

40A: 12A-50

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"Large Site Landfill Reclamation
& Improvement Act"

NJSA: 40A:12A-50

LAWS OF: 1996 CHAPTER: 73

BILL NO: S954

SPONSOR(S): DiFrancesco

DATE INTRODUCED: March 7, 1996

COMMITTEE: ASSEMBLY: ---

SENATE: Budget

AMENDED DURING PASSAGE: No Senate Committee substitute enacted

DATE OF PASSAGE: ASSEMBLY: November 7, 1996

SENATE: June 13, 1996

DATE OF APPROVAL: July 22, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

KBP:pp

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 954

STATE OF NEW JERSEY

ADOPTED JUNE 3, 1996

Sponsored by Senators DiFRANCESCO and LESNIAK

1 AN ACT concerning landfill reclamation improvement districts,
2 amending and supplementing P.L.1995, c.173, amending
3 N.J.S.40A:4-39, and repealing section 6 of P.L.1995, c.173
4 (C.40A:12A-55).

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

8
9 1. (New section) P.L.1995, c.173 (C.40A:12A-50 et seq.) as
10 amended and supplemented shall be known and may be cited as the
11 "Large Site Landfill Reclamation and Improvement Law."

12
13 2. Section 1 of P.L.1995, c.173 (C.40:12A-50) is amended to read
14 as follows:

15 1. a. The Legislature finds and declares that it is a public purpose
16 and compelling State interest and is consistent with Article VIII,
17 Section 3, paragraph 1 of the Constitution of this State to facilitate the
18 redevelopment of large landfill [reclamation] sites in areas in need of
19 redevelopment within municipalities that are attempting to create
20 economic growth and thereby to promote job creation and economic
21 development. Environmentally sound landfill reclamation is essentially
22 a "capping" process, and the development potential of a capped landfill
23 is limited. The extensive **[closed]** landfill areas in some of the State's
24 **[urban areas, the prior commercial retail development experience and**
25 **the excellent transportation potential of those areas makes it vital that**
26 **the commercial reuse of those sites be encouraged by providing**
27 **municipal governments with the appropriate financing tools.]** areas in
28 need of redevelopment present major obstacles, both environmentally
29 and financially, for the proper redevelopment of the economic
30 potential of these areas, which makes it necessary to provide special
31 financial and redevelopment tools for municipalities to address these

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 obstacles.

2 b. The Legislature, therefore, determines that it is appropriate to
3 enable [certain] municipalities to establish landfill reclamation
4 improvement districts in areas in need of redevelopment comprising
5 [reclaimed] landfills of sufficient size [in existing urban enterprise
6 zones] to foster meaningful economic development and to provide
7 [those] municipalities with the appropriate [economic] tools for the
8 reclamation and redevelopment of those districts. [To provide those
9 tools, it is appropriate to allow a municipality to fund beneficial
10 improvements through the use of revenue bonds, and to allow a
11 municipality to act as a conduit through which the commercial tenants
12 of a development district may finance their own futures by franchise
13 assessments on businesses within the district, with the proceeds of the
14 assessment to be used for land reclamation and infrastructure
15 improvements made directly by a municipality within the district or
16 indirectly through redevelopers.]

17 c. The Legislature further determines that the proper remediation
18 of extensive landfills and the redevelopment of large landfill sites are
19 necessary to halt the decline in economic activity and the
20 underemployment of economic resources in these areas, to reverse the
21 deterioration of the value of previous investments in areas in need of
22 redevelopment and of public revenue collections on those investments,
23 and to eliminate the disincentive to new investment; and that the
24 improvement of these large sites is vital to the safety, health and
25 welfare of the residents of the municipalities in which they are located
26 and to the State, and constitutes an important opportunity for
27 enhancing the economic condition of the municipalities in which large
28 site landfills are located and that of the State, by augmenting the fiscal
29 resources of government and by stimulating private and public efforts
30 to enhance the attractiveness and desirability of the State as a place to
31 live and work.

32 d. Therefore, to foster this redevelopment, the Legislature further
33 determines, in accordance with the New Jersey Constitution, including
34 without limitation, Article VIII, Section 3, paragraph 1, that a
35 municipality that has created a landfill reclamation improvement
36 district may: (1) provide for a tax abatement within that district and
37 for a payments in lieu of taxes agreement, in accordance with
38 P.L. 1991, c.431 (C.40A:20-1 et seq.) and P. L.1995, c.173
39 (C.40A:12A-50 et seq.) and this amendatory and supplementary act,
40 P.L. _____, c. _____ (C. _____) (now pending before the Legislature as
41 this bill); (2) levy special assessments on real property within that
42 district in accordance with chapter 56 of Title 40 of the Revised
43 Statutes, R.S. 40:56-1 et seq., and with P.L.1995, c.173 and this
44 amendatory and supplementary act, P.L. _____, c. _____ (C. _____);
45 and (3) secure revenue bonds, notes or other obligations with those
46 payments in lieu of taxes and special assessments, and utilize these
47 means to secure funds to effect landfill closures, remediation,

1 redevelopment, and construction of infrastructure improvements which
2 will benefit the public at large and which constitute an important
3 public purpose.

4 e. The Legislature, further, determines that special financing
5 problems exist with respect to the size or nature and extent of
6 remediation and infrastructure improvements where the reclamation
7 improvement district consists of a tract of land of at least 150 acres of
8 which not less than 100 acres were formerly used as a landfill, and
9 determines that the municipality, may, by ordinance, levy a franchise
10 assessment for the privilege of transacting business within the district,
11 which franchise assessment shall be used to compensate the
12 municipality for loss of tax revenues arising from assignment of
13 payments in lieu of taxes or special assessments, or both, as security
14 for bonds.

15 f. The Legislature, further, determines that it is appropriate to
16 authorize the New Jersey Economic Development Authority
17 established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.) or other
18 instrumentality created by law with the power to incur debt and issue
19 bonds and other obligations, as a conduit for municipalities, to issue
20 and secure revenue bonds, notes or other obligations issued in
21 accordance with P.L.1995, c.173 (C.40A:12A-50 et seq.) and this
22 amendatory and supplementary act, P.L. _____ c. (C. _____)
23 (now pending before the Legislature as this bill) with respect to
24 financing or refinancing, without limitation, the site work,
25 construction, reconstruction, repair, alteration, improvement, and
26 development of any infrastructure or parking or transportation
27 facilities or work that abates, prevents or reduces environmental
28 pollution or other improvements that provide a public benefit within
29 or appurtenant to a landfill reclamation improvement district.

30 (cf: P.L.1995, c.173, s.1)

31

32 3. Section 2 of P.L.1995, c.173 (C.40A:12A-51) is amended to
33 read as follows:

34 2. As used in [sections 1 through 6 of this] P.L.1995, c.173
35 (C.40A:12A-50 et seq.) and this amendatory and supplementary act,
36 P.L. _____, c. _____ (C. _____) (now pending before the Legislature
37 as this bill):

38 "Authority" means the New Jersey Economic Development
39 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.)
40 or other instrumentality created by law with the power to incur debt
41 and issue bonds and other obligations.

42 "Bonds" mean bonds, notes or other obligations issued to finance
43 projects by the authority pursuant to P.L.1995, c.173 (C.40A:12A-50
44 et seq.) and this amendatory and supplementary act, P.L. _____, c. _____
45 (C. _____) (now pending before the Legislature as this bill).

46 "Municipality" means the municipal governing body or, if a
47 redevelopment agency or redevelopment entity is established in the

1 municipality pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.) and the
2 municipality so provides, the redevelopment agency or entity so
3 established.

4 "Redeveloper" means any person that enters or proposes to enter,
5 pursuant to P.L.1995, c.173 (C.40A:12A-50 et seq.) and this
6 amendatory and supplementary act, P.L. _____, c. _____ (C. _____)
7 (now pending before the Legislature as this bill) and the "Local
8 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
9 seq.), into a redevelopment agreement with a municipality that has
10 established a landfill reclamation improvement district.

11 "Redevelopment agreement" means a contract between a
12 municipality and a redeveloper for any work or undertaking for the
13 clearance, development and redevelopment, and the construction or
14 rehabilitation of any [structure or improvement of] commercial,
15 industrial or public structures or improvements, landfill closure,
16 remediation, or redevelopment, including, but not limited to, on-site
17 and off-site infrastructure improvements, or rehabilitation of an area
18 in need of redevelopment, or part thereof, under the provisions of
19 P.L.1995, c.173 (C.40A:12A-50 et seq.) and this amendatory and
20 supplementary act, P.L. _____, c. _____ (C. _____) (now pending before
21 the Legislature as this bill) and the "Local Redevelopment and
22 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), that provide a
23 public benefit within a district undertaken pursuant to an ordinance
24 creating a landfill reclamation improvement district pursuant to section
25 3 of P.L.1995, c.173 (C.40A:12A-52).

26 "Financial agreement" means an agreement that meets the
27 requirements of a financial agreement under P.L.1991, c.431
28 (C.40A:20-1 et seq.).

29 "Franchise assessment" means: (1) **[an]** a gross receipts
30 assessment on the amount of the sale price of all tangible property sold
31 by a business in a district, valued in money, whether received in money
32 or otherwise, excluding the cost of transportation if such cost is
33 separately stated in the written contract and excluding any tax imposed
34 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1
35 et seq.); (2) **[an]** or a gross receipts assessment on all rental receipts
36 from the rental of commercial property in a district; or (3) both (1) and
37 (2), as imposed pursuant to section 4 of P.L.1995, c.173 (C.40A:12A-
38 53), and this amendatory and supplementary act, P.L. _____, c.
39 _____ (C. _____) (now pending before the Legislature as this bill).

40 "Landfill reclamation improvement district" or "district" means a
41 **[contiguous]** tract of land of at least 150 acres in size, which may
42 consist of one or more tax lots, of which not less than 100 acres were
43 formerly or are presently used as a landfill, [located in a municipality
44 having a population of more than 12,000 according to the latest
45 federal decennial census and in an area designated as an urban
46 enterprise zone in which the receipts of certain sales are exempt to the
47 extent of 50% of the tax imposed under the "Sales and Use Tax Act,"

1 P.L.1966, c.30 (C.54:32B-1 et seq.), pursuant to section 21 of
2 P.L.1983, c.303 (C.52:27H-80),] which has been delineated a
3 "redevelopment area" or "area in need of redevelopment" pursuant to
4 the "Local Redevelopment and Housing Law" P.L.1992, c.79
5 (C.40A:12A-1 et seq.), and is an area which has been designated a
6 landfill reclamation improvement district by a municipality pursuant to
7 section 3 of P.L.1995, c.173 (C.40A:12A-52).

8 "Special assessment" means an assessment upon the lands or
9 improvements on such lands, or both, in the landfill reclamation
10 improvement district benefitted by improvements undertaken pursuant
11 to P.L.1995, c.173 (C.40A:12A-50 et seq.) and this amendatory and
12 supplementary act, P.L. _____, c. _____ (C. _____) (now pending
13 before the Legislature as this bill), assessed pursuant to chapter 56 of
14 Title 40 of the Revised Statutes, R.S.40:56-1 et seq. except as
15 otherwise provided in subsection b. of section 8 of this amendatory
16 and supplementary act, P.L. _____, c. _____ (C. _____).
17 (cf: P.L.1995, c.173, s.2)

18

19 4. Section 3 of P.L.1995, c.173 (C.40A:12A-52) is amended to
20 read as follows:

21 3. A municipality [having a population of more than 12,000
22 according to the most recent federal decennial census in which there
23 is an area designated as an urban enterprise zone in which the receipts
24 of certain sales are exempt to the extent of 50% of the tax imposed
25 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
26 seq.), pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80)]in
27 which there is a tract of land of at least 150 acres in size which may
28 consist of one or more tax lots, of which not less than 100 acres were
29 formerly or are presently used as a landfill which has been delineated
30 a "redevelopment area" or "area in need of redevelopment" pursuant
31 to the "Local Redevelopment and Housing Law" P.L.1992, c.79
32 (C.40A:12A-1 et seq.), may adopt an ordinance creating a landfill
33 reclamation improvement district whenever the municipality
34 determines that the closure and remediation of the landfill within the
35 district and the proposed development of the property within the
36 district will promote [job creation and economic development] the
37 health and general welfare of the residents of the municipality and the
38 district. A municipality may create, by separate ordinances, more than
39 one district. Any municipal redevelopment plan adopted by the
40 municipality shall provide for the development of the property within
41 the district in compliance with P.L.1995, c.173 (C.40A:12A-50 et
42 seq.) and this amendatory and supplementary act, P.L. _____, c. _____
43 (C. _____) (now pending before the Legislature as this bill).
44 (cf: P.L.1995, c.173, s.3)

45

46 5. Section 4 of P.L.1995, c.173 (C.40A:12A-53) is amended to
47 read as follows:

1 4. a. A municipality that has created a district pursuant to section
2 3 of P.L.1995, c.173 (C.40A:12A-52), in which there is an area
3 designated as an urban enterprise zone in which the receipts of certain
4 sales are exempt to the extent of 50% of the tax imposed under the
5 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.),
6 pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80), may for the
7 purpose of increasing public revenue adopt an ordinance to levy and
8 collect, within the district, a franchise assessment not to exceed three
9 percent of gross receipts and to devote the proceeds from those
10 assessments to municipal purposes as provided in this section.

11 b. The rate of the franchise assessment shall be uniform throughout
12 the district. **【Notwithstanding any other law to the contrary,**
13 **agreements for the payment of a franchise assessment authorized by**
14 **ordinance pursuant to this section shall remain in full force and effect**
15 **regardless of whether such ordinance is altered or repealed】. The**
16 **franchise assessment shall apply only within the territorial limits of the**
17 **district and shall be in addition to any other assessments, taxes and**
18 **excises.**

19 c. The ordinance shall be a valid and binding ordinance of the
20 municipality. The ordinance shall continue in force and effect until
21 repealed by the governing body. The municipality may also provide
22 and covenant by ordinance that the ordinance authorizing the franchise
23 assessment will not be amended so as to repeal or reduce the franchise
24 assessment while bonds issued pursuant to P.L.1995, c.173
25 (C.40A:12A-50 et seq.) and this amendatory and supplementary act,
26 P.L. _____, c. _____ (C. _____) (now pending before the Legislature
27 as this bill) are outstanding, unless the resolution authorizing the
28 bonds shall provide otherwise. Such covenant shall constitute a valid
29 and legally binding contract between the municipality and bondholders.

30 d. No franchise assessment shall be imposed on gross receipts
31 which the municipality or the State is prohibited from taxing under
32 New Jersey law, or the Constitution and laws of the United States of
33 America.

34 **【A copy of an ordinance adopted pursuant to this section shall be**
35 **transmitted upon adoption to the State Treasurer.】**

36 e. Upon adoption, the municipal clerk shall immediately transmit
37 a copy of the ordinance to the Director of the Division of Local
38 Government Services in the Department of Community Affairs and to
39 the Director of the Division of Taxation in the Department of the
40 Treasury. Every ordinance levying a franchise assessment pursuant to
41 this section shall provide for reporting assessments due and for the
42 collection thereof, and all franchise assessments pursuant to such an
43 ordinance shall be remitted to the chief financial officer of the
44 municipality. An ordinance levying a franchise assessment shall take
45 effect only on the first day of any month in any year. 【For the
46 purposes of the effective administration of the franchise assessment,
47 the municipality shall have all of the rights and responsibilities

1 established pursuant to sections 35 through 39 of P.L.1970, c.326
2 (C.40:48C-35 through 40:48C-39) and the franchise assessment shall
3 be administered pursuant to those sections.】 The ordinance shall
4 provide for the allocation and distribution of the proceeds of the
5 franchise assessments collected; provided, however, that only such
6 sums as are retained by the municipality pursuant to the ordinance
7 shall be included in the general funds of the municipality and all other
8 franchise assessment proceeds shall be held in trust for the payment or
9 reimbursement of costs or obligations incurred for the purposes of the
10 district.

11 f. The ordinance shall set forth the person or persons subject to
12 the franchise assessment payment and collection procedures, and any
13 other matters deemed relevant by the municipality with the
14 municipality having discretion as to the mechanism to be utilized. The
15 ordinance shall also contain findings that the imposition of the
16 franchise assessment is necessary because of the substantial risks
17 undertaken to develop a landfill reclamation improvement district, and
18 to offset loss of revenues by the municipality because of its assignment
19 of payments in lieu of taxes.

20 g. The ordinance shall provide for the collection of the franchise
21 assessment by an officer of the municipality who shall be designated
22 in the ordinance; shall provide methods for enforcement; and may
23 provide penalties for the violation of any of the provisions of the
24 ordinance.

25 h. All revenues collected under the ordinance and retained by the
26 municipality pursuant to this section shall be deposited in the general
27 fund of the municipality and may be used for general municipal
28 purposes, including the payment of salaries, construction,
29 reconstruction, maintenance and repair of municipal buildings,
30 installations and properties and for such other purposes as may be
31 provided by existing ordinances or ordinances hereafter enacted for
32 general municipal purposes.

33 (cf: P.L.1995, c.173, s.4)

34

35 6. (New section) For the purposes of the effective administration
36 of the franchise assessment, a municipality adopting a franchise
37 assessment ordinance shall have the power to:

38 a. Collect the franchise assessment, interest and penalties imposed
39 by an ordinance adopted pursuant to section 4 of P.L.1995, c.173
40 (C.40A:12A-53) which shall from the time due be a debt of the person
41 by whom payable to the municipality, recoverable in a court of
42 competent jurisdiction in a civil action in the name of the municipality
43 to be instituted within three years of the date due.

44 b. Authorize, as an additional remedy, the chief financial officer
45 of the municipality to issue a certificate to the clerk of the Superior
46 Court that any person is indebted under the ordinance in an amount
47 stated in the certificate. Thereupon, the clerk to whom the certificate

1 is issued shall immediately enter upon the record of documented
2 judgments the name of the person, the address of the place of business
3 where the franchise assessment liability was incurred, the amount of
4 the debt so certified and the date of making of the entry. The making
5 of the entry shall have the same force and effect as the entry of a
6 documented judgment in the office of the clerk, and the chief financial
7 officer of the municipality shall have all the remedies and may take all
8 the proceedings for the collection of the debt which may be had or
9 taken upon the recovery of a judgment in an action, but without
10 prejudice to the person's right of appeal.

11 c. Provide that, if for any reason the franchise assessment is not
12 paid when due, interest at the rate of 12% per annum on the amount
13 of the franchise assessment due, and an additional penalty of one-half
14 of 1% of the amount of the unpaid assessment for each month or
15 fraction thereof during which the franchise assessment remains unpaid,
16 shall be added and collected. When action is brought for the recovery
17 of any franchise assessment, the person liable therefor shall, in
18 addition, be liable for the costs of collection and the interest and
19 penalties imposed.

20 Any aggrieved person may, within 90 days of the entry of the
21 decision, order, finding, assessment or action of the chief financial
22 officer of the municipality under this section, file an appeal in the
23 Superior Court, upon payment of the amount stated by the chief
24 financial officer to be due. The appeal provided by this section shall
25 be the exclusive remedy available to any person for review of a
26 determination of the chief financial officer with respect to a liability for
27 the franchise assessment imposed.

28

29 7. Section 5 of P.L.1995, c.173 (C.40A:12A-54) is amended to
30 read as follows:

31 5. **【Notwithstanding any law to the contrary, all franchise**
32 **assessments that are payable to a municipality from businesses located**
33 **within a landfill reclamation improvement district and that are subject**
34 **to a redevelopment agreement shall be appropriated by the**
35 **municipality for payment as provided for in the redevelopment**
36 **agreement.】** Any portion of the aggregate franchise assessment
37 collected annually by the municipality **【and retained pursuant to a**
38 **redevelopment agreement】** which is not appropriated or expended by
39 the municipality for purposes of the district as such purposes are
40 provided in the "Local Redevelopment and Housing Law," P.L.1992,
41 c.79 (C.40A:12A-1 et seq.), but is retained by the municipality, shall
42 be apportioned between the municipality and the county in which the
43 landfill reclamation improvement district is located, such that 90
44 percent of the **【aggregate】** retained franchise assessment collected in
45 that year shall be **【paid to】** retained by the municipality and 10 percent
46 shall be **【paid】** transferred by the municipality to the county for use in

1 economic development], unless the county waives its interest or any
2 part thereof. Franchise assessments shall be made by the municipality
3 until such time as the redeveloper has been paid in full, as defined in
4 the redevelopment agreement, notwithstanding the fact that a
5 municipality may no longer qualify to designate a district or that the
6 district designation may have expired prior to the full satisfaction of
7 the payments due the redeveloper under a redevelopment agreement].
8 (cf: P. L.1995, c.173, s.5)

9

10 8. (New section) a. A municipality that has created a landfill
11 reclamation improvement district pursuant to section 3 of P.L.1995,
12 c.173 (C.40A:12A-52) may provide for tax abatement within that
13 district and for payments in lieu of taxes in accordance with the
14 provisions of P.L.1991, c.431 (C.40A:20-1 et seq.); provided,
15 however, that the provisions of section 12 of P.L.1991, c.431
16 (C.40A:20-12) establishing a minimum or maximum annual service
17 charge and requiring staged increases in annual service charges over
18 the term of the exemption period, and of section 13 of P.L.1991,
19 c.431 (C.40A:20-13) permitting the relinquishment of status under that
20 act, shall not apply to landfill reclamation improvement district
21 projects.

22 b. In addition to, or in lieu of, the tax abatement provided for in
23 subsection a. of this section, the municipality may provide by
24 ordinance for one or more special assessments within the landfill
25 reclamation improvement district in accordance with chapter 56 of title
26 40 of the Revised Statutes, R.S.40:56-1 et seq., provided, however,
27 that the provisions of R.S.40:56-35 shall be applied so that if any
28 installment of a special assessment shall remain unpaid for 30 days
29 after the time at which it shall become due, the municipality may
30 provide, by ordinance, either that: (1) the whole assessment or
31 balance due thereon shall become and be immediately due; or, (2) any
32 subsequent installments which would not yet have become due except
33 for the default shall be considered as not in default and that the lien for
34 the installments not yet due shall continue; and provided, further, that
35 the ordinance may require that the assessments be payable in yearly
36 installments, with legal interest thereon, over a period of years up to
37 but in no event exceeding the period of years for which the bonds were
38 issued, or for 30 years, whichever shall be less. In levying a special
39 assessment on the lands or improvements, or both, located in the
40 district, the municipality may provide that the amount of the special
41 assessment shall be a specific amount, not to exceed the cost of the
42 improvements, paid with respect to property located in the district.
43 That specific amount shall, to the extent accepted by the owner of the
44 property benefitted, be deemed the conferred benefit, in lieu of the
45 amount being determined by the procedures otherwise applicable to
46 determining the actual benefit conferred on the property. Special
47 assessments levied pursuant to an ordinance adopted under this

1 subsection shall constitute a municipal lien upon confirmation by the
2 municipal governing body or by the court, under R.S.40:56-33.

3 c. Upon adoption, a copy of the ordinance shall be filed for public
4 inspection in the office of the municipal clerk, and there shall be
5 published in a newspaper, published or circulating in the municipality,
6 a notice stating the fact and the date of adoption and the place where
7 the ordinance is filed and a summary of the contents of the ordinance.
8 The notice shall state that any action or proceeding of any kind or
9 nature in any court questioning the validity or proper authorization of
10 the ordinance or the actions authorized to be taken as set forth in the
11 ordinance shall be commenced within 20 days after the publication of
12 the notice. If no action or proceeding questioning the validity of the
13 ordinance providing for tax abatement, special assessments or other
14 actions authorized by the ordinance shall be commenced or instituted
15 within 20 days after the publication of the notice, the county and the
16 school district and all other municipalities within the county and all
17 residents and taxpayers and owners of property therein shall be forever
18 barred and foreclosed from instituting or commencing any action or
19 proceeding in any court questioning the validity or enforceability of
20 the ordinance or the validity or enforceability of acts authorized under
21 the ordinance, and the ordinance and acts authorized by the ordinance
22 shall be conclusively deemed to be valid and enforceable in accordance
23 with their terms and tenor.

24
25 9. (New section) a. The municipality may, by resolution of the
26 governing body, authorize the municipality to apply to the authority
27 for the authority to issue negotiable bonds or other obligations secured
28 by payments in lieu of taxes and special assessments. Bonds so issued
29 shall be for the purpose of financing or refinancing the construction,
30 reconstruction, repair, alteration, improvement, and development of
31 any on-site or off-site infrastructure improvements, or parking or
32 transportation facilities, or work that reduces, abates or prevents
33 environmental pollution, or other improvements that provide a public
34 benefit within or to a landfill reclamation improvement district.

35 b. A municipality that has created a landfill reclamation
36 improvement district pursuant to section 3 of P.L.1995, c.173
37 (C.40A:12A-52) may, by resolution of its governing body, enter into
38 contracts with the authority relating to any project or projects for the
39 purpose of financing or refinancing the construction, reconstruction,
40 repair, alteration, improvement, and development of any on-site or off-
41 site infrastructure improvements, or parking or transportation
42 facilities, or work that reduces, abates or prevents environmental
43 pollution, or other improvements that provide a public benefit within
44 or to a landfill reclamation improvement district. A resolution so
45 adopted shall contain findings and determinations of the governing
46 body: (1) that the project will result in the closure and remediation
47 of a landfill and create employment opportunities in the municipality;

1 and, (2) that the contract with the authority is a necessary inducement
2 to the undertaking of the project in that the contract makes the
3 financing thereof feasible. The contract or contracts may provide for
4 the assignment, for the benefit of bondholders, of all or any portion of
5 payments in lieu of taxes and special assessments. A contract may be
6 made and entered into for a term beginning currently or at some future
7 or contingent date, and with or without consideration, and for a
8 specified or unlimited time, and on any terms and conditions which
9 may be requested by the municipality and as may be agreed to by the
10 authority in conformity with its contracts with the holders of bonds,
11 and shall be valid and binding on the municipality. The municipality
12 is hereby authorized and directed to do and perform any contract so
13 entered into by it and to provide for the discharge of any obligation
14 thereunder in the same manner as other obligations of the municipality.

15 Any contract, and any instrument making or evidencing the same,
16 may be pledged or assigned by the authority, with the consent of the
17 municipality executing the contract, to secure its bonds and thereafter
18 may not be modified except as provided by the terms of the instrument
19 or by the terms of the pledge or assignment.

20 c. The payments in lieu of taxes and special assessments may be
21 assigned directly to the authority or the trustee for the bonds as
22 payment or security for the bonds. Notwithstanding any law to the
23 contrary, the assignment shall be an absolute assignment of all the
24 municipality's right, title, and interest in the payment in lieu of taxes
25 and special assessments, or portion thereof, along with the rights and
26 remedies provided to the municipality under the agreement including,
27 but not limited to, the right of collection of payments due. Payments
28 in lieu of taxes and special assessments shall not be included in the
29 general funds of the municipality, nor shall they be subject to any laws
30 regarding the receipt, deposit, investment or appropriation of public
31 funds and shall retain such status notwithstanding enforcement of the
32 payment or assessment by the municipality or assignee as provided
33 herein. The municipality shall be a "person" within the meaning of that
34 term as defined in section 3 of P.L.1974, c.80 (C.34:1B-3); and the
35 purpose described in this section shall be a "project" within the
36 meaning of that term as defined in section 3 of P.L.1974, c.80
37 (C.34:1B-3).

38 d. Notwithstanding the provisions of subsection g. of section 37
39 of P.L.1992, c.79 (C.40A:12A-37), the bonds and notes issued
40 pursuant to this section shall be non-recourse obligations, and shall not
41 be direct and general obligations of the municipality, and the
42 municipality shall not be obligated to levy and collect a tax sufficient
43 in an amount to pay the principal and interest on the bonds and notes
44 when the same become due and payable. The provisions of the "Local
45 Government Supervision Act (1947)," P.L.1947, c 151 (C.52:27BB-1
46 et seq.) shall not apply to any bonds or other obligations issued or
47 authorized pursuant to this section and those bonds or other

1 obligations shall not be considered gross debt of the municipality on
2 any debt statement filed in accordance with the "Local Bond Law,"
3 N.J.S.40A:2-1, and the provisions of chapter 27 of Title 52 of the
4 Revised Statutes shall not apply to such bonds.

5 e. The proceeds from the sale of the bonds and any funds
6 provided by any department of the State, authority created by the
7 State or bi-state authority, shall not require compliance with public
8 bidding laws, including the "Local Public Contracts Law," P.L.1971,
9 c.198 (C.40A:11-1 et seq.), or any other statute where the redeveloper
10 shall undertake the landfill closure, remediation, redevelopment and
11 construction of the infrastructure improvements. The use of these
12 funds shall be subject to public accountability and oversight by the
13 municipality or agency providing the funds.

14

15 10. (New section) a. Payments required to be made in
16 accordance with an agreement for payments in lieu of taxes entered
17 into under section 8 of this amendatory and supplementary act, P.L. ,
18 c. (C.) (now pending before the Legislature as this bill) shall
19 be a continuous lien on the land against which the ordinance is
20 recorded on and after the date of recordation of both the ordinance
21 and the agreement, whether simultaneously or not, all subsequent
22 payments in lieu of taxes thereunder, interest, penalties and costs of
23 collection which thereafter fall due or accrue shall be added and relate
24 back to and be a part of initial lien. Upon recordation of the ordinance
25 and agreement, payments in lieu of taxes shall constitute a municipal
26 lien within the meaning, and for all purposes, of law.

27 b. If revenue bonds or other obligations are issued by the
28 authority in order to finance or refinance the construction,
29 reconstruction, repair, alteration, improvement, and development of
30 any infrastructure, or parking or transportation facilities, or work that
31 reduces, abates or prevents environmental pollution, or other
32 improvements that provide a public benefit within or to a landfill
33 reclamation improvement district in accordance with section 9
34 of P.L. , c. (C.) (now before the Legislature as this bill),
35 the municipality or the redeveloper may record, either simultaneously
36 or at different times, any ordinance enacted by the municipality
37 relating to the payment in lieu of taxes agreement or special
38 assessments and, either simultaneously with the ordinance or at
39 different times, a copy of the agreement or agreements. The
40 ordinance, when recorded, shall contain a legend at the top of the front
41 page substantially as follows:

42 "THIS ORDINANCE SECURES BONDS OR OTHER
43 OBLIGATIONS ISSUED IN ACCORDANCE WITH THE
44 PROVISIONS OF THE "LARGE SITE LANDFILL RECLAMATION
45 AND IMPROVEMENT LAW" AND THE LIEN HEREOF IN
46 FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER
47 OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL

1 OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED."

2 c. Notwithstanding any law to the contrary, upon recordation of
3 both the ordinance and any accompanying agreement and upon the
4 issuance of bonds or other obligations, the lien thereof shall be
5 perfected for all purposes in accordance with law and the lien shall
6 thereafter be superior to all non-municipal liens thereafter recorded or
7 otherwise arising, without any additional notice, recording, filing,
8 continuation filing or action, until the payment in full of the bonds or
9 other obligations. The lien thereby established shall apply not only to
10 the bonds and other obligations initially issued, but also to any
11 refinancing or refunding thereof, as well as to any additional bonds and
12 other obligations thereafter issued on a parity therewith in accordance
13 with the provisions of the original documents securing the initial bonds
14 and other obligations; provided, however, that in the event any
15 ordinance or agreement is amended or supplemented in a way which
16 increases the amount of payment in lieu of taxes or special
17 assessments, the lien as to that increase shall be perfected and apply
18 upon the recordation of the amended or supplemented ordinance and
19 agreement (including the above-recited legend). Except as set forth
20 in this section, no amendment or supplement to the ordinance or
21 agreement thereafter recorded shall affect the perfection or priority of
22 the lien established upon original recordation thereof.

23 d. Upon the final payment in full of any bonds or other obligations
24 secured as provided in this section and section 9 of this amendatory
25 and supplementary act, P.L. _____, c. _____ (C. _____) (now
26 pending before the Legislature as this bill), the lien established hereby
27 shall terminate, and the municipality shall record a notice to that
28 effect.

29
30 11. (New section) In lieu of the provisions of section 10 of
31 P.L. _____, c. _____ (C. _____) (now pending before the Legislature as this
32 bill), the municipality may provide in the agreement that the payment
33 in lieu of taxes, if any, is to be secured by a mortgage. In that event
34 the mortgage may also be assigned and pledged to the repayment of
35 the bonds authorized herein.

36 The assignment of any mortgage that secures a payment in lieu of
37 taxes, if any, may also be an absolute assignment of all or part of the
38 municipality's right, title, and interest in the mortgage and, to the
39 extent assigned, any moneys realized from the foreclosure of the
40 mortgaged property shall not be included in the general funds of the
41 municipality.

42 After the bonds or other obligations are paid and no longer deemed
43 to be outstanding, the assignment of the mortgage shall terminate.

44
45 12. (New section) All bonds issued pursuant to this act are hereby
46 declared to be issued by a political subdivision of this State and for an
47 essential public and governmental purpose and the bonds, and the

1 interest thereon and the income therefrom, and all facility charges,
2 funds revenues and other moneys pledged or available to pay or secure
3 the payment of the bonds, or interest thereon, shall at all times be
4 exempt from taxation except for transfer inheritance and estate taxes.
5

6 13. (New section) The State of New Jersey does hereby pledge
7 to and covenant and agree with the holders of any bonds issued
8 pursuant to this act that the State will not limit or alter the terms of
9 any agreement, ordinance or resolution made in connection with the
10 security for and the issuance and sale of any bonds, so as to in any way
11 impair the rights or remedies of such holders, and will not modify in
12 any way the exemption from taxation provided for in this act, until the
13 bonds, together with interest thereon, with interest on any unpaid
14 installments of interest, and all costs and expenses in connection with
15 any action or proceeding by or on behalf of such holders, are fully met
16 and discharged or provided for.
17

18 14. (New section) If any section, subsection, clause or provision
19 of this act shall be adjudged to be unconstitutional or ineffective in
20 whole or in part, to the extent that it is not adjudged unconstitutional
21 or is not ineffective, it shall be valid and effective and no other section,
22 subsection, clause or provision of this act shall on account thereof be
23 deemed invalid or ineffective, and the inapplicability or invalidity of
24 any section, subsection, clause or provision of this act in any one or
25 more instances or under any one or more circumstances shall not be
26 taken to affect or prejudice in any way its applicability or validity in
27 any other instance or under any other circumstance.
28

29 15. (New section) After issuance, pursuant to this act, all bonds,
30 notes or other obligations shall be conclusively presumed to be fully
31 authorized and issued by all courts and officers of this State, and any
32 person shall be estopped from questioning their sale, execution or
33 delivery.
34

35 16. N.J.S.40A:4-39 is amended to read as follows:

36 40A:4-39. a. In the budget of any local unit, dedicated revenues
37 anticipated during the fiscal year from any dog tax, dog license,
38 revenues collected pursuant to N.J.S.18A:39-1.2, solid fuel license,
39 sinking fund for term bonds, bequest, escheat, federal grant, motor
40 vehicle fine dedicated to road repairs, relocation costs deposited into
41 a revolving relocation assistance fund established pursuant to section
42 2 of P.L.1987, c.98 (C.20:4-4.1a), receipts from franchise assessments
43 levied pursuant to section 4 of P.L.1995, c.173 (C.40A:12A-53) to be
44 retained by the municipality and, subject to the prior written consent
45 of the director, other items of like character when the revenue is not
46 subject to reasonably accurate estimate in advance, may be included in
47 said budget by annexing to said budget a statement in substantially the

1 following form:

2 "The dedicated revenues anticipated during the year from
3 (here insert one or more of the sources above, as the case may
4 be) are hereby anticipated as revenue and are hereby appropriated for
5 the purposes to which said revenue is dedicated by statute or other
6 legal requirement."

7 b. Dedicated revenues included in accordance with this section
8 shall be available for expenditure by the local unit as and when
9 received in cash during the fiscal year. The inclusion of such dedicated
10 revenues shall be subject to the approval of the director, who may
11 require such explanatory statements or data in connection therewith as
12 the director deems advisable for the information and protection of the
13 public.

14 (cf: P.L.1995, c.271, s.2)

15

16 17. Section 6 of P.L.1995, c.173 (C.40A:12A-55) is repealed.

17

18 18. This act shall take effect immediately.

19

20

21

22

23 "Large Site Landfill Reclamation and Improvement Law."

SENATE, No. 954

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1996

By Senators DiFRANCESCO and LESNIAK

1 AN ACT concerning landfill reclamation improvement districts,
2 amending the title of P.L.1995, c.173, amending and supplementing
3 the body of that act, amending N.J.S.40A:4-39, and repealing
4 section 6 of P.L.1995, c.173 (C.40A:12-55).

5

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

8

9 1. The title of P.L. 1995, c. 173 (C.40A:12A-50 et seq.) is
10 amended to read as follows:

11 **AN ACT** concerning the reallocation of certain real property taxes for
12 bond payments in municipalities establishing landfill reclamation
13 improvement districts, and gross receipts franchise assessments on
14 certain businesses by distressed municipalities wherein landfill
15 reclamation and improvement involves special circumstances and
16 costs, supplementing Title 40A of the New Jersey Statutes and
17 amending N.J.S. 40A:4-39.

18 (cf: P.L.1995, c.173, title)

19

20 2. (New section) P.L.1995, c.173 (C.40A:12A-50 et seq.) as
21 amended and supplemented shall be known and may be cited as the
22 "Municipal Landfill Reclamation and Improvement Law."

23

24 3. Section 1 of P.L.1995, c.173 (C.40:12A-50) is amended to read
25 as follows:

26 1. a. The Legislature finds and declares that it is a public purpose
27 and compelling State interest to facilitate the redevelopment of landfill
28 **[reclamation]** sites in areas in need of redevelopment within
29 municipalities that are attempting to create economic growth and
30 thereby to promote job creation and economic development.
31 Environmentally sound landfill reclamation is essentially a "capping"
32 process, and the development potential of a capped landfill is limited.
33 **[The extensive closed landfill areas in some of the State's urban areas,**
34 **the prior commercial retail development experience and the excellent**

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 transportation potential of those areas makes it vital that the
2 commercial reuse of those sites be encouraged by providing municipal
3 governments with the appropriate financing tools.】

4 b. The Legislature, therefore, determines that it is appropriate to
5 enable 【certain】 municipalities to establish landfill reclamation
6 improvement districts in areas in need of redevelopment comprising
7 【reclaimed】 landfills of sufficient size 【in existing urban enterprise
8 zones】 to foster meaningful economic development and to provide
9 【those】 municipalities with the appropriate 【economic】 tools for the
10 reclamation and redevelopment of those districts. 【To provide those
11 tools, it is appropriate to allow a municipality to fund beneficial
12 improvements through the use of revenue bonds, and to allow a
13 municipality to act as a conduit through which the commercial tenants
14 of a development district may finance their own futures by franchise
15 assessments on businesses within the district, with the proceeds of the
16 assessment to be used for land reclamation and infrastructure
17 improvements made directly by a municipality within the district or
18 indirectly through redevelopers.】

19 c. The Legislature further determines that the closure of landfills
20 and the redevelopment of landfill sites are necessary to halt the decline
21 in economic activity and the underemployment of economic resources
22 in these areas, to reverse the deterioration of the value of previous
23 investments in areas in need of redevelopment and of public revenue
24 collections on those investments, and to eliminate the disincentive to
25 new investment; and that the improvement of these sites is vital to the
26 safety, health and welfare of the residents of the municipalities in
27 which they are located and to the State, and constitutes an important
28 opportunity for enhancing the economic condition of the municipalities
29 in which landfills are located and that of the State, by augmenting the
30 fiscal resources of government and by stimulating private and public
31 efforts to enhance the attractiveness and desirability of the State as a
32 place to live and work.

33 d. Therefore, to foster this redevelopment, the Legislature further
34 determines that a municipality that has created a landfill reclamation
35 improvement district may adopt an ordinance which provides for
36 reallocation of real property taxes within that district, in accordance
37 with P.L.1995, c.173 (C.40A:12A-50 et seq.) and this amendatory and
38 supplementary act, P.L. _____, c. _____ (C. _____) (now pending before
39 the Legislature as this bill), and may secure revenue bonds, notes or
40 other obligations with that reallocation tax, and utilize these means to
41 secure funds to effect landfill closures, remediation, redevelopment,
42 and construction of infrastructure improvements which will benefit the
43 public at large and which constitute an important public purpose.

44 e. The Legislature, further, determines that special financing
45 problems exist with respect to the size or nature and extent of
46 remediation and infrastructure provision where the reclamation

1 improvement district consists of a tract of land of at least 150 acres of
2 which not less than 100 acres were formerly used as a landfill, and is
3 located in a municipality having a population of more than 12,000
4 according to the latest federal decennial census, and in an area
5 designated as an urban enterprise zone in which the receipts of certain
6 sales are exempt to the extent of 50% of the tax imposed under the
7 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)
8 pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80), and
9 determines that the municipality, in addition to the reallocation of
10 taxes to secure bonds, may, by ordinance, levy a franchise assessment
11 within the district, which franchise assessment shall be used to
12 compensate the municipality for loss of tax revenues arising from
13 assignment of landfill tax proceeds as security for bonds and to
14 reimburse a redeveloper for the extraordinary risk of undertaking
15 remediation and development in a landfill reclamation improvement
16 district, all as shall be provided in accordance with the terms and
17 conditions of a redevelopment agreement executed between the
18 municipality and the redeveloper.

19 f. The Legislature, further, determines that it is appropriate to
20 authorize the New Jersey Economic Development Authority
21 established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), as a
22 conduit for municipalities, to issue and secure revenue bonds, notes or
23 other obligations issued in accordance with P.L.1995, c.173
24 (C.40A:12A-50 et seq.) and this amendatory and supplementary act,
25 P.L. _____, c. _____ (C. _____) (now pending before the Legislature as
26 this bill) with respect to financing or refinancing the construction,
27 reconstruction, repair, alteration, improvement, and development of
28 any infrastructure or parking or transportation facilities or work that
29 abates, prevents or reduces environmental pollution or other
30 improvements that provide a public benefit within or appurtenant to a
31 landfill reclamation improvement district.

32 (cf: P.L.1995, c.173,s.1)

33

34 4. Section 2 of P.L.1995, c.173 (C.40A:12A-51) is amended to
35 read as follows:

36 2. As used in [sections 1 through 6 of this] P.L.1995, c.173
37 (C.40A:12A-50 et seq.) and this amendatory and supplementary act,
38 P.L. _____, c. _____ (C. _____) (now pending before the Legislature
39 as this bill):

40 "Authority" means the New Jersey Economic Development
41 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.).

42 "Bonds" mean bonds, notes or other obligations issued by the New
43 Jersey Economic Development Authority pursuant to P.L.1995, c.173
44 (C.40A:12A-50 et seq.) and this amendatory and supplementary act,
45 P.L. _____, c. _____ (C. _____) (now pending before the Legislature
46 as this bill).

1 "Redeveloper" means any person that enters or proposes to enter
2 into a redevelopment agreement with a municipality that has
3 established a landfill reclamation improvement district providing for
4 landfill closure, remediation, redevelopment, including, but not limited
5 to, on-site and off-site infrastructure improvements, or rehabilitation
6 of an area in need of redevelopment, or part thereof, under the
7 provisions of P.L.1995, c.173 (C.40A:12A-50 et seq.) and this
8 amendatory and supplementary act, P.L. _____, c. _____ (C. _____) (now
9 pending before the Legislature as this bill) and the "Local
10 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
11 seq.).

12 "Redevelopment agreement" means a contract between a
13 municipality and a redeveloper for any work or undertaking for the
14 clearance, development and redevelopment, construction or
15 rehabilitation of any structure or improvement of commercial,
16 industrial or public structures or improvements, including, but not
17 limited to, on-site and off-site infrastructure improvements, that
18 provide a public benefit within a district undertaken pursuant to an
19 ordinance creating a landfill reclamation improvement district pursuant
20 to section 3 of P.L.1995, c.173 (C.40A:12A-52).

21 "Franchise assessment" means: (1) an assessment on the amount of
22 the sale price of all tangible property sold by a business in a district,
23 valued in money, whether received in money or otherwise, excluding
24 the cost of transportation if such cost is separately stated in the written
25 contract and excluding any tax imposed pursuant to the "Sales and Use
26 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.); (2) an assessment on
27 all rental receipts from the rental of commercial property in a district;
28 or (3) both (1) and (2).

29 "Landfill reclamation improvement district" or "district" means a
30 **contiguous** tract of land of at least **150** 20 acres in size, which
31 may consist of one or more tax lots, of which not less than **100** 10
32 acres were formerly or are presently used as a landfill, **located in a**
33 municipality having a population of more than 12,000 according to the
34 latest federal decennial census and in an area designated as an urban
35 enterprise zone in which the receipts of certain sales are exempt to the
36 extent of 50% of the tax imposed under the "Sales and Use Tax Act,"
37 P.L.1966, c.30 (C.54:32B-1 et seq.), pursuant to section 21 of
38 P.L.1983, c.303 (C.52:27H-80), **which has been delineated a**
39 **redevelopment area** or "area in need of redevelopment" pursuant to
40 the "Local Redevelopment and Housing Law" P.L.1992, c.79
41 (C.40A:12A-1 et seq.), and in an area which has been designated a
42 landfill reclamation improvement district by a municipality pursuant to
43 section 3 of P.L.1995, c.173 (C.40A:12A-52).

44 "Reallocation tax" means a conventional ad valorem tax adopted by
45 a municipality pursuant to section 9 of this amendatory and
46 supplementary act, P.L. _____, c. _____ (C. _____) (now

1 pending before the Legislature as this bill) on real property situate
2 within a landfill reclamation improvement district for the purpose of
3 securing bonds issued pursuant to section 10 of this amendatory and
4 supplementary act, P.L. _____, c. _____ (C. _____) (now pending
5 before the Legislature as this bill).

6 (cf: P. L.1995,c.173,s.2)

7
8 5. Section 3 of P.L 1995, c.173 (C.40A:12A-52) is amended to
9 read as follows:

10 3. A municipality **【**having a population of more than 12,000
11 according to the most recent federal decennial census in which there
12 is an area designated as an urban enterprise zone in which the receipts
13 of certain sales are exempt to the extent of 50% of the tax imposed
14 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
15 seq.), pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80),**】** may
16 adopt an ordinance creating a landfill reclamation improvement district
17 whenever the municipality determines that the closure and remediation
18 of the landfill within the district and the proposed development of the
19 property within the district will promote the health and general welfare
20 of the residents of the municipality and the district, and promote job
21 creation and economic development. A municipality may create, by
22 separate ordinances, more than one district. Any municipal
23 redevelopment plan adopted by the municipality shall provide for the
24 development of the property within the district in compliance with
25 P.L.1995, c.173 (C.40A:12A-50 et seq.) and this amendatory and
26 supplementary act, P.L. _____, c. _____ (C. _____) (now pending
27 before the Legislature as this bill).

28 (cf: P.L.1995, c.173, s.3)

29
30 6. Section 4 of P.L.1995, c.173 (C.40A:12A-53) is amended to
31 read as follows:

32 4. A municipality having a population of more than 12,000
33 according to the last federal decennial census that has created a district
34 pursuant to section 3 of P.L.1995, c.173 (C.40A:12A-52), which
35 consists of a tract of land of at least 150 acres in size of which not less
36 than 100 acres were formerly used as a landfill, and which is located
37 in an area designated as an urban enterprise zone in which the receipts
38 of certain sales are exempt to the extent of 50% of the tax imposed
39 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
40 seq.) pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80), may
41 adopt an ordinance to levy, within the district, a franchise assessment
42 not to exceed three percent, provided the municipality has by
43 ordinance provided for a reallocation tax and assigned the revenues to
44 provide security for bonds. The franchise assessment shall terminate
45 when bonds issued pursuant to P.L.1995, c.173 (C.40A:12A-50 et
46 seq.) and this amendatory and supplementary act, P.L. _____, c. _____

1 (C. _____) (now pending before the Legislature as this bill) have
2 been paid in full.

3 The rate of the franchise assessment shall be uniform throughout
4 the district. Notwithstanding any other law to the contrary,
5 **【agreements for the payment of a franchise assessment authorized by**
6 **ordinance pursuant to this section】** franchise assessments shall remain
7 in full force and effect until such time as the bonds have been paid in
8 full, notwithstanding that the municipality or district no longer
9 possesses the characteristics which qualified the authorization to
10 initially adopt the franchise assessment ordinance or the district
11 designation or the designation as an urban enterprise zone may have
12 expired prior to the full satisfaction of the payments due the
13 bondholders and regardless of whether **【such】** the ordinance levying
14 the franchise assessment is altered or repealed.

15 A certified copy of an ordinance adopted pursuant to this section
16 shall be transmitted upon adoption to the State Treasurer. Every
17 ordinance levying a franchise assessment pursuant to this section shall
18 provide for reporting assessments due and for the collection thereof,
19 and all franchise assessments pursuant to such an ordinance shall be
20 remitted to the chief financial officer of the municipality. An
21 ordinance levying a franchise assessment shall take effect only on the
22 first day of any month in any year. **【For the purposes of the effective**
23 **administration of the franchise assessment, the municipality shall have**
24 **all of the rights and responsibilities established pursuant to sections 35**
25 **through 39 of P.L.1970, c.326 (C.40:48C-35 through 40:48C-39) and**
26 **the franchise assessment shall be administered pursuant to those**
27 **sections.】** The redevelopment agreement shall provide for the
28 allocation and distribution of the proceeds of the franchise assessments
29 collected; provided, however, that only such sums as are retained by
30 the municipality pursuant to the redevelopment agreement shall be
31 included in the general funds of the municipality and all other franchise
32 assessment proceeds shall be held in trust for the benefit of the
33 redeveloper, as provided in the redevelopment agreement.

34 The ordinance shall set forth the person or persons subject to the
35 franchise assessment payment and collection procedures, and any other
36 matters deemed relevant by the municipality with the municipality
37 having discretion as to the mechanism to be utilized. The ordinance
38 shall also contain findings that the imposition of the franchise
39 assessment is necessary in order to finance the cost of remediation and
40 infrastructure provision because of the substantial costs thereof and
41 because of the substantial risks undertaken by the redeveloper, and to
42 offset loss of revenues by the municipality because of its assignment
43 of reallocation tax revenues.

44 (cf: P.L.1995, c.173,s.4)

45

46 7. (New section) For the purposes of the effective administration

1 of the franchise assessment, the municipality shall have the power to:

2 a. Collect the franchise assessment, interest and penalties imposed
3 by an ordinance adopted pursuant to section 4 of P.L.1995, c.173
4 (C.40A:12A-53) which shall from the time due be a debt of the person
5 by whom payable to the municipality, recoverable in a court of
6 competent jurisdiction in a civil action in the name of the municipality
7 to be instituted within three years of the date due.

8 b. Authorize, as an additional remedy, the chief financial officer
9 of the municipality to issue a certificate to the clerk of the Superior
10 Court that any person is indebted under the ordinance in an amount
11 stated in the certificate. Thereupon, the clerk to whom the certificate
12 is issued shall immediately enter upon the record of documented
13 judgments the name of the person, the address of the place of business
14 where the franchise assessment liability was incurred, the amount of
15 the debt so certified and the date of making of the entry. The making
16 of the entry shall have the same force and effect as the entry of a
17 documented judgment in the office of the clerk, and the chief financial
18 officer of the municipality shall have all the remedies and may take all
19 the proceedings for the collection of the debt which may be had or
20 taken upon the recovery of a judgment in an action, but without
21 prejudice to the person's right of appeal.

22 c. Provide that, if for any reason the franchise assessment is not
23 paid when due, interest at the rate of 12% per annum on the amount
24 of the franchise assessment due, and an additional penalty of one-half
25 of 1% of the amount of the unpaid assessment for each month or
26 fraction thereof during which the franchise assessment remains unpaid,
27 shall be added and collected. When action is brought for the recovery
28 of any franchise assessment, the person liable therefor shall, in
29 addition, be liable for the costs of collection and the interest and
30 penalties imposed.

31 Any aggrieved person may appeal a decision, order, finding,
32 assessment or action of the chief financial officer of the municipality
33 under this section to the Superior Court, upon payment of the amount
34 stated by the chief financial officer to be due. The appeal provided by
35 this section shall be the exclusive remedy available to any person for
36 review of a determination of the chief financial officer with respect to
37 a liability for the franchise assessment imposed.

38

39 8. Section 5 of P.L.1995, c.173 (C.40A:12A-54) is amended to
40 read as follows:

41 5. **【**Notwithstanding any law to the contrary, all franchise
42 assessments that are payable to a municipality from businesses located
43 within a landfill reclamation improvement district and that are subject
44 to a redevelopment agreement shall be appropriated by the
45 municipality for payment as provided for in the redevelopment
46 agreement.**】** Any portion of the aggregate franchise assessment

1 collected annually by the municipality and retained pursuant to a
2 redevelopment agreement which is not appropriated or expended by
3 the municipality for purposes of the district shall be apportioned
4 between the municipality and the county in which the landfill
5 reclamation improvement district is located, such that 90 percent of
6 the ~~【aggregate】~~ retained franchise assessment collected in that year
7 shall be ~~【paid to】~~ retained by the municipality and 10 percent shall be
8 ~~【paid】~~ transferred by the municipality to the county for use in
9 economic development, unless the county waives by resolution of the
10 county board of freeholders, its interest or any part thereof.
11 ~~【Franchise assessments shall be made by the municipality until such~~
12 ~~time as the redeveloper has been paid in full, as defined in the~~
13 ~~redevelopment agreement, notwithstanding the fact that a municipality~~
14 ~~may no longer qualify to designate a district or that the district~~
15 ~~designation may have expired prior to the full satisfaction of the~~
16 ~~payments due the redeveloper under a redevelopment agreement.】~~
17 (cf: P. L.1995, c.173, s.5)

18
19 9. (New section) A municipality that has created a landfill
20 reclamation improvement district pursuant to section 3 of P.L.1995,
21 c.173 (C.40A:12A-52) and proposes to finance the costs of
22 remediation and infrastructure provision from the proceeds of bonds,
23 may adopt an ordinance which provides for a reallocation tax within
24 that district and for payment of that reallocation tax by the owners of
25 the real property within the district. The reallocation tax is an ad
26 valorem real property tax with all proceeds dedicated to meet debt
27 service on bonds, and shall be imposed, for such time, not to exceed
28 35 years in duration, as bonds issued by the authority and secured by
29 revenues from the reallocation tax pursuant to P.L.1995, c.173 and
30 section 10 of this amendatory and supplementary act, P.L. , c.
31 (C.) (now pending before the Legislature as this bill) are issued
32 and outstanding. The reallocation tax shall be assessed according to
33 the same standard of value, and real property situate within the landfill
34 reclamation improvement district shall be taxed at the same general tax
35 rate, as is real property situate elsewhere in the municipal taxing
36 district. All rights and remedies afforded by law for municipal real
37 property taxes shall apply to the reallocation tax, and the reallocation
38 tax so imposed shall, in all respects, be the same as real property taxes
39 imposed elsewhere in the municipal taxing district, except that all
40 revenues collected from the levying of the reallocation tax shall be
41 deposited in the reallocation tax fund to be used for the exclusive
42 purpose of acting as security for bonds so issued. During the time that
43 the reallocation tax ordinance is in effect and bonds are outstanding,
44 the school district and county shall have no interest or right of
45 participation in the reallocation tax revenues collected and assigned as
46 security for bonds issued. An ordinance providing for a reallocation

1 tax shall not be effective if no bonds, notes or other obligations are
2 issued and outstanding. Upon the repayment in full of bonds secured
3 by the reallocation tax, the reallocation tax shall terminate and the
4 allocation of real property taxes collected in the landfill reclamation
5 and improvement district among the municipality, school district and
6 county shall be the same as that within the municipal taxing district.

7

8 10. (New section) a. A municipality that has created a landfill
9 reclamation improvement district pursuant to section 3 of P.L.1995,
10 c.173 (C.40A:12A-52) may, by resolution of the governing body,
11 authorize the municipality to apply to the authority for the authority
12 to issue negotiable bonds or other obligations secured by reallocation
13 taxes. Bonds so issued shall be for the purpose of financing or
14 refinancing the construction, reconstruction, repair, alteration,
15 improvement, and development of any on-site or off-site infrastructure
16 improvements or parking or transportation facilities or work that
17 reduces, abates or prevents environmental pollution, or other
18 improvements that provide a public benefit within or to a landfill
19 reclamation improvement district.

20 b. A municipality that has created landfill reclamation
21 improvement district pursuant to section 3 of P.L.1995, c.173
22 (C.40A:12A-52) may, by resolution of its governing body, enter into
23 contracts with the authority, which may include a non-recourse note
24 in an amount equal to the bond, relating to any project or projects for
25 the purpose of financing or refinancing the construction,
26 reconstruction, repair, alteration, improvement, and development of
27 any on-site or off-site infrastructure improvements; parking or
28 transportation facilities; project that reduces, abates or prevents
29 environmental pollution; or other improvements that provide a public
30 benefit within or to a landfill reclamation improvement district. A
31 resolution so adopted shall contain findings and determinations of the
32 governing body: (1) that the project will result in the closure and
33 remediation of a landfill and create employment opportunities in the
34 municipality; and, (2) that the contract with the authority is a
35 necessary inducement to the undertaking of the project in that the
36 contract makes the financing thereof feasible. No bonds shall be
37 issued by the authority pursuant to a contract under this section unless
38 the resolution and any contract adopted by the municipal governing
39 body contains provisions that authorize execution by the municipality
40 of a non-recourse note to the authority to be secured solely by the
41 monies on deposit from time to time in the reallocation tax fund, and
42 that make the issuance of the bonds contingent upon the establishment
43 and maintenance by the municipality of a reallocation tax fund
44 pursuant to section 11 of this amendatory and supplementary act,
45 P.L. , c. (C.) (now pending before the Legislature as
46 this bill), and upon the assignment, for the benefit of bondholders, of

1 revenues deposited in the reallocation tax fund to the authority or the
2 trustee for the bonds as security for bonds so issued. A contract may
3 be made and entered into for a term beginning currently or at some
4 future or contingent date, and with or without consideration, and for
5 a specified or unlimited time, and on any terms and conditions which
6 may be requested by the municipality and as may be agreed to by the
7 authority in conformity with its contracts with the holders of bonds,
8 and it shall be valid and binding on the municipality. The contract or
9 contracts may provide for the assignment for the benefit of
10 bondholders of all or any portion of revenues deposited in the
11 reallocation tax fund. The municipality is hereby authorized and
12 directed to do and perform any contract so entered into by it and to
13 provide for the discharge of any obligation thereunder in accordance
14 with the contract.

15 Any contract, and any instrument making or evidencing the same,
16 may be pledged or assigned by the authority, with the consent of the
17 municipality executing the contract, to secure its bonds and thereafter
18 may not be modified except as provided by the terms of the instrument
19 or by the terms of the pledge or assignment.

20 c. The revenues deposited in the reallocation tax fund may be
21 assigned directly to the authority or the trustee for the bonds as
22 payment or security for the bonds. Notwithstanding any law to the
23 contrary, the assignment of the reallocation tax revenues shall be an
24 absolute assignment of all the municipality's right, title, and interest in
25 the reallocation tax revenues and reallocation tax fund, neither of
26 which shall be included in the general funds of the municipality, nor
27 shall they be subject to any laws regarding the receipt, deposit,
28 investment or appropriation of public funds and they shall retain such
29 status notwithstanding enforcement of the payment by the
30 municipality. The municipality shall be a "person" within the meaning
31 of that term as defined in section 3 of P.L.1974, c.80 (C.34:1B-3); and
32 the purpose described in this section shall be a "project" within the
33 meaning of that term as defined in section 3 of P.L.1974, c.80
34 (C.34:1B-3).

35 d. Notwithstanding the provisions of subsection g. of section 37
36 of P.L.1992, c.79 (C.40A:12A-37), the bonds and notes issued
37 pursuant to this section shall be non-recourse obligations, and shall not
38 be direct and general obligations of the municipality, and the
39 municipality shall not be obligated to levy and collect a tax sufficient
40 in an amount to pay the principal and interest on the bonds and notes
41 when the same become due and payable. The provisions of the "Local
42 Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1
43 et seq.) shall not apply to any bonds or other obligations issued or
44 authorized pursuant to this section, and those bonds or other
45 obligations shall not be considered gross debt of the municipality on
46 any debt statement filed in accordance with the "Local Bond Law,"

1 N.J.S.40A:2-1, and the provisions of chapter 27 of Title 52 of the
2 Revised Statutes (C.52:27-1 et seq.) shall not apply to such bonds.

3 e. The proceeds from the sale of the bonds shall not be deemed to
4 be public funds and therefore the use of the proceeds from the sale of
5 the bonds or other funds secured pursuant to the redevelopment
6 agreement between the municipality and the redeveloper shall not
7 require compliance with public bidding laws, including the "Local
8 Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any
9 similar statute.

10 f. After all bonds are issued pursuant to this section and no longer
11 deemed to be outstanding, the reallocation tax and franchise
12 assessments, if applicable, shall terminate, and the municipality shall
13 levy real property taxes not subject to reallocation tax provisions
14 within the landfill reclamation improvement district.

15

16 11. (New section) a. A municipality that has created a landfill
17 reclamation improvement district and has adopted a reallocation tax
18 within that district may create and establish one or more special funds
19 to be known as reallocation tax funds and shall deposit into those
20 reallocation tax funds any monies received as reallocation taxes by the
21 municipality, any proceeds from the sale of bonds, and any other
22 moneys which may be made available to the municipality from any
23 other source or sources, for this purpose. The monies held in or
24 credited to each reallocation tax fund established under this section
25 shall be used solely for the payment of the principal of and interest on
26 bonds secured by that reallocation tax fund, as the same mature, for
27 required payments to any sinking fund established for the amortization
28 of bonds, for the purchase or redemption of those bonds or for the
29 payment of any redemption premium to be paid when those bonds are
30 redeemed prior to maturity.

31 b. The chief financial officer of the municipality shall maintain
32 each reallocation tax fund separate and apart from all other funds of
33 the municipality, and the reallocation tax funds shall not be included
34 in the general funds of the municipality.

35 c. The chief financial officer of the municipality shall remit the
36 reallocation taxes maintained in each reallocation tax fund as provided
37 in the contract entered into between the municipality and the authority
38 in connection with the issuance of bonds by the authority pursuant to
39 the provisions of section 10 of this amendatory and supplementary act,
40 P.L. _____, c. _____ (C. _____) (now pending before the
41 Legislature as this bill).

42 d. Any surplus monies in the reallocation tax fund not required for
43 the purposes set forth in subsection a. of this section shall be paid over
44 to the chief financial officer of the municipality, and the monies so paid
45 over shall be distributed proportionally among the municipality, the
46 school district and the county according to their respective taxes

1 levied in the municipal taxing district.

2

3 12. (New section) All bonds issued pursuant to this act are hereby
4 declared to be issued by a political subdivision of this State and for an
5 essential public and governmental purpose and the bonds, and the
6 interest thereon and the income therefrom, and all facility charges,
7 funds revenues and other moneys pledged or available to pay or secure
8 the payment of the bonds, or interest thereon, shall at all times be
9 exempt from taxation except for transfer inheritance and estate taxes.

10

11 13. (New section) The State of New Jersey does hereby pledge to
12 and covenant and agree with the holders of any bonds issued pursuant
13 to this act that the State will not limit or alter the terms of any
14 agreement, ordinance or resolution made in connection with the
15 security for and the issuance and sale of any bonds, so as to in any way
16 impair the rights or remedies of such holders, and will not modify in
17 any way the exemption from taxation provided for in this act, until the
18 bonds, together with interest thereon, with interest on any unpaid
19 installments of interest, and all costs and expenses in connection with
20 any action or proceeding by or on behalf of such holders, are fully met
21 and discharged or provided for.

22

23 14. (New section) If any section, subsection, clause or provision
24 of this act shall be adjudged to be unconstitutional or ineffective in
25 whole or in part, to the extent that it is not adjudged unconstitutional
26 or is not ineffective, it shall be valid and effective and no other section,
27 subsection, clause or provision of this act shall on account thereof be
28 deemed invalid or ineffective, and the inapplicability or invalidity of
29 any section, subsection, clause or provision of this act in any one or
30 more instances or under any one or more circumstances shall not be
31 taken to affect or prejudice in any way its applicability or validity in
32 any other instance or under any other circumstance.

33

34 15. (New section) After issuance, pursuant to this act, all bonds,
35 notes or other obligations shall be conclusively presumed to be fully
36 authorized and issued by all courts and officers of this State, and any
37 person shall be estopped from questioning their sale, execution or
38 delivery.

39

40 16. N.J.S.40A:4-39 is amended to read as follows:

41 40A:4-39. a. In the budget of any local unit, dedicated revenues
42 anticipated during the fiscal year from any dog tax, dog license,
43 revenues collected pursuant to N.J.S.18A:39-1.2, solid fuel license,
44 sinking fund for term bonds, bequest, escheat, federal grant, motor
45 vehicle fine dedicated to road repairs, relocation costs deposited into
46 a revolving relocation assistance fund established pursuant to section

1 2 of P.L.1987, c.98 (C.20:4-4.1a), receipts from franchise assessments
2 levied pursuant to section 4 of P.L.1995, c.173 to be retained by the
3 municipality and, subject to the prior written consent of the director,
4 other items of like character when the revenue is not subject to
5 reasonably accurate estimate in advance, may be included in said
6 budget by annexing to said budget a statement in substantially the
7 following form:

8 "The dedicated revenues anticipated during the year from
9 (here insert one or more of the sources above, as the case may
10 be) are hereby anticipated as revenue and are hereby appropriated for
11 the purposes to which said revenue is dedicated by statute or other
12 legal requirement."

13 b. Dedicated revenues included in accordance with this section
14 shall be available for expenditure by the local unit as and when
15 received in cash during the fiscal year. The inclusion of such dedicated
16 revenues shall be subject to the approval of the director, who may
17 require such explanatory statements or data in connection therewith as
18 the director deems advisable for the information and protection of the
19 public.

20 (cf: P.L.1995, c.271, s.2)

21

22 17. Section 6 of P.L.1995, c.173 (C.40A:12A-55) is repealed.

23

24 18. This act shall take effect immediately .

25

26

27

sponsors' STATEMENT

28

29 This bill revises P.L.1995, c.173 (C.40A:12A-50 et seq.) which
30 authorized the creation of landfill reclamation and improvement
31 districts, to strengthen the financing mechanism for landfill remediation
32 and infrastructure provision. Under the bill, bonds would be issued by
33 the New Jersey Economic Development Authority and secured by the
34 reallocation of real property taxes within the landfill district. The
35 reallocation tax would be in effect only during the time that the bonds
36 are issued and outstanding and would be assessed and levied in the
37 same manner and rate as taxes elsewhere in the municipality, except
38 that the county and school district would not receive reallocation tax
39 revenues during the time that bonds are issued, unless a surplus of
40 revenues exists which is not necessary for bond purposes.

41 The bill changes the landfill reclamation and improvement district
42 definition to permit a more general application throughout the State.
43 At the same time, the franchise assessments authorized by P.L.1995,
44 c.173 are restricted to municipalities and landfill districts meeting the
45 distress and size criteria set forth in the original enactment. The
46 legislative findings and determinations set forth the special

1 circumstances of size, extent and substantial cost of remediation and
2 infrastructure provision involved in these efforts.

3 In addition, the bill makes various provisions for the administration
4 of reallocation taxes and franchise assessments, where applicable, and
5 for contracts between the municipality and the New Jersey Economic
6 Development Authority for the assignment of reallocation taxes for
7 bond purposes and the issuance of bonds by the authority.

8

9

10

11

12 "Municipal Landfill Reclamation and Improvement Law."

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 954**

STATE OF NEW JERSEY

DATED: JUNE 3, 1996

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No.954.

This Senate Committee Substitute revises P.L.1995, c.173 (C.40A:12A-50 et seq.), which authorized the creation of landfill reclamation and improvement districts, to provide additional financing mechanisms for large site landfill remediation and infrastructure provision.

Under the bill, bonds would be issued by the New Jersey Economic Development Authority or similar public instrumentality, and be secured by payments in lieu of taxes under a tax abatement agreement or by special assessments on property benefitting from the improvements provided, or by both. The payment in lieu of taxes provisions of this bill are basically the same as provided in the original P.L.1995, c.173, but additional enforcement provisions are included to enhance use as security for bonds.

The bill changes the landfill reclamation and improvement district definition to permit a more general application to large site landfills throughout the State. The bill revises P.L.1995, c.173 to relate the redevelopment provisions of the bill more nearly to the "Local Redevelopment and Housing Law" P.L.1992, c.79 (C.40A:12A-1 et seq.), and the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et seq.), while providing financing mechanisms to address the special circumstances of large site landfill reclamation and redevelopment. The legislative findings and determinations set forth the special circumstances of size, extent and substantial cost of remediation and infrastructure provision involved in these efforts.

In addition, the bill makes various provisions for the administration of franchise assessments, where applicable, and for contracts between the municipality and the authority for the assignment of payments in lieu of taxes or special assessments, or both, for bond purposes and for the issuance of bonds by the authority.

FISCAL IMPACT

This committee substitute has not been certified as requiring a fiscal note since it does not have an impact on State revenues or expenditures.

17.101
361



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

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RELEASE: Wednesday
July 24, 1996

Governor Christie Whitman demonstrated her commitment to a clean environment, as well as a business friendly climate by signing legislation that facilitates financing for the remediation and redevelopment of municipal landfill sites throughout the state.

“This legislation will enhance and augment financing methods available for rehabilitating municipal landfills so that the properties can be used for economic development,” said Gov. Whitman. “This administration is committed to working with municipalities, communities and businesses to remediate these sites to return them to beneficial use.”

The municipal landfill reclamation and improvement law, enacted by Gov. Whitman in 1995, permits municipalities to create landfill improvement districts and establishes two financing methods for the redevelopment of these districts. The law allows eligible municipalities to impose a franchise assessment of up to three percent on gross sales and rentals by businesses locating in a district to fund landfill improvements, and allows municipalities to issue bonds, secured by payments in lieu of taxes (PILOTS), to fund improvements within districts.

This bill enhances the use of PILOTS as security for bonds issued for redevelopment projects in districts by providing a procedure whereby PILOTS gain priority status as municipal liens. Additionally, it authorizes municipalities to establish special assessments to secure bonds for improvements in districts.

The bill also broadens the landfill reclamation and improvement district definition to allow additional sites to qualify for funding, and establishes compliance methods for the collection, enforcement and distribution of funds collected for purposes of landfill remediation.

S-954/A-1713 was sponsored by Senate President Donald DiFrancesco (R-Middlesex/Morris/Somerset/Union) and Senator Raymond Lesniak (D-Union) and Assemblymen Joseph Suliga (D-Union) and Alan Augustine (R-Middlesex/Morris/Somerset/Union).