

13:1E-100 to 13:1E-116

LEGISLATIVE HISTORY CHECKLIST
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("Sanitary Landfill Facility Closure
and Contingency Fund")

NJSA: 13:1E-100 to 13:1E-116

LAWS OF: 1981 **CHAPTER:** 306

BILL NO: A1935

SPONSOR(S): Dalton and others

DATE INTRODUCED: July 28, 1980

COMMITTEE: **ASSEMBLY:** Energy and Natural Resources
SENATE: Energy and Environment

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by asterisks. Substituted for S1428 (not attached since identical to A1935)

DATE OF PASSAGE: **ASSEMBLY:** June 8, 1981
SENATE: June 25, 1981

DATE OF APPROVAL: November 25, 1981

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

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ASSEMBLY, No. 1935

STATE OF NEW JERSEY

INTRODUCED JULY 28, 1980

By Assemblymen DALTON, ALBOHN, STEWART, RILEY and
Assemblywoman McCONNELL

Referred to Committee on Energy and Natural Resources

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

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

1 1. This act shall be known and may be cited as the "Sanitary
2 Landfill Facility Closure and Contingency Fund Act."

1 2. The Legislature finds and declares that the proper closure of
2 sanitary landfills is essential to the public health, safety and
3 welfare; that closure activities can require capital expenditures at
4 a time when revenues collected by sanitary landfill facilities are
5 minimal or nonexistent; and that it is necessary to guarantee that
6 adequate funds are reserved to insure such closure.

7 The Legislature further finds and declares that the improper
8 operation or closure of sanitary landfill facilities can result in the
9 contamination of surface and ground waters, including potable
10 water supplies; that the migration of methane gas from sanitary
11 landfill facilities poses a significant threat to life and property;
12 that compensation for the damage resulting from improper opera-
13 tion or closure is, at best, inadequate; and that it is necessary to
14 provide a mechanism for the prompt and adequate compensation
15 for these damages.

1 3. As used in this act:

2 a. "Closing costs" or "closure" means all activities and costs
3 associated with the design, purchase, construction or maintenance
4 of all measures required by the department, pursuant to law, in
5 order to prevent ***[or]*** *****, minimize **or monitor** pollution or

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

6 health hazards resulting from sanitary landfill facilities subsequent
 7 to the termination of operations at any portion thereof, including,
 8 but not necessarily limited to, the costs of the placement of earthen
 9 or vegetative cover, and the installation of methane gas vents *or
 10 monitors* and leachate monitoring wells *or collection systems* at
 10A the site of any sanitary landfill facility;

11 b. "Owner or operator" means and includes, in addition to the
 12 usual meanings thereof, every owner of record of any interest in
 13 land whereon a sanitary landfill facility is or has been located, and
 14 any person or corporation which owns a majority interest in any
 15 other corporation which is the owner or operator of any sanitary
 16 landfill facility.

17 *c. "Division" means the Division of Taxation in the Department
 18 of the Treasury.

19 d. "Director" means the Director of the Division of Taxation in
 20 the Department of the Treasury.

21 e. "Tax period" means every calendar month, or any other period
 22 as may be prescribed by rule and regulation adopted by the director,
 23 on the basis of which the owner or operator of a sanitary landfill
 24 facility is required to report to the director pursuant to this act.

25 f. "Taxpayer" means the owner or operator of a sanitary land-
 26 fill facility subject to the tax provisions of this act.*

1 4. Every owner or operator of a sanitary landfill facility shall be
 2 jointly and *~~severably~~* *severally* liable for the proper opera-
 3 tion and closure of the facility, as required by law, and for any
 4 damages, no matter by whom sustained, proximately resulting
 5 from the operations or closure.

1 5. a. There is levied upon the owner or operator of every sanitary
 2 landfill facility a tax to insure the proper closure thereof and to
 3 provide funds to compensate for any damages resulting from the
 4 operations or closure of the facility. The tax shall be levied on all
 5 solid waste accepted for disposal, at the rate of *~~[\$0.45]~~* *\$0.15*
 6 per cubic yard of solids and *~~[\$0.006]~~* *\$0.002* per gallon of
 7 liquids. In the event that any solid waste is measured, upon accept-
 8 ance for disposal, by other than cubic yards or gallons, the tax
 9 shall be levied on the equivalents thereof as shall be determined by
 9A the *~~[department]~~* *director*.

10 *~~[b.~~ The proceeds of the tax levied pursuant to this section shall
 11 be disbursed by the owner or operator of any sanitary landfill
 12 facility as follows:

13 (1) \$0.30 per cubic yard of solids and \$0.004 per gallon of liquids
 14 shall be deposited, on a monthly basis, in an interest-bearing account
 15 with an accredited financial institution. The account shall constitute

16 an escrow account for the closure of the facility, and no with-
17 draws therefrom may be made except upon written approval of
18 the department;

19 (2) \$0.15 per cubic yard of solids and \$0.002 per gallon of
20 liquids shall be paid, on a monthly basis, into the Sanitary Landfill
21 Facility Contingency Fund established pursuant to this supple-
22 mentary act.]*

23 *b. (1) *Every owner or operator of a sanitary landfill facility*
24 *shall, on or before the twentieth day of the month following the*
25 *close of each tax period, render a return under oath to the director*
26 *on such form as may be prescribed by the director indicating the*
27 *number of cubic yards of solid waste and gallons of liquid waste*
28 *accepted for disposal and at said time the owner or operator shall*
29 *pay the full amount of tax due.*

30 (2) *Every owner or operator of a sanitary landfill which accepts*
31 *solid or liquid waste for disposal and which is subject to the tax*
32 *under subsection a. of this section shall, within 20 days after the*
33 *first acceptance of this waste, register with the director on forms*
34 *prescribed by him.*

35 c. *If a return required by this act is not filed, or if a return when*
36 *filed is incorrect or insufficient in the opinion of the director, the*
37 *amount of tax due shall be determined by the director from such*
38 *information as may be available. Notice of such determination*
39 *shall be given to the taxpayer liable for the payment of the tax.*
40 *Such determination shall finally and irrevocably fix the tax unless*
41 *the person against whom it is assessed, within 30 days after receiv-*
42 *ing notice of such determination, shall apply to the director for a*
43 *hearing, or unless the director on his own motion shall redetermine*
44 *the same. After such hearing the director shall give notice of his*
45 *determination to the person to whom the tax is assessed.*

46 d. *Any taxpayer who shall fail to file his return when due or to*
47 *pay any tax when the same becomes due, as herein provided, shall*
48 *be subject to such penalties and interest as provided in the "State*
49 *Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised*
50 *Statutes. If the Division of Taxation determines that the failure*
51 *to comply with any provision of this section was excusable under*
52 *the circumstances, it may remit such part or all of the penalty as*
53 *shall be appropriate under such circumstances.*

54 e. (1) *Any person failing to file a return, failing to pay the tax,*
55 *or filing or causing to be filed, or making or causing to be made,*
56 *or giving or causing to be given any return, certificate, affidavit,*
57 *representation, information, testimony or statement required or*
58 *authorized by this act, or rules or regulations adopted hereunder*

59 *which is willfully false, or failing to keep any records required*
 60 *by this act or rules and regulations adopted hereunder, shall, in*
 61 *addition to any other penalties herein or elsewhere prescribed, be*
 62 *guilty of a crime of the fourth degree.*

63 *(2) The certificate of the director to the effect that a tax has not*
 64 *been paid, that a return has not been filed, that information has*
 65 *not been supplied or that inaccurate information has been supplied*
 66 *pursuant to the provisions of this act or rules or regulations*
 67 *adopted hereunder shall be presumptive evidence thereof.*

68 *f. In addition to the other powers granted to the director in this*
 69 *section, he is hereby authorized and empowered:*

70 *(1) To delegate to any officer or employee of his division such of*
 71 *his powers and duties as he may deem necessary to carry out*
 72 *efficiently the provisions of this section, and the person or persons*
 73 *to whom such power has been delegated shall possess and may*
 74 *exercise all of said powers and perform all of the duties delegated*
 75 *by the director;*

76 *(2) To prescribe and distribute all necessary forms for the*
 77 *implementation of this section.*

78 *g. The tax imposed by this section shall be governed in all*
 79 *respects by the provisions of the "State Tax Uniform Procedure*
 80 *Law," Subtitle 9 of Title 54 of the Revised Statutes, except only*
 81 *to the extent that a specific provision of this section may be in*
 82 *conflict therewith.**

1 6. The Sanitary Landfill Facility Contingency Fund (hereinafter
 2 referred to as "the fund") is established as a nonlapsing, revolving
 3 fund in the Department of Environmental Protection. The fund
 4 shall be administered by the department, and shall be credited with
 5 **all* tax revenues*~~],~~ as expressly provided in]* **collected by the*
 6 *division pursuant to* section 5 of this supplementary act. Interest*
 7 *received on moneys in the fund shall be credited to the fund.**

1 7. a. The fund shall be strictly liable for all direct and indirect
 2 damages, no matter by whom sustained, proximately resulting
 3 from the operations or closure of any sanitary landfill. These
 4 damages shall include, but not be limited to:

5 (1) The cost of restoring, repairing or replacing any real or
 6 personal property damaged or destroyed; ~~*[and]*~~

7 (2) The cost of restoration and replacement, where possible, of
 8 any natural resource damaged or destroyed, including any potable
 9 water supply*;*

9A **(3) The cost of any personal injuries, including medical ex-*
 9B *penses incurred and income lost as a result thereof; and*

9C *(4) The costs of the design, construction, installation, operation*
 9D *and maintenance of any device or action deemed necessary by the*

9E department to cleanup, remedy, mitigate, monitor or analyze any
 9F threat to the public health, safety or welfare of the citizens of this
 9G State, including the installation and maintenance of methane gas
 9H monitors and vents and leachate monitoring wells and collection
 9I systems, and the sampling and analysis of any public or private
 9J potable water supply.*

10 ***[b.** The fund shall not be liable for any damage which is com-
 11 pensable pursuant to P. L. 1976, c. 141 (58:10-23.11 et seq.) as a
 12 result of the discharge of a hazardous substance.]*

13 ***[c.]** *b.* In the event that the total of claims awarded exceeds
 14 the current balance of the fund, the immediate award shall be paid
 15 on a prorated basis, and all claimants paid on a prorated basis
 16 shall be paid, as determined by the department, on a pro rata
 17 share of all moneys received by the fund until the total amount of
 18 the proven damages is paid to the claimants. The department may
 19 also provide, by regulation, priority for the payment of claims
 20 based on extreme hardship **or extreme existing or imminent*
 21 *hazard**.

1 8. Claims against the fund shall be filed within 1 year of the
 2 date of discovery of damage, and in the manner as shall be pre-
 3 scribed by the department.

1 9. Moneys in the fund shall be disbursed by the department for
 2 the following purposes and no others:

3 a. Administrative costs incurred by the department pursuant to
 4 section 6 of this supplementary act; and,

5 b. Damages as provided in section 7 hereof.

1 ***[10. a.** Any owner or operator of a sanitary landfill facility who
 2 shall fail to make payments to the fund when due, as herein
 3 provided, shall be subject to the penalties and interest as provided
 4 in the "state tax uniform procedure law," subtitle 9 of Title 54
 5 of the Revised Statutes.]*

5A *10. a. *The owner or operator of every sanitary landfill facility*
 5B *shall deposit, on a monthly basis in an interest-bearing account*
 5C *with an accredited financial institution, an amount equal to \$0.30*
 5D *per cubic yards of solids and \$0.004 per gallon of liquids of all*
 5E *solid waste accepted for disposal during the preceding month at*
 5F *the sanitary landfill facility. In the event that any solid waste is*
 5G *measured, upon acceptance for disposal, by other than cubic yards*
 5H *or gallons, the amount to be deposited shall be calculated by using*
 5I *the equivalents thereof as shall be determined by the division.*

5J *The account established pursuant to this subsection shall con-*
 5K *stitute an escrow account for the closure of the particular sanitary*
 5L *landfill facility, and no withdrawals therefrom may be made with-*

5M *out written approval of the department, except as otherwise author-*
5N *ized by the department.**

6 b. Any owner or operator of a sanitary landfill facility who shall
7 fail to deposit funds into an escrow account, as provided herein,
8 or uses those funds for any purpose other than closing costs, as
9 approved by the department, shall be guilty of a crime of the
10 third degree.

1 11. a. Every owner or operator of a sanitary landfill facility
2 shall file with the department an annual audit of the escrow account
3 established for the closure of the facility pursuant to this supple-
4 mentary act. The audit shall be conducted by a certified public
5 accountant, and shall be filed no later than October 31 of each year.

6 b. Any moneys remaining in the escrow account of any sanitary
7 landfill facility subsequent to the proper and complete closure
8 thereof, as determined by the department, shall be paid by the
9 owner or operator thereof into the fund.

1 12. Payment of any damages by the fund shall be conditioned
2 upon the department acquiring, by subrogation, all rights of the
3 claimant to recovery of the damages from any owner or operator
4 of a sanitary landfill facility.

1 13. **a.** The provisions of any law to the contrary notwithstand-
2 ing, the owner or operator of any sanitary landfill facility may col-
3 lect the tax imposed pursuant to*, *and the escrow account payments*
4 *required by,** this supplementary act as a surcharge on any **[rate*
5 *established by]* *tariff established pursuant to** law for the solid
6 waste disposal operations of the facility.

7 **b. The Board of Public Utilities may direct the owner or opera-*
8 *tor of a sanitary landfill facility to reduce the rate of payments*
9 *to an escrow account required by section 10 hereof, but only to*
10 *the extent that:*

11 (1) *The current tariff established pursuant to law for the solid*
12 *waste disposal operations of the facility specifically allocates a*
13 *portion thereof for closing costs; and*

14 (2) *The amount collected for closing costs pursuant to this tariff*
15 *are deposited, on a monthly basis, in the escrow account for the*
16 *facility.*

17 c. *The Board of Public Utilities shall, within 60 days of the*
18 *effective date of this supplementary act, issue an appropriate order*
19 *increasing current tariffs established pursuant to law for solid*
20 *waste collection operations by an amount equal to the total in-*
21 *crease in the relevant solid waste disposal tariff pursuant to sub-*
22 *section a. of this section.* **In issuing this order, the board shall*
23 *not be bound to find a rate base under the provisions of section 31*
24 *of P. L. 1962, c. 198 (C. 48:2-21.2).***

1 14. Any additional expenditures for the collection or disposal of
2 solid waste made by any county or municipality as a result of the
3 tax imposed pursuant to this supplementary act shall, for the
4 purposes of P. L. 1976, c. 68 (C. 40A:4-45.1 et seq.), be considered
5 an expenditure mandated by State law.

1 15. The department shall adopt, pursuant to the "Administrative
2 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), such rules
3 and regulations as are necessary to effectuate this supplementary
4 act.

1 16. Nothing in this supplementary act shall be deemed to preclude
2 the pursuit of any other civil or injunctive remedy by any person.
3 The remedies provided in this supplementary act are in addition
4 to those provided by existing statutory or common law, but no
5 person who receives compensation for damages pursuant to any
6 other State or Federal law shall be permitted to receive compen-
7 sation for the same damages or cleanup costs under this supple-
8 mentary act.

1 17. a. No person shall contract to sell any land which has been
2 utilized as a sanitary landfill facility at any time prior to the
3 effective date of this supplementary act unless the contract of
4 sale for the land shall state the fact and the period of time that
5 the land was so utilized.

6 Any prospective purchaser of such land may obtain from the
7 department, upon written request therefor, a history of the
8 compliance by the facility with all applicable statutes, rules and
9 regulations administered by the department.

10 b. Any contract made in violation of this section is voidable.

1 18. This act shall take effect ***[immediately]*** **on the first day of*
2 *the second month following enactment**, and shall be retroactive
3 to the extent provided in section 8 hereof.

A1935 (1980)

5

STATEMENT

This bill would impose a tax upon the disposal of solid waste in sanitary landfill facilities. The revenues from this tax would be used to establish escrow accounts to insure the proper closure of these facilities and to provide compensation to persons adversely affected by such things as methane gas migration or leachate contamination of potable water supplies.

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ASSEMBLY COMMITTEE
STATEMENT TO
ASSEMBLY, No. 1935

STATE OF NEW JERSEY

DATED: APRIL 27, 1931

This bill, as amended, imposes a levy on the disposal of solid waste, the revenues of which are to be deposited in escrow accounts to ensure the proper closure of sanitary landfill facilities; and a tax on the disposal of solid waste, the proceeds of which are to be used to establish a Sanitary Landfill Contingency Fund, to be used to pay damages resulting from the improper operation or closure of any sanitary landfill.

Specifically, the committee amended the bill to: (1) provide that only the amounts paid into the Sanitary Facility Contingency Fund (and not escrow account payments) be designated as a tax; (2) direct the Division of Taxation to collect this tax, which would be deposited in the fund and thereafter administered by the Department of Environmental Protection; (3) mandate that landfill owners or operators establish escrow accounts for closure costs; (4) clarify that the Fund would be available to cover the costs of personal injuries, remedial actions taken by the Department to protect the public health, safety and welfare, and damages resulting from hazardous waste disposed of in sanitary landfill facilities; (5) authorize priority payments for claims related to extreme hazard, whether existing or imminent; (6) provide for the reduction of escrow account rates to the extent covered in current tariffs; (7) direct the Board of Public Utilities to issue an appropriate order concerning the effect of the increase in disposal rates upon solid waste collection rates; and (8) incorporate technical revisions recommended by the Departments of Treasury and Environmental Protection.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1935

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with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 1981

The Assembly Agriculture and Environment Committee Statement to Assembly Bill No. 1935 (OCR), dated April 27, 1981, accurately explains the provisions of the bill as referred to this committee.

The Senate Energy and Environment Committee adopted an amendment which waives the statutory requirement that the Board of Public Utilities utilize a rate base of return analysis when issuing an order concerning the effect of the increase in solid waste disposal rates upon solid waste collection rates. With this amendment, this bill is identical to Senate Bill No. 1428, which also reported today, with committee amendments.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

NOVEMBER 30, 1981

DAVE DENAIO

Governor Brendan Byrne has signed into law a bill creating a fund to pay for personal injuries and property damages resulting from the operation or closure of sanitary landfills in New Jersey.

The bill, A-1935, sponsored by Assemblyman Daniel J. Dalton (D-Gloucester), establishes the Sanitary Landfill Facility Contingency Fund Tax on the owners or operators of sanitary landfills at a rate of five cents per cubic yard of solid waste and two one-thousandths cents per gallon of liquid wastes. The tax is expected to raise \$15 million annually.

The fund, to be administered by the Department of Environmental Protection, would be used to cover claims of personal injuries, damages to natural resources, and remedial actions taken by DEP to protect the public health. DEP will be allowed to make priority payments for claims based on extreme hardship or imminent health hazards. Claims for fund monies must be filed within one year of the discovery of damage or injury. The tax on landfill owners or operators will be administered by the Department of Treasury's Division of Taxation.

The bill will also require the operators of landfills to make a monthly deposit in an escrow account to cover their costs of closure. The monthly deposit will be at a rate of 30 cents per cubic yard of solid and four one-thousandths of a cent per gallon of liquid wastes.

The escrow account, payed over the life of the landfill, will ensure substantial funds to cover the closure costs of those facilities. Withdrawals from the escrow account will be permitted only with the consent of DEP, and an annual audit of the account must be filed with the Department. Failure to establish the closure account is a third degree crime.

Owners and operators of landfills will be allowed to raise the rates they charge for solid waste collection, but the increased costs to consumers are expected to be minimal.

The Board of Public Utilities will also be allowed to authorize individual reductions in escrow account payments for those facilities already possessing substantial closure accounts.

The bill takes effect on January 1, 1982.