

13:1E-5.1, 13:1E-5.2

LEGISLATIVE HISTORY CHECKLIST

NJSA: 13:1E-5.1, 13:1E-5.2

(Solid waste disposal facilities-approval require administrative hearings in affected municipality)

LAWS OF: 1983

CHAPTER: 464

Bill No: A805

Sponsor(s): Littell

Date Introduced: February 8, 1982

Committee: Assembly: Revenue, Finance and Appropriations

Senate: Energy and Environment

Amended during passage: Yes  
according to Governor's recommendation

Amendments denoted by asterisks

Date of Passage: Assembly: February 22, 1982 Re-enacted 1-12-83

Senate: June 20, 1983 Re-enacted 1-9-84

Date of Approval: January 12, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: Yes

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

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1-12-84

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**ASSEMBLY, No. 805****STATE OF NEW JERSEY**

INTRODUCED FEBRUARY 8, 1982

By Assemblyman LITTELL

(Without Reference)

A SUPPLEMENT to the "Solid Waste Management Act," approved May 6, 1970 (P. L. 1970, c. 39; C. 13:1E-1 et seq.), as said short title was amended by P. L. 1975, c. 326.

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

1 1. In addition to all other standards, conditions and procedures  
2 required pursuant to law for the approval of applications for regis-  
3 tration statements and engineering designs for new solid waste  
4 disposal facilities:

5 a. The department shall transmit, by certified mail, a complete  
6 copy of any application for a registration statement or engineering  
7 design approval for a new solid waste disposal facility to the  
8 governing body of the affected municipality;

9 b. Within 6 months of the receipt of a complete application, the  
10 department shall reject the application or grant tentative approval  
11 thereof, which tentative approval shall establish design and oper-  
12 ating conditions for the proposed solid waste disposal facility, re-  
13 quirements for the monitoring thereof, and any other conditions  
14 required under federal or State laws or rules and regulations;

15 c. All tentative approvals of applications granted pursuant to  
16 subsection b. of this section shall be transmitted to the applicant  
17 and to the affected municipality and shall be accompanied by a  
18 fact sheet setting forth the principal facts and the significant fac-  
19 tual, legal, methodological, and policy questions considered in  
20 granting the tentative approval. The fact sheet shall include a  
21 description of the facility which is the subject of the tentative

**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 June 21, 1982.**

**\*\*—Assembly amendments adopted in accordance with Governor's recommendations December 8, 1983.**

22 approval; the type and quantities of solid waste or sludge which  
 23 may be disposed of at the proposed facility; and a brief summary  
 24 of the basis for the conditions of the tentative approval; *\*\*and\*\**

25 d. Within 45 days of the granting of a tentative approval of an  
 26 application, *\*\*[an adjudicatory]\*\** *\*\*a public\*\** hearing on the  
 27 proposed facility and operator shall be conducted by *\*\*[an admin-  
 28 istrative law judge.* The affected municipality shall be a party of  
 29 interest to the hearing, and shall have the right to present testi-  
 30 mony and cross-examine witnesses. This hearing shall be conducted  
 31 in the manner provided in the "Administrative Procedure Act,"  
 32 P. L. 1968, c. 410 (C. 52:14B-1 et seq.);

33 e. Within *\*\*[30]\*\** *\*\*45\*\** days of the close of the hearing, the  
 34 administrative law judge shall transmit his recommendations for  
 35 action on the application to the department; and

36 f. Within *\*\*[60]\*\** *\*\*45\*\** days of the receipt thereof or within any  
 37 longer period agreed to by the applicant the department shall  
 38 *\*\*[affirm, conditionally affirm or reject]\*\** *\*\*adopt, reject or modify\*\**  
 39 the recommendations of the administrative law judge and grant  
 40 final approval to or deny the application. If the department *\*\*[con-  
 41 ditionally affirms]\*\** *\*\*modifies\*\** or rejects the recommendations of  
 42 the administrative law judge, the department shall prepare and  
 43 make available to all parties of interest a report detailing the  
 44 reasons for the *\*\*[conditional affirmation]\*\** *\*\*modification\*\** or rejec-  
 45 tion. The approval or denial of an application by the department  
 46 shall be considered to be final agency action thereon for the pur-  
 47 poses of the "Administrative Procedure Act," and shall be subject  
 48 only to judicial review as provided in the Rules of Court.

48A If the department fails to act upon the recommendations of the  
 49 administrative law judge as required by this subsection, the failure  
 50 shall constitute departmental *\*\*[affirmance]\*\** *\*\*adoption\*\** of the  
 51 recommendations. *\*\*the department. The department shall  
 52 adopt and promulgate rules and regulations necessary to ensure  
 53 that the public hearing is full and impartial and that the applicant  
 54 is present to answer questions relating to the facility which are  
 55 posed by interested parties.\*\**

1 2. In the event that any application review by the department  
 2 pursuant to this *\*\*[1982]\*\** *\*\*1983\*\** act is for a registration  
 3 statement and engineering design approval for a proposed solid  
 4 waste disposal facility on a site located in more than one munic-  
 5 ipality, the notices required herein shall be transmitted to each  
 6 affected municipality, and all of the affected municipalities shall  
 7 be considered a single party for the purposes of the *\*\*[adjudi-  
 8 catory]\*\** *\*\*public\*\** hearing held concerning the application.

1 3. The act shall take effect immediately.

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**ASSEMBLY, No. 805**

**STATE OF NEW JERSEY**

INTRODUCED FEBRUARY 8, 1982

By Assemblyman LITTELL

(Without Reference)

A SUPPLEMENT to the "Solid Waste Management Act," approved May 6, 1970 (P. L. 1970, c. 39; C. 13:1E-1 et seq.), as said short title was amended by P. L. 1975, c. 326.

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

1 1. In addition to all other standards, conditions and procedures  
2 required pursuant to law for the approval of applications for regis-  
3 tration statements and engineering designs for new solid waste  
4 disposal facilities:

5 a. The department shall transmit, by certified mail, a complete  
6 copy of any application for a registration statement or engineering  
7 design approval for a new solid waste disposal facility to the  
8 governing body of the affected municipality;

9 b. Within 6 months of the receipt of a complete application, the  
10 department shall reject the application or grant tentative approval  
11 thereof, which tentative approval shall establish design and oper-  
12 ating conditions for the proposed solid waste disposal facility, re-  
13 quirements for the monitoring thereof, and any other conditions  
14 required under federal or State laws or rules and regulations;

15 c. All tentative approvals of applications granted pursuant to  
16 subsection b. of this section shall be transmitted to the applicant  
17 and to the affected municipality and shall be accompanied by a  
18 fact sheet setting forth the principal facts and the significant fac-  
19 tual, legal, methodological, and policy questions considered in  
20 granting the tentative approval. The fact sheet shall include a  
21 description of the facility which is the subject of the tentative

22 approval; the type and quantities of solid waste or sludge which  
 23 may be disposed of at the proposed facility; and a brief summary  
 24 of the basis for the conditions of the tentative approval;

25 d. Within 45 days of the granting of a tentative approval of an  
 26 application, an adjudicatory hearing on the proposed facility and  
 27 operator shall be conducted by an administrative law judge. The  
 28 affected municipality shall be a party of interest to the hearing,  
 29 and shall have the right to present testimony and cross-examine  
 30 witnesses. This hearing shall be conducted in the manner provided  
 31 in the "Administrative Procedure Act," P. L. 1968, c. 410 (C.  
 32 52:14B-1 et seq.);

33 e. Within 30 days of the close of the hearing, the administrative  
 34 law judge shall transmit his recommendations for action on the  
 35 application to the department; and

36 f. Within 60 days of the receipt thereof or within any longer  
 37 period agreed to by the applicant the department shall affirm,  
 38 conditionally affirm or reject the recommendations of the adminis-  
 39 trative law judge and grant final approval to or deny the appli-  
 40 cation. If the department conditionally affirms or rejects the  
 41 recommendations of the administrative law judge, the department  
 42 shall prepare and make available to all parties of interest a report  
 43 detailing the reasons for the conditional affirmation or rejection.  
 44 The approval or denial of an application by the department shall  
 45 be considered to be final agency action thereon for the purposes  
 46 of the "Administrative Procedure Act," and shall be subject only  
 47 to judicial review as provided in the Rules of Court.

48 If the department fails to act upon the recommendations of the  
 49 administrative law judge as required by this subsection, the failure  
 50 shall constitute departmental affirmance of the recommendations.

1 2. In the event that any application review by the department  
 2 pursuant to this 1982 act is for a registration statement and  
 3 engineering design approval for a proposed solid waste disposal  
 4 facility on a site located in more than one municipality, the notices  
 5 required herein shall be transmitted to each affected municipality,  
 6 and all of the affected municipalities shall be considered a single  
 7 party for the purposes of the adjudicatory hearing held concerning  
 8 the application.

1 3. The act shall take effect immediately.

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#### STATEMENT

This bill would require that the approval of all new solid waste disposal facilities be the subject of an administrative hearing where the affected municipality would be a party of interest.

A 805 (1983)

In addition, this bill would require the Department of Environmental Protection to detail its reasons for revising or rejecting the recommendations of the administrative law judge who conducted the hearing.

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ASSEMBLY REVENUE, FINANCE AND APPROPRIATIONS  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 805**  
[SENATE REPRINT]

**STATE OF NEW JERSEY**

DATED: APRIL 25, 1983

Assembly Bill No. 805 provides that the approval by the Department of Environmental Protection of the location and design of a new solid waste disposal facility be the subject of an adjudicatory hearing conducted by an administrative law judge. This hearing would be in the form of a contested case, where the municipality or municipalities in which the solid waste facility would be located would be parties of interest to the hearing. The municipalities would have the right to present testimony and cross examine witnesses.

Upon the completion of the hearing, the administrative law judge would make a recommendation to the department concerning the facility, and the department would then adopt, reject, or modify the recommendation. If the department modifies or rejects the recommendation, it must detail its reasons for doing so.

**FISCAL IMPACT**

The fiscal note on the measure indicates that additional costs to the Department of Environmental Protection would be \$163,987.00 in FY 1983, \$180,385.00 in FY 1984 and \$198,423.00 in FY 1985. There may be additional indirect costs to the State, but are presently undeterminable.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 805

**STATE OF NEW JERSEY**

DATED: JUNE 21, 1982

Assembly Bill No. 805 provides that the approval by the Department of Environmental Protection of the location and design of a new solid waste disposal facility be the subject of an adjudicatory hearing conducted by an administrative law judge. This hearing would be in the form of a contested case, where the municipality or municipalities in which the solid waste facility would be located would be parties of interest to the hearing. The municipalities would have the right to present testimony and cross examine witnesses.

Upon the completion of the hearing, the administrative law judge would make a recommendation to the department concerning the facility, and the department would then adopt, reject, or modify the recommendation. If the department modifies or rejects the recommendation, it must detail its reasons for doing so.

This bill would provide municipalities with increased participation in the process of siting new solid waste disposal facilities.

The committee made technical amendments to the bill to conform the procedural requirements with those of the "Administrative Procedure Act."



FISCAL NOTE TO  
**ASSEMBLY, No. 805**

**STATE OF NEW JERSEY**

DATED: MAY 4, 1982

Assembly Bill No. 805, of 1982, would require that the approval of all new solid waste disposal facilities be the subject of an administrative hearing where the affected municipality would be a party of interest. In addition, it would require the Department of Environmental Protection (DEP) to detail its reasons for revising or rejecting the recommendations of the Administrative law judge who conducted the hearing.

The DEP estimates personnel and miscellaneous costs as follows:

FY 1983 . . . . .	\$163,987.00
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In addition, the DEP points out an indirect cost to the State which may be substantial, but presently undeterminable. Since many of those who will attempt to obtain permits under this process will be solid waste management districts (i.e. the State's 21 counties and the Hackensack Meadowlands), there will be substantial new burden placed upon the districts. This may result in increased funding requests from the districts to the DEP, and if such funding is not available, then in reduced progress by Districts in addressing solid waste issues.

The Office of Administrative Law may have additional funding costs if their present staff of administrative law judges is insufficient to handle the hearings.

The Office of Legislative Services concurs with the DEP and submits the following figures with an assumed increase of 10% compounded annually:

FY 1984 . . . . .	\$180,385.00
FY 1985 . . . . .	\$198,423.00

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

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

September 6, 1983

ASSEMBLY BILL NO. 805 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 805 (OCR) with my objections for consideration by the Legislature.

This bill would require that any tentative approval granted by the Department of Environmental Protection for a new solid waste disposal facility must be the subject of a hearing before an administrative law judge. At such a hearing, the municipality in which the solid waste facility is to be located would be party of interest with the right to present testimony and cross examine witnesses. Following the hearing, the administrative law judge would make a recommendation to the department concerning the proposed facility which the department would either adopt, reject, or modify with a written explanation of its decision.

My objection to this bill is that it would add a duplicative new procedural level which will add significantly to the time and resources required to obtain approval for necessary solid waste facilities without significantly enhancing the opportunity for participation by effected municipalities in the decision-making process. There is presently ample opportunity for local input under the approval process already established by the Solid Waste Management Act.

The Act provides that, prior to including a proposed solid waste facility in a district solid waste management plan, the county board of freeholders or the Hackensack Meadowlands Development Commission, as the case may be, must consult with local officials, as well as with agencies concerned with water supply, water pollution, and zoning and must also hold a public hearing during which effected parties, including the municipality in which a proposed facility is to be located, may state objections to the plan. If the inclusion of the proposed facility in the solid waste management plan is approved, an applicant may apply to the Department of Environmental Protection for permission to construct the facility, and finally to obtain an operating permit. Under the Solid Waste Management Act, this requires the preparation by the applicant of a detailed environmental impact statement and complete engineering designs which

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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must be reviewed by state, local and federal agencies. Pursuant to departmental regulation, an additional public hearing must be held regarding the proposed engineering designs, at which time local objections to the facility may again be raised.

This procedure is sufficient to ensure that local comments and objections to a proposed solid waste facility have been heard and considered by the decision-making agencies. The additional hearings and administrative review mandated by this bill would have the effect of introducing further uncertainty and delay into the financing and development of necessary solid waste facilities without providing concomitant benefits. Therefore, this bill should be amended to reflect the present approval process under the Solid Waste Management Act and the regulations adopted by the Department of Environmental Protection to implement the Act. In doing so, the bill should require a full and impartial public hearing to be conducted by the department on the engineering design for a proposed solid waste facility at which ample opportunity is given for interested parties to state objections to the facility and to obtain answers from the applicant to questions about the facility.

Accordingly, I herewith return Assembly Bill No. 805 (OCR) with the following amendments for enactment by the Legislature:

Page 2, section 1, line 24: After "approval;" INSERT "and"

Page 2, section 1, line 26: After "application," DELETE "an adjudicatory" and INSERT "a public"

Page 2, section 1, lines 27-51: On line 27 DELETE "an administrative law judge", delete lines 28-51 and INSERT "the department. The department shall adopt and promulgate rules and regulations necessary to ensure that the public hearing is full and impartial and that the applicant is present to answer questions relating to the facility which are posed by interested parties."

Page 2, section 2, line 2: Omit "1982" INSERT "1983"

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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Page 2, section 2, line 7: DELETE "adjudicatory" and INSERT "public"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

Attest:

/s/ W. Cary Edwards

Chief Counsel to the Governor

BILLS

Page Four

January 13, 1984

A-832, sponsored by Assemblyman Walter M.D. Kern, R-Bergen, designated the "Electronic Fund Transfer Privacy Act," which prescribes who can provide and obtain information concerning an electronic fund transfer or account, and under what circumstances. The Governor recommended a change which would require a financial institution to disclose such information when requested by a State agency in connection with an investigation concerning public assistance eligibility, as required by current law.

A-831, sponsored by Assemblyman Kern, which requires a supplier of liquified petroleum gas to residential dwellings to provide a five-day cut-off notice prior to discontinuing, abandoning or curtailing service. The Governor recommended a seven-day notice period.

A-805, sponsored by Assemblyman Robert E. Littell, R-Sussex, which requires that any tentative approval by the Department of Environmental Protection for a new solid waste disposal facility be the subject of an administrative law hearing at which the host municipality would be a party of interest. The Governor noted such a process would be duplicative and wasteful. He recommended modification which would require a full and impartial hearing on the engineering design for a proposed new facility at which ample opportunity is given for interested parties, including the host municipality, to obtain answers from the applicant to questions about the facility.