit shall provide adequate public notice of
39 the proposed contract award to prospective consumers and other interested parties, which shall include publication in at least one
40 newspaper of general circulation in the jurisdiction of the contracting unit;

41 b. The contracting unit shall schedule a meeting to be held within
42 45 days of publication of the public notice with consumer representatives and other interested parties in order to present and
43 explain the terms and conditions of the contract and to receive
44 written questions which shall become part of the hearing record;

45 c. The contracting unit shall hold a public hearing within 90
46 days of providing notice of the proposed contract award at which
47 the questions submitted at the meeting held pursuant to subsection b. of this section shall be addressed. At the hearing, interested
48

21 parties may submit statements or additional questions concerning
22 the terms and conditions of the proposed contract;

23 d. The contracting unit shall, within 30 days of the close of the
24 hearing record, publish a hearing report which shall include all
25 issues and questions raised at the hearing and the contracting
26 unit's response thereto; and

27 e. The hearing report and the determination of the contracting
28 unit concerning the terms and conditions of the contract shall be
29 provided to all interested parties and hearing attendees at least 15
30 days prior to submission of the contract for the approvals required
31 in section 26 of this act.

1 26. (New section) a. Any new or substantially renegotiated con-
2 tract to be awarded to a vendor and a copy of the public hearing
3 report shall be submitted to the department which shall approve or
4 disapprove the proposed contract based on its being consistent with
5 the district solid waste management plan adopted pursuant to the
6 provisions of the "Solid Waste Management Act," P. L. 1970, c. 39
7 (C. 13:1E-1 et seq.) within 60 days of receipt. If the department
8 shall disapprove the proposed contract, the contracting unit may
9 prepare an amended contract and, if the amendments are sub-
10 stantial, hold a public hearing thereon pursuant to the provisions
11 of section 25 of this act. Thereafter the amended contract ***[may]***
12 ***shall*** be resubmitted for approval. In the alternative, the district
13 solid waste management plan may be amended so as to be consistent
14 with the proposed contract.

15 b. Any new or substantially renegotiated contract to be awarded
16 to a vendor and a copy of the public hearing report shall be sub-
17 mitted to Division of Local Government Services in the Department
18 of Community Affairs which shall approve or disapprove the pro-
19 posed contract within 60 days of receipt. The Division of Local
20 Government Services shall approve the contract if the division
21 finds, in writing, that the contract meets the requirements of section
22 24 of this act concerning the contents of the contract and that the
23 contract comports with the fiscal and financial capabilities of the
24 contracting unit. If the Division of Local Government Services dis-
25 approves the proposed contract, the division shall inform the
26 contracting unit, in writing, of the changes necessary for approval.
27 The contracting unit may then prepare an amended contract and,
28 if the amendments are substantial, hold a public hearing thereon
29 pursuant to the provisions of section 25 of this act. Thereafter, the
30 amended contract ***[may]*** ***shall*** be resubmitted for approval.

31 c. Any new or substantially renegotiated contract to be awarded

32 to a vendor pursuant to **sections 20 through 25 of** this act, pur-
 33 suant to the "Local Public Contracts Law," P. L. 1971, c. 198 (C.
 34 40A:11-1 et seq.) or pursuant to any other contracting procedure
 35 authorized by law for resource recovery facilities, shall be filed
 36 with the Board of Public Utilities along with a copy of the public
 37 hearing report. The Board of Public Utilities shall, within 90 days
 38 of receipt, review any contract filed with it and approve that con-
 39 tract if the board finds the contract to be in the public interest. If the
 40 Board of Public Utilities disapproves the contract because the
 41 contract is not in the public interest, the board shall notify the con-
 42 tracting unit in writing of the changes needed in the contract in
 43 order for it to be in the public interest. The contracting unit may
 44 prepare an amended contract and, if the amendments are sub-
 45 stantial, hold a public hearing thereon pursuant to the provisions of
 46 section 25 of this act. Thereafter the amended contract ***[may]***
 47 **shall** be resubmitted for approval.

47A In reviewing and approving the contract, the Board of Public
 48 Utilities shall not determine a rate base for, or otherwise regulate
 49 the tariffs or return of, the proposed resource recovery facility. The
 50 board shall not, thereafter, conduct any further review of the
 51 contract.

52 d. Notwithstanding the provisions of subsection c. of this section,
 53 all parties to any contract may request the board to determine a rate
 54 base for the proposed resource recovery facility, in which case the
 55 board may make that determination and the terms of any contract
 56 so approved shall remain subject to the continuing jurisdiction of
 57 the board.

1 27. (New section) The contracting unit may award a contract
 2 for resource recovery facilities or services to a vendor only after
 3 a public hearing thereon **pursuant to section 25 of this act** and
 4 upon approval by the department, the Division of Local Govern-
 5 ment Services, and the Board of Public Utilities.

1 28. (New section) Whenever the Division of Rate Counsel in the
 2 Department of the Public Advocate represents the public interest in
 3 a proceeding held to consider a contract awarded pursuant to sec-
 4 tions 19 through 27 of this act, the Director of the Division of Rate
 5 Counsel may assess the vendor **as provided hereafter. Whenever*
 6 *a vendor shall first submit a contract to the Board of Public*
 7 *Utilities, the vendor shall be assessed an amount equal to one-tenth*
 8 *of 1% of the estimated gross revenues of the facility in the first*
 9 *year of its operation. Thereafter, the vendor shall be assessed** in

10 the manner provided for in section 20 of P. L. 1974, c. 27 (C.
11 52:27E-19).

1 29*.* (New section) ***[A]*** **Notwithstanding the provisions of*
2 *any other law, rule or regulation to the contrary, a** contracting
3 unit may lease or sell the site for a resource recovery facility to a
4 vendor which has been awarded a contract pursuant to this act or
5 pursuant to the "Local Public Contracts Law," P. L. 1971, c. 198
6 (C. 40A:11-1 et seq.) or pursuant to any other contracting pro-
7 cedure authorized by law for resource recovery facilities.

1 30. (New section) Any contracting unit which has substantially
2 and materially complied with the provisions of sections 20 through
3 23 of this act, prior to the effective date of this act, as determined
4 by the department, may award contracts pursuant to the provisions
5 of this act.

1 31. (New section) a. Each district which is awarded a franchise
2 pursuant to the provisions of section 6 of P. L. 1970, c. 40 (C.
3 48:13A-5) may award subfranchises to one or more persons en-
4 gaged in operating a resource recovery facility in all or any part
5 of that district, provided that any subfranchise so awarded does
6 not alter the terms of any franchise awarded by the Board of Public
7 Utilities and that the subfranchise shall conform to the solid waste
8 management plan for that district as approved by the department.

9 b. Subfranchises awarded pursuant to this section shall be of
10 sufficient area to support the estimated technical and economic needs
11 of the resource recovery facility which is to serve the district or
12 portion thereof.

1 32. (New section) a. **(1)** The department may adopt any rules
2 and regulations pursuant to the provisions of the "Administrative
3 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as it may
4 deem necessary to effectuate the purposes of this act.

4A **(2) The department shall adopt rules and regulations for the*
4B *engineering design of resource recovery facilities, to include a*
4C *requirement that state-of-the-art air emission technology be in-*
4D *stalled to control the emission of hydrocarbons, particulates,*
4E *dioxins, nitrogen oxides, carbon monoxide, heavy metals, hydro-*
4F *chloric acid, sulfur oxides and other acid gases and pollutants from*
4G *each resource recovery facility which is expected to emit these*
4H *pollutants.**

5 b. The Board of Public Utilities may adopt any rules and regula-
6 tions pursuant to the provisions of the "Administrative Procedure
7 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as it may deem
8 necessary to effectuate the purposes of this act.

9 c. The Division of Local Government Services in the Department
10 of Community Affairs may adopt any rules and regulations pursu-
11 ant to the provisions of the "Administrative Procedure Act," P. L.
12 1968, c. 410 (C. 52:14B-1 et seq.) as it may deem necessary to
13 effectuate the purposes of this act.

1 33. (New section) Any additional expenditures made by a munic-
2 ipality or county necessary to comply with an order***[.]*** issued by
3 the department pursuant to the provisions of the "Solid Waste
4 Management Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.) and the
5 Board of Public Utilities pursuant to the "Solid Waste Utility
6 Control Act of 1970," P. L. 1970, c. 40 (C. 48:13A-1 et seq.), to
7 transport solid waste to a resource recovery facility, or any
8 expenditures necessary to reflect adjustment in rates, fees or other
9 charges made in connection with the taxes and surcharges imposed
10 pursuant to section 3 of P. L.*,* c. (C.) (now pending
11 before the Legislature as Assembly Bill No. 1778 of 1984), or the
12 provisions of a contract entered into pursuant to the provisions of
13 P. L. , c. (C.) (now pending before the
14 Legislature as Assembly Bill No. 1778 of 1984), shall, for the
15 purposes of P. L. 1976, c. 68 (C. 40A:4-45.1 et seq.), be considered
16 an expenditure mandated by State law.

1 34. Section 11 of P. L. 1975, c. 326 (C. 13:1E-20) is amended to
2 read as follows:

3 11. a. (1) Within 360 days after the effective date of this amenda-
4 tory and supplementary act, the respective boards of chosen
5 freeholders, in the case of counties, and the Hackensack Com-
6 mission, in the case of the Hackensack Meadowlands District,
7 shall develop and formulate, pursuant to the procedures herein
8 contained, a solid waste management plan for each respective solid
9 waste management district; provided, however, that the commis-
10 sioner may extend such period for a maximum of 45 additional
11 days upon the certification of the board of chosen freeholders or
12 the Hackensack Commission, as the case may be, of the causes of
13 the delay in developing and formulating a plan, and upon the
14 commissioner's determination that an extension will permit the
15 development and formulation of a solid waste management plan
16 as required herein. Within 90 days of the effective date of this
17 act, each district shall make the necessary personnel, financial and
18 legal arrangements to assure the development and formulation
19 of the plan within 360 days of the effective date of this act.
20 Every such solid waste management plan shall be developed and
21 formulated to be in force and effect for a period of *not less than*
22 10 years, upon the expiration of which a new plan shall be developed

23 and formulated pursuant to the procedures herein contained; pro-
 24 vided, however, that every such plan shall contain provisions for
 25 automatic review thereof not less than once every two years
 26 following the approval thereof by the department, which review
 27 shall be undertaken by the board of chosen freeholders or the
 28 Hackensack Commission, as the case may be; and, provided further,
 29 however, that every such plan may be reviewed at any time by the
 30 department. Upon such review, if the board of chosen freeholders,
 31 the Hackensack Commission, or the department, as the case may
 32 be, determines that any solid waste management plan, or any part
 33 thereof, is inadequate for the purposes for which it was intended,
 34 such board of chosen freeholders or the Hackensack Commission, as
 35 the case may be, shall develop and formulate a new solid waste
 36 management plan, or any part thereof, and such new plan, or part
 37 thereof, shall be adopted thereby pursuant to the procedures con-
 38 tained in section 14 of this amendatory and supplementary act.

38A Nothing herein contained shall be construed as to prevent any
 38B board of chosen freeholders or the Hackensack Commission from
 38C readopting a solid waste management plan upon the expiration of
 38D same in a solid waste management district; provided, however,
 38E that any such reoption shall be pursuant to the provisions of
 38F section 14 of this amendatory and supplementary act.

39 (2) Any two or more districts may formulate and adopt a single
 40 solid waste management plan which shall meet all the requirements
 41 of this act for the combined area of the cooperating solid waste
 42 management districts.

43 b. (1) To assist each board of chosen freeholders in the develop-
 44 ment and formulation of the solid waste management plans re-
 45 quired herein, an advisory solid waste council shall be constituted
 46 in every county and shall include municipal mayors or their
 47 designees, persons engaged in the collection or disposal of solid
 48 waste and environmentalists. The respective size, composition and
 49 membership of each such council shall be designated by the respec-
 50 tive boards of chosen freeholders. In the Hackensack Meadowlands
 51 District, the Hackensack meadowlands municipal committee, estab-
 52 lished pursuant to article 4 of P. L. 1968, c. 404 (C. 13:17-7 and
 53 13:17-8), is hereby designated an advisory solid waste council
 54 for the purposes of this amendatory and supplementary act; pro-
 55 vided, however, that nothing herein contained shall be construed
 56 as in any way altering the powers, duties and responsibilities of the
 57 Hackensack Meadowlands municipal committee except as herein
 58 specifically provided. The respective boards of chosen freeholders

59 and the Hackensack Commission shall consult with the relevant
 60 advisory solid waste council at such stages in the development and
 61 formulation of the solid waste management plan as each such board
 62 of chosen freeholders or the Hackensack Commission, as the case
 63 may be, shall determine; provided, however, that a solid waste
 64 management plan shall be adopted as hereinafter provided only
 65 after consultation with the relevant advisory solid waste council.

66 (2) In the development and formulation of a solid waste man-
 67 agement plan for any solid waste management district, the board
 68 of chosen freeholders or the Hackensack Commission, as the case
 69 may be, shall:

70 (a) Consult with the county or municipal government agencies
 71 concerned with, or responsible for, water pollution control, water
 72 policy, water supply, or zoning or land use within the solid waste
 73 management district;

74 (b) Review such plans for solid waste collection and disposal
 75 proposed by, or in force in, any municipality or municipalities
 76 within the solid waste management district, to determine the suit-
 77 ability of any such plan, or any part thereof, for inclusion within
 78 the solid waste management plan of the solid waste management
 79 district; and

80 (c) Consult with persons engaged in solid waste collection and
 81 disposal in the solid waste management district.

1 35. Section 6 of P. L. 1970, c. 40 (C. 48:13A-5) is amended to
 2 read as follows:

3 6. *a.* The Board of Public **Utility Commissioners** *Utilities* shall,
 4 after hearing, by order in writing, when it finds that the public
 5 interest requires, designate any municipality as a franchise area
 6 to be served by one or more persons engaged in solid waste collec-
 7 tion and *may award* any solid waste management district **as** a
 8 franchise **area to** *which shall* be served by one or more persons
 9 engaged in solid waste disposal at rates and charges published in
 10 tariffs or contracts accepted for filing by the board; provided,
 11 however, that the proposed franchise area for solid waste collection
 12 or *the proposed franchise* for solid waste disposal conforms to the
 13 solid waste management plan of the solid waste management
 14 district in which such franchise area is to be located *or such fran-*
 15 *chise is to be awarded*, as such plan shall have been approved by
 16 the Department of Environmental Protection.

17 *b.* Upon application by any solid waste management district,
 18 the Board of Public Utilities shall, by order in writing, award a
 19 solid waste management district, or two or more districts, a fran-
 20 chise which shall be served by a person engaged in operating a

21 *resource recovery facility, provided that the proposed franchise*
 22 *shall conform to the solid waste management plan, as approved by*
 23 *the department, of the solid waste management district or districts*
 24 *to which the franchise will be awarded.*

25 *Each district awarded a franchise pursuant to this subsection*
 26 *may award subfranchises pursuant to the provisions of section 31*
 27 *of P. L. c. (C.) (now pending before the Legis-*
 28 *lature as Assembly Bill No. 1778 of 1984), provided the subfran-*
 29 *chises do not alter the terms of a franchise awarded pursuant to*
 30 *this subsection.*

31 *c. Franchises awarded pursuant to this section shall be of suffi-*
 32 *cient area to support the estimated technical and economic needs of*
 33 *the resource recovery facility which is to serve the district or*
 34 *portion thereof.*

35 *d. For the purposes of this section, franchise shall mean the*
 36 *exclusive right to control the disposal of solid waste within a*
 37 *district as awarded pursuant to this section.*

38 *e. The board shall encourage the consolidation of all accounts,*
 39 *customers, routes and facilities by persons engaged in solid waste*
 40 *collection [or] within franchise areas or in solid waste disposal*
 41 *[within such] pursuant to a franchise [areas].*

42 *Nothing in section 11 of this act (C. 48:13A-10) shall be inter-*
 43 *preted to prevent the implementation of this section by the Board*
 44 *of Public [Utility Commissioners] Utilities.*

1 36. Section 15 of P. L. 1971, c. 198 (C. 40A :11-15) is amended to
 2 read as follows:

3 15. Duration of certain contracts. All purchases, contracts or
 4 agreements for the performing of work or the furnishing of ma-
 5 terials, supplies or services shall be made for a period not to exceed
 6 12 consecutive months, except that contracts or agreements may
 7 be entered into for longer periods of time as follows:

- 8 (1) Supplying of
 9 (a) Fuel for heating purposes, for any term not exceeding
 10 in the aggregate, two years;
 11 (b) Fuel or oil for use of airplanes, automobiles, motor
 12 vehicles or equipment for any term not exceeding in the aggre-
 13 gate, two years;
 14 (c) Thermal energy produced by a cogeneration facility, for
 15 use of heating or air conditioning or both, *for* any term not
 16 exceeding [20] 40 years, when the contract is approved by the
 17 Board of Public Utilities. For the purposes of this paragraph,
 18 "cogeneration" means the simultaneous production in one

19 facility of electric power and other forms of useful energy such
20 as heating or process steam;

21 (2) (Deleted by amendment; P. L. 1977, c. 53.)

22 (3) The collection and disposal of garbage and refuse, for any
23 term not exceeding in the aggregate, five years;

24 (4) The recycling of solid waste, for any term not exceeding 25
25 years, when such contract is in conformance with a solid waste
26 management plan approved pursuant to P. L. 1970, c. 39 (C. 13:1E-1
27 et seq.), and with the approval of the Division of Local Government
28 Services and the Department of Environmental Protection;

29 (5) Data processing service, for any term of not more than three
30 years;

31 (6) Insurance, for any term of not more than three years;

32 (7) Leasing or servicing of automobiles, motor vehicles, [elec-
33 tronic communications equipment,] machinery and equipment of
34 every nature and kind, for a period not to exceed three years; pro-
35 vided, however, such contracts shall be entered into only subject
36 to and in accordance with the rules and regulations promulgated
37 by the Director of the Division of Local Government Services of
38 the Department of Community Affairs;

39 (8) The supplying of any product or the rendering of any service
40 by a telephone company which is subject to the jurisdiction of the
41 Board of Public Utilities for a term not exceeding five years;

42 (9) Any single project for the construction, reconstruction or
43 rehabilitation of any public building, structure or facility, or any
44 public works [projects] project, including the retention of the
45 services of any architect or engineer in connection therewith, for
46 the length of time authorized and necessary for the completion of
47 the actual construction;

48 (10) The providing of food services for any term not exceeding
49 three years;

50 (11) On-site inspections undertaken by private agencies pur-
51 suant to the "State Uniform Construction Code Act" (P. L. 1975,
52 c. 217; C. 52:27D-119 et seq.) for any term of not more than three
53 years;

54 (12) The performance of work or services or the furnishing of
55 materials or supplies for the purpose of conserving energy in build-
56 ings owned by, or operations conducted by, the contracting unit,
57 the entire price of which to be established as a percentage of the
58 resultant savings in energy costs, for a term not to exceed 10 years;
59 provided, however, that such contracts shall be entered into only
60 subject to and in accordance with rules and regulations promulgated

61 by the Department of Energy establishing a methodology for com-
62 puting energy cost savings[.];

63 (13) The performance of work or services or the furnishing of
64 materials or supplies for the purpose of elevator maintenance for
65 any term not exceeding three years;

66 (14) Leasing or servicing of electronic communications equip-
67 ment for a period not to exceed five years; provided, however, such
68 contract shall be entered into only subject to and in accordance
69 with the rules and regulations promulgated by the Director of the
70 Division of Local Government Services of the Department of Com-
71 munity Affairs;

72 (15) Leasing of motor vehicles, machinery and other equipment
73 primarily used to fight fires, for a term not to exceed seven years,
74 when the contract includes an option to purchase, subject to and in
75 accordance with rules and regulations promulgated by the Director
76 of the Division of Local Government Services of the Department of
77 Community Affairs;

78 *(16) The provision of solid waste disposal services by a resource*
79 *recovery facility, or the design, *financing* construction, operation*
80 *or maintenance of a resource recovery facility for a period not to*
81 *exceed 40 years when the contract is approved by the Division of*
82 *Local Government Services in the Department of Community*
83 *Affairs, the Board of Public Utilities, and the Department of*
84 *Environmental Protection; and when the facility is in conformance*
85 *with a solid waste management plan approved pursuant to P. L.*
86 *1970, c. 39 (C. 13:1E-1 et seq.). For the purposes of this subsection,*
87 *“resource recovery facility” means a solid waste facility for the*
88 *collection, separation, recycling and recovery of metals, glass,*
89 *paper and other materials for reuse or for energy production.*

90 All multi-year leases and contracts entered into pursuant to this
91 section 15, except contracts for the leasing or servicing of equip-
92 ment supplied by a telephone company which is subject to the
93 jurisdiction of the Board of Public Utilities [or], contracts for
94 thermal energy authorized pursuant to subsection (1) above, con-
95 struction contracts authorized pursuant to subsection (9) above,
96 *[or]* contracts and agreements for the [provisions] provision of
97 work or the supplying of equipment to promote energy conservation
98 authorized pursuant to subsection (12) above, or contracts for re-
99 source recovery services or a resource recovery facility authorized
100 pursuant to subsection (16) above*,* shall contain a clause making
101 them subject to the availability and appropriation annually of

102 sufficient funds as may be required to meet the extended obligation,
103 or contain an annual cancellation clause.

104 The Division of Local Government Services shall adopt and
105 promulgate rules and regulations concerning the methods of ac-
106 counting for all contracts that do not coincide with the fiscal year.

1 *37. Section 19 of P. L. 1975, c. 326 (C. 13:1E-28) is amended to
2 read as follows:

3 19. Subject to such terms as agreed upon by **[a board of chosen**
4 **freeholders]** *the governing body of a county* or the Hackensack
5 Commission, as the case may be, any municipality within which
6 any solid waste facility is located pursuant to an adopted and
7 approved solid waste management plan, shall be entitled to any or
8 all of the following benefits in consideration for the use of land
9 within its municipal boundaries as the location of such solid waste
10 facility:

11 a. The receipt of annual sums of money **[in lieu of taxes on such**
12 **property]** in such amount as may be agreed upon between the
13 **[board of chosen freeholders]** *governing body of a county* or the
14 Hackensack Commission, as the case may be, and the municipality,
15 and each **[such board of chosen freeholders]** *governing body of the*
16 *county* and the Hackensack Commission is empowered to make such
17 payments and each such municipality is empowered to accept such
18 payments and to apply them in the manner in which taxes may be
19 applied in such municipality; provided, however, that no such
20 annual payment **[with respect to any parcel of such property]** shall
21 **[exceed]** *be less than* the amount of taxes paid **[thereon]** *on the*
22 *land used for the facility* for the taxable year immediately prior to
23 the time of its use as the location of such solid waste facility;

24 b. Preferential rates charged for the services provided by the
25 solid waste management district for any solid waste disposed of at
26 a solid waste facility within said municipality, which rate dis-
27 counts shall be subject to the approval of the Board of Public
28 Utility Commissioners and shall not be in excess of 25% ;

29 c. The right to reacquire any real or personal property used by
30 the solid waste management district in connection with the opera-
31 tion of any solid waste facility upon the termination of the uses for
32 which such property was originally acquired, unless prior to such
33 expiration or termination the **[board of chosen freeholders]**
34 *governing body of the county* or the Hackensack Commission, as the
35 case may be, entered into a new agreement for the continued use
36 of such property.

37 Any real property reacquired by a municipality [in accordance
 38 with paragraph c. of this section,] shall be repaired and, as nearly
 39 as practicable, restored to its original condition, including, in the
 40 case of a sanitary landfill, adequate landscaping of the final earth
 41 covering to conform with the immediately surrounding terrain, by
 42 and at the expense of the [board of chosen freeholders] governing
 43 body of the county or the Hackensack Commission, as the case may
 44 be, or adequate compensation made therefor by [said board of
 45 chosen freeholders] the governing body of the county or the Hack-
 46 ensack Commission, as the case may be.

47 In the event that any municipality and any [board of chosen free-
 48 holders] governing body of a county or the Hackensack Commis-
 49 sion, as the case may be, fail to reach an agreement on the benefits
 50 authorized herein in consideration for the use of land within
 51 municipal boundaries as the location of a solid waste facility, the
 52 commissioner, after consultation with the relevant board of chosen
 53 freeholders or the Hackensack Commission, as the case may be, with
 54 the mayor of the relevant municipality, and with the relevant
 55 advisory municipal council, shall fix such terms and establish such
 56 benefits as he shall deem appropriate.*

1 *~~[37.]~~* *38.* This act shall take effect immediately except for
 2 section 3 which shall take effect the first day of the third month
 3 following enactment.]***

1 **1. (New section) *The Legislature finds that the proper disposal*
 2 *of solid waste and the maximum practical recovery of any potential*
 3 *resource in solid waste, especially its conversion to useable energy,*
 4 *are matters of basic concern to all citizens of this State, and*
 5 *insuring the implementation of an efficient solid waste and resource*
 6 *recovery management strategy is a governmental function thor-*
 7 *oughly imbued with the public interest; that the State's capacity to*
 8 *safely dispose of solid waste of sanitary landfills is rapidly*
 9 *diminishing; that New Jersey must move away from its current*
 10 *reliance on landfilling as the principal method of solid waste*
 11 *disposal to the application of waste reduction, recycling, and energy*
 12 *recovery technologies; that decreasing the waste flow to landfills,*
 13 *whether by means of predisposal methods such as source separation*
 14 *and recycling or through high technology energy conversion is in*
 15 *the energy, environmental, and economic interest of the State of*
 16 *New Jersey; and that these issues must be addressed as thoroughly*
 17 *expeditiously as possible.*

18 *The Legislature further finds that the planning, construction or*
 19 *operation of resource recovery facilities is characterized by high*
 20 *initial capital expenditures and initially high disposal costs or*

21 *tipping fees relative to landfilling, costs which may be stabilized or*
 22 *decreased based upon a return on energy generated and materials*
 23 *recovered; that these increased initial costs require long-term*
 24 *financial arrangements and a prior Statewide commitment to waste*
 25 *reduction and recycling; that to attract private investment capital*
 26 *for these waste-to-energy projects it is necessary to establish a*
 27 *favorable regulatory climate, which will at the same time insure*
 28 *safe, adequate and proper solid waste disposal service at just and*
 29 *reasonable rates; and that to encourage these joint public-private*
 30 *sector cooperative ventures it is also necessary to attain the most*
 31 *advantageous financial and programmatic scrutiny by the Legisla-*
 32 *ture and agencies of State government.*

33 *The Legislature therefore declares that it is the public policy of*
 34 *the State of New Jersey to provide a framework for the implementa-*
 35 *tion of an efficient solid waste disposal and resource recovery*
 36 *strategy which facilitates the orderly development of resource*
 37 *recovery facilities while protecting the public health, safety, and*
 38 *welfare, all as hereinafter provided.*

1 2. (New section) *As used in this amendatory and supplementary*
 2 *act:*

3 a. *“Contract file” means a file established and maintained by a*
 4 *contracting unit, in which the contracting unit shall maintain a*
 5 *copy of its request for qualifications issued pursuant to section 19*
 6 *of this amendatory and supplementary act, a list of vendors*
 7 *responding to its request for qualifications, a copy of its request*
 8 *for proposals issued pursuant to section 20 of this amendatory and*
 9 *supplementary act, a list of qualified vendors submitting proposals,*
 10 *and a document outlining the general criteria used by the contract-*
 11 *ing unit in selecting a proposal;*

12 b. *“Contracting unit” means any county; any municipality; any*
 13 *bi-State authority; or any board, commission, committee, authority*
 14 *or agency, which is not a State board, commission, committee,*
 15 *authority or agency, and which has administrative jurisdiction*
 16 *over any district other than a school district, project, or facility,*
 17 *included or operating in whole or in part, within the territorial*
 18 *boundaries of any county or municipality, which exercises functions*
 19 *which are appropriate for the exercise by one or more units of local*
 20 *government, and which has statutory power to make purchases and*
 21 *enter into contracts or agreements for the performance of own work*
 22 *or the furnishing or hiring of any materials or supplies usually*
 23 *required;*

24 c. *“County” means any county of this State of whatever class;*

25 d. "Department" means the Department of Environmental
26 Protection;

27 e. "Director" means the Director of the Division of Taxation in
28 the Department of Treasury;

29 f. "District" means a solid waste management district as desig-
30 nated by section 10 of P. L. 1975, c. 326 (C. 13:1E-19), except that,
31 as used in the provisions of this amendatory and supplementary
32 act, "district" shall not include the Hackensack Meadowlands
33 District;

34 g. "District investment tax fund" means a District Resource
35 Recovery Investment Tax Fund established pursuant to subsection
36 a. of section 15 of this amendatory and supplementary act;

37 h. "Division" means the Division of Taxation in the Department
38 of Treasury;

39 i. "Division of Local Government Services" means the Division
40 of Local Government Services in the Department of Community
41 Affairs;

42 j. "Division of Rate Counsel" means the Division of Rate Counsel
43 in the Department of the Public Advocate;

44 k. "Franchise" means the exclusive right to control and provide
45 for the disposal of solid waste, except for recyclable material
46 whenever markets for those materials are available, within a
47 district or districts as awarded by the Board of Public Utilities;

48 l. "Independent public accountant" means a certified public
49 accountant, a licensed public accountant or a registered municipal
50 accountant;

51 m. "Investment tax" means the resource recovery investment
52 tax imposed pursuant to subsection b. of section 3 of this amenda-
53 tory and supplementary act;

54 n. "Investment tax funds" means the Resource Recovery Invest-
55 ment Tax Fund containing sub-accounts for each county established
56 pursuant to the provisions of section 14 of this amendatory and
57 supplementary act;

58 o. "Out-of-district solid waste" means any solid waste accepted
59 for disposal in a district which was generated outside the receiving
60 district;

61 p. "Person or party" means any individual, public or private
62 corporation, company, partnership, firm, association, political
63 subdivision of this State, or any State, bi-state, or interstate agency
64 or authority;

65 q. "Proposed contract" means a contract negotiated by a
66 contracting unit pursuant to the provisions of this amendatory and
67 supplementary act, or a substantial renegotiation of a contract

68 approved pursuant to the provisions of this amendatory and
69 supplementary act if the renegotiation is determined to be substan-
70 tial by the department, the Board of Public Utilities, or the Division
71 of Local Government Services;

72 r. "Qualified vendor" means any person or party financially
73 qualified for, and technically and administratively capable of,
74 undertaking the design, financing, construction, operation, or
75 maintenance, or any combination thereof, of a resource recovery
76 facility or of providing resource recovery services, as provided in
77 section 19 of this amendatory and supplementary act;

78 s. "Recyclable material" means those materials which would
79 otherwise become solid waste, which may be collected, separated or
80 processed and returned to the economic mainstream in the form of
81 raw materials or products;

82 t. "Recycling" means any process by which materials which
83 would otherwise become solid waste are collected, separated or
84 processed and returned to the economic mainstream in the form of
85 raw materials or products;

86 u. "Recycling facility" means a facility at which materials which
87 would otherwise become solid waste are collected, separated or
88 processed and returned to the economic mainstream in the form of
89 raw materials or projects;

90 v. "Resource recovery facility" means a solid waste facility
91 constructed and operated for the incineration of solid waste for
92 energy production and the recovery of metals and other materials
93 for reuse; or a mechanized composting facility, or any other solid
94 waste facility constructed or operated for the collection, separation,
95 recycling, and recovery of metals, glass, paper, and other materials
96 for reuse or for energy production;

97 w. "Sanitary landfill facility" means a solid waste facility at
98 which solid waste is deposited on or in the land as fill for the
99 purpose of permanent disposal or storage for a period exceeding
100 six months, except that it shall not include any waste facility
101 approved for disposal of hazardous waste;

102 x. "Services tax" means the solid waste services tax imposed
103 pursuant to subsection a. of section 3 of this amendatory and
104 supplementary act;

105 y. "Services tax fund" means the Solid Waste Services Tax
106 Fund established pursuant to section 12 of this amendatory and
107 supplementary act;

108 z. "Vendor" means any person or party proposing to undertake
109 the design, financing, construction, operation, or maintenance, or
110 any combination thereof, of a resource recovery facility or of
111 providing resource recovery services;

112 *aa. "Waste importation tax" means the solid waste importation*
 113 *tax imposed pursuant to subsection c. of section 3 of this amenda-*
 114 *tory and supplementary act.*

1 3. (New section) a. *There is levied upon the owner or operator*
 2 *of every sanitary landfill facility a solid waste services tax. The*
 3 *services tax shall be imposed on the owner or operator at the*
 4 *initial rate of \$0.50 per ton of solids and \$0.002 per gallon of liquids*
 5 *on all solid waste accepted for disposal at a sanitary landfill facility.*
 6 *On the first day of the first calendar year following the imposition*
 7 *of the services tax, and annually thereafter, the rate of the services*
 8 *tax shall be increased by \$0.05 per ton of solids. No services tax*
 9 *shall be levied on the owner or operator of a sanitary landfill facility*
 10 *for the acceptance for disposal of the waste products resulting from*
 11 *the operation of a resource recovery facility.*

12 b. (1) *There is levied upon the owner or operator of every*
 13 *sanitary landfill facility a resource recovery investment tax. The*
 14 *investment tax shall be levied on the owner or operator at the*
 15 *initial rate of \$1.00 per ton of solids and \$0.004 per gallon of liquids*
 16 *on all solid waste accepted for disposal at a sanitary landfill facility.*
 17 *No investment tax shall be levied on the owner or operator of a*
 18 *sanitary landfill facility for the acceptance for disposal of the*
 19 *waste products resulting from the operation of a resource recovery*
 20 *facility.*

21 (2) *Unless the rate is otherwise adjusted pursuant to section 11*
 22 *of this amendatory and supplementary act, the rate of the invest-*
 23 *ment tax shall be increased in accordance with the following*
 24 *schedule:*

25 (a) *On the first day of the first calendar year following the*
 26 *imposition of the investment tax, the rate of the investment tax*
 27 *shall increase to \$2.00 per ton of solids;*

28 (b) *On the first day of the second calendar year following the*
 29 *imposition of the investment tax, the rate of the investment tax*
 30 *shall increase to \$3.00 per ton of solids; and*

31 (c) *On the first day of the third calendar year following the*
 32 *imposition of the investment tax, the rate of the investment tax*
 33 *shall increase to \$4.00 per ton of solids.*

34 *The investment tax shall no longer be levied on the owner or*
 35 *operator of a sanitary landfill on and after the first day of the*
 36 *11th calendar year following the imposition of the investment tax.*

37 c. *There is levied upon the owner or operator of every sanitary*
 38 *landfill facility which accepts out-of-district solid waste a solid*
 39 *waste importation tax. The waste importation tax shall be imposed*
 40 *on the owner or operator at the initial rate of \$1.00 per ton of solids*

41 and \$0.004 per gallon of liquids on all out-of-district solid waste
42 accepted for disposal at a sanitary landfill facility. On the first day
43 of the third calendar year following the imposition of the waste
44 importation tax, the rate of the waste importation tax shall be
45 increased to \$4.00 per ton of solids, and annually thereafter the rate
46 of the waste importation tax shall be increased by \$2.00 per ton of
47 solids. No waste importation tax shall be levied on the owner or
48 operator of a sanitary landfill facility for the acceptance for
49 disposal of the waste products resultng from the operation of a
50 resource recovery facility.

51 The waste importation tax shall no longer be levied on the owner
52 or operator of a sanitary landfill facility which accepts out-of-
53 district solid waste on or after the first day of the 11th calendar
54 year following the imposition of the waste importation tax.

55 d. If any owner or operator of a sanitary landfill facility deter-
56 mines the quantity of solid waste accepted for disposal by a
57 measure other than tons or gallons, the taxes imposed pursuant to
58 the provisions of this section shall be levied at an equivalent rate
59 as determined by the director.

60 e. No taxes shall be levied on the owner or operator of a sanitary
61 landfill facility for the acceptance of solid waste generated exclu-
62 sively by an agency of the federal government if a solid waste
63 collector submits to the owner or operator an itemized invoice,
64 signed and verified by an authorized officer of the federal agency,
65 indicating the number of tons of solid waste to be disposed of, and
66 a copy of the contract with the federal agency for the collection of
67 solid waste with an effective date prior to the effective date of this
68 amendatory and supplementary act. Taxes shall be levied on the
69 owner or operator for acceptance of solid waste generated by a
70 federal agency if the contract between the federal agency and the
71 solid waste collector was entered into, or renewed, on or after the
72 effective date of this amendatory and supplementary act.

1 4. (New section) a. Every owner or operator of a sanitary
2 landfill facility which accepts solid waste for disposal and which is
3 subject to the taxes imposed pursuant to section 3 of this amenda-
4 tory and supplementary act, shall register with the director on
5 registration forms prescribed by him within 20 days after the first
6 acceptance of that waste.

7 b. The director shall prescribe and distribute all necessary forms
8 for the implementation of the tax provisions of this amendatory
9 and supplementary act. The tax return form shall require the
10 following information, and any other information the director may
11 deem necessary to be rendered in the return:

12 (1) *The total number of tons of solids and gallons of liquids*
13 *accepted for disposal during the previous month;*

14 (2) *The number of tons of solids and gallons of liquids accepted,*
15 *and the place of origin of out-of-district waste accepted for disposal*
16 *during the previous month, as reported to the owner or operator by*
17 *the solid waste transporter who transports that solid waste to the*
18 *sanitary landfill facility pursuant to rules and regulations adopted*
19 *by the department; and*

20 (3) *The amount of each tax paid based upon the amount of solid*
21 *waste accepted.*

22 *c. The director may prescribe a consolidated form for reporting*
23 *the taxes imposed under this amendatory and supplementary act*
24 *and the taxes imposed pursuant to P. L. 1981, c. 278 (C. 13:1E-92*
25 *et seq.) and P. L. 1981, c. 306 (C. 13:1E-100 et seq.).*

1 5. (New section) *Every owner or operator of a sanitary landfill*
2 *facility shall, on or before the 20th day of the month following the*
3 *close of each tax period, render a return under oath to the director*
4 *and pay the full amount of taxes due as stated in the return.*

1 6. (New section) *a. If a return required by this amendatory and*
2 *supplementary act is not filed, or if a return when filed is incorrect*
3 *or insufficient in the opinion of the director, the amount of tax due*
4 *shall be determined by the director from such information as may*
5 *be available. Notice of the determination shall be given to the*
6 *taxpayer liable for the payment of the tax. This determination*
7 *shall finally and irrevocably fix the tax unless the person against*
8 *whom it is assessed, within 30 days after receiving notice of the*
9 *determination, shall apply to the director for a hearing, or unless*
10 *the director on his own motion shall redetermine the same. After*
11 *the hearing, the director shall give notice of his determination to*
12 *the person to whom the tax is assessed.*

13 *b. Any taxpayer who fails to file a return when due or to pay any*
14 *tax when the tax becomes due, as herein provided, is subject to the*
15 *penalties and interest as provided in the "State Tax Uniform*
16 *Procedure Law," R. S. 54:48-1 et seq. If the director determines*
17 *that the failure to comply with any provision of this section was*
18 *excusable under the circumstances, he may remit part of all of the*
19 *penalty as appropriate under the circumstances.*

20 *c. (1) Any person failing to file a return, failing to pay the tax,*
21 *or filing or causing to be filed, or making or causing to be made, or*
22 *giving or causing to be given any return, certificate, affidavit,*
23 *representation, information, testimony or statement required or*
24 *authorized by this amendatory and supplementary act, or rules or*
25 *regulations adopted pursuant hereto, which is willfully false, or*

26 failing to keep any records required by this amendatory and
 27 supplementary act or rules and regulations adopted pursuant
 28 hereto, shall, in addition to any other penalties herein or elsewhere
 29 prescribed, be guilty of a crime of the fourth degree.

30 (2) The certificate of the director to the effect that a tax has
 31 not been paid, that a return has not been filed, that information has
 32 not been supplied or that inaccurate information has been supplied
 33 pursuant to the provisions of this amendatory and supplementary
 34 act or rules or regulations adopted pursuant hereto shall be
 35 presumptive evidence thereof.

1 7. (New section) In addition to any other powers authorized by
 2 this amendatory and supplementary act, the director shall have the
 3 following powers:

4 a. To delegate to any officer or employee of the division any
 5 powers or responsibilities required by this amendatory and supple-
 6 mentary act as he may deem necessary;

7 b. To prescribe and distribute any forms necessary for the
 8 implementation of this amendatory and supplementary act; and

9 c. To adopt any rules and regulations, pursuant to the "Admini-
 10 strative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.)
 11 necessary to implement the provisions of this amendatory and
 12 supplementary act.

1 8. (New section) The taxes imposed under this amendatory and
 2 supplementary act shall be governed in all respects by the provi-
 3 sions of the "State Tax Uniform Procedure Law," R. S. 54:48-1
 4 et seq., except to the extent that a specific provision of this amenda-
 5 tory and supplementary act, or any rule or regulation adopted
 6 pursuant hereto, may be in conflict therewith.

1 9. (New section) a. Notwithstanding the provisions of any law
 2 to the contrary, the owner or operator of a sanitary landfill facility
 3 may collect the taxes levied and imposed pursuant to this amenda-
 4 tory and supplementary act by imposing an automatic surcharge
 5 on any tariff established pursuant to law for the solid waste disposal
 6 operations of the sanitary landfill facility.

7 b. For the purposes of this amendatory and supplementary act,
 8 all municipal, county, and State contracts for solid waste collection
 9 and disposal shall be considered tariffs for solid waste collection,
 10 and shall be subject to any adjustment of tariffs resulting from the
 11 provisions of this amendatory and supplementary act.

1 10. (New section) a. The Board of Public Utilities shall, within
 2 60 days of the effective date of this amendatory and supplementary
 3 act, issue an order adjusting the tariffs established pursuant to law
 4 for solid waste collection operations by an amount equal to the

5 total amount of the increase in the adjusted tariffs for solid waste
6 disposal operations to take effect on the date on which the tax is
7 imposed.

8 b. The Board of Public Utilities shall, by the date of any increase
9 in the services tax required in subsection a. of section 3 of this
10 amendatory and supplementary act, the investment tax required in
11 subsection b. of section 3 of this amendatory and supplementary
12 act, or the waste importation tax required in subsection c. of section
13 3 of this amendatory and supplementary act, issue an order
14 adjusting the tariffs established pursuant to law for solid waste
15 collection operations by an amount equal to the total amount of the
16 increase in the tariffs for solid waste disposal operations that shall
17 be adjusted on that date.

18 c. In issuing any order required by this section, the Board of
19 Public Utilities shall be exempt from the provisions of R. S. 48:2-21.

1 11. (New section) a. Each county, in consultation with the depart-
2 ment, may conduct a study to determine the investment tax rate
3 estimated to be necessary to be paid into the district investment
4 tax fund so as to lower the cost of resource recovery facility
5 services to a level which is competitive with the cost of disposal in
6 a sanitary landfill facility utilized by the county, or to finance the
7 closing costs for the proper closure of any terminated sanitary
8 landfill facility located within the county, except that only the
9 additional tax revenues generated by an investment tax rate
10 adjustment may be expended for closing costs.

11 b. After completion of the study, the county, by resolution of its
12 governing body, and after review of the study by the Local Finance
13 Board in the Division of Local Government Services in the Depart-
14 ment of Community Affairs, may adjust the investment tax rate
15 set forth in subsection b. of section 3 of this amendatory and
16 supplementary act to a rate, not to exceed \$10.00 per ton of solids
17 and \$0.04 per gallon of liquids, or the equivalent thereof, which is
18 consistent with the conclusions of the study and with the plan
19 developed pursuant to subsection c. of section 15 of this amendatory
20 and supplementary act. The county, by resolution of its governing
21 body, and after review of the study and any additional information
22 received during the previous year by the Local Finance Board in
23 the Division of Local Government Services in the Department of
24 Community Affairs, may adjust the investment tax rate, up to the
25 maximum rate, on an annual basis. Any adjustment in the invest-
26 ment tax rate made pursuant to this subsection shall take effect on
27 the first day of the first calendar year following the adjustment,
28 provided that notice of the adjustment shall be made to the director
29 no later than 90 days prior to the first day of a calendar year.

30 *c. Upon approval by the department, two or more counties may*
 31 *conduct a joint study and establish a single investment tax rate for*
 32 *the districts in the manner provided in subsection b. of this section.*

33 *d. The department, upon an investment tax rate adjustment by a*
 34 *county made in the manner provided in subsection b. of this section,*
 35 *shall notify the Board of Public Utilities of the investment tax*
 36 *rate adjustment in that county.*

1 *12. (New section) The Solid Waste Services Tax Fund is*
 2 *established as a nonlapsing, revolving fund in the Department of*
 3 *Environmental Protection. The services tax fund shall be admini-*
 4 *tered by the department and shall be the depository for the revenues*
 5 *generated by the services tax, and any interest earned thereon.*

1-6 *13. (New section) a. Prior to the disbursement of any moneys in*
 7 *the services tax fund pursuant to the provisions of this section, the*
 8 *cost of administration and collection of the services tax shall be*
 9 *paid to the director out of the fund, up to an amount not to exceed*
 10 *2% of the total revenues deposited in the fund during the fiscal year.*

11 *b. The moneys in the services tax fund shall be allocated and used*
 12 *to provide State aid to counties for preparing, revising, and*
 13 *implementing solid waste management plans, including the im-*
 14 *plementation of the goals of the State Recycling Plan. The moneys*
 15 *may also be used by the counties to support community oversight*
 16 *projects and to establish a citizens advisory committee. A county*
 17 *receiving State aid shall not expend more than 2% of the amount of*
 18 *aid received in any year for the costs of administering the aid.*
 19 *The State aid shall be distributed to the counties on the basis of*
 20 *the total amount of solid waste generated from within each county*
 21 *during the previous calendar year as determined by the department,*
 22 *except that no county shall receive less than 2% of the revenues*
 23 *deposited in the services tax fund during each calendar year. In*
 24 *the event that the department determines, pursuant to section 17 of*
 25 *this amendatory and supplementary act, that any county has failed*
 26 *to fulfill its district solid waste management planning responsibili-*
 27 *ties, the department may withhold for an entire year or until the*
 28 *county fulfills its responsibilities, all or a portion of the amount of*
 29 *moneys that county would have received in any year pursuant to*
 30 *this subsection. Any moneys withheld for an entire year shall be*
 31 *distributed among the remaining counties in the same proportion*
 32 *as the other moneys were distributed.*

33 *c. Any county may appoint a citizen advisory committee com-*
 34 *prising interested local officials and citizens. An appointed citizens*
 35 *advisory committee or an existing advisory solid waste committee*
 36 *may develop and implement oversight projects and conduct com-*

37 *munity awareness programs regarding resource recovery facilities*
 38 *in a district.*

1 14. (New section) a. *The Resource Recovery Investment Tax*
 2 *Fund is established in the Department of Treasury. The investment*
 3 *tax fund shall contain sub-accounts for each county to be held by*
 4 *the State Treasurer and shall be the depository for revenues*
 5 *generated by the investment tax and the waste importation tax, and*
 6 *any interest earned thereon, and shall be disbursed pursuant to the*
 7 *provisions of this section.*

8 b. *Prior to the disbursement of any moneys in the investment*
 9 *tax fund as provided hereunder, the cost of administration and*
 10 *collection of the taxes shall be paid to the director out of that fund,*
 11 *up to an amount not to exceed 2% of the total revenues deposited*
 12 *into the fund during the fiscal year.*

13 c. *The director shall allocate the moneys in the investment tax*
 14 *fund as follows:*

15 (1) *The investment tax revenues collected by the director*
 16 *resulting from the amount of solid waste generated from within*
 17 *each county shall be deposited in each county's sub-account;*

18 (2) *The investment tax revenues collected by the director and*
 19 *not otherwise deposited in an investment tax fund sub-account*
 20 *pursuant to paragraph (1) of this subsection shall be deposited in*
 21 *the receiving county's sub-account; and*

22 (3) *The waste importation tax revenues collected by the director*
 23 *resulting from the acceptance of out-of-district solid waste shall be*
 24 *deposited in the receiving county's sub-account, except that the*
 25 *waste importation tax revenues resulting from the disposal of*
 26 *out-of-district solid waste at sanitary landfill facilities operated*
 27 *and maintained by the Hackensack Meadowlands Development*
 28 *Commission shall be deposited in the sub-account of the county*
 29 *within which the sanitary landfill facility is located.*

1 15. (New section) a. *Each county shall create a District Resource*
 2 *Recovery Investment Tax Fund which shall be the depository for*
 3 *the moneys appropriated to each county pursuant to this section,*
 4 *and shall be administered by the governing body of each county.*

5 b. *The moneys deposited by the director in each investment tax*
 6 *fund sub-account shall be appropriated to each county for deposit*
 7 *in its district investment tax fund and shall be expended only in*
 8 *accordance with a plan prepared and approved pursuant to sub-*
 9 *section c. of this section and only for the following purposes:*

10 (1) *To reduce the rates charged to all users by a resource*
 11 *recovery facility serving the county in order to provide a gradual*
 12 *transition to resource recovery facility rates from sanitary landfill*

13 facility rates. A county may achieve reductions through the use of
14 moneys in its district investment tax fund to pay directly part of
15 the fees charged for disposal to all users of a resource recovery
16 facility;

17 (2) To design, finance, construct, operate or maintain environ-
18 mentally sound state-of-the-art sanitary landfill facilities to be
19 utilized for disposing of those solid wastes which cannot be
20 processed by a resource recovery facility or the waste products
21 resulting from the operation of a resource recovery facility;

22 (3) To design, finance, construct, operate or maintain environ-
23 mentally sound state-of-the-art sanitary landfill facilities to be
24 utilized for disposal of solid waste, on a long-term basis, if a county
25 can demonstrate to the satisfaction of the department that utiliza-
26 tion of a resource recovery facility is not feasible for disposal of the
27 solid waste generated in that county;

28 (4) To finance the closing costs for the proper closure of any
29 terminated sanitary landfill facility located within a county when-
30 ever that county has made an investment tax rate adjustment for
31 this purpose in accordance with the study conducted pursuant to
32 section 11 of this amendatory and supplementary act; and

33 (5) To administer the investment tax fund, up to an amount not
34 to exceed 2% of the total moneys appropriated to the fund during
35 the fiscal year.

36 c. Each county, within two years of the effective date of this
37 amendatory and supplementary act, and prior to the disbursement
38 of any funds in its district investment tax fund, shall prepare a
39 plan which shall outline the proposed uses of moneys in the district
40 investment tax fund as well as establish a schedule for the disburse-
41 ment of the moneys. Each plan shall be adopted as an amendment to
42 the district solid waste management plan required pursuant to the
43 provisions of the "Solid Waste Management Act," P. L. 1970, c. 39
44 (C. 13:1E-1 et seq.). This plan may be amended, as necessary, in
45 accordance with the procedures provided therefor pursuant to the
46 "Solid Waste Management Act."

47 d. Each county shall, by October 31 of each year in which moneys
48 remain in its district investment tax fund, file an audit of the
49 district investment tax fund and any expenditures therefrom with
50 the Local Finance Board in the Division of Local Government
51 Services in the Department of Community Affairs. The audit shall
52 be conducted by an independent public accountant.

53 e. Upon approval by the department, two or more counties may
54 establish a joint investment tax fund to receive the investment tax
55 fund revenues collected pursuant to section 5 of this amendatory
56 and supplementary act.

1 16. (New section) If the department determines that a county has
 2 failed to fulfill its district solid waste management planning
 3 responsibilities pursuant to section 17 of this amendatory and
 4 supplementary act, the department may assume the administration
 5 of the district investment tax fund of that county and may use the
 6 moneys in the fund for the purposes authorized under subsection b.
 7 of section 15 of this amendatory and supplementary act for the
 8 benefit of that county.

1 17. (New section) The department may determine that a county
 2 has failed to fulfill its district solid waste management planning
 3 responsibilities, which may include failure to implement the State
 4 Recycling Plan goals, as required by sections 11 and 12 of P. L. 1975,
 5 c. 326 (C. 13:1E-20 and 13:1E-21) and by subsection c. of section 15
 6 of this amendatory and supplementary act. A determination by the
 7 department that the county has failed to fulfill its planning
 8 responsibilities may be based upon a finding that the county has
 9 not made a good faith effort toward identifying sufficient available
 10 suitable sites for solid waste facilities within the county, or
 11 negotiating interdistrict agreements, to provide for the disposal
 12 needs of the county.

1 18. (New section) The provisions of any other law, rule or
 2 regulation to the contrary notwithstanding, and as an alternative to
 3 any other procedure provided for by law or by order of the Board of
 4 Public Utilities, a contracting unit may enter into a contract with a
 5 vendor for the design, financing, construction, operation or mainte-
 6 nance, or any combination thereof, of a resource recovery facility,
 7 or for the provision of resource recovery services, pursuant to the
 8 provisions of this amendatory and supplementary act. Any con-
 9 tracting unit intending to enter into a contract with a vendor
 10 pursuant to the provisions of this amendatory and supplementary
 11 act shall establish a contract file, which shall be open to members
 12 of the public for inspection at the offices of the contracting unit.
 13 Any contract entered into pursuant to the provisions of this amenda-
 14 tory and supplementary act may be awarded for a period not to
 15 exceed 40 years.

1 19. (New section) a. A contracting unit which intends to enter
 2 into a contract with a vendor pursuant to the provisions of this
 3 amendatory and supplementary act shall issue a request for
 4 qualifications of interested vendors. The request for qualifications
 5 shall include a general description of the resource recovery services
 6 required by the contracting unit, the minimum acceptable qualifica-
 7 tions to be possessed by a vendor proposing to enter into a contract
 8 for the provision of these services, and the date by which vendors

9 *must submit their qualifications. In addition to all other factors*
10 *bearing on qualifications, the contracting unit shall consider the*
11 *reputation and experience of the vendor, and may consider informa-*
12 *tion which might result in debarment or suspension of a vendor*
13 *from State contracting, and may disqualify a vendor if the vendor*
14 *has been debarred or suspended by any State agency. The request*
15 *for qualifications shall be published in at least one appropriate*
16 *professional or trade journal, and in at least one newspaper of*
17 *general circulation in the jurisdiction which would be served under*
18 *the terms of the proposed contract.*

19 *b. After reviewing the qualifications submitted by vendors pur-*
20 *suant to subsection a. of this section, the contracting unit shall*
21 *establish a list of qualified vendors, which shall include the criteria*
22 *applied by the contracting unit in selecting the qualified vendors,*
23 *and shall publish the list in the same publications in which the*
24 *request for qualifications were published pursuant to subsection a.*
25 *of this section. Any vendor designated by a contracting unit as a*
26 *qualified vendor shall be a person or party financially, technically*
27 *and administratively capable of undertaking the design, financing,*
28 *construction, operation, or maintenance, or any combination thereof,*
29 *of a resource recovery facility, or for providing resource recovery*
30 *services.*

1 *20. (New section) Upon the selection of qualified vendors pur-*
2 *suant to the provisions of section 19 of this amendatory and*
3 *supplementary act, the contracting unit shall issue a request for*
4 *proposals to the qualified vendors, which shall include a detailed*
5 *description of the resource recovery facility and services required,*
6 *the format and procedure to be followed in submitting proposals,*
7 *the specific information which qualified vendors must provide in the*
8 *proposal, a statement setting forth the relative importance of*
9 *factors, including cost, which the contracting unit will consider in*
10 *evaluating a proposal submitted by a qualified vendor, and any*
11 *other information which the contracting unit deems appropriate.*
12 *The request for proposals shall include the date and time of day*
13 *by which, and the place at which, the proposals shall be submitted*
14 *to the contracting unit. The contracting unit may extend the*
15 *deadline for submission of proposals, but this extension shall apply*
16 *to all qualified vendors, who shall be provided with simultaneous*
17 *written notification of this extension.*

1 *21. (New section) A contracting unit shall review proposals*
2 *submitted by vendors pursuant to section 20 of this amendatory*
3 *and supplementary act in such a manner as to avoid disclosure of*
4 *the contents of any proposal to vendors submitting competing*

5 proposals. If provided for in the request for proposals, the
6 contracting unit may conduct discussions with qualified vendors
7 who have submitted proposals for the purpose of clarifying any
8 information submitted in the proposal, or assuring that the vendor
9 fully understood and responded to the requirements set forth in the
10 request for proposals. If, as a result of these discussions, the
11 contracting unit decides to revise the request for proposals, it shall
12 immediately notify in writing each qualified vendor which has
13 submitted a proposal of any such revision or revisions to the request
14 for proposals. In the event of any revision in the request for
15 proposals, a qualified vendor shall be permitted to submit revisions
16 to its proposal prior to contract negotiations. In conducting
17 discussions with qualified vendors, a contracting unit shall not
18 disclose information derived from proposals submitted by com-
19 peting qualified vendors.

1 22. (New section) Upon a review of the proposals submitted by
2 qualified vendors pursuant to section 21 of this amendatory and
3 supplementary act, a contracting unit shall designate one or more
4 qualified vendors whose proposal or proposals the contracting unit
5 finds in writing to be the most advantageous to the public, taking
6 into consideration price and the evaluation factors set forth in the
7 request for proposals. Upon making this designation, the contract-
8 ing unit may begin negotiations with the qualified vendor or
9 vendors, and may negotiate a proposed contract with a qualified
10 vendor or vendors, which shall include the accepted proposal.

1 23. (New section) a. A contracting unit shall submit any proposed
2 contract negotiated with a qualified vendor pursuant to the provi-
3 sions of this act to the Division of Rate Counsel for review, and to
4 the department, the Board of Public Utilities, and the Division of
5 Local Government Services for review and approval pursuant to
6 the provisions of section 24 through section 28 of this amendatory
7 and supplementary act.

1 24. (New section) Any contracting unit intending to submit a
2 proposed contract to the department, the Board of Public Utilities,
3 and the Division of Local Government Services for review and
4 approval pursuant to the provisions of this amendatory and supple-
5 mentary act shall notify the department, the Board of Public
6 Utilities, the Division of Local Government Services, and the
7 Division of Rate Counsel of its intention to submit its proposed
8 contract for review and approval at least 10 days prior to the
9 submission.

1 25. (New section) The department, the Board of Public Utilities,
2 the Division of Local Government Services, and the Division of

3 *Rate Counsel, shall have 15 days from the date of receipt of a*
4 *proposed contract submitted by a contracting unit for review and*
5 *approval pursuant to the provisions of this amendatory and supple-*
6 *mentary act to request the contracting unit to supply additional*
7 *information or documentation concerning the proposed contract.*
8 *The contracting unit shall provide written responses to these*
9 *requests within 10 days of receipt of the request. Any supplemental*
10 *requests for information shall be made within five days of receipt*
11 *of the written responses to the initial requests. The contracting*
12 *unit shall provide written responses to any supplemental requests*
13 *within 10 days of receipt of the supplemental requests. The schedule*
14 *may be modified by the mutual consent of the contracting unit and*
15 *the department, the Division of Local Government Services, the*
16 *Board of Public Utilities, or the Division of Rate Counsel, as the*
17 *case may be.*

1 26. (New section) a. *A contracting unit shall hold a public hearing*
2 *on a proposed contract submitted to the department, the Board of*
3 *Public Utilities and the Division of Local Government Services for*
4 *review and approval pursuant to the provisions of this amendatory*
5 *and supplementary act no sooner than 30 days nor later than 45*
6 *days following submission of the proposed contract for review and*
7 *approval. This public hearing shall be held in the area to be served*
8 *under the terms of the proposed contract.*

9 b. *The contracting unit shall provide at least 20 days advance*
10 *written notice of a public hearing to be held on a proposed contract*
11 *pursuant to the provisions of this section to the department, the*
12 *Board of Public Utilities, the Division of Local Government Ser-*
13 *vices, the Division of Rate Counsel, the clerk of each municipality*
14 *within the area to be served under the terms of the proposed*
15 *contract, and to the county clerk of each county in whole or in part*
16 *within the area to be served under the terms of the proposed*
17 *contract.*

18 c. *A contracting unit shall provide advance notice to the public*
19 *of a public hearing to be held on a proposed contract pursuant to*
20 *the provisions of this section. This notice shall be published once*
21 *a week for two consecutive weeks in at least one newspaper of*
22 *general circulation in the area to be served under the terms of the*
23 *proposed contract. The second notice shall be published at least*
24 *10 days prior to the date of the public hearing. These notices shall*
25 *include the date, time and location of the public hearing, a general*
26 *description of the proposed contract, and shall inform the public*
27 *of the availability of copies of the proposed contract for inspection*
28 *by any interested party at the offices of the contracting unit. Upon*

29 request, the contracting unit shall provide any interested party
30 with a copy of the proposed contract at a cost not to exceed the
31 actual cost of reproducing the proposed contract and any support-
32 ing documentation.

1 27. (New section) a. At the public hearing on the proposed
2 contract held by the contracting unit pursuant to the provisions of
3 section 26 of this amendatory and supplementary act any interested
4 party may present statements or questions concerning the terms
5 and conditions of the proposed contract. Prior to the conclusion of
6 the public hearing, the contracting unit shall respond to questions
7 concerning the proposed contract raised by any interested party.
8 The contracting unit shall provide that a verbatim record be kept
9 of the public hearing. The record of the public hearing shall be
10 kept open for a period of 15 days following the conclusion of the
11 hearing, during which interested parties may submit written state-
12 ments to be included in the hearing record. The contracting unit
13 shall provide that a hearing report be printed, which shall include
14 the verbatim record of the public hearing, written statements
15 submitted by interested parties, and a statement prepared by the
16 contracting unit summarizing the major issues raised at the public
17 hearing and the contracting unit's specific response to these issues.
18 The contracting unit shall make copies of the transcript of the
19 hearing report available to interested parties upon request at a
20 cost not to exceed the actual cost of printing.

21 b. Within 45 days of the close of a public hearing on a proposed
22 contract held pursuant to this section, the contracting unit shall
23 submit a copy of the hearing report to the department, the Board
24 of Public Utilities, the Division of Local Government Services, and
25 the Division of Rate Counsel.

1 28. (New section) a. Within 30 days of receipt of the hearing
2 report submitted by a contracting unit pursuant to the provisions
3 of subsection b. of section 27 of this amendatory and supplementary
4 act, the department shall approve or conditionally approve the
5 proposed contract submitted for review by the contracting unit
6 pursuant to the provisions of this amendatory and supplementary
7 act. The department shall approve the proposed contract if it finds
8 that the terms of the proposed contract are consistent with the
9 district solid waste management plan adopted pursuant to the
10 provisions of the "Solid Waste Management Act," P. L. 1970, c. 39
11 (C. 13:1E-1 et seq.) by the solid waste district to be served under
12 the terms of the proposed contract. If the department conditionally
13 approves the proposed contract, it shall state in writing the
14 revisions which must be made to the proposed contract to receive

15 approval, and the contracting unit may prepare and submit to the
16 department a revised proposed contract. If the department deter-
17 mines that the revisions are substantial, the contracting unit shall
18 hold a public hearing on the revisions pursuant to the provisions of
19 section 26 and section 27 of this amendatory and supplementary act.
20 In the alternative, the district solid waste management plan may be
21 amended pursuant to law so as to be consistent with the terms of
22 the proposed contract.

23 b. Within 30 days of receipt of the hearing report submitted by
24 a contracting unit pursuant to the provisions of subsection b. of
25 section 27 of this amendatory and supplementary act, the Division
26 of Local Government Services shall approve or conditionally
27 approve the proposed contract submitted by the contracting unit
28 pursuant to the provisions of this amendatory and supplementary
29 act. The division shall approve the proposed contract if it finds in
30 writing that the terms of the proposed contract are in compliance
31 with the provisions of section 29 of this amendatory and supple-
32 mentary act, and that the terms of the proposed contract will
33 result in the provision of services or facilities necessary for the
34 health, safety, welfare, convenience or betterment of the recipients
35 or users of these services or facilities, that the terms and provisions
36 of the proposed contract are not unreasonable, exorbitant or
37 impracticable, would not impose an undue and unnecessary financial
38 burden on the citizens residing in or served by the contracting unit,
39 and will not materially impair the ability of the contracting unit to
40 punctually pay the principal and interest on its outstanding
41 indebtedness and to supply other essential public improvements
42 and services, except that the division, in its review of the proposed
43 contract, shall be bound by any applicable findings or determina-
44 tions of the Local Finance Board made pursuant to the provisions
45 of subsection d. of N. J. S. 40A:2-7 or section 7 of P. L. 1983, c. 313
46 (C. 40A:5A-7). If the division conditionally approves the proposed
47 contract, it shall state in writing the revisions which must be made
48 to the proposed contract to receive approval, and the contracting
49 unit may prepare and submit to the division a revised proposed
50 contract. If the division determines that revisions are substantial,
51 the contracting unit shall hold a public hearing on the revisions
52 pursuant to the provisions of section 26 and section 27 of this
53 amendatory and supplementary act.

54 c. Within 30 days of receipt of the hearing report submitted by
55 a contracting unit pursuant to the provisions of subsection b. of
56 section 27 of this amendatory and supplementntary act, the Board
57 of Public Utilities shall approve or conditionally approve the

58 *proposed contract submitted by the contracting unit pursuant to*
 59 *the provisions of this amendatory and supplementary act. The*
 60 *board shall approve the proposed contract if it finds in writing that*
 61 *the terms of the proposed contract are in the public interest. If the*
 62 *board conditionally approves the proposed contract it shall state in*
 63 *writing the revisions which must be made to the proposed contract*
 64 *to receive approval, and the contracting unit may prepare and*
 65 *submit to the board a revised proposed contract. If the board*
 66 *determines that the revisions are substantial, the contracting unit*
 67 *shall hold a public hearing on the revisions pursuant to the provi-*
 68 *sions of section 26 and section 27 of this amendatory and supple-*
 69 *mentary act. In reviewing and approving the contract, the Board*
 70 *of Public Utilities shall not determine a rate base for, or otherwise*
 71 *regulate the tariffs or return of, the proposed resource recovery*
 72 *facility. The board shall not, thereafter, conduct any further*
 73 *review of the contract.*

74 *d. Notwithstanding the provisions of subsection c. of this section,*
 75 *all parties to any contract may request the board to determine a*
 76 *rate base for the proposed resource recovery facility, in which case*
 77 *the board may make that determination and the terms of any*
 78 *contract so approved shall remain subject to the continuing juris-*
 79 *isdiction of the board.*

1 *29. (New section) Any contract to be awarded to a vendor pur-*
 2 *suant to the provisions of this amendatory and supplementary act*
 3 *or pursuant to the "Local Public Contracts Law," P. L. 1971, c. 198*
 4 *(C. 40A:11-1 et seq.) or any other contracting procedure permitted*
 5 *by law for resource recovery facilities, shall include where appli-*
 6 *cable, but not be limited to, provisions concerning:*

7 *a. Allocation of the risks of financing and constructing a resource*
 8 *recovery facility, such risks to include:*

- 9 (1) *Delays in project completion;*
- 10 (2) *Construction cost overruns and change orders;*
- 11 (3) *Changes necessitated by revisions in laws, rules or regu-*
 12 *lations;*
- 13 (4) *Failure to achieve the required operating performance;*
- 14 (5) *Loss of tax benefits; and*
- 15 (6) *The need for additional equity contributions.*

16 *b. Allocation of the risks of operating and maintaining a resource*
 17 *recovery facility, such risks to include:*

- 18 (1) *Excess downtime or technical failure;*
- 19 (2) *Excess labor or materials costs due to underestimation;*
- 20 (3) *Changes in operating procedure necessitated by revi-*
 21 *sions in laws, rules or regulations;*

22 (4) *Changes in the amount or composition of the solid waste*
23 *delivered for disposal;*

24 (5) *Excess operation or maintenance costs due to poor*
25 *management;*

26 (6) *Increased costs of disposal of the resource recovery*
27 *facility residue;*

28 (7) *The increased costs associated with the disposal of solid*
29 *waste delivered to a resource recovery facility which cannot be*
30 *processed at the facility; and*

31 (8) *The costs of disposal of recovered material which cannot*
32 *be sold.*

33 c. *Allocation of the risks associated with circumstances beyond*
34 *the control of any party to the contract;*

35 d. *Allocation of the revenues from the sale of energy or other*
36 *recovered metals and other materials for reuse;*

37 e. *Default and termination of the contract;*

38 f. *The periodic preparation by the vendor of an operating per-*
39 *formance report and an audited balance statement of the facility*
40 *which shall be submitted to the contracting unit, the department*
41 *and the Division of Local Government Services in the Department*
42 *of Community Affairs;*

43 g. *The intervals at which the contract shall be renegotiated;*

44 h. *Employment of current employees of the contracting unit*
45 *whose positions will be affected by the terms of the contract;*

46 i. *Competitive bidding procedures, or other methods of cost con-*
47 *trol, to be utilized by the vendor in obtaining any goods or services*
48 *the cost of which will automatically be included, pursuant to the*
49 *terms of the contract, in the rates to be charged at the resource*
50 *recovery facility; and*

51 j. *The formulas to be used to determine the charges, rates, or*
52 *fees to be charged for the resource recovery services, and the*
53 *methodology or methodologies used to develop these formulas.*

1 30. (New section) *Whenever the Division of Rate Counsel repre-*
2 *sents the public interest in a proceeding held pursuant to the pro-*
3 *visions of this amendatory and supplementary act to consider a*
4 *proposed contract, the Director of the Division of Rate Counsel may*
5 *assess the vendor pursuant to the provisions of this section. When-*
6 *ever a contracting unit shall first submit a proposed contract to the*
7 *department, the Board of Public Utilities, and the Division of Local*
8 *Government Services for review and approval pursuant to the pro-*
9 *visions of this amendatory and supplementary act, the vendor shall*
10 *be assessed an amount equal to one-tenth of 1% of the estimated*
11 *gross revenues of the facility in the first year of its operation.*

12 *Thereafter, the vendor shall be assessed in the manner provided*
 13 *for in section 20 of P. L. 1974, c. 27 (C. 52:27E-19).*

1 *31. (New section) a. Any contracting unit which has issued a re-*
 2 *quest for qualifications, a request for proposals, or both, as the case*
 3 *may be, or has initiated formal negotiations with a qualified vendor*
 4 *or two or more qualified vendors, within 30 days after the effective*
 5 *date of this amendatory and supplementary act, may petition the*
 6 *department for an exemption from the provisions of section 19,*
 7 *section 20, and section 21 of this amendatory and supplementary*
 8 *act. Upon receiving an exemption authorized pursuant to this sub-*
 9 *section, a contracting unit may negotiate a proposed contract with*
 10 *a vendor pursuant to the provisions of section 22 of this amenda-*
 11 *tory and supplementary act, and shall submit the proposed contract*
 12 *for review and approval pursuant to the provisions of section 23*
 13 *through section 28 of this amendatory and supplementary act.*

14 *b. Any contracting unit which has negotiated a contract for re-*
 15 *source recovery facilities or services with a vendor prior to the*
 16 *effective date of this amendatory and supplementary act, and has*
 17 *held a public hearing on the contract, may petition the department*
 18 *for an exemption from the provisions of sections 19 through sec-*
 19 *tion 27 of this amendatory and supplementary act. Upon receiving*
 20 *an exemption authorized pursuant to this subsection, the contract-*
 21 *ing unit shall submit the contract to the department, the Division*
 22 *of Local Government Services, and the Board of Public Utilities*
 23 *for the review and approvals required pursuant to section 28 of*
 24 *this amendatory and supplementary act. The provisions of section*
 25 *28 of this amendatory and supplementary act to the contrary not-*
 26 *withstanding, the department, the Division of Local Government*
 27 *Services, and the Board of Public Utilities shall approve or condi-*
 28 *tionally approve a contract submitted for review pursuant to the*
 29 *provisions of this subsection within 60 days of the receipt of the*
 30 *contract. If the department, the Division of Local Government*
 31 *Services, or the Board of Public Utilities, conditionally approves*
 32 *the proposed contract, the department, the Division of Local Gov-*
 33 *ernment Services, or the Board of Public Utilities, as the case may*
 34 *be, shall state in writing the revisions which must be made to the*
 35 *proposed contract to receive approval, and the contracting unit*
 36 *may prepare and submit a revised proposed contract. If the depart-*
 37 *ment, the Division of Local Government Service, or the Board of*
 38 *Public Utilities, as the case may be, determines that the necessary*
 39 *revisions are substantial, the contracting unit shall hold a public*
 40 *hearing on the revisions.*

1 *32. (New section) Notwithstanding the provisions of any other*

2 law, rule or regulation to the contrary, a contracting unit, or State
3 board, commission, committee, authority or agency may lease or
4 sell the site for a resource recovery facility to a qualified vendor
5 which has been awarded a contract pursuant to the provisions of
6 this amendatory and supplementary act or pursuant to the "Local
7 Public Contracts Law," P. L. 1971, c. 198 (C. 40A:11-1 et seq.) or
8 any other contracting procedure permitted by law for resource re-
9 covery facilities.

1 33. (New section) a. (1) The department may adopt, pursuant
2 to the provisions of the "Administrative Procedure Act," P. L.
3 1968, c. 410 (C. 52:14B-1 et seq.), any rules and regulations neces-
4 sary to implement the provisions of this amendatory and supple-
5 mentary act.

6 (2) The department shall adopt rules and regulations for the
7 engineering design of resource recovery facilities, to include a re-
8 quirement that state-of-the-art air emission technology be installed
9 to control the emission of hydrocarbons, particulates, dioxins, ni-
10 trogen oxides, carbon monoxide, heavy metals, hydrochloric acid,
11 sulfur oxides and other acid gases and pollutants from each re-
12 source recovery facility which is expected to emit these pollutants.

13 b. The Board of Public Utilities may adopt, pursuant to the pro-
14 visions of the "Administrative Procedure Act," P. L. 1968, c. 410
15 (C. 52:14B-1 et seq.), any rules and regulations necessary to im-
16 plement the provisions of this amendatory and supplementary act.

17 c. The Division of Local Government Services may adopt, pur-
18 suant to the provisions of the "Administrative Procedure Act,"
19 P. L. 1968, c. 410 (C. 52:14B-1 et seq.), any rules and regulations
20 necessary to implement the provisions of this amendatory and sup-
21 plementary act.

1 34. (New section) Any additional expenditures made by a mu-
2 nicipality or county in complying with an order issued by the de-
3 partment pursuant to the provisions of the "Solid Waste Manage-
4 ment Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.) and the Board of
5 Public Utilities pursuant to the "Solid Waste Utility Control Act
6 of 1970," P. L. 1970, c. 40 (C. 48:13A-1 et seq.), to transport solid
7 waste to a resource recovery facility, or any expenditures necessary
8 to reflect adjustment in rates, fees or other charges made in con-
9 nection with the taxes imposed pursuant to section 3 of this amen-
10 datory and supplementary act, or the provisions of a contract
11 entered into pursuant to the provisions of this amendatory and
12 supplementary act, shall, for the purposes of P. L. 1976, c. 68 (C.
13 40A:4-45.1 et seq.), be considered an expenditure mandated by
14 State law.

1 35. Section 11 of P. L. 1975, c. 326 (C. 13:1E-20) is amended to
2 read as follows:

3 11. a. (1) Within 360 days after the effective date of this amen-
4 datory and supplementary act, the respective boards of chosen
5 freeholders, in the case of counties, and the Hackensack Com-
6 mission, in the case of the Hackensack Meadowlands District,
7 shall develop and formulate, pursuant to the procedures herein
8 contained, a solid waste management plan for each respective solid
9 waste management district; provided, however, that the commis-
10 sioner may extend such period for a maximum of 45 additional
11 days upon the certification of the board of chosen freeholders or
12 the Hackensack Commission, as the case may be, of the causes of
13 the delay in developing and formulating a plan, and upon the
14 commissioner's determination that an extension will permit the
15 development and formulation of a solid waste management plan
16 as required herein. Within 90 days of the effective date of this
17 act, each district shall make the necessary personnel, financial and
18 legal arrangements to assure the development and formulation
19 of the plan within 360 days of the effective date of this act. Every
20 solid waste management plan shall be developed and formulated
21 to be in force and effect for a period of *not less than* 10 years, upon
22 the expiration of which a new plan shall be developed and formu-
23 lated pursuant to the procedures herein contained; provided, how-
24 ever, that every such plan shall contain provisions for automatic
25 review thereof not less than once every two years following the ap-
26 proval thereof by the department, which review shall be under-
27 taken by the board of chosen freeholders or the Hackensack Com-
28 mission, as the case may be; and, provided further, however, that
29 every such plan may be reviewed at any time by the department.
30 Upon such review, if the board of chosen freeholders, the Hacken-
31 sack Commission, or the department, as the case may be, determines
32 that any solid waste management plan, or any part thereof, is
33 inadequate for the purposes for which it was intended, such board
34 of chosen freeholders or the Hackensack Commission, as the case
35 may be, shall develop and formulate a new solid waste management
36 plan, or any part thereof, and such new plan, or part thereof, shall
37 be adopted thereby pursuant to the procedures contained in section
38 14 of [this amendatory and supplementary act.] *P. L. 1975, c. 326*
39 (*C. 13:1E-23*).

40 Nothing herein contained shall be construed as to prevent any
41 board of chosen freeholders or the Hackensack Commission from
42 readopting a solid waste management plan upon the expiration of
43 same in a solid waste management district; provided, however,

44 that any such readoption shall be pursuant to the provisions of
45 section 14 of [this amendatory and supplementary act.] P. L. 1975,
46 c. 326 (C. 13:1E-23).

47 (2) Any two or more districts may formulate and adopt a single
48 solid waste management plan which shall meet all the requirements
49 of this act for the combined area of the cooperating solid waste
50 management districts.

51 b. (1) To assist each board of chosen freeholders in the develop-
52 ment and formulation of the solid waste management plans re-
53 quired herein, an advisory solid waste council shall be constituted
54 in every county and shall include municipal mayors or their
55 designees, persons engaged in the collection or disposal of solid
56 waste and environmentalists. The respective size, composition and
57 membership of each such council shall be designated by the respec-
58 tive boards of chosen freeholders. In the Hackensack Meadowlands
59 District, the Hackensack meadowlands municipal committee, estab-
60 lished pursuant to article 4 of P. L. 1968, c. 404 (C. 13:17-7 and
61 13:17-8), is hereby designated an advisory solid waste council
62 for the purposes of this amendatory and supplementary act;
63 provided, however, that nothing herein contained shall be construed
64 as in any way altering the powers, duties and responsibilities of the
65 Hackensack meadowlands municipal committee except as herein
66 specifically provided. The respective boards of chosen freeholders
67 and the Hackensack Commission shall consult with the relevant
68 advisory solid waste council at such stages in the development and
69 formulation of the solid waste management plan as each such board
70 of chosen freeholders or the Hackensack Commission, as the case
71 may be, shall determine; provided, however, that a solid waste
72 management plan shall be adopted as hereinafter provided only
73 after consultation with the relevant advisory solid waste council.

74 (2) In the development and formulation of a solid waste man-
75 agement plan for any solid waste management district, the board
76 of chosen freeholders or the Hackensack Commission, as the case
77 may be, shall:

78 (a) Consult with the county or municipal government agencies
79 concerned with, or responsible for, water pollution control, water
80 policy, water supply, or zoning or land use within the solid waste
81 management district;

82 (b) Review such plans for solid waste collection and disposal
83 proposed by, or in force in, any municipality or municipalities
84 within the solid waste management district, to determine the suit-
85 ability of any such plan, or any part thereof, for inclusion within
86 the solid waste management plan of the solid waste management
87 district; and

88 (c) Consult with persons engaged in solid waste collection and
89 disposal in the solid waste management district.

1 36. Section 6 of P. L. 1970, c. 40 (C. 48:13A-5) is amended to
2 read as follows:

3 6. *a.* The Board of Public **[Utility Commissioners]** *Utilities*
4 shall, **[after hearing,]** by order in writing, when it finds that the
5 public interest requires, **[designate any municipality as a franchise**
6 **area to be served by one or more persons engaged in solid waste**
7 **collection and any solid waste management district as]** *award* a
8 franchise **[area]** to **[be served by one]** *any person* or **[more]**
9 persons engaged in solid waste disposal at rates and charges pub-
10 lished in tariffs or contracts accepted *or to be accepted* for filing
11 by the board; provided, however, that the proposed franchise **[area**
12 **for solid waste collection or]** for solid waste disposal conforms to
13 the solid waste management plan of the solid waste management
14 district *or districts* in which such **[franchise area]** *service* is to be
15 located, as such plan shall have been approved by the Department
16 of Environmental Protection.

17 *b. Franchises awarded pursuant to this section shall be of suffi-*
18 *cient area and duration to support the estimated technical and eco-*
19 *nomical needs of the disposal facility which is to serve the district*
20 *or districts.*

21 *c. For the purposes of this section, "franchise" shall mean the*
22 *exclusive right to control and provide for the disposal of solid*
23 *waste, except for recyclable material whenever markets for those*
24 *materials are available, within a district or districts as awarded by*
25 *the Board of Public Utilities.*

26 **[The board shall encourage the consolidation of all accounts, cus-**
27 **tomers, routes and facilities by persons engaged in solid waste**
28 **collection or solid waste disposal within such franchise areas.]**

29 *d.* Nothing in section 11 of this act (C. 48:13A-10) shall be inter-
30 preted to prevent the implementation of this section by the Board
31 of Public **[Utility Commissioners]** *Utilities.*

1 37. Section 15 of P. L. 1971, c. 198 (C. 40A:11-15) is amended
2 to read as follows:

3 15. Duration of certain contracts. All purchases, contracts or
4 agreements for the performing of work or the furnishing of ma-
5 terials, supplies or services shall be made for a period not to ex-
6 ceed 12 consecutive months, except that contracts or agreements
7 may be entered into for longer periods of time as follows:

8 (1) Supplying of

9 (a) Fuel for heating purposes, for any term not exceeding
10 in the aggregate, two years;

11 (b) Fuel or oil for use of airplanes, automobiles, motor
12 vehicles or equipment for any term not exceeding in the aggregate,
13 two years;

14 (c) Thermal energy produced by a cogeneration facility, for
15 use for heating or air conditioning or both, for any term not
16 exceeding ~~20~~ 40 years, when the contract is approved by the
17 Board of Public Utilities. For the purposes of this paragraph,
18 "cogeneration" means the simultaneous production in one
19 facility of electric power and other forms of useful energy
20 such as heating or process steam;

21 (2) (Deleted by amendment, P. L. 1977, c. 53.)

22 (3) The collection and disposal of garbage and refuse, for any
23 term not exceeding in the aggregate, five years;

24 (4) The recycling of solid waste, for any term not exceeding 25
25 years, when such contract is in conformance with a solid waste
26 management plan approved pursuant to P. L. 1970, c. 39
27 (C. 13:1E-1 et seq.), and with the approval of the Division of
28 Local Government Services and the Department of Environmental
29 Protection;

30 (5) Data processing service, for any term of not more than three
31 years;

32 (6) Insurance, for any term of not more than three years;

33 (7) Leasing and servicing of automobiles, motor vehicles, ma-
34 chinery and equipment of every nature and kind, for a period not
35 to exceed three years; provided, however, such contracts shall be
36 entered into only subject to and in accordance with the rules and
37 regulations promulgated by the Director of the Division of Local
38 Government Services of the Department of Community Affairs;

39 (8) The supplying of any product or the rendering of any ser-
40 vice by a telephone company which is subject to the jurisdiction of
41 the Board of Public Utilities for a term not exceeding five years;

42 (9) Any single project for the construction, reconstruction or
43 rehabilitation of any public building, structure or facility, or any
44 public works project, including the retention of the services of
45 any architect or engineer in connection therewith, for the length
46 of time authorized and necessary for the completion of the actual
47 construction;

48 (10) The providing of food services for any term not exceeding
49 three years;

50 (11) On-site inspections undertaken by private agencies pur-
51 suant to the "State Uniform Construction Code Act" (P. L. 1975,
52 c. 217; C. 52:27D-119 et seq.) for any term of not more than three
53 years;

54 (12) The performance of work or services or the furnishing of
55 materials or supplies for the purpose of conserving energy in build-
56 ings owned by, or operations conducted by, the contracting unit,
57 the entire price of which to be established as a percentage of the
58 resultant savings in energy costs, for a term not to exceed 10 years;
59 provided, however, that such contracts shall be entered into only
60 subject to and in accordance with rules and regulations promulgated
61 by the Department of Energy establishing a methodology for com-
62 puting energy cost savings;

63 (13) The performance of work or services or the furnishing of
64 materials or supplies for the purpose of elevator maintenance for
65 any term not exceeding three years;

66 (14) Leasing or servicing of electronic communications equip-
67 ment for a period not to exceed five years; provided, however, such
68 contract shall be entered into only subject to and in accordance
69 with the rules and regulations promulgated by the Director of the
70 Division of Local Government Services of the Department of Com-
71 munity Affairs;

72 (15) Leasing of motor vehicles, machinery and other equipment
73 primarily used to fight fires, for a term not to exceed seven years,
74 when the contract includes an option to purchase, subject to and in
75 accordance with rules and regulations promulgated by the Director
76 of the Division of Local Government Services of the Department of
77 Community Affairs[.];

78 (16) *The provision of solid waste disposal services by a resource*
79 *recovery facility, the furnishing of products of a resource recovery*
80 *facility, the disposal of the solid waste delivered for disposal which*
81 *cannot be processed by a resource recovery facility or the waste*
82 *products resulting from the operation of a resource recovery fa-*
83 *cility, including hazardous waste and recovered metals and other*
84 *materials for reuse, or the design, financing, construction, opera-*
85 *tion or maintenance of a resource recovery facility for a period not*
86 *to exceed 40 years when the contract is approved by the Division*
87 *of Local Government Services in the Department of Community*
88 *Affairs, the Board of Public Utilities, and the Department of En-*
89 *vironmental Protection; and when the facility is in conformance*
90 *with a solid waste management plan approved pursuant to P. L.*
91 *1970, c. 39 (C. 13:1E-1 et seq.). For the purposes of this subsec-*
92 *tion, "resource recovery facility" means a solid waste facility con-*
93 *structed and operated for the incineration of solid waste for energy*
94 *production and the recovery of metals and other materials for re-*
95 *use; or a mechanized composting facility, or any other solid waste*
96 *facility constructed or operated for the collection, separation, re-*

97 *cycling, and recovery of metals, glass, paper, and other materials*
 98 *for reuse or for energy production;*

99 *(17) The sale of electricity or thermal energy, or both, produced*
 100 *by a resource recovery facility for a period not to exceed 40 years*
 101 *when the contract is approved by the Board of Public Utilities; and*
 102 *when the facility is in conformance with a solid waste management*
 103 *plan approved pursuant to P. L. 1970, c. 39 (C. 13:1E-1 et seq.).*
 104 *For the purposes of this subsection, "resource recovery facility"*
 105 *means a solid waste facility constructed and operated for the in-*
 106 *cineration of solid waste for energy production and the recovery of*
 107 *metals and other materials for reuse; or a mechanized composting*
 108 *facility, or any other solid waste facility constructed or operated*
 109 *for the collection, separation, recycling, and recovery of metals,*
 110 *glass, paper, and other materials for reuse or for energy production.*

111 All multi-year leases and contracts entered into pursuant to this
 112 section 15, except contracts for the leasing or servicing of equip-
 113 ment supplied by a telephone company which is subject to the
 114 jurisdiction of the Board of Public Utilities, contracts for thermal
 115 energy authorized pursuant to subsection (1) above, construction
 116 contracts authorized pursuant to subsection (9) above, or contracts
 117 and agreements for the provision of work or the supplying of
 118 equipment to promote energy conservation authorized pursuant to
 119 subsection (12) above, *contracts for resource recovery services or*
 120 *a resource recovery facility authorized pursuant to subsection (16)*
 121 *above, or contracts for the sale of energy produced by a resource*
 122 *recovery facility authorized pursuant to subsection (17) above,*
 123 shall contain a clause making them subject to the availability and
 124 appropriation annually of sufficient funds as may be required to
 125 meet the extended obligation, or contain an annual cancellation
 126 clause.

127 The Division of Local Government Services shall adopt and
 128 promulgate rules and regulations concerning the methods of ac-
 129 counting for all contracts that do not coincide with the fiscal year.

1 38. Section 19 of P. L. 1975, c. 326 (C. 13:1E-28) is amended to
 2 read as follows:

3 19. [Subject to such terms as agreed upon by a board of chosen
 4 freeholders or the Hackensack Commission, as the case may be, any
 5 municipality within which any solid waste facility is located pur-
 6 suant to an adopted and approved solid waste management plan,
 7 shall be entitled to any or all of the following benefits in considera-
 8 tion for the use of land within its municipal boundaries as the
 9 location of such solid waste facility:

10 a. The receipt of annual sums of money in lieu of taxes on such

11 property in such amount as may be agreed upon between the board
12 of chosen freeholders or the Hackensack Commission, as the case
13 may be, and the municipality, and each such board of chosen free-
14 holders and the Hackensack Commission is empowered to make
15 such payments and each such municipality is empowered to accept
16 such payments and to apply them in the manner in which taxes may
17 be applied in such municipality; provided, however, that no such
18 annual payment with respect to any parcel of such property shall
19 exceed the amount of taxes paid thereon for the taxable year im-
20 mediately prior to the time of its use as the location of such solid
21 waste facility;

22 b. Preferential rates charged for the services provided by the
23 solid waste management district for any solid waste disposed of at
24 a solid waste facility within said municipality, which rate dis-
25 counts shall be subject to the approval of the Board of Public
26 Utility Commissioners and shall not be in excess of 25%;

27 c. The right to reacquire any real or personal property used by
28 the solid waste management district in connection with the opera-
29 tion of any solid waste facility upon the termination of the uses for
30 which such property was originally acquired, unless prior to such
31 expiration or termination the board of chosen freeholders or the
32 Hackensack Commission, as the case may be, entered into a new
33 agreement for the continued use of such property.

34 Any real property reacquired by a municipality in accordance
35 with paragraph c. of this section, shall be repaired and, as nearly as
36 practicable, restored to its original condition, including, in the case
37 of a sanitary landfill, adequate landscaping of the final earth cover-
38 ing to conform with the immediately surrounding terrain, by and
39 at the expense of the board of chosen freeholders or the Hackensack
40 Commission, as the case may be, or adequate compensation made
41 therefor by said board of chosen freeholders or the Hackensack
42 Commission, as the case may be.

43 In the event that any municipality and any board of chosen free-
44 holders or the Hackensack Commission, as the case may be, fail to
45 reach an agreement on the benefits authorized herein in considera-
46 tion for the use of land within municipal boundaries as the location
47 of a solid waste facility, the commissioner, after consultation with
48 the relevant board of chosen freeholders or the Hackensack Com-
49 mission, as the case may be, with the mayor of the relevant munic-
50 ipality, and with the relevant advisory municipal council, shall fix
51 such terms and established such benefits as he shall deem appro-
52 priate.】

53 a. *Any municipality within which a sanitary landfill facility is*

54 *located pursuant to an adopted and approved district solid waste*
 55 *management plan shall be entitled to an annual economic benefit*
 56 *not less than the equivalent of \$1.00 per ton of solids on all solid*
 57 *waste accepted for disposal at the sanitary landfill facility during*
 58 *the previous calendar year as determined by the department.*

59 *The owner or operator of the sanitary landfill facility shall an-*
 60 *nually pay to the relevant municipality the full amount due under*
 61 *this subsection and each relevant municipality is empowered to*
 62 *anticipate this amount for the purposes of preparing its annual*
 63 *budget. For the purposes of calculating the payments, the owner*
 64 *or operator of the sanitary landfill facility may, subject to the prior*
 65 *agreement of the relevant municipality and the approval of the*
 66 *Board of Public Utilities, provide the municipality with any of the*
 67 *following benefits in consideration for the use of land within its*
 68 *municipal boundaries as the location of a sanitary landfill facility:*

69 *(1) The receipt of annual sums of money in lieu of taxes on the*
 70 *land used for the sanitary landfill facility;*

71 *(2) The exemption from all fees and charges for the disposal of*
 72 *solid waste generated within its boundaries;*

73 *(3) The receipt of a lump sum cash payment; or*

74 *(4) Any combination thereof.*

75 *b. Every owner or operator of a sanitary landfill facility re-*
 76 *quired to make annual payments to a municipality pursuant to sub-*
 77 *section a. of this section may petition the Board of Public Utilities*
 78 *for an increase in its tariff which reflects these payments. The*
 79 *board, within 60 days of the receipt of the petition, shall issue an*
 80 *appropriate order that these payments shall be passed along to the*
 81 *users of the sanitary landfill facility as an automatic surcharge on*
 82 *any tariff filed with, and recorded by, the board for the solid waste*
 83 *disposal operations of the facility.*

84 *c. The board, within 60 days of the computation of any increase*
 85 *in a solid waste disposal tariff pursuant to subsection b. of this sec-*
 86 *tion, shall issue an appropriate order increasing current tariffs*
 87 *established pursuant to law for solid waste collection by an amount*
 88 *equal to the total amount of the increase in the relevant solid waste*
 89 *disposal tariff calculated pursuant to subsection b. of this section.*

90 *d. In issuing any order required by this section, the Board of*
 91 *Public Utilities shall be exempt from the provisions of R. S. 48:2-21.*

1 *39. (New section) Any monies due a municipality pursuant to*
 2 *the provisions of section 19 of P. L. 1975, c. 326 (C. 13:1E-28) may*
 3 *be anticipated by the municipality for the purposes of preparing*
 4 *its annual budget. The receipt and expenditure by a municipality*
 5 *of these monies shall be exempt from the limitations on municipal*

6 expenditures imposed pursuant to P. L. 1976, c. 68 (C. 40A:4-45.1
7 et seq.).

1 40. (New section) The person holding the franchise for a re-
2 source recovery facility pursuant to the provisions of section 6 of
3 P. L. 1970, c. 40 (C. 48:13A-5) shall, on or before January 25 of
4 each year, file with the chief fiscal officer of the municipality wherein
5 the resource recovery facility is located a statement, verified by
6 oath, showing the total number of tons of solid waste accepted for
7 disposal at the resource recovery facility during the preceding
8 calendar year, and shall at the time pay to the chief fiscal officer
9 a sum equal to at least \$1.00 per ton of all solid waste accepted for
10 disposal at the resource recovery facility. A municipality may
11 negotiate with the person holding the franchise for a resource re-
12 covery facility or the contracting unit, or both as the case may be,
13 for an amount exceeding the amount provided for in this section.

1 41. (New section) Any monies due a municipality pursuant to
2 the provisions of section 40 of this amendatory and supplementary
3 act may be anticipated by the municipality for the purposes of
4 preparing its annual budget. The receipt and expenditure by a
5 municipality of these monies shall be exempt from the limitations
6 on municipal expenditures imposed pursuant to P. L. 1976, c. 68
7 (C. 40A:4-45.1 et seq.).

1 42. This act shall take effect immediately except for section 3
2 which shall take effect the first day of the third month following
3 enactment.**

91 section 15, except contracts for the leasing or servicing of equip-
 92 ment supplied by a telephone company which is subject to the
 93 jurisdiction of the Board of Public Utilities [or], contracts for
 94 thermal energy authorized pursuant to subsection (1) above, con-
 95 struction contracts authorized pursuant to subsection (9) above, or
 96 contracts and agreements for the [provisions] provision of work or
 97 the supplying of equipment to promote energy conservation au-
 98 thorized pursuant to subsection (12) above, or contracts for re-
 99 source recovery services or a resource recovery facility authorized
 100 pursuant to subsection (16) above shall contain a clause making
 101 them subject to the availability and appropriation annually of
 102 sufficient funds as may be required to meet the extended obligation,
 103 or contain an annual cancellation clause.

104 The Division of Local Government Services shall adopt and
 105 promulgate rules and regulations concerning the methods of ac-
 106 counting for all contracts that do not coincide with the fiscal year.

1 37. This act shall take effect immediately except for section 3
 2 which shall take effect the first day of the third month following
 3 enactment.

SPONSOR'S
STATEMENT

The State's capacity to dispose of its non-hazardous solid waste through landfilling is rapidly diminishing. As required under the "Solid Waste Management Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.), each solid waste management district has prepared a plan for solid waste management. Most of the plans developed provide for the establishment of resource recovery facilities to replace the sanitary landfills currently in use. Resource recovery facilities provide an environmentally acceptable means of solid waste disposal and also will convert waste to energy and thereby be more economically efficient than landfilling.

The construction and initial operation of resource recovery facilities are highly capital intensive and, therefore, the owners or operators of the facilities may need to charge disposal fees which, at least initially, will be substantially higher than landfill disposal fees. In order to encourage and facilitate the provision of resource recovery services, it is necessary to reduce the initially high cost of these disposal services so that the fees are more competitive with landfill disposal fees.

This bill provides for a resource recovery investment tax on solid waste disposal at sanitary landfills to be placed in a resource recovery investment fund in each solid waste district for later use in

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subsidizing the transition to resource recovery. The tax will be levied on all solid waste generated within each district at an initial rate of \$0.28 per cubic yard of waste. Thereafter, the tax will be automatically increased by \$0.28 at 18 months, 30 months, and 42 months after the tax is first imposed unless otherwise adjusted by the district with the approval of the Department of Environmental Protection. In addition, the bill provides for a surcharge on the tax to be levied on all out-of-district waste received in a district at a rate of \$0.21 per cubic yard. The funds generated by the surcharge will be retained in the resource recovery fund of the receiving district as compensation for accepting solid waste from another district and to provide an incentive to districts that send waste to another district to discontinue that practice.

This bill also provides for the imposition of an additional tax to be levied on all solid waste accepted at landfills at a rate of \$0.25 per cubic yard. At least 50% of the funds generated by this additional tax will be distributed among the 22 solid waste management districts for the purpose of preparing, revising, and implementing solid waste management plans. The remaining funds will be used by the Department of Environmental Protection for research, planning, permitting, regulating and enforcing the provisions of the Solid Waste Management Act and for administering the services tax fund.

To attract private sector financing of resource recovery facilities, it is necessary to remove any institutional impediments which now exist. This bill would encourage private sector financing of resource recovery facilities by establishing a method of procurement by local government through the use of long term negotiated contracts, designated franchises and simplified rate setting as an alternative to traditional public utility regulation. This process would be subject to strict scrutiny by the Department of Environmental Protection, the Board of Public Utilities and the Department of Community Affairs.

ASSEMBLY COUNTY GOVERNMENT AND
REGIONAL AUTHORITIES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1778

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 18, 1984

Assembly Bill No. 1778, with Assembly committee amendments, establishes a new method of contracting for the construction, operation, and maintenance of resource recovery facilities, and simplifies the rate-setting procedures. In addition, the bill permits franchises and subfranchises to be awarded in order to ensure a solid waste flow to the facilities. The bill also establishes two taxes and a surcharge to provide stable funding sources for the State and the solid waste management districts to use in implementing, regulating, and enforcing solid waste management plans and in reducing resource recovery fees.

The new contracting procedure permits a contracting unit to request proposals from vendors for the construction, operation, and maintenance of a resource recovery facility. The contracting unit may then designate a vendor or vendors based upon price and evaluation factors for the purposes of negotiating a proposed contract. Certain provisions must be included in the proposed contract concerning the allocation of risks between the vendor and the contracting unit in the event problems arise during the construction or operation of the resource recovery facility.

After a proposed contract has been negotiated, the contracting unit must hold a meeting with consumer representatives and a public hearing to explain the contract and answer any questions thereon.

After the public hearing, the contracting unit must submit the proposed contract for approval to the Department of Environmental Protection, the Division of Local Government Services, and the Board of Public Utilities.

Upon approval by all three parties, the contract may be awarded to a vendor for a period not to exceed 40 years.

The bill further provides for a resource recovery investment tax on solid waste disposed at sanitary landfills to be placed in a resource recovery investment fund in each solid waste district for later use in subsidizing the transition to resource recovery. The tax is levied on the owner or operator of a sanitary landfill for all solid waste accepted

from a district, at an initial rate of \$0.28 per cubic yard of waste. Thereafter, the tax will be automatically increased by \$0.28 at 18 months, 30 months, and 42 months after the tax is first imposed, unless otherwise adjusted by the district and the Department of Environmental Protection.

In addition, the bill provides for a surcharge on the tax to be levied on the owner or operator, on all out-of-district waste received in a district, at a rate of \$0.21 per cubic yard of waste. The funds generated by the surcharge will be retained in the resource recovery fund of the receiving district as compensation for accepting solid waste from another district, and to provide an incentive to districts that send waste to another district to discontinue that practice.

The bill also provides for the imposition of an additional tax to be levied on all solid waste accepted at landfills, at a rate of \$0.25 per cubic yard of waste. At least 50% of the funds generated by this additional tax will be distributed among the 22 solid waste management districts for the purpose of preparing, revising, and implementing solid waste management plans. The remaining funds may be used by the Department of Environmental Protection for reviewing, regulating, enforcing, and assisting in the development of solid waste management plans, and for administering the tax funds.

The committee held three public hearings on the bill and invited interested individuals to a committee meeting to discuss air emissions from resource recovery facilities.

The committee amendments:

1. Limit the amount expended for administering the tax funds to 2% of the total amount in the funds;
2. Permit counties to use the services tax fund moneys to implement the goals of the State Recycling Plan and to support community oversight projects and community awareness programs. In addition, a county may appoint a citizens advisory committee;
3. Permit the Department of Environmental Protection to use the services tax fund moneys for recycling research and planning;
4. Further define the conditions by which the department may determine that a county has failed to fulfill its solid waste planning responsibilities; to include failure to implement the State Recycling Plan goals, or inability to negotiate interdistrict agreements or to identify suitable facility sites; and
5. Require the Department of Environmental Protection to adopt rules and regulations concerning the engineering design of resource recovery facilities, to include a requirement that state-of-the-art air emission technology be installed to control pollutants.

In addition, the amendments clarify the benefits a host municipality may receive. Other amendments are technical in nature.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1778

with Senate committee amendments

STATE OF NEW JERSEY

DATED : DECEMBER 13, 1984

I

This bill sets forth a two-pronged strategy for managing solid waste disposal designed to encourage a transition from a traditional and virtually exclusive reliance on landfilling to the increased use of advanced resource recovery incinerators and facilities. The number of New Jersey landfills, which as recently as a decade ago numbered near 300, has dwindled to the point where at the present time approximately 90% of the State's solid waste is disposed of at 10 landfills. Many of these landfills are already approaching their capacity; others have, or at any time may become, the subject of legal disputes among government units at the State and local levels. What is clear is that the days of the dominance of landfills are numbered.

The construction of resource recovery facilities—which include incinerators designed to burn solid waste while simultaneously producing electricity and thermal energy, mechanized composting facilities, and other facilities designed to salvage some component of solid waste for reuse—will not in one stroke obviate the need for landfills. Between 25% and 40% of the solid waste generated in an area served by a resource recovery incinerator (consisting of post-incineration residue and other solid waste which cannot be processed) must ultimately be landfilled. In addition, there may well be counties for which environmentally sound state-of-the-art landfills will be appropriate for their solid waste disposal needs. Nevertheless, resource recovery facilities, used for decades in densely populated European countries which never enjoyed this nation's abundance of available land, constitute a method of solid waste disposal which is environmentally and aesthetically preferable to landfilling.

The first component of this bill's strategy (sections 3-17) consists of the imposition of taxes on solid waste disposed of at landfills, designed to provide counties with funds with which to make the transition toward resource recovery, and to provide counties with incentives to provide for the disposal of their solid waste. The second component of the bill's strategy (sections 18-37) establishes a procurement procedure which local government units may use to enter into long-term

contracts with private firms for the provision of resource recovery services. Together these components take the State two important steps closer to the utilization of resource recovery.

II

This bill would impose three new taxes on the disposal of solid waste at sanitary landfills. The "Solid Waste Services Tax" is levied at the rate of \$0.50 per ton initially, and will be increased by \$0.05 per ton each year. The "Resource Recovery Investment Tax" is levied at the rate of \$1.00 per ton initially, and may be increased thereafter in two ways. First, each county may conduct a study within two years of the effective date of the act to determine the tax rate estimated to be necessary to generate revenues sufficient to subsidize anticipated resource recovery tipping fees to a level which is competitive with disposal costs at the landfill utilized by the county. This new rate cannot exceed \$10.00 per ton. Alternatively, the "Resource Recovery Investment Tax" will be increased by \$1.00 per year. The "Solid Waste Services Tax" will be in effect indefinitely. The "Resource Recovery Investment Tax" (regardless of the method of increase utilized) will expire 10 years and three months after the effective date of the act. The third tax, the "Solid Waste Importation Tax," is levied at the initial rate of \$1.00 per ton on the disposal of all out-of-district solid waste. The tax will be increased to \$4.00 per ton on the first day of the third calendar year after the effective date of the act and by \$2.00 per ton annually thereafter. The "Solid Waste Importation Tax" will expire 10 years and three months after the effective date of the act. These taxes shall not be levied on sanitary landfills to be utilized for disposing of those waste products which result from the operation of a resource recovery facility.

The bill would establish several funds as depositories of the revenues generated from the three new landfill taxes. The "Solid Waste Services Tax Fund" in the Department of Environmental Protection will be the depository for the services tax revenues. The moneys in the fund would be allocated to the counties on the basis of solid waste generation. The counties can use the moneys for district solid waste management plan implementation, public participation programs, and the implementation of the goals of the State Recycling Plan. Every county will receive at least 2% of the revenues deposited in the fund during each calendar year. No more than 2% of the revenues deposited in the fund during the fiscal year could be used for administrative and collection costs. The DEP may withhold for a year all or part of the moneys a county would have received if it finds that the county has failed to fulfill its solid waste management planning and facility siting responsibilities.

The "Resource Recovery Investment Tax Fund" in the Department of Treasury will be the depository of the investment tax and waste importation tax revenues. The revenues would be allocated to individual county funds to be known as a "District Resource Recovery Investment Tax Fund." The moneys in the individual county funds will be allocated on the basis of the total amount of solid waste generated within a district, and the total amount of solid waste accepted for disposal from out-of-county and out-of-state sources. The moneys in the individual county funds could be utilized for one or more of the following purposes: (1) to subsidize the cost differential between current landfill disposal costs and anticipated resource recovery tipping fees; (2) to finance the design, construction, operation, and maintenance of new or expanded sanitary landfill facilities to be utilized for the disposal of ash residue from resource recovery facilities, or for the long-term disposal of solid waste in those counties where resource recovery may not be feasible (as determined by the DEP); and (3) to finance the closure costs associated with terminated landfills in those counties which have adjusted their investment tax rate pursuant to a study, provided that only the revenues derived from the increased rate (exclusive of the base rate tax revenues) may be used for this purpose. No more than 2% of the total revenues appropriated to an individual county fund during the fiscal year may be expended on administrative costs. Two or more counties may establish a joint fund upon DEP approval. The DEP may assume the administration of the fund of any county which fails to carry out its solid waste management planning and facility siting responsibilities. To be eligible for any moneys in the funds the counties must revise their respective district solid waste management plans to outline the proposed uses of moneys in the fund within two years of the effective date of the act.

The bill would establish several "host municipality" economic benefits for municipalities wherein a sanitary landfill or resource recovery facility is to be located. Any municipality within which a new or existing landfill is located shall be entitled to an annual economic benefit not less than the equivalent of \$1.00 per ton of solid waste accepted for disposal during the previous year. The annual payments will be made by the landfill owner or operator to the municipality in the form of: (1) payments in lieu of taxes on the land used for the sanitary landfill facility; (2) the exemption from all fees and charges for the disposal of solid waste generated by the municipality, exclusive of existing and new landfill taxes imposed in the bill; (3) a lump sum cash payment; or (4) any combination thereof totalling not less than \$1.00 per ton. The annual payments will be considered "pass-through" costs to the landfill owner or operator and solid waste collector-hauler and

would thus be generated as "user fees" paid by the other waste generators utilizing the sanitary landfill facility.

Any municipality within which a resource recovery facility is to be located will be entitled to an annual economic benefit not less than the equivalent of \$1.00 per ton of all solid waste accepted for disposal at the facility during the previous year. The annual payments will be made by the person or party holding the franchise for the resource recovery facility to the municipality and shall be considered a minimum economic benefit in consideration for the siting of the facility within its municipal boundaries. The franchise holder or contracting unit, as the case may be, may negotiate an agreement for additional economic considerations with the municipality in excess of the minimum amount specified in the bill.

III

Sections 18-37 of the bill establish a procedure under which a local government unit may enter into a long-term contract (up to 40 years) with a private firm for the financing, engineering, construction, operation, and maintenance of a resource recovery system. The procurement procedure established in this bill would constitute an alternative to any other contracting procedure now available to a local government unit.

Under the procedure set forth in this bill, a local government unit would negotiate and award a contract to a private firm for resource recovery services in the following manner:

Local Level Negotiations

1. The contracting unit issues a request for qualifications of private firms (vendors) interested in providing the resource recovery services desired by the contracting unit.
2. The contracting unit reviews the qualifications submitted by vendors submitting qualifications, and designates vendors meeting the qualifications as "Qualified vendors."
3. The contracting unit issues a request for proposals (actual project plans) to the qualified vendors. Interested qualified vendors submit their proposals.
4. The contracting unit designates those proposals submitted by qualified vendors which best meet its needs, and enters into negotiations with these vendors.
5. The contracting unit negotiates a proposed contract with a qualified vendor or vendors.
6. Through the entire contract process, the contracting unit must maintain a contract file, containing all appropriate documents pertaining to the contract, which shall be open to the public for inspection.

State Level Review of the Proposed Contract by the Department of Environmental Protection, the Board of Public Utilities, The Division of Local Government Services in the Department of Community Affairs, and the Division of Rate Counsel in the Department of the Public Advocate.

1. A contracting unit intending to submit a proposed contract to the State Agencies for review and approval gives the State agencies 10 days of advance notice of the submission.

2. The contracting unit submits the proposed contract to the Division of Rate Counsel for review, and to the Department of Environmental Protection, the Board of Public Utilities, and the Division of Local Government Services for review and approval.

3. The State agencies may request additional information of the contracting unit within 15 days of submission of the proposed contract. The contracting unit must respond within 10 days. The State agencies may make supplemental requests for information within five days of response to the first request.

4. The contracting unit holds a public hearing on the proposed contract within 45 days of submission of the contract. The contracting unit gives public notice of the hearing, and gives State and local agencies 20 days written notice of the hearing. The Division of Rate Counsel is authorized to represent the public interest at the hearing, and to assess the vendor for the cost of this representation.

5. The contracting unit keeps the hearing record of the public hearing open for 15 days after the conclusion of the meeting for the submission of written statements by interested parties.

6. Within 45 days of the conclusion of the public hearing, the contracting unit transmits a copy of the hearing record of the public hearing (which includes a verbatim transcript of the hearing, statements submitted by interested persons, and a statement by the contracting unit addressing the major issues raised at the hearing) to the Department of Environmental Protection, the Board of Public Utilities, the Division of Rate Counsel, and the Division of Local Government Services.

7. Within 30 days of receipt of the hearing record from the contracting unit, the Department of Environmental Protection, the Board of Public Utilities, and the Division of Local Government Services approve or conditionally approve the proposed contract.

Because the contract entered into by the local government unit will constitute the basis on which the cost of the resource recovery services will be calculated for the duration of the contract, this bill provides that the contract will include provisions including:

1. The allocation of the risks of financing and constructing the resource recovery facility.
2. The allocation of the risks of operating and maintaining a resource recovery facility.
3. The allocation of risks beyond the control of the local unit and the contractor.
4. The defaulting and termination of the contract.
5. The periodic preparation by the contractor of an operating performance report and audited balance statement.
6. The intervals at which the contract shall be renegotiated.
7. The employment of current employees of the local unit which would be affected under the terms of the contract.
8. The formulas to be used to determine the rates to be charged for the resource recovery services.

This bill also provides that if a contracting unit has issued a request for qualifications, or has entered into negotiations with a vendor prior to 30 days after the effective date of the bill, the contracting unit will be covered only by the sections of the bill providing for State level review of the proposed contract. This bill also provides that if a contracting unit has negotiated a contract with a vendor prior to the effective date of this bill and has held a public hearing on the contract, the contract will receive State review on an accelerated basis.

The bill also requires that the Department of Environmental Protection adopt rules and regulations for the engineering design of resource recovery facilities, which must include the requirement that state-of-the-art emission technology be used on the facilities.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1762
STATE OF NEW JERSEY

ADOPTED DECEMBER 13, 1984

By Senator GORMLEY

AN ACT concerning solid waste disposal and resource recovery,
amending P. L. 1975, c. 326, P. L. 1970, c. 40 and P. L. 1971, c. 198,
and supplementing P. L. 1970, c. 39 and P. L. 1976, c. 68.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) The Legislature finds that the proper disposal
2 of solid waste and the maximum practical recovery of any poten-
3 tial resource in solid waste, especially its conversion to useable
4 energy, are matters of basic concern to all citizens of this State,
5 and insuring the implementation of an efficient solid waste and
6 resource recovery management strategy is a governmental function
7 thoroughly imbued with the public interest; that the State's ca-
8 pacity to safely dispose of solid waste at sanitary landfills is rapidly
9 diminishing; that New Jersey must move away from its current
10 reliance on landfilling as the principal method of solid waste dis-
11 posal to the application of waste reduction, recycling, and energy
12 recovery technologies; that decreasing the waste flow to landfills,
13 whether by means of predisposal methods such as source separa-
14 tion and recycling or through high technology energy conversion
15 is in the energy, environmental, and economic interest of the State
16 of New Jersey; and that these issues must be addressed as thor-
16A oughly and expeditiously as possible.

17 The Legislature further finds that the planning, construction or
18 operation of resource recovery facilities is characterized by high
19 initial capital expenditures and initially high disposal costs or
20 tipping fees relative to landfilling, costs which may be stablized
21 or decreased based upon a return on energy generated and materials
22 recovered; that these increased initial costs require long-term fi-

23 nancial arrangements and a prior Statewide commitment to waste
 24 reduction and recycling; that to attract private investment capital
 25 for these waste-to-energy projects it is necessary to establish a
 26 favorable regulatory climate, which will at the same time insure
 27 safe, adequate and proper solid waste disposal service at just and
 28 reasonable rates; and that to encourage these joint public-private
 29 sector cooperative ventures it is also necessary to attain the most
 30 advantageous financial and programmatic scrutiny by the Legis-
 31 lature and agencies of State government.

32 The Legislature therefore declares that it is the public policy
 33 of the State of New Jersey to provide a framework for the imple-
 34 mentation of an efficient solid waste disposal and resource recovery
 35 strategy which facilitates the orderly development of resource
 36 recovery facilities while protecting the public health, safety, and
 37 welfare, all as hereinafter provided.

1 2. (New section) As used in this amendatory and supplementary
 2 act:

3 a. "Contract file" means a file established and maintained by a
 4 contracting unit, in which the contracting unit shall maintain a
 5 copy of its request for qualifications issued pursuant to section 19
 6 of this amendatory and supplementary act, a list of vendors re-
 7 sponding to its request for qualifications, a copy of its request
 8 for proposals issued pursuant to section 20 of this amendatory and
 9 supplementary act, a list of qualified vendors submitting proposals,
 10 and a document outlining the general criteria used by the contract-
 11 ing unit in selecting a proposal;

12 b. "Contracting unit" means any county; any municipality; any
 13 bi-State authority; or any board, commission, committee, authority
 14 or agency, which is not a State board, commission, committee, au-
 15 thority or agency, and which has administrative jurisdiction over
 16 any district other than a school district, project, or facility, included
 17 or operating in whole or in part, within the territorial boundaries
 18 of any county or municipality, which exercises functions which are
 19 appropriate for the exercise by one or more units of local govern-
 20 ment, and which has statutory power to make purchases and enter
 21 into contracts or agreements for the performance of any work or
 22 the furnishing or hiring of any materials or supplies usually re-
 23 quired;

24 c. "County" means any county of this State of whatever class;

25 d. "Department" means the Department of Environmental Pro-
 26 tection;

27 e. "Director" means the Director of the Division of Taxation
 28 in the Department of Treasury;

29 f. "District" means a solid waste management district as desig-
30 nated by section 10 of P. L. 1975, c. 326 (C. 13:1E-19), except that,
31 as used in the provisions of this amendatory and supplementary
32 act, "district" shall not include the Hackensack Meadowlands Dis-
33 trict;

34 g. "District investment tax fund" means a District Resource
35 Recovery Investment Tax Fund established pursuant to subsection
36 a. of section 15 of this amendatory and supplementary act;

37 h. "Division" means the Division of Taxation in the Department
38 of Treasury;

39 i. "Division of Local Government Services" means the Division
40 of Local Government Services in the Department of Community
41 Affairs;

42 j. "Division of Rate Counsel" means the Division of Rate Counsel
43 in the Department of the Public Advocate;

44 k. "Franchise" means the exclusive right to control and provide
45 for the disposal of solid waste, except for recyclable material when-
46 ever markets for those materials are available, within a district
47 or districts as awarded by the Board of Public Utilities;

48 l. "Independent public accountant" means a certified public ac-
49 countant, a licensed public accountant or a registered municipal
50 accountant;

51 m. "Investment tax" means the resource recovery investment
52 tax imposed pursuant to subsection b. of section 3 of this amenda-
53 tory and supplementary act;

54 n. "Investment tax fund" means the Resource Recovery Invest-
55 ment Tax Fund containing sub-accounts for each county estab-
56 lished pursuant to the provisions of section 14 of this amendatory
57 and supplementary act;

58 o. "Out-of-district solid waste" means any solid waste accepted
59 for disposal in a district which was generated outside the receiving
60 district;

61 p. "Person or party" means any individual, public or private
62 corporation, company, partnership, firm, association, political sub-
63 division of this State, or any state, bi-state, in interstate agency
64 or authority;

65 q. "Proposed contract" means a contract negotiated by a con-
66 tracting unit pursuant to the provisions of this amendatory and
67 supplementary act, or a substantial renegotiation of a contract
68 approved pursuant to the provisions of this amendatory and sup-
69 plementary act if the renegotiation is determined to be substantial
70 by the department, the Board of Public Utilities, or the Division
71 of Local Government Services;

72 r. "Qualified vendor" means any person or party financially
73 qualified for, and technically and administratively capable of, un-
74 dertaking the design, financing, construction, operation, or mainte-
75 nance, or any combination thereof, of a resource recovery facility
76 or of providing resource recovery services, as provided in section
77 19 of this amendatory and supplementary act;

78 s. "Recyclable material" means those materials which would
79 otherwise become solid waste, which may be collected, separated
80 or processed and returned to the economic mainstream in the form
81 of raw materials or products;

82 t. "Recycling" means any process by which materials which
83 would otherwise become solid waste are collected, separated or
84 processed and returned to the economic mainstream in the form
85 of raw materials or products;

86 u. "Recycling facility" means a facility at which materials which
87 would otherwise become solid waste are collected, separated or
88 processed and returned to the economic mainstream in the form
89 of raw materials or products;

90 v. "Resource recovery facility" means a solid waste facility
91 constructed and operated for the incineration of solid waste for
92 energy production and the recovery of metals and other materials
93 for reuse; or a mechanized composting facility, or any other solid
94 waste facility constructed or operated for the collection, separation,
95 recycling, and recovery of metals, glass, paper, and other materials
96 for reuse or for energy production;

97 w. "Sanitary landfill facility" means a solid waste facility at
98 which solid waste is deposited on or in the land as fill for the pur-
99 pose of permanent disposal or storage for a period exceeding six
100 months, except that it shall not include any waste facility approved
101 for disposal of hazardous waste;

102 x. "Service tax" means the solid waste services tax imposed
103 pursuant to subsection a. of section 3 of this amendatory and sup-
104 plementary act;

105 y. "Services tax fund" means the Solid Waste Services Tax Fund
106 established pursuant to section 12 of this amendatory and supple-
107 mentary act;

108 z. "Vendor" means any person or party proposing to undertake
109 the design, financing, construction, operation, or maintenance, or
110 any combination thereof, of a resource recovery facility or of pro-
111 viding resource recovery services;

112 aa. "Waste importation tax" means the solid waste importation
113 tax imposed pursuant to subsection c. of section 3 of this amenda-
114 tory and supplementary act.

1 3. (New section) a. There is levied upon the owner or operator
2 of every sanitary landfill facility a solid waste services tax. The
3 services tax shall be imposed on the owner or operator at the initial
4 rate of \$0.50 per ton of solids and \$0.002 per gallon of liquids on
5 all solid waste accepted for disposal at a sanitary landfill facility.
6 On the first day of the first calendar year following the imposition
7 of the services tax, and annually thereafter, the rate of the services
8 tax shall be increased by \$0.05 per ton of solids. No services tax
9 shall be levied on the owner or operator of a sanitary landfill fa-
10 cility for the acceptance for disposal of the waste products resulting
11 from the operation of a resource recovery facility.

12 b. (1) There is levied upon the owner or operator of every
13 sanitary landfill facility a resource recovery investment tax. The
14 investment tax shall be levied on the owner or operator at the
15 initial rate of \$1.00 per ton of solids and \$0.004 per gallon of liquids
16 on all solid waste accepted for disposal at a sanitary landfill fa-
17 cility. No investment tax shall be levied on the owner or operator
18 of a sanitary landfill facility for the acceptance for disposal of
19 the waste products resulting from the operation of a resource re-
20 covery facility.

21 (2) Unless the rate is otherwise adjusted pursuant to section 11
22 of this amendatory and supplementary act, the rate of the invest-
23 ment tax shall be increased in accordance with the following sched-
24 ule:

25 (a) On the first day of the first calendar year following the
26 imposition of the investment tax, the rate of the investment
27 tax shall increase to \$2.00 per ton of solids;

28 (b) On the first day of the second calendar year following
29 the imposition of the investment tax, the rate of the investment
30 tax shall increase to \$3.00 per ton of solids; and

31 (c) On the first day of the third calendar year following the
32 imposition of the investment tax, the rate of the investment
33 tax shall increase to \$4.00 per ton of solids.

34 The investment tax shall no longer be levied on the owner or
35 operator of a sanitary landfill on and after the first day of the 11th
36 calendar year following the imposition of the investment tax.

37 c. There is levied upon the owner or operator of every sanitary
38 landfill facility which accepts out-of-district solid waste a solid
39 waste importation tax. The waste importation tax shall be imposed
40 on the owner or operator at the initial rate of \$1.00 per ton of
41 solids and \$0.004 per gallon of liquids on all out-of-district solid
42 waste accepted for disposal at a sanitary landfill facility. On the
43 first day of the third calendar year following the imposition of the

44 waste importation tax, the rate of the waste importation tax shall
45 be increased to \$4.00 per ton of solids, and annually thereafter the
46 rate of the waste importation tax shall be increased by \$2.00 per
47 ton of solids. No waste importation tax shall be levied on the owner
48 or operator of a sanitary landfill facility for the acceptance for
49 disposal of the waste products resulting from the operation of a
50 resource recovery facility.

51 The waste importation tax shall no longer be levied on the owner
52 or operator of a sanitary landfill facility which accepts out-of-dis-
53 trict solid waste on or after the first day of the 11th calendar year
54 following the imposition of the waste importation tax.

55 d. If any owner or operator of a sanitary landfill facility deter-
56 mines the quantity of solid waste accepted for disposal by a mea-
57 sure other than tons or gallons, the taxes imposed pursuant to
58 the provisions of this section shall be levied at an equivalent rate
59 as determined by the director.

60 e. No taxes shall be levied on the owner or operator of a sanitary
61 landfill facility for the acceptance of solid waste generated exclu-
62 sively by an agency of the federal government if a solid waste
63 collector submits to the owner or operator an itemized invoice,
64 signed and verified by an authorized officer of the federal agency,
65 indicating the number of tons of solid waste to be disposed of, and
66 a copy of the contract with the federal agency for the collection of
67 solid waste with an effective date prior to the effective date of this
68 amendatory and supplementary act. Taxes shall be levied on the
69 owner or operator for acceptance of solid waste generated by a
70 federal agency if the contract between the federal agency and the
71 solid waste collector was entered into, or renewed, on or after the
72 effective date of this amendatory and supplementary act.

1 4. (New section) a. Every owner or operator of a sanitary
2 landfill facility which accepts solid waste for disposal and which
3 is subject to the taxes imposed pursuant to section 3 of this amend-
4 atory and supplementary act, shall register with the director on
5 registration forms prescribed by him within 20 days after the first
6 acceptance of that waste.

7 b. The director shall prescribe and distribute all necessary forms
8 for the implementation of the tax provisions of this amendatory
9 and supplementary act. The tax return form shall require the
10 following information, and any other information the director may
11 deem necessary to be rendered in the return:

12 (1) The total number of tons of solids and gallons of liquids
13 accepted for disposal during the previous month;

14 (2) The number of tons of solids and gallons of liquids accepted,
 15 and the place of origin of out-of-district waste accepted for dis-
 16 posal during the previous month, as reported to the owner or op-
 17 erator by the solid waste transporter who transports that solid
 18 waste to the sanitary landfill facility pursuant to rules and regu-
 19 lations adopted by the department; and

20 (3) The amount of each tax paid based upon the amount of solid
 21 waste accepted.

22 c. The director may prescribe a consolidated form for reporting
 23 the taxes imposed under this amendatory and supplementary act
 24 and the taxes imposed pursuant to P. L. 1981, c. 278 (C. 13:1E-92
 25 et seq.) and P. L. 1981, c. 306 (C. 13:1E-100 et seq.).

1 5. (New section) Every owner or operator of a sanitary landfill
 2 facility shall, on or before the 20th day of the month following the
 3 close of each tax period, render a return under oath to the director
 4 and pay the full amount of taxes due as stated in the return.

1 6. (New section) a. If a return required by this amendatory and
 2 supplementary act is not filed, or if a return when filed is incorrect
 3 or insufficient in the opinion of the director, the amount of tax due
 4 shall be determined by the director from such information as may
 5 be available. Notice of the determination shall be given to the tax-
 6 payer liable for the payment of the tax. This determination shall
 7 finally and irrevocably fix the tax unless the person against whom
 8 it is assessed, within 30 days after receiving notice of the determi-
 9 nation, shall apply to the director for a hearing, or unless the di-
 10 rector on his own motion shall redetermine the same. After the
 11 hearing, the director shall give notice of his determination to the
 12 person to whom the tax is assessed.

13 b. Any taxpayer who fails to file a return when due or to pay
 14 any tax when the tax becomes due, as herein provided, is subject
 15 to the penalties and interest as provided in the "State Tax Uni-
 16 form Procedure Law," R. S. 54:48-1 et seq. If the director deter-
 17 mines that the failure to comply with any provision of this section
 18 was excusable under the circumstances, he may remit part or all
 19 of the penalty as appropriate under the circumstances.

20 c. (1) Any person failing to file a return, failing to pay the tax,
 21 or filing or causing to be filed, or making or causing to be made,
 22 or giving or causing to be given any return, certificate, affidavit,
 23 representation, information, testimony or statement required or
 24 authorized by this amendatory and supplementary act, or rules or
 25 regulations adopted pursuant hereto, which is willfully false, or
 26 failing to keep any records required by this amendatory and sup-

27 ~~plementary act or rules and regulations adopted pursuant hereto,~~
 28 shall, in addition to any other penalties herein or elsewhere pre-
 29 scribed, be guilty of a crime of the fourth degree.

30 (2) The certificate of the director to the effect that a tax has
 31 not been paid, that a return has not been filed, that information has
 32 not been supplied or that inaccurate information has been supplied
 33 pursuant to the provisions of this amendatory and supplementary
 34 act or rules or regulations adopted pursuant hereto shall be pre-
 35 sumptive evidence thereof.

1 7. (New section) In addition to any other powers authorized by
 2 this amendatory and supplementary act, the director shall have
 3 the following powers:

4 a. To delegate to any officer or employee of the division any
 5 powers or responsibilities required by this amendatory and sup-
 6 plementary act as he may deem necessary;

7 b. To prescribe and distribute any forms necessary for the im-
 8 plementation of this amendatory and supplementary act; and

9 c. To adopt any rules and regulations pursuant to the "Adminis-
 10 trative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.)
 11 necessary to implement the provisions of this amendatory and
 12 supplementary act.

1 8. (New section) The taxes imposed under this amendatory and
 2 supplementary act shall be governed in all respects by the pro-
 3 visions of the "State Tax Uniform Procedure Law," B. S. 54:48-1
 4 et seq., except to the extent that a specific provision of this amenda-
 5 tory and supplementary act, or any rule or regulation adopted pur-
 6 suant hereto, may be in conflict therewith.

1 9. (New section) a. Notwithstanding the provisions of any law
 2 to the contrary, the owner or operator of a sanitary landfill facility
 3 may collect the taxes levied and imposed pursuant to this amenda-
 4 tory and supplementary act by imposing an automatic surcharge
 5 on any tariff established pursuant to law for the solid waste dis-
 6 posal operations of the sanitary landfill facility.

7 b. For the purposes of this amendatory and supplementary act,
 8 all municipal, county, and State contracts for solid waste collection
 9 and disposal shall be considered tariffs for solid waste collection,
 10 and shall be subject to any adjustment of tariffs resulting from the
 11 provisions of this amendatory and supplementary act.

1 10. New section) a. The Board of Public Utilities shall, within
 2 60 days of the effective date of this amendatory and supplementary
 3 act, issue an order adjusting the tariffs established pursuant to law
 4 for solid waste collection operations by an amount equal to the
 5 total amount of the increase in the adjusted tariffs for solid waste

6 disposal operations to take effect on the date on which the tax is
7 imposed.

8 b. The Board of Public Utilities shall, by the date of any increase
9 in the services tax required in subsection a. of section 3 of this
10 amendatory and supplementary act, the investment tax required
11 in subsection b. of section 3 of this amendatory and supplementary
12 act, or the waste importation tax required in subsection c. of sec-
13 tion 3 of this amendatory and supplementary act, issue an order
14 adjusting the tariffs established pursuant to law for solid waste
15 collection operations by an amount equal to the total amount of
16 the increase in the tariffs for solid waste disposal operations that
17 shall be adjusted on that date.

18 c. In issuing any order required by this section, the Board of
19 Public Utilities shall be exempt from the provisions of R. S. 48:2-21.

1 11. (New section) a. Each county, in consultation with the depart-
2 ment, may conduct a study to determine the investment tax rate
3 estimated to be necessary to be paid into the district investment tax
4 fund so as to lower the cost of resource recovery facility services
5 to a level which is competitive with the cost of disposal in a sanitary
6 landfill facility utilized by the county, or to finance the closing
7 costs for the proper closure of any terminated sanitary landfill
8 facility located within the county, except that only the additional
9 tax revenues generated by an investment tax rate adjustment may
10 be expended for closing costs.

11 b. After completion of the study, the county, by resolution of its
12 governing body, and after review of the study by the Local Finance
13 Board in the Division of Local Government Services in the Depart-
14 ment of Community Affairs, may adjust the investment tax rate
15 set forth in subsection b. of section 3 of this amendatory and supple-
16 mentary act to a rate, not to exceed \$10.00 per ton of solids and
17 \$0.04 per gallon of liquids, or the equivalent thereof, which is con-
18 sistent with the conclusions of the study and with the plan developed
19 pursuant to subsection c. of section 15 of this amendatory and
20 supplementary act. The county, by resolution of its governing
21 body, and after review of the study and any additional information
22 received during the previous year by the Local Finance Board in
23 the Division of Local Government Services in the Department of
24 Community Affairs, may adjust the investment tax rate, up to the
25 maximum rate, on an annual basis. Any adjustment in the invest-
26 ment tax rate made pursuant to this subsection shall take effect on
27 the first day of the first calendar year following the adjustment,
28 provided that notice of the adjustment shall be made to the director
29 no later than 90 days prior to the first day of a calendar year.

30 c. Upon approval by the department, two or more counties may
31 conduct a joint study and establish a single investment tax rate for
32 the districts in the manner provided in subsection b. of this section.

33 d. The department, upon an investment tax rate adjustment by a
34 county made in the manner provided in subsection b. of this section,
35 shall notify the Board of Public Utilities of the investment tax rate
36 adjustment in that county.

1 12. (New section) The Solid Waste Services Tax Fund is estab-
2 lished as a nonlapsing, revolving fund in the Department of
3 Environmental Protection. The services tax fund shall be admin-
4 istered by the department and shall be the depository for the
5 revenues generated by the services tax, and any interest earned
6 thereon.

1 13. (New section) a. Prior to the disbursement of any moneys
2 in the services tax fund pursuant to the provisions of this section,
3 the cost of administration and collection of the services tax shall
4 be paid to the director out of the fund, up to an amount not to exceed
5 2% of the total revenues deposited in the fund during the fiscal
6 year.

7 b. The moneys in the services tax fund shall be allocated and
8 used to provide State aid to counties for preparing, revising, and
9 implementing solid waste management plans, including the imple-
10 mentation of the goals of the State Recycling Plan. The moneys
11 may also be used by the counties to support community oversight
12 projects and to establish a citizens advisory committee. A county
13 receiving State aid shall not expend more than 2% of the amount of
14 aid received in any year for the costs of administering the aid.
15 The State aid shall be distributed to the counties on the basis of
16 the total amount of solid waste generated from within each county
17 during the previous calendar year as determined by the department,
18 except that no county shall receive less than 2% of the revenues
19 deposited in the services tax fund during each calendar year. In
20 the event that the department determines, pursuant to section 17
21 of this amendatory and supplementary act, that any county has
22 failed to fulfill its district solid waste management planning
23 responsibilities, the department may withhold for a entire year or
24 until the county fulfills its responsibilities, all or a portion of the
25 amount of moneys that county would have received in any year pur-
26 suant to this subsection. Any moneys withheld for an entire year
27 shall be distributed among the remaining counties in the same
28 proportion as the other moneys were distributed.

29 c. Any county may appoint a citizen advisory committee com-
30 prising interested local officials and citizens. An appointed citizens

31 advisory committee or an existing advisory solid waste committee
 32 may develop and implement oversight projects and conduct com-
 33 munity awareness programs regarding resource recovery facilities
 34 in a district.

1 14. (New section) a. The Resource Recovery Investment Tax
 2 Fund is established in the Department of Treasury. The investment
 3 tax fund shall contain sub-accounts for each county to be held by
 4 the State Treasurer and shall be the depository for revenues
 5 generated by the investment tax and the waste importation tax, and
 6 any interest earned thereon, and shall be disbursed pursuant to the
 7 provisions of this section.

8 b. Prior to the disbursement of any moneys in the investment
 9 tax fund as provided hereunder, the cost of administration and
 10 collection of the taxes shall be paid to the director out of that fund,
 11 up to an amount not to exceed 2% of the total revenues deposited
 12 into the fund during the fiscal year.

13 c. The director shall allocate the moneys in the investment tax
 14 fund as follows:

15 (1) The investment tax revenues collected by the director result-
 16 ing from the amount of solid waste generated from within each
 17 county shall be deposited in each county's sub-account:

18 (2) The investment tax revenues collected by the director and
 19 not otherwise deposited in an investment tax fund subaccount pur-
 20 suant to paragraph (1) of this subsection shall be deposited in the
 21 receiving county's sub-account; and

22 (3) The waste importation tax revenues collected by the director
 23 resulting from the acceptance of out-of-district solid waste shall be
 24 deposited in the receiving county's sub-account, except that the
 25 waste importation tax revenues resulting from the disposal of
 26 out-of-district solid waste at sanitary landfill facilities operated
 27 and maintained by the Hackensack Meadowlands Development
 28 Commission shall be deposited in the sub-account of the county
 29 within which the sanitary landfill facility is located.

1 15. (New section) a. Each county shall create a District Resource
 2 Recovery Investment Tax Fund which shall be the depository for
 3 the moneys appropriated to each county pursuant to this section,
 4 and shall be administered by the governing body of each county.

5 b. The moneys deposited by the director in each investment tax
 6 fund sub-account shall be appropriated to each county for deposit
 7 in its district investment tax fund and shall be expended only in
 8 accordance with a plan prepared and approved pursuant to sub-
 9 section c. of this section and only for the following purposes:

10 (1) To reduce the rates charged to all users by a resource
11 recovery facility serving the county in order to provide a gradual
12 transition to resource recovery facility rates from sanitary landfill
13 facility rates. A county may achieve reductions through the use of
14 moneys in its district investment tax fund to pay directly part of
15 the fees charged for disposal to all users of a resource recovery
16 facility;

17 (2) To design, finance, construct, operate or maintain environ-
18 mentally sound state-of-the-art sanitary landfill facilities to be
19 utilized for disposing of those solid wastes which cannot be pro-
20 cessed by a resource recovery facility or the waste products result-
21 ing from the operation of a resource recovery facility;

22 (3) To design, finance, construct, operate or maintain environ-
23 mentally sound state-of-the-art sanitary landfill facilities to be
24 utilized for disposal of solid waste, on a long-term basis, if a county
25 can demonstrate to the satisfaction of the department that utiliza-
26 tion of a resource recovery facility is not feasible for disposal of
27 the solid waste generated in that county;

28 (4) To finance the closing costs for the proper closure of any
29 terminated sanitary landfill facility located within a county when-
30 ever that county has made an investment tax rate adjustment for
31 this purpose in accordance with the study conducted pursuant to
32 section 11 of this amendatory and supplementary act; and

33 (5) To administer the investment tax fund, up to an amount not
34 to exceed 2% of the total moneys appropriated to the fund during
35 the fiscal year.

36 c. Each county, within two years of the effective date of this
37 amendatory and supplementary act, and prior to the disbursement
38 of any funds in its district investment tax fund, shall prepare a
39 plan which shall outline the proposed uses of moneys in the district
40 investment tax fund as well as establish a schedule for the disburse-
41 ment of the moneys. Each plan shall be adopted as an amendment
42 to the district solid waste management plan required pursuant to
43 the provisions of the "Solid Waste Management Act," P. L. 1970,
44 c. 39 (C. 13:1E-1 et seq.). This plan may be amended, as necessary,
45 in accordance with the procedures provided therefor pursuant to
46 the "Solid Waste Management Act."

47 d. Each county shall, by October 31 of each year in which moneys
48 remain in its district investment tax fund, file an audit of the
49 district investment tax fund and any expenditures therefrom with
50 the Local Finance Board in the Division of Local Government
51 Services in the Department of Community Affairs. The audit shall
52 be conducted by an independent public accountant.

53 e. Upon approval by the department, two or more counties may
54 establish a joint investment tax fund to receive the investment tax
55 fund revenues collected pursuant to section 5 of this amendatory
56 and supplementary act.

1 16. (New section) If the department determines that a county
2 has failed to fulfill its district solid waste management planning
3 responsibilities pursuant to section 17 of this amendatory and
4 supplementary act, the department may assume the administration
5 of the district investment tax fund of that county and may use the
6 moneys in the fund for the purposes authorized under subsection
7 b. of section 15 of this amendatory and supplementary act for the
8 benefit of that county.

1 17. (New section) The department may determine that a county
2 has failed to fulfill its district solid waste management planning
3 responsibilities, which may include failure to implement the State
4 Recycling Plan goals, as required by sections 11 and 12 of P. L.
5 1975, c. 326 (C. 13:1E-20 and 13:1E-21) and by subsection c. of
6 section 15 of this amendatory and supplementary act. A determina-
7 tion by the department that the county has failed to fulfill its
8 planning responsibilities may be based upon a finding that the
9 county has not made a good faith effort toward identifying suffi-
10 cient available suitable sites for solid waste facilities within the
11 county, or negotiating interdistrict agreements, to provide for the
12 disposal needs of the county.

1 18. (New section) The provisions of any other law, rule or regula-
2 tion to the contrary notwithstanding, and as an alternative to any
3 other procedure provided for by law or by order of the Board of
4 Public Utilities, a contracting unit may enter into a contract with
5 a vendor for the design, financing, construction, operation or main-
6 tenance, or any combination thereof, of a resource recovery facility,
7 or for the provision of resource recovery services, pursuant to the
8 provisions of this amendatory and supplementary act. Any con-
9 tracting unit intending to enter into a contract with a vendor pur-
10 suant to the provisions of this act shall establish a contract file,
11 which shall be open to members of the public for inspection at the
12 offices of the contracting unit. Any contract entered into pursuant
13 to the provisions of this amendatory and supplementary act may
14 be awarded for a period not to exceed 40 years.

1 19. (New section) a. A contracting unit which intends to enter
2 into a contract with a vendor pursuant to the provisions of this
3 amendatory and supplementary act shall issue a request for quali-
4 fications of interested vendors. The request for qualifications shall
5 include a general description of the resource recovery services re-

6 quired by the contracting unit, the minimum acceptable qualifica-
7 tions to be possessed by a vendor proposing to enter into a contract
8 for the provision of these services, and the date by which vendors
9 must submit their qualifications. In addition to all other factors
10 bearing on qualifications, the contracting unit shall consider the
11 reputation and experience of the vendor, and may consider infor-
12 mation which might result in debarment or suspension of a vendor
13 from State contracting, and may disqualify a vendor if the vendor
14 has been debarred or suspended by any State agency. The request
15 for qualifications shall be published in at least one appropriate pro-
16 fessional or trade journal, and in at least one newspaper of general
17 circulation in the jurisdiction which would be served under the
18 terms of the proposed contract.

19 b. After reviewing the qualifications submitted by vendors pur-
20 suant to subsection a. of this section, the contracting unit shall
21 establish a list of qualified vendors, which shall include the criteria
22 applied by the contracting unit in selecting the qualified vendors,
23 and shall publish the list in the same publications in which the re-
24 quest for qualifications were published pursuant to subsection a. of
25 this section. Any vendor designated by a contracting unit as a
26 qualified vendor shall be a person or party financially, technically
27 and administratively capable of undertaking the design, financing,
28 construction, operation, or maintenance, or any combination thereof,
29 of a resource recovery facility, or for providing resource recovery
30 services.

1 20. (New section) Upon the selection of qualified vendors pur-
2 suant to the provisions of section 19 of this amendatory and sup-
3 plementary act, the contracting unit shall issue a request for pro-
4 posals to the qualified vendors, which shall include a detailed
5 description of the resource recovery facility and services required,
6 the format and procedure to be followed in submitting proposals,
7 the specific information which qualified vendors must provide in
8 the proposal, a statement setting forth the relative importance of
9 factors, including cost, which the contracting unit will consider in
10 evaluating a proposal submitted by a qualified vendor, and any
11 other information which the contracting unit deems appropriate.
12 The request for proposals shall include the date and time of day
13 by which, and the place at which, the proposals shall be submitted
14 to the contracting unit. The contracting unit may extend the dead-
15 line for submission of proposals, but this extension shall apply to
16 all qualified vendors, who shall be provided with simultaneous
17 written notification of this extension.

1 21. (New section) A contracting unit shall review proposals
2 submitted by vendors pursuant to section 20 of this amendatory
3 and supplementary act in such a manner as to avoid disclosure of
4 the contents of any proposal to vendors submitting competing pro-
5 posals. If provided for in the request for proposals, the contract-
6 ing unit may conduct discussions with qualified vendors who have
7 submitted proposals for the purpose of clarifying any information
8 submitted in the proposal, or assuring that the vendor fully under-
9 stood and responded to the requirements set forth in the request
10 for proposals. If, as a result of these discussions, the contracting
11 unit decides to revise the request for proposals, it shall immediately
12 notify in writing each qualified vendor which has submitted a pro-
13 posal of any such revision or revisions to the request for proposals.
14 In the event of any revision in the request for proposals, a quali-
15 fied vendor shall be permitted to submit revisions to its proposal
16 prior to contract negotiations. In conducting discussions with
17 qualified vendors, a contracting unit shall not disclose information
18 derived from proposals submitted by competing qualified vendors.

1 22. (New section) Upon a review of the proposals submitted by
2 qualified vendors pursuant to section 21 of this amendatory and
3 supplementary act, a contracting unit shall designate one or more
4 qualified vendors whose proposal or proposals the contracting unit
5 finds in writing to be the most advantageous to the public, taking
6 into consideration price and the evaluation factors set forth in the
7 request for proposals. Upon making this designation, the con-
8 tracting unit may begin negotiations with the qualified vendor or
9 vendors, and may negotiate a proposed contract with a qualified
10 vendor or vendors, which shall include the accepted proposal.

1 23. (New section) a. A contracting unit shall submit any pro-
2 posed contract negotiated with a qualified vendor pursuant to the
3 provisions of this act to the Division of Rate Counsel for review,
4 and to the department, the Board of Public Utilities, and the Divi-
5 sion of Local Government Services for review and approval pur-
6 suant to the provisions of section 24 through section 28 of this
7 amendatory and supplementary act.

1 24. (New section) Any contracting unit intending to submit a
2 proposed contract to the department, the Board of Public Utilities,
3 and the Division of Local Government Services for review and ap-
4 proval pursuant to the provisions of this amendatory and supple-
5 mentary act shall notify the department, the Board of Public Utili-
6 ties, the Division of Local Government Services, and the Division
7 of Rate Counsel of its intention to submit its proposed contract for
8 review and approval at least 10 days prior to the submission.

1 25. (New section) The Department, the Board of Public Utilities,
2 the Division of Local Government Services, and the Division of
3 Rate Counsel, shall have 15 days from the date of receipt of a pro-
4 posed contract submitted by a contracting unit for review and ap-
5 proval pursuant to the provisions of this amendatory and supple-
6 mentary act to request the contracting unit to supply additional
7 information or documentation concerning the proposed contract.
8 The contracting unit shall provide written responses to these re-
9 quests within 10 days of receipt of the request. Any supplemental
10 requests for information shall be made within five days of receipt
11 of the written responses to the initial requests. The contracting
12 unit shall provide written responses to any supplemental requests
13 within 10 days of receipt of the supplemental requests. The sched-
14 ule may be modified by the mutual consent of the contracting unit
15 and the department, the Division of Local Government Services,
16 the Board of Public Utilities, or the Division of Rate Counsel, as
17 the case may be.

1 26. (New section) a. A contracting unit shall hold a public hear-
2 ing on a proposed contract submitted to the department, the Board
3 of Public Utilities and the Division of Local Government Services
4 for review and approval pursuant to the provisions of this amen-
5 datory and supplementary act no sooner than 30 days nor later
6 than 45 days following submission of the proposed contract for
7 review and approval. This public hearing shall be held in the area
8 to be served under the terms of the proposed contract.

9 b. The contracting unit shall provide at least 20 days advance
10 written notice of a public hearing to be held on a proposed contract
11 pursuant to the provisions of this section to the department, the
12 Board of Public Utilities, the Division of Local Government Ser-
13 vices, the Division of Rate Counsel, the clerk of each municipality
14 within the area to be served under the terms of the proposed con-
15 tract, and to the county clerk of each county in whole or in part
16 within the area to be served under the terms of the proposed
17 contract.

18 c. A contracting unit shall provide advance notice to the public
19 of a public hearing to be held on a proposed contract pursuant to
20 the provisions of this section. This notice shall be published once
21 a week for two consecutive weeks in at least one newspaper of
22 general circulation in the area to be served under the terms of the
23 proposed contract. The second notice shall be published at least
24 10 days prior to the date of the public hearing. These notices shall
25 include the date, time and location of the public hearing, a general
26 description of the proposed contract, and shall inform the public

27 of the availability of copies of the proposed contract for inspection
28 by any interested party at the offices of the contracting unit. Upon
29 request, the contracting unit shall provide any interested party
30 with a copy of the proposed contract at a cost not to exceed the
31 actual cost of reproducing the proposed contract and any support-
32 ing documentation.

1 27. (New section) a. At the public hearing on the proposed con-
2 tract held by the contracting unit pursuant to the provisions of
3 section 26 of this amendatory and supplementary act any interested
4 party may present statements or questions concerning the terms
5 and conditions of the proposed contract. Prior to the conclusion
6 of the public hearing, the contracting unit shall respond to ques-
7 tions concerning the proposed contract raised by any interested
8 party. The contracting unit shall provide that a verbatim record
9 be kept of the public hearing. The record of the public hearing
10 shall be kept open for a period of 15 days following the conclusion
11 of the hearing, during which interested parties may submit written
12 statements to be included in the hearing record. The contracting
13 unit shall provide that a hearing report be printed, which shall in-
14 clude the verbatim record of the public hearing, written statements
15 submitted by interested parties, and a statement prepared by the
16 contracting unit summarizing the major issues raised at the public
17 hearing and the contracting unit's specific response to these issues.
18 The contracting unit shall make copies of the transcript of the
19 hearing report available to interested parties upon request at a
20 cost not to exceed the actual cost of printing.

21 b. Within 45 days of the close of a public hearing on a proposed
22 contract held pursuant to this section, the contracting unit shall
23 submit a copy of the hearing report to the department, the Board
24 of Public Utilities, the Division of Local Government Services, and
25 the Division of Rate Counsel.

1 28. (New section) a. Within 30 days of receipt of the hearing
2 report submitted by a contracting unit pursuant to the provisions
3 of subsection b. of section 27 of this amendatory and supplementary
4 act, the department shall approve or conditionally approve the pro-
5 posed contract submitted for review by the contracting unit pur-
6 suant to the provisions of this amendatory and supplementary act.

7 The department shall approve the proposed contract if it finds
8 that the terms of the proposed contract are consistent with the dis-
9 trict solid waste management plan adopted pursuant to the provi-
10 sions of the "Solid Waste Management Act," P. L. 1970, c. 39 (C.
11 13:1E-1 et seq.) by the solid waste district to be served under the
12 terms of the proposed contract. If the department conditionally

13 approves the proposed contract, it shall state in writing the revisions which must be made to the proposed contract to receive approval, and the contracting unit may prepare and submit to the department a revised proposed contract. If the department determines that the revisions are substantial, the contracting unit shall hold a public hearing on the revisions pursuant to the provisions of section 26 and section 27 of this amendatory and supplementary act. In the alternative, the district solid waste management plan may be amended pursuant to law so as to be consistent with the terms of the proposed contract.

23 b. Within 30 days of receipt of the hearing report submitted by a contracting unit pursuant to the provisions of subsection b. of section 27 of this amendatory and supplementary act, the Division of Local Government Services shall approve or conditionally approve the proposed contract submitted by the contracting unit pursuant to the provisions of this amendatory and supplementary act. The division shall approve the proposed contract if it finds in writing that the terms of the proposed contract are in compliance with the provisions of section 29 of this amendatory and supplementary act, and that the terms of the proposed contract will result in the provision of services or facilities necessary for the health, safety, welfare, convenience or betterment of the recipients or users of these services or facilities, that the terms and provisions of the proposed contract are not unreasonable, exorbitant or impracticable, would not impose an undue and unnecessary financial burden on the citizens residing in or served by the contracting unit, and will not materially impair the ability of the contracting unit to punctually pay the principal and interest on its outstanding indebtedness and to supply other essential public improvements and services, except that the division, in its review of the proposed contract, shall be bound by any applicable findings or determinations of the Local Finance Board made pursuant to the provisions of subsection d. of N. J. S. 40A:2-7 or section 7 of P. L. 1983, c. 313 (C. 40A:5A-7). If the division conditionally approves the proposed contract, it shall state in writing the revisions which must be made to the proposed contract to receive approval, and the contracting unit may prepare and submit to the division a revised proposed contract. If the division determines that revisions are substantial, the contracting unit shall hold a public hearing on the revisions pursuant to the provisions of section 26 and section 27 of this amendatory and supplementary act.

54 c. Within 30 days of receipt of the hearing report submitted by a contracting unit pursuant to the provisions of subsection b. of

56 section 27 of this amendatory and supplementary act, the Board
 57 of Public Utilities shall approve or conditionally approve the pro-
 58 posed contract submitted by the contracting unit pursuant to the
 59 provisions of this amendatory and supplementary act. The board
 60 shall approve the proposed contract if it finds in writing that the
 61 terms of the proposed contract are in the public interest. If the
 62 board conditionally approves the proposed contract it shall state
 63 in writing the revisions which must be made to the proposed con-
 64 tract to receive approval, and the contracting unit may prepare and
 65 submit to the board a revised proposed contract. If the board
 66 determines that the revisions are substantial, the contracting unit
 67 shall hold a public hearing on the revisions pursuant to the pro-
 68 visions of section 26 and section 27 of this amendatory and sup-
 69 plementary act. In reviewing and approving the contract, the
 70 Board of Public Utilities shall not determine a rate base for, or
 71 otherwise regulate the tariffs or return of, proposed resource re-
 72 covery facility. The board shall not, thereafter, conduct any further
 73 review of the contract.

74 d. Notwithstanding the provisions of subsection c. of this section,
 75 all parties to any contract may request the board to determine a
 76 rate base for the proposed resource recovery facility, in which case
 77 the board may make that determination and the terms of any con-
 78 tract so approved shall remain subject to the continuing jurisdic-
 79 tion of the board.

1 29. (New section) Any contract to be awarded to a vendor pur-
 2 suant to the provisions of this amendatory and supplementary act
 3 or pursuant to the "Local Public Contracts Law," P. L. 1971, c.
 4 198 (C. 40A:11-1 et seq.) or any other contracting procedure per-
 5 mitted by law for resource recovery facilities, shall include where
 6 applicable, but not be limited to, provisions concerning:

7 a. Allocation of the risks of financing and constructing a resource
 8 recovery facility, such risks to include:

- 9 (1) Delays in project completion;
- 10 (2) Construction cost overruns and change orders;
- 11 (3) Changes necessitated by revisions in laws, rules or regu-
 12 lations;
- 13 (4) Failure to achieve the required operating performance;
- 14 (5) Loss of tax benefits; and
- 15 (6) The need for additional equity contributions.

16 b. Allocation of the risks of operating and maintaining a re-
 17 source recovery facility, such risks to include:

- 18 (1) Excess downtime or technical failure;

19 (2) Excess labor or materials costs due to underestimation;

20 (3) Changes in operating procedure necessitated by revisions in laws, rules or regulations;

22 (4) Changes in the amount or composition of the solid waste delivered for disposal;

24 (5) Excess operation or maintenance costs due to poor management;

26 (6) Increased costs of disposal of the resource recovery facility residue;

28 (7) The increased costs associated with the disposal of solid waste delivered to a resource recovery facility which cannot be processed at the facility; and

31 (8) The costs of disposal of recovered material which cannot be sold.

33 c. Allocation of the risks associated with circumstances beyond the control of any party to the contract;

35 d. Allocation of the revenues from the sale of energy or other recovered metals and other materials for reuse;

37 e. Default and termination of the contract;

38 f. The periodic preparation by the vendor of an operating performance report and an audited balance statement of the facility which shall be submitted to the contracting unit, the department and the Division of Local Government Services in the Department of Community Affairs;

43 g. The intervals at which the contract shall be renegotiated;

44 h. Employment of current employees of the contracting unit whose positions will be affected by the terms of the contract;

46 i. Competitive bidding procedures, or other methods of cost control, to be utilized by the vendor in obtaining any goods or services the cost of which will automatically be included, pursuant to the terms of the contract, in the rates to be charged at the resource recovery facility; and

51 j. The formulas to be used to determine the charges, rates, or fees to be charged for the resource recovery services, and the methodology or methodologies used to develop these formulas.

1 30. (New section) Whenever the Division of Rate Counsel represents the public interest in a proceeding held pursuant to the provisions of this amendatory and supplementary act to consider a proposed contract, the Director of the Division of Rate Counsel may assess the vendor pursuant to the provisions of this section. Whenever a contracting unit shall first submit a proposed contract to the department, the Board of Public Utilities, and the Division of Local Government Services for review and approval pursuant

9 to the provisions of this amendatory and supplementary act, the
10 vendor shall be assessed an amount equal to one-tenth of 1% of
11 the estimated gross revenues of the facility in the first year of its
12 operation. Thereafter, the vendor shall be assessed in the manner
13 provided for in section 20 of P. L. 1974, c. 27 (C. 52:27E-19).

1 31. (New section) a. Any contracting unit which has issued a
2 request for qualifications, a request for proposals, or both, as the
3 case may be, or has initiated formal negotiations with a qualified
4 vendor or two or more qualified vendors, within 30 days after the
5 effective date of this amendatory and supplementary act, may peti-
6 tion the department for an exemption from the provisions of
7 section 19, section 20, and section 21 of this amendatory and supple-
8 mentary act. Upon receiving an exemption authorized pursuant to
9 this subsection, a contracting unit may negotiate a proposed con-
10 tract with a vendor pursuant to the provisions of section 22 of this
11 amendatory and supplementary act, and shall submit the proposed
12 contract for review and approval pursuant to the provisions of
13 section 23 through section 28 of this amendatory and supplementary
14 act.

15 b. Any contracting unit which has negotiated a contract for
16 resource recovery facilities or services with a vendor prior to the
17 effective date of this amendatory and supplementary act, and has
18 held a public hearing on the contract, may petition the department
19 for an exemption from the provisions of section 19 through section
20 27 of this amendatory and supplementary act. Upon receiving an
21 exemption authorized pursuant to this subsection, the contracting
22 unit shall submit the contract to the department, the Division of
23 Local Government Services, and the Board of Public Utilities for
24 the review and approvals required pursuant to section 28 of this
25 amendatory and supplementary act. The provisions of section 28
26 of this amendatory and supplementary act to the contrary not-
27 withstanding, the department, the Division of Local Government
28 Services, and the Board of Public Utilities shall approve or condi-
29 tionally approve a contract submitted for review pursuant to the
30 provisions of this subsection within 60 days of the receipt of the
31 contract. If the department, the Division of Local Government
32 Services, or the Board of Public Utilities, conditionally approves
33 the proposed contract, the department, the Division of Local
34 Government Services, or the Board of Public Utilities, as the case
35 may be, shall state in writing the revisions which must be made to
36 the proposed contract to receive approval, and the contracting unit
37 may prepare and submit a revised proposed contract. If the depart-
38 ment, the Division of Local Government Services, or the Board of

39 Public Utilities, as the case may be, determines that the necessary
40 revisions are substantial, the contracting unit shall hold a public
41 hearing on the revisions.

1 32. (New section) Notwithstanding the provisions of any other
2 law, rule or regulation to the contrary, a contracting unit, or State
3 board, commission, committee, authority or agency may lease or sell
4 the site for a resource recovery facility to a qualified vendor which
5 has been awarded a contract pursuant to the provisions of this
6 amendatory and supplementary act or pursuant to the "Local
7 Public Contracts Law." P. L. 1971, c. 198 (C. 40A:11-1 et seq.) or
8 any other contracting procedure permitted by law for resource
9 recovery facilities.

1 33. (New section) a. (1) The department may adopt, pursuant to
2 the provisions of the "Administrative Procedure Act," P. L. 1968,
3 c. 410 (C. 52:14B-1 et seq.), any rules and regulations necessary to
4 implement the provisions of this amendatory and supplementary
5 act.

6 (2) The department shall adopt rules and regulations for the
7 engineering design of resource recovery facilities, to include a
8 requirement that state-of-the-art air emission technology be in-
9 stalled to control the emission of hydrocarbons, particulates,
10 dioxins, nitrogen oxides, carbon monoxide, heavy metals, hydro-
11 chloric acid, sulfur oxides and other acid gases and pollutants from
12 each resource recovery facility which is expected to emit these
13 pollutants.

14 b. The Board of Public Utilities may adopt, pursuant to the
15 provisions of the "Administrative Procedure Act," P. L. 1968, c. 410
16 (C. 52:14B-1 et seq.), any rules and regulations necessary to imple-
17 ment the provisions of this amendatory and supplementary act.

18 c. The Division of Local Government Services may adopt, pur-
19 suant to the provisions of the "Administrative Procedure Act,"
20 P. L. 1968, c. 410 (C. 52:14B-1 et seq.), any rules and regulations
21 necessary to implement the provisions of this amendatory and
22 supplementary act.

1 34. (New section) Any additional expenditures made by a munici-
2 pality or county in complying with an order issued by the depart-
3 ment pursuant to the provisions of the "Solid Waste Management
4 Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.) and the Board of Public
5 Utilities pursuant to the "Solid Waste Utility Control Act of
6 1970," P. L. 1970, c. 40 (C. 48:13A-1 et seq.), to transport solid
7 waste to a resource recovery facility, or any expenditures necessary
8 to reflect adjustment in rates, fees or other charges made in con-
9 nection with the taxes imposed pursuant to section 3 of this amend-

10 atory and supplementary act, or the provisions of a contract entered
11 into pursuant to the provisions of this amendatory and supple-
12 mentary act, shall, for the purposes of P. L. 1976, c. 68 (C.
13 40A:4-45.1 et seq.), be considered an expenditure mandated by
14 State law.

1 35. Section 11 of P. L. 1975, c. 326 (C. 13:1E-20) is amended to
2 read as follows:

3 11. a. (1) Within 360 days after the effective date of this amenda-
4 tory and supplementary act, the respective boards of chosen free-
5 holders, in the case of counties, and the Hackensack Commission,
6 in the case of the Hackensack Meadowlands District, shall develop
7 and formulate, pursuant to the procedures herein contained, a solid
8 waste management plan for each respective solid waste manage-
9 ment district; provided, however, that the commissioner may extend
10 such period for a maximum of 45 additional days upon the certifica-
11 tion of the board of chosen freeholders or the Hackensack Commis-
12 sion, as the case may be, of the causes of the delay in developing
13 and formulating a plan, and upon the commissioner's determination
14 that an extension will permit the development and formulation of
15 a solid waste management plan as required herein. Within 90 days
16 of the effective date of this act, each district shall make the neces-
17 sary personnel, financial and legal arrangements to assure the
18 development and formulation of the plan within 360 days of the
19 effective date of this act. Every solid waste management plan
20 shall be developed and formulated to be in force and effect for a
21 period of *not less than* 10 years, upon the expiration of which a new
22 plan shall be developed and formulated pursuant to the procedures
23 herein contained; provided, however, that every such plan shall
24 contain provisions for automatic review thereof not less than once
25 every two years following the approval thereof by the department,
26 which review shall be undertaken by the board of chosen freeholders
27 or the Hackensack Commission, as the case may be; and, provided
28 further, however, that every such plan may be reviewed at any time
29 by the department. Upon such review, if the board of chosen free-
30 holders, the Hackensack Commission, or the department, as the case
31 may be, determines that any solid waste management plan, or any
32 part thereof, is inadequate for the purposes for which it was in-
33 tended, such board of chosen freeholders or the Hackensack Com-
34 mission, as the case may be, shall develop and formulate a new solid
35 waste management plan, or any part thereof, and such new plan,
36 or part thereof, shall be adopted thereby pursuant to the procedures
37 contained in section 14 of [this amendatory and supplementary act]
38 P. L. 1975, c. 326 (C. 13:1E-23).

39 Nothing herein contained shall be construed as to prevent any
40 board of chosen freeholders or the Hackensack Commission from
41 readopting a solid waste management plan upon the expiration of
42 same in a solid waste management district; provided, however,
43 that any such readoption shall be pursuant to the provisions of
44 section 14 of [this amendatory and supplementary act] P. L. 1975,
45 c. 326 (C. 13:1E-23).

46 (2) Any two or more districts may formulate and adopt a single
47 solid waste management plan which shall meet all the requirements
48 of this act for the combined area of the cooperating solid waste
49 management districts.

50 b. (1) To assist each board of chosen freeholders in the develop-
51 ment and formulation of the solid waste management plans re-
52 quired herein, an advisory solid waste council shall be constituted
53 in every county and shall include municipal mayors or their
54 designees, persons engaged in the collection or disposal of solid
55 waste and environmentalists. The respective size, composition and
56 membership of each such council shall be designated by the respec-
57 tive boards of chosen freeholders. In the Hackensack Meadowlands
58 District, the Hackensack meadowlands municipal committee, estab-
59 lished pursuant to article 4 of P. L. 1968, c. 404 (C. 13:17-7 and
60 13:17-8), is hereby designated an advisory solid waste council
61 for the purposes of this amendatory and supplementary act;
62 provided, however, that nothing herein contained shall be construed
63 as in any way altering the powers, duties and responsibilities of the
64 Hackensack meadowlands municipal committee except as herein
65 specifically provided. The respective boards of chosen freeholders
66 and the Hackensack Commission shall consult with the relevant
67 advisory solid waste council at such stages in the development and
68 formulation of the solid waste management plan as each such board
69 of chosen freeholders or the Hackensack Commission, as the case
70 may be, shall determine; provided, however, that a solid waste
71 management plan shall be adopted as hereinafter provided only
72 after consultation with the relevant advisory solid waste council.

73 (2) In the development and formulation of a solid waste man-
74 agement plan for any solid waste management district, the board
75 of chosen freeholders or the Hackensack Commission, as the case
76 may be, shall:

77 (a) Consult with the county or municipal government agencies
78 concerned with, or responsible for, water pollution control, water
79 policy, water supply, or zoning or land use within the solid waste
80 management district;

81 (b) Review such plans for solid waste collection and disposal
 82 proposed by, or in force in, any municipality or municipalities
 83 within the solid waste management district, to determine the suit-
 84 ability of any such plan, or any part thereof, for inclusion within
 85 the solid waste management plan of the solid waste management
 86 district; and

87 (c) Consult with persons engaged in solid waste collection and
 88 disposal in the solid waste management district.

1 36. Section 6 of P. L. 1970, c. 40 (C. 48:13A-5) is amended to
 2 read as follows:

3 6. *a.* The Board of Public **[Utility Commissioners]** *Utilities* shall,
 4 **[after hearing,]** by order in writing, when it finds that the public
 5 interest requires, **[designate any municipality as a franchise area**
 6 **to be served by one or more persons engaged in solid waste collec-**
 7 **tion and any solid waste management district as]** *award* a franchise
 8 **[area]** to **[be served by one]** *any person* or **[more]** persons en-
 9 gaged in solid waste disposal at rates and charges published in
 10 tariffs or contracts accepted *or to be accepted* for filing by the
 11 board; provided, however, that the proposed franchise **[area for**
 12 **solid waste collection or]** for solid waste disposal conforms to the
 13 solid waste management plan of the solid waste management
 14 district *or districts* in which such **[franchise area]** *service* is to be
 15 located, as such plan shall have been approved by the Department
 16 of Environmental Protection.

17 *b. Franchises awarded pursuant to this section shall be of suffi-*
 18 *cient area and duration to support the estimated technical and*
 19 *economic needs of the disposal facility which is to serve the district*
 20 *or districts.*

21 *c. For the purposes of this section, "franchise" shall mean the*
 22 *exclusive right to control and provide for the disposal of solid*
 23 *waste, except for recyclable material whenever markets for those*
 24 *materials are available, within a district or districts as awarded*
 25 *by the Board of Public Utilities.*

26 **[The board shall encourage the consolidation of all accounts, cus-**
 27 **tomers, routes and facilities by persons engaged in solid waste**
 28 **collection or solid waste disposal within such franchise areas.]**

29 d. Nothing in section 11 of this act (C. 48:13A-10) shall be inter-
 30 preted to prevent the implementation of this section by the Board
 31 of Public **[Utility Commissioners]** *Utilities*.

1 37. Section 15 of P. L. 1971, c. 198 (C. 40A:11-15) is amended to
 2 read as follows:

3 15. Duration of certain contracts. All purchases, contracts or
 4 agreements for the performing of work or the furnishing of

5 materials, supplies or services shall be made for a period not to
6 exceed 12 consecutive months, except that contracts or agreements
7 may be entered into for longer periods of time as follows:

8 (1) Supplying of

9 (a) Fuel for heating purposes, for any term not exceeding
10 in the aggregate, two years;

11 (b) Fuel or oil for use of airplanes, automobiles, motor
12 vehicles or equipment for any term not exceeding in the aggregate,
13 two years;

14 (c) Thermal energy produced by a cogeneration facility, for
15 use for heating on air conditioning or both, for any term not
16 exceeding [20] 40 years, when the contract is approved by the
17 Board of Public Utilities. For the purposes of this paragraph,
18 "cogeneration" means the simultaneous production in one
19 facility of electric power and other forms of useful energy such
20 as heating or process steam;

21 (2) (Deleted by amendment; P. L. 1977, c. 53.)

22 (3) The collection and disposal of garbage and refuse, for any
23 term not exceeding in the aggregate, five years;

24 (4) The recycling of solid waste, for any term not exceeding 25
25 years, when such contract is in conformance with a solid waste
26 management plan approved pursuant to P. L. 1970, c. 39 (C. 13:1E-1
27 et seq.), and with the approval of the Division of Local Government
28 Services and the Department of Environmental Protection;

29 (5) Data processing service, for any term of not more than three
30 years;

31 (6) Insurance, for any term of not more than three years;

32 (7) Leasing or servicing of automobiles, motor vehicles,
33 machinery and equipment of every nature and kind, for a period
34 not to exceed three years; provided, however, such contracts shall
35 be entered into only subject to and in accordance with the rules and
36 regulations promulgated by the Director of the Division of Local
37 Government Services of the Department of Community Affairs;

38 (8) The supplying of any product or the rendering of any service
39 by a telephone company which is subject to the jurisdiction of
40 the Board of Public Utilities for a term not exceeding five years;

41 (9) Any single project for the construction, reconstruction or
42 rehabilitation of any public building, structure or facility, or any
43 public works project, including the retention of the services of
44 any architect or engineer in connection therewith, for the length
45 of time authorized and necessary for the completion of the actual
46 construction;

47 (10) The providing of food services for any term not exceeding
48 three years;

49 (11) On-site inspections undertaken by private agencies pur-
50 suant to the "State Uniform Construction Code Act" (P. L. 1975,
51 c. 217; C. 52:27D-119 et seq.) for any term of not more than three
52 years;

53 (12) The performance of work or services or the furnishing of
54 materials or supplies for the purpose of conserving energy in build-
55 ings owned by, or operations conducted by, the contracting unit,
56 the entire price of which to be established as a percentage of the
57 resultant savings in energy costs, for a term not to exceed 10 years;
58 provided, however, that such contracts shall be entered into only
59 subject to and in accordance with rules and regulations promulgated
60 by the Department of Energy establishing a methodology for com-
61 puting energy cost savings;

62 (13) The performance of work or services or the furnishing of
63 materials or supplies for the purpose of elevator maintenance for
64 any term not exceeding three years;

65 (14) Leasing or servicing of electronic communications equip-
66 ment for a period not to exceed five years; provided, however, such
67 contract shall be entered into only subject to and in accordance
68 with the rules and regulations promulgated by the Director of the
69 Division of Local Government Services of the Department of Com-
70 munity Affairs;

71 (15) Leasing of motor vehicles, machinery and other equipment
72 primarily used to fight fires, for a term not to exceed seven years,
73 when the contract includes an option to purchase, subject to and in
74 accordance with rules and regulations promulgated by the Director
75 of the Division of Local Government Services of the Department
76 of Community Affairs[.];

77 (16) *The provision of solid waste disposal services by a resource*
78 *recovery facility, the furnishing of products of a resource recovery*
79 *facility, the disposal of the solid waste delivered for disposal which*
80 *cannot be processed by a resource recovery facility or the waste*
81 *products resulting from the operation of a resource recovery*
82 *facility, including hazardous waste and recovered metals and other*
83 *materials for reuse, or the design, financing, construction, operation*
84 *or maintenance of a resource recovery facility for a period not to*
85 *exceed 40 years when the contract is approved by the Division of*
86 *Local Government Services in the Department of Community*
87 *Affairs, the Board of Public Utilities, and the Department of*
88 *Environmental Protection; and when the facility is in conformance*
89 *with a solid waste management plan approved pursuant to P. L.*

90 1970, c. 39 (C. 13:1E-1 et seq.). For the purposes of this subsection,
 91 "resource recovery facility" means a solid waste facility con-
 92 structed and operated for the incineration of solid waste for energy
 93 production and the recovery of metals and other materials for
 94 reuse; or a mechanized composting facility, or any other solid
 95 waste facility constructed or operated for the collection, separation,
 96 recycling, and recovery of metals, glass, paper, and other materials
 97 for reuse or for energy production;

98 (17) The sale of electricity or thermal energy, or both, produced
 99 by a resource recovery facility for a period not to exceed 40 years
 100 when the contract is approved by the Board of Public Utilities;
 101 and when the facility is in conformance with a solid waste manage-
 102 ment plan approved pursuant to P. L. 1970, c. 39 (C. 13:1E-1 et
 103 seq.). For the purposes of this subsection, "resource recovery
 104 facility" means a solid waste facility constructed and operated for
 105 the incineration of solid waste for energy production and the
 106 recovery of metals and other materials for reuse; or a mechanized
 107 composting facility, or any other solid waste facility constructed
 108 or operated for the collection, separation, recycling, and recovery
 109 of metals, glass, paper, and other materials for reuse or for energy
 110 production.

111 All multi-year leases and contracts entered into pursuant to this
 112 section 15, except contracts for the leasing or servicing of equip-
 113 ment supplied by a telephone company which is subject to the
 114 jurisdiction of the Board of Public Utilities, contracts for thermal
 115 energy authorized pursuant to subsection (1) above, construction
 116 contracts authorized pursuant to subsection (9) above, or contracts
 117 and agreements for the provision of work or the supplying of equip-
 118 ment to promote energy conservation authorized pursuant to sub-
 119 section (12) above, contracts for resource recovery services or a
 120 resource recovery facility authorized pursuant to subsection (16)
 121 above, or contracts for the sale of energy produced by a resource
 122 recovery facility authorized pursuant to subsection (17) above,
 123 shall contain a clause making them subject to the availability and
 124 appropriation annually of sufficient funds as may be required to
 125 meet the extended obligation, or contain an annual cancellation
 126 clause.

127 The Division of Local Government Services shall adopt and
 128 promulgate rules and regulations concerning the methods of ac-
 129 counting for all contracts that do not coincide with the fiscal year.

1 38. Section 19 of P. L. 1975, c. 326 (C. 13:1E-28) is amended to
 2 read as follows:

3 19. [Subject to such terms as agreed upon by a board of chosen
4 freeholders or the Hackensack Commission, as the case may be, any
5 municipality within which any solid waste facility is located pur-
6 suant to an adopted and approved solid waste management plan,
7 shall be entitled to any or all of the following benefits in considera-
8 tion for the use of land within its municipal boundaries as the
9 location of such solid waste facility:

10 a. The receipt of annual sums of money in lieu of taxes on such
11 property in such amount as may be agreed upon between the board
12 of chosen freeholders or the Hackensack Commission, as the case
13 may be, and the municipality, and each such board of chosen free-
14 holders and the Hackensack Commission is empowered to make
15 such payments and each such municipality is empowered to accept
16 such payments and to apply them in the manner in which taxes may
17 be applied in such municipality; provided, however, that no such
18 annual payment with respect to any parcel of such property shall
19 exceed the amount of taxes paid thereon for the taxable year im-
20 mediately prior to the time of its use as the location of such solid
21 waste facility;

22 b. Preferential rates charged for the services provided by the
23 solid waste management district for any solid waste disposed of at
24 a solid waste facility within said municipality, which rate dis-
25 counts shall be subject to the approval of the Board of Public
26 Utility Commissioners and shall not be in excess of 25%;

27 c. The right to reacquire any real or personal property used by
28 the solid waste management district in connection with the opera-
29 tion of any solid waste facility upon the termination of the uses for
30 which such property was originally acquired, unless prior to such
31 expiration or termination the board of chosen freeholders or the
32 Hackensack Commission, as the case may be, entered into a new
33 agreement for the continued use of such property.

34 Any real property reacquired by a municipality in accordance
35 with paragraph c. of this section, shall be repaired and, as nearly as
36 practicable, restored to its original condition, including, in the case
37 of a sanitary landfill, adequate landscaping of the final earth cover-
38 ing to conform with the immediately surrounding terrain, by and
39 at the expense of the board of chosen freeholders or the Hackensack
40 Commission, as the case may be, or adequate compensation made
41 therefor by said board of chosen freeholders or the Hackensack
42 Commission, as the case may be.

43 In the event that any municipality and any board of chosen free-
44 holders or the Hackensack Commission, as the case may be, fail to
45 reach an agreement on the benefits authorized herein in considera-

46 tion for the use of land within municipal boundaries as the location
47 of a solid waste facility, the commissioner, after consultation with
48 the relevant board of chosen freeholders or the Hackensack Com-
49 mission, as the case may be, with the mayor of the relevant munici-
50 pality, and with the relevant advisory municipal council, shall fix
51 such terms and establish such benefits as he shall deem appro-
52 priate.】

53 *a. Any municipality within which a sanitary landfill facility is*
54 *located pursuant to an adopted and approved district solid waste*
55 *management plan shall be entitled to an annual economic benefit not*
56 *less than the equivalent of \$1.00 per ton of solids on all solid waste*
57 *accepted for disposal at the sanitary landfill facility during the*
58 *previous calendar year as determined by the department.*

59 *The owner or operator of the sanitary landfill facility shall*
60 *annually pay to the relevant municipality the full amount due under*
61 *this subsection and each relevant municipality is empowered to*
62 *anticipate this amount for the purposes of preparing its annual*
63 *budget. For the purposes of calculating the payments, the owner or*
64 *operator of the sanitary landfill facility may, subject to the prior*
65 *agreement of the relevant municipality and the approval of the*
66 *Board of Public Utilities, provide the municipality with any of the*
67 *following benefits in consideration for the use of land within its*
68 *municipal boundaries as the location of a sanitary landfill facility;*

69 *(1) The receipt of annual sums of money in lieu of taxes on the*
70 *land used for the sanitary landfill facility:*

71 *(2) The exemption from all fees and charges for the disposal of*
72 *solid waste generated within its boundaries;*

73 *(3) The receipt of a lump sum cash payment; or*

74 *(4) Any combination thereof.*

75 *b. Every owner or operator of a sanitary landfill facility re-*
76 *quired to make annual payments to a municipality pursuant to*
77 *subsection a. of this section may petition the Board of Public*
78 *Utilities for an increase in its tariff which reflects these payments.*
79 *The board, within 60 days of the receipt of the petition, shall issue*
80 *an appropriate order that these payments shall be passed along*
81 *to the users of the sanitary landfill facility as an automatic sur-*
82 *charge on any tariff filed with, and recorded by, the board for the*
83 *solid waste disposal operations of the facility.*

84 *c. The board, within 60 days of the computation of any increase*
85 *in a solid waste disposal tariff pursuant to subsection b. of this*
86 *section, shall issue an appropriate order increasing current tariffs*
87 *established pursuant to law for solid waste collection by an amount*
88 *equal to the total amount of the increase in the relevant solid waste*

89 *disposal tariff calculated pursuant to subsection b. of this section.*

90 *d. In issuing any order required by this section, the Board of*
91 *Public Utilities shall be exempt from the provisions of R. S. 48:2-21.*

1 39. (New section) Any moneys due a municipality pursuant to
2 the provisions of section 19 of P. L. 1975, c. 326 (C. 13:1E-28)
3 may be anticipated by the municipality for the purposes of pre-
4 paring its annual budget. The receipt and expenditure by a munici-
5 pality of these moneys shall be exempt from the limitations on
6 municipal expenditures imposed pursuant to P. L. 1976, c. 68 (C.
7 40A:4-45.1 et seq.).

1 40. (New section) The person holding the franchise for a resource
2 recovery facility pursuant to the provisions of section 6 of P. L.
3 1970, c. 40 (C. 48:13A-5) shall, on or before January 25 of each
4 year, file with the chief fiscal officer of the municipality wherein the
5 resource recovery facility is located a statement, verified by oath,
6 showing the total number of tons of solid waste accepted for dis-
7 posal at the resource recovery facility during the preceding
8 calendar year, and shall at the time pay to the chief fiscal officer a
9 sum equal to at least \$1.00 per ton of all solid waste accepted for
10 disposal at the resource recovery facility. A municipality may
11 negotiate with the person holding the franchise for a resource
12 recovery facility or the contracting unit, or both as the case may be,
13 for an amount exceeding the amount provided for in this section.

1 41. (New section) Any moneys due a municipality pursuant to the
2 provisions of section 40 of this amendatory and supplementary act
3 may be anticipated by the municipality for the purposes of prepar-
4 ing its annual budget. The receipt and expenditure by a munici-
5 pality of these moneys shall be exempt from the limitations on
6 municipal expenditures imposed pursuant to P. L. 1976, c. 68 (C.
7 40A:4-45.1 et seq.).

1 42. This act shall take effect immediately except for section 3
2 which shall take effect the first day of the third month following
3 enactment.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

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TRENTON, N.J. 08625

Release: MONDAY, FEB. 4, 1985

Governor Thomas H. Kean has signed legislation which establishes for the first time in New Jersey the framework for a comprehensive approach to solid waste disposal by generating funds to help counties make the transition to resource recovery, while providing incentives for county governments to deal with their solid waste problems.

"Solving New Jersey's solid waste problems is clearly going to require a multi-faceted approach," Kean said. "This important bill provides the structure we need to make those approaches. And, importantly, it creates the incentives needed to make the counties meet their responsibilities. It penalizes those who drag their feet, while rewarding those who take the responsible course and move ahead to meet the challenge."

The bill, A-1778, was sponsored by Assemblyman Harry A. McEnroe, D-Essex. It attacks the solid waste problem by creating a series of taxes to help finance the transition to resource recovery, and by establishing the necessary procedures by which local units of government may enter into long term contracts with private firms for the provision of resource recovery services.

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Major provisions of the bill include:

- A Solid Waste Services Tax levied on the owner or operator of every sanitary landfill facility. The initial rate of the tax is 50 cents per ton of solids and .2 cents per gallon of liquids. Funds from this tax will go into a nonlapsing, revolving fund in the Department of Environmental Protection, known as the Solid Waste Services Tax Fund. Monies in this fund will be used to provide State aid to counties for counties to prepare, revise and implement solid waste management plans. The money, which will be allocated on the basis of the total amount of solid waste generated by each county, may also be used for recycling or solid-waste-related public participation programs.

- A Resource Recovery Investment Tax, also levied on owners and operators at the initial rate of \$1 per ton of solids and .4 cents per gallon of liquids. (The tax excludes solids that are the residue of a resource recovery plant.) The maximum rate, to be set by a study determining the rate needed to lower resource recovery services to a competitive level, is \$10 per ton. The Resource Recovery Investment Tax Fund will receive these revenues and allocate them to the counties, based on the waste generated, for several purposes: rate reduction at resource recovery facilities; design, finance, construction, operation and maintenance of environmentally sound landfills for waste which cannot be processed by resource recovery; for landfills to be used when resource recovery is not feasible or undesirable; and financing the closing of landfills.

The Resource Recovery Investment Tax expires after 11 years.

● A Solid Waste Importation Tax (host benefit tax) levied on owners and operators of landfills accepting waste from outside the solid waste district. The initial rate is \$1 per ton of solids and .4 cents per gallon of liquids on all out-of-district waste. The tax increases to \$4 per ton after three years and by \$2 per ton every year after that, with the tax also expiring in 11 years. Revenues from this tax would also go into the Resource Recovery Investment Tax Fund and then allocated to the host counties on the basis of the amount of out-of-district waste they accept.

● A provision which amends the Local Public Contract Law to permit local contracting units to enter into contract for resource recovery services and the sale of electricity for periods up to 40 years.

● A provision which entitles the host municipality of a sanitary landfill to a payment by the owner or operator of a sum equal to \$1 per ton of all solid waste disposed of in the facility the previous calendar year. The payment may come in the form of a payment in lieu of taxes, exemption from dumping fees for waste from the host municipality, a lump sum, or a combination of the above. In any event, the payment may be anticipated by the municipality in its annual budget, and shall be exempt from the municipal budget cap.

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