

# 48:13A-7.24

## LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

**LAWS OF:** 2003 **CHAPTER:** 169  
**NJSA:** 48:13A-7.24 (“Commercial Landfill Regulatory Reform Act”)  
**BILL NO:** S2354 (Substituted for A3768)

**SPONSOR(S):** Suliga and others

**DATE INTRODUCED:** March 10, 2003

**COMMITTEE:** **ASSEMBLY:** Environment and Solid Waste

**SENATE:** Environment

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** June 23, 2003

**SENATE:** June 16, 2003

**DATE OF APPROVAL:** September 3, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Senate Committee Substitute enacted)

#### S2354

[SPONSORS STATEMENT](#): (Begins on page 10 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

#### A3768

[SPONSORS STATEMENT](#): (Begins on page 15 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

Identical to Senate Statement to S2354

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR’S PRESS RELEASE ON SIGNING:** No

### FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2003, CHAPTER 169, *approved September 3, 2003*  
Senate Committee Substitute for  
Senate, No. 2354

1 **AN ACT** concerning privately-owned sanitary landfill facilities, and  
2 revising various sections of statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. (New section) Sections 1 through 10 of P.L. , c. (C. )(now  
8 before the Legislature as this bill) shall be known and may be cited as  
9 the "Commercial Landfill Regulatory Reform Act."

10

11 2. (New section) The Legislature finds and declares that efficient  
12 and reasonable solid waste disposal services at competitive rates will  
13 more likely be achieved if the services of privately-owned sanitary  
14 landfill facilities in this State are under the supervision of the  
15 Department of Environmental Protection but not subject to traditional  
16 public utility economic regulation.

17 The Legislature further finds and declares that it is imperative that  
18 the State ensure the economic viability and competitiveness of all solid  
19 waste disposal facilities in this State whether publicly or privately  
20 owned in order to safeguard the integrity of the State's solid waste  
21 management strategy; that it is equally imperative to safeguard the  
22 interests of consumers in efficient sanitary landfill services at  
23 competitive rates; that to achieve these ends and provide for consumer  
24 protection it is necessary to foster competition and this can best be  
25 achieved by establishing a responsible State supervisory role and  
26 abolishing tradition utility economic restrictions which place New  
27 Jersey's commercial landfills at a competitive disadvantage and  
28 threaten their economic viability in today's competitive market for  
29 solid waste disposal services.

30 The Legislature further finds and declares that reforming  
31 traditional public utility regulation with respect to privately-owned  
32 sanitary landfill facilities in the manner hereinafter provided will not  
33 compromise the State's ability to supervise the solid waste disposal  
34 services provided at such commercial facilities pursuant to P.L.1970,  
35 c.40 (C.48:13A-1 et seq.) or its ability to prevent persons with  
36 criminal backgrounds from engaging in the business of solid waste  
37 disposal through implementation of the licensing system established

**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 underlined thus is new matter.**

1 under P.L.1983, c.392 (C.13:1E-126 et seq.) and P.L.1991, c.269  
2 (C.13:1E-128.1 et al.).

3 The Legislature therefore determines that it is in the public interest  
4 to provide for the reform of this State's economic regulation of  
5 privately-owned sanitary landfill facilities while at the same time  
6 maintaining State supervision over these commercial facilities.

7

8 3. (New section) As used in sections 1 through 10 of P.L. ,  
9 c. (C. )(now before the Legislature as this bill):

10 "Department" means the Department of Environmental Protection.

11 "Market-based rates" means the solid waste disposal rates  
12 collected by a privately-owned sanitary landfill facility which do not  
13 exceed rates charged at other solid waste facilities in this State or at  
14 competing out-of-state facilities.

15 "Privately-owned sanitary landfill facility" means a commercial  
16 sanitary landfill facility which is owned and operated by a private  
17 person, corporation or other organization and includes all  
18 appurtenances and related improvements used at the site for the  
19 transfer, processing or disposal of solid waste.

20 "Sanitary landfill facility" means a solid waste facility at which  
21 solid waste is deposited on or in the land as fill for the purpose of  
22 permanent disposal or storage for a period exceeding six months,  
23 except that it shall not include any waste facility approved for disposal  
24 of hazardous waste.

25 "Solid waste disposal services" means the services provided by  
26 persons engaging in the business of solid waste disposal.

27

28 4. (New section) a. The owner or operator of every privately-  
29 owned sanitary landfill facility shall hold a certificate of public  
30 convenience and necessity issued by the department pursuant to the  
31 provisions of section 7 of P.L.1970, c.40 (C.48:13A-6).

32 b. The terms and conditions of solid waste disposal services at a  
33 privately-owned sanitary landfill facility shall be set forth in a tariff  
34 filed with the department.

35 c. Within ten days of any deletion or addition of a service, a tariff  
36 amendment shall be filed with the department.

37

38 5. (New section) a. The solid waste disposal rates collected by  
39 a privately-owned sanitary landfill facility may be adjusted upon 30  
40 days notice to current customers and publication in a newspaper of  
41 general circulation in the service area once a week for two consecutive  
42 weeks, with the first notice being 30 days in advance of the effective  
43 date of the adjustments, and following their effective date the rates  
44 shall be posted in a prominent location at the entrance to the privately-  
45 owned sanitary landfill facility.

46 b. The notice of solid waste disposal rate adjustments shall be filed

1 with the department within three days of their effective date.

2

3 6. (New section) a. The total annual fee collected by the  
4 department from the owner or operator of a privately-owned sanitary  
5 landfill facility to cover the costs of supervising the privately-owned  
6 sanitary landfill facility pursuant to the provisions of P.L.1970, c.40  
7 (C.48:13A-1 et seq.) shall not exceed the annual assessment  
8 authorized under the provisions of P.L.1968, c.173 (C.48:2-59 et  
9 seq.).

10 b. For the purposes of the annual assessment authorized under the  
11 provisions of P.L.1968, c.173 (C.48:2-59 et seq.), the owner or  
12 operator of a privately-owned sanitary landfill facility shall file with the  
13 department not later than May 1 of each year a certification of gross  
14 operating revenues received from intrastate utility services during the  
15 preceding calendar year.

16

17 7. (New section) a. Notwithstanding the provisions of any other  
18 law, rule or regulation, court decision or order of the Board of Public  
19 Utilities or department to the contrary, the solid waste disposal rates  
20 collected by a privately-owned sanitary landfill facility shall be deemed  
21 just and reasonable for the purposes of section 8 of P.L.1970, c.40  
22 (C.48:13A-7) if those rates are market-based rates.

23 b. The solid waste disposal rates collected by a privately-owned  
24 sanitary landfill facility which exceed the market-based rates  
25 authorized pursuant to subsection a. of this section shall not be  
26 deemed unjust and unreasonable if the solid waste disposal rates are  
27 designed to: (1) stabilize incoming waste flows and prevent the  
28 premature exhaustion of landfill capacity; or (2) recover sufficient  
29 revenues to meet the revenue requirements of the privately-owned  
30 sanitary landfill facility.

31 c. The internal cost of service or financial condition of a privately-  
32 owned sanitary landfill facility shall be deemed relevant only if the  
33 owner or operator of the affected facility raises a revenue requirement  
34 defense in a contested case proceeding initiated by the department  
35 pursuant to section 8 of P.L. , c. (C. )(now before the  
36 Legislature as this bill). In such a case, the owner or operator of the  
37 privately-owned sanitary landfill facility, at the owner's sole discretion,  
38 may establish a reasonable profit margin using either the return on rate  
39 base or operating margin methodology, or any alternative  
40 methodology which is consistent with market practices.

41

42 8. (New section) a. Whenever, on the basis of available  
43 information, the department has reasonable grounds for belief that the  
44 solid waste disposal rates collected by a privately-owned sanitary  
45 landfill facility are not in compliance with the market-based rates  
46 authorized in subsection a. of section 7 of P.L. , c. (C. )

1 (now before the Legislature as this bill), the department may initiate  
2 contested case proceedings before the Office of Administrative Law  
3 as authorized herein.

4 b. At least 30 days prior to transmittal of the contested case to the  
5 Office of Administrative Law pursuant to subsection a. of this section,  
6 the department shall serve a notice on the owner or operator of the  
7 affected facility. The notice shall identify the solid waste disposal rate  
8 or rates at issue, describe and attach copies of the evidence relied  
9 upon, and afford the owner or operator an opportunity to be heard on  
10 why further action on the matter is not warranted.

11 c. Within 30 days of the close of the hearing before the Office of  
12 Administrative Law, the administrative law judge shall issue an initial  
13 decision which may recommend that the department order the owner  
14 or operator of the affected facility to adjust the solid waste disposal  
15 rates collected by the privately-owned sanitary landfill facility to bring  
16 the rates into compliance with the market-based rates authorized in  
17 subsection a. of section 7 of P.L. , c. (C. )(now before the  
18 Legislature as this bill), if the department shows that the solid waste  
19 disposal rates identified in the notice of transmittal: (1) are not in  
20 compliance with the market-based rates authorized in subsection a. of  
21 section 7 of P.L. , c. (C. )(now before the Legislature as this  
22 bill) and the owner or operator of the affected facility has not  
23 demonstrated that the rates; (2) are designed to stabilize incoming  
24 waste flows; or (3) are needed to meet the revenue requirements of the  
25 privately-owned sanitary landfill facility.

26 d. The administrative law judge's initial decision shall be  
27 simultaneously served on the department and the owner or operator of  
28 the affected facility. Within 30 days of receipt of the initial decision,  
29 the department shall issue a final order affirming or rejecting the  
30 recommendations of the administrative law judge and describing with  
31 specificity the basis in the record for any findings or conclusions which  
32 are contrary to those set forth in the initial decision.

33 e. If the department fails to act on the initial decision within 90  
34 days of its receipt, or within any extended period agreed to, in writing,  
35 by the owner or operator of the affected facility, the recommendations  
36 of the administrative law judge shall be deemed affirmed and the final  
37 agency decision in the case for the purposes of appeal. Any order on  
38 the initial decision issued by the department thereafter shall be of no  
39 effect.

40 f. Except to the extent expressly modified herein, the contested  
41 case proceeding authorized pursuant to this section shall be conducted  
42 in accordance with the rules and regulations applicable to such  
43 proceedings promulgated by the Office of Administrative Law,  
44 including rules applicable to summary judgment motions.

45

46 9. (New section) a. The provisions of section 18 of P.L.1975,

1 c.326 (C.13:1E-27), Title 48 of the Revised Statutes, P.L.1970, c.40  
2 (C.48:13A-1 et seq.), or any other law, rule or regulation adopted  
3 pursuant thereto, or order issued by the Board of Public Utilities or  
4 the department, to the contrary notwithstanding, the jurisdiction of the  
5 department with respect to the State supervision of privately-owned  
6 sanitary landfill facilities shall be exercised with respect to the solid  
7 waste disposal rates collected by privately-owned sanitary landfill  
8 facilities solely in the manner and to the extent expressly provided in  
9 the provisions of P.L. , c. (C. ) (now before the Legislature as  
10 this bill), and shall not extend to the financial or business affairs of any  
11 privately-owned sanitary landfill facility or the owner or operator  
12 thereof, except to the extent expressly provided in the provisions of  
13 R.S.48:3-7 and section 12 of P.L.1970, c.40 (C.48:13A-11).

14 b. Nothing contained in the provisions of P.L. , c. (C. )  
15 (now before the Legislature as this bill) shall be construed to limit the  
16 authority of the department to regulate privately-owned sanitary  
17 landfill facilities with respect to the provision of solid waste disposal  
18 services pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.), environment  
19 standards and requirements pursuant to P.L.1970, c.39 (C.13:1E-1 et  
20 seq.) and licensing standards and requirements pursuant to P.L.1983,  
21 c.392 (C.13:1E-126 et seq.) and P.L.1991, c.269 (C.13:1E-128.1 et  
22 al.).

23

24 10. (New section) Within 180 days of the effective date of  
25 P.L. , c. (C. ) (now before the Legislature as this bill), the  
26 department shall adopt, pursuant to the "Administrative Procedure  
27 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as  
28 are necessary to effectuate the provisions of this act and to implement  
29 the regulatory reforms enacted herein.

30

31 11. Section 5 of P.L.1970, c.40 (C.48:13A-4) is amended to read  
32 as follows:

33 5. a. The **[Board of Public Utilities]** Department of  
34 Environmental Protection shall, after hearing, by order in writing,  
35 adopt appropriate rules, regulations or administrative orders for the  
36 regulation of rates and public utility aspects of the solid waste disposal  
37 industry.

38 b. The **[Board of Public Utilities]** Department of Environmental  
39 Protection shall, after hearing, by order in writing, adopt appropriate  
40 rules, regulations or administrative orders for the supervision of the  
41 solid waste collection industry.

42 c. **[The Board of Public Utilities]** shall, in conjunction with the  
43 Department of Environmental Protection, after hearing, by order in  
44 writing, adopt appropriate rules, regulations or administrative orders  
45 providing for the interdistrict, intradistrict and interstate flow of solid  
46 waste. The rules, regulations, or administrative orders shall establish

1 the manner in which the board and the department jointly direct the  
2 flow of solid waste in this State pursuant to P.L.1970, c.40  
3 (C.48:13A-1 et seq.) and P.L.1970, c.39 (C.13:1E-1 et seq.).

4 The provisions of this subsection shall not apply to designated  
5 recyclable materials as defined in section 2 of P.L.1987, c.102  
6 (C.13:1E-99.12) or any other recyclable material whenever markets  
7 for those materials are available.] (Deleted by amendment,  
8 P.L. , c. )  
9 (cf: P.L.1991, c.381, s.27)

10  
11 12. Section 6 of P.L.1970, c.40 (C.48:13A-5) is amended to read  
12 as follows:

13 6. a. The ~~[Board of Public Utilities]~~ Department of  
14 Environmental Protection may, by order in writing, when it finds that  
15 the public interest requires, award a franchise to any person or persons  
16 engaged in solid waste disposal at rates ~~[and charges]~~ published in  
17 tariffs or contracts accepted or to be accepted for filing by the ~~[board;~~  
18 provided, however, that the proposed franchise for solid waste  
19 disposal conforms to the district solid waste management plan of the  
20 district or districts in which such service is to be located, as such plan  
21 shall have been approved by the] Department of Environmental  
22 Protection.

23 After November 10, 1997, the Department of Environmental  
24 Protection shall not award a franchise to any person or persons  
25 engaged in solid waste disposal in this State.

26 b. ~~[Franchises awarded pursuant to this section shall be of~~  
27 sufficient area and duration to support the estimated technical and  
28 economic needs of the disposal facility which is to serve the district or  
29 districts.] (Deleted by amendment, P.L. , c. )

30 c. For the purposes of this section, "franchise" shall mean the  
31 exclusive right to control and provide for the disposal of solid waste,  
32 except for recyclable material whenever markets for those materials  
33 are available, within a district ~~[or districts]~~ as awarded by the Board  
34 of Public Utilities or the department prior to November 10, 1997.

35 d. In no event shall the ~~[board]~~ department award a franchise to  
36 any person required to be listed in the disclosure statement, or  
37 otherwise shown to have a beneficial interest in the business of the  
38 applicant, permittee or the licensee as defined in section 2 of P.L.1983,  
39 c.392 (C.13:1E-127), if the ~~[board]~~ department determines that there  
40 is a reasonable suspicion to believe that the person does not possess  
41 a reputation for good character, honesty and integrity, and that person  
42 or the applicant, permittee or licensee fails, by clear and convincing  
43 evidence, to establish his reputation for good character, honesty and  
44 integrity.

45 e. Nothing in section 11 of P.L.1970, c.40 (C.48:13A-10) shall be



1 interpreted to prevent the implementation of this section by the [Board  
2 of Public Utilities] Department of Environmental Protection.  
3 (cf: P.L.1991, c.269, s.11)

4

5 13. Section 7 of P.L.1970, c.40 (C.48:13A-6) is amended to read  
6 as follows:

7 7. a. No person shall engage, or be permitted to engage, in the  
8 business of solid waste collection or solid waste disposal until found  
9 by the [board] Department of Environmental Protection to be  
10 qualified by experience, training or education to engage in such  
11 business, is able to furnish proof of financial responsibility, and unless  
12 that person holds a certificate of public convenience and necessity  
13 issued by the [Board of Public Utilities] Department of Environmental  
14 Protection.

15 (1) No certificate shall be issued for solid waste collection or solid  
16 waste disposal until the person proposing to engage in solid waste  
17 collection or solid waste disposal, as the case may be, has been  
18 registered with and approved by the Department of Environmental  
19 Protection as provided by section 5 of P.L.1970, c.39 (C.13:1E-5).

20 (2) No certificate of public convenience and necessity shall be  
21 issued by the [Board of Public Utilities] Department of Environmental  
22 Protection to any person who has been denied approval of a license  
23 under the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), or  
24 whose license has been revoked by the Department of Environmental  
25 Protection, as the case may be.

26 b. No person shall transport regulated medical waste until found  
27 by the [Board of Public Utilities] Department of Environmental  
28 Protection to be qualified by experience, training or education to  
29 engage in such business, and is able to furnish proof of financial  
30 responsibility, and holds a certificate of public convenience and  
31 necessity issued by the [board] Department of Environmental  
32 Protection. No certificate shall be issued for the transportation of  
33 regulated medical waste until the proposed transporter has obtained a  
34 registration statement required by section 5 of P.L.1970, c.39  
35 (C.13:1E-5) and paid the fee imposed under section 9 of P.L.1989,  
36 c.34 (C.13:1E-48.9).

37 c. Notwithstanding the provisions of subsection b. of this section,  
38 the [board] department shall not have jurisdiction over rates or  
39 charges for the transportation of regulated medical waste.

40 (cf: P.L.1991, c.381, s.28)

41

42 14. Section 1 of P.L.1981, c.221 (C.48:13A-6.1) is amended to  
43 read as follows:

44 1. a. Notwithstanding the provision of any other law, rule or  
45 regulation to the contrary, no sanitary landfill facility shall commence  
46 or continue operation unless a solid waste disposal tariff therefor has

1 been filed and approved by the [Board of Public Utilities] Department  
 2 of Environmental Protection pursuant to the "Solid Waste Utility  
 3 Control Act [of 1970] ," [(P.L.1970, c.40[,] (C.48:13A-1 et seq.).  
 4 No sanitary landfill facility shall operate under any conditions contrary  
 5 to those specifically set forth in its approved solid waste disposal  
 6 tariff.

7 [This act] The provisions of this subsection shall not apply to  
 8 sanitary landfill facilities operated by [an] a public authority created  
 9 [under P.L.1946, c. 138 (C. 40:14A-1 et seq.) or] pursuant to the  
 10 "municipal and county utilities authorities law," P.L.1957, c.183  
 11 (C.40:14B-1 et seq.).

12 b. The provisions of subsection a. of this section shall not apply  
 13 to a privately-owned sanitary landfill facility, except as provided in  
 14 sections 1 through 10 of P.L. , c. (C. )(now before the  
 15 Legislature as this bill). As used in this subsection, "privately-owned  
 16 sanitary landfill facility means a commercial sanitary landfill facility  
 17 which is owned and operated by a private person, corporation or other  
 18 organization and includes all appurtenances and related improvements  
 19 used at the site for the transfer, processing or disposal of solid waste.  
 20 (cf: P.L.1981, c.221, s.1)

21  
 22 15. Section 8 of P.L.1970, c.40 (C.48:13A-7) is amended to read  
 23 as follows:

24 8. a. The [board] Department of Environmental Protection, upon  
 25 complaint or its own initiative, after hearing, may direct any person  
 26 engaging in the solid waste disposal business to furnish proof that the  
 27 rates [or charges received] charged for solid waste disposal services  
 28 do not exceed just and reasonable rates [or charges] for such service.

29 b. Should the [board] department find that the rates [or charges  
 30 received] charged for solid waste disposal services are excessive, then  
 31 [it] the department may order the person charging such excessive  
 32 rates [or charges] to make an adjustment in the tariff or contract to  
 33 a sum which shall result in just and reasonable rates [or charges].

34 (cf: P.L.1991, c.381, s.29)

35  
 36 16. Section 9 of P.L.1970, c.40 (C.48:13A-8) is amended to read  
 37 as follows:

38 9. a. Should any person engaged in the solid waste disposal  
 39 business fail or refuse to complete, execute or perform any contract or  
 40 agreement obligating [such] that person to provide solid waste  
 41 disposal services, the [board] Department of Environmental  
 42 Protection may order any person engaged in the solid waste disposal  
 43 business to extend solid waste disposal services into any area where  
 44 service has been discontinued in accordance with the provisions of  
 45 R.S.48:2-27, and the [board] department shall:

1 (1) fix an appropriate initial rate for solid waste collection service;  
2 or

3 (2) fix and exercise continuing jurisdiction over just and  
4 reasonable rates [and charges] for solid waste disposal service in the  
5 extended area.

6 [c.] b. Should any person engaged in the solid waste collection  
7 business refuse to furnish solid waste collection services within a  
8 municipality pursuant to section 2 of P.L.1991, c.170 (C.40:66-5.2),  
9 the [board] department may order the solid waste collector to provide  
10 these services in accordance with the provisions of R.S.48:2-23.  
11 (cf: P.L.1991, c.381, s.30)

12

13 17. R.S.48:3-7 is amended to read as follows:

14 48:3-7. a. No public utility shall, without the approval of the  
15 board, sell, lease, mortgage or otherwise dispose of or encumber its  
16 property, franchises, privileges or rights, or any part thereof; or merge  
17 or consolidate its property, franchises, privileges or rights, or any part  
18 thereof, with that of any other public utility.

19 Where, by the proposed sale, lease or other disposition of all or a  
20 substantial portion of its property, any franchise or franchises,  
21 privileges or rights, or any part thereof or merger or consolidation  
22 thereof as set forth herein, it appears that the public utility or a wholly  
23 owned subsidiary thereof may be unable to fulfill its obligation to any  
24 employees thereof with respect to pension benefits previously enjoyed,  
25 whether vested or contingent, the board shall not grant its approval  
26 unless the public utility seeking the board's approval for such sale,  
27 lease or other disposition assumes such responsibility as will be  
28 sufficient to provide that all such obligations to employees will be  
29 satisfied as they become due.

30 Every sale, mortgage, lease, disposition, encumbrance, merger or  
31 consolidation made in violation of this section shall be void.

32 Nothing herein shall prevent the sale, lease or other disposition by  
33 any public utility of any of its property in the ordinary course of  
34 business, nor require the approval of the board to any grant,  
35 conveyance or release of any property or interest therein heretofore  
36 made or hereafter to be made by any public utility to the United States,  
37 State or any county or municipality or any agency, authority or  
38 subdivision thereof, for public use.

39 The approval of the board shall not be required to validate the title  
40 of the United States, State or any county or municipality or any  
41 agency, authority or subdivision thereof, to any lands or interest  
42 therein heretofore condemned or hereafter to be condemned by the  
43 United States, State or any county or municipality or any agency,  
44 authority or subdivision thereof for public use.

45 b. Notwithstanding any law, rule, regulation or order to the  
46 contrary, an autobus public utility regulated by and subject to the

1 provisions of Title 48 of the Revised Statutes may, without the  
2 approval of the Department of Transportation, sell, lease, mortgage or  
3 otherwise dispose of or encumber its property, or any part thereof,  
4 except that approval of the Department of Transportation shall be  
5 required for the following:

6 (1) the sale of 60% or more of its property within a 12-month  
7 period;

8 (2) a merger or consolidation of its property, franchises, privileges  
9 or rights; or

10 (3) the sale of any of its franchises, privileges or rights.

11 Notice of the sale, purchase or lease of any autobus or other  
12 vehicle subject to regulation under Title 48 of the Revised Statutes  
13 shall be provided to the Department of Transportation as the  
14 department shall require.

15 c. Except as otherwise provided in subsection e. of this section, no  
16 solid waste collector as defined in section 3 of P.L.1970, c.40  
17 (C.48:13A-3) shall, without the approval of the [board] Department  
18 of Environmental Protection:

19 (1) sell, lease, mortgage or otherwise dispose of or encumber its  
20 property, including customer lists; or

21 (2) merge or consolidate its property, including customer lists,  
22 with that of any other person or business concern, whether or not that  
23 person or business concern is engaged in the business of solid waste  
24 collection or solid waste disposal pursuant to the provisions of  
25 P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et  
26 seq.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

27 d. Any solid waste collector seeking approval for any transaction  
28 enumerated in subsection c. of this section shall file with the [board]  
29 department, on forms and in a manner prescribed by the [board]  
30 department, a notice of intent at least 30 days prior to the completion  
31 of the transaction.

32 (1) The [board] department shall promptly review all notices filed  
33 pursuant to this subsection. The [board] department may, within 30  
34 days of receipt of a notice of intent, request that the solid waste  
35 collector submit additional information to assist in its review if it  
36 deems that such information is necessary. If no such request is made,  
37 the transaction shall be deemed to have been approved. In the event  
38 that additional information is requested, the [board] department shall  
39 outline, in writing, why it deems such information necessary to make  
40 an informed decision on the impact of the transaction on effective  
41 competition.

42 (2) The [board] department shall approve or deny a transaction  
43 within 60 days of receipt of all requested information. In the event  
44 that the [board] department fails to take action on a transaction within  
45 the 60-day period specified herein, then the transaction shall be  
46 deemed to have been approved.

1 (3) The [board] department shall approve a transaction unless it  
2 makes a determination pursuant to the provisions of section 19 of  
3 P.L.1991, c.381 (C.48:13A-7.19) that the proposed sale, lease,  
4 mortgage, disposition, encumbrance, merger or consolidation would  
5 result in a lack of effective competition.

6 The [Board of Public Utilities] department shall prescribe and  
7 provide upon request all necessary forms for the implementation of the  
8 notification requirements of this subsection.

9 e. (1) Any solid waste collector may, without the approval of the  
10 [board] department, purchase, finance or lease any equipment,  
11 including collection or haulage vehicles.

12 (2) Any solid waste collector may, without the approval of the  
13 [board] department, sell or otherwise dispose of its collection or  
14 haulage vehicles; except that no solid waste collector shall, without the  
15 approval of the [board] department in the manner provided in  
16 subsection d. of this section, sell or dispose of 33% or more of its  
17 collection or haulage vehicles within a 12-month period.

18 f. (1) The owner or operator of a privately-owned sanitary landfill  
19 facility may, without the approval of the Department of Environmental  
20 Protection, sell or otherwise dispose of its assets except that the prior  
21 approval of the department shall be required (a) to sell all assets  
22 associated with the sanitary landfill facility or a portion thereof  
23 sufficient to transfer the operation of the sanitary landfill facility to a  
24 new owner or operator; (b) to sell a controlling ownership interest in  
25 the sanitary landfill facility; or (c) to merge or consolidate its property  
26 with that of any other person or business concern, whether or not that  
27 person or business concern is engaged in the business of solid waste  
28 disposal pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et  
29 seq.), P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act.

30 (2) Any owner or operator seeking approval for any transaction  
31 enumerated in this subsection shall file with the department an  
32 application therefor, on forms and in a manner prescribed by the  
33 department. The department shall promptly review all applications  
34 filed pursuant to this subsection and shall serve requests for  
35 information regarding any transaction within 30 days following the  
36 filing of an application if the department deems that such information  
37 is necessary. The department shall approve or deny the transaction  
38 within 60 days of receipt of all requested information. In the event  
39 that the department fails to take action on a transaction within the  
40 60-day period specified herein, then the transaction shall be deemed to  
41 have been approved.

42 As used in this section, "business concern" means any corporation,  
43 association, firm, partnership, sole proprietorship, trust or other form  
44 of commercial organization; and "privately-owned sanitary landfill  
45 facility" means a commercial sanitary landfill facility which is owned  
46 and operated by a private person, corporation or other organization

1 and includes all appurtenances and related improvements used at the  
2 site for the transfer, processing or disposal of solid waste.

3 (cf: P.L.1991, 381, s.35)

4  
5 18. R.S.48:3-9 is amended to read as follows:

6 48:3-9. No public utility shall, unless it shall have first obtained  
7 authority from the board so to do:

8 (a) Issue any stocks, or any bonds, notes or other evidence of  
9 indebtedness payable more than 12 months after the date or dates  
10 thereof, or extend or renew any bond, note or any other evidence of  
11 indebtedness so that any extension or renewal thereof shall be payable  
12 later than 12 months after the date of the original instrument, or

13 (b) Permit any demand note to remain unpaid for a period of more  
14 than 12 months after the date thereof.

15 The board shall approve any such proposed issue, with or without  
16 hearing at its discretion, when satisfied that such issue is to be made  
17 in accordance with law and the purpose thereof is approved by the  
18 board.

19 The provisions of this section shall not apply to any public utility  
20 operating, managing or controlling a railroad or a railway express  
21 which is subject to the rules and regulations from time to time issued  
22 by the Interstate Commerce Commission.

23 The provisions of this section shall not apply to autobus public  
24 utilities under the jurisdiction of the Department of Transportation.

25 The provisions of this section shall not apply to any solid waste  
26 collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3).

27 The provisions of this section shall not apply to any privately-  
28 owned sanitary landfill facility as defined in section 3 of P.L. , c.  
29 (C. )(now before the Legislature as this bill).

30 (cf: P.L.1991, 381, s.36)

31  
32 19. Section 10 of P.L.1970, c.40 (C.48:13A-9) is amended to read  
33 as follows:

34 10. The [board, on its own initiative or upon complaint by the]  
35 Department of Environmental Protection shall revoke or suspend the  
36 certificate of public convenience and necessity issued to any person  
37 engaged in the solid waste collection business or the solid waste  
38 disposal business upon the finding that such person:

39 a. Has violated any provision of P.L.1970, c.40 (C.48:13A-1 et  
40 seq.) or P.L.1991, c.381 (C.48:13A-7.1 et al.), or any rule, regulation  
41 or administrative order adopted or issued pursuant thereto; or

42 b. Has violated any provision of any laws related to pollution of  
43 the air, water or lands of this State; or

44 c. Has refused or failed to comply with any lawful order of the  
45 [board] department; or

46 d. Has had its registration revoked by the Department of

1 Environmental Protection; or

2 e. Has been denied approval of a license under the provisions of  
3 P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license revoked  
4 by the Department of Environmental Protection, as the case may be.  
5 (cf: P.L.1991, c.381, s.31)

6

7 20. Section 12 of P.L.1970, c.40 (C.48:13A-11) is amended to  
8 read as follows:

9 12. a. The [board] Department of Environmental Protection may  
10 compel the attendance of witnesses and the production of tariffs,  
11 contracts, papers, books, accounts and all the documents necessary to  
12 enable the [board] department to administer its duties as prescribed  
13 by law and [this act] the provisions of P.L.1970, c.40 (C.48:13A-1 et  
14 seq.).

15 b. The [board] department may compel any person engaged in the  
16 business of solid waste [collection or solid waste] disposal or  
17 otherwise providing solid waste [collection or transfer, transportation  
18 or] disposal services in this State to furnish and file with the [board]  
19 department any annual reports, federal or State tax returns, contracts,  
20 papers, books, accounts, customer lists, financial or operational  
21 information, or contracts, books, accounts and records of affiliated  
22 business concerns, including any affiliated or parent corporation or  
23 organization, or any wholly or partially owned subsidiary thereof,  
24 directly or indirectly involved therewith, or having a direct or indirect  
25 financial interest in the solid waste disposal services provided by that  
26 person, and all financial transactions between these parties related to  
27 the solid waste disposal services provided by that person, or other  
28 documents as may be necessary to enable the [board] department to  
29 administer its duties as prescribed by law and [this act] the provisions  
30 of P.L.1970, c.40 (C.48:13A-1 et seq.).

31 c. Should any person engaged in the business of solid waste  
32 [collection or solid waste] disposal or otherwise providing solid waste  
33 [collection or transfer, transportation or] disposal services fail or  
34 refuse to comply with any provision of this section, or any applicable  
35 provision of Title 48 of the Revised Statutes, the [board] department  
36 may revoke or suspend the certificate of public convenience and  
37 necessity issued to that person.

38 d. The provisions of this section shall apply to a privately-owned  
39 sanitary landfill facility as defined in section 3 of P.L. , c. (C. )  
40 (now before the Legislature as this bill) only if the owner or operator  
41 of the affected facility raises a revenue requirement defense in a  
42 contested case proceeding initiated by the department pursuant to  
43 section 8 of P.L. , c. (C. )(now before the Legislature as this  
44 bill).

45 (cf: P.L.1991, c.381, s.33)

1       21. Section 16 of P.L.1991, c.381 (C.48:13A-7.16) is amended to  
2 read as follows:

3       16. a. The [board] Department of Environmental Protection may  
4 compel any person engaged in the business of solid waste collection or  
5 otherwise providing solid waste collection services to furnish and file  
6 with the [board] department a consolidated annual report or other  
7 documents as may be necessary to enable the [board] department to  
8 administer its duties as prescribed by law and [this act] the provisions  
9 of P.L.1991, c.381 (C.48:13A-7.1 et al.).

10       b. Should any person engaged in the business of solid waste  
11 collection or otherwise providing solid waste collection services fail  
12 or refuse to comply with any provision of this section, the [board]  
13 department may revoke or suspend the certificate of public  
14 convenience and necessity issued to that person.

15 (cf: P.L.1991, c.381, s.16)

16

17       22. Section 17 of P.L.1991, c.381 (C.48:13A-7.17) is amended to  
18 read as follows:

19       17. a. The [board] Department of Environmental Protection may  
20 compel any solid waste collector to furnish and file with the [board]  
21 department any records, including, but not limited to, manifests, origin  
22 and destination forms, customer lists, financial or operational  
23 information, contracts, books, accounts and records of affiliated  
24 business concerns, including any affiliated or parent corporation or  
25 organization, or any wholly or partially owned subsidiary thereof,  
26 directly or indirectly involved therewith, or having a direct or indirect  
27 financial interest in the solid waste collection services provided by the  
28 solid waste collector, and all financial transactions between these  
29 parties related to the solid waste collection services provided by the  
30 solid waste collector, and any other documents related to solid waste  
31 collection or solid waste disposal activities, at any time or place in  
32 order to determine compliance with the provisions of [this act]  
33 P.L.1991, c.381 (C.48:13A-7.1 et al.) or P.L.1970, c.40 (C.48:13A-1  
34 et seq.) or any rule, regulation or administrative order adopted or  
35 issued pursuant thereto, and to enable the [board] department to  
36 administer its duties as prescribed by law and [this act] the provisions  
37 of P.L.1991, c.381 (C.48:13A-7.1 et al.).

38       b. Should any solid waste collector fail or refuse to comply with  
39 any provision of this section, the [board] department may revoke or  
40 suspend the certificate of public convenience and necessity issued to  
41 that person.

42 (cf: P.L.1991, c.381, s.17)

43

44       23. This act shall take effect on January 1, 2004.



- 1 \_\_\_\_\_
- 2
- 3 "Commercial Landfill Regulatory Reform Act."

**SENATE, No. 2354**

---

**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

---

INTRODUCED MARCH 10, 2003

**Sponsored by:**

**Senator JOSEPH SULIGA**

**District 22 (Middlesex, Somerset and Union)**

**Senator ANDREW R. CIESLA**

**District 10 (Monmouth and Ocean)**

**SYNOPSIS**

"Commercial Landfill Regulatory Reform Act."

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning privately-owned sanitary landfill facilities, and  
2 revising and repealing various sections of statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. (New section) Sections 1 through 10 of P.L. , c. (C. )(now  
8 before the Legislature as this bill) shall be known and may be cited as  
9 the "Commercial Landfill Regulatory Reform Act."

10

11 2. (New section) The Legislature finds and declares that efficient  
12 and reasonable solid waste disposal services at competitive rates will  
13 more likely be achieved if the services of privately-owned sanitary  
14 landfill facilities in this State are under the supervision of the  
15 Department of Environmental Protection but not subject to traditional  
16 public utility economic regulation.

17 The Legislature further finds and declares that it is imperative that  
18 the State ensure the economic viability and competitiveness of all solid  
19 waste disposal facilities in this State whether publicly or privately  
20 owned in order to safeguard the integrity of the State's solid waste  
21 management strategy; that it is equally imperative to safeguard the  
22 interests of consumers in efficient sanitary landfill services at  
23 competitive rates; that to achieve these ends and provide for consumer  
24 protection it is necessary to foster competition and this can best be  
25 achieved by establishing a responsible State supervisory role and  
26 abolishing tradition utility economic restrictions which place New  
27 Jersey's commercial landfills at a competitive disadvantage and  
28 threaten their economic viability in today's competitive market for  
29 solid waste disposal services.

30 The Legislature further finds and declares that reforming traditional  
31 public utility regulation with respect to privately-owned sanitary  
32 landfill facilities in the manner hereinafter provided will not  
33 compromise the State's ability to supervise the solid waste disposal  
34 services provided at such commercial facilities pursuant to P.L.1970,  
35 c.40 (C.48:13A-1 et seq.) or its ability to prevent persons with  
36 criminal backgrounds from engaging in the business of solid waste  
37 disposal through implementation of the licensing system established  
38 under P.L.1983, c.392 (C.13:1E-126 et seq.) and P.L.1991, c.269  
39 (C.13:1E-128.1 et al.).

40 The Legislature therefore determines that it is in the public interest  
41 to provide for the reform of this State's economic regulation of  
42 privately-owned sanitary landfill facilities while at the same time  
43 maintaining State supervision over these commercial facilities.

**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 underlined thus is new matter.**

1 3. (New section) As used in sections 1 through 10 of P.L. , c.  
2 (C. )(now before the Legislature as this bill):

3 "Department" means the Department of Environmental Protection.

4 "Privately-owned sanitary landfill facility" means a commercial  
5 sanitary landfill facility which is owned and operated by a private  
6 person, corporation or other organization and includes all  
7 appurtenances and related improvements used at the site for the  
8 transfer, processing or disposal of solid waste.

9 "Sanitary landfill facility" means a solid waste facility at which solid  
10 waste is deposited on or in the land as fill for the purpose of  
11 permanent disposal or storage for a period exceeding six months,  
12 except that it shall not include any waste facility approved for disposal  
13 of hazardous waste.

14 "Solid waste disposal services" means the services provided by  
15 persons engaging in the business of solid waste disposal.

16

17 4. (New section) a. The owner or operator of every privately-  
18 owned sanitary landfill facility shall hold a certificate of public  
19 convenience and necessity issued by the department pursuant to the  
20 provisions of section 7 of P.L.1970, c.40 (C.48:13A-6).

21 b. The terms and conditions of solid waste disposal services at a  
22 privately-owned sanitary landfill facility shall be set forth in a tariff  
23 filed with the department.

24 c. Within ten days of any deletion or addition of a service, a tariff  
25 amendment shall be filed with the department.

26

27 5. (New section) a. The solid waste disposal rates, contract  
28 charges or business transactions of a privately-owned sanitary landfill  
29 facility shall not be subject to review or approval by the department.

30 b. The solid waste disposal rates collected by a privately-owned  
31 sanitary landfill facility may be adjusted upon 30 days notice to current  
32 customers and publication in a newspaper of general circulation in the  
33 service area once a week for two consecutive weeks, with the first  
34 notice being 30 days in advance of the effective date of the  
35 adjustments, and following their effective date the rates shall be posted  
36 in a prominent location at the entrance to the privately-owned sanitary  
37 landfill facility.

38 c. The notice of solid waste disposal rate adjustments shall be filed  
39 with the department within three days of their effective date.

40

41 6. (New section) a. The total annual fee collected by the  
42 department from the owner or operator of a privately-owned sanitary  
43 landfill facility to cover the costs of supervising the privately-owned  
44 sanitary landfill facility pursuant to the provisions of P.L.1970, c.40  
45 (C.48:13A-1 et seq.) shall not exceed the annual assessment  
46 authorized under the provisions of P.L.1968, c.173 (C.48:2-59 et

1 seq.).

2 b. For the purposes of the annual assessment authorized under the  
3 provisions of P.L.1968, c.173 (C.48:2-59 et seq.), the owner or  
4 operator of a privately-owned sanitary landfill facility shall file with the  
5 department not later than May 1 of each year a certification of gross  
6 operating revenues received from intrastate utility services during the  
7 preceding calendar year.

8

9 7. (New section) a. Notwithstanding the provisions of any other  
10 law, rule or regulation, court decision or order of the Board of Public  
11 Utilities or department to the contrary, the solid waste disposal rates  
12 collected by a privately-owned sanitary landfill facility which do not  
13 exceed rates charged at other solid waste facilities in this State or at  
14 competing out-of-state facilities shall be deemed just and reasonable  
15 (the "market-based standard") for the purposes of section 8 of  
16 P.L.1970, c.40 (C.48:13A-7).

17 b. The solid waste disposal rates collected by a privately-owned  
18 sanitary landfill facility which exceed the market-based standard  
19 established pursuant to subsection a. of this section shall not be  
20 deemed unjust and unreasonable if the solid waste disposal rates are  
21 designed to: (1) stabilize incoming waste flows and prevent the  
22 premature exhaustion of landfill capacity; or (2) recover sufficient  
23 revenues to meet the revenue requirements of the privately-owned  
24 sanitary landfill facility.

25 c. (1) The internal cost of service or financial condition of a  
26 privately-owned sanitary landfill facility shall not be deemed relevant  
27 to a determination of whether the solid waste disposal rates collected  
28 by the privately-owned sanitary landfill facility comply with the  
29 market-based standard established in subsection a. of this section, or  
30 whether these rates are designed to stabilize incoming waste flows.

31 (2) The internal cost of service or financial condition of a privately-  
32 owned sanitary landfill facility shall be deemed relevant if a contested  
33 case proceeding is initiated by the department pursuant to section 8 of  
34 P.L. , c. (C. )(now before the Legislature as this bill) and the  
35 owner or operator of the affected facility raises a revenue requirement  
36 defense. In such a case, the owner or operator of the privately-owned  
37 sanitary landfill facility, at the owner's sole discretion, may establish a  
38 reasonable profit margin using either the return on rate base or  
39 operating margin methodology, or any alternative methodology which  
40 is consistent with market practices.

41

42 8. (New section) a. Whenever the department has prima facie  
43 evidence that the solid waste disposal rates collected by a privately-  
44 owned sanitary landfill facility are not in compliance with the market-  
45 based standard established in subsection a. of section 7 of P.L. , c.  
46 (C. )(now before the Legislature as this bill) and these rates are

1 not designed to stabilize incoming waste flows, the department may  
2 initiate contested case proceedings before the Office of Administrative  
3 Law as authorized herein.

4 b. At least 60 days prior to transmittal to the Office of  
5 Administrative Law pursuant to subsection a. of this section, the  
6 department shall serve a notice on the owner or operator of the  
7 affected facility. The notice shall identify the solid waste disposal  
8 rates at issue, describe and annex copies of the evidence relied upon,  
9 and afford a pre-transmittal opportunity to be heard on why further  
10 action on the matter is not warranted.

11 c. Transmittal of the matter to the Office of Administrative Law for  
12 contested case proceedings shall be deemed and certified a final  
13 decision for the purposes of an appeal to the Superior Court Appellate  
14 Division and the proceedings before the Office of Administrative Law  
15 shall be stayed pending exhaustion of any appeal. Failure to file an  
16 appeal shall not bar a challenge to the decision to transmit the matter  
17 to the Office of Administrative Law in any appeal from the final  
18 decision of the department at the close of the contested case  
19 proceeding.

20 d. Following transmittal to the Office of Administrative Law, upon  
21 motion by the owner or operator of the affected facility, the  
22 administrative law judge may dismiss the case if the department  
23 cannot demonstrate prima facie evidence that the solid waste disposal  
24 rates identified in the notice to the affected facility are not in  
25 compliance with the market-based standard established in subsection  
26 a. of section 7 of P.L. , c. (C. )(now before the Legislature as  
27 this bill).

28 e. Within 30 days of the close of the hearing before the Office of  
29 Administrative Law, the administrative law judge shall issue an initial  
30 decision which may recommend that the department order the owner  
31 or operator of the affected facility to adjust the solid waste disposal  
32 rates collected by the privately-owned sanitary landfill facility to bring  
33 them into compliance with the market-based standard established in  
34 subsection a. of section 7 of P.L. , c. (C. )(now before the  
35 Legislature as this bill), if the department has established, by a  
36 preponderance of the evidence, that the solid waste disposal rates  
37 identified in the notice of transmittal are: (1) not in compliance with  
38 the market-based standard established in subsection a. of section 7 of  
39 P.L. , c. (C. )(now before the Legislature as this bill); (2) not  
40 designed to stabilize incoming waste flows; and (3) not needed to meet  
41 the revenue requirements of the privately-owned sanitary landfill  
42 facility. Otherwise, the administrative law judge shall recommend that  
43 the department issue an order dismissing the action.

44 f. The administrative law judge's initial decision shall be  
45 simultaneously served on the department and the owner or operator of  
46 the affected facility. Within 30 days of receipt of the initial decision,

1 the department shall issue a final order affirming or rejecting the  
2 recommendations of the administrative law judge and describing with  
3 specificity the basis in the record for any findings or conclusions which  
4 are contrary to those set forth in the initial decision.

5 g. If the department fails to act on the initial decision within 30  
6 days of its receipt, or within any extended period agreed to, in writing,  
7 by the owner or operator of the affected facility, the recommendations  
8 of the administrative law judge shall be deemed affirmed and the final  
9 agency decision in the case for the purposes of appeal. Any order on  
10 the initial decision issued by the department thereafter shall be of no  
11 effect.

12 h. Nothing herein shall be construed as authorizing a  
13 recommendation by the administrative law judge or an order of the  
14 department fixing the solid waste disposal rates of the affected facility  
15 or as authorizing a refund of any amounts collected by the owner or  
16 operator of the affected facility prior to the effective date of the final  
17 order in the case.

18 i. Except to the extent expressly modified herein, the contested  
19 case proceeding authorized pursuant to this section shall be conducted  
20 in accordance with the rules and regulations applicable to such  
21 proceedings promulgated by the Office of Administrative Law,  
22 including rules applicable to summary judgment motions.

23  
24 9. (New section) a. The provisions of section 18 of P.L.1975,  
25 c.326 (C.13:1E-27), Title 48 of the Revised Statutes, P.L.1970, c.40  
26 (C.48:13A-1 et seq.), or any other law, rule or regulation adopted  
27 pursuant thereto, or order issued by the Board of Public Utilities or  
28 the department, to the contrary notwithstanding, the jurisdiction of the  
29 department with respect to the State supervision of privately-owned  
30 sanitary landfill facilities shall not extend to the financial or business  
31 affairs of any privately-owned sanitary landfill facility or the owner or  
32 operator thereof, and shall be exercised with respect to the solid waste  
33 disposal rates collected by privately-owned sanitary landfill facilities  
34 solely in the manner and to the extent expressly provided in the  
35 provisions of P.L. , c. (C. )(now before the Legislature as this  
36 bill).

37 b. Nothing contained in the provisions of P.L. , c. (C. )(now  
38 before the Legislature as this bill) shall be construed to limit the  
39 authority of the department to regulate privately-owned sanitary  
40 landfill facilities with respect to the provision of solid waste disposal  
41 services pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.), environment  
42 standards and requirements pursuant to P.L.1970, c.39 (C.13:1E-1 et  
43 seq.) and licensing standards and requirements pursuant to P.L.1983,  
44 c.392 (C.13:1E-126 et seq.) and P.L.1991, c.269 (C.13:1E-128.1 et  
45 al.).

1        10. (New section) Within 180 days of the effective date of P.L. ,  
2 c. (C.     )(now before the Legislature as this bill), the department  
3 shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968,  
4 c.410 (C.52:14B-1 et seq.), rules and regulations as are necessary to  
5 effectuate the provisions of this act and to implement the regulatory  
6 reforms enacted herein.

7  
8        11. Section 5 of P.L.1970, c.40 (C.48:13A-4) is amended to read  
9 as follows:

10        5. a. The ~~Board of Public Utilities~~ Department of Environmental  
11 Protection shall, after hearing, by order in writing, adopt appropriate  
12 rules, regulations or administrative orders for the regulation of rates  
13 and public utility aspects of the solid waste disposal industry.

14        b. The ~~Board of Public Utilities~~ Department of Environmental  
15 Protection shall, after hearing, by order in writing, adopt appropriate  
16 rules, regulations or administrative orders for the supervision of the  
17 solid waste collection industry.

18        c. ~~The Board of Public Utilities shall, in conjunction with the~~  
19 ~~Department of Environmental Protection, after hearing, by order in~~  
20 ~~writing, adopt appropriate rules, regulations or administrative orders~~  
21 ~~providing for the interdistrict, intradistrict and interstate flow of solid~~  
22 ~~waste. The rules, regulations, or administrative orders shall establish~~  
23 ~~the manner in which the board and the department jointly direct the~~  
24 ~~flow of solid waste in this State pursuant to P.L.1970, c.40~~  
25 ~~(C.48:13A-1 et seq.) and P.L.1970, c.39 (C.13:1E-1 et seq.).~~

26        The provisions of this subsection shall not apply to designated  
27 recyclable materials as defined in section 2 of P.L.1987, c.102  
28 (C.13:1E-99.12) or any other recyclable material whenever markets  
29 for those materials are available.] ~~(Deleted by amendment, P.L. , c. )~~  
30 (cf: P.L.1991, c.381, s.27)

31  
32        12. Section 6 of P.L.1970, c.40 (C.48:13A-5) is amended to read  
33 as follows:

34        6. a. The ~~Board of Public Utilities~~ Department of Environmental  
35 Protection may, by order in writing, when it finds that the public  
36 interest requires, award a franchise to any person or persons engaged  
37 in solid waste disposal at rates ~~and charges~~ published in tariffs or  
38 contracts accepted or to be accepted for filing by the ~~board~~;  
39 provided, however, that the proposed franchise for solid waste  
40 disposal conforms to the district solid waste management plan of the  
41 district or districts in which such service is to be located, as such plan  
42 shall have been approved by the] Department of Environmental  
43 Protection.

44        After November 10, 1997, the Department of Environmental  
45 Protection shall not award a franchise to any person or persons  
46 engaged in solid waste disposal in this State.



1 b. [Franchises awarded pursuant to this section shall be of  
2 sufficient area and duration to support the estimated technical and  
3 economic needs of the disposal facility which is to serve the district or  
4 districts.] (Deleted by amendment, P.L. , c. )

5 c. For the purposes of this section, "franchise" shall mean the  
6 exclusive right to control and provide for the disposal of solid waste,  
7 except for recyclable material whenever markets for those materials  
8 are available, within a district [or districts] as awarded by the Board  
9 of Public Utilities or the department prior to November 10, 1997.

10 d. In no event shall the [board] department award a franchise to  
11 any person required to be listed in the disclosure statement, or  
12 otherwise shown to have a beneficial interest in the business of the  
13 applicant, permittee or the licensee as defined in section 2 of P.L.1983,  
14 c.392 (C.13:1E-127), if the [board] department determines that there  
15 is a reasonable suspicion to believe that the person does not possess  
16 a reputation for good character, honesty and integrity, and that person  
17 or the applicant, permittee or licensee fails, by clear and convincing  
18 evidence, to establish his reputation for good character, honesty and  
19 integrity.

20 e. Nothing in section 11 of P.L.1970, c.40 (C.48:13A-10) shall be  
21 interpreted to prevent the implementation of this section by the [Board  
22 of Public Utilities] Department of Environmental Protection.  
23 (cf: P.L.1991, c.269, s.11)

24  
25 13. Section 7 of P.L.1970, c.40 (C.48:13A-6) is amended to read  
26 as follows:

27 7. a. No person shall engage, or be permitted to engage, in the  
28 business of solid waste collection or solid waste disposal until found  
29 by the [board] Department of Environmental Protection to be  
30 qualified by experience, training or education to engage in such  
31 business, is able to furnish proof of financial responsibility, and unless  
32 that person holds a certificate of public convenience and necessity  
33 issued by the [Board of Public Utilities] Department of Environmental  
34 Protection.

35 (1) No certificate shall be issued for solid waste collection or solid  
36 waste disposal until the person proposing to engage in solid waste  
37 collection or solid waste disposal, as the case may be, has been  
38 registered with and approved by the Department of Environmental  
39 Protection as provided by section 5 of P.L.1970, c.39 (C.13:1E-5).

40 (2) No certificate of public convenience and necessity shall be  
41 issued by the [Board of Public Utilities] Department of Environmental  
42 Protection to any person who has been denied approval of a license  
43 under the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), or  
44 whose license has been revoked by the Department of Environmental  
45 Protection, as the case may be.

1 b. No person shall transport regulated medical waste until found by  
2 the [Board of Public Utilities] Department of Environmental  
3 Protection to be qualified by experience, training or education to  
4 engage in such business, and is able to furnish proof of financial  
5 responsibility, and holds a certificate of public convenience and  
6 necessity issued by the [board] Department of Environmental  
7 Protection. No certificate shall be issued for the transportation of  
8 regulated medical waste until the proposed transporter has obtained a  
9 registration statement required by section 5 of P.L.1970, c.39  
10 (C.13:1E-5) and paid the fee imposed under section 9 of P.L.1989,  
11 c.34 (C.13:1E-48.9).

12 c. Notwithstanding the provisions of subsection b. of this section,  
13 the [board] department shall not have jurisdiction over rates or  
14 charges for the transportation of regulated medical waste.  
15 (cf: P.L.1991, c.381, s.28)

16

17 14. Section 1 of P.L.1981, c.221 (C.48:13A-6.1) is amended to  
18 read as follows:

19 1. a. Notwithstanding the provision of any other law, rule or  
20 regulation to the contrary, no sanitary landfill facility shall commence  
21 or continue operation unless a solid waste disposal tariff therefor has  
22 been filed and approved by the [Board of Public Utilities] Department  
23 of Environmental Protection pursuant to the "Solid Waste Utility  
24 Control Act [of 1970] ," [(]P.L.1970, c.40[, ] (C.48:13A-1 et seq.).  
25 No sanitary landfill facility shall operate under any conditions contrary  
26 to those specifically set forth in its approved solid waste disposal  
27 tariff.

28 [This act] The provisions of this subsection shall not apply to  
29 sanitary landfill facilities operated by [an] a public authority created  
30 [under P.L.1946, c. 138 (C. 40:14A-1 et seq.) or] pursuant to the  
31 "municipal and county utilities authorities law," P.L.1957, c.183  
32 (C.40:14B-1 et seq.).

33 b. The provisions of subsection a. of this section shall not apply to  
34 a privately-owned sanitary landfill facility, except as provided in  
35 sections 1 through 10 of P.L. , c. (C. )(now before the  
36 Legislature as this bill). As used in this subsection, "privately-owned  
37 sanitary landfill facility means a commercial sanitary landfill facility  
38 which is owned and operated by a private person, corporation or other  
39 organization and includes all appurtenances and related improvements  
40 used at the site for the transfer, processing or disposal of solid waste.  
41 (cf: P.L.1981, c.221, s.1)

42

43 15. Section 8 of P.L.1970, c.40 (C.48:13A-7) is amended to read  
44 as follows:

45 8. a. The [board] Department of Environmental Protection, upon

1 complaint or its own initiative, after hearing, may direct any person  
2 engaging in the solid waste disposal business to furnish proof that the  
3 rates [or charges received] charged for solid waste disposal services  
4 do not exceed just and reasonable rates [or charges] for such service.

5 b. Should the [board] department find that the rates [or charges  
6 received] charged for solid waste disposal services are excessive, then  
7 it may order the person charging such excessive rates [or charges] to  
8 make an adjustment in the tariff or contract to a sum which shall result  
9 in just and reasonable rates [or charges].

10 (cf: P.L.1991, c.381, s.29)

11  
12 16. Section 9 of P.L.1970, c.40 (C.48:13A-8) is amended to read  
13 as follows:

14 9. Should any person engaged in the solid waste disposal business  
15 fail or refuse to complete, execute or perform any contract or  
16 agreement obligating such person to provide solid waste disposal  
17 services, the [board] Department of Environmental Protection may  
18 order any person engaged in the solid waste disposal business to  
19 extend solid waste disposal services into any area where service has  
20 been discontinued in accordance with the provisions of R.S.48:2-27,  
21 and the [board] department shall:

22 (1) fix an appropriate initial rate for solid waste collection service;  
23 or

24 (2) fix and exercise continuing jurisdiction over just and reasonable  
25 rates [and charges] for solid waste disposal service in the extended  
26 area.

27 c. Should any person engaged in the solid waste collection business  
28 refuse to furnish solid waste collection services within a municipality  
29 pursuant to section 2 of P.L.1991, c.170 (C.40:66-5.2), the [board]  
30 department may order the solid waste collector to provide these  
31 services in accordance with the provisions of R.S.48:2-23.

32 (cf: P.L.1991, c.381, s.30)

33  
34 17. This act shall take effect on January 1, 2004.

35  
36  
37 STATEMENT

38  
39 This bill would reform the current system of economic regulation  
40 as it applies to privately-owned commercial sanitary landfill facilities.  
41 It would enable such facilities to participate on a level playing field  
42 with publicly-owned in-state disposal facilities and out-of-state  
43 landfills which are not regulated in the more competitive marketplace  
44 created by the Court's invalidation of State waste flow control in  
45 Atlantic Coast Demolition & Recycling v. Board of Chosen

1 Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997).  
2 The bill would retain State supervision to ensure that adequate and  
3 efficient disposal services are maintained and that disposal rates  
4 charged by privately-owned commercial sanitary landfill facilities are  
5 not excessive.

6 Under this bill, every owner or operator of a privately-owned  
7 commercial sanitary landfill facility would still be required to hold a  
8 certificate of public convenience and necessity issued by the  
9 Department of Environmental Protection (DEP) pursuant to the  
10 provisions of P.L.1970, c.40 (C.48:13A-1 et seq.). The terms and  
11 conditions of solid waste disposal services at a privately-owned  
12 commercial sanitary landfill facility would still have to be set forth in  
13 a tariff filed with the DEP. A tariff amendment would have to be filed  
14 within ten days of any deletion or addition of a service.

15 This bill would establish a new, market-based standard for ensuring  
16 that the solid waste disposal rates charged by a privately-owned  
17 commercial sanitary landfill facility are just and reasonable. It would  
18 also require that a privately-owned commercial sanitary landfill facility  
19 give notice of adjustments in its disposal rates to current customers  
20 and publish notice of the adjustments in a newspaper of general  
21 circulation in its service area at least 30 days before putting the new  
22 rates into effect, and file the notice of rate adjustments with the DEP  
23 within three days thereafter.

24 Whenever the DEP has evidence that the solid waste disposal rates  
25 charged by a privately-owned commercial sanitary landfill facility are  
26 not in compliance with the market-based standard established under  
27 this bill, the DEP may initiate contested case proceedings before the  
28 Office of Administrative Law. The Administrative Law Judge may  
29 recommend adjustments to bring the rates into compliance and this  
30 recommendation may be affirmed, modified or rejected by the DEP.  
31 These proceedings shall be conducted in accordance with the rules  
32 governing contested cases promulgated by the Office of Administrative  
33 Law, including rules applicable to summary judgment proceedings.

34 This bill would not alter the authority of the DEP to regulate  
35 privately-owned commercial sanitary landfill facilities with respect to  
36 the provision of solid waste disposal services under the "Solid Waste  
37 Utility Control Act," with respect to environment standards and  
38 requirements under the "Solid Waste Management Act," or with  
39 respect to licensing standards and requirements under the "A-901"  
40 solid waste licensing law.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2354**

**STATE OF NEW JERSEY**

DATED: JUNE 19, 2003

The Assembly Environment and Solid Waste Committee reports favorably Senate Bill No. 2354 (SCS).

The substitute bill would reform the current system of economic regulation as it applies to privately-owned commercial sanitary landfill facilities. It would enable such facilities to participate on a level playing field with publicly-owned disposal facilities in the State and out-of-state landfills which are not regulated in the more competitive marketplace created by the Court's invalidation of State waste flow control in Atlantic Coast Demolition & Recycling v. Board of Chosen Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997).

For instance, tariff filings by publicly-owned solid waste facilities which propose adjustments in solid waste disposal rates that do not increase the rates above the so-called "peak rate" do not require prior approval by the Department of Environmental Protection (DEP). Any adjustment in rates below the peak rate would require the owner or operator of the publicly-owned facility to notify the DEP of the change, in writing, within three days of the effective date of the change. The substitute bill would permit the owner or operator of a commercial sanitary landfill facility to give notice of adjustments in its disposal rates to current customers and publish notice of the adjustments in a newspaper of general circulation in its service area at least 30 days before putting the new rates into effect, and file the notice of rate adjustments with the DEP within three days thereafter.

The substitute bill would retain State supervision to ensure that adequate and efficient disposal services are maintained and that disposal rates charged by privately-owned commercial sanitary landfill facilities are not excessive.

Under the substitute bill, every owner or operator of a privately-owned commercial sanitary landfill facility would still be required to hold a certificate of public convenience and necessity issued by the DEP pursuant to the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.). The terms and conditions of solid waste disposal services at a privately-owned commercial sanitary landfill facility would still have

to be set forth in a tariff filed with the DEP. A tariff amendment would have to be filed within ten days of any deletion or addition of a service.

The substitute bill would establish a new, market-based standard for ensuring that the solid waste disposal rates charged by a privately-owned commercial sanitary landfill facility are just and reasonable. Market-based rates are defined as the solid waste disposal rates collected by a privately-owned sanitary landfill facility which do not exceed rates charged at other solid waste facilities in this State or at competing out-of-state facilities. Rates which exceed this market-based standard would not be deemed unjust and unreasonable if they are designed to: (1) stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity (needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located); or (2) recover sufficient revenues to meet the facility's revenue requirement.

Whenever, on the basis of available information, the DEP has reasonable grounds for belief that the solid waste disposal rates collected by a privately-owned commercial sanitary landfill facility are not in compliance with the market-based rate standard established under the substitute bill, the DEP may initiate contested case proceedings before the Office of Administrative Law.

The DEP must serve a notice on the owner or operator of the affected facility at least 30 days prior to transmittal of the contested case to the Office of Administrative Law. The notice shall identify the solid waste disposal rate or rates at issue, describe and attach copies of the evidence relied upon, and afford the owner or operator an opportunity to be heard on why further action on the matter is not warranted.

Within 30 days of the close of the hearing before the Office of Administrative Law, the administrative law judge shall issue an initial decision which may recommend that the DEP order the owner or operator of the affected facility to adjust the solid waste disposal rates collected by the privately-owned sanitary landfill facility to bring the rates into compliance with the market-based rates authorized under the substitute bill, if the DEP shows that the solid waste disposal rates identified in the notice of transmittal are not in compliance with the market-based rates authorized under the substitute bill and the owner or operator of the affected facility has not demonstrated that the rates are designed to stabilize incoming waste flows or are needed to meet the revenue requirements of the privately-owned sanitary landfill facility.

The administrative law judge's initial decision shall be simultaneously served on the DEP and the owner or operator of the affected facility. Within 30 days of receipt of the initial decision, the DEP shall issue a final order affirming or rejecting the recommendations of the administrative law judge and describing with specificity the basis in the record for any findings or conclusions which

are contrary to those set forth in the initial decision.

If the DEP fails to act on the initial decision within 90 days of its receipt, or within any extended period agreed to, in writing, by the owner or operator of the affected facility, the recommendations of the administrative law judge would be deemed affirmed and the final agency decision in the case for the purposes of appeal. Any order on the initial decision issued by the DEP thereafter would be of no effect.

Except to the extent expressly modified in the provisions of the substitute bill, the contested case proceeding would be conducted in accordance with the rules and regulations applicable to such proceedings promulgated by the Office of Administrative Law, including rules applicable to summary judgment motions.

The jurisdiction of the DEP with respect to the State supervision of privately-owned sanitary landfill facilities would be exercised with respect to the solid waste disposal rates collected by privately-owned sanitary landfill facilities solely in the manner and to the extent expressly provided in the provisions of the substitute bill, and would not extend to the financial or business affairs of any privately-owned sanitary landfill facility or the owner or operator thereof, except to the extent expressly authorized under the provisions of the substitute bill.

Under the substitute bill, the DEP may exercise the authority provided under section 12 of P.L.1970, c.40 (C.48:13A-11) if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the DEP pursuant to section 8 of the substitute bill.

Under the substitute bill, the owner or operator of a privately-owned sanitary landfill facility may, without the approval of the DEP, sell or otherwise dispose of its assets except that the prior approval of the DEP would be required (1) to sell all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the operation of the sanitary landfill facility to a new owner or operator; (2) to sell a controlling ownership interest in the sanitary landfill facility; or (3) to merge or consolidate its property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal.

Any owner or operator seeking approval for any of these transactions must file with the DEP an application therefor, on forms and in a manner prescribed by the department. The DEP must promptly review all such applications and must serve requests for information regarding any transaction within 30 days following the filing of an application if the DEP deems that such information is necessary. The DEP must approve or deny the transaction within 60 days of receipt of all requested information. In the event that the DEP fails to take action on a transaction within the 60-day period, then the transaction shall be deemed to have been approved.

The substitute bill would not otherwise alter the authority of the DEP to regulate privately-owned commercial sanitary landfill facilities with respect to the provision of solid waste disposal services under the

"Solid Waste Utility Control Act," with respect to environmental standards and requirements under the "Solid Waste Management Act," or with respect to licensing standards and requirements under the "A-901" solid waste licensing law.

As reported by committee, this bill is identical to Assembly Bill No. 3768 as also reported by the committee.



# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2354**

# STATE OF NEW JERSEY

DATED: MAY 15, 2003

The Senate Environment Committee favorably reports a Senate Committee Substitute for Senate Bill No. 2354.

The substitute bill would reform the current system of economic regulation as it applies to privately-owned commercial sanitary landfill facilities. It would enable such facilities to participate on a level playing field with publicly-owned in-state disposal facilities and out-of-state landfills which are not regulated in the more competitive marketplace created by the Court's invalidation of State waste flow control in Atlantic Coast Demolition & Recycling v. Board of Chosen Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997).

For instance, tariff filings by publicly-owned solid waste facilities which propose adjustments in solid waste disposal rates that do not increase the rates above the so-called "peak rate" do not require prior approval by the Department of Environmental Protection (DEP). Any adjustment in rates below the peak rate would require the owner or operator of the publicly-owned facility to notify the DEP of the change, in writing, within three days of the effective date of the change. The substitute bill would permit the owner or operator of a commercial sanitary landfill facility to give notice of adjustments in its disposal rates to current customers and publish notice of the adjustments in a newspaper of general circulation in its service area at least 30 days before putting the new rates into effect, and file the notice of rate adjustments with the DEP within three days thereafter.

The substitute bill would retain State supervision to ensure that adequate and efficient disposal services are maintained and that disposal rates charged by privately-owned commercial sanitary landfill facilities are not excessive.

Under the substitute bill, every owner or operator of a privately-owned commercial sanitary landfill facility would still be required to hold a certificate of public convenience and necessity issued by the DEP pursuant to the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.). The terms and conditions of solid waste disposal services at a privately-owned commercial sanitary landfill facility would still have to be set forth in a tariff filed with the DEP. A tariff amendment

would have to be filed within ten days of any deletion or addition of a service.

The substitute bill would establish a new, market-based standard for ensuring that the solid waste disposal rates charged by a privately-owned commercial sanitary landfill facility are just and reasonable. Market-based rates are defined as the solid waste disposal rates collected by a privately-owned sanitary landfill facility which do not exceed rates charged at other solid waste facilities in this State or at competing out-of-state facilities. Rates which exceed this market-based standard would not be deemed unjust and unreasonable if they are designed to: (1) stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity (needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located); or (2) recover sufficient revenues to meet the facility's revenue requirement.

Whenever, on the basis of available information, the DEP has reasonable grounds for belief that the solid waste disposal rates collected by a privately-owned commercial sanitary landfill facility are not in compliance with the market-based rate standard established under the substitute bill, the DEP may initiate contested case proceedings before the Office of Administrative Law.

The DEP must serve a notice on the owner or operator of the affected facility at least 30 days prior to transmittal of the contested case to the Office of Administrative Law. The notice shall identify the solid waste disposal rate or rates at issue, describe and attach copies of the evidence relied upon, and afford the owner or operator an opportunity to be heard on why further action on the matter is not warranted.

Within 30 days of the close of the hearing before the Office of Administrative Law, the administrative law judge shall issue an initial decision which may recommend that the DEP order the owner or operator of the affected facility to adjust the solid waste disposal rates collected by the privately-owned sanitary landfill facility to bring the rates into compliance with the market-based rates authorized under the substitute bill, if the DEP shows that the solid waste disposal rates identified in the notice of transmittal are not in compliance with the market-based rates authorized under the substitute bill and the owner or operator of the affected facility has not demonstrated that the rates are designed to stabilize incoming waste flows or are needed to meet the revenue requirements of the privately-owned sanitary landfill facility.

The administrative law judge's initial decision shall be simultaneously served on the DEP and the owner or operator of the affected facility. Within 30 days of receipt of the initial decision, the DEP shall issue a final order affirming or rejecting the recommendations of the administrative law judge and describing with specificity the basis in the record for any findings or conclusions which are contrary to those set forth in the initial decision.

If the DEP fails to act on the initial decision within 90 days of its receipt, or within any extended period agreed to, in writing, by the owner or operator of the affected facility, the recommendations of the administrative law judge would be deemed affirmed and the final agency decision in the case for the purposes of appeal. Any order on the initial decision issued by the DEP thereafter would be of no effect.

Except to the extent expressly modified in the provisions of the substitute bill, the contested case proceeding would be conducted in accordance with the rules and regulations applicable to such proceedings promulgated by the Office of Administrative Law, including rules applicable to summary judgment motions.

The jurisdiction of the DEP with respect to the State supervision of privately-owned sanitary landfill facilities would be exercised with respect to the solid waste disposal rates collected by privately-owned sanitary landfill facilities solely in the manner and to the extent expressly provided in the provisions of the substitute bill, and would not extend to the financial or business affairs of any privately-owned sanitary landfill facility or the owner or operator thereof, except to the extent expressly authorized under the provisions of the substitute bill.

Under the substitute bill, the DEP may exercise the authority provided under section 12 of P.L.1970, c.40 (C.48:13A-11) if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the DEP pursuant to section 8 of the substitute bill.

Under the substitute bill, the owner or operator of a privately-owned sanitary landfill facility may, without the approval of the DEP, sell or otherwise dispose of its assets except that the prior approval of the DEP would be required (1) to sell all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the operation of the sanitary landfill facility to a new owner or operator; (2) to sell a controlling ownership interest in the sanitary landfill facility; or (3) to merge or consolidate its property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal.

Any owner or operator seeking approval for any of these transactions must file with the DEP an application therefor, on forms and in a manner prescribed by the department. The DEP must promptly review all such applications and must serve requests for information regarding any transaction within 30 days following the filing of an application if the DEP deems that such information is necessary. The DEP must approve or deny the transaction within 60 days of receipt of all requested information. In the event that the DEP fails to take action on a transaction within the 60-day period, then the transaction shall be deemed to have been approved.

The substitute bill would not otherwise alter the authority of the DEP to regulate privately-owned commercial sanitary landfill facilities with respect to the provision of solid waste disposal services under the "Solid Waste Utility Control Act," with respect to environment

standards and requirements under the "Solid Waste Management Act," or with respect to licensing standards and requirements under the "A-901" solid waste licensing law.

# ASSEMBLY, No. 3768

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 9, 2003

**Sponsored by:**

**Assemblyman JOSEPH J. ROBERTS, JR.**

**District 5 (Camden and Gloucester)**

**Assemblyman DAVID W. WOLFE**

**District 10 (Monmouth and Ocean)**

**SYNOPSIS**

"Commercial Landfill Regulatory Reform Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/13/2003)**

1 AN ACT concerning privately-owned sanitary landfill facilities, and  
2 revising various sections of statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. (New section) Sections 1 through 10 of P.L. , c. (C. )(now  
8 before the Legislature as this bill) shall be known and may be cited as  
9 the "Commercial Landfill Regulatory Reform Act."

10

11 2. (New section) The Legislature finds and declares that efficient  
12 and reasonable solid waste disposal services at competitive rates will  
13 more likely be achieved if the services of privately-owned sanitary  
14 landfill facilities in this State are under the supervision of the  
15 Department of Environmental Protection but not subject to traditional  
16 public utility economic regulation.

17 The Legislature further finds and declares that it is imperative that  
18 the State ensure the economic viability and competitiveness of all solid  
19 waste disposal facilities in this State whether publicly or privately  
20 owned in order to safeguard the integrity of the State's solid waste  
21 management strategy; that it is equally imperative to safeguard the  
22 interests of consumers in efficient sanitary landfill services at  
23 competitive rates; that to achieve these ends and provide for consumer  
24 protection it is necessary to foster competition and this can best be  
25 achieved by establishing a responsible State supervisory role and  
26 abolishing tradition utility economic restrictions which place New  
27 Jersey's commercial landfills at a competitive disadvantage and  
28 threaten their economic viability in today's competitive market for  
29 solid waste disposal services.

30 The Legislature further finds and declares that reforming traditional  
31 public utility regulation with respect to privately-owned sanitary  
32 landfill facilities in the manner hereinafter provided will not  
33 compromise the State's ability to supervise the solid waste disposal  
34 services provided at such commercial facilities pursuant to P.L.1970,  
35 c.40 (C.48:13A-1 et seq.) or its ability to prevent persons with  
36 criminal backgrounds from engaging in the business of solid waste  
37 disposal through implementation of the licensing system established  
38 under P.L.1983, c.392 (C.13:1E-126 et seq.) and P.L.1991, c.269  
39 (C.13:1E-128.1 et al.).

40 The Legislature therefore determines that it is in the public interest  
41 to provide for the reform of this State's economic regulation of  
42 privately-owned sanitary landfill facilities while at the same time  
43 maintaining State supervision over these commercial facilities.

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

**Matter underlined thus is new matter.**

1 3. (New section) As used in sections 1 through 10 of P.L. ,  
2 c. (C. )(now before the Legislature as this bill):

3 "Department" means the Department of Environmental Protection.

4 "Market-based rates" means the solid waste disposal rates collected  
5 by a privately-owned sanitary landfill facility which do not exceed  
6 rates charged at other solid waste facilities in this State or at  
7 competing out-of-state facilities.

8 "Privately-owned sanitary landfill facility" means a commercial  
9 sanitary landfill facility which is owned and operated by a private  
10 person, corporation or other organization and includes all  
11 appurtenances and related improvements used at the site for the  
12 transfer, processing or disposal of solid waste.

13 "Sanitary landfill facility" means a solid waste facility at which solid  
14 waste is deposited on or in the land as fill for the purpose of  
15 permanent disposal or storage for a period exceeding six months,  
16 except that it shall not include any waste facility approved for disposal  
17 of hazardous waste.

18 "Solid waste disposal services" means the services provided by  
19 persons engaging in the business of solid waste disposal.

20

21 4. (New section) a. The owner or operator of every privately-  
22 owned sanitary landfill facility shall hold a certificate of public  
23 convenience and necessity issued by the department pursuant to the  
24 provisions of section 7 of P.L.1970, c.40 (C.48:13A-6).

25 b. The terms and conditions of solid waste disposal services at a  
26 privately-owned sanitary landfill facility shall be set forth in a tariff  
27 filed with the department.

28 c. Within ten days of any deletion or addition of a service, a tariff  
29 amendment shall be filed with the department.

30

31 5. (New section) a. The solid waste disposal rates collected by a  
32 privately-owned sanitary landfill facility may be adjusted upon 30 days  
33 notice to current customers and publication in a newspaper of general  
34 circulation in the service area once a week for two consecutive weeks,  
35 with the first notice being 30 days in advance of the effective date of  
36 the adjustments, and following their effective date the rates shall be  
37 posted in a prominent location at the entrance to the privately-owned  
38 sanitary landfill facility.

39 b. The notice of solid waste disposal rate adjustments shall be filed  
40 with the department within three days of their effective date.

41

42 6. (New section) a. The total annual fee collected by the  
43 department from the owner or operator of a privately-owned sanitary  
44 landfill facility to cover the costs of supervising the privately-owned  
45 sanitary landfill facility pursuant to the provisions of P.L.1970, c.40  
46 (C.48:13A-1 et seq.) shall not exceed the annual assessment

1 authorized under the provisions of P.L.1968, c.173 (C.48:2-59 et  
2 seq.).

3 b. For the purposes of the annual assessment authorized under the  
4 provisions of P.L.1968, c.173 (C.48:2-59 et seq.), the owner or  
5 operator of a privately-owned sanitary landfill facility shall file with the  
6 department not later than May 1 of each year a certification of gross  
7 operating revenues received from intrastate utility services during the  
8 preceding calendar year.

9

10 7. (New section) a. Notwithstanding the provisions of any other  
11 law, rule or regulation, court decision or order of the Board of Public  
12 Utilities or department to the contrary, the solid waste disposal rates  
13 collected by a privately-owned sanitary landfill facility shall be deemed  
14 just and reasonable for the purposes of section 8 of P.L.1970, c.40  
15 (C.48:13A-7) if those rates are market-based rates.

16 b. The solid waste disposal rates collected by a privately-owned  
17 sanitary landfill facility which exceed the market-based rates  
18 authorized pursuant to subsection a. of this section shall not be  
19 deemed unjust and unreasonable if the solid waste disposal rates are  
20 designed to: (1) stabilize incoming waste flows and prevent the  
21 premature exhaustion of landfill capacity; or (2) recover sufficient  
22 revenues to meet the revenue requirements of the privately-owned  
23 sanitary landfill facility.

24 c. The internal cost of service or financial condition of a privately-  
25 owned sanitary landfill facility shall be deemed relevant only if the  
26 owner or operator of the affected facility raises a revenue requirement  
27 defense in a contested case proceeding initiated by the department  
28 pursuant to section 8 of P.L. , c. (C. )(now before the  
29 Legislature as this bill). In such a case, the owner or operator of the  
30 privately-owned sanitary landfill facility, at the owner's sole discretion,  
31 may establish a reasonable profit margin using either the return on rate  
32 base or operating margin methodology, or any alternative  
33 methodology which is consistent with market practices.

34

35 8. (New section) a. Whenever, on the basis of available  
36 information, the department has reasonable grounds for belief that the  
37 solid waste disposal rates collected by a privately-owned sanitary  
38 landfill facility are not in compliance with the market-based rates  
39 authorized in subsection a. of section 7 of P.L. , c. (C. )  
40 (now before the Legislature as this bill), the department may initiate  
41 contested case proceedings before the Office of Administrative Law  
42 as authorized herein.

43 b. At least 30 days prior to transmittal of the contested case to the  
44 Office of Administrative Law pursuant to subsection a. of this section,  
45 the department shall serve a notice on the owner or operator of the  
46 affected facility. The notice shall identify the solid waste disposal rate



1 or rates at issue, describe and attach copies of the evidence relied  
2 upon, and afford the owner or operator an opportunity to be heard on  
3 why further action on the matter is not warranted.

4 c. Within 30 days of the close of the hearing before the Office of  
5 Administrative Law, the administrative law judge shall issue an initial  
6 decision which may recommend that the department order the owner  
7 or operator of the affected facility to adjust the solid waste disposal  
8 rates collected by the privately-owned sanitary landfill facility to bring  
9 the rates into compliance with the market-based rates authorized in  
10 subsection a. of section 7 of P.L. , c. (C. )(now before the  
11 Legislature as this bill), if the department shows that the solid waste  
12 disposal rates identified in the notice of transmittal: (1) are not in  
13 compliance with the market-based rates authorized in subsection a. of  
14 section 7 of P.L. , c. (C. )(now before the Legislature as this  
15 bill) and the owner or operator of the affected facility has not  
16 demonstrated that the rates; (2) are designed to stabilize incoming  
17 waste flows; or (3) are needed to meet the revenue requirements of the  
18 privately-owned sanitary landfill facility.

19 d. The administrative law judge's initial decision shall be  
20 simultaneously served on the department and the owner or operator of  
21 the affected facility. Within 30 days of receipt of the initial decision,  
22 the department shall issue a final order affirming or rejecting the  
23 recommendations of the administrative law judge and describing with  
24 specificity the basis in the record for any findings or conclusions which  
25 are contrary to those set forth in the initial decision.

26 e. If the department fails to act on the initial decision within 90  
27 days of its receipt, or within any extended period agreed to, in writing,  
28 by the owner or operator of the affected facility, the recommendations  
29 of the administrative law judge shall be deemed affirmed and the final  
30 agency decision in the case for the purposes of appeal. Any order on  
31 the initial decision issued by the department thereafter shall be of no  
32 effect.

33 f. Except to the extent expressly modified herein, the contested  
34 case proceeding authorized pursuant to this section shall be conducted  
35 in accordance with the rules and regulations applicable to such  
36 proceedings promulgated by the Office of Administrative Law,  
37 including rules applicable to summary judgment motions.

38  
39 9. (New section) a. The provisions of section 18 of P.L.1975,  
40 c.326 (C.13:1E-27), Title 48 of the Revised Statutes, P.L.1970, c.40  
41 (C.48:13A-1 et seq.), or any other law, rule or regulation adopted  
42 pursuant thereto, or order issued by the Board of Public Utilities or  
43 the department, to the contrary notwithstanding, the jurisdiction of the  
44 department with respect to the State supervision of privately-owned  
45 sanitary landfill facilities shall be exercised with respect to the solid  
46 waste disposal rates collected by privately-owned sanitary landfill

1 facilities solely in the manner and to the extent expressly provided in  
2 the provisions of P.L. , c. (C. )(now before the Legislature as  
3 this bill), and shall not extend to the financial or business affairs of any  
4 privately-owned sanitary landfill facility or the owner or operator  
5 thereof, except to the extent expressly provided in the provisions of  
6 R.S.48:3-7 and section 12 of P.L.1970, c.40 (C.48:13A-11).

7 b. Nothing contained in the provisions of P.L. , c. (C. )  
8 (now before the Legislature as this bill) shall be construed to limit the  
9 authority of the department to regulate privately-owned sanitary  
10 landfill facilities with respect to the provision of solid waste disposal  
11 services pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.), environment  
12 standards and requirements pursuant to P.L.1970, c.39 (C.13:1E-1 et  
13 seq.) and licensing standards and requirements pursuant to P.L.1983,  
14 c.392 (C.13:1E-126 et seq.) and P.L.1991, c.269 (C.13:1E-128.1 et  
15 al.).

16

17 10. (New section) Within 180 days of the effective date of  
18 P.L. , c. (C. )(now before the Legislature as this bill), the  
19 department shall adopt, pursuant to the "Administrative Procedure  
20 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as  
21 are necessary to effectuate the provisions of this act and to implement  
22 the regulatory reforms enacted herein.

23

24 11. Section 5 of P.L.1970, c.40 (C.48:13A-4) is amended to read  
25 as follows:

26 5. a. The **[Board of Public Utilities]** Department of Environmental  
27 Protection shall, after hearing, by order in writing, adopt appropriate  
28 rules, regulations or administrative orders for the regulation of rates  
29 and public utility aspects of the solid waste disposal industry.

30 b. The **[Board of Public Utilities]** Department of Environmental  
31 Protection shall, after hearing, by order in writing, adopt appropriate  
32 rules, regulations or administrative orders for the supervision of the  
33 solid waste collection industry.

34 c. **[The Board of Public Utilities shall, in conjunction with the**  
35 **Department of Environmental Protection, after hearing, by order in**  
36 **writing, adopt appropriate rules, regulations or administrative orders**  
37 **providing for the interdistrict, intradistrict and interstate flow of solid**  
38 **waste. The rules, regulations, or administrative orders shall establish**  
39 **the manner in which the board and the department jointly direct the**  
40 **flow of solid waste in this State pursuant to P.L.1970, c.40**  
41 **(C.48:13A-1 et seq.) and P.L.1970, c.39 (C.13:1E-1 et seq.).**

42 The provisions of this subsection shall not apply to designated  
43 recyclable materials as defined in section 2 of P.L.1987, c.102  
44 (C.13:1E-99.12) or any other recyclable material whenever markets  
45 for those materials are available.] (Deleted by amendment,  
46 P.L. , c. )

47 (cf: P.L.1991, c.381, s.27)

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

3       6. a. The ~~Board of Public Utilities~~ Department of Environmental  
4 Protection may, by order in writing, when it finds that the public  
5 interest requires, award a franchise to any person or persons engaged  
6 in solid waste disposal at rates ~~and charges~~ published in tariffs or  
7 contracts accepted or to be accepted for filing by the ~~board~~;  
8 provided, however, that the proposed franchise for solid waste  
9 disposal conforms to the district solid waste management plan of the  
10 district or districts in which such service is to be located, as such plan  
11 shall have been approved by the ~~board~~ Department of Environmental  
12 Protection.

13       After November 10, 1997, the Department of Environmental  
14 Protection shall not award a franchise to any person or persons  
15 engaged in solid waste disposal in this State.

16       b. ~~Franchises awarded pursuant to this section shall be of~~  
17 ~~sufficient area and duration to support the estimated technical and~~  
18 ~~economic needs of the disposal facility which is to serve the district or~~  
19 ~~districts.] (Deleted by amendment, P.L. , c. )~~

20       c. For the purposes of this section, "franchise" shall mean the  
21 exclusive right to control and provide for the disposal of solid waste,  
22 except for recyclable material whenever markets for those materials  
23 are available, within a district ~~or districts~~ as awarded by the Board  
24 of Public Utilities or the department prior to November 10, 1997.

25       d. In no event shall the ~~board~~ department award a franchise to  
26 any person required to be listed in the disclosure statement, or  
27 otherwise shown to have a beneficial interest in the business of the  
28 applicant, permittee or the licensee as defined in section 2 of P.L.1983,  
29 c.392 (C.13:1E-127), if the ~~board~~ department determines that there  
30 is a reasonable suspicion to believe that the person does not possess  
31 a reputation for good character, honesty and integrity, and that person  
32 or the applicant, permittee or licensee fails, by clear and convincing  
33 evidence, to establish his reputation for good character, honesty and  
34 integrity.

35       e. Nothing in section 11 of P.L.1970, c.40 (C.48:13A-10) shall be  
36 interpreted to prevent the implementation of this section by the ~~Board~~  
37 ~~of Public Utilities~~ Department of Environmental Protection.  
38 (cf: P.L.1991, c.269, s.11)

39  
40       13. Section 7 of P.L.1970, c.40 (C.48:13A-6) is amended to read  
41 as follows:

42       7. a. No person shall engage, or be permitted to engage, in the  
43 business of solid waste collection or solid waste disposal until found  
44 by the ~~board~~ Department of Environmental Protection to be  
45 qualified by experience, training or education to engage in such  
46 business, is able to furnish proof of financial responsibility, and unless

1 that person holds a certificate of public convenience and necessity  
2 issued by the [Board of Public Utilities] Department of Environmental  
3 Protection.

4 (1) No certificate shall be issued for solid waste collection or solid  
5 waste disposal until the person proposing to engage in solid waste  
6 collection or solid waste disposal, as the case may be, has been  
7 registered with and approved by the Department of Environmental  
8 Protection as provided by section 5 of P.L.1970, c.39 (C.13:1E-5).

9 (2) No certificate of public convenience and necessity shall be  
10 issued by the [Board of Public Utilities] Department of Environmental  
11 Protection to any person who has been denied approval of a license  
12 under the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), or  
13 whose license has been revoked by the Department of Environmental  
14 Protection, as the case may be.

15 b. No person shall transport regulated medical waste until found by  
16 the [Board of Public Utilities] Department of Environmental  
17 Protection to be qualified by experience, training or education to  
18 engage in such business, and is able to furnish proof of financial  
19 responsibility, and holds a certificate of public convenience and  
20 necessity issued by the [board] Department of Environmental  
21 Protection. No certificate shall be issued for the transportation of  
22 regulated medical waste until the proposed transporter has obtained a  
23 registration statement required by section 5 of P.L.1970, c.39  
24 (C.13:1E-5) and paid the fee imposed under section 9 of P.L.1989,  
25 c.34 (C.13:1E-48.9).

26 c. Notwithstanding the provisions of subsection b. of this section,  
27 the [board] department shall not have jurisdiction over rates or  
28 charges for the transportation of regulated medical waste.  
29 (cf: P.L.1991, c.381, s.28)

30

31 14. Section 1 of P.L.1981, c.221 (C.48:13A-6.1) is amended to  
32 read as follows:

33 1. a. Notwithstanding the provision of any other law, rule or  
34 regulation to the contrary, no sanitary landfill facility shall commence  
35 or continue operation unless a solid waste disposal tariff therefor has  
36 been filed and approved by the [Board of Public Utilities] Department  
37 of Environmental Protection pursuant to the "Solid Waste Utility  
38 Control Act [of 1970] ," [(]P.L.1970, c.40[,] (C.48:13A-1 et seq.).  
39 No sanitary landfill facility shall operate under any conditions contrary  
40 to those specifically set forth in its approved solid waste disposal  
41 tariff.

42 [This act] The provisions of this subsection shall not apply to  
43 sanitary landfill facilities operated by [an] a public authority created  
44 [under P.L.1946, c. 138 (C. 40:14A-1 et seq.) or] pursuant to the  
45 "municipal and county utilities authorities law," P.L.1957, c.183  
46 (C.40:14B-1 et seq.).

1        b. The provisions of subsection a. of this section shall not apply to  
2 a privately-owned sanitary landfill facility, except as provided in  
3 sections 1 through 10 of P.L. , c. (C. )(now before the  
4 Legislature as this bill). As used in this subsection, "privately-owned  
5 sanitary landfill facility means a commercial sanitary landfill facility  
6 which is owned and operated by a private person, corporation or other  
7 organization and includes all appurtenances and related improvements  
8 used at the site for the transfer, processing or disposal of solid waste.  
9 (cf: P.L.1981, c.221, s.1)

10  
11        15. Section 8 of P.L.1970, c.40 (C.48:13A-7) is amended to read  
12 as follows:

13        8. a. The [board] Department of Environmental Protection, upon  
14 complaint or its own initiative, after hearing, may direct any person  
15 engaging in the solid waste disposal business to furnish proof that the  
16 rates [or charges received] charged for solid waste disposal services  
17 do not exceed just and reasonable rates [or charges] for such service.

18        b. Should the [board] department find that the rates [or charges  
19 received] charged for solid waste disposal services are excessive, then  
20 [it] the department may order the person charging such excessive  
21 rates [or charges] to make an adjustment in the tariff or contract to  
22 a sum which shall result in just and reasonable rates [or charges].

23 (cf: P.L.1991, c.381, s.29)

24  
25        16. Section 9 of P.L.1970, c.40 (C.48:13A-8) is amended to read  
26 as follows:

27        9. a. Should any person engaged in the solid waste disposal  
28 business fail or refuse to complete, execute or perform any contract or  
29 agreement obligating [such] that person to provide solid waste  
30 disposal services, the [board] Department of Environmental  
31 Protection may order any person engaged in the solid waste disposal  
32 business to extend solid waste disposal services into any area where  
33 service has been discontinued in accordance with the provisions of  
34 R.S.48:2-27, and the [board] department shall:

35        (1) fix an appropriate initial rate for solid waste collection service;  
36 or

37        (2) fix and exercise continuing jurisdiction over just and reasonable  
38 rates [and charges] for solid waste disposal service in the extended  
39 area.

40        [c.] b. Should any person engaged in the solid waste collection  
41 business refuse to furnish solid waste collection services within a  
42 municipality pursuant to section 2 of P.L.1991, c.170 (C.40:66-5.2),  
43 the [board] department may order the solid waste collector to provide  
44 these services in accordance with the provisions of R.S.48:2-23.

45 (cf: P.L.1991, c.381, s.30)

1 17. R.S.48:3-7 is amended to read as follows:

2 48:3-7. a. No public utility shall, without the approval of the  
3 board, sell, lease, mortgage or otherwise dispose of or encumber its  
4 property, franchises, privileges or rights, or any part thereof; or merge  
5 or consolidate its property, franchises, privileges or rights, or any part  
6 thereof, with that of any other public utility.

7 Where, by the proposed sale, lease or other disposition of all or a  
8 substantial portion of its property, any franchise or franchises,  
9 privileges or rights, or any part thereof or merger or consolidation  
10 thereof as set forth herein, it appears that the public utility or a wholly  
11 owned subsidiary thereof may be unable to fulfill its obligation to any  
12 employees thereof with respect to pension benefits previously enjoyed,  
13 whether vested or contingent, the board shall not grant its approval  
14 unless the public utility seeking the board's approval for such sale,  
15 lease or other disposition assumes such responsibility as will be  
16 sufficient to provide that all such obligations to employees will be  
17 satisfied as they become due.

18 Every sale, mortgage, lease, disposition, encumbrance, merger or  
19 consolidation made in violation of this section shall be void.

20 Nothing herein shall prevent the sale, lease or other disposition by  
21 any public utility of any of its property in the ordinary course of  
22 business, nor require the approval of the board to any grant,  
23 conveyance or release of any property or interest therein heretofore  
24 made or hereafter to be made by any public utility to the United States,  
25 State or any county or municipality or any agency, authority or  
26 subdivision thereof, for public use.

27 The approval of the board shall not be required to validate the title  
28 of the United States, State or any county or municipality or any  
29 agency, authority or subdivision thereof, to any lands or interest  
30 therein heretofore condemned or hereafter to be condemned by the  
31 United States, State or any county or municipality or any agency,  
32 authority or subdivision thereof for public use.

33 b. Notwithstanding any law, rule, regulation or order to the  
34 contrary, an autobus public utility regulated by and subject to the  
35 provisions of Title 48 of the Revised Statutes may, without the  
36 approval of the Department of Transportation, sell, lease, mortgage or  
37 otherwise dispose of or encumber its property, or any part thereof,  
38 except that approval of the Department of Transportation shall be  
39 required for the following:

40 (1) the sale of 60% or more of its property within a 12-month  
41 period;

42 (2) a merger or consolidation of its property, franchises, privileges  
43 or rights; or

44 (3) the sale of any of its franchises, privileges or rights.

45 Notice of the sale, purchase or lease of any autobus or other vehicle  
46 subject to regulation under Title 48 of the Revised Statutes shall be  
47 provided to the Department of Transportation as the department shall

1 require.

2 c. Except as otherwise provided in subsection e. of this section, no  
3 solid waste collector as defined in section 3 of P.L.1970, c.40  
4 (C.48:13A-3) shall, without the approval of the [board] Department  
5 of Environmental Protection:

6 (1) sell, lease, mortgage or otherwise dispose of or encumber its  
7 property, including customer lists; or

8 (2) merge or consolidate its property, including customer lists, with  
9 that of any other person or business concern, whether or not that  
10 person or business concern is engaged in the business of solid waste  
11 collection or solid waste disposal pursuant to the provisions of  
12 P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et  
13 seq.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

14 d. Any solid waste collector seeking approval for any transaction  
15 enumerated in subsection c. of this section shall file with the [board]  
16 department, on forms and in a manner prescribed by the [board]  
17 department, a notice of intent at least 30 days prior to the completion  
18 of the transaction.

19 (1) The [board] department shall promptly review all notices filed  
20 pursuant to this subsection. The [board] department may, within 30  
21 days of receipt of a notice of intent, request that the solid waste  
22 collector submit additional information to assist in its review if it  
23 deems that such information is necessary. If no such request is made,  
24 the transaction shall be deemed to have been approved. In the event  
25 that additional information is requested, the [board] department shall  
26 outline, in writing, why it deems such information necessary to make  
27 an informed decision on the impact of the transaction on effective  
28 competition.

29 (2) The [board] department shall approve or deny a transaction  
30 within 60 days of receipt of all requested information. In the event  
31 that the [board] department fails to take action on a transaction within  
32 the 60-day period specified herein, then the transaction shall be  
33 deemed to have been approved.

34 (3) The [board] department shall approve a transaction unless it  
35 makes a determination pursuant to the provisions of section 19 of  
36 P.L.1991, c.381 (C.48:13A-7.19) that the proposed sale, lease,  
37 mortgage, disposition, encumbrance, merger or consolidation would  
38 result in a lack of effective competition.

39 The [Board of Public Utilities] department shall prescribe and  
40 provide upon request all necessary forms for the implementation of the  
41 notification requirements of this subsection.

42 e. (1) Any solid waste collector may, without the approval of the  
43 [board] department, purchase, finance or lease any equipment,  
44 including collection or haulage vehicles.

45 (2) Any solid waste collector may, without the approval of the  
46 [board] department, sell or otherwise dispose of its collection or

1 haulage vehicles; except that no solid waste collector shall, without the  
2 approval of the [board] department in the manner provided in  
3 subsection d. of this section, sell or dispose of 33% or more of its  
4 collection or haulage vehicles within a 12-month period.

5 f. (1) The owner or operator of a privately-owned sanitary landfill  
6 facility may, without the approval of the Department of Environmental  
7 Protection, sell or otherwise dispose of its assets except that the prior  
8 approval of the department shall be required (a) to sell all assets  
9 associated with the sanitary landfill facility or a portion thereof  
10 sufficient to transfer the operation of the sanitary landfill facility to a  
11 new owner or operator; (b) to sell a controlling ownership interest in  
12 the sanitary landfill facility; or (c) to merge or consolidate its property  
13 with that of any other person or business concern, whether or not that  
14 person or business concern is engaged in the business of solid waste  
15 disposal pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et  
16 seq.), P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act.

17 (2) Any owner or operator seeking approval for any transaction  
18 enumerated in this subsection shall file with the department an  
19 application therefor, on forms and in a manner prescribed by the  
20 department. The department shall promptly review all applications  
21 filed pursuant to this subsection and shall serve requests for  
22 information regarding any transaction within 30 days following the  
23 filing of an application if the department deems that such information  
24 is necessary. The department shall approve or deny the transaction  
25 within 60 days of receipt of all requested information. In the event  
26 that the department fails to take action on a transaction within the  
27 60-day period specified herein, then the transaction shall be deemed to  
28 have been approved.

29 As used in this section, "business concern" means any corporation,  
30 association, firm, partnership, sole proprietorship, trust or other form  
31 of commercial organization; and "privately-owned sanitary landfill  
32 facility" means a commercial sanitary landfill facility which is owned  
33 and operated by a private person, corporation or other organization  
34 and includes all appurtenances and related improvements used at the  
35 site for the transfer, processing or disposal of solid waste.

36 (cf: P.L.1991, 381, s.35)

37

38 18. R.S.48:3-9 is amended to read as follows:

39 48:3-9. No public utility shall, unless it shall have first obtained  
40 authority from the board so to do:

41 (a) Issue any stocks, or any bonds, notes or other evidence of  
42 indebtedness payable more than 12 months after the date or dates  
43 thereof, or extend or renew any bond, note or any other evidence of  
44 indebtedness so that any extension or renewal thereof shall be payable  
45 later than 12 months after the date of the original instrument, or

46 (b) Permit any demand note to remain unpaid for a period of more  
47 than 12 months after the date thereof.



1 The board shall approve any such proposed issue, with or without  
2 hearing at its discretion, when satisfied that such issue is to be made  
3 in accordance with law and the purpose thereof is approved by the  
4 board.

5 The provisions of this section shall not apply to any public utility  
6 operating, managing or controlling a railroad or a railway express  
7 which is subject to the rules and regulations from time to time issued  
8 by the Interstate Commerce Commission.

9 The provisions of this section shall not apply to autobus public  
10 utilities under the jurisdiction of the Department of Transportation.

11 The provisions of this section shall not apply to any solid waste  
12 collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3).

13 The provisions of this section shall not apply to any privately-  
14 owned sanitary landfill facility as defined in section 3 of P.L. , c.  
15 (C. )(now before the Legislature as this bill).

16 (cf: P.L.1991, 381, s.36)

17

18 19. Section 10 of P.L.1970, c.40 (C.48:13A-9) is amended to read  
19 as follows:

20 10. The [board, on its own initiative or upon complaint by the]  
21 Department of Environmental Protection shall revoke or suspend the  
22 certificate of public convenience and necessity issued to any person  
23 engaged in the solid waste collection business or the solid waste  
24 disposal business upon the finding that such person:

25 a. Has violated any provision of P.L.1970, c.40 (C.48:13A-1 et  
26 seq.) or P.L.1991, c.381 (C.48:13A-7.1 et al.), or any rule, regulation  
27 or administrative order adopted or issued pursuant thereto; or

28 b. Has violated any provision of any laws related to pollution of the  
29 air, water or lands of this State; or

30 c. Has refused or failed to comply with any lawful order of the  
31 [board] department; or

32 d. Has had its registration revoked by the Department of  
33 Environmental Protection; or

34 e. Has been denied approval of a license under the provisions of  
35 P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license revoked  
36 by the Department of Environmental Protection, as the case may be.  
37 (cf: P.L.1991, c.381, s.31)

38

39 20. Section 12 of P.L.1970, c.40 (C.48:13A-11) is amended to  
40 read as follows:

41 12. a. The [board] Department of Environmental Protection may  
42 compel the attendance of witnesses and the production of tariffs,  
43 contracts, papers, books, accounts and all the documents necessary to  
44 enable the [board] department to administer its duties as prescribed  
45 by law and [this act] the provisions of P.L.1970, c.40 (C.48:13A-1 et  
46 seq.).

47 b. The [board] department may compel any person engaged in the

1 business of solid waste [collection or solid waste] disposal or  
2 otherwise providing solid waste [collection or transfer, transportation  
3 or] disposal services in this State to furnish and file with the [board]  
4 department any annual reports, federal or State tax returns, contracts,  
5 papers, books, accounts, customer lists, financial or operational  
6 information, or contracts, books, accounts and records of affiliated  
7 business concerns, including any affiliated or parent corporation or  
8 organization, or any wholly or partially owned subsidiary thereof,  
9 directly or indirectly involved therewith, or having a direct or indirect  
10 financial interest in the solid waste disposal services provided by that  
11 person, and all financial transactions between these parties related to  
12 the solid waste disposal services provided by that person, or other  
13 documents as may be necessary to enable the [board] department to  
14 administer its duties as prescribed by law and [this act] the provisions  
15 of P.L.1970, c.40 (C.48:13A-1 et seq.).

16 c. Should any person engaged in the business of solid waste  
17 [collection or solid waste] disposal or otherwise providing solid waste  
18 [collection or transfer, transportation or] disposal services fail or  
19 refuse to comply with any provision of this section, or any applicable  
20 provision of Title 48 of the Revised Statutes, the [board] department  
21 may revoke or suspend the certificate of public convenience and  
22 necessity issued to that person.

23 d. The provisions of this section shall apply to a privately-owned  
24 sanitary landfill facility as defined in section 3 of P.L. , c. (C. )  
25 (now before the Legislature as this bill) only if the owner or operator  
26 of the affected facility raises a revenue requirement defense in a  
27 contested case proceeding initiated by the department pursuant to  
28 section 8 of P.L. , c. (C. )(now before the Legislature as this  
29 bill).

30 (cf: P.L.1991, c.381, s.33)

31

32 21. Section 16 of P.L.1991, c.381 (C.48:13A-7.16) is amended to  
33 read as follows:

34 16. a. The [board] Department of Environmental Protection may  
35 compel any person engaged in the business of solid waste collection or  
36 otherwise providing solid waste collection services to furnish and file  
37 with the [board] department a consolidated annual report or other  
38 documents as may be necessary to enable the [board] department to  
39 administer its duties as prescribed by law and [this act] the provisions  
40 of P.L.1991, c.381 (C.48:13A-7.1 et al.).

41 b. Should any person engaged in the business of solid waste  
42 collection or otherwise providing solid waste collection services fail  
43 or refuse to comply with any provision of this section, the [board]  
44 department may revoke or suspend the certificate of public  
45 convenience and necessity issued to that person.

46 (cf: P.L.1991, c.381, s.16)

1       22. Section 17 of P.L.1991, c.381 (C.48:13A-7.17) is amended to  
2 read as follows:

3       17. a. The [board] Department of Environmental Protection may  
4 compel any solid waste collector to furnish and file with the [board]  
5 department any records, including, but not limited to, manifests, origin  
6 and destination forms, customer lists, financial or operational  
7 information, contracts, books, accounts and records of affiliated  
8 business concerns, including any affiliated or parent corporation or  
9 organization, or any wholly or partially owned subsidiary thereof,  
10 directly or indirectly involved therewith, or having a direct or indirect  
11 financial interest in the solid waste collection services provided by the  
12 solid waste collector, and all financial transactions between these  
13 parties related to the solid waste collection services provided by the  
14 solid waste collector, and any other documents related to solid waste  
15 collection or solid waste disposal activities, at any time or place in  
16 order to determine compliance with the provisions of [this act]  
17 P.L.1991, c.381 (C.48:13A-7.1 et al.) or P.L.1970, c.40 (C.48:13A-1  
18 et seq.) or any rule, regulation or administrative order adopted or  
19 issued pursuant thereto, and to enable the [board] department to  
20 administer its duties as prescribed by law and [this act] the provisions  
21 of P.L.1991, c.381 (C.48:13A-7.1 et al.).

22       b. Should any solid waste collector fail or refuse to comply with  
23 any provision of this section, the [board] department may revoke or  
24 suspend the certificate of public convenience and necessity issued to  
25 that person.

26 (cf: P.L.1991, c.381, s.17)

27

28       23. This act shall take effect on January 1, 2004.

29

30

31

## STATEMENT

32

33       This bill would reform the current system of economic regulation  
34 as it applies to privately-owned commercial sanitary landfill facilities.  
35 It would enable such facilities to participate on a level playing field  
36 with publicly-owned in-state disposal facilities and out-of-state  
37 landfills which are not regulated in the more competitive marketplace  
38 created by the Court's invalidation of State waste flow control in  
39 Atlantic Coast Demolition & Recycling v. Board of Chosen  
40 Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997).

41       For instance, tariff filings by publicly-owned solid waste facilities  
42 which propose adjustments in solid waste disposal rates that do not  
43 increase the rates above the so-called "peak rate" do not require prior  
44 approval by the Department of Environmental Protection (DEP). Any  
45 adjustment in rates below the peak rate would require the owner or  
46 operator of the publicly-owned facility to notify the DEP of the  
47 change, in writing, within three days of the effective date of the

1 change. The bill would permit the owner or operator of a commercial  
2 sanitary landfill facility to give notice of adjustments in its disposal  
3 rates to current customers and publish notice of the adjustments in a  
4 newspaper of general circulation in its service area at least 30 days  
5 before putting the new rates into effect, and file the notice of rate  
6 adjustments with the DEP within three days thereafter.

7 The bill would retain State supervision to ensure that adequate and  
8 efficient disposal services are maintained and that disposal rates  
9 charged by privately-owned commercial sanitary landfill facilities are  
10 not excessive.

11 Under the bill, every owner or operator of a privately-owned  
12 commercial sanitary landfill facility would still be required to hold a  
13 certificate of public convenience and necessity issued by the DEP  
14 pursuant to the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.).  
15 The terms and conditions of solid waste disposal services at a  
16 privately-owned commercial sanitary landfill facility would still have  
17 to be set forth in a tariff filed with the DEP. A tariff amendment  
18 would have to be filed within ten days of any deletion or addition of  
19 a service.

20 The bill would establish a new, market-based standard for ensuring  
21 that the solid waste disposal rates charged by a privately-owned  
22 commercial sanitary landfill facility are just and reasonable. Market-  
23 based rates are defined as the solid waste disposal rates collected by  
24 a privately-owned sanitary landfill facility which do not exceed rates  
25 charged at other solid waste facilities in this State or at competing out-  
26 of-state facilities. Rates which exceed this market-based standard  
27 would not be deemed unjust and unreasonable if they are designed to:  
28 (1) stabilize incoming waste flows and prevent the premature  
29 exhaustion of landfill capacity (needed for the disposal of residential  
30 and municipal solid waste generated in the county in which the facility  
31 is located); or (2) recover sufficient revenues to meet the facility's  
32 revenue requirement.

33 Whenever, on the basis of available information, the DEP has  
34 reasonable grounds for belief that the solid waste disposal rates  
35 collected by a privately-owned commercial sanitary landfill facility are  
36 not in compliance with the market-based rate standard established  
37 under the bill, the DEP may initiate contested case proceedings before  
38 the Office of Administrative Law.

39 The DEP must serve a notice on the owner or operator of the  
40 affected facility at least 30 days prior to transmittal of the contested  
41 case to the Office of Administrative Law. The notice shall identify the  
42 solid waste disposal rate or rates at issue, describe and attach copies  
43 of the evidence relied upon, and afford the owner or operator an  
44 opportunity to be heard on why further action on the matter is not  
45 warranted.

46 Within 30 days of the close of the hearing before the Office of  
47 Administrative Law, the administrative law judge shall issue an initial

1 decision which may recommend that the DEP order the owner or  
2 operator of the affected facility to adjust the solid waste disposal rates  
3 collected by the privately-owned sanitary landfill facility to bring the  
4 rates into compliance with the market-based rates authorized under the  
5 bill, if the DEP shows that the solid waste disposal rates identified in  
6 the notice of transmittal are not in compliance with the market-based  
7 rates authorized under the bill and the owner or operator of the  
8 affected facility has not demonstrated that the rates are designed to  
9 stabilize incoming waste flows or are needed to meet the revenue  
10 requirements of the privately-owned sanitary landfill facility.

11 The administrative law judge's initial decision shall be  
12 simultaneously served on the DEP and the owner or operator of the  
13 affected facility. Within 30 days of receipt of the initial decision, the  
14 DEP shall issue a final order affirming or rejecting the  
15 recommendations of the administrative law judge and describing with  
16 specificity the basis in the record for any findings or conclusions which  
17 are contrary to those set forth in the initial decision.

18 If the DEP fails to act on the initial decision within 90 days of its  
19 receipt, or within any extended period agreed to, in writing, by the  
20 owner or operator of the affected facility, the recommendations of the  
21 administrative law judge would be deemed affirmed and the final  
22 agency decision in the case for the purposes of appeal. Any order on  
23 the initial decision issued by the DEP thereafter would be of no effect.

24 Except to the extent expressly modified in the provisions of the bill,  
25 the contested case proceeding would be conducted in accordance with  
26 the rules and regulations applicable to such proceedings promulgated  
27 by the Office of Administrative Law, including rules applicable to  
28 summary judgment motions.

29 The jurisdiction of the DEP with respect to the State supervision of  
30 privately-owned sanitary landfill facilities would be exercised with  
31 respect to the solid waste disposal rates collected by privately-owned  
32 sanitary landfill facilities solely in the manner and to the extent  
33 expressly provided in the provisions of the bill, and would not extend  
34 to the financial or business affairs of any privately-owned sanitary  
35 landfill facility or the owner or operator thereof, except to the extent  
36 expressly authorized under the provisions of the bill.

37 Under the bill, the DEP may exercise the authority provided under  
38 section 12 of P.L.1970, c.40 (C.48:13A-11) if the owner or operator  
39 of the affected facility raises a revenue requirement defense in a  
40 contested case proceeding initiated by the DEP pursuant to section 8  
41 of the bill.

42 Under the bill, the owner or operator of a privately-owned sanitary  
43 landfill facility may, without the approval of the DEP, sell or otherwise  
44 dispose of its assets except that the prior approval of the DEP would  
45 be required (1) to sell all assets associated with the sanitary landfill  
46 facility or a portion thereof sufficient to transfer the operation of the  
47 sanitary landfill facility to a new owner or operator; (2) to sell a

1 controlling ownership interest in the sanitary landfill facility; or (3) to  
2 merge or consolidate its property with that of any other person or  
3 business concern, whether or not that person or business concern is  
4 engaged in the business of solid waste disposal.

5 Any owner or operator seeking approval for any of these  
6 transactions must file with the DEP an application therefor, on forms  
7 and in a manner prescribed by the department. The DEP must  
8 promptly review all such applications and must serve requests for  
9 information regarding any transaction within 30 days following the  
10 filing of an application if the DEP deems that such information is  
11 necessary. The DEP must approve or deny the transaction within 60  
12 days of receipt of all requested information. In the event that the DEP  
13 fails to take action on a transaction within the 60-day period, then the  
14 transaction shall be deemed to have been approved.

15 The bill would not otherwise alter the authority of the DEP to  
16 regulate privately-owned commercial sanitary landfill facilities with  
17 respect to the provision of solid waste disposal services under the  
18 "Solid Waste Utility Control Act," with respect to environment  
19 standards and requirements under the "Solid Waste Management Act,"  
20 or with respect to licensing standards and requirements under the "A-  
21 901" solid waste licensing law.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3768

**STATE OF NEW JERSEY**

DATED: JUNE 19, 2003

The Assembly Environment and Solid Waste Committee reports favorably Assembly Bill No. 3768.

This bill would reform the current system of economic regulation as it applies to privately-owned commercial sanitary landfill facilities. It would enable such facilities to participate on a level playing field with publicly-owned disposal facilities in the State and out-of-state landfills which are not regulated in the more competitive marketplace created by the Court's invalidation of State waste flow control in Atlantic Coast Demolition & Recycling v. Board of Chosen Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997).

For instance, tariff filings by publicly-owned solid waste facilities which propose adjustments in solid waste disposal rates that do not increase the rates above the so-called "peak rate" do not require prior approval by the Department of Environmental Protection (DEP). Any adjustment in rates below the peak rate would require the owner or operator of the publicly-owned facility to notify the DEP of the change, in writing, within three days of the effective date of the change. The bill would permit the owner or operator of a commercial sanitary landfill facility to give notice of adjustments in its disposal rates to current customers and publish notice of the adjustments in a newspaper of general circulation in its service area at least 30 days before putting the new rates into effect, and file the notice of rate adjustments with the DEP within three days thereafter.

The bill would retain State supervision to ensure that adequate and efficient disposal services are maintained and that disposal rates charged by privately-owned commercial sanitary landfill facilities are not excessive.

Under the bill, every owner or operator of a privately-owned commercial sanitary landfill facility would still be required to hold a certificate of public convenience and necessity issued by the DEP pursuant to the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.). The terms and conditions of solid waste disposal services at a privately-owned commercial sanitary landfill facility would still have to be set forth in a tariff filed with the DEP. A tariff amendment

would have to be filed within ten days of any deletion or addition of a service.

The bill would establish a new, market-based standard for ensuring that the solid waste disposal rates charged by a privately-owned commercial sanitary landfill facility are just and reasonable. Market-based rates are defined as the solid waste disposal rates collected by a privately-owned sanitary landfill facility which do not exceed rates charged at other solid waste facilities in this State or at competing out-of-state facilities. Rates which exceed this market-based standard would not be deemed unjust and unreasonable if they are designed to: (1) stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity (needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located); or (2) recover sufficient revenues to meet the facility's revenue requirement.

Whenever, on the basis of available information, the DEP has reasonable grounds for belief that the solid waste disposal rates collected by a privately-owned commercial sanitary landfill facility are not in compliance with the market-based rate standard established under the bill, the DEP may initiate contested case proceedings before the Office of Administrative Law.

The DEP must serve a notice on the owner or operator of the affected facility at least 30 days prior to transmittal of the contested case to the Office of Administrative Law. The notice shall identify the solid waste disposal rate or rates at issue, describe and attach copies of the evidence relied upon, and afford the owner or operator an opportunity to be heard on why further action on the matter is not warranted.

Within 30 days of the close of the hearing before the Office of Administrative Law, the administrative law judge shall issue an initial decision which may recommend that the DEP order the owner or operator of the affected facility to adjust the solid waste disposal rates collected by the privately-owned sanitary landfill facility to bring the rates into compliance with the market-based rates authorized under the bill, if the DEP shows that the solid waste disposal rates identified in the notice of transmittal are not in compliance with the market-based rates authorized under the bill and the owner or operator of the affected facility has not demonstrated that the rates are designed to stabilize incoming waste flows or are needed to meet the revenue requirements of the privately-owned sanitary landfill facility.

The administrative law judge's initial decision shall be simultaneously served on the DEP and the owner or operator of the affected facility. Within 30 days of receipt of the initial decision, the DEP shall issue a final order affirming or rejecting the recommendations of the administrative law judge and describing with specificity the basis in the record for any findings or conclusions which are contrary to those set forth in the initial decision.

If the DEP fails to act on the initial decision within 90 days of its



receipt, or within any extended period agreed to, in writing, by the owner or operator of the affected facility, the recommendations of the administrative law judge would be deemed affirmed and the final agency decision in the case for the purposes of appeal. Any order on the initial decision issued by the DEP thereafter would be of no effect.

Except to the extent expressly modified in the provisions of the bill, the contested case proceeding would be conducted in accordance with the rules and regulations applicable to such proceedings promulgated by the Office of Administrative Law, including rules applicable to summary judgment motions.

The jurisdiction of the DEP with respect to the State supervision of privately-owned sanitary landfill facilities would be exercised with respect to the solid waste disposal rates collected by privately-owned sanitary landfill facilities solely in the manner and to the extent expressly provided in the provisions of the bill, and would not extend to the financial or business affairs of any privately-owned sanitary landfill facility or the owner or operator thereof, except to the extent expressly authorized under the provisions of the bill.

Under the bill, the DEP may exercise the authority provided under section 12 of P.L.1970, c.40 (C.48:13A-11) if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the DEP pursuant to section 8 of the bill.

Under the bill, the owner or operator of a privately-owned sanitary landfill facility may, without the approval of the DEP, sell or otherwise dispose of its assets except that the prior approval of the DEP would be required (1) to sell all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the operation of the sanitary landfill facility to a new owner or operator; (2) to sell a controlling ownership interest in the sanitary landfill facility; or (3) to merge or consolidate its property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal.

Any owner or operator seeking approval for any of these transactions must file with the DEP an application therefor, on forms and in a manner prescribed by the department. The DEP must promptly review all such applications and must serve requests for information regarding any transaction within 30 days following the filing of an application if the DEP deems that such information is necessary. The DEP must approve or deny the transaction within 60 days of receipt of all requested information. In the event that the DEP fails to take action on a transaction within the 60-day period, then the transaction shall be deemed to have been approved.

The bill would not otherwise alter the authority of the DEP to regulate privately-owned commercial sanitary landfill facilities with respect to the provision of solid waste disposal services under the "Solid Waste Utility Control Act," with respect to environmental standards and requirements under the "Solid Waste Management Act,"

or with respect to licensing standards and requirements under the "A-901" solid waste licensing law.

As reported by committee, this bill is identical to Senate Bill No. 2354 (SCS) as also reported by the committee.