

13:1E-9

LEGISLATIVE HISTORY CHECKLIST

NJSA: 13:1E-9 (Solid Waste Management Act—enforceable by local health)

LAWS OF: 1983

CHAPTER: 68

Bill No.: S1187

Sponsor(s): Dorsey and Hurley

Date Introduced: March 15, 1982

Committee: Assembly: Agriculture and Environment

Senate: Energy and Environment

Amended during passage Yes // Substituted for A1163 (not attached since identical to S1187, fiscal note to A1163 attached)

Date of Passage: Assembly: Dec. 13, 1982

Senate: Sept. 16, 1982

Date of Approval: Feb. 17, 1983

Following statements are attached if available:

Sponsor statement: Yes //

Committee statement: Assembly Yes //

Senate Yes //

Fiscal Note: *Yes* ~~##~~ ~~No~~

Veto Message /// No

Message on Signing: /// No

Following were printed:

Reports: /// No

Hearings: /// No

2-17-83

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SENATE, No. 1187

STATE OF NEW JERSEY

INTRODUCED MARCH 15, 1982

By Senators DORSEY and HURLEY

Referred to Committee on Energy and Environment

AN ACT concerning the enforcement of certain codes, rules and regulations of the Department of Environmental Protection by local boards of health and county health departments and amending P. L. 1970, c. 39 ****[and P. L. 1977, c. 443]****.

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

1 1. Section 9 of P. L. 1970, c. 39 (C. 13:1E-9) is amended to read
2 as follows:

3 9. a. All codes, rules and regulations adopted by the department
4 related to solid waste collection and disposal shall have the force
5 and effect of law. Such codes, rules and regulations shall be ob-
6 served throughout the State and shall be enforced by the depart-
7 ment and by every local board of health, or county health depart-
8 ment, as the case may be.

9 *The department and the local board of health, or the county*
10 *health department, as the case may be, shall have the right to enter*
11 *a solid waste ****[collection and disposal]**** facility at any time in*
12 *order to determine compliance with the registration statement and*
13 *engineering design, and with the provisions of all applicable laws*
14 *or rules and regulations adopted pursuant thereto.*

15 *The ****[prosecutor]**** municipal attorney or an attorney ****[re-***
16 *turned]** ****retained**** by a municipality ****[of a municipality]*****
17 *in which a violation of such laws or rules and regulations adopted*
18 *pursuant thereto is alleged to have occurred shall act as counsel to*
18A *a local board of health **[** or a county health department for the*
18B *prosecution of the violation **]**.*

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:

*—Senate committee amendments adopted July 12, 1982.

**—Assembly committee amendments adopted October 25, 1982.

18C ***The county counsel or an attorney retained by a county in*
18D *which a violation of such laws or rules and regulations adopted*
18E *pursuant thereto is alleged to have occurred shall act as counsel to*
18F *the county health department.***

19 Any county health department may charge and collect from the
20 owner or operator of any sanitary landfill facility within its juris-
21 diction such fees for enforcement activities as may be established
22 by ordinance or resolution adopted by the governing body of any
23 such county. Such fees shall be established in accordance with a
24 fee schedule regulation to be adopted by the department, pursuant
25 to law, within 60 days of the effective date of this amendatory act
26 and shall be utilized exclusively to fund such enforcement activities.

27 All enforcement activities undertaken by county health depart-
28 ments pursuant to this subsection shall conform to all applicable
29 performance and administrative standards adopted pursuant to
30 section 10 of the "County Environmental Health Act," P. L. 1977,
31 c. 443 (C. 26:3A2-28).

32 b. The commissioner, a local board of health or county health
33 department, may institute an action or proceeding in the Superior
34 Court for injunctive and other relief, including the appointment of
35 a receiver for any solid waste collection or disposal facility or
36 operation, which is established or operated in violation of this act,
37 or of any code, rule or regulation promulgated pursuant to this act
38 and said court may proceed in the action in a summary manner. In
39 any such proceeding the court may grant temporary or interlocu-
40 tory relief notwithstanding the provisions of R. S. 48:2-24.

41-42 Such relief may include, singly or in combination:

43 (1) A temporary or permanent injunction;

44 (2) Assessment of the violator for the costs of any investigation,
45 inspection, or monitoring survey which led to the establishment of
46 the violation, and for the reasonable costs of preparing and liti-
47 gating the case under this subsection;

48 (3) Assessment of the violator for any cost incurred by the State
49 in removing, correcting or terminating the adverse effects upon
50 water and air quality resulting from any violation of any provision
51 of this act or any rule, regulation or condition of approval for
52 which the action under this subsection may have been brought;

53 (4) Assessment against the violator of compensatory damages
54 for any loss or destruction of wildlife, fish or aquatic life, and for
55 any other actual damages caused by any violation of this act or any
56 rules, regulations or condition of approval established pursuant
57 to this act for which the action under this subsection may have
58 been brought. Assessments under this subsection shall be paid to

59 the State Treasurer, or to the local board of health, or to the county
60 health department, as the case may be, except that compensatory
61 damages may be paid by specific order of the court to any persons
62 who have been aggrieved by the violation.

63 *If a proceeding is instituted by a local board of health or county*
64 *health department, notice thereof shall be served upon the commis-*
65 *sioner in the same manner as if the commissioner were a named*
66 *party to the action or proceeding. The department may intervene as*
67 *a matter of right in any proceeding brought by a local board of*
68 *health or county health department.*

69 c. Any person who violates the provisions of this act or any code,
70 rule or regulation promulgated pursuant to this act shall be liable
71 to a penalty of not more than \$25,000.00 per day to be collected in
72 a civil action commenced by a local board of health, a county health
73 department, or the commissioner by a summary proceeding under
74 "the penalty enforcement law" (N. J. S. 2A:58-1 et seq.) in the
75 Superior Court, county district court, or a municipal court, all of
76 which shall have jurisdiction to enforce [said] "the penalty en-
77 forcement law" in connection with this act. If the violation is of a
78 continuing nature, each day during which it continues after the date
79 given by which the violation must be eliminated in accordance with
80 the order of the department shall constitute an additional, separate
81 and distinct offense.

82 d. The department is hereby authorized and empowered to com-
83 promise and settle any claim for a penalty under this section in such
84 amount in the discretion of the department as may appear appro-
85 priate and equitable under all of the circumstances, including a
86 rebate of any such penalty paid up to 90% thereof where such
87 person satisfies the department within 1 year or such other period
88 as the department may deem reasonable that such violation has
89 been eliminated or removed or that such order or injunction has
90 been met or satisfied, as the case may be.

91 e. Any person who knowingly:

92 (1) Transports any hazardous waste to a facility ***or any other*
93 *place*** which does not have authorization from the department to
94 accept such waste ***[.]** **;*

95 *** (2) Generates and causes or permits to be transported any*
96 *hazardous waste to a facility or any other place which does not have*
97 *authorization from the department to accept such waste; ***

98 *** (2) ** (3) Disposes, treats [or] ** stores **or*
99 *transports** hazardous waste without authorization from the de-*
100 *partment** [.]** **;*

101 *** (4) Makes any false or misleading statement to any person who*
 102 *prepares any hazardous waste application, label, manifest, record,*
 103 *report, design or other document required to be submitted to the*
 104 *department; or***

105 ***[(3)]** (5)** Makes any false ***or misleading*** statement*
 106 *on any hazardous waste application, label, manifest, record, report,*
 107 *design or other document required to be submitted to the depart-*
 108 *ment shall, upon conviction, be guilty of a crime of the third degree*
 109 *and, notwithstanding the provisions of N. J. S. 2C:43-3, shall be*
 110 *subject to a fine of not more than \$25,000.00 for the first offense*
 111 *and not more than \$50,000.00 for the second and each subsequent*
 112 *offense ***and restitution of not more than \$100,000.00 for the first**
 113 *and each subsequent offense***, in addition to any other appro-
 114 *priate disposition authorized by subsection b. of N. J. S. 2C:43-2.*

115 f. Any person who recklessly:

116 (1) *Transports any hazardous waste to a facility ***or any other**
 117 *place*** which does not have authorization from the department to
 118 *accept such waste**[,]** **;*

119 *(2) Generates and causes or permits to be transported any*
 120 *hazardous waste to a facility or any other place which does not*
 121 *have authorization from the department to accept such waste;**

122 *[(2)]** (3)** Disposes, treats ***[or]** **;* stores ***or**
 123 *transports*** hazardous waste without authorization from the de-
 124 *partment**[,]** **;*

125 *(4) Makes any false or misleading statement to any person*
 126 *who prepares any hazardous waste application, label, manifest,*
 127 *record, report, design or other document required to be submitted*
 128 *to the department; or***

129 *[(3)]** (5)** Makes any false ***or misleading*** statement*
 130 *on any hazardous waste application, label, manifest, record, report,*
 131 *design or other document required to be submitted to the depart-*
 132 *ment, shall, upon conviction, be guilty of a crime of the fourth*
 133 *degree.*

134 **g. Any person who, regardless of intent, generates and causes*
 135 *or permits any hazardous waste to be transported, transports, or*
 136 *receives transported hazardous waste without completing and sub-*
 137 *mitting to the department a hazardous waste manifest in accordance*
 138 *with the provisions of this act or any rule or regulation adopted*
 139 *pursuant hereto shall, upon conviction, be guilty of a crime of the*
 140 *fourth degree.***

1 *[(2). Section 7 of P. L. 1977, c. 443 (C. 26:3A2-25) is amended to*
 2 *read as follows:*

3 7. The county department shall investigate citizen complaints and
4 provide public information and citizen education services in all mat-
5 ters concerning environmental health. The county department shall
6 monitor the various State statutes, rules and regulations concern-
7 ing environmental health; shall report any violation of said statutes,
8 rules and regulations to the Department of Environmental Protec-
9 tion **[for enforcement]**; shall gather evidence of said violations as
10 required; and shall provide witnesses for any resultant court
11 action as needed. The county department may maintain an action
12 in a court of competent jurisdiction against any other person to
13 enforce, or to restrain the violation of, any statute, regulation or
14 ordinance which is designed to prevent or minimize pollution,
15 impairment or destruction of the environment as provided in the
16 "Environmental Rights Act," (P. L. 1974, c. 169; C. 2A:35A-1
17 et seq.) and the "Solid Waste Management Act," P. L. 1970, c. 39
18 (C. 13:1E-1 et seq.).**

1 ****[3.]**** **2.** This act shall take effect immediately.

108 (2) Disposes, treats or stores hazardous waste without autho-
109 rization from the department,

110 (3) Makes any false statement on any hazardous waste applica-
111 tion, label, manifest, record, report, design or other document
112 required to be submitted to the department, shall, upon conviction,
113 be guilty of a crime of the fourth degree.

1 2. Section 7 of P. L. 1977, c. 443 (C. 26:3A2-25) is amended to
2 read as follows:

3 7. The county department shall investigate citizen complaints and
4 provide public information and citizen education services in all mat-
5 ters concerning environmental health. The county department shall
6 monitor the various State statutes, rules and regulations concern-
7 ing environmental health; shall report any violation of said statutes,
8 rules and regulations to the Department of Environmental Protec-
9 tion **[for enforcement]**; shall gather evidence of said violations as
10 required; and shall provide witnesses for any resultant court
11 action as needed. The county department may maintain an action
12 in a court of competent jurisdiction against any other person to
13 enforce, or to restrain the violation of, any statute, regulation or
14 ordinance which is designed to prevent or minimize pollution,
15 impairment or destruction of the environment as provided in the
16 "Environmental Rights Act," (P. L. 1974, c. 169; C. 2A:35A-1
17 et seq.) and the "Solid Waste Management Act," P. L. 1970, c. 39
18 (C. 13:1E-1 et seq.).

1 3. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to allow local boards of health and county health departments, concurrently with the Department of Environmental Protection to enforce the provisions of the "Solid Waste Management Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.).

At present, local boards of health and county health departments have the right to enforce the department regulations along with the department itself, but only the department may institute an action or proceeding in the Superior Court for injunctive and other relief to enforce its rules and regulations. The only enforcement power given to local boards of health and county health departments is an action for the imposition of a fine.

By providing local boards of health and county health departments with the right to seek injunctive or other relief from the Superior Court, they will better be able to respond expeditiously to critical situations without the cumbersome procedure of convincing the department to file its own law suit.

S1187(1982)

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO

SENATE, No. 1187

[OFFICIAL COPY REPRINT]

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 25, 1982

Senate Bill No. 1187 Sca-Senator Dorsey

This bill would permit local boards of health and county health departments, concurrently with the Department of Environmental Protection, to enhance compliance with the registration statement and engineering design of any solid waste facility located within their jurisdiction pursuant to the "Solid Waste Management Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.).

At present, local boards of health and county health departments are authorized to enforce departmental regulations but are not authorized to institute an action in Superior Court for injunctive or other relief. Presently, they may bring an action for the imposition of fine.

The committee amended the bill to correct certain technical deficiencies.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1187

STATE OF NEW JERSEY

DATED: JUNE 24, 1982

Senate Bill No. 1187 allows local boards of health and county health departments to enforce the provisions of the "Solid Waste Management Act," and to institute an action or proceeding in the Superior Court for injunctive or other relief for a violation of the act or rules and regulations promulgated pursuant to the act.

This bill also grants local boards of health and county health departments the right to enter a solid waste collection and disposal facility to determine if the facility is in compliance with the registration statement and engineering design approved for the facility, and with the provisions of the "Solid Waste Management Act." Senate Bill No. 1187 also provides that if a local board of health or a county health department institutes legal action against a facility, for a violation, the prosecutor of the municipality in which the violation occurred shall act as counsel to the board or the department.

The committee amended the bill to provide that an attorney retained by a municipality, as well as a municipal attorney, may represent a local board of health in an action against a solid waste facility and that such an attorney is required to represent only the local board of health, not the county health department.

FISCAL NOTE TO
ASSEMBLY, No. 1163

STATE OF NEW JERSEY

DATED: SEPTEMBER 30, 1982

Assembly Bill No. 1163, of 1982, would allow local boards of health and county health departments, concurrently with the Department of Environmental Protection (DEP) to enforce the provisions of the "Solid Waste Management Act," P. L. 1970, c. 39, i. e. to seek injunctive or other relief from the Superior Court.

The Department of Environmental Protection comments as follows:

STATE BUDGET IMPACTS

Although precise dollar estimates are difficult to develop, it appears that enactment of this bill will allow for substantial savings to the State. The assumption of some of the responsibility for enforcement of waste disposal rules and regulations by local governments will relieve current demands on State resources. While this increased activity of local enforcement units will require increased communication and contact with local officials, it is clear that oversight and monitoring of local actions would be less costly than were the same actions to be taken by State level units. On the other hand, some funds from penalties, previously received by the State under State-initiated enforcement actions, will no longer be received.

Quantification of these impacts is difficult because the bill in question does not impose requirements on local governments, but rather broadens their range of optional activities. (Note: Some actions are mandated; e. g. if a local unit *decides* to engage in enforcement activities, the prosecutor or county counsel *must* act as counsel; however, the first step would be the optional decision to enforce.)

LOCAL BUDGET IMPACTS

Local governments are likely to encounter budget impacts which mirror those at the State level. Instead of only monitoring those actions the State is taking, local units could or would be providing field enforcement capability, and legal and administrative support for these activities.

For these local government impacts as well, quantification is difficult due to the nonmandatory nature of this proposal. To the extent that local units choose to act, they will encounter costs, and the State will

experience savings. As well, the degree of enforcement involvement will determine the level of penalty funds received by local governments.

The Office of Legislative Services concurs and notes that a quantified net savings figure cannot be presently determined.

In compliance with written request received, there is hereby submitted a estimate for the above bill, pursuant to P. L. 1980, c. 67.
