

48:13A-2

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LAWS OF: 1991 CHAPTER: 381

Bill No: A3136 (Submitted Per S3040 and A312)

Sponsor(s): McEnroe

Date Introduced: March 1, 1990

Committee: Assembly: Waste Management

Senate: Land Use

Amended during passage: Yes Assembly substitute (IR) enacted

Date of Passage: Assembly: April 25, 1991 Re-enacted 12-2-91

Senate: June 27, 1991 Re-enacted 1-6-92

Date of Approval: January 15, 1992

Following statements are attached if available:

Sponsor statement: Yes ~~Also attached statement to assembly floor substitute~~
for A3136 and A312

Committee Statement: Assembly: Yes

~~Floor Amendment statement~~ Senate: Yes
Yes

Fiscal Note: Yes

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/dgw

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§§1-23
C.48:13A-7.1
to
48:13A-7.23
§51
Repealer
§52
Note to §§1-51

P.L.1991, CHAPTER 381, approved January 15, 1992

Assembly Substitute (First Reprint) for
1991 Assembly No. 3136 and 312 ACS

~~AN ACT~~ concerning regulatory reform of the solid waste collection industry, and amending, supplementing and repealing parts of the statutory law.

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

1. ~~(New section)~~ Sections 1 through 23 inclusive of this amendatory and supplementary act shall be known and may be cited as the "Solid Waste Collection Regulatory Reform Act."

2. (New section) The Legislature finds and declares that the collection of solid waste is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste collection services; and that efficient solid waste collection services at competitive rates will more likely be achieved if the solid waste collection industry is under the supervision of, but not subject to traditional public utility rate regulation by, the Board of Public Utilities.

The Legislature further finds and declares that it is imperative that the State ensure the economic viability and competitiveness of the solid waste collection industry in order to safeguard the integrity of the State's long-term solid waste management strategy; that it is equally imperative to safeguard the interests of consumers as well as the interests of those providing solid waste collection services; that to provide for ratepayer and consumer protection it is necessary to foster competition within the industry and to establish a responsible State supervisory role to ensure safe, adequate and proper solid waste collection service at competitive rates; and that to achieve these ends in the most efficient and reasonable manner, it is necessary to establish procedures for regulatory reform and the eventual termination of traditional public utility rate regulation of the solid waste collection industry.

The Legislature further finds and declares that the Legislature through enactment of P.L.1983, c.392 (C.13:1E-126 et seq.) has established a licensing system which is designed to prevent persons with criminal backgrounds from engaging in the solid

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.

Matter enclosed in superscript numerals has been adopted as follows:

Assembly amendments adopted in accordance with Governor's recommendations August 22, 1991.

waste collection business, thereby promoting free and open competition within the solid waste collection industry; and that terminating traditional public utility rate regulation of the solid waste collection industry can be achieved without compromising the State's role in protecting the public interest.

The Legislature therefore determines that it is in the public interest to establish procedures for the eventual termination of public utility rate regulation of solid waste collectors while at the same time maintaining Board of Public Utilities supervision over the solid waste collection industry.

3. (New section) As used in sections 1 through 23 of P.L. , c. (C.) (pending in the Legislature as this bill):

"Applicant" means any person seeking to obtain an initial certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9) in order to provide solid waste collection services in this State.

"Board" means the Board of Public Utilities.

"Materials recovery" means the processing and separation of solid waste utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Materials recovery facility" means a transfer station or other authorized solid waste facility at which nonhazardous¹, nonputrescible¹ solid waste, which material is not source separated by the generator thereof prior to collection, is received for onsite processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Septic waste" means pumpings from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

"Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

"Solid waste collection" means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

"Solid waste collection services" means the services provided by persons engaging in the business of solid waste collection.

"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

"Solid waste container" means a receptacle, container or bag suitable for the depositing of solid waste.

"Solid waste disposal" means the storage, treatment, utilization, processing, or final disposal of solid waste.

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

"Solid waste facilities" mean and include the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

"Transition year" means any of the 4 successive 12-month periods commencing on the effective date of P.L. , c. (C.) (pending in the Legislature as this bill).

4. (New section) a. Every solid waste collector shall pay an annual fee of \$100.00 to cover the costs of supervising the solid waste collection industry. The fee imposed pursuant to this section shall be in addition to the annual assessment made by the board pursuant to P.L.1968, c.173 (C.48:2-59 et seq.).

b. The provisions of section 1 of P.L.1959, c.43 (C.48:2-56) or any rules or regulations adopted pursuant thereto to the contrary notwithstanding, the board may charge and collect a filing fee of up to \$500.00 per applicant from persons seeking to obtain a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

5. (New section) The board may direct any applicant to furnish proof that the rates or charges to be received for solid waste collection services do not exceed just and reasonable rates or charges. Should the board find, subsequent to the issuance of a certificate of public convenience and necessity, that the rates or charges received for solid waste collection services are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in just and reasonable rates or charges.

6. (New section) a. The board, upon ¹[complaint or its own initiative, after hearing] the adoption of the rules and regulations required pursuant to section 19 of P.L. , c. (C.) (pending in the Legislature as this bill)¹, may ¹[direct] review the rates or charges of¹ any solid waste collector ¹pursuant to the provisions of section 20 of P.L. , c. (C.) (pending in the Legislature as this bill) in accordance with the criteria and procedures established pursuant to section 19 of P.L. , c. (C.) (pending in the Legislature as this bill)¹ to ¹[furnish proof that]

~~determine whether~~¹ the rates or charges received for solid waste collection services ~~do not~~¹ exceed ~~those~~¹ rates or charges which would result from effective competition.

b. Should the board find¹, pursuant to the provisions of section 20 of P.L. , c. (C.) (pending in the Legislature as this bill),¹ that the rates or charges received for solid waste collection services are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in competitive rates or charges. In issuing this order, the board may direct the solid waste collector to refund, at an interest rate to be determined by the board, the difference between the excessive rates or charges and the competitive rates or charges ordered by the board¹ as of the date of the notice of the board's intention to review the rates or charges received by that solid waste collector¹.

¹c. Nothing contained in sections 9 or 10 of P.L. , c. (C.) (pending in the Legislature as this bill) shall be construed to interfere with the implementation of this section by the board.¹

7. (New section) a. Any solid waste collector proposing to extend solid waste collection services into any area where that person is not actively engaged in solid waste collection, and the proposed extension of services is not set forth in a tariff previously filed with and accepted by the board, shall file with the board appropriate revised tariff sheets which reflect the proposed changes in areas to be served.

b. Any solid waste collector proposing to expand his solid waste collection business for the purpose of providing new solid waste collection services, and the proposed expansion of services is not set forth in a tariff previously filed with and accepted by the board, shall file with the board appropriate revised tariff sheets which reflect the proposed changes in services to be provided.

c. Should the board find, subsequent to its review of a revised tariff, that the rates or charges set forth therein are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in ¹[competitive] just and reasonable¹ rates or charges.

8. (New section) a. Any increase or decrease in the disposal rates or charges received at authorized solid waste facilities in this State shall be automatically adjusted for in the uniform tariff for solid waste collection established by the Board of Public Utilities in rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(1) Any solid waste collector seeking an adjustment to the rates or charges set forth in the uniform tariff ¹[as]¹ solid waste disposal ¹[service]¹ charges shall file with the board appropriate

revised tariff sheets which reflect changes in the disposal rates or charges received at an authorized solid waste facility.

(2) No adjustment in the disposal rate shall be implemented until such time as revised tariff sheets and verification forms have been filed with the board. Every solid waste collector shall file these documents with the board within five days of any decrease in the disposal rates or charges received at an authorized solid waste facility.

b. (1) Any net savings in the payment of disposal rates or charges at authorized solid waste facilities realized by a solid waste collector due to decreased waste flows resulting from materials recovery, or the revenues generated thereby, may be adjusted for in the rates or charges set forth in the uniform tariff ¹[as] ¹solid waste disposal ¹[service] ¹charges.

(2) Any solid waste collector seeking an adjustment to the rates or charges set forth in the uniform tariff ¹[as] ¹solid waste disposal ¹[service] ¹charges shall file with the board appropriate revised tariff sheets which reflect net savings in the payment of disposal rates or charges at an authorized solid waste facility. No adjustment in the disposal rate shall be implemented until such time as revised tariff sheets and verification forms have been filed with the board.

c. Every solid waste collector shall file with the board rates or charges for solid waste collection services conforming to the uniform tariff for solid waste collection established by the board. Every person engaged in the business of solid waste collection in this State shall be subject to the provisions of this subsection and shall file with the board a uniform tariff.

9. (New section) The provisions of any other law, or of any rule, regulation or administrative order adopted or issued pursuant thereto, to the contrary notwithstanding, during the 48-month transition from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry, the rates or charges that may be imposed by solid waste collectors for solid waste collection services in this State shall be determined in accordance with the provisions of P.L. , c. (C.) (pending in the Legislature as this bill).

a. The Board of Public Utilities shall establish, in rules and regulations adopted pursuant to the "Administrative Procedure Act," solid waste collection rate bands governing the rates or charges that may be imposed by solid waste collectors for solid waste collection services in this State during each transition year.

The solid waste collection rate bands shall provide for the maximum adjustment that any solid waste collector may make to the rates or charges set forth as solid waste collection service charges in the uniform tariff filed with and accepted by the board after the effective date of this amendatory and supplementary act for any residential, commercial, industrial or institutional customer during a specified transition year.

b. The solid waste collection rate bands shall conform to the

following schedule:

(1) During the first transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the Consumer Price Index, multiplied by the rates or charges;

~~(2) During the second transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the Consumer Price Index, plus the sum authorized pursuant to paragraph (1), multiplied by the rates or charges;~~

(3) During the third transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 10% plus the annual percentage change in the Consumer Price Index, plus the sum authorized pursuant to paragraph (2), multiplied by the rates or charges; and

(4) During the fourth transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of the annual percentage change in the Consumer Price Index plus the sum authorized pursuant to paragraph (3), multiplied by the rates or charges.

Any adjustments to the uniform tariff authorized pursuant to this subsection may be made on an individual customer basis.

For the purposes of this subsection, "Consumer Price Index" means the consumer price index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of Labor.

c. Prior to the close of each transition year, the board shall, by order in writing, revise the solid waste collection rate bands for the forthcoming transition year to conform to the schedule established pursuant to subsection b. of this section for the pricing of solid waste collection services.

10. (New section) a. Upon filing with the Board of Public Utilities a uniform tariff, any solid waste collector may adjust the rates or charges set forth as solid waste collection service charges in the uniform tariff as provided in the solid waste collection rate bands established pursuant to section 9 of P.L.

c. (C.) (pending in the Legislature as this bill).

b. (1) Any solid waste collector may adjust the rates or charges set forth in the uniform tariff filed with the board as provided in the solid waste collection rate bands¹, whether or not¹ unless¹ those rates or charges have been¹ [reviewed¹ and accepted¹] expressly rejected¹ by the board.

(2) Should the board find, subsequent to its review of a uniform tariff¹ filed by a solid waste collector and the adjusted rates or charges imposed by that solid waste collector¹, that the rates or charges¹ [set forth therein] imposed by that solid waste collector¹ are excessive, then it may order the solid waste collector to refund, at an interest rate to be determined by the board, ¹[the] any¹ difference between the adjusted rates or charges¹ imposed by the solid waste collector¹ and the rates or charges accepted by the board ¹following readjustment of the uniform tariff and the solid waste collection rate bands governing the rates or charges that may be imposed by the solid waste collector¹.

c. (1) During the first and second transition years, every solid waste collector shall, at least once every six months, file with the board a report describing the amount and frequency of variation from the rates or charges set forth in the uniform tariff for each class of residential, commercial, industrial or institutional customers. The report shall include the percentage of each class of solid waste collection services for which adjustments have been made, and the specified percentage increase or decrease to the rates or charges made to that customer class.

(2) During the third and fourth transition years, every solid waste collector shall, at least once every 12 months, file with the board a report describing the amount and frequency of variation from the rates or charges set forth in the uniform tariff for each class of residential, commercial, industrial or institutional customers. The report shall include the percentage of each class of solid waste collection services for which adjustments have been made, and the specified percentage increase or decrease to the rates or charges made to that customer class.

d. Whenever a solid waste collector makes an adjustment to the uniform tariff pursuant to this section, the solid waste collector shall notify every customer to be affected thereby at least 10 days prior to the implementation of that adjustment. The solid waste collector shall attach a copy of the applicable rate schedule to the notice.

11. (New section) Every solid waste collector shall notify customers at least once every year that solid waste collection services in this State are available on a competitive basis, as provided in the customer bill of rights established by the board in rules and regulations adopted pursuant to the "Administrative Procedure Act," and shall provide every customer with a copy thereof.

12. (New section) No solid waste collector¹ [utilizing the solid waste collection rate bands established by the Board of Public Utilities pursuant to section 9 of P.L. , c. (C.) (pending in the Legislature as this bill) to make adjustments to the uniform tariff]¹ may, except in cases of hardship or exigent circumstances, or in the case of significant increases in energy

costs, as determined by the board, petition the board for changes in the rates or charges set forth as solid waste collection service charges in the uniform tariff previously filed with and accepted by the board.

13. (New section) The Board of Public Utilities shall, within 12 months of the effective date of this amendatory and supplementary act and at least once every six months thereafter, publish the rate schedule set forth in the uniform tariff of every solid waste collector serving a particular region of the State in at least one newspaper of general circulation within that region and at least one newspaper of statewide circulation. The rate schedule shall be accompanied by a notice advising the public of the current solid waste collection rate band in effect on that date and stating that any difficulties in securing solid waste collection services, or any complaints pertaining to the adequacy of existing solid waste collection services, may be referred to the board.

14. (New section) a. The Board of Public Utilities shall, within 30 months of the effective date of this amendatory and supplementary act, submit a preliminary report to the Governor and the Legislature concerning the implementation of P.L. . . c. (C.) (pending in the Legislature as this bill).

The board shall provide interested parties and the general public with an opportunity to submit written comments on the contents of the preliminary report in a manner to be determined by the board.

b. The board shall, within 36 months of the effective date of this amendatory and supplementary act, submit a final report to the Governor and the Legislature concerning the implementation of P.L. . . c. (C.) (pending in the Legislature as this bill).

The final report shall include, but need not be limited to:

(1) An evaluation of the success of solid waste collection rate bands in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper solid waste collection services at competitive rates;

(2) An evaluation of the success of solid waste collection rate bands in eliminating predatory pricing and other anticompetitive activities within the solid waste collection industry;

(3) An evaluation of the success of uniform specifications for municipal solid waste collection contracts in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper municipal solid waste collection services at competitive rates;

(4) An assessment of the economic viability and competitiveness of the solid waste collection industry and a recommendation, as warranted by the circumstances, as to whether the termination of rate regulation of the solid waste collection industry by the board will promote meaningful competition and ensure efficient solid waste collection services at competitive rates; and

(5) A summary of any written comments submitted by

interested parties or the general public on the contents of the preliminary report required pursuant to subsection a. of this section.

16. (New section) The rates or charges imposed by solid waste collectors, or fees, rates or charges for solid waste collection services provided by persons engaged in the business of solid waste collection in this State shall not be subject to the regulation of the Board of Public Utilities¹, ~~except as provided in section 20 of P.L. . c. (C.) (pending in the Legislature as this bill)¹~~. Nothing herein provided shall be construed to limit the authority of the board with respect to the supervision of the solid waste collection industry.

16. (New section) a. ~~The board may compel any person engaged in the business of solid waste collection or otherwise providing solid waste collection services to furnish and file with the board a consolidated annual report or other documents as may be necessary to enable the board to administer its duties as prescribed by law and this act.~~

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

17. (New section) a. The board may compel any solid waste collector to furnish and file with the board any records, including, but not limited to, manifests, origin and destination forms, customer lists, financial or operational information, contracts, books, accounts and records of affiliated business concerns, including any affiliated or parent corporation or organization, or any wholly or partially owned subsidiary thereof, directly or indirectly involved therewith, or having a direct or indirect financial interest in the solid waste collection services provided by the solid waste collector, and all financial transactions between these parties related to the solid waste collection services provided by the solid waste collector, and any other documents related to solid waste collection or solid waste disposal activities, at any time or place in order to determine compliance with the provisions of this act or P.L.1970, c.40 (C.48:13A-1 et seq.) or any rule, regulation or administrative order adopted or issued pursuant thereto, and to enable the board to administer its duties as prescribed by law and this act.

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

18. (New section) a. Should any person engaged in the solid waste collection business fail or refuse to complete, execute or perform any contract or agreement obligating such person to provide solid waste collection services, the board may order any solid waste collector to extend solid waste collection services

into any area where the collection of solid waste has been discontinued.

b. ~~Should the board find that any class of customers within a specific geographic area is unable to secure solid waste collection services, or that any person seeking a specific type of solid waste collection service is unable to secure solid waste collection services, or that the board has received complaints pertaining to the adequacy of existing solid waste collection services, the board may order any solid waste collector to extend solid waste collection services to that geographic area, class of customers or person.~~

c. (1) Prior to the effective date of section 15 of P.L. , c. (C.) (pending in the Legislature as this bill), should the board order any solid waste collector to extend solid waste collection services to any area, class of customers or person, the rates and charges for the extended solid waste collection services shall be determined in accordance with the provisions of sections 17, 19 and 10 of P.L. , c. (C.) (pending in the Legislature as this bill).

(2) After the effective date of section 15 of P.L. , c. (C.) (pending in the Legislature as this bill), should the board order any solid waste collector to extend solid waste collection services to any area, class of customers or person, the rates and charges for the extended solid waste collection services shall be determined by the person ordered by the board to extend those services.

d. Should any solid waste collector fail or refuse to comply with any provision of this section, the board may revoke or suspend the certificate of public convenience and necessity issued to that person.

19. (New section) Within 180 days of the effective date of this amendatory and supplementary act, the Board of Public Utilities shall establish, in rules and regulations adopted pursuant to the provisions of the "Administrative Procedure Act," the criteria and procedures to be utilized by the board in making a determination of effective competition.

a. The board shall utilize the criteria in making a determination as to whether a lack of effective competition is likely to occur if the board approves a transaction pursuant to the provisions of R.S.48:3-7, or in making a determination as to whether a lack of effective competition exists within a specific geographic area, class of customers or type of solid waste collection services [after the effective date of section 15 of P.L. , c. (C.) (pending in the Legislature as this bill)]¹.

b. The criteria shall include, but need not be limited to, the following:

(1) the existence of barriers to entry of persons seeking to provide solid waste collection services within a specific geographic area, class of customers or type of service;

(2) the structure of the solid waste collection industry within a

specific geographic area, class of customers or type of service, including the number of participating solid waste collectors, the intensity of competition, or the concentration in ownership of collection or haulage vehicles or other equipment; and

(3) the existence of patterns of anti-competitive behavior by persons providing solid waste collection services within a specific geographic area, class of customers or type of service.

c. The board shall utilize the criteria in conjunction with generally accepted economic indicators which shall be identified in rules and regulations adopted pursuant to the provisions of the "Administrative Procedure Act." These indicators may include an evaluation of capital investment costs, economies of scale, differentiation of service, technological barriers facing entrants, financial requirements, including capital entry or exit costs, regulatory barriers, and business characteristics, including number of customers, customer turnover, annual gross revenues, class or type of service provided, and annual net income.

d. The board shall establish procedures to be utilized in reviewing the rates or charges received by a solid waste collector pursuant to ¹[section] sections 6 and ¹20 of P.L. , c. (C.) (pending in the Legislature as this bill).

20. (New section) a. (1) Whenever, on the basis of available information, the board has reasonable grounds for belief in the existence of facts warranting further investigation that a solid waste collector is charging rates or charges for solid waste collection services which exceed rates or charges that would have resulted from effective competition, the board shall transmit a notice to the solid waste collector stating that the board intends to review the rates or charges received by that solid waste collector. The notice shall enumerate the reasons for the review and the criteria utilized by the board in making a determination that a lack of effective competition exists.

(2) ¹The board may, within 30 days following the date of notice, request that the solid waste collector submit any additional information needed to assist in its review. In the event that additional information is requested, the board shall outline, in writing, why it deems such information necessary to make an informed determination on whether the collector is charging rates or charges for solid waste collection services which exceed rates or charges that would have resulted from effective competition. ¹The board shall complete its review of the rates or charges received by the solid waste collector no later than ¹[45] 60¹ days following the date of the notice ¹, except if the board requests additional information from the solid waste collector, the board shall complete its review within 60 days of receipt of all requested information¹.

(3) Upon completing its review, the board may, after hearing, by order in writing, issue an order to the solid waste collector charging such excessive rates or charges to reduce the rates or charges received for solid waste collection services to a sum

which would result from effective competition.

b. The board may issue an order to any person engaged in the business of solid waste collection to reduce the rates or charges received for solid waste collection services to a sum which would result from effective competition if the following conditions are met:

(1) the board has determined that a lack of effective competition exists within a specific geographic area, or within a specific class of customers or type of solid waste collection services; and

(2) the board has determined that the lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition.

In making a determination pursuant to paragraph (1) of this subsection, the board shall not consider ¹[extraneous]¹ technical or economic factors ¹[such as variation in solid waste disposal or recycling costs, the availability of, or access to, materials recovery facilities, recycling centers or markets for recyclable materials, or other seasonal or short-term considerations] that are not directly related to the provision of solid waste collection services¹.

In making a determination pursuant to paragraph (2) of this subsection, the board shall compare the rates or charges received by the solid waste collector charging such excessive rates or charges with those received by other solid waste collectors for solid waste collection services within a comparable geographic area, class of customers or type of service. The board, if it deems that such information is necessary, may review the revenues, income or expenditures of the solid waste collector charging such excessive rates or charges, except that the board shall not consider any revenues, income or expenditures derived from recycling activities.

Any order issued by the board pursuant to this subsection shall expire no later than the first day of the seventh month following the effective date of the order¹, except that an order may remain in effect pending the adjudication of a contested case¹.

c. In issuing an order pursuant to subsection b. of this section, the board may:

(1) direct the solid waste collector to refund, at an interest rate to be determined by the board, the difference between the excessive rates or charges and the competitive rates or charges ordered by the board as of the date of the notice of the board's intention to review the rates or charges received by that solid waste collector;

(2) take other actions pursuant to law as may be needed to restore or promote effective competition within the affected geographic area, class of customers or type of service; or

(3) make recommendations as to the steps needed to restore or promote effective competition within the affected geographic

area, class of customers or type of service.

d. (1) No later than 6 months after issuing an order pursuant to subsection b. of this section, the board shall review the actions taken pursuant thereto and make a determination as to whether a lack of effective competition still exists within the affected geographic area, class of customers or type of service, or whether the continued lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition.

(2) The board shall, upon a determination that effective competition exists within the affected geographic area, class of customers or type of service, rescind any such order and cease any further rate setting activity with respect to the solid waste collector subject to that order.

(3) The board may, upon a written determination that a lack of effective competition still exists within the affected geographic area, class of customers or type of service, and that the continued lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition, issue a new order pursuant to subsection b. of this section and continue rate setting activity with respect to the solid waste collector subject to that order as provided in subsection c. of this section.

21. (New section) a. There is created in the Board of Public Utilities a special nonlapsing fund to be known as the "Solid Waste Enforcement Fund." All monies from penalties collected by the board pursuant to section 13 of P.L.1970, c.40 (C.48:13A-12) shall be deposited in the fund.

b. Unless otherwise expressly provided by the specific appropriation thereof by the Legislature, monies in the fund shall be utilized exclusively by the Division of Solid Waste in the Board of Public Utilities for enforcement and implementation of the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and P.L. , c. (C.) (pending in the Legislature as this bill).

22. (New section) The Board of Public Utilities shall establish, in rules and regulations adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), uniform bid specifications for municipal solid waste collection contracts.

23. (New section) a. (1) Whenever the governing body of a municipality adopts an ordinance to provide for the collection or disposal of solid waste within its municipal boundaries by imposing solid waste charges based on the number of solid waste containers processed per household pursuant to subsection b. of R.S.40:66-5, the governing body shall transmit to the Board of Public Utilities, by certified mail and within 90 days of the effective date of the ordinance, a copy of the proposed rate schedule and the contract awarded pursuant to subsection a. of

R.S.40:66-4. The board, within 60 days of receipt of the proposed rate schedule and contract and if requested to do so by the municipality or the relevant solid waste collector, as the case may be, may review these documents to determine whether the solid waste charges are equitable and to accept, reject or modify the rate schedule. If the board finds the solid waste charges to be equitable, the board shall accept the rate schedule and contract and issue an appropriate order therefor. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

(2) Should the board find, subsequent to the issuance of any order pursuant to this subsection, that the rates or charges received for the collection of solid waste contained within a contract entered into prior to the effective date of that order require adjustment, then it may order the person charging these rates or charges to make an adjustment in the contract to a sum which shall result in equitable rates or charges. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

b. (1) The board may issue an appropriate order establishing an equitable rate schedule based on the number of solid waste containers processed per household for the solid waste collection tariffs of persons engaging in private solid waste collection services in any municipality in which solid waste collection services are contracted for and provided on an individual household basis. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

(2) Any person engaged in private solid waste collection services in this State and utilizing a rate schedule based on the number of solid waste containers processed per household as provided in this subsection may provide customers with the opportunity to purchase, on a prepaid basis, one or more solid waste containers, or a voucher or sticker therefor, to facilitate the provision of solid waste collection services on a per container basis.

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

1. This act shall be known [as,] and may be cited as[,] the "Solid Waste Utility Control Act [of 1970]."

(cf: P.L.1970, c.40, s.1)

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

2. The Legislature finds and declares that the [collection,] disposal [and utilization] of solid waste is a matter of grave concern to all citizens and is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste [collection,] disposal [and utilization] service; that [such service will more likely be achieved if the Public Utility Commission] safe, adequate and proper solid waste disposal service at just and

~~reasonable rates cannot be achieved unless the Board of Public Utilities is charged with the duty of setting and enforcing standards and rates for regulating the economic aspects of all solid waste [collection,] disposal [and utilization] service; and that the exercise of any power herein provided for shall be deemed to be in the public interest and for a public purpose.~~

(cf: P.L.1970, c.40, s.2)

26. Section 3 of P.L.1970, c.40 (C.48:13A-3) is amended to read as follows:

3. As used in this act:

[a.] "Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids [disposed of incident thereto], except [it shall not include] ~~for solid animal and vegetable [waste] wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.~~

[b.] "Solid waste collection" means the activity related to pickup and transportation of solid waste from its source or location to a transfer station or other authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

~~"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).~~

[c.] "Solid waste disposal" means the storage, treatment, utilization, processing, transfer, or final disposal of solid waste.

[d.] "Septic waste" means pumpings from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

[e.] "Solid waste container" means a receptacle, container or bag suitable for the depositing of solid waste.

~~"Solid waste collection services" means the services provided by persons engaging in the business of solid waste collection.~~

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

[f.] "Solid waste facilities" mean and include the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

[g.] "Solid waste transfer operations" mean the activity

related to the transfer of solid waste from solid waste collection vehicles to solid waste haulage vehicles, including rail cars, for transportation to an offsite sanitary landfill facility, resource recovery facility, or other destination for disposal.

[h.] "Transfer station" means a solid waste facility at which solid waste is transferred from a solid waste collection vehicle to a licensed solid waste haulage vehicle, including a rail car, for transportation to an offsite sanitary landfill facility, resource recovery facility, or other destination for disposal, except that a "transfer station" shall not include any solid waste facility at which solid waste is received for onsite transfer, and processing or disposal utilizing facility-owned or operated equipment and vehicles operated therefor.

(cf: P.L.1990, c.113, s.1)

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

5. a. The Board of Public [Utility Commissioners] Utilities shall, after hearing, by order in writing, [make] adopt appropriate rules, regulations [and] or administrative orders for the regulation of rates and public utility aspects of the [solid waste collection industry and the] solid waste disposal industry.

b. The Board of Public Utilities shall, after hearing, by order in writing, adopt appropriate rules, regulations or administrative orders for the supervision of the solid waste collection industry.

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

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

(cf: P.L.1970, c.40, s.5)

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

7. a. No person shall engage, or be permitted to engage, in the business of solid waste collection or solid waste disposal until found by the board to be qualified by experience, training or education to engage in such business, is able to furnish proof of financial responsibility, and unless that person holds a certificate of public convenience and necessity issued by the Board of Public Utilities.

(1) No certificate shall be issued for solid waste collection or solid waste disposal until the [proposed collection or disposal system] person proposing to engage in solid waste collection or

solid waste disposal has been registered with and approved by the [State] Department of Environmental Protection as provided by section 6 of P.L.1970, c.39 (C.13:1E-5).

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

b. No person shall transport regulated medical waste until found by the Board of Public Utilities to be qualified by experience, training or education to engage in such business, is able to furnish proof of financial responsibility, and holds a certificate of public convenience and necessity issued by the board. No certificate shall be issued for the transportation of regulated medical waste until the proposed transporter has obtained a registration statement required by section 6 of P.L.1970, c.39 (C.13:1E-5) and paid the fee imposed under section 9 of P.L.1989, c.34 (C.13:1E-48-9).

c. Notwithstanding the provisions of subsection b. of this section, the board shall not have jurisdiction over rates or charges for the transportation of regulated medical waste. (cf: P.L.1989, c.34, s.30)

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

8. a. The board, upon complaint or its own initiative, after hearing, may direct any person engaging in the [solid waste collection business or the] solid waste disposal business to furnish proof that the rates or charges [or rates to be] received for [such service] solid waste disposal services do not exceed just and reasonable rates or charges for such service.

b. [(1)] Should the board find that the rates or charges received for solid waste disposal services are excessive, then it may order the person charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in just and reasonable rates or charges.

[(2)] Should the board find, subsequent to the issuance of any order pursuant to subsection c. of this subsection, that the rates or charges received for the collection of solid waste contained within a contract entered into prior to the effective date of that order require adjustment, then it may order the person charging these rates or charges to make an adjustment in the contract to a sum which shall result in just and reasonable rates or charges. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

c. (1) Whenever the governing body of a municipality adopts an ordinance to provide for the collection or disposal of solid waste within its municipal boundaries by imposing solid waste charges based on the number of solid waste containers processed per household pursuant to subsection b. of R.S.40:66-5, the governing body shall transmit to the board, by certified mail and

within 90 days of the effective date of the ordinance, a copy of the proposed rate schedule and the contract awarded pursuant to subsection a. of R.S.40:66-4. The board, within 60 days of receipt of the proposed rate schedule and contract and if requested to do so by the municipality or the relevant solid waste collector or solid waste transporter, as the case may be, may review these documents to determine whether the solid waste charges are equitable and to accept, reject or modify the rate schedule.

(2) If the board finds the solid waste charges to be equitable, the board shall accept the rate schedule and contract and issue an appropriate order therefor. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

d. (1) The board may issue an appropriate order establishing an equitable rate schedule based on the number of solid waste containers processed per household for the solid waste collection tariffs of persons engaging in private solid waste collection or transportation services in any municipality in which solid waste collection or transportation services are contracted for and provided on an individual household basis. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

(2) Any person engaged in private solid waste collection or transportation services in this State and utilizing a rate schedule based on the number of solid waste containers processed per household as provided in this subsection may provide customers with the opportunity to purchase, on a prepaid basis, one or more solid waste containers, or a voucher or sticker therefor, to facilitate the provision of solid waste collection services on a per container basis.]

(cf: P.L.1989, c.244, s.8)

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

9. [a. Every person engaged in the business of solid waste collection or solid waste disposal shall furnish and file with the board, in connection with each contract or agreement entered into by him for the provision of such service, a performance bond in such amount as may be required by the board in rules or regulations promulgated by the board.

b.] Should any person engaged in the solid waste [collection business or the solid waste] disposal business fail or refuse to complete, execute or perform any contract or agreement obligating such person to provide [such service] solid waste disposal services, the board may order any person engaged in the solid waste [collection business or the solid waste] disposal business to extend [his collection or disposal service] solid waste disposal services into any area where service has been discontinued in accordance with the provisions of R.S.48:2-27, and the board shall fix just and reasonable rates and charges for [such] solid waste disposal service in the extended area.

(cf: P.L.1970, c.40, s.9)

31. Section 10 of P.L.1970, c.40 (C.48:13A-9) is amended to

read as follows:

10. The board, on its own initiative or upon complaint by the [State] Department of Environmental Protection shall revoke[,] or suspend [or grant a temporary continuance for up to 1 year of] the certificate of public convenience and necessity issued to any person engaged in the solid waste collection business or the solid waste disposal business upon the finding that such person:

a. Has violated any provision of [this act] P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L. . c. (C.) (pending in the Legislature as this act), or any rule, regulation or administrative order [promulgated hereunder] adopted or issued pursuant thereto; or

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

c. Has refused or failed to comply with any lawful order of the board; or

d. Has had its registration revoked by the [State] Department of Environmental Protection; or

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

(cf: P.L.1976, c.326, s.32)

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

11. a. No person shall monopolize, or attempt to monopolize, or combine or conspire with any other person to monopolize, trade or commerce in any relevant market, located in whole or in part in this State, for the solid waste collection business or the solid waste disposal business.

b. Any person who shall be injured in his business or property by reason of a violation of the provisions of subsection a. of this section may sue therefor and shall recover threefold the damages sustained by him, together with reasonable attorney's fees and the costs of the suit. The State and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this act. Any action brought pursuant to this subsection shall be barred unless commenced within [4] 5 years after the cause of action accrued.

c. No municipality may require [a public utility] any person lawfully engaged in the solid waste collection business or the solid waste disposal business to submit to any prequalification test before permitting [it] that person to bid on a contract or before the employment of a solid waste collection or a solid waste disposal contractor.

(cf: P.L.1970, c.40, s.11)

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

12. a. The board may compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and

all the documents necessary to enable the board to administer its duties as prescribed by law and this act.

b. ~~The board may compel any person engaged in the business of solid waste disposal or otherwise providing solid waste disposal services in this State to furnish and file with the board any annual reports, federal or State tax returns, contracts, papers, books, accounts, customer lists, financial or operational information, or contracts, books, accounts, and records of affiliated business concerns, including any affiliated or parent corporation or organization, or any wholly or partially owned subsidiary thereof, directly or indirectly involved therewith, or having a direct or indirect financial interest in the solid waste disposal services provided by that person, and all financial transactions between these parties related to the solid waste disposal services provided by that person, or other documents as may be necessary to enable the board to administer its duties as prescribed by law and this act.~~

c. ~~Should any person engaged in the business of solid waste disposal or otherwise providing solid waste disposal services fail or refuse to comply with any provision of this section, or any applicable provision of Title 48 of the Revised Statutes, the board may revoke or suspend the certificate of public convenience and necessity issued to that person.~~

(cf: P.L.1970, c.40, s.12)

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

13. a. Any person or any officer or agent thereof who shall knowingly violate any of the provisions of this act or aid or advise in such violation, or who, as principal, manager, director, agent, servant or employee knowingly does any act comprising a part of such violation, is guilty of a [misdemeanor] crime of the fourth degree and shall be punished by imprisonment for not more than [three years] 18 months or, notwithstanding the provisions of N.J.S.2C:43-3, by a fine of not more than \$50,000.00, or both; and if a corporation by a fine of not more than \$100,000.00. Each day during which the violation continues constitutes an additional, separate and distinct offense.

b. Any person who shall violate any provision of [this act] P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L. . c. (C.) (pending in the Legislature as this bill) or any rule, regulation or administrative order adopted or issued thereunder) pursuant thereto, including an interdistrict, intradistrict or interstate waste flow order issued in conjunction with the Department of Environmental Protection, or under any applicable provision of Title 48 of the Revised Statutes, or who shall engage in the solid waste collection business or solid waste disposal business without having been issued a certificate of public convenience and necessity, shall be liable to a penalty of not more than \$10,000.00 for a first offense, not more than \$25,000.00 for a second offense and not more than \$50,000.00 for a third and every subsequent

offense. Each day during which the violation continues constitutes an additional, separate and distinct offense. The penalties herein provided shall be enforced by summary proceedings instituted by the board under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and the municipal courts shall all have jurisdiction to enforce "the penalty enforcement law" in connection with this act.

c. Whenever it shall appear to the Board, a municipality, local board of health, or county health department, as the case may be, that any person has violated, intends to violate, or will violate any provision of [this act] P.L. 1970, c. 40 (C. 48:13A-1 et seq.) or P.L. . . . c. (C. . . .) (pending in the Legislature as this bill) or any rule, regulation or administrative order [duly promulgated hereunder] adopted or issued pursuant thereto, or under any applicable provision of Title 48 of the Revised Statutes, the Board, the municipality, local board of health or county health department may institute a civil action in the Superior Court for injunctive relief and for such other relief as may be appropriate in the circumstances, and the [said] court may proceed in any such action in a summary manner.

Notwithstanding the provisions of any other law, or any rule or regulation adopted pursuant thereto to the contrary, all penalties recovered pursuant to actions brought by the Board under this section shall be paid to the "Solid Waste Enforcement Fund" established pursuant to section 21 of P.L. . . . c. (C. . . .) (pending in the Legislature as this bill). If a money judgment is rendered against a defendant pursuant to subsections a. or b. of this section, the payment made to the court shall be remitted to the fund.

(cf: P.L. 1989, c. 118, s. 1)

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) merge or consolidate its property, including customer lists, with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal pursuant to the provisions of P.L. 1970, c. 39 (C. 13:1E-1 et seq.), P.L. 1970, c. 40 (C. 48:13A-1 et seq.), P.L. , c. (C.) (pending in the Legislature as this bill) or any other act.

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

(1) The board shall promptly review all notices filed pursuant to this subsection. The board may, within 30 days of receipt of a

notice of intent, request that the solid waste collector submit additional information to assist in its review if it deems that such information is necessary. If no such request is made, the transaction shall be deemed to have been approved. In the event that additional information is requested, the board shall outline, in writing, why it deems such information necessary to make an informed decision on the impact of the transaction on effective competition.

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

(3) The board shall approve a transaction unless it makes a determination pursuant to the provisions of section 19 of P.L. c. (C.) (pending in the Legislature as this bill) that the proposed sale, lease, mortgage, disposition, encumbrance, merger or consolidation would result in a lack of effective competition.

The Board of Public Utilities shall prescribe and provide upon request all necessary forms for the implementation of the notification requirements of this subsection.

a. (1) Any solid waste collector may, without the approval of the board, purchase, finance or lease any equipment, including collection or haulage vehicles.

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

As used in this section, "business concern" means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization.

(cf: P.L.1985, c.232, s.1)

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

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

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

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

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

The provisions of this factl section shall not apply to any public

utility operating, managing or controlling a railroad or a railway express which is subject to the rules and regulations from time to time issued by the Interstate Commerce Commission.

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

~~The provisions of this section shall not apply to any solid waste collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3). (cf: P.L.1985, c.232, s.2)~~

37. Section 2 of P.L.1981, c.438 (C.13:1E-9.1) is amended to read as follows:

2. [a.] The provisions of any law to the contrary notwithstanding, the owner or operator of any sanitary landfill facility may collect any fee imposed pursuant to section 9 of P.L.1970, c.39 (C.13:1E-9) as a surcharge on any tariff established pursuant to law for the solid waste disposal operations of the facility.

[b. The Board of Public Utilities shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection operations by an amount equal to the total increase in the relevant solid waste disposal tariff pursuant to subsection a. of this section. In issuing this order, the board shall not be bound to find a rate base under section 31 of P.L.1982, c.198 (C.48:2-21.2).]

(cf: P.L.1981, c.438, s.2)

38. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to read as follows:

18. Any solid waste facility constructed, acquired or operated pursuant to the provisions of [this amendatory and supplementary act] ~~P.L.1970, c.39 (C.13:1E-1 et seq.)~~ shall be deemed a public utility and shall be subject to such rules and regulations as may be adopted by the Board of Public [Utility Commissioners] Utilities in accordance with the provisions of the "Solid Waste Utility Control Act [of 1970]" (P.L.1970, c.40, C.48:13A-1 et seq.) and P.L. , c. (C.) (pending in the Legislature as this bill).

(cf: P.L.1975, c.326, s.18)

39. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to read as follows:

19. a. Any municipality within which a sanitary landfill facility is located pursuant to an adopted and approved district solid waste management plan shall be entitled to an annual economic benefit not less than the equivalent of \$1.00 per ton of solids on all solid waste accepted for disposal at the sanitary landfill facility during the previous calendar year as determined by the department.

The owner or operator of the sanitary landfill facility shall annually pay to the relevant municipality the full amount due under this subsection and each relevant municipality is empowered to anticipate this amount for the purposes of

preparing its annual budget. For the purposes of calculating the payments, the owner or operator of the sanitary landfill facility may, subject to the prior agreement of the relevant municipality and the approval of the Board of Public Utilities, provide the municipality with any of the following benefits in consideration for the use of land within its municipal boundaries as the location of a sanitary landfill facility:

(1) The receipt of annual sums of money in lieu of taxes on the land used for the sanitary landfill facility;

(2) The exemption from all fees and charges for the disposal of solid waste generated within its boundaries;

(3) The receipt of a lump sum cash payment; or

(4) Any combination thereof.

b. Every owner or operator of a sanitary landfill facility required to make annual payments to a municipality pursuant to subsection a. of this section may petition the Board of Public Utilities for an increase in its tariff which reflects these payments. The board, within 60 days of the receipt of the petition, shall issue an appropriate order that these payments shall be passed along to the users of the sanitary landfill facility as an automatic surcharge on any tariff filed with, and recorded by, the board for the solid waste disposal operations of the facility.

c. [The board, within 60 days of the computation of any increase in a solid waste disposal tariff pursuant to subsection b. of this section, shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection by an amount equal to the total amount of the increase in the relevant solid waste disposal tariff calculated pursuant to subsection b. of this section.

d.] In issuing any order required by this section, the Board of Public Utilities shall be exempt from the provisions of R.S.48:2-21.

(cf: P.L.1985, c.38, s.38)

40. Section 2 of P.L.1987, c.449 (C.13:1E-28.1) is amended to read as follows:

2. a. Any municipality within which a transfer station is located pursuant to an adopted and approved district solid waste management plan shall be entitled to an annual economic benefit to be paid or adjusted not less than quarterly in an amount established by agreement with the owner or operator of the transfer station or by order of the Board of Public Utilities, but not less than the equivalent of \$0.50 per ton of all solid waste accepted for transfer at the transfer station during the 1987 calendar year and each year thereafter.

The owner or operator of the transfer station shall, not less frequently than quarterly, pay to the relevant municipality the full amount due under this subsection and each relevant municipality is empowered to anticipate this amount for the purposes of preparing its annual budget. For the purposes of

calculating the payments, the owner or operator of the transfer station may, subject to the prior agreement of the relevant municipality and the approval of the Board of Public Utilities, provide the municipality with any of the following benefits in consideration for the use of land within its municipal boundaries as the location of a transfer station:

(1) The receipt of quarterly payments of annual sums of money in lieu of taxes on the land used for the transfer station;

(2) The exemption from all fees and charges for the acceptance for transfer of solid waste generated within its boundaries;

(3) The receipt of quarterly lump sum cash payments; or

(4) Any combination thereof.

b. Every owner or operator of a transfer station required to make payments not less frequently than quarterly to a municipality pursuant to subsection a. of this section may petition the Board of Public Utilities for an increase in its tariff which reflects these payments. The board, within 60 days of the receipt of the petition, shall issue an order that these payments shall be passed along to the users of the transfer station as an automatic surcharge on any tariff filed with, and recorded by, the board for the solid waste disposal operations of the transfer station.

c. [The board, within 60 days of the computation of any increase in a solid waste disposal tariff for a transfer station pursuant to subsection b. of this section, shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collectors using the transfer station by an amount equal to the total amount of the increase in the relevant solid waste disposal tariff calculated pursuant to subsection b. of this section.

d.] In issuing any order required by this section, the Board of Public Utilities shall be exempt from the provisions of R.S.48:2-21.

(cf: P.L.1990, c.54, s.1)

41. Section 7 of P.L.1981, c.278 (C.13:1E-98) is amended to read as follows:

7. [a.] The provisions of any law to the contrary notwithstanding, the owner or operator of any solid waste facility may collect the tax imposed pursuant to section 4 of P.L.1981, c.278 (C.13:1E-95) as a surcharge on any tariff established pursuant to law for the solid waste disposal operations of the facility.

b. The Board of Public Utilities shall, within 90 days of the effective date of P.L.1987, c.102 (C.13:1E-99, 11 et al.), issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection operations by an amount equal to the total increase in the relevant solid waste disposal tariff pursuant to subsection a. of this section. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.]

(cf: P.L.1987, c.102, s.38)

42. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended to read as follows:

40. a. Any person engaged in the business of solid waste collection or solid waste disposal in accordance with the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), P.L. . . . (C. . . .) (pending in the Legislature as this bill) or any other act may engage in recycling or otherwise provide recycling services in this State.

b. [Notwithstanding the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) or any other law, the] The Board of Public Utilities shall not have jurisdiction over charges or rates for recycling or services provided by persons engaging in the business of recycling or otherwise providing recycling services in this State. [The revenues generated by persons engaging in the business of recycling or otherwise providing recycling services shall not be included within the computation of current or adjusted tariffs established pursuant to law for solid waste collection.]

(cf: P.L.1987, c.102, s.40)

43. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to read as follows:

13. a. The provisions of any law to the contrary notwithstanding, the owner or operator of any sanitary landfill facility may collect the tax imposed pursuant to section 5 of P.L.1981, c.306 (C.13:1E-104), and the escrow account payments required by section 10 of P.L.1981, c.306 (C.13:1E-109), [this supplementary act] as a surcharge on any tariff established pursuant to law for the solid waste disposal operations of the facility.

b. The Board of Public Utilities may direct the owner or operator of a sanitary landfill facility to reduce the rate of payments to an escrow account required by section 10 [hereof] of P.L.1981, c.306 (C.13:1E-109), but only to the extent that:

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

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

c. The Board of Public Utilities shall, within 60 days of the effective date of this supplementary act, issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection operations by an amount equal to the total increase in the relevant solid waste disposal tariff pursuant to subsection a. of this section. In issuing this order, the board shall not be bound to find a rate base under the provisions of section 31 of P.L.1982, c.198 (C.48:2-21.2).]

(cf: P.L.1981, c.306, s.13)

44. Section 3 of P.L.1983, c.03 (C.13:1E-110) is amended to read as follows:

3. [a.] Any solid waste facility required to install scales pursuant to this act may petition the Board of Public Utilities for an increase in its tariff which reflects the costs reasonably incurred by the facility in complying with this act. The board, within 60 days of the receipt of such a petition, shall determine the extent to which these costs shall be passed along to the users of the solid waste facility as an automatic surcharge on any tariff filed with, and recorded by, the board for the operation of the solid waste facility.

[b. The board, within 60 days of the computation of any increase in a solid waste disposal tariff pursuant to subsection a. of this section, shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection by an amount equal to the total amount of the increase in the relevant solid waste disposal tariff calculated pursuant to subsection a. of this section. In issuing this order, the board shall be exempt from the provisions of section 31 of P.L.1962, c.198 (C.48:2-21.2).

c. For the purposes of this act, all municipal, county, and State contracts for solid waste collection and disposal shall be deemed to be tariffs for solid waste collection, and shall be subject to adjustment pursuant to the terms of this act.]

(cf: P.L.1983; c.93, s.3)

45. Section 9 of P.L.1985, c.38 (C.13:1E-144) is amended to read as follows:

9. [a.] Notwithstanding the provisions of any law to the contrary, the owner or operator of a sanitary landfill facility may collect the taxes levied and imposed pursuant to [this amendatory and supplementary act] section 3 of P.L.1985, c.38 (C.13:1E-138) by imposing an automatic surcharge on any tariff established pursuant to law for the solid waste disposal operations of the sanitary landfill facility.

[b. For the purposes of this amendatory and supplementary act, all municipal, county, and State contracts for solid waste collection and disposal shall be considered tariffs for solid waste collection, and shall be subject to any adjustment of tariffs resulting from the provisions of this amendatory and supplementary act.]

(cf: P.L.1985, c.38, s.9)

46. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to read as follows:

6. Any solid waste [collection system or solid waste treatment or disposal] facilities owned or operated by a county improvement authority pursuant to the provisions of this amendatory and supplementary act, shall be deemed a public utility and shall be subject to such rules and regulations as may be adopted by the Board of Public [Utility Commissioners] Utilities in accordance with the provisions of the "Solid Waste Utility Control Act [of 1970]" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement authority's application to operate any solid waste facility shall

be considered at a public hearing by the Board of Public [Utility Commissioners] Utilities.

(cf: P.L.1973, c.330, s.6)

47. R.S.40:66-4 is amended to read as follows:

40:66-4. a. The governing body may, if it deem it more advantageous, contract with any person for the cleaning of the streets, or the collection or disposal of solid waste. Before making any such contract or contracts the governing body shall first adopt specifications for the doing of the work in a sanitary and inoffensive manner, and any]. ~~Any specifications adopted by the governing body for the collection or disposal of solid waste shall conform to the uniform bid specifications for municipal solid waste collection contracts established pursuant to section 22 of P.L. . c. (C.) (pending in the Legislature as this bill). Any such contract or contracts, the total amount of which exceeds in the fiscal year the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), shall be entered into and made only after bids shall have been advertised therefor, and awarded in the manner provided in the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq). [The bidder or bidders to whom the contract or contracts shall be awarded shall give satisfactory bond or other security for the faithful performance of the work. The contract shall include and in all respects conform to the specifications adopted for the doing of the work.]~~

b. Whenever the governing body adopts an ordinance to provide for the collection or disposal of solid waste within its municipal boundaries by imposing solid waste charges based on the number of solid waste containers processed per household pursuant to subsection b. of R.S.40:66-5, on or after the first day of the 13th month following the effective date of that ordinance, the governing body may request the relevant solid waste collector [or solid waste transporter] to whom a multi-year contract has been awarded to renegotiate the contract to reflect any reduction in the annual volume of solid waste collected [or transported] achieved as a result of the ordinance.

(cf: P.L.1989; c.244, s.4)

48. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to read as follows:

13. Specifications. Any specifications for an acquisition under this act, whether by purchase, contract or agreement, shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the purchase, contract or agreement is made; or

(b) Require that any bidder be a resident of, or that his place of business be located in, the county or municipality in which the purchase will be made or the contract or agreement performed, unless the physical proximity of the bidder is requisite to the

efficient and economical purchase or performance of the contract or agreement; except that no specification for a contract for the collection and disposal of municipal solid waste shall require any bidder to be a resident of, or that his place of business be located in, the county or municipality in which the contract will be performed; or

(c) Discriminate on the basis of race, religion, sex, national origin; or

(d) Require, with regard to any purchase, contract or agreement, the furnishing of any "brand name," but may in all cases require "brand name or equivalent," except that if the materials to be supplied or purchased are patented or copyrighted, such materials or supplies may be purchased by specification in any case in which the ordinance or resolution authorizing the purchase, contract, sale or agreement so indicates, and the special need for such patented or copyrighted materials or supplies is directly related to the performance, completion or undertaking of the purpose for which the purchase, contract or agreement is made; or

(e) Fail to include any option for renewal, extension, or release which the contracting unit may intend to exercise or require; or any terms and conditions necessary for the performance of any extra work; or fail to disclose any matter necessary to the substantial performance of the contract or agreement.

Any specification adopted by the governing body, which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect and subject purchase, contract or agreement shall be readvertised, and the original purchase, contract or agreement shall be set aside by the governing body.

Any specification adopted by the governing body for a contract for the collection and disposal of municipal solid waste shall conform to the uniform bid specifications for municipal solid waste collection contracts established pursuant to section 22 of P.L. c. (C.) (pending in the Legislature as this bill).

(cf: P.L. 1971, c. 198, s. 13)

49. Section 15 of P.L. 1971, c. 198 (C. 40A:11-15) is amended to read as follows:

15. Duration of certain contracts. All purchases, contracts or agreements for the performing of work or the furnishing of materials, supplies or services shall be made for a period not to exceed 12 consecutive months, except that contracts or agreements may be entered into for longer periods of time as follows:

(1) Supplying of:

(a) Fuel for heating purposes, for any term not exceeding in the aggregate, two years;

(b) Fuel or oil for use of airplanes, automobiles, motor vehicles or equipment for any term not exceeding in the aggregate, two

years;

(c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;

(2) (Deleted by amendment, P.L. 1977, c. 63.)

(3) The collection and disposal of [garbage and refuse] municipal solid waste, [and] or the [barging and] disposal of sewage sludge, for any term not exceeding in the aggregate, five years;

(4) The [recycling of solid waste, including the] collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a solid waste management plan approved pursuant to P.L. 1970, c. 39 (C. 13:1E-1 et seq.), and with the approval of the Division of Local Government Services and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L. 1971, c. 198 (C. 40A:11-5);

(6) Data processing service, for any term of not more than three years;

(8) Insurance, for any term of not more than three years;

(7) Leasing or servicing of automobiles, motor vehicles, machinery and equipment of every nature and kind, for a period not to exceed three years; provided, however, such contracts shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a telephone company which is subject to the jurisdiction of the Board of Public Utilities for a term not exceeding five years;

(9) Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

(10) The providing of food services for any term not exceeding

three years;

(11) On-site inspections undertaken by private agencies pursuant to the "State Uniform Construction Code Act" (P.L.1975, c.217; C.52:27D-119 et seq.) for any term of not more than three years;

(12) The performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 10 years; provided, however, that such contracts shall be entered into only subject to and in accordance with rules and regulations promulgated by the Department of Energy establishing a methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of materials or supplies for the purpose of elevator maintenance for any term not exceeding three years;

(14) Leasing or servicing of electronic communications equipment for a period not to exceed five years; provided, however, such contract shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(15) Leasing of motor vehicles, machinery and other equipment primarily used to fight fires, for a term not to exceed seven years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:20-1 et seq.). For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures,

interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

(17) The provision of solid waste disposal services by a resource recovery facility, the furnishing of products of a resource recovery facility, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the waste products resulting from the operation of a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, or the design, financing, construction, operation or maintenance of a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection; and when the facility is in conformance with a solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the facility is in conformance with a solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or

any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et seq.). For the purposes of this subsection, "wastewater treatment services" means any service provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of materials or services for the purpose of lighting public streets, for a term not to exceed five years, provided that the rates, fares, tariffs or charges for the supplying of electricity for that purpose are approved by the Board of Public Utilities;

(21) In the case of a contracting unit which is a county or municipality, the provision of emergency medical services by a hospital to residents of a municipality or county as appropriate for a term not to exceed five years.

All multi-year leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Public Utilities, contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

(cf: P.L.1989, c.169, s.2)

50. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to read as follows:

23. Advertisements for bids; bids; general requirements. All advertisements for bids shall be published in a legal newspaper sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than 10 days prior to such date; ~~except that all advertisements for bids on contracts for the collection and disposal of municipal solid waste shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but not less than 60 days prior to that date.~~

The advertisement shall designate the manner of submitting and the method of receiving the bids and the time and place at which the bids will be received. If the published specifications provide for receipt of bids by mail, those bids which are mailed to the contracting unit shall be sealed and shall only be opened for examination at such time and place as all bids received are unsealed and announced. At such time and place the contracting agent of the contracting unit shall publicly receive the bids, and thereupon immediately proceed to unseal them and publicly announce the contents, which announcement shall be made in the presence of any parties bidding or their agents, who are then and there present, and shall also make proper record of the prices and terms, upon the minutes of the governing body, if the award is to be made by the governing body of the contracting unit, or in a book kept for that purpose, if the award is to be made by other than the governing body, and in such latter case it shall be reported to the governing body of the contracting unit for its action thereon, when such action thereon is required. No bids shall be received after the time designated in the advertisement.

Notice of revisions or addenda to advertisements or bid documents relating to bids shall, no later than five days, Saturdays, Sundays and holidays excepted, prior to the date for acceptance of bids, be published in a legal newspaper and be made available by notification in writing by certified mail to any person who has submitted a bid or who has received a bid package; ~~except that notice of revisions or addenda to advertisements or bid documents relating to bids on contracts for the collection and disposal of municipal solid waste shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, no later than 6 days, Saturdays, Sundays and holidays excepted, prior to the date for acceptance of bids.~~

Failure of the contracting unit to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the contracting unit from accepting the bids and require the readvertisement for bids.

(cf: P.L.1985, c.429, s.1)

51. Section 10 of P.L.1985, c.38 (C.13:1E-146) is repealed.

52. This act shall take effect on the ¹[45th] ¹90th¹ day after enactment, except that ¹[sections 15 and 20] ¹section 15¹ shall take effect 48 months thereafter. Sections 5 through 10 and sections 12, 13 and 23 of this act shall expire on the effective date of ¹[sections 15 and 20] ¹section 15¹.

WASTE MANAGEMENT

The "Solid Waste Collection Regulatory Reform Act."

ASSEMBLY, No. 3136

STATE OF NEW JERSEY

INTRODUCED MARCH 1, 1990

By Assemblymen McENROE and DUCH

1 AN ACT concerning the deregulation of the solid waste collection
2 industry, and amending, supplementing and repealing parts of
3 the statutory law.

4

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

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

9 2. The Legislature finds and declares that the collection,
10 transportation and disposal [and utilization] of solid waste [is a
11 matter] are matters of grave concern to all citizens and [is an
12 activity] are activities thoroughly affected with the public
13 interest; that the health, safety and welfare of the people of this
14 State require efficient and reasonable solid waste collection,
15 transportation and disposal [and utilization service] services; that
16 [such service] efficient solid waste collection and transportation
17 services at just and reasonable rates will more likely be achieved
18 if the [Public Utility Commission] solid waste collection industry
19 is under the supervision of, but not subject to economic
20 regulation by, the Board of Public Utilities; that safe, adequate
21 and proper solid waste disposal services at just and reasonable
22 rates cannot be achieved unless the Board of Public Utilities is
23 charged with the duty of setting and enforcing standards and
24 rates for regulating the economic aspects of solid waste
25 [collection,] disposal [and utilization service]; and that the
26 exercise of any power herein provided for shall be deemed to be
27 in the public interest and for a public purpose.

28 The Legislature further finds and declares that the Legislature
29 through enactment of P.L.1983, c.392 (C.13:1E-126 et seq.) has
30 established a licensing system which is designed to prevent
31 persons with criminal backgrounds from engaging in the solid
32 waste collection business, thereby promoting free and open
33 competition within the solid waste collection industry; and that
34 the economic deregulation of the solid waste collection industry
35 can be achieved without compromising the State's role in
36 protecting the public interest.

37 The Legislature therefore determines that it is necessary to
38 provide for the economic deregulation of the solid waste
39 collection industry while at the same time maintaining Board of

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 Public Utilities supervision over the solid waste collection
2 industry.

3 (cf: P.L.1970, c.40, s.2)

4 2. Section 3 of P.L.1970, c.40 (C.48:13A-3) is amended to read
5 as follows:

6 3. As used in this act:

7 a. "Solid waste" means garbage, refuse, and other discarded
8 materials resulting from industrial, commercial and agricultural
9 operations, and from domestic and community activities, and
10 shall include all other waste materials including liquids disposed
11 of incident thereto, except it shall not include solid animal and
12 vegetable waste collected by swine producers licensed by the
13 State Department of Agriculture to collect, prepare and feed
14 such wastes to swine on their own farms.

15 b. "Solid waste collection" means the activity related to
16 pickup and transportation of solid waste from its source or
17 location to [a disposal site] an authorized solid waste facility, but
18 does not include activity related to the pickup, transportation or
19 unloading of septic waste.

20 c. "Solid waste collector" means a person engaged in the
21 collection or transportation of solid waste and holding a
22 certificate of public convenience and necessity pursuant to
23 sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

24 [c.] d. "Solid waste disposal" means the storage, treatment,
25 utilization, processing, or final disposal of solid waste.

26 [d.] e. "Septic waste" means pumpings from septic tanks and
27 cesspools, but shall not include wastes from a sewage treatment
28 plant.

29 [e.] f. "Solid waste container" means a receptacle, container
30 or bag suitable for the depositing of solid waste.

31 g. "Solid waste collection services" means the services
32 provided by persons engaging in the business of solid waste
33 collection.

34 h. "Solid waste disposal services" means the services provided
35 by persons engaging in the business of solid waste disposal.

36 i. "Solid waste facilities" mean and include the plants,
37 structures and other real and personal property acquired,
38 constructed or operated or to be acquired, constructed or
39 operated by any person pursuant to the provisions of P.L.1970
40 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.)
41 or any other act, including transfer stations, incinerators,
42 resource recovery facilities, sanitary landfill facilities or other
43 plants for the disposal of solid waste, and all vehicles, equipment
44 and other real and personal property and rights therein and
45 appurtenances necessary or useful and convenient for the
46 collection or disposal of solid waste in a sanitary manner.

47 j. "Solid waste transporter" means a person engaged in the
48 transportation of solid waste and holding a certificate of public
49 convenience and necessity pursuant to sections 7 and 10 of

1 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

2 (cf: P.L.1989, c.244, s.7)

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

5 5. a. The Board of Public [Utility Commissioners] Utilities
6 shall, after hearing, by order in writing, [make] adopt appropriate
7 rules, regulations [and] or administrative orders for the regulation
8 of rates and public utility aspects of the [solid waste collection
9 industry and the] solid waste disposal industry.

10 b. The Board of Public Utilities shall, after hearing, by order
11 in writing, adopt appropriate rules, regulations or administrative
12 orders for the supervision of the solid waste collection industry.

13 (cf: P.L.1970, c.40, s.5)

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

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

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

32 (1) No certificate shall be issued for solid waste collection,
33 transportation or disposal until the proposed solid waste
34 collector, solid waste transporter or person proposing to engage
35 in solid waste disposal, as the case may be, is able to furnish
36 proof of financial responsibility.

37 (2) No certificate shall be issued for solid waste collection [or
38 solid waste] , transportation or disposal until the proposed
39 [collection or disposal system] solid waste collector, solid waste
40 transporter or person proposing to engage in solid waste disposal,
41 as the case may be, has been registered with and approved by the
42 [State] Department of Environmental Protection as provided by
43 section 5 of P.L.1970, c.39 (C.13:1E-5).

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

49 b. Every solid waste collector and solid waste transporter

1 holding a certificate of public convenience and necessity issued
2 by the Board of Public Utilities shall pay an annual renewal fee of
3 \$100.00 to cover the costs of supervising the solid waste
4 collection and transportation industry. The fee imposed pursuant
5 to this subsection shall be in addition to the annual assessment
6 made by the board pursuant to P.L.1968, c.173 (C.48:2-59 et seq.).

7 c. Notwithstanding the provisions of subsection a. of this
8 section, the board shall not have jurisdiction over rates or
9 charges for solid waste collection.

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

20 [c.] e. Notwithstanding the provisions of subsection [b.] d. of
21 this section, the board shall not have jurisdiction over rates or
22 charges for the transportation of regulated medical waste.

23 (cf: P.L.1989, c.34, s.30)

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

26 8. a. The board, upon complaint or its own initiative, after
27 hearing, may direct any person engaging in the [solid waste
28 collection business or the] solid waste disposal business to furnish
29 proof that the charges or rates to be received for [such service]
30 solid waste disposal services do not exceed just and reasonable
31 rates or charges for such service.

32 b. [(1)] Should the board find that the rates or charges for solid
33 waste disposal services are excessive then it may order the
34 person charging such excessive rates or charges to make an
35 adjustment in the tariff or contract to a sum which shall result in
36 just and reasonable rates or charges.

37 [(2)] Should the board find, subsequent to the issuance of any
38 order pursuant to subsection c. of this subsection, that the rates
39 or charges received for the collection of solid waste contained
40 within a contract entered into prior to the effective date of that
41 order require adjustment, then it may order the person charging
42 these rates or charges to make an adjustment in the contract to a
43 sum which shall result in just and reasonable rates or charges. In
44 issuing this order, the board shall be exempt from the provisions
45 of R.S.48:2-21.

46 c. (1) Whenever the governing body of a municipality adopts an
47 ordinance to provide for the collection or disposal of solid waste
48 within its municipal boundaries by imposing solid waste charges
49 based on the number of solid waste containers processed per

1 household pursuant to subsection b. of R.S.40:66-5, the governing
2 body shall transmit to the board, by certified mail and within 90
3 days of the effective date of the ordinance, a copy of the
4 proposed rate schedule and the contract awarded pursuant to
5 subsection a. of R.S.40:66-4. The board, within 60 days of receipt
6 of the proposed rate schedule and contract and if requested to do
7 so by the municipality or the relevant solid waste collector or
8 solid waste transporter, as the case may be, may review these
9 documents to determine whether the solid waste charges are
10 equitable and to accept, reject or modify the rate schedule.

11 (2) If the board finds the solid waste charges to be equitable,
12 the board shall accept the rate schedule and contract and issue an
13 appropriate order therefor. In issuing this order, the board shall
14 be exempt from the provisions of R.S.48:2-21.

15 d. (1) The board may issue an appropriate order establishing an
16 equitable rate schedule based on the number of solid waste
17 containers processed per household for the solid waste collection
18 tariffs of persons engaging in private solid waste collection or
19 transportation services in any municipality in which solid waste
20 collection or transportation services are contracted for and
21 provided on an individual household basis. In issuing this order,
22 the board shall be exempt from the provisions of R.S.48:2-21.

23 (2) Any person engaged in private solid waste collection or
24 transportation services in this State and utilizing a rate schedule
25 based on the number of solid waste containers processed per
26 household as provided in this subsection may provide customers
27 with the opportunity to purchase, on a prepaid basis, one or more
28 solid waste containers, or a voucher or sticker therefor, to
29 facilitate the provision of solid waste collection services on a per
30 container basis.]

31 (cf: P.L.1989, c.244, s.8)

32 7. (New section) The provisions of section 1 of P.L.1959, c.43
33 (C.48:2-56) or any rules or regulations adopted pursuant thereto
34 to the contrary notwithstanding, the Board of Public Utilities
35 may charge and collect a filing fee of up to \$500.00 per
36 application from applicants seeking to obtain a certificate of
37 public convenience and necessity pursuant to sections 7 and 10 of
38 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

39 8. (New section) After January 1, 1991, the rates or charges
40 imposed by solid waste collectors or solid waste transporters, or
41 fees, rates or charges for solid waste collection services provided
42 by persons engaged in the business of solid waste collection
43 within this State shall not be subject to the regulation of the
44 Board of Public Utilities.

45 9. (New section) a. The board may compel any solid waste
46 collector or solid waste transporter to furnish and file with the
47 board any records, including, but not limited to, manifests, origin
48 and destination forms, and any other documents related to solid
49 waste collection, transportation or disposal activities conducted

1 within this State, at any time or place in order to determine
2 compliance with the provisions of P.L.1970, c.40 (C.48:13A-1 et
3 seq.) or any rules and regulations adopted pursuant thereto,
4 including any interdistrict, intradistrict and interstate waste flow
5 order issued in conjunction with the Department of
6 Environmental Protection, and to enable the board to administer
7 its duties as prescribed by law and this act.

8 b. Should any solid waste collector or solid waste transporter
9 fail or refuse to comply with any provision of this section, the
10 board may revoke or suspend the certificate of public
11 convenience and necessity issued to that person.

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

14 9. a. Every person engaged in the business of solid waste
15 collection, transportation or [solid waste] disposal shall furnish
16 and file with the board, in connection with each contract or
17 agreement entered into by him for the provision of [such service]
18 solid waste collection services or solid waste disposal services, a
19 performance bond in such amount as may be required by the
20 board in rules or regulations [promulgated] adopted by the board.

21 b. Should any person engaged in the business of solid waste
22 collection [business or the solid waste disposal business] or
23 transportation fail or refuse to complete, execute or perform any
24 contract or agreement obligating such person to provide [such
25 service] solid waste collection services, the board may order any
26 person engaged in the business of solid waste collection [business
27 or the solid waste disposal business] or transportation to extend
28 [his collection or disposal service] solid waste collection services
29 into any area where [service] the collection or transportation of
30 solid waste has been discontinued [in accordance with the
31 provisions of R.S.48:2-27, and the board shall fix just and
32 reasonable rates and charges for such service in the extended
33 area].

34 c. Should any person engaged in the solid waste disposal
35 business fail or refuse to complete, execute or perform any
36 contract or agreement obligating such person to provide solid
37 waste disposal services, the board may order any person engaged
38 in the solid waste disposal business to extend his disposal service
39 into any area where solid waste disposal service has been
40 discontinued in accordance with the provisions of R.S.48:2-27,
41 and the board shall fix just and reasonable rates and charges for
42 solid waste disposal service in the extended area.

43 (cf: P.L.1970, c.40, s.9)

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

46 10. The board, on its own initiative or upon complaint by the
47 [State] Department of Environmental Protection shall revoke[,] or
48 suspend [or grant a temporary continuance for up to 1 year of]
49 the certificate of public convenience and necessity issued to any

1 person engaged in the solid waste collection [business or the solid
2 waste] , transportation or disposal business upon the finding that
3 such person:

4 a. Has violated any provision of this act or any rule, regulation
5 or administrative order [promulgated] adopted or issued
6 hereunder; or

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

9 c. Has refused or failed to comply with any lawful order of the
10 board;[or]

11 d. Has had its registration revoked by the [State] Department
12 of Environmental Protection; or

13 e. Has been denied approval of a license under the provisions
14 of P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license
15 revoked by the Department of Environmental Protection, as the
16 case may be.

17 (cf: P.L.1975, c.326, s.32)

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

20 11. a. No person shall monopolize, or attempt to monopolize,
21 or combine or conspire with any other person to monopolize,
22 trade or commerce in any relevant market, located in whole or in
23 part in this State, for the solid waste collection [business or the
24 solid waste], transportation or disposal business.

25 b. Any person who shall be injured in his business or property
26 by reason of a violation of the provisions of subsection a. of this
27 section may sue therefor and shall recover threefold the damages
28 sustained by him, together with reasonable attorney's fees and
29 the costs of the suit. The State and any of its political
30 subdivisions and public agencies shall be deemed a person within
31 the meaning of this act. Any action brought pursuant to this
32 subsection shall be barred unless commenced within 4 years after
33 the cause of action accrued.

34 c. No municipality may require [a public utility] any person
35 lawfully engaged in the solid waste collection [business or the
36 solid waste], transportation or disposal business to submit to any
37 prequalification test before permitting [it] that person to bid on a
38 contract or before the employment of a solid waste collection or
39 a solid waste disposal contractor.

40 (cf: P.L.1970, c.40, s.11)

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

43 12. a. The board may compel the attendance of witnesses and
44 the production of tariffs, contracts, papers, books, accounts and
45 all the documents necessary to enable the board to administer its
46 duties as prescribed by law and this act.

47 b. The board may compel any person engaged in the business of
48 solid waste disposal or otherwise providing solid waste disposal
49 services in this State to furnish and file with the board any annual

1 reports, federal or State tax returns, contracts, papers, books,
2 accounts or other documents as may be necessary to enable the
3 board to administer its duties as prescribed by law and this act.

4 c. Should any person engaged in the business of solid waste
5 disposal or otherwise providing solid waste disposal services fail
6 or refuse to comply with any provision of this section, or any
7 applicable provision of Title 48 of the Revised Statutes, the board
8 may revoke or suspend the certificate of public convenience and
9 necessity issued to that person.

10 (cf: P.L.1970, c.40, s.12)

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

13 13. a. Any person or any officer or agent thereof who shall
14 knowingly violate any of the provisions of this act or aid or advise
15 in such violation, or who, as principal, manager, director, agent,
16 servant or employee knowingly does any act comprising a part of
17 such violation, is guilty of a [misdemeanor] crime of the fourth
18 degree and shall be punished by imprisonment for not more than
19 [three years] 18 months or, notwithstanding the provisions of
20 N.J.S.2C:43-3, by a fine of not more than \$50,000.00, or both;
21 and if a corporation by a fine of not more than \$100,000.00. Each
22 day during which the violation continues constitutes an
23 additional, separate and distinct offense.

24 b. Any person who shall violate any provision of this act or any
25 rule, regulation or administrative order adopted or issued
26 hereunder, including an interdistrict, intradistrict or interstate
27 waste flow order issued in conjunction with the Department of
28 Environmental Protection, or under any applicable provision of
29 Title 48 of the Revised Statutes, or who shall engage in the
30 business of solid waste collection [business or solid waste],
31 transportation or disposal [business] without having been issued a
32 certificate of public convenience and necessity, shall be liable to
33 a penalty of not more than \$10,000.00 for a first offense, not
34 more than \$25,000.00 for a second offense and not more than
35 \$50,000.00 for a third and every subsequent offense. Each day
36 during which the violation continues constitutes an additional,
37 separate and distinct offense. The penalties herein provided shall
38 be enforced by summary proceedings instituted by the board
39 under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The
40 Superior Court and the municipal courts shall all have jurisdiction
41 to enforce "the penalty enforcement law" in connection with this
42 act.

43 c. Whenever it shall appear to the Board, a municipality, local
44 board of health, or county health department, as the case may be,
45 that any person has violated, intends to violate, or will violate
46 any provision of this act or any rule, regulation or administrative
47 order [duly promulgated] adopted or issued hereunder, or under
48 any applicable provision of Title 48 of the Revised Statutes, the
49 Board, the municipality, local board of health or county health

1 department may institute a civil action in the Superior Court for
2 injunctive relief and for such other relief as may be appropriate
3 in the circumstances, and the [said] court may proceed in any
4 such action in a summary manner.

5 Notwithstanding the provisions of any other law, or any rule or
6 regulation adopted pursuant thereto to the contrary, all penalties
7 recovered pursuant to actions brought by the Board under this
8 section shall be paid to the "Solid Waste Enforcement Fund"
9 established pursuant to section 15 of P.L. , c. (C.)
10 (now before the Legislature as this bill). If a money judgment is
11 rendered against a defendant pursuant to subsections a. or b. of
12 this section, the payment made to the court shall be remitted to
13 the fund.

14 (cf: P.L.1989, c.118, s.1)

15 15. (New section) There is created in the Board of Public
16 Utilities a special nonlapsing fund to be known as the "Solid
17 Waste Enforcement Fund." All monies from penalties collected
18 by the board pursuant to section 13 of P.L.1970, c.40
19 (C.48:13A-12) on and after the effective date of this section shall
20 be deposited in the fund. Unless otherwise specifically provided
21 by law, monies in the fund shall be utilized exclusively by the
22 Division of Solid Waste in the Board of Public Utilities for
23 enforcement and implementation of the provisions of P.L.1970,
24 c.40 (C.48:13A-1 et seq.) and P.L. , c. (C.)(now before
25 the Legislature as this bill).

26 16. R.S.48:3-7 is amended to read as follows:

27 48:3-7. a. No public utility shall, without the approval of the
28 board, sell, lease, mortgage or otherwise dispose of or encumber
29 its property, franchises, privileges or rights, or any part thereof;
30 or merge or consolidate its property, franchises, privileges or
31 rights, or any part thereof, with that of any other public utility.

32 Where, by the proposed sale, lease or other disposition of all or
33 a substantial portion of its property, any franchise or franchises,
34 privileges or rights, or any part thereof or merger or
35 consolidation thereof as set forth herein, it appears that the
36 public utility or a wholly owned subsidiary thereof may be unable
37 to fulfill its obligation to any employees thereof with respect to
38 pension benefits previously enjoyed, whether vested or
39 contingent, the board shall not grant its approval unless the
40 public utility seeking the board's approval for such sale, lease or
41 other disposition assumes such responsibility as will be sufficient
42 to provide that all such obligations to employees will be satisfied
43 as they become due.

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

46 Nothing herein shall prevent the sale, lease or other disposition
47 by any public utility of any of its property in the ordinary course
48 of business, nor require the approval of the board to any grant,
49 conveyance or release of any property or interest therein

1 heretofore made or hereafter to be made by any public utility to
2 the United States, State or any county or municipality or any
3 agency, authority or subdivision thereof, for public use.

4 The approval of the board shall not be required to validate the
5 title of the United States, State or any county or municipality or
6 any agency, authority or subdivision thereof, to any lands or
7 interest therein heretofore condemned or hereafter to be
8 condemned by the United States, State or any county or
9 municipality or any agency, authority or subdivision thereof for
10 public use.

11 b. Notwithstanding any law, rule, regulation or order to the
12 contrary, an autobus public utility regulated by and subject to the
13 provisions of Title 48 of the Revised Statutes may, without the
14 approval of the Department of Transportation, sell, lease,
15 mortgage or otherwise dispose of or encumber its property, or
16 any part thereof, except that approval of the Department of
17 Transportation shall be required for the following:

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

20 (2) a merger or consolidation of its property, franchises,
21 privileges or rights; or

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

23 Notice of the sale, purchase or lease of any autobus or other
24 vehicle subject to regulation under Title 48 of the Revised
25 Statutes shall be provided to the Department of Transportation as
26 the department shall require.

27 c. Any solid waste collector or solid waste transporter subject
28 to the supervision of the Board of Public Utilities pursuant to
29 P.L.1970, c.40 (C.48:13A-1 et seq.) and the provisions of Title 48
30 of the Revised Statutes may, without the approval of the board,
31 sell, purchase, lease, mortgage or otherwise acquire or dispose of
32 any equipment, including collection or haulage vehicles.

33 (cf: P.L.1985, c.232, s.1)

34 17. R.S.48:3-9 is amended to read as follows:

35 48:3-9. No public utility shall, unless it shall have first
36 obtained authority from the board so to do:

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

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

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

49 The provisions of this [act] section shall not apply to any public

1 utility operating, managing or controlling a railroad or a railway
2 express which is subject to the rules and regulations from time to
3 time issued by the Interstate Commerce Commission.

4 The provisions of this section shall not apply to autobus public
5 utilities under the jurisdiction of the Department of
6 Transportation.

7 The provisions of this section shall not apply to any solid waste
8 collector or solid waste transporter subject to the supervision of
9 the Board of Public Utilities pursuant to P.L.1970, c.40
10 (C.48:13A-1 et seq.) and the provisions of Title 48 of the Revised
11 Statutes.

12 (cf: P.L.1985, c.232, s.2)

13 18. Section 2 of P.L.1981, c.438 (C.13:1E-9.1) is amended to
14 read as follows:

15 2. [a.] The provisions of any law to the contrary
16 notwithstanding, the owner or operator of any sanitary landfill
17 facility may collect any fee imposed pursuant to section 9 of
18 P.L.1970, c.39 (C.13:1E-9) as a surcharge on any tariff
19 established pursuant to law for the solid waste disposal operations
20 of the facility.

21 [b. The Board of Public Utilities shall issue an appropriate
22 order increasing current tariffs established pursuant to law for
23 solid waste collection operations by an amount equal to the total
24 increase in the relevant solid waste disposal tariff pursuant to
25 subsection a. of this section. In issuing this order, the board shall
26 not be bound to find a rate base under section 31 of P.L.1962,
27 c.198 (C.48:2-21.2).]

28 (cf: P.L.1981, c.438, s.2)

29 19. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to
30 read as follows:

31 18. Any solid waste facility constructed, acquired or operated
32 pursuant to the provisions of [this amendatory and supplementary
33 act] P.L.1970, c.39 (C.13:1E-1 et seq.) shall be deemed a public
34 utility and shall be subject to such rules and regulations as may
35 be adopted by the Board of Public [Utility Commissioners]
36 Utilities in accordance with the provisions of the "Solid Waste
37 Utility Control Act of 1970" (P.L.1970, c.40, C.48:13A-1 et seq.).

38 (cf: P.L.1975, c.326, s.18)

39 20. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to
40 read as follows:

41 19. a. Any municipality within which a sanitary landfill
42 facility is located pursuant to an adopted and approved district
43 solid waste management plan shall be entitled to an annual
44 economic benefit not less than the equivalent of \$1.00 per ton of
45 solids on all solid waste accepted for disposal at the sanitary
46 landfill facility during the previous calendar year as determined
47 by the department.

48 The owner or operator of the sanitary landfill facility shall
49 annually pay to the relevant municipality the full amount due

1 under this subsection and each relevant municipality is
2 empowered to anticipate this amount for the purposes of
3 preparing its annual budget. For the purposes of calculating the
4 payments, the owner or operator of the sanitary landfill facility
5 may, subject to the prior agreement of the relevant municipality
6 and the approval of the Board of Public Utilities, provide the
7 municipality with any of the following benefits in consideration
8 for the use of land within its municipal boundaries as the location
9 of a sanitary landfill facility:

10 (1) The receipt of annual sums of money in lieu of taxes on the
11 land used for the sanitary landfill facility;

12 (2) The exemption from all fees and charges for the disposal of
13 solid waste generated within its boundaries;

14 (3) The receipt of a lump sum cash payment; or

15 (4) Any combination thereof.

16 b. Every owner or operator of a sanitary landfill facility
17 required to make annual payments to a municipality pursuant to
18 subsection a. of this section may petition the Board of Public
19 Utilities for an increase in its tariff which reflects these
20 payments. The board, within 60 days of the receipt of the
21 petition, shall issue an appropriate order that these payments
22 shall be passed along to the users of the sanitary landfill facility
23 as an automatic surcharge on any tariff filed with, and recorded
24 by, the board for the solid waste disposal operations of the
25 facility.

26 c. [The board, within 60 days of the computation of any
27 increase in a solid waste disposal tariff pursuant to subsection b.
28 of this section, shall issue an appropriate order increasing current
29 tariffs established pursuant to law for solid waste collection by
30 an amount equal to the total amount of the increase in the
31 relevant solid waste disposal tariff calculated pursuant to
32 subsection b. of this section.

33 d.] In issuing any order required by this section, the Board of
34 Public Utilities shall be exempt from the provisions of
35 R.S.48:2-21.

36 (cf: P.L.1985, c.38, s.38)

37 21. Section 7 of P.L.1981, c.278 (C.13:1E-98) is amended to
38 read as follows:

39 7. [a.] The provisions of any law to the contrary
40 notwithstanding, the owner or operator of any solid waste facility
41 may collect the tax imposed pursuant to section 4 of P.L.1981,
42 c.278 (C.13:1E-95) as a surcharge on any tariff established
43 pursuant to law for the solid waste disposal operations of the
44 facility.

45 [b. The Board of Public Utilities shall, within 90 days of the
46 effective date of P.L.1987, c.102 (C.13:1E-99.11 et al.), issue an
47 appropriate order increasing current tariffs established pursuant
48 to law for solid waste collection operations by an amount equal to
49 the total increase in the relevant solid waste disposal tariff

1 pursuant to subsection a. of this section. In issuing this order, the
2 board shall be exempt from the provisions of R.S.48:2-21.]

3 (cf: P.L.1987, c.102, s.38)

4 22. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended
5 to read as follows:

6 40. a. Any person engaged in the business of solid waste
7 collection or solid waste disposal in accordance with the
8 provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) may engage in
9 recycling or otherwise provide recycling services.

10 b. Notwithstanding the provisions of P.L.1970, c.40
11 (C.48:13A-1 et seq.) or any other law, the Board of Public
12 Utilities shall not have jurisdiction over charges or rates for
13 recycling or services provided by persons engaging in the business
14 of recycling or otherwise providing recycling services in this
15 State. [The revenues generated by persons engaging in the
16 business of recycling or otherwise providing recycling services
17 shall not be included within the computation of current or
18 adjusted tariffs established pursuant to law for solid waste
19 collection.]

20 (cf: P.L.1987, c.102, s.40)

21 23. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to
22 read as follows:

23 13. a. The provisions of any law to the contrary
24 notwithstanding, the owner or operator of any sanitary landfill
25 facility may collect the tax imposed pursuant to section 5 of
26 P.L.1981, c.306 (C.13:1E-104), and the escrow account payments
27 required by section 10 of P.L.1981, c.306 (C.13:1E-109), [this
28 supplementary act] as a surcharge on any tariff established
29 pursuant to law for the solid waste disposal operations of the
30 facility.

31 b. The Board of Public Utilities may direct the owner or
32 operator of a sanitary landfill facility to reduce the rate of
33 payments to an escrow account required by section 10 [hereof] of
34 P.L.1981, c.306 (C.13:1E-109), but only to the extent that:

35 (1) The current tariff established pursuant to law for the solid
36 waste disposal operations of the facility specifically allocates a
37 portion thereof for closing costs; and

38 (2) The amount collected for closing costs pursuant to this
39 tariff are deposited, on a monthly basis, in the escrow account
40 for the facility.

41 [c. The Board of Public Utilities shall, within 60 days of the
42 effective date of this supplementary act, issue an appropriate
43 order increasing current tariffs established pursuant to law for
44 solid waste collection operations by an amount equal to the total
45 increase in the relevant solid waste disposal tariff pursuant to
46 subsection a. of this section. In issuing this order, the board shall
47 not be bound to find a rate base under the provisions of section 31
48 of P.L.1962, c.198 (C.48:2-21.2).]

49 (cf: P.L.1981, c.306, s.13)

1 24. Section 3 of P.L.1983, c.93 (C.13:1E-119) is amended to
2 read as follows:

3 3. [a.] Any solid waste facility required to install scales
4 pursuant to this act may petition the Board of Public Utilities for
5 an increase in its tariff which reflects the costs reasonably
6 incurred by the facility in complying with this act. The board,
7 within 60 days of the receipt of such a petition, shall determine
8 the extent to which these costs shall be passed along to the users
9 of the solid waste facility as an automatic surcharge on any tariff
10 ~~filed with, and recorded by, the board for the operation of the~~
11 solid waste facility.

12 [b. The board, within 60 days of the computation of any
13 increase in a solid waste disposal tariff pursuant to subsection a.
14 of this section, shall issue an appropriate order increasing current
15 tariffs established pursuant to law for solid waste collection by
16 an amount equal to the total amount of the increase in the
17 relevant solid waste disposal tariff calculated pursuant to
18 subsection a. of this section. In issuing this order, the board shall
19 be exempt from the provisions of section 31 of P.L.1962, c.198
20 (C.48:2-21.2).

21 c. For the purposes of this act, all municipal, county, and
22 State contracts for solid waste collection and disposal shall be
23 deemed to be tariffs for solid waste collection, and shall be
24 subject to adjustment pursuant to the terms of this act.]
25 (cf: P.L.1983, c.93, s.3)

26 25. Section 9 of P.L.1985, c.38 (C.13:1E-144) is amended to
27 read as follows:

28 9. [a.] Notwithstanding the provisions of any law to the
29 contrary, the owner or operator of a sanitary landfill facility may
30 collect the taxes levied and imposed pursuant to [this amendatory
31 and supplementary act] section 3 of P.L.1985, c.38 (C.13:1E-138)
32 by imposing an automatic surcharge on any tariff established
33 pursuant to law for the solid waste disposal operations of the
34 sanitary landfill facility.

35 [b. For the purposes of this amendatory and supplementary act,
36 all municipal, county, and State contracts for solid waste
37 collection and disposal shall be considered tariffs for solid waste
38 collection, and shall be subject to any adjustment of tariffs
39 resulting from the provisions of this amendatory and
40 supplementary act.]

41 (cf: P.L.1985, c.38, s.9)

42 26. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to
43 read as follows:

44 6. Any solid waste [collection system or solid waste treatment
45 or disposal] facilities operated by a county improvement
46 authority pursuant to the provisions of this amendatory and
47 supplementary act, shall be deemed a public utility and shall be
48 subject to such rules and regulations as may be adopted by the
49 Board of Public [Utility Commissioners] Utilities in accordance

1 with the provisions of the "Solid Waste Utility Control Act of
2 1970" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement
3 authority's application to operate any solid waste facility shall
4 be considered at a public hearing by the Board of Public [Utility
5 Commissioners] Utilities.

6 (cf: P.L.1973, c.330, s.6)

7 27. Section 10 of P.L.1985, c.38 (C.13:1E-145) is repealed.

8 28. This act shall take effect immediately, except that
9 sections 1, 5, 6, 9, 18, 20, 21, 22, 23, 24, 25, 26 and 27 shall take
10 effect January 1, 1991.

11
12
13 STATEMENT
14

15 This bill provides for the deregulation of the solid waste
16 collection industry by the Board of Public Utilities.

17 The bill would not affect the board's rate regulation of the
18 solid waste disposal industry. In addition, the performance of the
19 solid waste collection industry would remain under the
20 supervision of the BPU. In this regard, the bill would give
21 statutory recognition to the long-held judicial view that the
22 Board of Public Utilities and the Department of Environmental
23 Protection have coextensive jurisdiction over the interdistrict,
24 intradistrict and interstate flow of solid waste, viz. the orderly
25 management of solid waste in New Jersey is achieved through
26 waste flow orders jointly issued by these State agencies directing
27 specific haulers and waste streams to specific processing or
28 disposal facilities.

29 Specifically, the bill provides that after January 1, 1991, the
30 rates or charges imposed by solid waste collectors or solid waste
31 transporters, or fees, rates or charges for solid waste collection
32 services provided by persons engaged in the business of solid
33 waste collection within this State would no longer be subject to
34 the regulation of the Board of Public Utilities.

35 The bill provides that the penalties recovered through
36 enforcement actions brought by the Board under section 13 of
37 P.L.1970, c.40 (C.48:13A-12) for violations of P.L.1970, c.40,
38 including any rule, regulation or administrative order adopted or
39 issued thereunder, and any waste flow order issued in conjunction
40 with the Department of Environmental Protection, or any
41 applicable provision of Title 48 of the Revised Statutes, must be
42 paid to the "Solid Waste Enforcement Fund" established in
43 section 15 of the bill. Thus if a money judgment is rendered
44 against a defendant pursuant to this section, the payment made
45 to the court would be remitted to the fund. All monies in the fund
46 would be utilized exclusively by the Division of Solid Waste in the
47 Board of Public Utilities for enforcement and implementation of
48 the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and this bill.

49 The other major provisions of the bill would: (1) authorize any

1 ~~solid waste collector or transporter to acquire or dispose of any~~
2 ~~equipment, including collection or haulage vehicles, at any time,~~
3 ~~or to issue stock, bonds or other evidence of long-term~~
4 ~~indebtedness, without the approval of the BPU; (2) after January~~
5 ~~1, 1991, require every existing solid waste collector and~~
6 ~~transporter to pay an annual renewal fee of \$100.00 for the~~
7 ~~certificate of public convenience and necessity issued by the~~
8 ~~board to defray the costs of supervising the solid waste collection~~
9 ~~and transportation industry; and (3) authorize the BPU to charge~~
10 ~~and collect a filing fee of up to \$500.00 per application from~~
11 ~~applicants for an initial certificate of public convenience and~~
12 ~~necessity.~~

13
14
15 **WASTE MANAGEMENT**

16
17 Provides for the deregulation of solid waste collection industry.

ASSEMBLY, No. 312
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblyman SHINN

1 **AN ACT** concerning the gradual deregulation of the solid waste
2 collection industry, and amending and supplementing parts of
3 the statutory law.

4

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

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

9 2. The Legislature finds and declares that the collection[,] and
10 disposal [and utilization] of solid waste is a matter of grave
11 concern to all citizens and is an economic activity thoroughly
12 affected with the public interest; that the health, safety and
13 welfare of the people of this State require efficient and
14 reasonable solid waste collection[,] and disposal [and utilization]
15 service; that such service will more likely be achieved if the
16 [Public Utility Commission] Board of Public Utilities is charged
17 with the duty of supervising the solid waste collection industry
18 and setting and enforcing standards and rates for regulating the
19 economic aspects of solid waste [collection,] disposal [and
20 utilization] service; and that the exercise of any power herein
21 provided for shall be deemed to be in the public interest and for a
22 public purpose.

23 The Legislature further finds and declares that the health and
24 safety of the citizens of this State is dependent upon the
25 operation of an efficient and competitive solid waste collection
26 industry; that the Legislature through enactment of P.L.1983,
27 c.392 (C.13:1E-126 et seq.), as amended and supplemented by
28 P.L. , c. (C.) (now before the Legislature as Assembly
29 Bill No. 3101 ACS), has established a licensing system which is
30 designed to prevent persons with criminal backgrounds from
31 engaging in the solid waste collection business thereby promoting
32 free and open competition within the solid waste collection
33 industry; and that gradual deregulation of the solid waste
34 collection industry can be achieved without compromising the
35 State's role in supervising the solid waste collection industry.

36 The Legislature further finds and declares that insuring safe,
37 adequate and proper solid waste collection service at just and
38 reasonable rates is a primary function of the Board of Public

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 Utilities; and that to achieve these ends in the most efficient and
2 reasonable manner, and in light of the manifold inadequacies of
3 the existing regulatory framework, it is necessary to establish
4 orderly procedures for the gradual economic deregulation of the
5 solid waste collection industry.

6 The Legislature further finds and declares that it is imperative
7 that the State insure the economic viability and competitiveness
8 of the solid waste collection industry in order to safeguard the
9 integrity of the State's long-term solid waste management
10 strategy; that it is equally imperative to safeguard the interests
11 of the ratepayers as well as the interests of those providing solid
12 waste collection services; that to provide for ratepayer and
13 consumer protection it is necessary to establish a responsible
14 State supervisory role, which will at the same time insure safe,
15 adequate and proper solid waste collection service at just and
16 reasonable rates; and that to achieve these ends, the rates and
17 charges for the provision of solid waste collection services in this
18 State must be set in a uniform manner and subject to the
19 continuing supervision of the Board of Public Utilities.

20 (cf: P.L.1970, c.40, s.2)

21 2. Section 3 of P.L.1970, c.40 (C.48:13A-3) is amended to read
22 as follows:

23 3. As used in this act[, the following words and terms shall
24 have the following meanings, unless the context indicates or
25 requires another or different meaning or intent]:

26 a. "Solid waste" means garbage, refuse, and other discarded
27 materials resulting from industrial, commercial and agricultural
28 operations, and from domestic and community activities, and
29 shall include all other waste materials including liquids disposed
30 of incident thereto, except it shall not include solid animal and
31 vegetable waste collected by swine producers licensed by the
32 State Department of Agriculture to collect, prepare and feed
33 such wastes to swine on their own farms.

34 b. "Solid waste collection" means the activity related to
35 pickup and transportation of solid waste from its source or
36 location to a sanitary landfill facility, transfer station, resource
37 recovery facility or other authorized disposal site, but does not
38 include activity related to the pickup, transportation or unloading
39 of septic waste.

40 c. "Solid waste collector" means a person engaged in the
41 collection or transportation of solid waste and holding a
42 certificate of public convenience and necessity pursuant to
43 sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

44 [c.] d. "Solid waste disposal" means the storage, treatment,
45 utilization, processing, or final disposal of solid waste.

46 e. "Solid waste facilities" mean and include the plants,
47 structures and other real and personal property acquired,
48 constructed or

1 operated or to be acquired, constructed or operated by any person
2 pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.)
3 and P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act, and
4 licensed under the provisions of P.L.1983, c.392 (C.13:1E-126 et
5 seq.), including transfer stations, incinerators, resource recovery
6 facilities, sanitary landfill facilities or other plants for the
7 disposal of solid waste, and all vehicles, equipment and other real
8 and personal property and rights therein and appurtenances
9 necessary or useful and convenient for the collection or disposal
10 of solid waste in a sanitary manner.

11 f. "Solid waste transporter" means a person engaged in the
12 transportation of solid waste and holding a certificate of public
13 convenience and necessity pursuant to sections 7 and 10 of
14 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

15 [d.] g. "Septic waste" means pumpings from septic tanks and
16 cesspools, but shall not include wastes from a sewage treatment
17 plant.

18 (cf: P.L.1983, c.123, s.1)

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

21 5. a. The Board of Public [Utility Commissioners] Utilities
22 shall, after hearing, by order in writing, [make] adopt appropriate
23 rules, regulations [and] or administrative orders for the regulation
24 of rates and public utility aspects of the solid waste collection
25 industry and the solid waste disposal industry.

26 b. The board shall, in conjunction with the Department of
27 Environmental Protection, after hearing, by order in writing,
28 adopt appropriate rules, regulations or administrative orders
29 providing for the interdistrict, intradistrict and interstate flow of
30 solid waste. The rules, regulations, or administrative orders shall
31 establish the manner in which the board and the department
32 jointly direct the flow of solid waste in this State pursuant to
33 P.L.1970, c.40 (C.48:13A-1 et seq.) and P.L.1970, c.39 (C.13:1E-1
34 et seq.).

35 (cf: P.L.1970, c.40, s.5)

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

38 7. a. No person shall engage, or be permitted to engage, in the
39 business of solid waste collection or solid waste disposal until
40 found by the board to be qualified by experience, training or
41 education to engage in such business, is able to furnish proof of
42 financial responsibility, and holds a certificate of public
43 convenience and necessity issued by the Board of Public Utilities.

44 (1) No certificate shall be issued for solid waste collection or
45 solid waste disposal until the proposed collection or disposal
46 system has been registered with and approved by the State
47 Department of Environmental Protection as provided by section 5
48 of P.L.1970, c.39 (C.13:1E-5).

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

6 b. Every solid waste collector and solid waste transporter shall
7 pay an annual renewal fee in an amount set by the board as may
8 be necessary to cover the costs of supervising the solid waste
9 collection and transportation industry.

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

20 **[c.] d.** Notwithstanding the provisions of subsection **[b.] c.** of
21 this section, the board shall not have jurisdiction over rates or
22 charges for the transportation of regulated medical waste.

23 (cf: P.L.1989, c.34, s.30)

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

26 8. a. The board, upon complaint or its own initiative, after
27 hearing, may direct any person engaging in the solid waste
28 collection business or the solid waste transfer or disposal business
29 or otherwise providing solid waste collection, transfer or disposal
30 services in this State to furnish proof that the charges or rates to
31 be received for such service or services do not exceed just and
32 reasonable rates or charges for such service.

33 b. Should the board find that the solid waste collection,
34 transfer or disposal rates or charges are excessive then it may
35 order the person charging such excessive rates or charges to
36 make an adjustment in the contract to a sum which shall result in
37 just and reasonable rates or charges.

38 (cf: P.L.1970, c.40, s.8)

39 6. (New section) The provisions of section 1 of P.L.1959, c.43
40 (C.48:2-56) or any rules or regulations adopted pursuant thereto
41 to the contrary notwithstanding, the Board of Public Utilities
42 may charge and collect a filing fee of up to \$500.00 per
43 application from applicants seeking to obtain a certificate of
44 public convenience and necessity pursuant to sections 7 and 10 of
45 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

46 7. (New section) The board shall conduct a hearing or series of
47 hearings to determine just and reasonable rates or charges for the
48 collection or transportation of residential, commercial and

1 institutional solid waste in this State, whether solid waste
2 collection or transportation services are provided on an individual
3 private contract basis or pursuant to a lawfully negotiated public
4 contract therefor. For the purposes of this determination, the
5 board may investigate the practicability and feasibility of
6 establishing solid waste collection or transportation rates or
7 charges on a regional basis.

8 8. (New section) a. The Board of Public Utilities shall, no
9 later than January 1, 1990, issue an appropriate order establishing
10 a uniform tariff of solid waste collection rates or charges. The
11 uniform tariff shall include separate components for solid waste
12 collection charges and solid waste disposal charges.

13 b. The uniform tariff of solid waste collection rates or charges
14 established by the board shall provide for the inclusion of the
15 rates or charges received at any lawfully operational solid waste
16 facility in this State, including all relevant transfer or disposal
17 costs, fees or taxes, as an automatic pass-through on any tariff
18 filed with and accepted by the board for solid waste collection or
19 transportation services.

20 c. Every solid waste collector or solid waste transporter
21 holding a certificate of public convenience and necessity pursuant
22 to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9)
23 shall be subject to the provisions of this section and shall file
24 with the Board of Public Utilities a new tariff of solid waste
25 collection or transportation rates or charges in conformance with
26 the uniform tariff of solid waste collection rates or charges
27 established by the board pursuant to subsection a. of this section.

28 9. (New section) a. The Board of Public Utilities shall issue a
29 generic order authorizing the imposition of minimum and
30 maximum solid waste collection charges that may be imposed by
31 solid waste collectors or solid waste transporters in this State.
32 For the purposes of the generic order, all interim rates or charges
33 set forth in an existing tariff filed with and accepted by the
34 board pursuant to law for solid waste collection and in effect as
35 of January 1, 1990 shall be deemed final rates or charges.

36 b. In issuing the order required by this section, the Board of
37 Public Utilities shall be exempt from the provisions of
38 R.S.48:2-21.

39 10. (New section) a. After January 1, 1990, the rates or
40 charges imposed by solid waste collectors or solid waste
41 transporters, or fees, rates or charges for solid waste collection
42 or transportation services provided by persons engaged in the
43 business of solid waste collection within this State shall conform
44 to the uniform tariff of solid waste collection charges established
45 by the Board of Public Utilities pursuant to section 8 of P.L. ,
46 c. (C.) (now before the Legislature as this bill).

47 b. The board shall complete its review of a uniform tariff
48 petition within 90 days of receipt of a completed petition. Any

1 solid waste collector or solid waste transporter may increase by
2 an amount not to exceed 20%, or reduce by an amount not to
3 exceed 20%, the rates or charges set forth in a uniform tariff in
4 effect on that date.

5 c. In the event that a solid waste collector or transporter
6 makes an adjustment to a uniform tariff pursuant to subsection b.
7 of this section, the solid waste collector or transporter shall
8 notify the Board of Public Utilities, by certified mail, at least 14
9 days prior to the implementation of that adjustment.

10 11. (New section) a. The board may compel any person
11 engaged in the business of solid waste collection or otherwise
12 providing solid waste collection or transportation services to
13 furnish and file with the board a consolidated annual report or
14 other documents as may be necessary to enable the board to
15 administer its duties as prescribed by law and this act.

16 b. Should any person engaged in the business of solid waste
17 collection or otherwise providing solid waste collection or
18 transportation services fail or refuse to comply with any
19 provision of this section, the board may revoke or suspend the
20 certificate of public convenience and necessity issued to that
21 person.

22 12. (New section) a. The board shall prepare an annual report
23 to the Governor and the Legislature concerning the
24 implementation of P.L. , c. (C.) (now before the
25 Legislature as this bill). The report shall include, but need not be
26 limited to:

27 (1) An evaluation of the success of minimum and maximum
28 pricing of solid waste collection charges in promoting
29 competition within the solid waste collection industry while at
30 the same time insuring safe, adequate and proper solid waste
31 collection services at just and reasonable rates;

32 (2) An evaluation of the success of uniform solid waste
33 collection tariffs or other provisions of P.L. , c. (C.)
34 (now before the Legislature as this bill) in expediting the
35 ratemaking process and streamlining the board's regulatory
36 procedures while at the same time safeguarding the interests of
37 the ratepayers;

38 (3) A recommendation concerning the board's continuing
39 supervision of the solid waste collection industry pending the
40 completion by the Attorney General and the Department of
41 Environmental Protection of the requirements of P.L.1983, c.392
42 (C.13:1E-126 et seq.), as amended and supplemented by P.L. ,
43 c. (C.) (now before the Legislature as Assembly Bill No.
44 3101 ACS); and

45 (4) A recommendation concerning the total deregulation of the
46 solid waste collection industry upon the completion by the
47 Attorney General and the Department of Environmental
48 Protection of the requirements of P.L.1983, c.392 (C.13:1E-126

1 et seq.), as amended and supplemented by P.L. , c. (C.)
2 (now before the Legislature as Assembly Bill No. 3101 ACS).

3 b. The annual report prepared by the board pursuant to this
4 section shall be transmitted to the Chairmen of the Senate
5 Energy and Environment and the Assembly Solid Waste
6 Management Committees. The committees, either singly or
7 jointly, shall conduct at least one public hearing on the report.

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

10 9. a. Every person engaged in the business of solid waste
11 collection or solid waste disposal shall furnish and file with the
12 board, in connection with each contract or agreement entered
13 into by him for the provision of [such service] solid waste
14 collection, transfer or disposal services, a performance bond in
15 such amount as may be required by the board in rules or
16 regulations [promulgated] adopted by the board.

17 b. Should any person engaged in the solid waste collection
18 business or the solid waste disposal business fail or refuse to
19 complete, execute or perform any contract or agreement
20 obligating such person to provide [such service] solid waste
21 collection, transfer or disposal services, the board may order any
22 person engaged in the solid waste collection business or the solid
23 waste disposal business to extend his collection or disposal
24 service into any area where service has been discontinued in
25 accordance with the provisions of R.S.48:2-27, and the board
26 shall fix and exercise continuing jurisdiction over just and
27 reasonable rates and charges for [such] solid waste collection,
28 transfer or disposal service in the extended area.

29 (cf: P.L.1970, c.40, s.9)

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

32 10. The board, on its own initiative or upon complaint by the
33 State Department of Environmental Protection shall revoke[,] or
34 suspend [or grant a temporary continuance for up to 1 year of]
35 the certificate of public convenience and necessity issued to any
36 person engaged in the solid waste collection business or the solid
37 waste disposal business upon the finding that such person:

38 a. Has violated any provision of this act or any rule, regulation
39 or administrative order [promulgated] adopted or issued
40 hereunder; or

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

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

45 d. Has had its registration revoked by the State Department of
46 Environmental Protection; or

47 e. Has been denied approval of a license under the provisions
48 of P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license

1 revoked by the Department of Environmental Protection, as the
2 case may be.

3 (cf: P.L.1975, c.326, s.32)

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

6 11. a. No person shall monopolize, or attempt to monopolize,
7 or combine or conspire with any other person to monopolize,
8 trade or commerce in any relevant market, located in whole or in
9 part in this State, for the solid waste collection business or the
10 solid waste disposal business.

11 b. Any person who shall be injured in his business or property
12 by reason of a violation of the provisions of subsection a. of this
13 section may sue therefor and shall recover threefold the damages
14 sustained by him, together with reasonable attorney's fees and
15 the costs of the suit. The State and any of its political
16 subdivisions and public agencies shall be deemed a person within
17 the meaning of this act. Any action brought pursuant to this
18 subsection shall be barred unless commenced within 4 years after
19 the cause of action accrued.

20 c. No municipality may require [a public utility] any person
21 lawfully engaged in the solid waste collection business or the
22 solid waste disposal business to submit to any prequalification
23 test before permitting [it] that person to bid on a contract or
24 before the employment of a solid waste collection or a solid
25 waste disposal contractor.

26 (cf: P.L.1970, c.40, s.11)

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

29 12. a. The board may compel the attendance of witnesses and
30 the production of tariffs, contracts, papers, books, accounts and
31 all the documents necessary to enable the board to administer its
32 duties as prescribed by law and this act.

33 b. The board may compel any person engaged in the business of
34 solid waste disposal or otherwise providing solid waste transfer or
35 disposal services in this State to furnish and file with the board
36 any annual reports, federal or State tax returns, contracts,
37 papers, books, accounts or other documents as may be necessary
38 to enable the board to administer its duties as prescribed by law
39 and this act.

40 c. Should any person engaged in the business of solid waste
41 disposal or otherwise providing solid waste transfer or disposal
42 services fail or refuse to comply with any provision of this
43 section, or any applicable provision of Title 48 of the Revised
44 Statutes, the board may revoke or suspend the certificate of
45 public convenience and necessity issued to that person.

46 (cf: P.L.1970, c.40, s.12)

47 17. Section 31 of P.L.1962, c.198, (C.48:2-21.2) is amended to
48 read as follows:

1 31. In arriving at any determination as to the justness or
2 reasonableness of any existing rate, fare or charge or in
3 prescribing a just and reasonable rate, fare or charge, the board
4 shall not be bound to find a rate base, if it determines that:

5 [1. To find a rate base, if it determines that

6 (a) a. the applicable operating expenses plus depreciation and
7 taxes of conducting the business, for which the rate, fare or
8 charge is established, computed on the basis of the 12 months
9 next preceding the month in which the proceeding is initiated,
10 exceeds the revenue from such operation, during said period,
11 under the existing rates, fares or charges and that the revenue
12 under the proposed increased rates, fares or charges will not
13 exceed such operating expenses, depreciation and taxes[, or];

14 [(b)] b. the gross operating revenue of the public utility,
15 computed on the basis of the 12 months next preceding the month
16 in which the proceeding is initiated, exceeds the depreciated book
17 cost of its property used and useful in its business as a public
18 utility[, or];

19 [(c)] c. the product or service is a new offering and not
20 covered by an existing rate, fare or charge approved by the
21 board; or

22 d. the gross operating revenue of a solid waste collector or
23 solid waste transporter holding a certificate of public
24 convenience and necessity pursuant to sections 7 and 10 of
25 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9), computed on the basis
26 of the 12 months next preceding the month in which the
27 proceeding is initiated, does not exceed \$1,000,000.00.

28 When the board shall prescribe a rate, fare or charge without
29 finding a rate base, it shall, in its determination, make a finding
30 of the facts on the basis of which it prescribed such rate, fare or
31 charge.

32 (cf: P.L.1962, c.198, s.31)

33 18. R.S.48:3-7 is amended to read as follows:

34 48:3-7. a. No public utility shall, without the approval of the
35 board, sell, lease, mortgage or otherwise dispose of or encumber
36 its property, franchises, privileges or rights, or any part thereof;
37 or merge or consolidate its property, franchises, privileges or
38 rights, or any part thereof, with that of any other public utility.

39 Where, by the proposed sale, lease or other disposition of all or
40 a substantial portion of its property, any franchise or franchises,
41 privileges or rights, or any part thereof or merger or
42 consolidation thereof as set forth herein, it appears that the
43 public utility or a wholly owned subsidiary thereof may be unable
44 to fulfill its obligation to any employees thereof with respect to
45 pension benefits previously enjoyed, whether vested or
46 contingent, the board shall not grant its approval unless the
47 public utility seeking the board's approval for such sale, lease or
48 other disposition assumes such responsibility as will be sufficient

1 to provide that all such obligations to employees will be satisfied
2 as they become due.

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

5 Nothing herein shall prevent the sale, lease or other disposition
6 by any public utility of any of its property in the ordinary course
7 of business, nor require the approval of the board to any grant,
8 conveyance or release of any property or interest therein
9 heretofore made or hereafter to be made by any public utility to
10 the United States, State or any county or municipality or any
11 agency, authority or subdivision thereof, for public use.

12 The approval of the board shall not be required to validate the
13 title of the United States, State or any county or municipality or
14 any agency, authority or subdivision thereof, to any lands or
15 interest therein heretofore condemned or hereafter to be
16 condemned by the United States, State or any county or
17 municipality or any agency, authority or subdivision thereof for
18 public use.

19 b. Notwithstanding any law, rule, regulation or order to the
20 contrary, an autobus public utility regulated by and subject to the
21 provisions of Title 48 of the Revised Statutes may, without the
22 approval of the Department of Transportation, sell, lease,
23 mortgage or otherwise dispose of or encumber its property, or
24 any part thereof, except that approval of the Department of
25 Transportation shall be required for the following:

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

28 (2) a merger or consolidation of its property, franchises,
29 privileges or rights; or

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

31 Notice of the sale, purchase or lease of any autobus or other
32 vehicle subject to regulation under Title 48 of the Revised
33 Statutes shall be provided to the Department of Transportation as
34 the department shall require.

35 c. After January 1, 1990, any solid waste collector or solid
36 waste transporter holding a certificate of public convenience and
37 necessity pursuant to sections 7 and 10 of P.L.1970, c.40
38 (C.48:13A-6 and 48:13A-9) and subject to the continuing
39 supervision of the Board of Public Utilities pursuant to P.L.1970,
40 c.40 (C.48:13A-1 et seq.) and the provisions of Title 48 of the
41 Revised Statutes may, without the approval of the board, sell,
42 purchase, lease, mortgage or otherwise acquire or dispose of any
43 equipment, including collection or haulage vehicles, except that
44 notice of the sale, purchase or lease of any equipment or
45 collection or haulage vehicles shall be provided to the Board of
46 Public Utilities as the board may require.

47 (cf: P.L.1985, c.232, s.1)

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

1 48:3-9. No public utility shall, unless it shall have first
2 obtained authority from the board so to do:

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

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

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

15 The provisions of this [act] section shall not apply to any public
16 utility operating, managing or controlling a railroad or a railway
17 express which is subject to the rules and regulations from time to
18 time issued by the Interstate Commerce Commission.

19 The provisions of this section shall not apply to autobus public
20 utilities under the jurisdiction of the Department of
21 Transportation.

22 After January 1, 1990, the provisions of this section shall not
23 apply to any solid waste collector or solid waste transporter
24 holding a certificate of public convenience and necessity pursuant
25 to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9)
26 and subject to the continuing supervision of the Board of Public
27 Utilities pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.) and the
28 provisions of Title 48 of the Revised Statutes, except that notice
29 of any proposed issue shall be provided to the Board of Public
30 Utilities as the board may require.

31 (cf: P.L.1985, c.232, s.2)

32 20. This act shall take effect immediately, except that the
33 Board of Public Utilities shall take any actions necessary prior to
34 the effective date of this act necessary to implement the
35 provisions of this act on its effective date.

36
37
38 STATEMENT

39
40 This bill provides for the gradual deregulation of the solid
41 waste collection industry by the Board of Public Utilities.

42 The bill requires the BPU to establish a uniform tariff of solid
43 waste collection rates or charges consisting of separate
44 components for solid waste collection charges and solid waste
45 disposal charges. Upon the establishment of the uniform tariff,
46 the BPU would issue a generic order authorizing solid waste
47 collectors and transporters to increase by 20% or decrease by
48 20% the rates or charges that are in effect on January 1, 1990.

1 For the purposes of the generic order, all interim rates or
2 charges set forth in an existing tariff filed with and accepted by
3 the board pursuant to law for solid waste collection and in effect
4 as of January 1, 1990 would be deemed final rates or charges.
5 Subsequent to that date, these rates or charges could be adjusted
6 by a solid waste collector or transporter only upon the filing with
7 the BPU of a new tariff to conform with the uniform tariff
8 established by the board.

9 The bill would not affect the board's rate regulation of the
10 solid waste disposal industry. In addition, the performance of the
11 solid waste collection industry would remain under the continuous
12 supervision of the BPU at least until the completion by the
13 Department of Environmental Protection and the Attorney
14 General of the "A-901" licensing process.

15 The bill requires the BPU to submit an annual report to the
16 Governor and the Legislature concerning the implementation of
17 this bill. The Senate Energy and Environment and the Assembly
18 Solid Waste Management Committees, either singly or jointly,
19 must conduct at least one public hearing on the report.

20 The report must include: (1) an evaluation of the success of
21 minimum and maximum solid waste collection charges in
22 promoting competition within the solid waste collection industry
23 while insuring solid waste collection services at just and
24 reasonable rates; (2) an evaluation of the success of uniform solid
25 waste collection tariffs and the other deregulation measures in
26 the bill in expediting the ratemaking process and streamlining the
27 board's regulatory procedures while at the same time protecting
28 ratepayers' interests; (3) a recommendation concerning the
29 BPU's continuing supervision of the solid waste collection
30 industry pending the completion of the backlog of "A-901"
31 license applications by the Attorney General and the DEP as
32 provided in Assembly Bill No. 3101 ACS; and (4) a
33 recommendation concerning the total deregulation of the solid
34 waste collection industry upon the completion by the Attorney
35 General and the DEP of the the "A-901" licensing process.

36

37

38 WASTE MANAGEMENT

39

40 Provides for the gradual deregulation of solid waste collection
41 industry.

SENATE, No. 3040
STATE OF NEW JERSEY

INTRODUCED OCTOBER 15, 1990

By Senator CONTILLO

1 **AN ACT** concerning the deregulation of the solid waste collection
2 industry, and amending, supplementing and repealing parts of
3 the statutory law.

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

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

9 2. The Legislature finds and declares that the collection,
10 transportation and disposal [and utilization] of solid waste [is a
11 matter] are matters of grave concern to all citizens and [is an
12 activity] are activities thoroughly affected with the public
13 interest; that the health, safety and welfare of the people of this
14 State require efficient and reasonable solid waste collection,
15 transportation and disposal [and utilization service] services; that
16 [such service] efficient solid waste collection and transportation
17 services at just and reasonable rates will more likely be achieved
18 if the [Public Utility Commission] solid waste collection industry
19 is under the supervision of, but not subject to economic
20 regulation by, the Board of Public Utilities; that safe, adequate
21 and proper solid waste disposal services at just and reasonable
22 rates cannot be achieved unless the Board of Public Utilities is
23 charged with the duty of setting and enforcing standards and
24 rates for regulating the economic aspects of solid waste
25 [collection.] disposal [and utilization service]; and that the
26 exercise of any power herein provided for shall be deemed to be
27 in the public interest and for a public purpose.

28 The Legislature further finds and declares that the Legislature
29 through enactment of P.L.1983, c.392 (C.13:1E-126 et seq.) has
30 established a licensing system which is designed to prevent
31 persons with criminal backgrounds from engaging in the solid
32 waste collection business, thereby promoting free and open
33 competition within the solid waste collection industry; and that
34 the economic deregulation of the solid waste collection industry
35 can be achieved without compromising the State's role in
36 protecting the public interest.

37 The Legislature therefore determines that it is necessary to
38 provide for the economic deregulation of the solid waste
39 collection industry while at the same time maintaining Board of

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 Public Utilities supervision over the solid waste collection
2 industry.

3 (cf: P.L.1970, c.40, s.2)

4 2. Section 3 of P.L.1970, c.40 (C.48:13A-3) is amended to read
5 as follows:

6 3. As used in this act:

7 a. "Solid waste" means garbage, refuse, and other discarded
8 materials resulting from industrial, commercial and agricultural
9 operations, and from domestic and community activities, and
10 shall include all other waste materials including liquids disposed
11 of incident thereto, except it shall not include solid animal and
12 vegetable waste collected by swine producers licensed by the
13 State Department of Agriculture to collect, prepare and feed
14 such wastes to swine on their own farms.

15 b. "Solid waste collection" means the activity related to
16 pickup and transportation of solid waste from its source or
17 location to [a disposal site] an authorized solid waste facility, but
18 does not include activity related to the pickup, transportation or
19 unloading of septic waste.

20 c. "Solid waste collector" means a person engaged in the
21 collection or transportation of solid waste and holding a
22 certificate of public convenience and necessity pursuant to
23 sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

24 [c.] d. "Solid waste disposal" means the storage, treatment,
25 utilization, processing, or final disposal of solid waste.

26 [d.] e. "Septic waste" means pumpings from septic tanks and
27 cesspools, but shall not include wastes from a sewage treatment
28 plant.

29 ~~[e.] f. "Solid waste container" means a receptacle, container~~
30 ~~or bag suitable for the depositing of solid waste.~~

31 g. "Solid waste collection services" means the services
32 provided by persons engaging in the business of solid waste
33 collection.

34 h. "Solid waste disposal services" means the services provided
35 by persons engaging in the business of solid waste disposal.

36 i. "Solid waste facilities" mean and include the plants,
37 structures and other real and personal property acquired,
38 constructed or operated or to be acquired, constructed or
39 operated by any person pursuant to the provisions of P.L.1970
40 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.)
41 or any other act, including transfer stations, incinerators,
42 resource recovery facilities, sanitary landfill facilities or other
43 plants for the disposal of solid waste, and all vehicles, equipment
44 and other real and personal property and rights therein and
45 appurtenances necessary or useful and convenient for the
46 collection or disposal of solid waste in a sanitary manner.

47 j. "Solid waste transporter" means a person engaged in the
48 transportation of solid waste and holding a certificate of public
49 convenience and necessity pursuant to sections 7 and 10 of

1 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

2 (cf: P.L.1989, c.244, s.7)

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

5 5. a. The Board of Public [Utility Commissioners] Utilities
6 shall, after hearing, by order in writing, [make] adopt appropriate
7 rules, regulations [and] or administrative orders for the regulation
8 of rates and public utility aspects of the [solid waste collection
9 industry and the] solid waste disposal industry.

10 b. The Board of Public Utilities shall, after hearing, by order
11 in writing, adopt appropriate rules, regulations or administrative
12 orders for the supervision of the solid waste collection industry.

13 (cf: P.L.1970, c.40, s.5)

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

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

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

32 (1) No certificate shall be issued for solid waste collection,
33 transportation or disposal until the proposed solid waste
34 collector, solid waste transporter or person proposing to engage
35 in solid waste disposal, as the case may be, is able to furnish
36 proof of financial responsibility.

37 (2) No certificate shall be issued for solid waste collection [or
38 solid waste] , transportation or disposal until the proposed
39 [collection or disposal system] solid waste collector, solid waste
40 transporter or person proposing to engage in solid waste disposal,
41 as the case may be, has been registered with and approved by the
42 [State] Department of Environmental Protection as provided by
43 section 5 of P.L.1970, c.39 (C.13:1E-5).

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

49 b. Every solid waste collector and solid waste transporter

1 holding a certificate of public convenience and necessity issued
2 by the Board of Public Utilities shall pay an annual renewal fee of
3 \$100.00 to cover the costs of supervising the solid waste
4 collection and transportation industry. The fee imposed pursuant
5 to this subsection shall be in addition to the annual assessment
6 made by the board pursuant to P.L.1968, c.173 (C.48:2-59 et seq.).

7 c. Notwithstanding the provisions of subsection a. of this
8 section, the board shall not have jurisdiction over rates or
9 charges for solid waste collection.

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

20 [c.] e. Notwithstanding the provisions of subsection [b.] d. of
21 this section, the board shall not have jurisdiction over rates or
22 charges for the transportation of regulated medical waste.

23 (cf: P.L.1989, c.34, s.30)

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

26 8. a. The board, upon complaint or its own initiative, after
27 hearing, may direct any person engaging in the [solid waste
28 ~~collection business or the~~ solid waste disposal business to furnish
29 proof that the charges or rates to be received for [such service]
30 solid waste disposal services do not exceed just and reasonable
31 rates or charges for such service.

32 b. [(1)] Should the board find that the rates or charges for solid
33 waste disposal services are excessive then it may order the
34 person charging such excessive rates or charges to make an
35 adjustment in the tariff or contract to a sum which shall result in
36 just and reasonable rates or charges.

37 [(2)] Should the board find, subsequent to the issuance of any
38 order pursuant to subsection c. of this subsection, that the rates
39 or charges received for the collection of solid waste contained
40 within a contract entered into prior to the effective date of that
41 order require adjustment, then it may order the person charging
42 these rates or charges to make an adjustment in the contract to a
43 sum which shall result in just and reasonable rates or charges. In
44 issuing this order, the board shall be exempt from the provisions
45 of R.S.48:2-21.

46 c. (1) Whenever the governing body of a municipality adopts an
47 ordinance to provide for the collection or disposal of solid waste
48 within its municipal boundaries by imposing solid waste charges
49 based on the number of solid waste containers processed per

1 household pursuant to subsection b. of R.S.40:66-5, the governing
2 body shall transmit to the board, by certified mail and within 90
3 days of the effective date of the ordinance, a copy of the
4 proposed rate schedule and the contract awarded pursuant to
5 subsection a. of R.S.40:66-4. The board, within 60 days of receipt
6 of the proposed rate schedule and contract and if requested to do
7 so by the municipality or the relevant solid waste collector or
8 solid waste transporter, as the case may be, may review these
9 documents to determine whether the solid waste charges are
10 equitable and to accept, reject or modify the rate schedule.

11 (2) If the board finds the solid waste charges to be equitable,
12 the board shall accept the rate schedule and contract and issue an
13 appropriate order therefor. In issuing this order, the board shall
14 be exempt from the provisions of R.S.48:2-21.

15 d. (1) The board may issue an appropriate order establishing an
16 equitable rate schedule based on the number of solid waste
17 containers processed per household for the solid waste collection
18 tariffs of persons engaging in private solid waste collection or
19 transportation services in any municipality in which solid waste
20 collection or transportation services are contracted for and
21 provided on an individual household basis. In issuing this order,
22 the board shall be exempt from the provisions of R.S.48:2-21.

23 (2) Any person engaged in private solid waste collection or
24 transportation services in this State and utilizing a rate schedule
25 based on the number of solid waste containers processed per
26 household as provided in this subsection may provide customers
27 with the opportunity to purchase, on a prepaid basis, one or more
28 solid waste containers, or a voucher or sticker therefor, to
29 facilitate the provision of solid waste collection services on a per
30 container basis.

31 (cf. P.L.1989, c.244, s.8)

32 7. (New section) The provisions of section 1 of P.L.1959, c.43
33 (C.48:2-56) or any rules or regulations adopted pursuant thereto
34 to the contrary notwithstanding, the Board of Public Utilities
35 may charge and collect a filing fee of up to \$500.00 per
36 application from applicants seeking to obtain a certificate of
37 public convenience and necessity pursuant to sections 7 and 10 of
38 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

39 8. (New section) After January 1, 1991, the rates or charges
40 imposed by solid waste collectors or solid waste transporters, or
41 fees, rates or charges for solid waste collection services provided
42 by persons engaged in the business of solid waste collection
43 within this State shall not be subject to the regulation of the
44 Board of Public Utilities.

45 9. (New section) a. The board may compel any solid waste
46 collector or solid waste transporter to furnish and file with the
47 board any records, including, but not limited to, manifests, origin
48 and destination forms, and any other documents related to solid
49 waste collection, transportation or disposal activities conducted

1 within this State, at any time or place in order to determine
2 compliance with the provisions of P.L.1970, c.40 (C.48:13A-1 et
3 seq.) or any rules and regulations adopted pursuant thereto,
4 including any interdistrict, intradistrict and interstate waste flow
5 order issued in conjunction with the Department of
6 Environmental Protection, and to enable the board to administer
7 its duties as prescribed by law and this act.

8 b. Should any solid waste collector or solid waste transporter
9 fail or refuse to comply with any provision of this section, the
10 board may revoke or suspend the certificate of public
11 convenience and necessity issued to that person.

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

14 9. a. Every person engaged in the business of solid waste
15 collection, transportation or [solid waste] disposal shall furnish
16 and file with the board, in connection with each contract or
17 agreement entered into by him for the provision of [such service]
18 solid waste collection services or solid waste disposal services, a
19 performance bond in such amount as may be required by the
20 board in rules or regulations [pronulgated] adopted by the board.

21 b. Should any person engaged in the business of solid waste
22 collection [business or the solid waste disposal business] or
23 transportation fail or refuse to complete, execute or perform any
24 contract or agreement obligating such person to provide [such
25 service] solid waste collection services, the board may order any
26 person engaged in the business of solid waste collection [business
27 or the solid waste disposal business] or transportation to extend
28 this collection or disposal service] solid waste collection services
29 into any area where [service] the collection or transportation of
30 solid waste has been discontinued [in accordance with the
31 provisions of R.S.48:2-27, and the board shall fix just and
32 reasonable rates and charges for such service in the extended
33 area].

34 c. Should any person engaged in the solid waste disposal
35 business fail or refuse to complete, execute or perform any
36 contract or agreement obligating such person to provide solid
37 waste disposal services, the board may order any person engaged
38 in the solid waste disposal business to extend his disposal service
39 into any area where solid waste disposal service has been
40 discontinued in accordance with the provisions of R.S.48:2-27,
41 and the board shall fix just and reasonable rates and charges for
42 solid waste disposal service in the extended area.

43 (cf: P.L.1970, c.40, s.9)

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

46 10. The board, on its own initiative or upon complaint by the
47 [State] Department of Environmental Protection shall revoke[,] or
48 suspend [or grant a temporary continuance for up to 1 year of]
49 the certificate of public convenience and necessity issued to any

1 person engaged in the solid waste collection (business or the solid
2 waste), transportation or disposal business upon the finding that
3 such person:

4 a. Has violated any provision of this act or any rule, regulation
5 or administrative order (promulgated) adopted or issued
6 hereunder; or

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

9 c. Has refused or failed to comply with any lawful order of the
10 board; [or]

11 d. Has had its registration revoked by the [State] Department
12 of Environmental Protection; or

13 e. Has been denied approval of a license under the provisions
14 of P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license
15 revoked by the Department of Environmental Protection, as the
16 case may be.

17 (cf: P.L.1975, c.326, s.32)

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

20 11. a. No person shall monopolize, or attempt to monopolize,
21 or combine or conspire with any other person to monopolize,
22 trade or commerce in any relevant market, located in whole or in
23 part in this State, for the solid waste collection (business or the
24 solid waste), transportation or disposal business.

25 b. Any person who shall be injured in his business or property
26 by reason of a violation of the provisions of subsection a. of this
27 section may sue therefor and shall recover threefold the damages
28 sustained by him, together with reasonable attorney's fees and
29 the costs of the suit. The State and any of its political
30 subdivisions and public agencies shall be deemed a person within
31 the meaning of this act. Any action brought pursuant to this
32 subsection shall be barred unless commenced within 4 years after
33 the cause of action accrued.

34 c. No municipality may require [a public utility] any person
35 lawfully engaged in the solid waste collection (business or the
36 solid waste), transportation or disposal business to submit to any
37 prequalification test before permitting [it] that person to bid on a
38 contract or before the employment of a solid waste collection or
39 a solid waste disposal contractor.

40 (cf: P.L.1970, c.40, s.11)

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

43 12. a. The board may compel the attendance of witnesses and
44 the production of tariffs, contracts, papers, books, accounts and
45 all the documents necessary to enable the board to administer its
46 duties as prescribed by law and this act.

47 b. The board may compel any person engaged in the business of
48 solid waste disposal or otherwise providing solid waste disposal
49 services in this State to furnish and file with the board any annual

1 reports, federal or State tax returns, contracts, papers, books,
2 accounts or other documents as may be necessary to enable the
3 board to administer its duties as prescribed by law and this act.

4 c. Should any person engaged in the business of solid waste
5 disposal or otherwise providing solid waste disposal services fail
6 or refuse to comply with any provision of this section, or any
7 applicable provision of Title 48 of the Revised Statutes, the board
8 may revoke or suspend the certificate of public convenience and
9 necessity issued to that person.

10 (cf: P.L.1970, c.40, s.12)

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

13 13. a. Any person or any officer or agent thereof who shall
14 knowingly violate any of the provisions of this act or aid or advise
15 in such violation, or who, as principal, manager, director, agent,
16 servant or employee knowingly does any act comprising a part of
17 such violation, is guilty of a [misdemeanor] crime of the fourth
18 degree and shall be punished by imprisonment for not more than
19 [three years] 18 months or, notwithstanding the provisions of
20 N.J.S.2C:43-3, by a fine of not more than \$50,000.00, or both;
21 and if a corporation by a fine of not more than \$100,000.00. Each
22 day during which the violation continues constitutes an
23 additional, separate and distinct offense.

24 b. Any person who shall violate any provision of this act or any
25 ~~rule, regulation or administrative order adopted or issued~~
26 ~~hereunder, including an interdistrict, intradistrict or interstate~~
27 ~~waste flow order issued in conjunction with the Department of~~
28 ~~Environmental Protection, or under any applicable provision of~~
29 ~~Title 48 of the Revised Statutes, or who shall engage in the~~
30 ~~business of solid waste collection [business or solid waste],~~
31 ~~transportation or disposal [business] without having been issued a~~
32 ~~certificate of public convenience and necessity, shall be liable to~~
33 ~~a penalty of not more than \$10,000.00 for a first offense, not~~
34 ~~more than \$25,000.00 for a second offense and not more than~~
35 ~~\$50,000.00 for a third and every subsequent offense. Each day~~
36 ~~during which the violation continues constitutes an additional,~~
37 ~~separate and distinct offense. The penalties herein provided shall~~
38 ~~be enforced by summary proceedings instituted by the board~~
39 ~~under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The~~
40 ~~Superior Court and the municipal courts shall all have jurisdiction~~
41 ~~to enforce "the penalty enforcement law" in connection with this~~
42 ~~act.~~

43 c. Whenever it shall appear to the Board, a municipality, local
44 board of health, or county health department, as the case may be,
45 that any person has violated, intends to violate, or will violate
46 any provision of this act or any rule, regulation or administrative
47 order [duly promulgated] adopted or issued hereunder, or under
48 any applicable provision of Title 48 of the Revised Statutes, the
49 Board, the municipality, local board of health or county health

1 department may institute a civil action in the Superior Court for
2 injunctive relief and for such other relief as may be appropriate
3 in the circumstances, and the [said] court may proceed in any
4 such action in a summary manner.

5 Notwithstanding the provisions of any other law, or any rule or
6 regulation adopted pursuant thereto to the contrary, all penalties
7 recovered pursuant to actions brought by the Board under this
8 section shall be paid to the "Solid Waste Enforcement Fund"
9 established pursuant to section 15 of P.L. , c. (C.)
10 (now before the Legislature as this bill). If a money judgment is
11 rendered against a defendant pursuant to subsections a. or b. of
12 this section, the payment made to the court shall be remitted to
13 the fund.

14 (cf: P.L.1989, c.118, s.1)

15 15. (New section) There is created in the Board of Public
16 Utilities a special nonlapsing fund to be known as the "Solid
17 Waste Enforcement Fund." All monies from penalties collected
18 by the board pursuant to section 13 of P.L.1970, c.40
19 (C.48:13A-12) on and after the effective date of this section shall
20 be deposited in the fund. Unless otherwise specifically provided
21 by law, monies in the fund shall be utilized exclusively by the
22 Division of Solid Waste in the Board of Public Utilities for
23 enforcement and implementation of the provisions of P.L.1970,
24 c.40 (C.48:13A-1 et seq.) and P.L. , c. (C.)(now before
25 the Legislature as this bill).

26 16. R.S. 48:3-7. is amended to read as follows:

27 ~~48:3-7. a. No public utility shall, without the approval of the~~
28 ~~board, sell, lease, mortgage or otherwise dispose of or encumber~~
29 ~~its property, franchises, privileges or rights, or any part thereof;~~
30 ~~or merge or consolidate its property, franchises, privileges or~~
31 ~~rights, or any part thereof, with that of any other public utility.~~

32 ~~Where, by the proposed sale, lease or other disposition of all or~~
33 ~~a substantial portion of its property, any franchise or franchises,~~
34 ~~privileges or rights, or any part thereof or merger or~~
35 ~~consolidation thereof as set forth herein, it appears that the~~
36 ~~public utility or a wholly owned subsidiary thereof may be unable~~
37 ~~to fulfill its obligation to any employees thereof with respect to~~
38 ~~pension benefits previously enjoyed, whether vested or~~
39 ~~contingent, the board shall not grant its approval unless the~~
40 ~~public utility seeking the board's approval for such sale, lease or~~
41 ~~other disposition assumes such responsibility as will be sufficient~~
42 ~~to provide that all such obligations to employees will be satisfied~~
43 ~~as they become due.~~

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

46 ~~Nothing herein shall prevent the sale, lease or other disposition~~
47 ~~by any public utility of any of its property in the ordinary course~~
48 ~~of business, nor require the approval of the board to any grant,~~
49 ~~conveyance or release of any property or interest therein~~

1 heretofore made or hereafter to be made by any public utility to
2 the United States, State or any county or municipality or any
3 agency, authority or subdivision thereof, for public use.

4 The approval of the board shall not be required to validate the
5 title of the United States, State or any county or municipality or
6 any agency, authority or subdivision thereof, to any lands or
7 interest therein heretofore condemned or hereafter to be
8 condemned by the United States, State or any county or
9 municipality or any agency, authority or subdivision thereof for
10 public use.

11 b. Notwithstanding any law, rule, regulation or order to the
12 contrary, an autobus public utility regulated by and subject to the
13 provisions of Title 48 of the Revised Statutes may, without the
14 approval of the Department of Transportation, sell, lease,
15 mortgage or otherwise dispose of or encumber its property, or
16 any part thereof, except that approval of the Department of
17 Transportation shall be required for the following:

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

20 (2) a merger or consolidation of its property, franchises,
21 privileges or rights; or

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

23 Notice of the sale, purchase or lease of any autobus or other
24 vehicle subject to regulation under Title 48 of the Revised
25 Statutes shall be provided to the Department of Transportation as
26 the department shall require.

27 c. Any solid waste collector or solid waste transporter subject
28 to the supervision of the Board of Public Utilities pursuant to
29 P.L.1970, c.40 (C.48:13A-1 et seq.) and the provisions of Title 48
30 of the Revised Statutes may, without the approval of the board,
31 sell, purchase, lease, mortgage or otherwise acquire or dispose of
32 any equipment, including collection or haulage vehicles.

33 (cf: P.L.1985, c.232, s.1)

34 17. R.S.48:3-9 is amended to read as follows:

35 48:3-9. No public utility shall, unless it shall have first
36 obtained authority from the board so to do:

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

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

45 ~~The board shall approve any such proposed issue, with or~~
46 ~~without hearing at its discretion, when satisfied that such issue is~~
47 ~~to be made in accordance with law and the purpose thereof is~~
48 ~~approved by the board.~~

49 The provisions of this [act] section shall not apply to any public

1 utility operating, managing or controlling a railroad or a railway
2 express which is subject to the rules and regulations from time to
3 time issued by the Interstate Commerce Commission.

4 The provisions of this section shall not apply to autobus public
5 utilities under the jurisdiction of the Department of
6 Transportation.

7 The provisions of this section shall not apply to any solid waste
8 collector or solid waste transporter subject to the supervision of
9 the Board of Public Utilities pursuant to P.L.1970, c.40
10 (C.48:13A-1 et seq.) and the provisions of Title 48 of the Revised
11 Statutes.

12 (cf: P.L.1985, c.232, s.2)

13 18. Section 2 of P.L.1981, c.438 (C.13:1E-9.1) is amended to
14 read as follows:

15 2. [a.] The provisions of any law to the contrary
16 notwithstanding, the owner or operator of any sanitary landfill
17 facility may collect any fee imposed pursuant to section 9 of
18 P.L.1970, c.39 (C.13:1E-9) as a surcharge on any tariff
19 established pursuant to law for the solid waste disposal operations
20 of the facility.

21 [b. The Board of Public Utilities shall issue an appropriate
22 order increasing current tariffs established pursuant to law for
23 solid waste collection operations by an amount equal to the total
24 increase in the relevant solid waste disposal tariff pursuant to
25 subsection a. of this section. In issuing this order, the board shall
26 not be bound to find a rate base under section 31 of P.L.1962,
27 c.198 (C.48:2-21.2).]

28 (cf: P.L.1981, c.438, s.2)

29 19. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to
30 read as follows:

31 18. Any solid waste facility constructed, acquired or operated
32 pursuant to the provisions of [this amendatory and supplementary
33 act] P.L.1970, c.39 (C.13:1E-1 et seq.) shall be deemed a public
34 utility and shall be subject to such rules and regulations as may
35 be adopted by the Board of Public [Utility Commissioners]
36 Utilities in accordance with the provisions of the "Solid Waste
37 Utility Control Act of 1970" (P.L.1970, c.40, C.48:13A-1 et seq.).
38 (cf: P.L.1975, c.326, s.18)

39 20. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to
40 read as follows:

41 19. a. Any municipality within which a sanitary landfill
42 facility is located pursuant to an adopted and approved district
43 solid waste management plan shall be entitled to an annual
44 economic benefit not less than the equivalent of \$1.00 per ton of
45 solids on all solid waste accepted for disposal at the sanitary
46 landfill facility during the previous calendar year as determined
47 by the department.

48 The owner or operator of the sanitary landfill facility shall
49 annually pay to the relevant municipality the full amount due

1 pursuant to subsection a. of this section. In issuing this order, the
2 board shall be exempt from the provisions of R.S.48:2-21.]

3 (cf: P.L.1987, c.102, s.38)

4 22. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended
5 to read as follows:

6 40. a. Any person engaged in the business of solid waste
7 collection or solid waste disposal in accordance with the
8 provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) may engage in
9 recycling or otherwise provide recycling services.

10 b. Notwithstanding the provisions of P.L.1970, c.40
11 (C.48:13A-1 et seq.) or any other law, the Board of Public
12 Utilities shall not have jurisdiction over charges or rates for
13 recycling or services provided by persons engaging in the business
14 of recycling or otherwise providing recycling services in this
15 State. [The revenues generated by persons engaging in the
16 business of recycling or otherwise providing recycling services
17 shall not be included within the computation of current or
18 adjusted tariffs established pursuant to law for solid waste
19 collection.]

20 (cf: P.L.1987, c.102, s.40)

21 23. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to
22 read as follows:

23 13. a. The provisions of any law to the contrary
24 notwithstanding, the owner or operator of any sanitary landfill
25 ~~facility may collect the tax imposed pursuant to section 5 of~~
26 P.L.1981, c.306 (C.13:1E-104), and the escrow account payments
27 required by section 10 of P.L.1981, c.306 (C.13:1E-109), [this
28 supplementary act] as a surcharge on any tariff established
29 pursuant to law for the solid waste disposal operations of the
30 facility.

31 b. The Board of Public Utilities may direct the owner or
32 operator of a sanitary landfill facility to reduce the rate of
33 payments to an escrow account required by section 10 ~~(hereof)~~ of
34 P.L.1981, c.306 (C.13:1E-109), but only to the extent that:

35 (1) The current tariff established pursuant to law for the solid
36 waste disposal operations of the facility specifically allocates a
37 portion thereof for closing costs; and

38 (2) The amount collected for closing costs pursuant to this
39 tariff are deposited, on a monthly basis, in the escrow account
40 for the facility.

41 c. The Board of Public Utilities shall, within 60 days of the
42 effective date of this supplementary act, issue an appropriate
43 order increasing current tariffs established pursuant to law for
44 solid waste collection operations by an amount equal to the total
45 increase in the relevant solid waste disposal tariff pursuant to
46 subsection a. of this section. In issuing this order, the board shall
47 not be bound to find a rate base under the provisions of section 31
48 of P.L.1962, c.198 (C.48:2-21.2).]

49 (cf: P.L.1981, c.306, s.13)

1 24. Section 3 of P.L.1983, c.93 (C.13:1E-119) is amended to
2 read as follows:

3 3. [a.] Any solid waste facility required to install scales
4 pursuant to this act may petition the Board of Public Utilities for
5 an increase in its tariff which reflects the costs reasonably
6 incurred by the facility in complying with this act. The board,
7 within 60 days of the receipt of such a petition, shall determine
8 the extent to which these costs shall be passed along to the users
9 of the solid waste facility as an automatic surcharge on any tariff
10 filed with, and recorded by, the board for the operation of the
11 solid waste facility.

12 [b. The board, within 60 days of the computation of any
13 increase in a solid waste disposal tariff pursuant to subsection a.
14 of this section, shall issue an appropriate order increasing current
15 tariffs established pursuant to law for solid waste collection by
16 an amount equal to the total amount of the increase in the
17 relevant solid waste disposal tariff calculated pursuant to
18 subsection a. of this section. In issuing this order, the board shall
19 be exempt from the provisions of section 31 of P.L.1962, c.198
20 (C.48:2-21.2).

21 c. For the purposes of this act, all municipal, county, and
22 State contracts for solid waste collection and disposal shall be
23 deemed to be tariffs for solid waste collection, and shall be
24 subject to adjustment pursuant to the terms of this act.)

25 (cf: P.L.1983, c.93; s.3)

26 25. Section 9 of P.L.1985, c.38 (C.13:1E-144) is amended to
27 read as follows:

28 9. [a.] Notwithstanding the provisions of any law to the
29 contrary, the owner or operator of a sanitary landfill facility may
30 collect the taxes levied and imposed pursuant to [this amendatory
31 and supplementary act] section 3 of P.L.1985, c.38 (C.13:1E-138)
32 by imposing an automatic surcharge on any tariff established
33 pursuant to law for the solid waste disposal operations of the
34 sanitary landfill facility.

35 [b. For the purposes of this amendatory and supplementary act,
36 all municipal, county, and State contracts for solid waste
37 collection and disposal shall be considered tariffs for solid waste
38 collection, and shall be subject to any adjustment of tariffs
39 resulting from the provisions of this amendatory and
40 supplementary act.]

41 (cf: P.L.1985, c.38, s.9)

42 26. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to
43 read as follows:

44 6. Any solid waste [collection system or solid waste treatment
45 or disposal] facilities operated by a county improvement
46 authority pursuant to the provisions of this amendatory and
47 supplementary act, shall be deemed a public utility and shall be
48 subject to such rules and regulations as may be adopted by the
49 Board of Public [Utility Commissioners] Utilities in accordance

1 with the provisions of the "Solid Waste Utility Control Act of
2 1970" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement
3 authority's application to operate any solid waste facility shall
4 be considered at a public hearing by the Board of Public [Utility
5 Commissioners] Utilities.

6 (cf: P.L.1973, c.330, s.6)

7 27. Section 10 of P.L.1985, c.38 (C.13:1E-145) is repealed.

8 28. This act shall take effect immediately, except that
9 sections 1, 5, 6, 9, 18, 20, 21, 22, 23, 24, 25, 26 and 27 shall take
10 effect January 1, 1991.

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13 STATEMENT
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15 This bill provides for the deregulation of the solid waste
16 collection industry by the Board of Public Utilities. The bill would
17 not affect the board's rate regulation of the solid waste disposal
18 industry. In addition, the performance of the solid waste
19 collection industry would remain under the supervision of the
20 BPU.

21 In this regard, the bill would give statutory recognition to the
22 long-held judicial view that the Board of Public Utilities and the
23 Department of Environmental Protection have coextensive
24 jurisdiction over the interdistrict, intradistrict and interstate
25 flow of solid waste, viz. the orderly management of solid waste in
26 New Jersey is achieved through waste flow orders jointly issued
27 by these State agencies directing specific haulers and waste
28 streams to specific processing or disposal facilities.

29 Specifically, the bill provides that after January 1, 1991, the
30 rates or charges imposed by solid waste collectors or solid waste
31 transporters, or fees, rates or charges for solid waste collection
32 services provided by persons engaged in the business of solid
33 waste collection within this State would no longer be subject to
34 the regulation of the Board of Public Utilities.

35 The bill provides that the penalties recovered through
36 enforcement actions brought by the Board under section 13 of
37 P.L.1970, c.40 (C.48:13A-12) for violations of P.L.1970, c.40,
38 including any rule, regulation or administrative order adopted or
39 issued thereunder, and any waste flow order issued in conjunction
40 with the Department of Environmental Protection, or any
41 applicable provision of Title 48 of the Revised Statutes, must be
42 paid to the "Solid Waste Enforcement Fund" established in
43 section 15 of the bill. Thus if a money judgment is rendered
44 against a defendant pursuant to this section, the payment made
45 to the court would be remitted to the fund. All monies in the fund
46 would be utilized exclusively by the Division of Solid Waste in the
47 Board of Public Utilities for enforcement and implementation of
48 the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and this bill.

49 The other major provisions of the bill would: (1) authorize any

1 solid waste collector or transporter to acquire or dispose of any
2 equipment, including collection or haulage vehicles, at any time,
3 or to issue stock, bonds or other evidence of long-term
4 indebtedness, without the approval of the BPU; (2) after January
5 1, 1991, require every existing solid waste collector and
6 transporter to pay an annual renewal fee of \$100.00 for the
7 certificate of public convenience and necessity issued by the
8 board to defray the costs of supervising the solid waste collection
9 and transportation industry; and (3) authorize the BPU to charge
10 and collect a filing fee of up to \$500.00 per application from
11 applicants for an initial certificate of public convenience and
12 necessity.

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WASTE MANAGEMENT

Provides for the deregulation of solid waste collection industry.

**SENATE LAND USE MANAGEMENT
AND REGIONAL AFFAIRS COMMITTEE**

STATEMENT TO

**SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3040**

STATE OF NEW JERSEY

DATED: JUNE 17, 1991

The Senate Land Use Management and Regional Affairs Committee favorably reports a Senate Committee Substitute for Senate Bill No. 3040.

The substitute bill would establish procedures for regulatory reform and provide a 48-month transition period from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry.

Specifically, the rates or charges imposed by solid waste collectors for solid waste collection services would no longer be subject to the regulation of the Board of Public Utilities 48 months after the effective date of the bill. However, between the bill's effective date and the end of the fourth transition year, ~~solid waste collectors would remain subject to the rate regulation of the Board. The bill would not affect the Board's rate regulation of the solid waste disposal industry.~~

The solid waste collection industry would remain under the general supervision of the BPU after the 48-month transition period and every solid waste collector would still be required to obtain the certificate of public convenience and necessity issued by the Board. The bill would not affect the Board's jurisdiction with respect to waste flow control and enforcement. Rather, the bill would give statutory recognition to the long-held judicial view that the Board of Public Utilities and the Department of Environmental Protection have coextensive jurisdiction over the interdistrict, intradistrict and interstate flow of solid waste, viz. the orderly management of solid waste in New Jersey is achieved through waste flow orders jointly issued by these State agencies directing specific haulers and waste streams to specific processing or disposal facilities.

The bill provides that all rates or charges imposed by solid waste collectors within this State must conform to the uniform tariff for solid waste collection adopted by the BPU by rules and regulations, and every solid waste collector must file a uniform tariff with the Board.

The bill provides that any increase or decrease in the disposal rates or charges received at authorized solid waste disposal facilities in this State would be automatically adjusted for in the uniform tariff. Any solid waste collector seeking an adjustment must file with the BPU appropriate revised tariff sheets. ~~No adjustment in the disposal rate could be implemented until the revised tariff sheets have been filed with, and verified by the~~

Board. Every solid waste collector must file these documents with the Board within five days of any decrease in the disposal rates or charges received at an authorized disposal facility.

The bill would authorize any solid waste collector, during the 48-month transition period to deregulation, to pass along to customers any net savings in the payment of disposal rates or charges at authorized solid waste facilities realized due to the materials recovery activities undertaken by that solid waste collector. These savings would be reflected in an adjustment of the rates or charges set forth in the uniform tariff as solid waste disposal service charges.

The bill requires the Board to adopt rules and regulations establishing solid waste collection rate bands governing the rates or charges that may be imposed by solid waste collectors for solid waste collection services in this State during the 48-month transition from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry.

The solid waste collection rate bands provide for the maximum adjustment that any solid waste collector may make to the rates or charges set forth as solid waste collection service charges in the uniform tariff filed with and accepted by the Board after the bill's effective date for any residential, commercial, industrial or institutional customer during a specified transition year, in accordance with the following schedule:

(1) During the initial transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the Consumer Price Index (CPI), multiplied by the rates or charges;

(2) During the second transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the CPI, plus the sum authorized in paragraph (1), multiplied by the rates or charges;

(3) During the third transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 10% plus the annual percentage change in the CPI, plus the sum authorized in paragraph (2), multiplied by the rates or charges; and

(4) During the fourth transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of the annual percentage change in the CPI plus the sum authorized in paragraph (3), multiplied by the rates or charges.

Any adjustments to the uniform tariff may be made on an individual customer basis.

Prior to the close of each transition year, the Board is required

to revise the rate bands for the forthcoming transition year, by order in writing and in conformance with the schedule for the pricing of solid waste collection services.

The solid waste collection rate band pricing system established in the bill may be illustrated by the following example, which outlines a hypothetical solid waste collection rate band for residential customer service.

Assumptions:

- Service charges in the uniform tariff: \$100 per year
- Consumer Price Index: 5% annual percentage increase for each of the 4 years
- Maximum adjustment: 5% (initial transition year); 5% (2nd transition year); 10% (3rd transition year) and CPI (4th transition year)

I	II	III	IV	Transition Year
\$110	\$120	\$135	\$140	Maximum Charges
\$100	\$100	\$100	\$100	Service Charges
10%	20%	35%	40%	Rate Band
\$90	\$80	\$65	\$60	Minimum Charges

As provided in the example, during the initial transition year a hypothetical solid waste collector charging \$100 per year for residential service may adjust his rates by an amount within a rate band consisting of the sum of 5% and the 5% change in the CPI multiplied by the service charge. Thus, the collector may increase his rate to \$110 (10% x \$100 = \$10 + \$100 = \$110), or decrease the rate to \$90 (10% x \$100 = \$10 - \$100 = \$90).

During the second transition year, the solid waste collector may adjust his rates by an amount within a rate band consisting of the sum of 5% and the 5% change in the CPI, plus the previous year's rate band (10%), multiplied by the service charge. Thus, the collector may increase his rate to \$120 (20% x \$100 = \$20 + \$100 = \$120), or decrease the rate to \$80 (20% x \$100 = \$20 - \$100 = \$80).

During the third transition year, these rates may be adjusted by an amount within a rate band consisting of the sum of 10% and the 5% change in the CPI, plus the previous year's rate band (20%), multiplied by the service charge. Thus, the collector may increase his rate to \$135 (35% x \$100 = \$35 + \$100 = \$135), or decrease the rate to \$65 (35% x \$100 = \$35 - \$100 = \$65).

During the fourth transition year, the rates may be adjusted by

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an amount within a rate band consisting of the sum of the 5% change in the CPI and the previous year's rate band (35%), multiplied by the service charge. Thus, the collector may increase his rate to \$140 ($40\% \times \$100 = \$40 + \$100 = \140), or decrease the rate to \$60 ($40\% \times \$100 = \$100 - \$40 = \60).

Thereafter, the solid waste collector may determine his own rates.

After filing a uniform tariff with the Board, any solid waste collector may adjust the rates or charges set forth in the uniform tariff as provided in the solid waste collection rate bands. Any adjustments to the uniform tariff may be made on an individual customer basis.

In instances where the rates or charges set forth in a uniform tariff filed by a solid waste collector have not been reviewed and accepted by the Board, the solid waste collector may adjust those rates or charges as provided in the rate band schedule. However, subsequent to its review of a uniform tariff, if the Board finds that the rates or charges set forth therein are excessive, then it may order the solid waste collector to refund, at an interest rate to be determined by the Board, the difference between the adjusted rates or charges and the rates or charges accepted by the Board.

During the first and second transition years, every solid waste collector must file with the Board a semi-annual report describing the amount and frequency of variation from the rates or charges set forth in the uniform tariff for each class of residential, commercial, industrial or institutional customers. The report must include the percentage of each class of solid waste collection services for which adjustments have been made, and the specified percentage increase or decrease to the rates or charges made to that customer class. During the third and fourth transition years, every solid waste collector must file this report with the Board on an annual basis.

Whenever a solid waste collector makes an adjustment to the uniform tariff, he must notify every customer to be affected thereby at least 10 days prior to the implementation of that adjustment, and attach a copy of the applicable rate schedule to the notice. At least once every transition year, every solid waste collector must notify customers that solid waste collection services are available on a competitive basis. The notice must include copies of the "customer bill of rights" established by the Board in rules and regulations adopted therefor.

No solid waste collector utilizing the rate bands to make adjustments to the uniform tariff previously filed with and accepted by the Board may petition the BPU for an increase in the rates or charges set forth therein, except in cases of hardship or exigent circumstances, or in the case of significant increases in energy costs, as determined by the Board.

Within 12 months of the bill's effective date and at least once every six months thereafter, the Board must publish the rate schedule set forth in the uniform tariff of every solid waste collector serving a particular region of the State in at least one newspaper of general circulation within that region and at least one newspaper of statewide circulation. The rate schedule must be accompanied by a notice advising the public of the current rate band in effect and stating that any difficulties in securing solid waste collection services, or any complaints pertaining to the adequacy of existing solid waste collection services, should be referred to the Board of Public Utilities.

Within 30 months of the bill's effective date, the Board must submit a preliminary report to the Governor and the Legislature concerning the implementation of this bill. The Board is required to provide interested parties and the general public with an opportunity to submit written comments on the contents of the preliminary report in a manner to be determined by the Board.

Within 36 months of the bill's effective date, the Board must submit a final report to the Governor and the Legislature concerning the implementation of this bill. The final report must include the following components:

(1) An evaluation of the success of solid waste collection rate bands in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper solid waste collection services at competitive rates;

(2) An evaluation of the success of solid waste collection rate bands in eliminating predatory pricing and other anticompetitive activities within the solid waste collection industry;

(3) An evaluation of the success of uniform specifications for municipal solid waste collection contracts in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper municipal solid waste collection services at competitive rates;

(4) An assessment of the economic viability and competitiveness of the solid waste collection industry and a recommendation, as warranted by the circumstances, as to whether the termination of rate regulation of the solid waste collection industry by the Board will promote meaningful competition and ensure efficient solid waste collection services at competitive rates; and

(5) A summary of any written comments submitted by interested parties or the general public on the contents of the preliminary report.

Section 19 of the bill requires the Board to adopt rules and regulations within 180 days of the bill's effective date establishing the criteria and procedures to be utilized by the Board in making a determination of effective competition. The Board must utilize these criteria in making either of the following determinations: (1) whether a lack of effective

competition is likely to occur if the Board approves a proposed sale, lease, mortgage or other transaction by a solid waste collector to dispose of or encumber any property; or (2) whether a lack of effective competition exists within a specific geographic area, class of customers or type of solid waste collection services after the 48-month transition period.

The criteria must include the following considerations: (1) the existence of barriers to entry of persons seeking to provide solid waste collection services within a specific geographic area, class of customers or type of service; (2) the structure of the solid waste collection industry within a specific geographic area, class of customers or type of service, including the number of participating solid waste collectors, the intensity of competition, or the concentration in ownership of collection or haulage vehicles or other equipment; and (3) the existence of patterns of anti-competitive behavior by persons providing solid waste collection services within a specific geographic area, class of customers or type of service.

The Board is required to utilize these criteria in conjunction with generally accepted economic indicators to be identified in the rules and regulations adopted by the Board, including: an evaluation of capital investment costs, economies of scale, differentiation of service, technological barriers facing entrants, financial requirements, including capital entry or exit costs, regulatory barriers, and business characteristics, including number of customers, customer turnover, annual gross revenues, class or type of service provided, and annual net income.

The rules adopted by the board must also establish procedures to be utilized in reviewing the rates or charges received by a solid waste collector pursuant to section 20 of the bill following the 48-month transition period.

Section 20 of the bill would authorize the BPU to retain residual ratesetting authority over a solid waste collector following the 48-month transition period to total deregulation if the Board determines that: (1) there exists a lack of effective competition within a specified geographic region, class of customers or particular type of collection service; and (2) the lack of effective competition has resulted in the solid waste collector charging rates that exceed rates that would have resulted under effective competition.

The Board would make this determination by comparing the solid waste collector's rates with those received in a comparable region or for comparable solid waste collection services. If necessary, the Board would be authorized to review the solid waste collector's rates and financial records, and to order refunds of excessive rates and take other measures to restore effective competition. Any such order would expire six months following the effective date of the order.

Following its six month review and upon a determination that

effective competition has been restored to the affected geographic area, class of customers or type of service, the Board must rescind the order and cease any further rate setting activity with respect to the solid waste collector subject to that order. However, upon a written determination that a lack of effective competition still exists, and that the continued lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition, the Board may issue a new order and continue rate setting activity with respect to that solid waste collector for an additional six-month period.

The bill provides that the penalties recovered pursuant to actions brought by the BPU under section 13 of P.L.1970, c.40 (C.48:13A-12) must be paid to the "Solid Waste Enforcement Fund" established in section 21 of the bill. Thus if a money judgment is rendered against a defendant, the payment made to the court would be remitted to the fund. All monies in the fund would be utilized exclusively by the Division of Solid Waste in the Board of Public Utilities for enforcement and implementation of the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and this bill.

The bill amends and supplements the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq) to incorporate a number of the recommendations made by the State Commission of Investigation in April, 1989 concerning bidding on municipal solid waste collection contracts which are designed to promote competition within the solid waste collection industry for the provision of municipal solid waste collection services.

Specifically, these provisions of the bill would: (1) require the Board of Public Utilities to adopt by rule or regulation uniform specifications for municipal solid waste collection contracts; (2) prohibit any local contracting unit from requiring any bidder on a contract for the collection and disposal of municipal solid waste to be a resident of, or that his place of business be located in, the county or municipality in which the contract would be performed; (3) require all advertisements for bids on municipal solid waste collection contracts to be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, at least 60 days prior to the date fixed for receiving the bids; and (4) require any notice of revisions or addenda to advertisements or bid documents relating to bids on municipal solid waste collection contracts to be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, no later than 5 business days prior to the date for acceptance of bids.

The bill authorizes the Board to direct any applicant seeking to obtain a certificate of public convenience and necessity, i.e. any entrant into the solid waste collection industry in New Jersey, to furnish proof that the proposed rates or charges to be received

for solid waste collection services do not exceed just and reasonable rates or charges. Subsequent to the issuance of a certificate, if the Board finds that the rates or charges actually being received for collection services are excessive, then it may order that solid waste collector to adjust the tariff or contract to a sum which would result in just and reasonable rates or charges.

Any solid waste collector seeking to extend solid waste collection services into any area where that person is not actively engaged in solid waste collection, and the proposed extension of services is not set forth in a tariff previously filed with and accepted by the Board, must file with the BPU appropriate revised tariff sheets which reflect proposed changes in areas to be served.

Further, any solid waste collector seeking to expand his solid waste collection business for the purpose of providing new solid waste collection services, and the proposed expansion of services is not set forth in a tariff previously filed with and accepted by the Board, must file with the Board appropriate revised tariff sheets which reflect proposed changes in services to be provided.

In either case, subsequent to its review of a revised tariff, ~~should~~ the Board find that the rates or charges set forth therein are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in competitive rates or charges.

The bill provides that no solid waste collector may sell, lease, mortgage or otherwise dispose of or encumber any property without the approval of the Board of Public Utilities. Further, no solid waste collector may, without the prior approval of the Board, merge or consolidate any property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal.

Any solid waste collector seeking approval for any of these transactions must file with the Board a notice of intent at least 30 days prior to the completion of the transaction, and the Board must promptly review all such notices. Within 30 days of receiving a notice of intent, the Board may request the solid waste collector to submit additional information to assist the Board in its review, if it deems that such information is necessary. If no such request is made, the transaction would be deemed to have been approved. If additional information is requested, the Board must provide a written explanation as to why it deems such information necessary to make an informed decision on the impact of the transaction on effective competition.

The Board must approve or deny a transaction within 60 days of receipt of all requested information. If the Board fails to take action on a transaction within the 60-day period, then the

transaction would be deemed to have been approved. The Board must approve a transaction unless it makes a determination pursuant to the criteria and procedures established in section 19 of the bill that the proposed sale, lease, mortgage, disposition, encumbrance, merger or consolidation would result in a lack of effective competition.

Any solid waste collector may, without the approval of the Board, purchase, finance or lease any equipment, including collection or haulage vehicles. In addition, any solid waste collector may, without the approval of the Board, sell or otherwise dispose of up to 33% of its collection or haulage vehicles within a 12-month period.

The other major provisions of the bill would: (1) authorize any solid waste collector to purchase or lease any equipment, including collection or haulage vehicles, at any time, or to issue stock, bonds or other evidence of long-term indebtedness, without the approval of the Board; (2) require existing solid waste collectors to pay an annual renewal fee of \$100.00 for the certificate of public convenience and necessity issued by the Board to defray the costs of supervising the solid waste collection industry; (3) authorize the Board to charge and collect a filing fee of up to \$500.00 per application from applicants for an initial certificate of public convenience and necessity; and (4) authorize the Board to order any person engaged in the business of solid waste collection to extend solid waste collection services into any area where such service has been discontinued. If the Board orders a solid waste collector to extend collection services to an area in need of such services, the rates and charges for solid waste collection service in the extended area would be determined in accordance with the uniform tariff filed with the Board during the 48-month transition period, and by the ordered person thereafter.

The Senate Committee Substitute for Senate Bill No. 3040 is identical to the Assembly Substitute for Assembly Bill Nos. 3136 and 312-ACS.

STATE OF NEW JERSEY

ADOPTED JUNE 17, 1991

Sponsored by Senator CONTILLO

1 **AN ACT** concerning regulatory reform of the solid waste
2 collection industry, and amending, supplementing and repealing
3 parts of the statutory law.

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

7 1. (New section) Sections 1 through 23 inclusive of this
8 amendatory and supplementary act shall be known and may be
9 cited as the "Solid Waste Collection Regulatory Reform Act."

10 2. (New section) The Legislature finds and declares that the
11 collection of solid waste is an activity thoroughly affected with
12 the public interest; that the health, safety and welfare of the
13 people of this State require efficient and reasonable solid waste
14 collection services; and that efficient solid waste collection
15 services at competitive rates will more likely be achieved if the
16 solid waste collection industry is under the supervision of, but not
17 subject to traditional public utility rate regulation by, the Board
18 of Public Utilities.

19 The Legislature further finds and declares that it is imperative
20 that the State ensure the economic viability and competitiveness
21 of the solid waste collection industry in order to safeguard the
22 integrity of the State's long-term solid waste management
23 strategy; that it is equally imperative to safeguard the interests
24 of consumers as well as the interests of those providing solid
25 waste collection services; that to provide for ratepayer and
26 consumer protection it is necessary to foster competition within
27 the industry and to establish a responsible State supervisory role
28 to ensure safe, adequate and proper solid waste collection service
29 at competitive rates; and that to achieve these ends in the most
30 efficient and reasonable manner, it is necessary to establish
31 procedures for regulatory reform and the eventual termination of
32 traditional public utility rate regulation of the solid waste
33 collection industry.

34 The Legislature further finds and declares that the Legislature
35 through enactment of P.L.1983, c.392 (C.13:1E-126 et seq.) has
36 established a licensing system which is designed to prevent
37 persons with criminal backgrounds from engaging in the solid
38 waste collection business, thereby promoting free and open
39 competition within the solid waste collection industry; and that
40 terminating traditional public utility rate regulation of the solid

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 waste collection industry can be achieved without compromising
2 the State's role in protecting the public interest.

3 The Legislature therefore determines that it is in the public
4 interest to establish procedures for the eventual termination of
5 public utility rate regulation of solid waste collectors while at
6 the same time maintaining Board of Public Utilities supervision
7 over the solid waste collection industry.

8 3. (New section) As used in sections 1 through 23 of P.L. .
9 c. (C.) (pending in the Legislature as this bill):

10 "Applicant" means any person seeking to obtain an initial
11 certificate of public convenience and necessity pursuant to
12 sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9) in
13 order to provide solid waste collection services in this State.

14 "Board" means the Board of Public Utilities.

15 "Materials recovery" means the processing and separation of
16 solid waste utilizing manual or mechanical methods for the
17 purposes of recovering recyclable materials for disposition and
18 recycling prior to the disposal of the residual solid waste at an
19 authorized solid waste facility.

20 "Materials recovery facility" means a transfer station or other
21 authorized solid waste facility at which nonhazardous,
22 nonputrescible solid waste, which material is not source
23 separated by the generator thereof prior to collection, is received
24 for onsite processing and separation utilizing manual or
25 mechanical methods for the purposes of recovering recyclable
26 materials for disposition and recycling prior to the disposal of the
27 residual solid waste at an authorized solid waste facility.

28 "Septic waste" means pumpings from septic tanks and
29 cesspools, but shall not include wastes from a sewage treatment
30 plant.

31 "Solid waste" means garbage, refuse, and other discarded
32 materials resulting from industrial, commercial and agricultural
33 operations, and from domestic and community activities, and
34 shall include all other waste materials including liquids, except
35 for solid animal and vegetable wastes collected by swine
36 producers licensed by the State Department of Agriculture to
37 collect, prepare and feed such wastes to swine on their own farms.

38 "Solid waste collection" means the activity related to pickup
39 and transportation of solid waste from its source or location to an
40 authorized solid waste facility, but does not include activity
41 related to the pickup, transportation or unloading of septic waste.

42 "Solid waste collection services" means the services provided
43 by persons engaging in the business of solid waste collection.

44 "Solid waste collector" means a person engaged in the
45 collection of solid waste and holding a certificate of public
46 convenience and necessity pursuant to sections 7 and 10 of
47 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

48 "Solid waste container" means a receptacle, container or bag
49 suitable for the depositing of solid waste.

1 "Solid waste disposal" means the storage, treatment,
2 utilization, processing, or final disposal of solid waste.

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

5 "Solid waste facilities" mean and include the plants, structures
6 and other real and personal property acquired, constructed or
7 operated or to be acquired, constructed or operated by any person
8 pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.)
9 and P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act,
10 including transfer stations, incinerators, resource recovery
11 facilities, sanitary landfill facilities or other plants for the
12 disposal of solid waste, and all vehicles, equipment and other real
13 and personal property and rights therein and appurtenances
14 necessary or useful and convenient for the collection or disposal
15 of solid waste in a sanitary manner.

16 "Transition year" means any of the 4 successive 12-month
17 periods commencing on the effective date of P.L. , c. (C.)
18 (pending in the Legislature as this bill).

19 4. (New section) a. Every solid waste collector shall pay an
20 annual fee of \$100.00 to cover the costs of supervising the solid
21 waste collection industry. The fee imposed pursuant to this
22 section shall be in addition to the annual assessment made by the
23 board pursuant to P.L.1968, c.173 (C.48:2-59 et seq.).

24 b. The provisions of section 1 of P.L.1959, c.43 (C.48:2-56) or
25 any rules or regulations adopted pursuant thereto to the contrary
26 notwithstanding, the board may charge and collect a filing fee of
27 up to \$500.00 per applicant from persons seeking to obtain a
28 certificate of public convenience and necessity pursuant to
29 sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

30 5. (New section) The board may direct any applicant to
31 furnish proof that the rates or charges to be received for solid
32 waste collection services do not exceed just and reasonable rates
33 or charges. Should the board find, subsequent to the issuance of a
34 certificate of public convenience and necessity, that the rates or
35 charges received for solid waste collection services are
36 excessive, then it may order the solid waste collector charging
37 such excessive rates or charges to make an adjustment in the
38 tariff or contract to a sum which shall result in just and
39 reasonable rates or charges.

40 6. (New section) a. The board, upon complaint or its own
41 initiative, after hearing, may direct any solid waste collector to
42 furnish proof that the rates or charges received for solid waste
43 collection services do not exceed rates or charges which would
44 result from effective competition.

45 b. Should the board find that the rates or charges received for
46 solid waste collection services are excessive, then it may order
47 the solid waste collector charging such excessive rates or charges
48 to make an adjustment in the tariff or contract to a sum which
49 shall result in competitive rates or charges. In issuing this order,

1 the board may direct the solid waste collector to refund, at an
2 interest rate to be determined by the board, the difference
3 between the excessive rates or charges and the competitive rates
4 or charges ordered by the board.

5 7. (New section) a. Any solid waste collector proposing to
6 extend solid waste collection services into any area where that
7 person is not actively engaged in solid waste collection, and the
8 proposed extension of services is not set forth in a tariff
9 previously filed with and accepted by the board, shall file with
10 the board appropriate revised tariff sheets which reflect the
11 proposed changes in areas to be served.

12 b. Any solid waste collector proposing to expand his solid
13 waste collection business for the purpose of providing new solid
14 waste collection services, and the proposed expansion of services
15 is not set forth in a tariff previously filed with and accepted by
16 the board, shall file with the board appropriate revised tariff
17 sheets which reflect the proposed changes in services to be
18 provided.

19 c. Should the board find, subsequent to its review of a revised
20 tariff, that the rates or charges set forth therein are excessive,
21 then it may order the solid waste collector charging such
22 excessive rates or charges to make an adjustment in the tariff or
23 contract to a sum which shall result in competitive rates or
24 charges.

25 8. (New section) a. Any increase or decrease in the disposal
26 rates or charges received at authorized solid waste facilities in
27 this State shall be automatically adjusted for in the uniform
28 tariff for solid waste collection established by the Board of
29 Public Utilities in rules and regulations adopted pursuant to the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
31 et seq.).

32 (1) Any solid waste collector seeking an adjustment to the
33 rates or charges set forth in the uniform tariff as solid waste
34 disposal service charges shall file with the board appropriate
35 revised tariff sheets which reflect changes in the disposal rates
36 or charges received at an authorized solid waste facility.

37 (2) No adjustment in the disposal rate shall be implemented
38 until such time as revised tariff sheets and verification forms
39 have been filed with the board. Every solid waste collector shall
40 file these documents with the board within five days of any
41 decrease in the disposal rates or charges received at an
42 authorized solid waste facility.

43 b. (1) Any net savings in the payment of disposal rates or
44 charges at authorized solid waste facilities realized by a solid
45 waste collector due to decreased waste flows resulting from
46 materials recovery, or the revenues generated thereby, may be
47 adjusted for in the rates or charges set forth in the uniform tariff
48 as solid waste disposal service charges.

49 (2) Any solid waste collector seeking an adjustment to the

1 rates or charges set forth in the uniform tariff as solid waste
2 disposal service charges shall file with the board appropriate
3 revised tariff sheets which reflect net savings in the payment of
4 disposal rates or charges at an authorized solid waste facility. No
5 adjustment in the disposal rate shall be implemented until such
6 time as revised tariff sheets and verification forms have been
7 filed with the board.

8 c. Every solid waste collector shall file with the board rates or
9 charges for solid waste collection services conforming to the
10 uniform tariff for solid waste collection established by the board.
11 Every person engaged in the business of solid waste collection in
12 this State shall be subject to the provisions of this subsection and
13 shall file with the board a uniform tariff.

14 9. (New section) The provisions of any other law, or of any
15 rule, regulation or administrative order adopted or issued
16 pursuant thereto, to the contrary notwithstanding, during the
17 48-month transition from economic regulation to the termination
18 of Board of Public Utilities rate regulation of the solid waste
19 collection industry, the rates or charges that may be imposed by
20 solid waste collectors for solid waste collection services in this
21 State shall be determined in accordance with the provisions of
22 P.L. c. (C.) (pending in the Legislature as this bill).

23 a. The Board of Public Utilities shall establish, in rules and
24 regulations adopted pursuant to the "Administrative Procedure
25 Act," solid waste collection rate bands governing the rates or
26 charges that may be imposed by solid waste collectors for solid
27 waste collection services in this State during each transition year.

28 The solid waste collection rate bands shall provide for the
29 maximum adjustment that any solid waste collector may make to
30 the rates or charges set forth as solid waste collection service
31 charges in the uniform tariff filed with and accepted by the board
32 after the effective date of this amendatory and supplementary
33 act for any residential, commercial, industrial or institutional
34 customer during a specified transition year.

35 b. The solid waste collection rate bands shall conform to the
36 following schedule:

37 (1) During the first transition year, the rates or charges set
38 forth as solid waste collection service charges in the uniform
39 tariff may be adjusted by an amount within a rate band the upper
40 and lower limits of which shall not exceed the sum of 5% plus the
41 annual percentage change in the Consumer Price Index,
42 multiplied by the rates or charges;

43 (2) During the second transition year, the rates or charges set
44 forth as solid waste collection service charges in the uniform
45 tariff may be adjusted by an amount within a rate band the upper
46 and lower limits of which shall not exceed the sum of 5% plus the
47 annual percentage change in the Consumer Price Index, plus the
48 sum authorized pursuant to paragraph (1), multiplied by the rates
49 or charges;

1 (3) During the third transition year, the rates or charges set
2 forth as solid waste collection service charges in the uniform
3 tariff may be adjusted by an amount within a rate band the upper
4 and lower limits of which shall not exceed the sum of 10% plus
5 the annual percentage change in the Consumer Price Index, plus
6 the sum authorized pursuant to paragraph (2), multiplied by the
7 rates or charges; and

8 (4) During the fourth transition year, the rates or charges set
9 forth as solid waste collection service charges in the uniform
10 tariff may be adjusted by an amount within a rate band the upper
11 and lower limits of which shall not exceed the sum of the annual
12 percentage change in the Consumer Price Index plus the sum
13 authorized pursuant to paragraph (3), multiplied by the rates or
14 charges.

15 Any adjustments to the uniform tariff authorized pursuant to
16 this subsection may be made on an individual customer basis.

17 For the purposes of this subsection, "Consumer Price Index"
18 means the consumer price index for all urban consumers in the
19 New York City and the Philadelphia areas as reported by the
20 United States Department of Labor.

21 c. Prior to the close of each transition year, the board shall,
22 by order in writing, revise the solid waste collection rate bands
23 for the forthcoming transition year to conform to the schedule
24 established pursuant to subsection b. of this section for the
25 pricing of solid waste collection services.

26 10. (New section) a. Upon filing with the Board of Public
27 Utilities a uniform tariff, any solid waste collector may adjust
28 the rates or charges set forth as solid waste collection service
29 charges in the uniform tariff as provided in the solid waste
30 collection rate bands established pursuant to section 9 of P.L. ,
31 c. (C.) (pending in the Legislature as this bill).

32 b. (1) Any solid waste collector may adjust the rates or
33 charges set forth in the uniform tariff filed with the board as
34 provided in the solid waste collection rate bands, whether or not
35 those rates or charges have been reviewed and accepted by the
36 board.

37 (2) Should the board find, subsequent to its review of a uniform
38 tariff, that the rates or charges set forth therein are excessive,
39 then it may order the solid waste collector to refund, at an
40 interest rate to be determined by the board, the difference
41 between the adjusted rates or charges and the rates or charges
42 accepted by the board.

43 c. (1) During the first and second transition years, every solid
44 waste collector shall, at least once every six months, file with
45 the board a report describing the amount and frequency of
46 variation from the rates or charges set forth in the uniform tariff
47 for each class of residential, commercial, industrial or
48 institutional customers. The report shall include the percentage
49 of each class of solid waste collection services for which

1 adjustments have been made, and the specified percentage
2 increase or decrease to the rates or charges made to that
3 customer class.

4 (2) During the third and fourth transition years, every solid
5 waste collector shall, at least once every 12 months, file with the
6 board a report describing the amount and frequency of variation
7 from the rates or charges set forth in the uniform tariff for each
8 class of residential, commercial, industrial or institutional
9 customers. The report shall include the percentage of each class
10 of solid waste collection services for which adjustments have
11 been made, and the specified percentage increase or decrease to
12 the rates or charges made to that customer class.

13 d. Whenever a solid waste collector makes an adjustment to
14 the uniform tariff pursuant to this section, the solid waste
15 collector shall notify every customer to be affected thereby at
16 least 10 days prior to the implementation of that adjustment. The
17 solid waste collector shall attach a copy of the applicable rate
18 schedule to the notice.

19 11. (New section) Every solid waste collector shall notify
20 customers at least once every year that solid waste collection
21 services in this State are available on a competitive basis, as
22 provided in the customer bill of rights established by the board in
23 rules and regulations adopted pursuant to the "Administrative
24 Procedure Act," and shall provide every customer with a copy
25 thereof.

26 12. (New section) No solid waste collector utilizing the solid
27 waste collection rate bands established by the Board of Public
28 Utilities pursuant to section 9 of P.L. , c. (C.) (pending
29 in the Legislature as this bill) to make adjustments to the uniform
30 tariff may, except in cases of hardship or exigent circumstances,
31 or in the case of significant increases in energy costs, as
32 determined by the board, petition the board for changes in the
33 rates or charges set forth as solid waste collection service
34 charges in the uniform tariff previously filed with and accepted
35 by the board.

36 13. (New section) The Board of Public Utilities shall, within
37 12 months of the effective date of this amendatory and
38 supplementary act and at least once every six months thereafter,
39 publish the rate schedule set forth in the uniform tariff of every
40 solid waste collector serving a particular region of the State in at
41 least one newspaper of general circulation within that region and
42 at least one newspaper of statewide circulation. The rate
43 schedule shall be accompanied by a notice advising the public of
44 the current solid waste collection rate band in effect on that date
45 and stating that any difficulties in securing solid waste collection
46 services, or any complaints pertaining to the adequacy of existing
47 solid waste collection services, may be referred to the board.

48 14. (New section) a. The Board of Public Utilities shall,
49 within 30 months of the effective date of this amendatory and

1 supplementary act, submit a preliminary report to the Governor
2 and the Legislature concerning the implementation of P.L. , c.
3 (C.) (pending in the Legislature as this bill).

4 The board shall provide interested parties and the general
5 public with an opportunity to submit written comments on the
6 contents of the preliminary report in a manner to be determined
7 by the board.

8 b. The board shall, within 36 months of the effective date of
9 this amendatory and supplementary act, submit a final report to
10 the Governor and the Legislature concerning the implementation
11 of P.L. , c. (C.) (pending in the Legislature as this bill).

12 The final report shall include, but need not be limited to:

13 (1) An evaluation of the success of solid waste collection rate
14 bands in promoting competition within the solid waste collection
15 industry while at the same time ensuring safe, adequate and
16 proper solid waste collection services at competitive rates;

17 (2) An evaluation of the success of solid waste collection rate
18 bands in eliminating predatory pricing and other anticompetitive
19 activities within the solid waste collection industry;

20 (3) An evaluation of the success of uniform specifications for
21 municipal solid waste collection contracts in promoting
22 competition within the solid waste collection industry while at
23 the same time ensuring safe, adequate and proper municipal solid
24 waste collection services at competitive rates;

25 (4) An assessment of the economic viability and
26 competitiveness of the solid waste collection industry and a
27 recommendation, as warranted by the circumstances, as to
28 whether the termination of rate regulation of the solid waste
29 collection industry by the board will promote meaningful
30 competition and ensure efficient solid waste collection services
31 at competitive rates; and

32 (5) A summary of any written comments submitted by
33 interested parties or the general public on the contents of the
34 preliminary report required pursuant to subsection a. of this
35 section.

36 15. (New section) The rates or charges imposed by solid waste
37 collectors, or fees, rates or charges for solid waste collection
38 services provided by persons engaged in the business of solid
39 waste collection in this State shall not be subject to the
40 regulation of the Board of Public Utilities. Nothing herein
41 provided shall be construed to limit the authority of the board
42 with respect to the supervision of the solid waste collection
43 industry.

44 16. (New section) a. The board may compel any person
45 engaged in the business of solid waste collection or otherwise
46 providing solid waste collection services to furnish and file with
47 the board a consolidated annual report or other documents as may
48 be necessary to enable the board to administer its duties as
49 prescribed by law and this act.

1 **b. Should any person engaged in the business of solid waste**
2 **collection or otherwise providing solid waste collection services**
3 **fail or refuse to comply with any provision of this section, the**
4 **board may revoke or suspend the certificate of public**
5 **convenience and necessity issued to that person.**

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

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

28 **18. (New section) a. Should any person engaged in the solid**
29 **waste collection business fail or refuse to complete, execute or**
30 **perform any contract or agreement obligating such person to**
31 **provide solid waste collection services, the board may order any**
32 **solid waste collector to extend solid waste collection services**
33 **into any area where the collection of solid waste has been**
34 **discontinued.**

35 **b. Should the board find that any class of customers within a**
36 **specific geographic area is unable to secure solid waste collection**
37 **services, or that any person seeking a specific type of solid waste**
38 **collection service is unable to secure solid waste collection**
39 **services, or that the board has received complaints pertaining to**
40 **the adequacy of existing solid waste collection services, the**
41 **board may order any solid waste collector to extend solid waste**
42 **collection services to that geographic area, class of customers or**
43 **person.**

44 **c. (1) Prior to the effective date of section 15 of P.L. , c.**
45 **(C.) (pending in the Legislature as this bill), should the**
46 **board order any solid waste collector to extend solid waste**
47 **collection services to any area, class of customers or person, the**
48 **rates and charges for the extended solid waste collection services**
49 **shall be determined in accordance with the provisions of sections**

1 9 and 10 of P.L. , c. (C.) (pending in the Legislature as
2 this bill).

3 (2) After the effective date of section 15 of P.L. , c.
4 (C.) (pending in the Legislature as this bill), should the
5 board order any solid waste collector to extend solid waste
6 collection services to any area, class of customers or person, the
7 rates and charges for the extended solid waste collection services
8 shall be determined by the person ordered by the board to extend
9 those services.

10 d. Should any solid waste collector fail or refuse to comply
11 with any provision of this section, the board may revoke or
12 suspend the certificate of public convenience and necessity issued
13 to that person.

14 19. (New section) Within 180 days of the effective date of this
15 amendatory and supplementary act, the Board of Public Utilities
16 shall establish, in rules and regulations adopted pursuant to the
17 provisions of the "Administrative Procedure Act," the criteria
18 and procedures to be utilized by the board in making a
19 determination of effective competition.

20 a. The board shall utilize the criteria in making a
21 determination as to whether a lack of effective competition is
22 likely to occur if the board approves a transaction pursuant to the
23 provisions of R.S.48:3-7, or in making a determination as to
24 whether a lack of effective competition exists within a specific
25 geographic area, class of customers or type of solid waste
26 collection services after the effective date of section 15 of
27 P.L. , c. (C.) (pending in the Legislature as this bill).

28 b. The criteria shall include, but need not be limited to, the
29 following:

30 (1) the existence of barriers to entry of persons seeking to
31 provide solid waste collection services within a specific
32 geographic area, class of customers or type of service;

33 (2) the structure of the solid waste collection industry within a
34 specific geographic area, class of customers or type of service,
35 including the number of participating solid waste collectors, the
36 intensity of competition, or the concentration in ownership of
37 collection or haulage vehicles or other equipment; and

38 (3) the existence of patterns of anti-competitive behavior by
39 persons providing solid waste collection services within a specific
40 geographic area, class of customers or type of service.

41 c. The board shall utilize the criteria in conjunction with
42 generally accepted economic indicators which shall be identified
43 in rules and regulations adopted pursuant to the provisions of the
44 "Administrative Procedure Act." These indicators may include
45 an evaluation of capital investment costs, economies of scale,
46 differentiation of service, technological barriers facing entrants,
47 financial requirements, including capital entry or exit costs,
48 regulatory barriers, and business characteristics, including
49 number of customers, customer turnover, annual gross revenues,

1 class or type of service provided, and annual net income.

2 d. The board shall establish procedures to be utilized in
3 reviewing the rates or charges received by a solid waste collector
4 pursuant to section 20 of P.L. , c. (C.) (pending in the
5 Legislature as this bill).

6 20. (New section) a. (1) Whenever, on the basis of available
7 information, the board has reasonable grounds for belief in the
8 existence of facts warranting further investigation that a solid
9 waste collector is charging rates or charges for solid waste
10 collection services which exceed rates or charges that would have
11 resulted from effective competition, the board shall transmit a
12 notice to the solid waste collector stating that the board intends
13 to review the rates or charges received by that solid waste
14 collector. The notice shall enumerate the reasons for the review
15 and the criteria utilized by the board in making a determination
16 that a lack of effective competition exists.

17 (2) The board shall complete its review of the rates or charges
18 received by the solid waste collector no later than 45 days
19 following the date of the notice.

20 (3) Upon completing its review, the board may, after hearing,
21 by order in writing, issue an order to the solid waste collector
22 charging such excessive rates or charges to reduce the rates or
23 charges received for solid waste collection services to a sum
24 which would result from effective competition.

25 b. The board may issue an order to any person engaged in the
26 business of solid waste collection to reduce the rates or charges
27 received for solid waste collection services to a sum which would
28 result from effective competition if the following conditions are
29 met:

30 (1) the board has determined that a lack of effective
31 competition exists within a specific geographic area, or within a
32 specific class of customers or type of solid waste collection
33 services; and

34 (2) the board has determined that the lack of effective
35 competition has resulted in rates or charges received for solid
36 waste collection services which exceed rates or charges that
37 would have resulted from effective competition.

38 In making a determination pursuant to paragraph (1) of this
39 subsection, the board shall not consider extraneous technical or
40 economic factors such as variation in solid waste disposal or
41 recycling costs, the availability of, or access to, materials
42 recovery facilities, recycling centers or markets for recyclable
43 materials, or other seasonal or short-term considerations.

44 In making a determination pursuant to paragraph (2) of this
45 subsection, the board shall compare the rates or charges received
46 by the solid waste collector charging such excessive rates or
47 charges with those received by other solid waste collectors for
48 solid waste collection services within a comparable geographic
49 area, class of customers or type of service. The board, if it deems

1 that such information is necessary, may review the revenues,
2 income or expenditures of the solid waste collector charging such
3 excessive rates or charges, except that the board shall not
4 consider any revenues, income or expenditures derived from
5 recycling activities.

6 Any order issued by the board pursuant to this subsection shall
7 expire no later than the first day of the seventh month following
8 the effective date of the order.

9 c. In issuing an order pursuant to subsection b. of this section,
10 the board may:

11 (1) direct the solid waste collector to refund, at an interest
12 rate to be determined by the board, the difference between the
13 excessive rates or charges and the competitive rates or charges
14 ordered by the board as of the date of the notice of the board's
15 intention to review the rates or charges received by that solid
16 waste collector;

17 (2) take other actions pursuant to law as may be needed to
18 restore or promote effective competition within the affected
19 geographic area, class of customers or type of service; or

20 (3) make recommendations as to the steps needed to restore or
21 promote effective competition within the affected geographic
22 area, class of customers or type of service.

23 d. (1) No later than 6 months after issuing an order pursuant
24 to subsection b. of this section, the board shall review the actions
25 taken pursuant thereto and make a determination as to whether a
26 lack of effective competition still exists within the affected
27 geographic area, class of customers or type of service, or
28 whether the continued lack of effective competition has resulted
29 in rates or charges received for solid waste collection services
30 which exceed rates or charges that would have resulted from
31 effective competition.

32 (2) The board shall, upon a determination that effective
33 competition exists within the affected geographic area, class of
34 customers or type of service, rescind any such order and cease
35 any further rate setting activity with respect to the solid waste
36 collector subject to that order.

37 (3) The board may, upon a written determination that a lack of
38 effective competition still exists within the affected geographic
39 area, class of customers or type of service, and that the
40 continued lack of effective competition has resulted in rates or
41 charges received for solid waste collection services which exceed
42 rates or charges that would have resulted from effective
43 competition, issue a new order pursuant to subsection b. of this
44 section and continue rate setting activity with respect to the
45 solid waste collector subject to that order as provided in
46 subsection c. of this section.

47 21. (New section) a. There is created in the Board of Public
48 Utilities a special nonlapsing fund to be known as the "Solid
49 Waste Enforcement Fund." All monies from penalties collected

1 by the board pursuant to section 13 of P.L.1970, c.40
2 (C.48:13A-12) shall be deposited in the fund.

3 b. Unless otherwise expressly provided by the specific
4 appropriation thereof by the Legislature, monies in the fund shall
5 be utilized exclusively by the Division of Solid Waste in the Board
6 of Public Utilities for enforcement and implementation of the
7 provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and P.L. , c.
8 (C.) (pending in the Legislature as this bill).

9 22. (New section) The Board of Public Utilities shall establish,
10 in rules and regulations adopted pursuant to the provisions of the
11 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
12 et seq.), uniform bid specifications for municipal solid waste
13 collection contracts.

14 23. (New section) a. (1) Whenever the governing body of a
15 municipality adopts an ordinance to provide for the collection or
16 disposal of solid waste within its municipal boundaries by
17 imposing solid waste charges based on the number of solid waste
18 containers processed per household pursuant to subsection b. of
19 R.S.40:66-5, the governing body shall transmit to the Board of
20 Public Utilities, by certified mail and within 90 days of the
21 effective date of the ordinance, a copy of the proposed rate
22 schedule and the contract awarded pursuant to subsection a. of
23 R.S.40:66-4. The board, within 60 days of receipt of the proposed
24 rate schedule and contract and if requested to do so by the
25 municipality or the relevant solid waste collector, as the case
26 may be, may review these documents to determine whether the
27 solid waste charges are equitable and to accept, reject or modify
28 the rate schedule. If the board finds the solid waste charges to
29 be equitable, the board shall accept the rate schedule and
30 contract and issue an appropriate order therefor. In issuing this
31 order, the board shall be exempt from the provisions of
32 R.S.48:2-21.

33 (2) Should the board find, subsequent to the issuance of any
34 order pursuant to this subsection, that the rates or charges
35 received for the collection of solid waste contained within a
36 contract entered into prior to the effective date of that order
37 require adjustment, then it may order the person charging these
38 rates or charges to make an adjustment in the contract to a sum
39 which shall result in equitable rates or charges. In issuing this
40 order, the board shall be exempt from the provisions of
41 R.S.48:2-21.

42 b. (1) The board may issue an appropriate order establishing
43 an equitable rate schedule based on the number of solid waste
44 containers processed per household for the solid waste collection
45 tariffs of persons engaging in private solid waste collection
46 services in any municipality in which solid waste collection
47 services are contracted for and provided on an individual
48 household basis. In issuing this order, the board shall be exempt
49 from the provisions of R.S.48:2-21.

1 (2) Any person engaged in private solid waste collection
2 services in this State and utilizing a rate schedule based on the
3 number of solid waste containers processed per household as
4 provided in this subsection may provide customers with the
5 opportunity to purchase, on a prepaid basis, one or more solid
6 waste containers, or a voucher or sticker therefor, to facilitate
7 the provision of solid waste collection services on a per container
8 basis.

9 24. Section 1 of P.L.1970, c.40 (C.48:13A-1) is amended to
10 read as follows:

11 1. This act shall be known [as,] and may be cited as[,] the
12 "Solid Waste Utility Control Act [of 1970]."

13 (cf: P.L.1970, c.40, s.1)

14 25. Section 2 of P.L.1970, c.40 (C.48:13A-2) is amended to
15 read as follows:

16 2. The Legislature finds and declares that the [collection,]
17 disposal [and utilization] of solid waste is a matter of grave
18 concern to all citizens and is an activity thoroughly affected with
19 the public interest; that the health, safety and welfare of the
20 people of this State require efficient and reasonable solid waste
21 [collection,] disposal [and utilization] service; that [such service
22 will more likely be achieved if the Public Utility Commission]
23 safe, adequate and proper solid waste disposal service at just and
24 reasonable rates cannot be achieved unless the Board of Public
25 Utilities is charged with the duty of setting and enforcing
26 standards and rates for regulating the economic aspects of all
27 solid waste [collection,] disposal [and utilization] service; and
28 that the exercise of any power herein provided for shall be
29 deemed to be in the public interest and for a public purpose.

30 (cf: P.L.1970, c.40, s.2)

31 26. Section 3 of P.L.1970, c.40 (C.48:13A-3) is amended to
32 read as follows:

33 3. As used in this act:

34 [a.] "Solid waste" means garbage, refuse, and other discarded
35 materials resulting from industrial, commercial and agricultural
36 operations, and from domestic and community activities, and
37 shall include all other waste materials including liquids [disposed
38 of incident thereto], except [it shall not include] for solid animal
39 and vegetable [waste] wastes collected by swine producers
40 licensed by the State Department of Agriculture to collect,
41 prepare and feed such wastes to swine on their own farms.

42 [b.] "Solid waste collection" means the activity related to
43 pickup and transportation of solid waste from its source or
44 location to a transfer station or other authorized solid waste
45 facility, but does not include activity related to the pickup,
46 transportation or unloading of septic waste.

47 "Solid waste collector" means a person engaged in the
48 collection of solid waste and holding a certificate of public
49 convenience and necessity pursuant to sections 7 and 10 of

1 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

2 [c.] "Solid waste disposal" means the storage, treatment,
3 utilization, processing, transfer, or final disposal of solid waste.

4 [d.] "Septic waste" means pumpings from septic tanks and
5 cesspools, but shall not include wastes from a sewage treatment
6 plant.

7 [e.] "Solid waste container" means a receptacle, container or
8 bag suitable for the depositing of solid waste.

9 "Solid waste collection services" means the services provided
10 by persons engaging in the business of solid waste collection.

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

13 [f.] "Solid waste facilities" mean and include the plants,
14 structures and other real and personal property acquired,
15 constructed or operated or to be acquired, constructed or
16 operated by any person pursuant to the provisions of P.L.1970
17 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.)
18 or any other act, including transfer stations, incinerators,
19 resource recovery facilities, sanitary landfill facilities or other
20 plants for the disposal of solid waste, and all vehicles, equipment
21 and other real and personal property and rights therein and
22 appurtenances necessary or useful and convenient for the
23 collection or disposal of solid waste in a sanitary manner.

24 [g.] "Solid waste transfer operations" mean the activity
25 related to the transfer of solid waste from solid waste collection
26 vehicles to solid waste haulage vehicles, including rail cars, for
27 transportation to an offsite sanitary landfill facility, resource
28 recovery facility, or other destination for disposal.

29 [h.] "Transfer station" means a solid waste facility at which
30 solid waste is transferred from a solid waste collection vehicle to
31 a licensed solid waste haulage vehicle, including a rail car, for
32 transportation to an offsite sanitary landfill facility, resource
33 recovery facility, or other destination for disposal, except that a
34 "transfer station" shall not include any solid waste facility at
35 which solid waste is received for onsite transfer, and processing
36 or disposal utilizing facility-owned or operated equipment and
37 vehicles operated therefor.

38 (cf: P.L.1990, c.113, s.1)

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

41 5. a. The Board of Public [Utility Commissioners] Utilities
42 shall, after hearing, by order in writing, [make] adopt appropriate
43 rules, regulations [and] or administrative orders for the regulation
44 of rates and public utility aspects of the [solid waste collection
45 industry and the] solid waste disposal industry.

46 b. The Board of Public Utilities shall, after hearing, by order
47 in writing, adopt appropriate rules, regulations or administrative
48 orders for the supervision of the solid waste collection industry.

49 c. The Board of Public Utilities shall, in conjunction with the

1 Department of Environmental Protection, after hearing, by order
2 in writing, adopt appropriate rules, regulations or administrative
3 orders providing for the interdistrict, intradistrict and interstate
4 flow of solid waste. The rules, regulations, or administrative
5 orders shall establish the manner in which the board and the
6 department jointly direct the flow of solid waste in this State
7 pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.) and P.L.1970,
8 c.39 (C.13:1E-1 et seq.).

9 The provisions of this subsection shall not apply to designated
10 recyclable materials as defined in section 2 of P.L.1987, c.102
11 (C.13:1E-99.12) or any other recyclable material whenever
12 markets for those materials are available.

13 (cf: P.L.1970, c.40, s.5)

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

16 7. a. No person shall engage, or be permitted to engage, in the
17 business of solid waste collection or solid waste disposal until
18 found by the board to be qualified by experience, training or
19 education to engage in such business, is able to furnish proof of
20 financial responsibility, and unless that person holds a certificate
21 of public convenience and necessity issued by the Board of Public
22 Utilities.

23 (1) No certificate shall be issued for solid waste collection or
24 solid waste disposal until the [proposed collection or disposal
25 system] person proposing to engage in solid waste collection or
26 solid waste disposal has been registered with and approved by the
27 [State] Department of Environmental Protection as provided by
28 section 5 of P.L.1970, c.39 (C.13:1E-5).

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

34 b. No person shall transport regulated medical waste until
35 found by the Board of Public Utilities to be qualified by
36 experience, training or education to engage in such business, is
37 able to furnish proof of financial responsibility, and holds a
38 certificate of public convenience and necessity issued by the
39 board. No certificate shall be issued for the transportation of
40 regulated medical waste until the proposed transporter has
41 obtained a registration statement required by section 5 of
42 P.L.1970, c.39 (C.13:1E-5) and paid the fee imposed under section
43 9 of P.L.1989, c.34 (C.13:1E-48.9).

44 c. Notwithstanding the provisions of subsection b. of this
45 section, the board shall not have jurisdiction over rates or
46 charges for the transportation of regulated medical waste.

47 (cf: P.L.1989, c.34, s.30)

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

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

7 b. [(1)] Should the board find that the rates or charges
8 received for solid waste disposal services are excessive, then it
9 may order the person charging such excessive rates or charges to
10 make an adjustment in the tariff or contract to a sum which shall
11 result in just and reasonable rates or charges.

12 [(2) Should the board find, subsequent to the issuance of any
13 order pursuant to subsection c. of this subsection, that the rates
14 or charges received for the collection of solid waste contained
15 within a contract entered into prior to the effective date of that
16 order require adjustment, then it may order the person charging
17 these rates or charges to make an adjustment in the contract to a
18 sum which shall result in just and reasonable rates or charges. In
19 issuing this order, the board shall be exempt from the provisions
20 of R.S.48:2-21.

21 c. (1) Whenever the governing body of a municipality adopts
22 an ordinance to provide for the collection or disposal of solid
23 waste within its municipal boundaries by imposing solid waste
24 charges based on the number of solid waste containers processed
25 per household pursuant to subsection b. of R.S.40:66-5, the
26 governing body shall transmit to the board, by certified mail and
27 within 90 days of the effective date of the ordinance, a copy of
28 the proposed rate schedule and the contract awarded pursuant to
29 subsection a. of R.S.40:66-4. The board, within 60 days of receipt
30 of the proposed rate schedule and contract and if requested to do
31 so by the municipality or the relevant solid waste collector or
32 solid waste transporter, as the case may be, may review these
33 documents to determine whether the solid waste charges are
34 equitable and to accept, reject or modify the rate schedule.

35 (2) If the board finds the solid waste charges to be equitable,
36 the board shall accept the rate schedule and contract and issue an
37 appropriate order therefor. In issuing this order, the board shall
38 be exempt from the provisions of R.S.48:2-21.

39 d. (1) The board may issue an appropriate order establishing
40 an equitable rate schedule based on the number of solid waste
41 containers processed per household for the solid waste collection
42 tariffs of persons engaging in private solid waste collection or
43 transportation services in any municipality in which solid waste
44 collection or transportation services are contracted for and
45 provided on an individual household basis. In issuing this order,
46 the board shall be exempt from the provisions of R.S.48:2-21.

47 (2) Any person engaged in private solid waste collection or
48 transportation services in this State and utilizing a rate schedule
49 based on the number of solid waste containers processed per

1 household as provided in this subsection may provide customers
2 with the opportunity to purchase, on a prepaid basis, one or more
3 solid waste containers, or a voucher or sticker therefor, to
4 facilitate the provision of solid waste collection services on a per
5 container basis.]

6 (cf: P.L.1989, c.244, s.8)

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

9 9. [a. Every person engaged in the business of solid waste
10 collection or solid waste disposal shall furnish and file with the
11 board, in connection with each contract or agreement entered
12 into by him for the provision of such service, a performance bond
13 in such amount as may be required by the board in rules or
14 regulations promulgated by the board.

15 b.) Should any person engaged in the solid waste [collection
16 business or the solid waste] disposal business fail or refuse to
17 complete, execute or perform any contract or agreement
18 obligating such person to provide [such service] solid waste
19 disposal services, the board may order any person engaged in the
20 solid waste [collection business or the solid waste] disposal
21 business to extend [his collection or disposal service] solid waste
22 disposal services into any area where service has been
23 discontinued in accordance with the provisions of R.S.48:2-27,
24 and the board shall fix just and reasonable rates and charges for
25 [such] solid waste disposal service in the extended area.

26 (cf: P.L.1970, c.40, s.9)

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

29 10. The board, on its own initiative or upon complaint by the
30 [State] Department of Environmental Protection shall revoke[,] or
31 suspend [or grant a temporary continuance for up to 1 year of]
32 the certificate of public convenience and necessity issued to any
33 person engaged in the solid waste collection business or the solid
34 waste disposal business upon the finding that such person:

35 a. Has violated any provision of [this act] P.L.1970, c.40
36 (C.48:13A-1 et seq.) or P.L. , c. (C.) (pending in the
37 Legislature as this act), or any rule, regulation or administrative
38 order [promulgated hereunder] adopted or issued pursuant
39 thereto; or

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

42 c. Has refused or failed to comply with any lawful order of the
43 board; or

44 d. Has had its registration revoked by the [State] Department
45 of Environmental Protection; or

46 e. Has been denied approval of a license under the provisions
47 of P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license
48 revoked by the Department of Environmental Protection, as the
49 case may be.

50 (cf: P.L.1975, c.326, s.32)

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

3 11. a. No person shall monopolize, or attempt to monopolize,
4 or combine or conspire with any other person to monopolize,
5 trade or commerce in any relevant market, located in whole or in
6 part in this State, for the solid waste collection business or the
7 solid waste disposal business.

8 b. Any person who shall be injured in his business or property
9 by reason of a violation of the provisions of subsection a. of this
10 section may sue therefor and shall recover threefold the damages
11 sustained by him, together with reasonable attorney's fees and
12 the costs of the suit. The State and any of its political
13 subdivisions and public agencies shall be deemed a person within
14 the meaning of this act. Any action brought pursuant to this
15 subsection shall be barred unless commenced within [4] 5 years
16 after the cause of action accrued.

17 c. No municipality may require [a public utility] any person
18 lawfully engaged in the solid waste collection business or the
19 solid waste disposal business to submit to any prequalification
20 test before permitting [it] that person to bid on a contract or
21 before the employment of a solid waste collection or a solid
22 waste disposal contractor.

23 (cf: P.L.1970, c.40, s.11)

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

26 12. a. The board may compel the attendance of witnesses and
27 the production of tariffs, contracts, papers, books, accounts and
28 all the documents necessary to enable the board to administer its
29 duties as prescribed by law and this act.

30 b. The board may compel any person engaged in the business of
31 solid waste disposal or otherwise providing solid waste disposal
32 services in this State to furnish and file with the board any annual
33 reports, federal or State tax returns, contracts, papers, books,
34 accounts, customer lists, financial or operational information, or
35 contracts, books, accounts and records of affiliated business
36 concerns, including any affiliated or parent corporation or
37 organization, or any wholly or partially owned subsidiary thereof,
38 directly or indirectly involved therewith, or having a direct or
39 indirect financial interest in the solid waste disposal services
40 provided by that person, and all financial transactions between
41 these parties related to the solid waste disposal services provided
42 by that person, or other documents as may be necessary to enable
43 the board to administer its duties as prescribed by law and this
44 act.

45 c. Should any person engaged in the business of solid waste
46 disposal or otherwise providing solid waste disposal services fail
47 or refuse to comply with any provision of this section, or any
48 applicable provision of Title 48 of the Revised Statutes, the board
49 may revoke or suspend the certificate of public convenience and

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1 necessity issued to that person.

2 (cf: P.L.1970, c.40, s.12)

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

5 13. a. Any person or any officer or agent thereof who shall
6 knowingly violate any of the provisions of this act or aid or advise
7 in such violation, or who, as principal, manager, director, agent,
8 servant or employee knowingly does any act comprising a part of
9 such violation, is guilty of a [misdemeanor] crime of the fourth
10 degree and shall be punished by imprisonment for not more than
11 [three years] 18 months or, notwithstanding the provisions of
12 N.J.S.2C:43-3, by a fine of not more than \$50,000.00, or both;
13 and if a corporation by a fine of not more than \$100,000.00. Each
14 day during which the violation continues constitutes an
15 additional, separate and distinct offense.

16 b. Any person who shall violate any provision of [this act]
17 P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L. , c. (C.)
18 (pending in the Legislature as this bill) or any rule, regulation or
19 administrative order adopted or issued [hereunder] pursuant
20 thereto, including an interdistrict, intradistrict or interstate
21 waste flow order issued in conjunction with the Department of
22 Environmental Protection, or under any applicable provision of
23 Title 48 of the Revised Statutes, or who shall engage in the solid
24 waste collection business or solid waste disposal business without
25 having been issued a certificate of public convenience and
26 necessity, shall be liable to a penalty of not more than \$10,000.00
27 for a first offense, not more than \$25,000.00 for a second offense
28 and not more than \$50,000.00 for a third and every subsequent
29 offense. Each day during which the violation continues
30 constitutes an additional, separate and distinct offense. The
31 penalties herein provided shall be enforced by summary
32 proceedings instituted by the board under "the penalty
33 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and
34 the municipal courts shall all have jurisdiction to enforce "the
35 penalty enforcement law" in connection with this act.

36 c. Whenever it shall appear to the Board, a municipality, local
37 board of health, or county health department, as the case may be,
38 that any person has violated, intends to violate, or will violate
39 any provision of [this act] P.L.1970, c.40 (C.48:13A-1 et seq.) or
40 P.L. , c. (C.) (pending in the Legislature as this bill) or
41 any rule, regulation or administrative order [duly promulgated
42 hereunder] adopted or issued pursuant thereto, or under any
43 applicable provision of Title 48 of the Revised Statutes, the
44 Board, the municipality, local board of health or county health
45 department may institute a civil action in the Superior Court for
46 injunctive relief and for such other relief as may be appropriate
47 in the circumstances, and the [said] court may proceed in any
48 such action in a summary manner.

49 Notwithstanding the provisions of any other law, or any rule or

1 regulation adopted pursuant thereto to the contrary, all penalties
2 recovered pursuant to actions brought by the Board under this
3 section shall be paid to the "Solid Waste Enforcement Fund"
4 established pursuant to section 21 of P.L. , c. (C.)
5 (pending in the Legislature as this bill). If a money judgment is
6 rendered against a defendant pursuant to subsections a. or b. of
7 this section, the payment made to the court shall be remitted to
8 the fund.

9 (cf: P.L.1989, c.118, s.1)

10 35. R.S.48:3-7 is amended to read as follows:

11 48:3-7. a. No public utility shall, without the approval of the
12 board, sell, lease, mortgage or otherwise dispose of or encumber
13 its property, franchises, privileges or rights, or any part thereof;
14 or merge or consolidate its property, franchises, privileges or
15 rights, or any part thereof, with that of any other public utility.

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

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

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

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

44 b. Notwithstanding any law, rule, regulation or order to the
45 contrary, an autobus public utility regulated by and subject to the
46 provisions of Title 48 of the Revised Statutes may, without the
47 approval of the Department of Transportation, sell, lease,
48 mortgage or otherwise dispose of or encumber its property, or
49 any part thereof, except that approval of the Department of

1 Transportation shall be required for the following:

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

4 (2) a merger or consolidation of its property, franchises,
5 privileges or rights; or

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

7 Notice of the sale, purchase or lease of any autobus or other
8 vehicle subject to regulation under Title 48 of the Revised
9 Statutes shall be provided to the Department of Transportation as
10 the department shall require.

11 c. Except as otherwise provided in subsection e. of this
12 section, no solid waste collector as defined in section 3 of
13 P.L.1970, c.40 (C.48:13A-3) shall, without the approval of the
14 board:

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

17 (2) merge or consolidate its property, including customer lists,
18 with that of any other person or business concern, whether or not
19 that person or business concern is engaged in the business of solid
20 waste collection or solid waste disposal pursuant to the provisions
21 of P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1
22 et seq.), P.L. , c. (C.) (pending in the Legislature as
23 this bill) or any other act.

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

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

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

44 (3) The board shall approve a transaction unless it makes a
45 determination pursuant to the provisions of section 19 of P.L. ,
46 c. (C.) (pending in the Legislature as this bill) that the
47 proposed sale, lease, mortgage, disposition, encumbrance, merger
48 or consolidation would result in a lack of effective competition.

49 The Board of Public Utilities shall prescribe and provide upon

1 request all necessary forms for the implementation of the
2 notification requirements of this subsection.

3 e. (1) Any solid waste collector may, without the approval of
4 the board, purchase, finance or lease any equipment, including
5 collection or haulage vehicles.

6 (2) Any solid waste collector may, without the approval of the
7 board, sell or otherwise dispose of its collection or haulage
8 vehicles; except that no solid waste collector shall, without the
9 approval of the board in the manner provided in subsection d. of
10 this section, sell or dispose of 33% or more of its collection or
11 haulage vehicles within a 12-month period.

12 As used in this section, "business concern" means any
13 corporation, association, firm, partnership, sole proprietorship,
14 trust or other form of commercial organization.

15 (cf: P.L.1985, c.232, s.1)

16 36. R.S.48:3-9 is amended to read as follows:

17 48:3-9. No public utility shall, unless it shall have first
18 obtained authority from the board so to do:

19 (a) Issue any stocks, or any bonds, notes or other evidence of
20 indebtedness payable more than 12 months after the date or dates
21 thereof, or extend or renew any bond, note or any other evidence
22 of indebtedness so that any extension or renewal thereof shall be
23 payable later than 12 months after the date of the original
24 instrument, or

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

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

31 The provisions of this [act] section shall not apply to any public
32 utility operating, managing or controlling a railroad or a railway
33 express which is subject to the rules and regulations from time to
34 time issued by the Interstate Commerce Commission.

35 The provisions of this section shall not apply to autobus public
36 utilities under the jurisdiction of the Department of
37 Transportation.

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

40 (cf: P.L.1985, c.232, s.2)

41 37. Section 2 of P.L.1981, c.438 (C.13:1E-9.1) is amended to
42 read as follows:

43 2. [a.] The provisions of any law to the contrary
44 notwithstanding, the owner or operator of any sanitary landfill
45 facility may collect any fee imposed pursuant to section 9 of
46 P.L.1970, c.39 (C.13:1E-9) as a surcharge on any tariff
47 established pursuant to law for the solid waste disposal operations
48 of the facility.

49 [b. The Board of Public Utilities shall issue an appropriate

1 order increasing current tariffs established pursuant to law for
2 solid waste collection operations by an amount equal to the total
3 increase in the relevant solid waste disposal tariff pursuant to
4 subsection a. of this section. In issuing this order, the board shall
5 not be bound to find a rate base under section 31 of P.L.1962,
6 c.198 (C.48:2-21.2.)

7 (cf: P.L.1981, c.438, s.2)

8 38. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to
9 read as follows:

10 18. Any solid waste facility constructed, acquired or operated
11 pursuant to the provisions of [this amendatory and supplementary
12 act] P.L.1970, c.39 (C.13:1E-1 et seq.) shall be deemed a public
13 utility and shall be subject to such rules and regulations as may
14 be adopted by the Board of Public [Utility Commissioners]
15 Utilities in accordance with the provisions of the "Solid Waste
16 Utility Control Act [of 1970]" (P.L.1970, c.40, C.48:13A-1
17 et seq.) and P.L. , c. (C.) (pending in the Legislature as
18 this bill).

19 (cf: P.L.1975, c.326, s.18)

20 39. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to
21 read as follows:

22 19. a. Any municipality within which a sanitary landfill
23 facility is located pursuant to an adopted and approved district
24 solid waste management plan shall, be entitled to an annual
25 economic benefit not less than the equivalent of \$1.00 per ton of
26 solids on all solid waste accepted for disposal at the sanitary
27 landfill facility during the previous calendar year as determined
28 by the department.

29 The owner or operator of the sanitary landfill facility shall
30 annually pay to the relevant municipality the full amount due
31 under this subsection and each relevant municipality is
32 empowered to anticipate this amount for the purposes of
33 preparing its annual budget. For the purposes of calculating the
34 payments, the owner or operator of the sanitary landfill facility
35 may, subject to the prior agreement of the relevant municipality
36 and the approval of the Board of Public Utilities, provide the
37 municipality with any of the following benefits in consideration
38 for the use of land within its municipal boundaries as the location
39 of a sanitary landfill facility:

40 (1) The receipt of annual sums of money in lieu of taxes on the
41 land used for the sanitary landfill facility;

42 (2) The exemption from all fees and charges for the disposal of
43 solid waste generated within its boundaries;

44 (3) The receipt of a lump sum cash payment; or

45 (4) Any combination thereof.

46 b. Every owner or operator of a sanitary landfill facility
47 required to make annual payments to a municipality pursuant to
48 subsection a. of this section may petition the Board of Public
49 Utilities for an increase in its tariff which reflects these

1 payments. The board, within 60 days of the receipt of the
2 petition, shall issue an appropriate order that these payments
3 shall be passed along to the users of the sanitary landfill facility
4 as an automatic surcharge on any tariff filed with, and recorded
5 by, the board for the solid waste disposal operations of the
6 facility.

7 c. [The board, within 60 days of the computation of any
8 increase in a solid waste disposal tariff pursuant to subsection b.
9 of this section, shall issue an appropriate order increasing current
10 tariffs established pursuant to law for solid waste collection by
11 an amount equal to the total amount of the increase in the
12 relevant solid waste disposal tariff calculated pursuant to
13 subsection b. of this section.

14 d.] In issuing any order required by this section, the Board of
15 Public Utilities shall be exempt from the provisions of
16 R.S.48:2-21.

17 (cf: P.L.1985, c.38, s.38)

18 40. Section 2 of P.L.1987, c.449 (C.13:1E-28.1) is amended to
19 read as follows:

20 2. a. Any municipality within which a transfer station is
21 located pursuant to an adopted and approved district solid waste
22 management plan shall be entitled to an annual economic benefit
23 to be paid or adjusted not less than quarterly in an amount
24 established by agreement with the owner or operator of the
25 transfer station or by order of the Board of Public Utilities, but
26 not less than the equivalent of \$0.50 per ton of all solid waste
27 accepted for transfer at the transfer station during the 1987
28 calendar year and each year thereafter.

29 The owner or operator of the transfer station shall, not less
30 frequently than quarterly, pay to the relevant municipality the
31 full amount due under this subsection and each relevant
32 municipality is empowered to anticipate this amount for the
33 purposes of preparing its annual budget. For the purposes of
34 calculating the payments, the owner or operator of the transfer
35 station may, subject to the prior agreement of the relevant
36 municipality and the approval of the Board of Public Utilities,
37 provide the municipality with any of the following benefits in
38 consideration for the use of land within its municipal boundaries
39 as the location of a transfer station:

40 (1) The receipt of quarterly payments of annual sums of money
41 in lieu of taxes on the land used for the transfer station;

42 (2) The exemption from all fees and charges for the
43 acceptance for transfer of solid waste generated within its
44 boundaries;

45 (3) The receipt of quarterly lump sum cash payments; or

46 (4) Any combination thereof.

47 b. Every owner or operator of a transfer station required to
48 make payments not less frequently than quarterly to a
49 municipality pursuant to subsection a. of this section may

1 petition the Board of Public Utilities for an increase in its tariff
2 which reflects these payments. The board, within 60 days of the
3 receipt of the petition, shall issue an order that these payments
4 shall be passed along to the users of the transfer station as an
5 automatic surcharge on any tariff filed with, and recorded by, the
6 board for the solid waste disposal operations of the transfer
7 station.

8 c. [The board, within 60 days of the computation of any
9 increase in a solid waste disposal tariff for a transfer station
10 pursuant to subsection b. of this section, shall issue an
11 appropriate order increasing current tariffs established pursuant
12 to law for solid waste collectors using the transfer station by an
13 amount equal to the total amount of the increase in the relevant
14 solid waste disposal tariff calculated pursuant to subsection b. of
15 this section.

16 d.) In issuing any order required by this section, the Board of
17 Public Utilities shall be exempt from the provisions of
18 R.S.48:2-21.

19 (cf: P.L.1990, c.54, s.1)

20 41. Section 7 of P.L.1981, c.278 (C.13:1E-98) is amended to
21 read as follows:

22 7. [a.] The provisions of any law to the contrary
23 notwithstanding, the owner or operator of any solid waste facility
24 may collect the tax imposed pursuant to section 4 of P.L.1981,
25 c.278 (C.13:1E-95) as a surcharge on any tariff established
26 pursuant to law for the solid waste disposal operations of the
27 facility.

28 [b. The Board of Public Utilities shall, within 90 days of the
29 effective date of P.L.1987, c.102 (C.13:1E-99.11 et al.), issue an
30 appropriate order increasing current tariffs established pursuant
31 to law for solid waste collection operations by an amount equal to
32 the total increase in the relevant solid waste disposal tariff
33 pursuant to subsection a. of this section. In issuing this order, the
34 board shall be exempt from the provisions of R.S.48:2-21.]

35 (cf: P.L.1987, c.102, s.38)

36 42. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended
37 to read as follows:

38 40. a. Any person engaged in the business of solid waste
39 collection or solid waste disposal in accordance with the
40 provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1970, c.40
41 (C.48:13A-1 et seq.), P.L. , c. (C.) (pending in the
42 Legislature as this bill) or any other act may engage in recycling
43 or otherwise provide recycling services in this State.

44 b. [Notwithstanding the provisions of P.L.1970, c.40
45 (C.48:13A-1 et seq.) or any other law, the] The Board of Public
46 Utilities shall not have jurisdiction over charges or rates for
47 recycling or services provided by persons engaging in the business
48 of recycling or otherwise providing recycling services in this
49 State. [The revenues generated by persons engaging in the

1 business of recycling or otherwise providing recycling services
2 shall not be included within the computation of current or
3 adjusted tariffs established pursuant to law for solid waste
4 collection.]

5 (cf: P.L.1987, c.102, s.40)

6 43. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to
7 read as follows:

8 13. a. The provisions of any law to the contrary
9 notwithstanding, the owner or operator of any sanitary landfill
10 facility may collect the tax imposed pursuant to section 5 of
11 P.L.1981, c.306 (C.13:1E-104), and the escrow account payments
12 required by section 10 of P.L.1981, c.306 (C.13:1E-109), [this
13 supplementary act] as a surcharge on any tariff established
14 pursuant to law for the solid waste disposal operations of the
15 facility.

16 b. The Board of Public Utilities may direct the owner or
17 operator of a sanitary landfill facility to reduce the rate of
18 payments to an escrow account required by section 10 [hereof] of
19 P.L.1981, c.306 (C.13:1E-109), but only to the extent that:

20 (1) The current tariff established pursuant to law for the solid
21 waste disposal operations of the facility specifically allocates a
22 portion thereof for closing costs; and

23 (2) The amount collected for closing costs pursuant to this
24 tariff are deposited, on a monthly basis, in the escrow account
25 for the facility.

26 [c. The Board of Public Utilities shall, within 60 days of the
27 effective date of this supplementary act, issue an appropriate
28 order increasing current tariffs established pursuant to law for
29 solid waste collection operations by an amount equal to the total
30 increase in the relevant solid waste disposal tariff pursuant to
31 subsection a. of this section. In issuing this order, the board shall
32 not be bound to find a rate base under the provisions of section 31
33 of P.L.1962, c.198 (C.48:2-21.2).]

34 (cf: P.L.1981, c.306, s.13)

35 44. Section 3 of P.L.1983, c.93 (C.13:1E-119) is amended to
36 read as follows:

37 3. [a.] Any solid waste facility required to install scales
38 pursuant to this act may petition the Board of Public Utilities for
39 an increase in its tariff which reflects the costs reasonably
40 incurred by the facility in complying with this act. The board,
41 within 60 days of the receipt of such a petition, shall determine
42 the extent to which these costs shall be passed along to the users
43 of the solid waste facility as an automatic surcharge on any tariff
44 filed with, and recorded by, the board for the operation of the
45 solid waste facility.

46 [b. The board, within 60 days of the computation of any
47 increase in a solid waste disposal tariff pursuant to subsection a.
48 of this section, shall issue an appropriate order increasing current
49 tariffs established pursuant to law for solid waste collection by

1 an amount equal to the total amount of the increase in the
2 relevant solid waste disposal tariff calculated pursuant to
3 subsection a. of this section. In issuing this order, the board shall
4 be exempt from the provisions of section 31 of P.L.1962, c.198
5 (C.48:2-21.2).

6 c. For the purposes of this act, all municipal, county, and
7 State contracts for solid waste collection and disposal shall be
8 deemed to be tariffs for solid waste collection, and shall be
9 subject to adjustment pursuant to the terms of this act.]
10 (cf: P.L.1983, c.93, s.3)

11 45. Section 9 of P.L.1985, c.38 (C.13:1E-144) is amended to
12 read as follows:

13 9. [a.] Notwithstanding the provisions of any law to the
14 contrary, the owner or operator of a sanitary landfill facility may
15 collect the taxes levied and imposed pursuant to [this amendatory
16 and supplementary act] section 3 of P.L.1985, c.38 (C.13:1E-138)
17 by imposing an automatic surcharge on any tariff established
18 pursuant to law for the solid waste disposal operations of the
19 sanitary landfill facility.

20 [b. For the purposes of this amendatory and supplementary
21 act, all municipal, county, and State contracts for solid waste
22 collection and disposal shall be considered tariffs for solid waste
23 collection, and shall be subject to any adjustment of tariffs
24 resulting from the provisions of this amendatory and
25 supplementary act.]

26 (cf: P.L.1985, c.38, s.9)

27 46. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to
28 read as follows:

29 6. Any solid waste [collection system or solid waste treatment
30 or disposal] facilities owned or operated by a county improvement
31 authority pursuant to the provisions of this amendatory and
32 supplementary act, shall be deemed a public utility and shall be
33 subject to such rules and regulations as may be adopted by the
34 Board of Public [Utility Commissioners] Utilities in accordance
35 with the provisions of the "Solid Waste Utility Control Act [of
36 1970]" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement
37 authority's application to operate any solid waste facility shall
38 be considered at a public hearing by the Board of Public [Utility
39 Commissioners] Utilities.

40 (cf: P.L.1973, c.330, s.6)

41 47. R.S.40:66-4 is amended to read as follows:

42 40:66-4. a. The governing body may, if it deem it more
43 advantageous, contract with any person for the cleaning of the
44 streets, or the collection or disposal of solid waste. Before
45 making any such contract or contracts the governing body shall
46 first adopt specifications for the doing of the work in a sanitary
47 and inoffensive manner[, and any]. Any specifications adopted by
48 the governing body for the collection or disposal of solid waste
49 shall conform to the uniform bid specifications for municipal

1 solid waste collection contracts established pursuant to section
2 22 of P.L. , c. (C.) (pending in the Legislature as this
3 bill). Any such contract or contracts, the total amount of which
4 exceeds in the fiscal year the amount set forth in, or the amount
5 calculated by the Governor pursuant to, section 3 of P.L.1971,
6 c.198 (C.40A:11-3), shall be entered into and made only after bids
7 shall have been advertised therefor, and awarded in the manner
8 provided in the "Local Public Contracts Law," P.L.1971, c.198
9 (C.40A:11-1 et seq). [The bidder or bidders to whom the contract
10 or contracts shall be awarded shall give satisfactory bond or
11 other security for the faithful performance of the work. The
12 contract shall include and in all respects conform to the
13 specifications adopted for the doing of the work.]

14 b. Whenever the governing body adopts an ordinance to provide
15 for the collection or disposal of solid waste within its municipal
16 boundaries by imposing solid waste charges based on the number
17 of solid waste containers processed per household pursuant to
18 subsection b. of R.S.40:66-5, on or after the first day of the 13th
19 month following the effective date of that ordinance, the
20 governing body may request the relevant solid waste collector [or
21 solid waste transporter] to whom a multi-year contract has been
22 awarded to renegotiate the contract to reflect any reduction in
23 the annual volume of solid waste collected [or transported]
24 achieved as a result of the ordinance.

25 (cf: P.L.1989, c.244, s.4)

26 48. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to
27 read as follows:

28 13. Specifications. Any specifications for an acquisition under
29 this act, whether by purchase, contract or agreement, shall be
30 drafted in a manner to encourage free, open and competitive
31 bidding. In particular, no specifications under this act may:

32 (a) Require any standard, restriction, condition or limitation
33 not directly related to the purpose, function or activity for which
34 the purchase, contract or agreement is made; or

35 (b) Require that any bidder be a resident of, or that his place
36 of business be located in, the county or municipality in which the
37 purchase will be made or the contract or agreement performed,
38 unless the physical proximity of the bidder is requisite to the
39 efficient and economical purchase or performance of the
40 contract or agreement; except that no specification for a
41 contract for the collection and disposal of municipal solid waste
42 shall require any bidder to be a resident of, or that his place of
43 business be located in, the county or municipality in which the
44 contract will be performed; or

45 (c) Discriminate on the basis of race, religion, sex, national
46 origin; or

47 (d) Require, with regard to any purchase, contract or
48 agreement, the furnishing of any "brand name," but may in all
49 cases require "brand name or equivalent," except that if the

1 materials to be supplied or purchased are patented or
2 copyrighted, such materials or supplies may be purchased by
3 specification in any case in which the ordinance or resolution
4 authorizing the purchase, contract, sale or agreement so
5 indicates, and the special need for such patented or copyrighted
6 materials or supplies is directly related to the performance,
7 completion or undertaking of the purpose for which the purchase,
8 contract or agreement is made; or

9 (e) Fail to include any option for renewal, extension, or release
10 which the contracting unit may intend to exercise or require; or
11 any terms and conditions necessary for the performance of any
12 extra work; or fail to disclose any matter necessary to the
13 substantial performance of the contract or agreement.

14 Any specification adopted by the governing body, which
15 knowingly excludes prospective bidders by reason of the
16 impossibility of performance, bidding or qualification by any but
17 one bidder, except as provided herein, shall be null and void and
18 of no effect and subject purchase, contract or agreement shall be
19 readvertised, and the original purchase, contract or agreement
20 shall be set aside by the governing body.

21 Any specification adopted by the governing body for a contract
22 for the collection and disposal of municipal solid waste shall
23 conform to the uniform bid specifications for municipal solid
24 waste collection contracts established pursuant to section 22 of
25 P.L. , c. (C.) (pending in the Legislature as this bill).

26 (cf: P.L.1971, c.198, s.13)

27 49. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
28 read as follows:

29 15. Duration of certain contracts. All purchases, contracts or
30 agreements for the performing of work or the furnishing of
31 materials, supplies or services shall be made for a period not to
32 exceed 12 consecutive months, except that contracts or
33 agreements may be entered into for longer periods of time as
34 follows:

35 (1) Supplying of:

36 (a) Fuel for heating purposes, for any term not exceeding in
37 the aggregate, two years;

38 (b) Fuel or oil for use of airplanes, automobiles, motor vehicles
39 or equipment for any term not exceeding in the aggregate, two
40 years;

41 (c) Thermal energy produced by a cogeneration facility, for
42 use for heating or air conditioning or both, for any term not
43 exceeding 40 years, when the contract is approved by the Board
44 of Public Utilities. For the purposes of this paragraph,
45 "cogeneration" means the simultaneous production in one facility
46 of electric power and other forms of useful energy such as
47 heating or process steam;

48 (2) (Deleted by amendment; P.L.1977, c.53.)

49 (3) The collection and disposal of [garbage and refuse]

1 municipal solid waste, [and] or the [barging and] disposal of
2 sewage sludge, for any term not exceeding in the aggregate, five
3 years;

4 (4) The [recycling of solid waste, including the] collection and
5 recycling of methane gas from a sanitary landfill facility, for any
6 term not exceeding 25 years, when such contract is in
7 conformance with a solid waste management plan approved
8 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
9 approval of the Division of Local Government Services and the
10 Department of Environmental Protection. The contracting unit
11 shall award the contract to the highest responsible bidder,
12 notwithstanding that the contract price may be in excess of the
13 amount of any necessarily related administrative expenses;
14 except that if the contract requires the contracting unit to
15 expend funds only, the contracting unit shall award the contract
16 to the lowest responsible bidder. The approval by the Division of
17 Local Government Services of public bidding requirements shall
18 not be required for those contracts exempted therefrom pursuant
19 to section 5 of P.L.1971, c.198 (C.40A:11-5);

20 (5) Data processing service, for any term of not more than
21 three years;

22 (6) Insurance, for any term of not more than three years;

23 (7) Leasing or servicing of automobiles, motor vehicles,
24 machinery and equipment of every nature and kind, for a period
25 not to exceed three years; provided, however, such contracts
26 shall be entered into only subject to and in accordance with the
27 rules and regulations promulgated by the Director of the Division
28 of Local Government Services of the Department of Community
29 Affairs;

30 (8) The supplying of any product or the rendering of any
31 service by a telephone company which is subject to the
32 jurisdiction of the Board of Public Utilities for a term not
33 exceeding five years;

34 (9) Any single project for the construction, reconstruction or
35 rehabilitation of any public building, structure or facility, or any
36 public works project, including the retention of the services of
37 any architect or engineer in connection therewith, for the length
38 of time authorized and necessary for the completion of the actual
39 construction;

40 (10) The providing of food services for any term not exceeding
41 three years;

42 (11) On-site inspections undertaken by private agencies
43 pursuant to the "State Uniform Construction Code Act"
44 (P.L.1975, c.217; C.52:27D-119 et seq.) for any term of not more
45 than three years;

46 (12) The performance of work or services or the furnishing of
47 materials or supplies for the purpose of conserving energy in
48 buildings owned by, or operations conducted by, the contracting
49 unit, the entire price of which to be established as a percentage

1 of the resultant savings in energy costs, for a term not to exceed
2 10 years; provided, however, that such contracts shall be entered
3 into only subject to and in accordance with rules and regulations
4 promulgated by the Department of Energy establishing a
5 methodology for computing energy cost savings;

6 (13) The performance of work or services or the furnishing of
7 materials or supplies for the purpose of elevator maintenance for
8 any term not exceeding three years;

9 (14) Leasing or servicing of electronic communications
10 equipment for a period not to exceed five years; provided,
11 however, such contract shall be entered into only subject to and
12 in accordance with the rules and regulations promulgated by the
13 Director of the Division of Local Government Services of the
14 Department of Community Affairs;

15 (15) Leasing of motor vehicles, machinery and other equipment
16 primarily used to fight fires, for a term not to exceed seven
17 years, when the contract includes an option to purchase, subject
18 to and in accordance with rules and regulations promulgated by
19 the Director of the Division of Local Government Services of the
20 Department of Community Affairs;

21 (16) The provision of water supply services or the designing,
22 financing, construction, operation, or maintenance, or any
23 combination thereof, of a water supply facility, or any component
24 part or parts thereof, including a water filtration system, for a
25 period not to exceed 40 years, when the contract for these
26 services is approved by the Division of Local Government
27 Services in the Department of Community Affairs, the Board of
28 Public Utilities, and the Department of Environmental Protection
29 pursuant to P.L.1985, c.37 (C.58:26-1 et seq.). For the purposes
30 of this subsection, "water supply services" means any service
31 provided by a water supply facility; "water filtration system"
32 means any equipment, plants, structures, machinery, apparatus,
33 or land, or any combination thereof, acquired, used, constructed,
34 rehabilitated, or operated for the collection, impoundment,
35 storage, improvement, filtration, or other treatment of drinking
36 water for the purposes of purifying and enhancing water quality
37 and insuring its potability prior to the distribution of the drinking
38 water to the general public for human consumption, including
39 plants and works, and other personal property and appurtenances
40 necessary for their use or operation; and "water supply facility"
41 means and refers to the real property and the plants, structures,
42 interconnections between existing water supply facilities,
43 machinery and equipment and other property, real, personal and
44 mixed, acquired, constructed or operated, or to be acquired,
45 constructed or operated, in whole or in part by or on behalf of a
46 political subdivision of the State or any agency thereof, for the
47 purpose of augmenting the natural water resources of the State
48 and making available an increased supply of water for all uses, or
49 of conserving existing water resources, and any and all

1 appurtenances necessary, useful or convenient for the collecting,
2 impounding, storing, improving, treating, filtering, conserving or
3 transmitting of water and for the preservation and protection of
4 these resources and facilities and providing for the conservation
5 and development of future water supply resources;

6 (17) The provision of solid waste disposal services by a
7 resource recovery facility, the furnishing of products of a
8 resource recovery facility, the disposal of the solid waste
9 delivered for disposal which cannot be processed by a resource
10 recovery facility or the waste products resulting from the
11 operation of a resource recovery facility, including hazardous
12 waste and recovered metals and other materials for reuse, or the
13 design, financing, construction, operation or maintenance of a
14 resource recovery facility for a period not to exceed 40 years
15 when the contract is approved by the Division of Local
16 Government Services in the Department of Community Affairs,
17 the Board of Public Utilities, and the Department of
18 Environmental Protection; and when the facility is in
19 conformance with a solid waste management plan approved
20 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes
21 of this subsection, "resource recovery facility" means a solid
22 waste facility constructed and operated for the incineration of
23 solid waste for energy production and the recovery of metals and
24 other materials for reuse; or a mechanized composting facility,
25 or any other solid waste facility constructed or operated for the
26 collection, separation, recycling, and recovery of metals, glass,
27 paper, and other materials for reuse or for energy production;

28 (18) The sale of electricity or thermal energy, or both,
29 produced by a resource recovery facility for a period not to
30 exceed 40 years when the contract is approved by the Board of
31 Public Utilities, and when the facility is in conformance with a
32 solid waste management plan approved pursuant to P.L.1970, c.39
33 (C.13:1E-1 et seq.). For the purposes of this subsection,
34 "resource recovery facility" means a solid waste facility
35 constructed and operated for the incineration of solid waste for
36 energy production and the recovery of metals and other materials
37 for reuse; or a mechanized composting facility, or any other solid
38 waste facility constructed or operated for the collection,
39 separation, recycling, and recovery of metals, glass, paper, and
40 other materials for reuse or for energy production;

41 (19) The provision of wastewater treatment services or the
42 designing, financing, construction, operation, or maintenance, or
43 any combination thereof, of a wastewater treatment system, or
44 any component part or parts thereof, for a period not to exceed
45 40 years, when the contract for these services is approved by the
46 Division of Local Government Services in the Department of
47 Community Affairs and the Department of Environmental
48 Protection pursuant to P.L.1985, c.72 (C.58:27-1 et seq.). For
49 the purposes of this subsection, "wastewater treatment services"

1 means any service provided by a wastewater treatment system,
2 and "wastewater treatment system" means equipment, plants,
3 structures, machinery, apparatus, or land, or any combination
4 thereof, acquired, used, constructed, or operated for the storage,
5 collection, reduction, recycling, reclamation, disposal,
6 separation, or other treatment of wastewater or sewage sludge,
7 or for the final disposal of residues resulting from the treatment
8 of wastewater, including, but not limited to, pumping and
9 ventilating stations, facilities, plants and works, connections,
10 outfall sewers, interceptors, trunk lines, and other personal
11 property and appurtenances necessary for their operation;

12 (20) The supplying of materials or services for the purpose of
13 lighting public streets, for a term not to exceed five years,
14 provided that the rates, fares, tariffs or charges for the supplying
15 of electricity for that purpose are approved by the Board of
16 Public Utilities;

17 (21) In the case of a contracting unit which is a county or
18 municipality, the provision of emergency medical services by a
19 hospital to residents of a municipality or county as appropriate
20 for a term not to exceed five years.

21 All multi-year leases and contracts entered into pursuant to
22 this section, except contracts for the leasing or servicing of
23 equipment supplied by a telephone company which is subject to
24 the jurisdiction of the Board of Public Utilities, contracts
25 involving the supplying of electricity for the purpose of lighting
26 public streets and contracts for thermal energy authorized
27 pursuant to subsection (1) above, construction contracts
28 authorized pursuant to subsection (9) above, contracts and
29 agreements for the provision of work or the supplying of
30 equipment to promote energy conservation authorized pursuant to
31 subsection (12) above, contracts for water supply services or for a
32 water supply facility, or any component part or parts thereof
33 authorized pursuant to subsection (16) above, contracts for
34 resource recovery services or a resource recovery facility
35 authorized pursuant to subsection (17) above, contracts for the
36 sale of energy produced by a resource recovery facility
37 authorized pursuant to subsection (18) above, contracts for
38 wastewater treatment services or for a wastewater treatment
39 system or any component part or parts thereof authorized
40 pursuant to subsection (19) above, shall contain a clause making
41 them subject to the availability and appropriation annually of
42 sufficient funds as may be required to meet the extended
43 obligation, or contain an annual cancellation clause.

44 The Division of Local Government Services shall adopt and
45 promulgate rules and regulations concerning the methods of
46 accounting for all contracts that do not coincide with the fiscal
47 year.

48 (cf: P.L.1989, c.159, s.2)

49 50. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to

1 read as follows:

2 23. Advertisements for bids; bids; general requirements. All
3 advertisements for bids shall be published in a legal newspaper
4 sufficiently in advance of the date fixed for receiving the bids to
5 promote competitive bidding, but in no event less than 10 days
6 prior to such date; except that all advertisements for bids on
7 contracts for the collection and disposal of municipal solid waste
8 shall be published in a legal newspaper circulating in the county
9 or municipality, and in at least one newspaper of general
10 circulation published in the State, sufficiently in advance of the
11 date fixed for receiving the bids to promote competitive bidding,
12 but not less than 60 days prior to that date.

13 The advertisement shall designate the manner of submitting
14 and the method of receiving the bids and the time and place at
15 which the bids will be received. If the published specifications
16 provide for receipt of bids by mail, those bids which are mailed to
17 the contracting unit shall be sealed and shall only be opened for
18 examination at such time and place as all bids received are
19 unsealed and announced. At such time and place the contracting
20 agent of the contracting unit shall publicly receive the bids, and
21 thereupon immediately proceed to unseal them and publicly
22 announce the contents, which announcement shall be made in the
23 presence of any parties bidding or their agents, who are then and
24 there present, and shall also make proper record of the prices and
25 terms, upon the minutes of the governing body, if the award is to
26 be made by the governing body of the contracting unit, or in a
27 book kept for that purpose, if the award is to be made by other
28 than the governing body, and in such latter case it shall be
29 reported to the governing body of the contracting unit for its
30 action thereon, when such action thereon is required. No bids
31 shall be received after the time designated in the advertisement.

32 Notice of revisions or addenda to advertisements or bid
33 documents relating to bids shall, no later than five days,
34 Saturdays, Sundays and holidays excepted, prior to the date for
35 acceptance of bids, be published in a legal newspaper and be
36 made available by notification in writing by certified mail to any
37 person who has submitted a bid or who has received a bid
38 package; except that notice of revisions or addenda to
39 advertisements or bid documents relating to bids on contracts for
40 the collection and disposal of municipal solid waste shall be
41 published in a legal newspaper circulating in the county or
42 municipality, and in at least one newspaper of general circulation
43 published in the State, no later than 5 days, Saturdays, Sundays
44 and holidays excepted, prior to the date for acceptance of bids.

45 Failure of the contracting unit to advertise for the receipt of
46 bids or to provide proper notification of revisions or addenda to
47 advertisements or bid documents related to bids as prescribed by
48 this section shall prevent the contracting unit from accepting the
49 bids and require the readvertisement for bids.

50 (cf: P.L.1985, c.429, s.1)

ASSEMBLY WASTE MANAGEMENT,
PLANNING AND RECYCLING COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3136 and 312

STATE OF NEW JERSEY

DATED: OCTOBER 11, 1990

The Assembly Waste Management, Planning and Recycling Committee favorably reports an Assembly Committee Substitute for Assembly Bill Nos. 3136 and 312.

The ACS for Assembly Bill Nos. 3136 and 312 would establish procedures for regulatory reform and provides a 48-month transition period from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry.

Specifically, the ACS provides that 48 months following the effective date of the bill, the rates or charges imposed by solid waste collectors for solid waste collection services would no longer be subject to the regulation of the Board of Public Utilities. However, between the bill's effective date and the end of the fourth transition year, solid waste collectors would remain subject to the rate regulation of the Board. The bill would not affect the Board's rate regulation of the solid waste disposal industry.

The solid waste collection industry would remain under the general supervision of the BPU after the 48-month transition period and every solid waste collector would still be required to obtain the certificate of public convenience and necessity issued by the board. The bill would not affect the Board's jurisdiction with respect to waste flow control and enforcement. Rather, the bill would give statutory recognition to the long-held judicial view that the Board of Public Utilities and the Department of Environmental Protection have coextensive jurisdiction over the interdistrict, intradistrict and interstate flow of solid waste, viz. the orderly management of solid waste in New Jersey is achieved through waste flow orders jointly issued by these State agencies directing specific haulers and waste streams to specific processing or disposal facilities.

The ACS provides that all rates or charges imposed by solid waste collectors within this State must conform to the uniform tariff for solid waste collection recently adopted by the BPU by rules and regulations. Every solid waste collector must file a uniform tariff with the BPU by January 1, 1991.

The ACS provides that any increase or decrease in the disposal rates or charges received at authorized solid waste disposal

facilities in this State would be automatically adjusted for in the uniform tariff. Any solid waste collector seeking an adjustment must file with the BPU appropriate revised tariff sheets. No adjustment in the disposal rate could be implemented until the revised tariff sheets have been filed with, and verified by the Board. Every solid waste collector must file these documents with the board within five days of any decrease in the disposal rates or charges received at an authorized disposal facility.

The bill requires the Board of Public Utilities to adopt rules and regulations establishing solid waste collection rate bands governing the rates or charges that may be imposed by solid waste collectors for solid waste collection services in this State during the 48-month transition from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry.

The rate bands would provide for the maximum adjustment that any solid waste collector may make to the rates or charges set forth as solid waste collection service charges in the uniform tariff filed with and accepted by the board on or after January 1, 1991 for any residential, commercial, industrial or institutional customer during a specified transition year.

The solid waste collection rate bands must conform to the following schedule:

(1) During the initial transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the Consumer Price Index (CPI), multiplied by the rates or charges;

(2) During the second transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the CPI, plus the sum authorized in paragraph (1), multiplied by the rates or charges;

(3) During the third transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 10% plus the annual percentage change in the CPI, plus the sum authorized in paragraph (2), multiplied by the rates or charges; and

(4) During the fourth transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of the annual percentage change in the CPI plus the sum authorized in paragraph (3), multiplied by the rates or charges.

Prior to the close of each transition year, the board must, by order in writing, revise the solid waste collection rate bands for the forthcoming transition year to conform to this schedule for the pricing of solid waste collection services.

Any adjustments to the uniform tariff may be made on an individual customer basis.

The Committee finds that the concept of solid waste collection rate bands can be more readily understood by means of the example provided below, which outlines a hypothetical solid waste collection rate band for residential customer service.

Assumptions:

Service charges in the uniform tariff: \$100 per year

Consumer Price Index: 5% annual percentage increase for each of the 4 years

Maximum adjustment: 5% (initial transition year); 5% (2nd transition year); 10% (3rd transition year) and CPI (4th transition year)

I	II	III	IV	Transition Year
\$110	\$120	\$135	\$140	Maximum Charges
\$100	\$100	\$100	\$100	Service Charges
10%	20%	35%	40%	Rate Band
\$90	\$80	\$65	\$60	Minimum Charges

As provided in the example, during the initial transition year a hypothetical solid waste collector charging \$100 per year for residential service may adjust his rates by an amount within a rate band consisting of the sum of 5% and the 5% change in the CPI multiplied by the service charge. Thus, the collector may increase his rate to \$110 ($10\% \times \$100 = \$10 + \$100 = \110), or decrease the rate to \$90 ($10\% \times \$100 = \$100 - \$10 = \90).

During the second transition year, the solid waste collector may adjust his rates by an amount within a rate band consisting of the sum of 5% and the 5% change in the CPI, plus the previous year's rate band (10%), multiplied by the service charge. Thus, the collector may increase his rate to \$120 ($20\% \times \$100 = \$20 + \$100 = \120), or decrease the rate to \$80 ($20\% \times \$100 = \$100 - \$20 = \80).

During the third transition year, these rates may be adjusted by an amount within a rate band consisting of the sum of 10% and the 5% change in the CPI, plus the previous year's rate band (20%), multiplied by the service charge. Thus, the collector may increase his rate to \$135 ($35\% \times \$100 = \$35 + \$100 = \135), or decrease the rate to \$65 ($35\% \times \$100 = \$100 - \$35 = \65).

During the fourth transition year, the rates may be adjusted by

an amount within a rate band consisting of the sum of the 5% change in the CPI and the previous year's rate band (35%), multiplied by the service charge. Thus, the collector may increase his rate to \$140 ($40\% \times \$100 = \$40 + \$100 = \140), or decrease the rate to \$60 ($40\% \times \$100 = \$100 - \$40 = \60).

Thereafter, the solid waste collector may determine his own rates.

After January 1, 1991 and upon filing with the BPU a uniform tariff, any solid waste collector may adjust the rates or charges set forth in the uniform tariff as provided in the solid waste collection rate bands established by the board. Any adjustments to the uniform tariff may be made on an individual customer basis.

In instances where the rates or charges set forth in a uniform tariff filed by a solid waste collector have not been reviewed and accepted by the board, the solid waste collector may adjust those rates or charges as provided in the solid waste collection rate band schedule. However, should the board find, subsequent to its review of a uniform tariff, that the rates or charges set forth therein are excessive, then it may order the solid waste collector to refund, at an interest rate to be determined by the board, the difference between the adjusted rates or charges and the rates or charges accepted by the board.

During the first and second transition years, every solid waste collector must file with the board a semi-annual report describing the amount and frequency of variation from the rates or charges set forth in the uniform tariff for each class of residential, commercial, industrial or institutional customers. The report must include the percentage of each class of solid waste collection services for which adjustments have been made, and the specified percentage increase or decrease to the rates or charges made to that customer class. During the third and fourth transition years, every solid waste collector must file this report with the board on an annual basis.

Whenever a solid waste collector makes an adjustment to the uniform tariff, he must notify every customer to be affected thereby at least 10 days prior to the implementation of that adjustment, and attach a copy of the applicable rate schedule to the notice.

At least once every transition year, every solid waste collector must notify customers that solid waste collection services are available on a competitive basis. The notice must include copies of the "customer bill of rights" established by the board in rules and regulations adopted therefor.

No solid waste collector utilizing the rate bands to make adjustments to the uniform tariff may, except in cases of hardship or exigent circumstances, or in the case of significant increases in energy costs, as determined by the Board, petition

the BPU for an increase in the rates or charges set forth in the uniform tariff previously filed with and accepted by the Board.

By December 31, 1991 and at least once every six months thereafter, the BPU must publish the rate schedule set forth in the uniform tariff of every solid waste collector serving a particular region of the State in at least one newspaper of general circulation within that region and at least one newspaper of statewide circulation. The rate schedule must be accompanied by a notice advising the public of the current rate band in effect and stating that any difficulties in securing solid waste collection services, or any complaints pertaining to the adequacy of existing solid waste collection services, should be referred to the Board of Public Utilities.

By the end of the third transition year, the Board must submit a report to the Governor and the Legislature concerning the implementation of this bill. The report must include:

(1) an evaluation of the success of the annual rate band approach to the pricing of solid waste collection charges in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper solid waste collection services at competitive rates;

(2) an evaluation of the success of rate bands in eliminating predatory pricing and other anticompetitive activities within the solid waste collection industry;

(3) an evaluation of the success of uniform specifications for municipal solid waste collection contracts in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper municipal solid waste collection services at competitive rates; and

(4) an assessment of the economic viability and competitiveness of the solid waste collection industry and a recommendation, as warranted by the circumstances, as to whether the termination of rate regulation of the solid waste collection industry by the Board will promote competition and ensure efficient solid waste collection services at competitive rates.

The ACS provides that the penalties recovered pursuant to actions brought by the BPU under section 13 of P.L. 1970, c. 40 (C.48:13A-12) must be paid to the "Solid Waste Enforcement Fund" established in the bill. Thus if a money judgment is rendered against a defendant pursuant to this section, the payment made to the court would be remitted to the fund. All monies in the fund would be utilized exclusively by the Division of Solid Waste in the Board of Public Utilities for enforcement and implementation of the provisions of P.L.1970, c. 40 (C.48:13A-1 et seq.) and this bill.

The ACS amends and supplements the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq) to incorporate a

number of the recommendations made by the SCI in April, 1989 concerning bidding on municipal solid waste collection contracts which are designed to promote competition within the solid waste collection industry for the provision of municipal solid waste collection services.

Specifically, the bill would: (1) expressly prohibit any local contracting unit from requiring any bidder on a contract for the collection and disposal of municipal solid waste to be a resident of, or that his place of business be located in, the county or municipality in which the contract would be performed; (2) require all advertisements for bids on municipal solid waste collection contracts to be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, at least 60 days prior to the date fixed for receiving the bids; (3) require that notice of revisions or addenda to advertisements or bid documents relating to bids on municipal solid waste collection contracts must be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, no later than 30 days prior to the date for acceptance of bids; and (4) require the Board of Public Utilities to adopt by rule or regulation uniform specifications for municipal solid waste collection contracts.

The ACS authorizes the board to direct any applicant seeking to obtain a certificate of public convenience and necessity, i.e. any entrant into the solid waste collection industry in New Jersey, to furnish proof that the rates or charges to be received for solid waste collection services do not exceed just and reasonable rates or charges. Should the board find, subsequent to the issuance of a certificate of public convenience and necessity, that the rates or charges received for solid waste collection services are excessive, then it may order the solid waste collector charging such excessive rates or charges to adjust the tariff or contract to a sum which would result in just and reasonable rates or charges.

Any solid waste collector seeking to extend solid waste collection services into any area where that person is not actively engaged in solid waste collection, and the proposed extension of services is not set forth in a tariff previously filed with and accepted by the board, must file with the board appropriate revised tariff sheets which reflect proposed changes in areas to be served.

Further, any solid waste collector seeking to expand his solid waste collection business for the purpose of providing new solid waste collection services, and the proposed expansion of services is not set forth in a tariff previously filed with and accepted by the board, must file with the board appropriate revised tariff sheets which reflect proposed changes in services to be provided.

In either case, should the board find, subsequent to its review of a revised tariff, that the rates or charges set forth therein are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in just and reasonable rates or charges.

The ACS provides that no solid waste collector may, without the approval of the Board of Public Utilities, sell, lease, mortgage or otherwise dispose of or encumber any property.

Further, no solid waste collector may, without the approval of the Board of Public Utilities, merge or consolidate any property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal.

Any solid waste collector seeking approval for any of these transactions must file with the board an appropriate petition therefor.

The board must promptly review all such petitions, and within 45 days of receipt of a petition, the board must request that the solid waste collector submit additional information to assist in its review if it deems that such information is necessary. If no such request is made, the petition would be considered to be completed. In the event that additional information is requested, the petition would be considered to be completed when the additional information is received by the board.

The board must approve or deny a petition within 90 days of receipt of a completed petition. In the event that the board fails to take action on a petition within the 90-day period, then the petition would be deemed to have been approved.

Any solid waste collector may, without the approval of the board, sell or otherwise dispose of its collection or haulage vehicles. However, no solid waste collector may sell or dispose of 60% or more of its collection or haulage vehicles within a 12-month period without the approval of the board.

The other major provisions of the ACS would: (1) authorize any solid waste collector to purchase or lease any equipment, including collection or haulage vehicles, at any time, or to issue stock, bonds or other evidence of long-term indebtedness, without the approval of the BPU; (2) require existing solid waste collectors to pay an annual renewal fee of \$100.00 for the certificate of public convenience and necessity issued by the Board to defray the costs of supervising the solid waste collection industry; (3) authorize the BPU to charge and collect a filing fee of up to \$500.00 per application from applicants for an initial certificate of public convenience and necessity; and (4) authorize the BPU to order any person engaged in the business of solid waste collection to extend solid waste collection services into any area where such service has been discontinued. Should the

Board order any person to extend solid waste collection services to an area in need of such services, the rates and charges for service in the extended area would be determined in accordance with the uniform tariff during the 48-month transition period, and by the ordered person thereafter.

SENATE LAND USE MANAGEMENT
AND REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY SUBSTITUTE FOR
ASSEMBLY, Nos. 3136 and 312 ACS

STATE OF NEW JERSEY

DATED: JUNE 17, 1991

The Senate Land Use Management and Regional Affairs Committee favorably reports the Assembly Substitute for Assembly Bill Nos. 3136 and 312 ACS.

The Assembly Substitute for Assembly Bill Nos. 3136 and 312 ACS would establish procedures for regulatory reform and provide a 48-month transition period from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry.

Specifically, the rates or charges imposed by solid waste collectors for solid waste collection services would no longer be subject to the regulation of the Board of Public Utilities 48 months after the effective date of the bill. However, between the bill's effective date and the end of the fourth transition year, solid waste collectors would remain subject to the rate regulation of the Board. The bill would not affect the Board's rate regulation of the solid waste disposal industry.

The solid waste collection industry would remain under the general supervision of the BPU after the 48-month transition period and every solid waste collector would still be required to obtain the certificate of public convenience and necessity issued by the Board. The bill would not affect the Board's jurisdiction with respect to waste flow control and enforcement. Rather, the bill would give statutory recognition to the long-held judicial view that the Board of Public Utilities and the Department of Environmental Protection have coextensive jurisdiction over the interdistrict, intradistrict and interstate flow of solid waste, viz. the orderly management of solid waste in New Jersey is achieved through waste flow orders jointly issued by these State agencies directing specific haulers and waste streams to specific processing or disposal facilities.

The bill provides that all rates or charges imposed by solid waste collectors within this State must conform to the uniform tariff for solid waste collection adopted by the BPU by rules and regulations, and every solid waste collector must file a uniform tariff with the Board.

The bill provides that any increase or decrease in the disposal rates or charges received at authorized solid waste disposal facilities in this State would be automatically adjusted for in the uniform tariff. Any solid waste collector seeking an adjustment

must file with the BPU appropriate revised tariff sheets. No adjustment in the disposal rate could be implemented until the revised tariff sheets have been filed with, and verified by the Board. Every solid waste collector must file these documents with the Board within five days of any decrease in the disposal rates or charges received at an authorized disposal facility.

The bill would authorize any solid waste collector, during the 48-month transition period to deregulation, to pass along to customers any net savings in the payment of disposal rates or charges at authorized solid waste facilities realized due to the materials recovery activities undertaken by that solid waste collector. These savings would be reflected in an adjustment of the rates or charges set forth in the uniform tariff as solid waste disposal service charges.

The bill requires the Board to adopt rules and regulations establishing solid waste collection rate bands governing the rates or charges that may be imposed by solid waste collectors for solid waste collection services in this State during the 48 month transition from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry.

The solid waste collection rate bands provide for the maximum adjustment that any solid waste collector may make to the rates or charges set forth as solid waste collection service charges in the uniform tariff filed with and accepted by the Board after the bill's effective date for any residential, commercial, industrial or institutional customer during a specified transition year, in accordance with the following schedule:

(1) During the initial transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the Consumer Price Index (CPI), multiplied by the rates or charges;

(2) During the second transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the CPI, plus the sum authorized in paragraph (1), multiplied by the rates or charges;

(3) During the third transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 10% plus the annual percentage change in the CPI, plus the sum authorized in paragraph (2), multiplied by the rates or charges; and

(4) During the fourth transition year, the rates or charges may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of the annual percentage change in the CPI plus the sum authorized in paragraph (3), multiplied by the rates or charges.

Any adjustments to the uniform tariff may be made on an individual customer basis.

Prior to the close of each transition year, the Board is required to revise the rate bands for the forthcoming transition year, by order in writing and in conformance with the schedule for the pricing of solid waste collection services.

The solid waste collection rate band pricing system established in the bill may be illustrated by the following example, which outlines a hypothetical solid waste collection rate band for residential customer service:

Assumptions:

Service charges in the uniform tariff: \$100 per year

Consumer Price Index: 5% annual percentage increase for each of the 4 years

Maximum adjustment: 5% (initial transition year); 5% (2nd transition year); 10% (3rd transition year) and CPI (4th transition year)

I	II	III	IV	Transition Year
\$110	\$120	\$135	\$140	Maximum Charges
\$100	\$100	\$100	\$100	Service Charges
10%	20%	35%	40%	Rate Band
\$90	\$80	\$65	\$60	Minimum Charges

As provided in the example, during the initial transition year a hypothetical solid waste collector charging \$100 per year for residential service may adjust his rates by an amount within a rate band consisting of the sum of 5% and the 5% change in the CPI multiplied by the service charge. Thus, the collector may increase his rate to \$110 ($10\% \times \$100 = \$10 + \$100 = \110), or decrease the rate to \$90 ($10\% \times \$100 = \$10 - \$10 = \90).

During the second transition year, the solid waste collector may adjust his rates by an amount within a rate band consisting of the sum of 5% and the 5% change in the CPI, plus the previous year's rate band (10%), multiplied by the service charge. Thus, the collector may increase his rate to \$120 ($20\% \times \$100 = \$20 + \$100 = \120), or decrease the rate to \$80 ($20\% \times \$100 = \$20 - \$20 = \80).

During the third transition year, these rates may be adjusted by an amount within a rate band consisting of the sum of 10% and the 5% change in the CPI, plus the previous year's rate band (20%), multiplied by the service charge. Thus, the collector may

increase his rate to \$135 ($35\% \times \$100 = \$35 + \$100 = \135), or decrease the rate to \$65 ($35\% \times \$100 = \$100 - \$35 = \65).

During the fourth transition year, the rates may be adjusted by an amount within a rate band consisting of the sum of the 5% change in the CPI and the previous year's rate band (35%), multiplied by the service charge. Thus, the collector may increase his rate to \$140 ($40\% \times \$100 = \$40 + \$100 = \140), or decrease the rate to \$60 ($40\% \times \$100 = \$100 - \$40 = \60).

Thereafter, the solid waste collector may determine his own rates.

After filing a uniform tariff with the Board, any solid waste collector may adjust the rates or charges set forth in the uniform tariff as provided in the solid waste collection rate bands. Any adjustments to the uniform tariff may be made on an individual customer basis.

In instances where the rates or charges set forth in a uniform tariff filed by a solid waste collector have not been reviewed and accepted by the Board, the solid waste collector may adjust those rates or charges as provided in the rate band schedule. However, subsequent to its review of a uniform tariff, if the Board finds that the rates or charges set forth therein are excessive, then it may order the solid waste collector to refund, at an interest rate to be determined by the Board, the difference between the adjusted rates or charges and the rates or charges accepted by the Board.

During the first and second transition years, every solid waste collector must file with the Board a semi-annual report describing the amount and frequency of variation from the rates or charges set forth in the uniform tariff for each class of residential, commercial, industrial or institutional customers. The report must include the percentage of each class of solid waste collection services for which adjustments have been made, and the specified percentage increase or decrease to the rates or charges made to that customer class. During the third and fourth transition years, every solid waste collector must file this report with the Board on an annual basis.

Whenever a solid waste collector makes an adjustment to the uniform tariff, he must notify every customer to be affected thereby at least 10 days prior to the implementation of that adjustment, and attach a copy of the applicable rate schedule to the notice. At least once every transition year, every solid waste collector must notify customers that solid waste collection services are available on a competitive basis. The notice must include copies of the "customer bill of rights" established by the Board in rules and regulations adopted therefor.

No solid waste collector utilizing the rate bands to make adjustments to the uniform tariff previously filed with and accepted by the Board may petition the BPU for an increase in the rates or charges set forth therein, except in cases of hardship

or exigent circumstances, or in the case of significant increases in energy costs, as determined by the Board.

Within 12 months of the bill's effective date and at least once every six months thereafter, the Board must publish the rate schedule set forth in the uniform tariff of every solid waste collector serving a particular region of the State in at least one newspaper of general circulation within that region and at least one newspaper of statewide circulation. The rate schedule must be accompanied by a notice advising the public of the current rate band in effect and stating that any difficulties in securing solid waste collection services, or any complaints pertaining to the adequacy of existing solid waste collection services, should be referred to the Board of Public Utilities.

Within 30 months of the bill's effective date, the Board must submit a preliminary report to the Governor and the Legislature concerning the implementation of this bill. The Board is required to provide interested parties and the general public with an opportunity to submit written comments on the contents of the preliminary report in a manner to be determined by the Board.

Within 36 months of the bill's effective date, the Board must submit a final report to the Governor and the Legislature concerning the implementation of this bill. The final report must include the following components:

(1) An evaluation of the success of solid waste collection rate bands in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper solid waste collection services at competitive rates;

(2) An evaluation of the success of solid waste collection rate bands in eliminating predatory pricing and other anticompetitive activities within the solid waste collection industry;

(3) An evaluation of the success of uniform specifications for municipal solid waste collection contracts in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper municipal solid waste collection services at competitive rates;

(4) An assessment of the economic viability and competitiveness of the solid waste collection industry and a recommendation, as warranted by the circumstances, as to whether the termination of rate regulation of the solid waste collection industry by the Board will promote meaningful competition and ensure efficient solid waste collection services at competitive rates; and

(5) A summary of any written comments submitted by interested parties or the general public on the contents of the preliminary report.

Section 19 of the bill requires the Board to adopt rules and regulations within 180 days of the bill's effective date establishing the criteria and procedures to be utilized by the Board in making a determination of effective competition. The

Board must utilize these criteria in making either of the following determinations: (1) whether a lack of effective competition is likely to occur if the Board approves a proposed sale, lease, mortgage or other transaction by a solid waste collector to dispose of or encumber any property; or (2) whether a lack of effective competition exists within a specific geographic area, class of customers or type of solid waste collection services after the 48-month transition period.

The criteria must include the following considerations: (1) the existence of barriers to entry of persons seeking to provide solid waste collection services within a specific geographic area, class of customers or type of service; (2) the structure of the solid waste collection industry within a specific geographic area, class of customers or type of service, including the number of participating solid waste collectors, the intensity of competition, or the concentration in ownership of collection or haulage vehicles or other equipment; and (3) the existence of patterns of anti-competitive behavior by persons providing solid waste collection services within a specific geographic area, class of customers or type of service.

The Board is required to utilize these criteria in conjunction with generally accepted economic indicators to be identified in the rules and regulations adopted by the Board, including: an evaluation of capital investment costs, economies of scale, differentiation of service, technological barriers facing entrants, financial requirements, including capital entry or exit costs, regulatory barriers, and business characteristics, including number of customers, customer turnover, annual gross revenues, class or type of service provided, and annual net income.

The rules adopted by the board must also establish procedures to be utilized in reviewing the rates or charges received by a solid waste collector pursuant to section 20 of the bill following the 48-month transition period.

Section 20 of the bill would authorize the BPU to retain residual ratesetting authority over a solid waste collector following the 48-month transition period to total deregulation if the Board determines that: (1) there exists a lack of effective competition within a specified geographic region, class of customers or particular type of collection service; and (2) the lack of effective competition has resulted in the solid waste collector charging rates that exceed rates that would have resulted under effective competition.

The Board would make this determination by comparing the solid waste collector's rates with those received in a comparable region or for comparable solid waste collection services. If necessary, the Board would be authorized to review the solid waste collector's rates and financial records, and to order refunds of excessive rates and take other measures to restore effective competition. Any such order would expire six months

following the effective date of the order.

Following its six month review and upon a determination that effective competition has been restored to the affected geographic area, class of customers or type of service, the Board must rescind the order and cease any further rate setting activity with respect to the solid waste collector subject to that order. However, upon a written determination that a lack of effective competition still exists, and that the continued lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition, the Board may issue a new order and continue rate setting activity with respect to that solid waste collector for an additional six-month period.

The bill provides that the penalties recovered pursuant to actions brought by the BPU under section 13 of P.L.1970, c.40 (C.48:13A-12) must be paid to the "Solid Waste Enforcement Fund" established in section 21 of the bill. Thus if a money judgment is rendered against a defendant, the payment made to the court would be remitted to the fund. All monies in the fund would be utilized exclusively by the Division of Solid Waste in the Board of Public Utilities for enforcement and implementation of the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and this bill.

The bill amends and supplements the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq) to incorporate a number of the recommendations made by the State Commission of Investigation in April, 1989 concerning bidding on municipal solid waste collection contracts which are designed to promote competition within the solid waste collection industry for the provision of municipal solid waste collection services.

Specifically, these provisions of the bill would: (1) require the Board of Public Utilities to adopt by rule or regulation uniform specifications for municipal solid waste collection contracts; (2) prohibit any local contracting unit from requiring any bidder on a contract for the collection and disposal of municipal solid waste to be a resident of, or that his place of business be located in, the county or municipality in which the contract would be performed; (3) require all advertisements for bids on municipal solid waste collection contracts to be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, at least 60 days prior to the date fixed for receiving the bids; and (4) require any notice of revisions or addenda to advertisements or bid documents relating to bids on municipal solid waste collection contracts to be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, no later than 5 business days prior to the date for acceptance of bids.

The bill authorizes the Board to direct any applicant seeking to obtain a certificate of public convenience and necessity, i.e. any

entrant into the solid waste collection industry in New Jersey, to furnish proof that the proposed rates or charges to be received for solid waste collection services do not exceed just and reasonable rates or charges. Subsequent to the issuance of a certificate, if the Board finds that the rates or charges actually being received for collection services are excessive, then it may order that solid waste collector to adjust the tariff or contract to a sum which would result in just and reasonable rates or charges.

Any solid waste collector seeking to extend solid waste collection services into any area where that person is not actively engaged in solid waste collection, and the proposed extension of services is not set forth in a tariff previously filed with and accepted by the Board, must file with the BPU appropriate revised tariff sheets which reflect proposed changes in areas to be served.

Further, any solid waste collector seeking to expand his solid waste collection business for the purpose of providing new solid waste collection services, and the proposed expansion of services is not set forth in a tariff previously filed with and accepted by the Board, must file with the Board appropriate revised tariff sheets which reflect proposed changes in services to be provided.

In either case, subsequent to its review of a revised tariff, should the Board find that the rates or charges set forth therein are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in competitive rates or charges.

The bill provides that no solid waste collector may sell, lease, mortgage or otherwise dispose of or encumber any property without the approval of the Board of Public Utilities. Further, no solid waste collector may, without the prior approval of the Board, merge or consolidate any property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal.

Any solid waste collector seeking approval for any of these transactions must file with the Board a notice of intent at least 30 days prior to the completion of the transaction, and the Board must promptly review all such notices. Within 30 days of receiving a notice of intent, the Board may request the solid waste collector to submit additional information to assist the Board in its review, if it deems that such information is necessary. If no such request is made, the transaction would be deemed to have been approved. If additional information is requested, the Board must provide a written explanation as to why it deems such information necessary to make an informed decision on the impact of the transaction on effective competition.

The Board must approve or deny a transaction within 60 days of

receipt of all requested information. If the Board fails to take action on a transaction within the 60-day period, then the transaction would be deemed to have been approved. The Board must approve a transaction unless it makes a determination pursuant to the criteria and procedures established in section 19 of the bill that the proposed sale, lease, mortgage, disposition, encumbrance, merger or consolidation would result in a lack of effective competition.

Any solid waste collector may, without the approval of the Board, purchase, finance or lease any equipment, including collection or haulage vehicles. In addition, any solid waste collector may, without the approval of the Board, sell or otherwise dispose of up to 33% of its collection or haulage vehicles within a 12-month period.

The other major provisions of the bill would: (1) authorize any solid waste collector to purchase or lease any equipment, including collection or haulage vehicles, at any time, or to issue stock, bonds or other evidence of long-term indebtedness, without the approval of the Board; (2) require existing solid waste collectors to pay an annual renewal fee of \$100.00 for the certificate of public convenience and necessity issued by the Board to defray the costs of supervising the solid waste collection industry; (3) authorize the Board to charge and collect a filing fee of up to \$500.00 per application from applicants for an initial certificate of public convenience and necessity; and (4) authorize the Board to order any person engaged in the business of solid waste collection to extend solid waste collection services into any area where such service has been discontinued. If the Board orders a solid waste collector to extend collection services to an area in need of such services, the rates and charges for solid waste collection service in the extended area would be determined in accordance with the uniform tariff filed with the Board during the 48-month transition period, and by the ordered person thereafter.

The Assembly Substitute for Assembly Bill Nos. 3136 and 312 ACS is identical to the Senate Committee Substitute for Senate Bill Number 3040.

STATE OF NEW JERSEY

ADOPTED OCTOBER 15, 1990

Sponsored by Assemblymen McENROE, DUCH and Shinn

1 AN ACT concerning regulatory reform of the solid waste
2 collection industry, and amending, supplementing and repealing
3 parts of the statutory law.

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

7 1. Sections 1 through 21 inclusive of this 1990 amendatory and
8 supplementary act shall be known and may be cited as the "Solid
9 Waste Collection Regulatory Reform Act."

10 2. (New section) The Legislature finds that the collection of
11 solid waste is an activity thoroughly affected with the public
12 interest; that the health, safety and welfare of the people of this
13 State require efficient and reasonable solid waste collection
14 services; that efficient solid waste collection services at
15 competitive rates will more likely be achieved if the solid waste
16 collection industry is under the supervision of, but not subject to
17 economic regulation by, the Board of Public Utilities.

18 The Legislature further finds that it is imperative that the
19 State ensure the economic viability and competitiveness of the
20 solid waste collection industry in order to safeguard the integrity
21 of the State's long-term solid waste management strategy; that
22 it is equally imperative to safeguard the interests of the
23 ratepayers as well as the interests of those providing solid waste
24 collection services; that to provide for ratepayer and consumer
25 protection it is necessary to foster competition within the
26 industry and to establish a responsible State supervisory role to
27 ensure safe, adequate and proper solid waste collection service at
28 competitive rates; and that to achieve these ends in the most
29 efficient and reasonable manner, and in light of the manifold
30 inadequacies of the existing regulatory framework, it is necessary
31 to establish procedures for regulatory reform and the eventual
32 termination of Board of Public Utilities rate regulation of the
33 solid waste collection industry.

34 The Legislature further finds that the Legislature through
35 enactment of P.L. 1983, c. 302 (C. 13:1E-126 et seq.) has
36 established a licensing system which is designed to prevent
37 persons with criminal backgrounds from engaging in the solid
38 waste collection business, thereby promoting free and open

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 competition within the solid waste collection industry; and that
2 terminating traditional public utility rate regulation of the solid
3 waste collection industry can be achieved without compromising
4 the State's role in protecting the public interest.

5 The Legislature therefore declares that it is in the public
6 interest to establish procedures for regulatory reform and the
7 eventual termination of public utility rate regulation of solid
8 waste collectors while at the same time maintaining Board of
9 Public Utilities supervision over the solid waste collection
10 industry.

11 3. (New section) As used in sections 1 through 21 of P.L. .c.
12 (C.) (now before the Legislature as this bill):

13 "Applicant" means any person seeking to obtain an initial
14 certificate of public convenience and necessity pursuant to
15 sections 7 and 10 of P.L. 1970, c. 40 (C. 48:13A-6 and 48:13A-9) in
16 order to provide solid waste collection services in this State.

17 "Board" means the Board of Public Utilities.

18 "Septic waste" means pumpings from septic tanks and
19 cesspools, but shall not include wastes from a sewage treatment
20 plant.

21 "Solid waste" means garbage, refuse, and other discarded
22 materials resulting from industrial, commercial and agricultural
23 operations, and from domestic and community activities, and
24 shall include all other waste materials including liquids, except
25 for solid animal and vegetable wastes collected by swine
26 producers licensed by the State Department of Agriculture to
27 collect, prepare and feed such wastes to swine on their own farms.

28 "Solid waste collection" means the activity related to pickup
29 and transportation of solid waste from its source or location to an
30 authorized solid waste facility, but does not include activity
31 related to the pickup, transportation or unloading of septic waste.

32 "Solid waste collection services" means the services provided
33 by persons engaging in the business of solid waste collection.

34 "Solid waste collector" means a person engaged in the
35 collection of solid waste and holding a certificate of public
36 convenience and necessity pursuant to sections 7 and 10 of
37 P.L. 1970, c. 40 (C. 48:13A-6 and 48:13A-9).

38 "Solid waste container" means a receptacle, container or bag
39 suitable for the depositing of solid waste.

40 "Solid waste disposal" means the storage, treatment,
41 utilization, processing, or final disposal of solid waste.

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

44 "Solid waste facilities" mean and include the plants, structures,
45 and other real and personal property acquired, constructed or
46 operated or to be acquired, constructed or operated by any person
47 pursuant to the provisions of P.L. 1970 c. 39 (C. 13:1E-1 et seq.)
48 and P.L. 1970, c. 40 (C. 48:13A-1 et seq.) or any other act.

1 including transfer stations, incinerators, resource recovery
2 facilities, sanitary landfill facilities or other plants for the
3 disposal of solid waste, and all vehicles, equipment and other real
4 and personal property and rights therein and appurtenances
5 necessary or useful and convenient for the collection or disposal
6 of solid waste in a sanitary manner.

7 "Transition year" means any of 4 successive 12-month periods
8 designated as such by the board and commencing on the effective
9 date of P.L. . c. (C.) (now before the Legislature as this
10 bill).

11 4. (New section) Every solid waste collector shall pay an annual
12 renewal fee of \$100.00 to cover the costs of supervising the solid
13 waste collection industry. The fee imposed pursuant to this
14 section shall be in addition to the annual assessment made by the
15 board pursuant to P.L.1968, c.173 (C.48:2-59 et seq.).

16 5. (New section) a. The provisions of section 1 of P.L.1959, c.43
17 (C.48:2-56) or any rules or regulations adopted pursuant thereto
18 to the contrary notwithstanding, the Board of Public Utilities
19 may charge and collect a filing fee of up to \$500.00 per
20 application from applicants seeking to obtain a certificate of
21 public convenience and necessity pursuant to sections 7 and 10 of
22 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

23 b. The board may direct any applicant to furnish proof that the
24 rates or charges to be received for solid waste collection services
25 do not exceed just and reasonable rates or charges. Should the
26 board find, subsequent to the issuance of a certificate of public
27 convenience and necessity, that the rates or charges received for
28 solid waste collection services are excessive, then it may order
29 the solid waste collector charging such excessive rates or charges
30 to make an adjustment in the tariff or contract to a sum which
31 shall result in just and reasonable rates or charges.

32 6. (New section) a. Any solid waste collector seeking to extend
33 solid waste collection services into any area where that person is
34 not actively engaged in solid waste collection, and the proposed
35 extension of services is not set forth in a tariff previously filed
36 with and accepted by the board, shall file with the board
37 appropriate revised tariff sheets which reflect proposed changes
38 in areas to be served.

39 b. Any solid waste collector seeking to expand his solid waste
40 collection business for the purpose of providing new solid waste
41 collection services, and the proposed expansion of services is not
42 set forth in a tariff previously filed with and accepted by the
43 board, shall file with the board appropriate revised tariff sheets
44 which reflect proposed changes in services to be provided.

45 c. Should the board find, subsequent to its review of a revised
46 tariff, that the rates or charges set forth therein are excessive,
47 then it may order the solid waste collector charging such
48 excessive rates or charges to make an adjustment in the tariff or

1 contract to a sum which shall result in just and reasonable rates
2 or charges.

3 7. (New section) a. The Board of Public Utilities, upon
4 complaint or its own initiative, after hearing, may direct any
5 person engaging in the solid waste disposal business to furnish
6 proof that the rates or charges received for solid waste disposal
7 services do not exceed just and reasonable rates or charges for
8 such service.

9 b. Should the board find that the rates or charges for solid
10 waste disposal services are excessive, then it may order the
11 person charging such excessive rates or charges to make an
12 adjustment in the tariff or contract to a sum which shall result in
13 just and reasonable rates or charges.

14 8. (New section) a. (1) Any increase or decrease in the disposal
15 rates or charges received at authorized solid waste facilities in
16 this State shall be automatically adjusted for in the uniform
17 tariff for solid waste collection established by the, Board of
18 Public Utilities in rules and regulations adopted pursuant to the
19 "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et
20 seq.).

21 (2) Any solid waste collector seeking an adjustment to the rates
22 or charges set forth in the uniform tariff as solid waste disposal
23 service charges shall file with the board appropriate revised
24 tariff sheets which reflect changes in the disposal rates or
25 charges received at an authorized solid waste facility. No
26 adjustment in the disposal rate shall be implemented until such
27 time as revised tariff sheets and verification forms have been
28 filed with the board. Every solid waste collector shall file these
29 documents with the board within five days of any decrease in the
30 disposal rates or charges received at an authorized solid waste
31 facility.

32 b. (1) By January 1, 1991, every solid waste collector shall file
33 with the Board of Public Utilities rates or charges for solid waste
34 collection services conforming to the uniform tariff for solid
35 waste collection established by the board.

36 (2) Every solid waste collector shall be subject to the provisions
37 of this subsection and shall file with the Board of Public Utilities
38 a uniform tariff.

39 9. (New section) a. The Board of Public Utilities shall establish,
40 in rules and regulations adopted pursuant to the "Administrative
41 Procedure Act," solid waste collection rate bands governing the
42 rates or charges that may be imposed by solid waste collectors
43 for solid waste collection services in this State during the
44 48-month transition from economic regulation to the termination
45 of Board of Public Utilities rate regulation of the solid waste
46 collection industry. The solid waste collection rate bands shall
47 provide for the maximum adjustment that any solid waste
48 collector may make to the rates or charges set forth as solid

1 waste collection service charges in the uniform tariff filed with
2 and accepted by the board on or after January 1, 1991 for any
3 residential, commercial, industrial or institutional customer
4 during a specified transition year.

5 ~~b. The solid waste collection rate bands shall conform to the~~
6 following schedule:

7 (1) During the initial transition year, the rates or charges set
8 forth as solid waste collection service charges in the uniform
9 tariff may be adjusted by an amount within a rate band the upper
10 and lower limits of which shall not exceed the sum of 5% plus the
11 annual percentage change in the Consumer Price Index,
12 multiplied by the rates or charges;

13 (2) During the second transition year, the rates or charges set
14 forth as solid waste collection service charges in the uniform
15 tariff may be adjusted by an amount within a rate band the upper
16 and lower limits of which shall not exceed the sum of 5% plus the
17 annual percentage change in the Consumer Price Index, plus the
18 sum authorized pursuant to paragraph (1), multiplied by the rates
19 or charges;

20 (3) During the third transition year, the rates or charges set
21 forth as solid waste collection service charges in the uniform
22 tariff may be adjusted by an amount within a rate band the upper
23 and lower limits of which shall not exceed the sum of 10% plus
24 the annual percentage change in the Consumer Price Index, plus
25 the sum authorized pursuant to paragraph (2), multiplied by the
26 rates or charges; and

27 (4) During the fourth transition year, the rates or charges set
28 forth as solid waste collection service charges in the uniform
29 tariff may be adjusted by an amount within a rate band the upper
30 and lower limits of which shall not exceed the sum of the annual
31 percentage change in the Consumer Price Index plus the sum
32 authorized pursuant to paragraph (3), multiplied by the rates or
33 charges.

34 Any adjustments to the uniform tariff authorized pursuant to
35 this subsection may be made on an individual customer basis.

36 For the purposes of this subsection, "Consumer Price Index"
37 means the consumer price index for all urban consumers in the
38 New York City and the Philadelphia areas as reported by the
39 United States Department of Labor.

40 c. Prior to the close of each transition year, the board shall, by
41 order in writing, revise the solid waste collection rate bands for
42 the forthcoming transition year to conform to the schedule
43 established pursuant to subsection b. of this section for the
44 pricing of solid waste collection services.

45 10. (New section) a. On or after January 1, 1991 and upon filing
46 with the Board of Public Utilities a uniform tariff, any solid
47 waste collector may adjust the rates or charges set forth as solid
48 waste collection service charges in the uniform tariff as provided

1 in the solid waste collection rate bands established pursuant to
2 section 9 of P.L. , c. (now before the Legislature as this bill).

3 b. (1) Any solid waste collector may adjust the rates or charges
4 set forth in the uniform tariff filed with the board as provided in
5 the solid waste collection rate bands, whether or not those rates
6 or charges have been reviewed and accepted by the board.

7 (2) Should the board find, subsequent to its review of a uniform
8 tariff, that the rates or charges set forth therein are excessive,
9 then it may order the solid waste collector to refund, at an
10 interest rate to be determined by the board, the difference
11 between the adjusted rates or charges and the rates or charges
12 accepted by the board.

13 c. (1) During the first and second transition years, every solid
14 waste collector shall, at least once every six months, file with
15 the board a report describing the amount and frequency of
16 variation from the rates or charges set forth in the uniform tariff
17 for each class of residential, commercial, industrial or
18 institutional customers. The report shall include the percentage
19 of each class of solid waste collection services for which
20 adjustments have been made, and the specified percentage
21 increase or decrease to the rates or charges made to that
22 customer class.

23 (2) During the third and fourth transition years, every solid
24 waste collector shall, at least once every 12 months, file with the
25 board a report describing the amount and frequency of variation
26 from the rates or charges set forth in the uniform tariff for each
27 class of residential, commercial, industrial or institutional
28 customers. The report shall include the percentage of each class
29 of solid waste collection services for which adjustments have
30 been made, and the specified percentage increase or decrease to
31 the rates or charges made to that customer class.

32 d. Whenever a solid waste collector makes an adjustment to the
33 uniform tariff pursuant to this section, the solid waste collector
34 shall notify every customer to be affected thereby at least 10
35 days prior to the implementation of that adjustment. The solid
36 waste collector shall attach a copy of the applicable rate
37 schedule to the notice.

38 11. (New section) Every solid waste collector shall notify
39 customers at least once every year that solid waste collection
40 services in this State are available on a competitive basis, as
41 provided in the customer bill of rights established by the board in
42 rules and regulations adopted pursuant to the "Administrative
43 Procedure Act," and shall provide every customer with a copy
44 thereof.

45 12. (New section) No solid waste collector utilizing the solid
46 waste collection rate bands established by the Board of Public
47 Utilities pursuant to section 9 of P.L. , c. (C.) (now
48 before the Legislature as this bill) to make adjustments to the

1 uniform tariff may, except in cases of hardship or exigent
2 circumstances, or in the case of significant increases in energy
3 costs, as determined by the board, petition the board for changes
4 in the rates or charges set forth as solid waste collection service
5 charges in the uniform tariff previously filed with and accepted
6 by the board.

7 13. (New section) The Board of Public Utilities shall, within 12
8 months of the effective date of this amendatory and
9 supplementary act and at least once every six months thereafter,
10 publish the rate schedule set forth in the uniform tariff of every
11 solid waste collector serving a particular region of the State in at
12 least one newspaper of general circulation within that region and
13 at least one newspaper of statewide circulation. The rate
14 schedule shall be accompanied by a notice advising the public of
15 the current solid waste collection rate band in effect on that date
16 and stating that any difficulties in securing solid waste collection
17 services, or any complaints pertaining to the adequacy of existing
18 solid waste collection services, may be referred to the board.

19 14. (New section) a. The Board of Public Utilities shall, within
20 36 months of the effective date of this amendatory and
21 supplementary act, submit a report to the Governor and the
22 Legislature concerning the implementation of P.L. c.
23 (C.) (now before the Legislature as this bill).

24 b. The report shall include, but need not be limited to:

25 (1) An evaluation of the success of solid waste collection rate
26 bands in promoting competition within the solid waste collection
27 industry while at the same time ensuring safe, adequate and
28 proper solid waste collection services at competitive rates;

29 (2) An evaluation of the success of solid waste collection rate
30 bands in eliminating predatory pricing and other anticompetitive
31 activities within the solid waste collection industry;

32 (3) An evaluation of the success of uniform specifications for
33 municipal solid waste collection contracts in promoting
34 competition within the solid waste collection industry while at
35 the same time ensuring safe, adequate and proper municipal solid
36 waste collection services at competitive rates; and

37 (4) An assessment of the economic viability and
38 competitiveness of the solid waste collection industry and a
39 recommendation, as warranted by the circumstances, as to
40 whether the termination of rate regulation of the solid waste
41 collection industry by the board will promote meaningful
42 competition and ensure efficient solid waste collection services
43 at competitive rates.

44 15. (New section) The rates or charges imposed by solid waste
45 collectors, or fees, rates or charges for solid waste collection
46 services provided by persons engaged in the business of solid
47 waste collection in this State shall not be subject to the
48 regulation of the Board of Public Utilities. Nothing herein

1 provided shall be construed to limit the authority of the board
2 with respect to the supervision of the solid waste collection
3 industry.

4 16. (New section) a. The board may compel any person engaged
5 ~~in the business of solid waste collection or otherwise providing~~
6 solid waste collection services to furnish and file with the board a
7 consolidated annual report or other documents as may be
8 necessary to enable the board to administer its duties as
9 prescribed by law and this act.

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

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

33 b. ~~Should any solid waste collector fail or refuse to comply~~
34 ~~with any provision of this section, the board may revoke or~~
35 ~~suspend the certificate of public convenience and necessity issued~~
36 ~~to that person.~~

37 18. (New section) a. Should any person engaged in the solid
38 waste collection business fail or refuse to complete, execute or
39 perform any contract or agreement obligating such person to
40 ~~provide solid waste collection services, the board may order any~~
41 ~~person engaged in the business of solid waste collection to extend~~
42 ~~solid waste collection services into any area where the collection~~
43 ~~of solid waste has been discontinued.~~

44 b. Should the board order any person engaged in the solid waste
45 collection business to extend solid waste collection services into
46 any area where the collection of solid waste has been
47 discontinued, the rates and charges for solid waste collection
48 service in the extended area shall be determined in accordance

1 with the provisions of sections 9 and 10 of P.L. , c. (C.)
2 (now before the Legislature as this bill).

3 c. After the effective date of section 15 of P.L. , c.
4 (C.) (now before the Legislature as this bill), should the
5 board order any person engaged in the solid waste collection
6 business to extend solid waste collection services into any area
7 where the collection of solid waste has been discontinued, the
8 rates and charges for solid waste collection service in the
9 extended area shall be determined by the person ordered by the
10 board to extend those services.

11 19. (New section) There is created in the Board of Public
12 Utilities a special nonlapsing fund to be known as the "Solid
13 Waste Enforcement Fund." All monies from penalties collected
14 by the board pursuant to section 13 of P.L.1970, c.40
15 (C.48:13A-12) shall be deposited in the fund.

16 Unless otherwise specifically provided by law, monies in the
17 fund shall be utilized exclusively by the Division of Solid Waste in
18 the Board of Public Utilities for enforcement and implementation
19 of the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and
20 P.L. , c. (C.)(now before the Legislature as this bill).

21 20. (New section) The Board of Public Utilities shall establish,
22 in rules and regulations adopted pursuant to the provisions of the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.), uniform bid specifications for municipal solid waste
25 collection contracts.

26 21. (New section) a. (1) Whenever the governing body of a
27 municipality adopts an ordinance to provide for the collection or
28 disposal of solid waste within its municipal boundaries by
29 imposing solid waste charges based on the number of solid waste
30 containers processed per household pursuant to subsection b. of
31 R.S.40:66-5, the governing body shall transmit to the Board of
32 Public Utilities, by certified mail and within 90 days of the
33 effective date of the ordinance, a copy of the proposed rate
34 schedule and the contract awarded pursuant to subsection a. of
35 R.S.40:66-4. The board, within 60 days of receipt of the proposed
36 rate schedule and contract and if requested to do so by the
37 municipality or the relevant solid waste collector, as the case
38 may be, may review these documents to determine whether the
39 solid waste charges are equitable and to accept, reject or modify
40 the rate schedule.

41 (2) If the board finds the solid waste charges to be equitable,
42 the board shall accept the rate schedule and contract and issue an
43 appropriate order therefor. In issuing this order, the board shall
44 be exempt from the provisions of R.S.48:2-21.

45 b. (1) The board may issue an appropriate order establishing an
46 equitable rate schedule based on the number of solid waste
47 containers processed per household for the solid waste collection
48 tariffs of persons engaging in private solid waste collection

1 services in any municipality in which solid waste collection
2 services are contracted for and provided on an individual
3 household basis. In issuing this order, the board shall be exempt
4 from the provisions of R.S. 48:2-21.

5 ~~(2) Any person engaged in private solid waste collection~~
6 services in this State and utilizing a rate schedule based on the
7 number of solid waste containers processed per household as
8 ~~provided in this subsection may provide customers with the~~
9 opportunity to purchase, on a prepaid basis, one or more solid
10 waste containers, or a voucher or sticker therefor, to facilitate
11 the provision of solid waste collection services on a per container
12 basis.

13 c. Should the board find, subsequent to the issuance of any
14 order pursuant to subsection a. of this subsection, that the rates
15 or charges received for the collection of solid waste contained
16 within a contract entered into prior to the effective date of that
17 order require adjustment, then it may order the person charging
18 these rates or charges to make an adjustment in the contract to a
19 sum which shall result in equitable rates or charges. In issuing
20 this order, the board shall be exempt from the provisions of
21 R.S. 48:2-21.

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

24 1. This act shall be known [as,] and may be cited as[,] the "Solid
25 Waste Utility Control Act [of 1970]."
26 (cf: P.L. 1970, c. 40, s. 1)

27 23. Section 2 of P.L. 1970, c. 40 (C. 48:13A-2) is amended to read
28 as follows:

29 2. The Legislature finds and declares that the [collection,]
30 disposal [and utilization] of solid waste is a matter of grave
31 concern to all citizens and is an activity thoroughly affected with
32 the public interest; that the health, safety and welfare of the
33 people of this State require efficient and reasonable solid waste
34 [collection,] disposal [and utilization] service; that [such service
35 will more likely be achieved if the Public Utility Commission]
36 safe, adequate and proper solid waste disposal service at just and
37 reasonable rates cannot be achieved unless the Board of Public
38 Utilities is charged with the duty of setting and enforcing
39 standards and rates for regulating the economic aspects of all
40 solid waste [collection,] disposal [and utilization] service; and
41 that the exercise of any power herein provided for shall be
42 deemed to be in the public interest and for a public purpose.

43 (cf: P.L. 1970, c. 40, s. 2)

44 24. Section 3 of P.L. 1970, c. 40 (C. 48:13A-3) is amended to read
45 as follows:

46 3. As used in this act:

47 a. "Solid waste" means garbage, refuse, and other discarded
48 materials resulting from industrial, commercial and agricultural

1 operations, and from domestic and community activities, and
2 shall include all other waste materials including liquids [disposed
3 of incident thereto], except [it shall not include] for solid animal
4 and vegetable [waste] wastes collected by swine producers
5 licensed by the State Department of Agriculture to collect,
6 prepare and feed such wastes to swine on their own farms.

7 b. "Solid waste collection" means the activity related to
8 pickup and transportation of solid waste from its source or
9 location to [a disposal site] an authorized solid waste facility, but
10 does not include activity related to the pickup, transportation or
11 unloading of septic waste.

12 c. "Solid waste collector" means a person engaged in the
13 collection of solid waste and holding a certificate of public
14 convenience and necessity pursuant to sections 7 and 10 of
15 P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

16 [c.] d. "Solid waste disposal" means the storage, treatment,
17 utilization, processing, or final disposal of solid waste.

18 [d.] e. "Septic waste" means pumpings from septic tanks and
19 cesspools, but shall not include wastes from a sewage treatment
20 plant.

21 [e.] f. "Solid waste container" means a receptacle, container
22 or bag suitable for the depositing of solid waste.

23 g. "Solid waste collection services" means the services
24 provided by persons engaging in the business of solid waste
25 collection.

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

28 i. "Solid waste facilities" mean and include the plants,
29 structures and other real and personal property acquired,
30 constructed or operated or to be acquired, constructed or
31 operated by any person pursuant to the provisions of P.L.1970
32 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.)
33 or any other act, including transfer stations, incinerators,
34 resource recovery facilities, sanitary landfill facilities or other
35 plants for the disposal of solid waste, and all vehicles, equipment
36 and other real and personal property and rights therein and
37 appurtenances necessary or useful and convenient for the
38 collection or disposal of solid waste in a sanitary manner.

39 j. "Transition year" means any of 4 successive 12-month
40 periods designated as such by the board and commencing on the
41 effective date of P.L. , c. (C.) (now before the
42 Legislature as this bill).

43 (cf: P.L.1989, c.244, s.7)

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

46 5. a. The Board of Public [Utility Commissioners] Utilities
47 shall, after hearing, by order in writing, [make] adopt appropriate
48 rules, regulations [and] or administrative orders for the regulation

1 of rates and public utility aspects of the [solid waste collection
2 industry and the] solid waste disposal industry.

3 b. The Board of Public Utilities shall, after hearing, by order in
4 writing, adopt appropriate rules, regulations or administrative
5 orders for the supervision of the solid waste collection industry.

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

15 (cf: P.L.1970, c.40, s.5)

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

18 7. a. No person shall engage, or be permitted to engage, in the
19 business of solid waste collection or solid waste disposal until
20 found by the board to be qualified by experience, training or
21 education to engage in such business, is able to furnish proof of
22 financial responsibility, and unless that person holds a certificate
23 of public convenience and necessity issued by the Board of Public
24 Utilities.

25 (1) No certificate shall be issued for solid waste collection or
26 solid waste disposal until the proposed [collection or disposal
27 system] solid waste collector or person proposing to engage in
28 solid waste disposal, as the case may be, has been registered with
29 and approved by the [State] Department of Environmental
30 Protection as provided by section 5 of P.L.1970, c.39 (C.13:1E-5).

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

36 b. No person shall transport regulated medical waste until
37 found by the Board of Public Utilities to be qualified by
38 experience, training or education to engage in such business, is
39 able to furnish proof of financial responsibility, and holds a
40 certificate of public convenience and necessity issued by the
41 board. No certificate shall be issued for the transportation of
42 regulated medical waste until the proposed transporter has
43 obtained a registration statement required by section 5 of
44 P.L.1970, c.39 (C.13:1E-5) and paid the fee imposed under section
45 9 of P.L.1989, c.34 (C.13:1E-48.9).

46 c. Notwithstanding the provisions of subsection b. of this
47 section, the board shall not have jurisdiction over rates or
48 charges for the transportation of regulated medical waste.

49 (cf: P.L.1989, c.34, s.30)

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

3 8. a. The board, upon complaint or its own initiative, after
4 hearing, ~~may direct any person~~ engaging in the solid waste
5 collection business or the solid waste disposal business to furnish
6 proof that the charges or rates to be received for such service do
7 not exceed just and reasonable rates or charges for such service]
8 solid waste collector holding a certificate of public convenience
9 and necessity to furnish proof that the rates or charges received
10 for solid waste collection services do not exceed rates or charges
11 which would result from effective competition.

12 b. [(1)] Should the board find that the rates or charges received
13 for solid waste collection services are excessive, then it may
14 order the [person] solid waste collector charging such excessive
15 rates or charges to make an adjustment in the tariff or contract
16 to a sum which shall result in [just and reasonable] competitive
17 rates or charges. In issuing this order, the board may direct the
18 solid waste collector to refund, at an interest rate to be
19 determined by the board, the difference between the excessive
20 rates or charges and the competitive rates or charges ordered by
21 the board.

22 [(2)] Should the board find, subsequent to the issuance of any
23 order pursuant to subsection c. of this subsection, that the rates
24 or charges received for the collection of solid waste contained
25 within a contract entered into prior to the effective date of that
26 order require adjustment, then it may order the person charging
27 these rates or charges to make an adjustment in the contract to a
28 sum which shall result in just and reasonable rates or charges. In
29 issuing this order, the board shall be exempt from the provisions
30 of R.S.48:2-21.

31 c. (1) Whenever the governing body of a municipality adopts an
32 ordinance to provide for the collection or disposal of solid waste
33 within its municipal boundaries by imposing solid waste charges
34 based on the number of solid waste containers processed per
35 household pursuant to subsection b. of R.S.40:66-5, the governing
36 body shall transmit to the board, by certified mail and within 90
37 days of the effective date of the ordinance, a copy of the
38 proposed rate schedule and the contract awarded pursuant to
39 subsection a. of R.S.40:66-4. The board, within 60 days of receipt
40 of the proposed rate schedule and contract and if requested to do
41 so by the municipality or the relevant solid waste collector or
42 solid waste transporter, as the case may be, may review these
43 documents to determine whether the solid waste charges are
44 equitable and to accept, reject or modify the rate schedule.

45 (2) If the board finds the solid waste charges to be equitable,
46 the board shall accept the rate schedule and contract and issue an
47 appropriate order therefor. In issuing this order, the board shall
48 be exempt from the provisions of R.S.48:2-21.

1 d. (1) The board may issue an appropriate order establishing an
2 equitable rate schedule based on the number of solid waste
3 containers processed per household for the solid waste collection
4 tariffs of persons engaging in private solid waste collection or
5 transportation services in any municipality in which solid waste
6 collection or transportation services are contracted for and
7 provided on an individual household basis. In issuing this order,
8 the board shall be exempt from the provisions of R.S.48:2-21.

9 (2) Any person engaged in private solid waste collection or
10 transportation services in this State and utilizing a rate schedule
11 based on the number of solid waste containers processed per
12 household as provided in this subsection may provide customers
13 with the opportunity to purchase, on a prepaid basis, one or more
14 solid waste containers, or a voucher or sticker therefor, to
15 facilitate the provision of solid waste collection services on a per
16 container basis.]

17 (cf: P.L.1989, c.244, s.8)

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

20 9. [a. Every person engaged in the business of solid waste
21 collection or solid waste disposal shall furnish and file with the
22 board, in connection with each contract or agreement entered
23 into by him for the provision of such service, a performance bond
24 in such amount as may be required by the board in rules or
25 regulations promulgated by the board.

26 b.] Should any person engaged in the solid waste [collection
27 business or the solid waste] disposal business fail or refuse to
28 complete, execute or perform any contract or agreement
29 obligating such person to provide [such service] solid waste
30 disposal services, the board may order any person engaged in the
31 solid waste [collection business or the solid waste] disposal
32 business to extend [his collection or disposal service] solid waste
33 disposal services into any area where service has been
34 discontinued in accordance with the provisions of R.S.48:2-27,
35 and the board shall fix just and reasonable rates and charges for
36 [such] solid waste disposal service in the extended area.

37 (cf: P.L.1970, c.40, s.9)

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

40 10. The board, on its own initiative or upon complaint by the
41 [State] Department of Environmental Protection shall revoke[,] or
42 suspend [or grant a temporary continuance for up to 1 year of]
43 the certificate of public convenience and necessity issued to any
44 person engaged in the solid waste collection business or the solid
45 waste disposal business upon the finding that such person:

46 a. Has violated any provision of this act or any rule, regulation
47 or administrative order [promulgated] adopted or issued
48 hereunder; or

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

3 c. Has refused or failed to comply with any lawful order of the
4 board; [or]

5 d. Has had its registration revoked by the [State] Department
6 of Environmental Protection; or

7 e. Has been denied approval of a license under the provisions of
8 P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license
9 revoked by the Department of Environmental Protection, as the
10 case may be.

11 (cf: P.L.1975; c.326, s.32)

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

14 11. a. No person shall monopolize, or attempt to monopolize, or
15 combine or conspire with any other person to monopolize, trade
16 or commerce in any relevant market, located in whole or in part
17 in this State, for the solid waste collection business or the solid
18 waste disposal business.

19 b. Any person who shall be injured in his business or property by
20 reason of a violation of the provisions of subsection a. of this
21 section may sue therefor and shall recover threefold the damages
22 sustained by him, together with reasonable attorney's fees and
23 the costs of the suit. The State and any of its political
24 subdivisions and public agencies shall be deemed a person within
25 the meaning of this act. Any action brought pursuant to this
26 subsection shall be barred unless commenced within [4] 5 years
27 after the cause of action accrued.

28 c. No municipality may require [a public utility] any person
29 lawfully engaged in the solid waste collection business or the
30 solid waste disposal business to submit to any prequalification
31 test before permitting [it] that person to bid on a contract or
32 before the employment of a solid waste collection or a solid
33 waste disposal contractor.

34 (cf: P.L.1970, c.40, s.11)

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

37 12. a. The board may compel the attendance of witnesses and
38 the production of tariffs, contracts, papers, books, accounts and
39 all the documents necessary to enable the board to administer its
40 duties as prescribed by law and this act.

41 b. The board may compel any person engaged in the business of
42 solid waste disposal or otherwise providing solid waste disposal
43 services in this State to furnish and file with the board any annual
44 reports, federal or State tax returns, contracts, papers, books,
45 accounts, customer lists, financial or operational information, or
46 contracts, books, accounts and records of affiliated business
47 concerns, including any affiliated or parent corporation or
48 organization, or any wholly or partially owned subsidiary thereof,

1 directly or indirectly involved therewith, or having a direct or
2 indirect financial interest in the solid waste disposal services
3 provided by that person, and all financial transactions between
4 these parties related to the solid waste disposal services provided
5 by that person, or other documents as may be necessary to enable
6 the board to administer its duties as prescribed by law and this
7 act.

8 c. Should any person engaged in the business of solid waste
9 disposal or otherwise providing solid waste disposal services fail
10 or refuse to comply with any provision of this section, or any
11 applicable provision of Title 48 of the Revised Statutes, the board
12 may revoke or suspend the certificate of public convenience and
13 necessity issued to that person.

14 (cf: P.L.1970, c.40, s.12)

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

17 13. a. Any person or any officer or agent thereof who shall
18 knowingly violate any of the provisions of this act or aid or advise
19 in such violation, or who, as principal, manager, director, agent,
20 servant or employee knowingly does any act comprising a part of
21 such violation, is guilty of a [misdemeanor] crime of the fourth
22 degree and shall be punished by imprisonment for not more than
23 [three years] 18 months or, notwithstanding the provisions of
24 N.J.S.2C:43-3, by a fine of not more than \$50,000.00, or both;
25 and if a corporation by a fine of not more than \$100,000.00. Each
26 day during which the violation continues constitutes an
27 additional, separate and distinct offense.

28 b. Any person who shall violate any provision of [this act]
29 P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L. , c. (C.) (now
30 before the Legislature as this bill) or any rule, regulation or
31 administrative order adopted or issued [hereunder] pursuant
32 thereto, including an interdistrict, intradistrict or interstate
33 waste flow order issued in conjunction with the Department of
34 Environmental Protection, or under any applicable provision of
35 Title 48 of the Revised Statutes, or who shall engage in the solid
36 waste collection business or solid waste disposal business without
37 having been issued a certificate of public convenience and
38 necessity, shall be liable to a penalty of not more than \$10,000.00
39 for a first offense, not more than \$25,000.00 for a second offense
40 and not more than \$50,000.00 for a third and every subsequent
41 offense. Each day during which the violation continues
42 constitutes an additional, separate and distinct offense. The
43 penalties herein provided shall be enforced by summary
44 proceedings instituted by the board under "the penalty
45 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and
46 the municipal courts shall all have jurisdiction to enforce "the
47 penalty enforcement law" in connection with this act.

48 c. Whenever it shall appear to the Board, a municipality, local

1 board of health, or county health department, as the case may be,
2 that any person has violated, intends to violate, or will violate
3 ~~any provision of [this act] P.L. 1970, c. 40 (C. 48:13A-1 et seq.) or~~
4 ~~P.L. , c. (C.) (now before the Legislature as this bill) or~~
5 any rule, regulation or administrative order [duly promulgated
6 hereunder] adopted or issued pursuant thereto, or under any
7 applicable provision of Title 48 of the Revised Statutes, the
8 Board, the municipality, local board of health or county health
9 department may institute a civil action in the Superior Court for
10 injunctive relief and for such other relief as may be appropriate
11 in the circumstances, and the [said] court may proceed in any
12 such action in a summary manner.

13 Notwithstanding the provisions of any other law, or any rule or
14 regulation adopted pursuant thereto to the contrary, all penalties
15 recovered pursuant to actions brought by the Board under this
16 section shall be paid to the "Solid Waste Enforcement Fund"
17 established pursuant to section 19 of P.L. , c. (C.)
18 (now before the Legislature as this bill). If a money judgment is
19 rendered against a defendant pursuant to subsections a. or b. of
20 this section, the payment made to the court shall be remitted to
21 the fund.

22 (cf: P.L. 1989, c. 118, s. 1)

23 33. R.S. 48:3-7 is amended to read as follows:

24 48:3-7. a. No public utility shall, without the approval of the
25 board, sell, lease, mortgage or otherwise dispose of or encumber
26 its property, franchises, privileges or rights, or any part thereof;
27 or merge or consolidate its property, franchises, privileges or
28 rights, or any part thereof, with that of any other public utility.

29 Where, by the proposed sale, lease or other disposition of all or
30 a substantial portion of its property, any franchise or franchises,
31 privileges or rights, or any part thereof or merger or
32 consolidation thereof as set forth herein, it appears that the
33 ~~public utility or a wholly owned subsidiary thereof may be unable~~
34 to fulfill its obligation to any employees thereof with respect to
35 pension benefits previously enjoyed, whether vested or
36 contingent, the board shall not grant its approval unless the
37 public utility seeking the board's approval for such sale, lease or
38 other disposition assumes such responsibility as will be sufficient
39 to provide that all such obligations to employees will be satisfied
40 as they become due.

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

43 Nothing herein shall prevent the sale, lease or other disposition
44 by any public utility of any of its property in the ordinary course
45 of business, nor require the approval of the board to any grant,
46 conveyance or release of any property or interest therein
47 heretofore made or hereafter to be made by any public utility to
48 the United States, State or any county or municipality, or any

1 agency, authority or subdivision thereof, for public use.

2 The approval of the board shall not be required to validate the
3 title of the United States, State or any county or municipality or
4 any agency, authority or subdivision thereof, to any lands or
5 interest therein heretofore condemned or hereafter to be
6 condemned by the United States, State or any county or
7 municipality or any agency, authority or subdivision thereof for
8 public use.

9 b. Notwithstanding any law, rule, regulation or order to the
10 contrary, an autobus public utility regulated by and subject to the
11 provisions of Title 48 of the Revised Statutes may, without the
12 approval of the Department of Transportation, sell, lease,
13 mortgage or otherwise dispose of or encumber its property, or
14 any part thereof, except that approval of the Department of
15 Transportation shall be required for the following:

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

18 (2) a merger or consolidation of its property, franchises,
19 privileges or rights; or

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

21 Notice of the sale, purchase or lease of any autobus or other
22 vehicle subject to regulation under Title 48 of the Revised
23 Statutes shall be provided to the Department of Transportation as
24 the department shall require.

25 c. (1) No solid waste collector as defined in section 3 of
26 P.L.1970, c.40 (C.48:13A-3) shall sell, lease, mortgage or
27 otherwise dispose of or encumber its property, including customer
28 lists, without the approval of the board.

29 (2) No solid waste collector shall merge or consolidate its
30 property, including customer lists, with that of any other person
31 or business concern, whether or not that person or business
32 concern is engaged in the business of solid waste collection or
33 solid waste disposal pursuant to the provisions of P.L.1970 c.39
34 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), P.L.
35 c. (C.) (now before the Legislature as this bill) or any
36 other act, without the approval of the board.

37 d. Any solid waste collector seeking approval for any
38 transaction enumerated in subsection c. of this section shall file
39 with the board an appropriate petition therefor.

40 (1) The board shall promptly review all petitions filed pursuant
41 to this subsection. The board shall, within 45 days of receipt of a
42 petition, request that the solid waste collector submit additional
43 information to assist in its review if it deems that such
44 information is necessary. If no such request is made, the petition
45 shall be construed to be completed. In the event that additional
46 information is requested, the petition shall be construed to be
47 completed when the additional information is received by the
48 board.

1 (2) The board shall approve or deny a petition within 90 days of
2 receipt of a completed petition. In the event that the board fails
3 to take action on a petition within the 90-day period specified
4 herein, then the petition shall be deemed to have been approved.

5 e. (1) Any solid waste collector may, without the approval of
6 the board, purchase or lease any equipment, including collection
7 or haulage vehicles.

8 (2) Any solid waste collector may, without the approval of the
9 board, sell or otherwise dispose of its collection or haulage
10 vehicles; except that no solid waste collector shall, without the
11 approval of the board, sell or dispose of 60% or more of its
12 collection or haulage vehicles within a 12-month period.

13 As used in this section, "business concern" means any
14 corporation, association, firm, partnership, sole proprietorship,
15 trust or other form of commercial organization.

16 (cf: P.L.1985, c.232, s.1)

17 34. R.S.48:3-9 is amended to read as follows:

18 48:3-9. No public utility shall, unless it shall have first
19 obtained authority from the board so to do:

20 (a) Issue any stocks, or any bonds, notes or other evidence of
21 indebtedness payable more than 12 months after the date or dates
22 thereof, or extend or renew any bond, note or any other evidence
23 of indebtedness so that any extension or renewal thereof shall be
24 payable later than 12 months after the date of the original
25 instrument, or

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

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

32 The provisions of this [act] section shall not apply to any public
33 utility operating, managing or controlling a railroad or a railway
34 express which is subject to the rules and regulations from time to
35 time issued by the Interstate Commerce Commission.

36 The provisions of this section shall not apply to autobus public
37 utilities under the jurisdiction of the Department of
38 Transportation.

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

41 (cf: P.L.1985, c.232, s.2)

42 35. Section 2 of P.L.1981, c.438 (C.13:1E-9.1) is amended to
43 read as follows:

44 2. [a.] The provisions of any law to the contrary
45 notwithstanding, the owner or operator of any sanitary landfill
46 facility may collect any fee imposed pursuant to section 9 of
47 P.L.1970, c.39 (C.13:1E-9) as a surcharge on any tariff
48 established pursuant to law for the solid waste disposal operations

1 of the facility.

2 [b. The Board of Public Utilities shall issue an appropriate
3 order increasing current tariffs established pursuant to law for
4 solid waste collection operations by an amount equal to the total
5 increase in the relevant solid waste disposal tariff pursuant to
6 subsection a. of this section. In issuing this order, the board shall
7 not be bound to find a rate base under section 31 of P.L.1962,
8 c.198 (C.48:2-21.2).]
9 (cf: P.L.1981, c.438, s.2)

10 ~~36. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to~~
11 ~~read as follows:~~

12 18. Any solid waste facility constructed, acquired or operated
13 pursuant to the provisions of [this amendatory and supplementary
14 act] P.L.1970, c.39 (C.13:1E-1 et seq.) shall be deemed a public
15 utility and shall be subject to such rules and regulations as may
16 be adopted by the Board of Public [Utility Commissioners]
17 Utilities in accordance with the provisions of the "Solid Waste
18 Utility Control Act [of 1970]" (P.L.1970, c.40, C.48:13A-1 et
19 seq.) and P.L. , c. (C.) (now before the Legislature as this
20 bill).

21 (cf: P.L.1975, c.326, s.18)

22 37. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to
23 read as follows:

24 19. a. Any municipality within which a sanitary landfill facility
25 is located pursuant to an adopted and approved district solid
26 waste management plan shall be entitled to an annual economic
27 benefit not less than the equivalent of \$1.00 per ton of solids on
28 all solid waste accepted for disposal at the sanitary landfill
29 facility during the previous calendar year as determined by the
30 department.

31 The owner or operator of the sanitary landfill facility shall
32 annually pay to the relevant municipality the full amount due
33 under this subsection and each relevant municipality is
34 empowered to anticipate this amount for the purposes of
35 preparing its annual budget. For the purposes of calculating the
36 payments, the owner or operator of the sanitary landfill facility
37 may, subject to the prior agreement of the relevant municipality
38 and the approval of the Board of Public Utilities, provide the
39 municipality with any of the following benefits in consideration
40 for the use of land within its municipal boundaries as the location
41 of a sanitary landfill facility:

42 (1) The receipt of annual sums of money in lieu of taxes on the
43 land used for the sanitary landfill facility;

44 (2) The exemption from all fees and charges for the disposal of
45 solid waste generated within its boundaries;

46 (3) The receipt of a lump sum cash payment; or

47 (4) Any combination thereof.

48 b. Every owner or operator of a sanitary landfill facility

1 required to make annual payments to a municipality pursuant to
2 subsection a. of this section may petition the Board of Public
3 Utilities for an increase in its tariff which reflects these
4 payments. The board, within 60 days of the receipt of the
5 petition, shall issue an appropriate order that these payments
6 shall be passed along to the users of the sanitary landfill facility
7 as an automatic surcharge on any tariff filed with, and recorded
8 by, the board for the solid waste disposal operations of the
9 facility.

10 c. [The board, within 60 days of the computation of any
11 increase in a solid waste disposal tariff pursuant to subsection b.
12 of this section, shall issue an appropriate order increasing current
13 tariffs established pursuant to law for solid waste collection by
14 an amount equal to the total amount of the increase in the
15 relevant solid waste disposal tariff calculated pursuant to
16 subsection b. of this section.

17 d.] In issuing any order required by this section, the Board of
18 Public Utilities shall be exempt from the provisions of
19 R.S.48:2-21.

20 (cf: P.L.1985, c.38, s.38)

21 38. Section 2 of P.L.1987, c.449 (C.13:1E-28.1) is amended to
22 read as follows:

23 2. a. Any municipality within which a transfer station is
24 located pursuant to an adopted and approved district solid waste
25 management plan shall be entitled to an annual economic benefit
26 to be paid or adjusted not less than quarterly in an amount
27 established by agreement with the owner or operator of the
28 transfer station or by order of the Board of Public Utilities, but
29 not less than the equivalent of \$0.50 per ton of all solid waste
30 accepted for transfer at the transfer station during the 1987
31 calendar year and each year thereafter.

32 The owner or operator of the transfer station shall, not less
33 frequently than quarterly, pay to the relevant municipality the
34 full amount due under this subsection and each relevant
35 municipality is empowered to anticipate this amount for the
36 purposes of preparing its annual budget. For the purposes of
37 calculating the payments, the owner or operator of the transfer
38 station may, subject to the prior agreement of the relevant
39 municipality and the approval of the Board of Public Utilities,
40 provide the municipality with any of the following benefits in
41 consideration for the use of land within its municipal boundaries
42 as the location of a transfer station:

43 (1) The receipt of quarterly payments of annual sums of money
44 in lieu of taxes on the land used for the transfer station;

45 (2) The exemption from all fees and charges for the
46 acceptance for transfer of solid waste generated within its
47 boundaries;

48 (3) The receipt of quarterly lump sum cash payments; or

1 (4) Any combination thereof.

2 b. Every owner or operator of a transfer station required to
3 make payments not less frequently than quarterly to a
4 municipality pursuant to subsection a. of this section may
5 petition the Board of Public Utilities for an increase in its tariff
6 which reflects these payments. The board, within 60 days of the
7 receipt of the petition, shall issue an order that these payments
8 shall be passed along to the users of the transfer station as an
9 automatic surcharge on any tariff filed with, and recorded by, the
10 board for the solid waste disposal operations of the transfer
11 station.

12 c. [The board, within 60 days of the computation of any
13 increase in a solid waste disposal tariff for a transfer station
14 pursuant to subsection b. of this section, shall issue an
15 appropriate order increasing current tariffs established pursuant
16 to law for solid waste collectors using the transfer station by an
17 amount equal to the total amount of the increase in the relevant
18 solid waste disposal tariff calculated pursuant to subsection b. of
19 this section.

20 d.] In issuing any order required by this section, the Board of
21 Public Utilities shall be exempt from the provisions of
22 R.S.48:2-21.

23 (cf: P.L.1990, c.54, s.1)

24 39. Section 7 of P.L.1981, c.278 (C.13:1E-98) is amended to
25 read as follows:

26 7. [a.] The provisions of any law to the contrary
27 notwithstanding, the owner or operator of any solid waste facility
28 may collect the tax imposed pursuant to section 4 of P.L.1981,
29 c.278 (C.13:1E-95) as a surcharge on any tariff established
30 pursuant to law for the solid waste disposal operations of the
31 facility.

32 [b. The Board of Public Utilities shall, within 90 days of the
33 effective date of P.L.1987, c.102 (C.13:1E-99.11 et al.), issue an
34 appropriate order increasing current tariffs established pursuant
35 to law for solid waste collection operations by an amount equal to
36 the total increase in the relevant solid waste disposal tariff
37 pursuant to subsection a. of this section. In issuing this order, the
38 board shall be exempt from the provisions of R.S.48:2-21.]

39 (cf: P.L.1987, c.102, s.38)

40 40. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended
41 to read as follows:

42 40. a. Any person engaged in the business of solid waste
43 collection or solid waste disposal in accordance with the
44 provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) may engage in
45 recycling or otherwise provide recycling services.

46 b. Notwithstanding the provisions of P.L.1970, c.40
47 (C.48:13A-1 et seq.) or any other law, the Board of Public
48 Utilities shall not have jurisdiction over charges or rates for

1 recycling or services provided by persons engaging in the business
2 of recycling or otherwise providing recycling services in this
3 State. [The revenues generated by persons engaging in the
4 business of recycling or otherwise providing recycling services
5 shall not be included within the computation of current or
6 adjusted tariffs established pursuant to law for solid waste
7 collection.]

8 (cf: P.L.1987, c.102, s.40)

9 41. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to
10 read as follows:

11 13. a. The provisions of any law to the contrary
12 notwithstanding, the owner or operator of any sanitary landfill
13 facility may collect the tax imposed pursuant to section 5 of
14 P.L.1981, c.306 (C.13:1E-104), and the escrow account payments
15 required by section 10 of P.L.1981, c.306 (C.13:1E-109), [this
16 supplementary act] as a surcharge on any tariff established
17 pursuant to law for the solid waste disposal operations of the
18 facility.

19 b. The Board of Public Utilities may direct the owner or
20 operator of a sanitary landfill facility to reduce the rate of
21 payments to an escrow account required by section 10 [hereof] of
22 P.L.1981, c.306 (C.13:1E-109), but only to the extent that:

23 (1) The current tariff established pursuant to law for the solid
24 waste disposal operations of the facility specifically allocates a
25 portion thereof for closing costs; and

26 (2) The amount collected for closing costs pursuant to this
27 tariff are deposited, on a monthly basis, in the escrow account
28 for the facility.

29 [c. The Board of Public Utilities shall, within 60 days of the
30 effective date of this supplementary act, issue an appropriate
31 order increasing current tariffs established pursuant to law for
32 solid waste collection operations by an amount equal to the total
33 increase in the relevant solid waste disposal tariff pursuant to
34 subsection a. of this section. In issuing this order, the board shall
35 not be bound to find a rate base under the provisions of section 31
36 of P.L.1962, c.198 (C.48:2-21.2).]

37 (cf: P.L.1981, c.306, s.13)

38 42. Section 3 of P.L.1983, c.93 (C.13:1E-119) is amended to
39 read as follows:

40 3. [a.] Any solid waste facility required to install scales
41 pursuant to this act may petition the Board of Public Utilities for
42 an increase in its tariff which reflects the costs reasonably
43 incurred by the facility in complying with this act. The board,
44 within 60 days of the receipt of such a petition, shall determine
45 the extent to which these costs shall be passed along to the users
46 of the solid waste facility as an automatic surcharge on any tariff
47 filed with, and recorded by, the board for the operation of the
48 solid waste facility.

1 [b. The board, within 60 days of the computation of any
2 increase in a solid waste disposal tariff pursuant to subsection a.
3 of this section, shall issue an appropriate order increasing current
4 tariffs established pursuant to law for solid waste collection by
5 ~~an amount equal to the total amount of the increase in the~~
6 relevant solid waste disposal tariff calculated pursuant to
7 subsection a. of this section. In issuing this order, the board shall
8 be exempt from the provisions of section 31 of P.L.1962, c.198
9 (C.48:2-21.2).

10 c. For the purposes of this act, all municipal, county, and
11 State contracts for solid waste collection and disposal shall be
12 deemed to be tariffs for solid waste collection, and shall be
13 subject to adjustment pursuant to the terms of this act.]

14 (cf: P.L.1983, c.93, s.3)

15 43. Section 9 of P.L.1985, c.38 (C.13:1E-144) is amended to
16 read as follows:

17 9. [a.] Notwithstanding the provisions of any law to the
18 contrary, ~~the owner or operator of a sanitary landfill facility may~~
19 ~~collect the taxes levied and imposed pursuant to [this amendatory~~
20 ~~and supplementary act] section 3 of P.L.1985, c.38 (C.13:1E-138)~~
21 ~~by imposing an automatic surcharge on any tariff established~~
22 ~~pursuant to law for the solid waste disposal operations of the~~
23 ~~sanitary landfill facility.~~

24 [b. For the purposes of this amendatory and supplementary act,
25 ~~all municipal, county, and State contracts for solid waste~~
26 ~~collection and disposal shall be considered tariffs for solid waste~~
27 ~~collection, and shall be subject to any adjustment of tariffs~~
28 ~~resulting from the provisions of this amendatory and~~
29 ~~supplementary act.]~~

30 (cf: P.L.1985, c.38, s.9)

31 44. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to
32 read as follows:

33 6. Any solid waste [collection system or solid waste treatment
34 or disposal] facilities operated by a county improvement
35 authority pursuant to the provisions of this amendatory and
36 supplementary act, shall be deemed a public utility and shall be
37 subject to such rules and regulations as may be adopted by the
38 Board of Public [Utility Commissioners] Utilities in accordance
39 with the provisions of the "Solid Waste Utility Control Act [of
40 1970]" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement
41 authority's application to operate any solid waste facility shall
42 be considered at a public hearing by the Board of Public [Utility
43 Commissioners] Utilities.

44 (cf: P.L.1973, c.330, s.6)

45 45. R.S.40:66-4 is amended to read as follows:

46 40:66-4. a. The governing body may, if it deem it more
47 advantageous, contract with any person for the cleaning of the
48 streets, or the collection or disposal of solid waste. Before

1 contract will be performed; or

2 (c) Discriminate on the basis of race, religion, sex, national
3 origin; or

4 (d) Require, with regard to any purchase, contract or
5 agreement, the furnishing of any "brand name," but may in all
6 cases require "brand name or equivalent," except that if the
7 materials to be supplied or purchased are patented or
8 copyrighted, such materials or supplies may be purchased by
9 specification in any case in which the ordinance or resolution
10 authorizing the purchase, contract, sale or agreement so
11 indicates, and the special need for such patented or copyrighted
12 materials or supplies is directly related to the performance,
13 completion or undertaking of the purpose for which the purchase,
14 contract or agreement is made; or

15 (e) Fail to include any option for renewal, extension, or release
16 which the contracting unit may intend to exercise or require; or
17 any terms and conditions necessary for the performance of any
18 extra work; or fail to disclose any matter necessary to the
19 substantial performance of the contract or agreement.

20 Any specification adopted by the governing body, which
21 knowingly excludes prospective bidders by reason of the
22 impossibility of performance, bidding or qualification by any but
23 one bidder, except as provided herein, shall be null and void and
24 of no effect and subject purchase, contract or agreement shall be
25 readvertised, and the original purchase, contract or agreement
26 shall be set aside by the governing body.

27 Any specification adopted by the governing body for a contract
28 for the collection and disposal of municipal solid waste shall
29 conform to the uniform bid specifications for municipal solid
30 waste collection contracts established pursuant to section 20 of
31 P.L. , c. (C.) (now before the Legislature as this bill).

32 (cf: P.L.1971, c.198, s.13)

33 47. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to
34 read as follows:

35 15. Duration of certain contracts. All purchases, contracts or
36 agreements for the performing of work or the furnishing of
37 materials, supplies or services shall be made for a period not to
38 exceed 12 consecutive months, except that contracts or
39 agreements may be entered into for longer periods of time as
40 follows:

41 (1) Supplying of:

42 (a) Fuel for heating purposes, for any term not exceeding in
43 the aggregate, two years;

44 (b) Fuel or oil for use of airplanes, automobiles, motor vehicles
45 or equipment for any term not exceeding in the aggregate, two
46 years;

47 (c) Thermal energy produced by a cogeneration facility, for
48 use for heating or air conditioning or both, for any term not

1 exceeding 40 years, when the contract is approved by the Board
2 of Public Utilities. For the purposes of this paragraph,
3 "cogeneration" means the simultaneous production in one facility
4 of electric power and other forms of useful energy such as
5 heating or process steam;

6 (2) (Deleted by amendment; P.L.1977, c.53.)

7 (3) The collection and disposal of [garbage and refuse]
8 municipal solid waste, [and] ~~or~~ the [barging and] disposal of
9 sewage sludge, for any term not exceeding in the aggregate, five
10 years;

11 (4) The [recycling of solid waste, including the] collection and
12 recycling of methane gas from a sanitary landfill facility, for any
13 term not exceeding 25 years, when such contract is in
14 conformance with a solid waste management plan approved
15 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the
16 approval of the Division of Local Government Services and the
17 Department of Environmental Protection. The contracting unit
18 shall award the contract to the highest responsible bidder,
19 notwithstanding that the contract price may be in excess of the
20 amount of any necessarily related administrative expenses;
21 except that if the contract requires the contracting unit to
22 expend funds only, the contracting unit shall award the contract
23 to the lowest responsible bidder. The approval by the Division of
24 Local Government Services of public bidding requirements shall
25 not be required for those contracts exempted therefrom pursuant
26 to section 5 of P.L.1971, c.198 (C.40A:11-5);

27 (5) Data processing service, for any term of not more than
28 three years;

29 (6) Insurance, for any term of not more than three years;

30 (7) Leasing or servicing of automobiles, motor vehicles,
31 machinery and equipment of every nature and kind, for a period
32 not to exceed three years; provided, however, such contracts
33 shall be entered into only subject to and in accordance with the
34 rules and regulations promulgated by the Director of the Division
35 of Local Government Services of the Department of Community
36 Affairs;

37 (8) The supplying of any product or the rendering of any
38 service by a telephone company which is subject to the
39 jurisdiction of the Board of Public Utilities for a term not
40 exceeding five years;

41 (9) Any single project for the construction, reconstruction or
42 rehabilitation of any public building, structure or facility, or any
43 public works project, including the retention of the services of
44 any architect or engineer in connection therewith, for the length
45 of time authorized and necessary for the completion of the actual
46 construction;

47 (10) The providing of food services for any term not exceeding
48 three years;

1 (11) On-site inspections undertaken by private agencies
2 pursuant to the "State Uniform Construction Code Act"
3 (P.L.1975, c.217; C.52:27D-119 et seq.) for any term of not more
4 than three years;

5 (12) The performance of work or services or the furnishing of
6 materials or supplies for the purpose of conserving energy in
7 buildings owned by, or operations conducted by, the contracting
8 unit, the entire price of which to be established as a percentage
9 of the resultant savings in energy costs, for a term not to exceed
10 10 years; provided, however, that such contracts shall be entered
11 into only subject to and in accordance with rules and regulations
12 promulgated by the Department of Energy establishing a
13 methodology for computing energy cost savings;

14 (13) The performance of work or services or the furnishing of
15 materials or supplies for the purpose of elevator maintenance for
16 any term not exceeding three years;

17 (14) Leasing or servicing of electronic communications
18 equipment for a period not to exceed five years; provided,
19 however, such contract shall be entered into only subject to and
20 in accordance with the rules and regulations promulgated by the
21 Director of the Division of Local Government Services of the
22 Department of Community Affairs;

23 (15) Leasing of motor vehicles, machinery and other equipment
24 primarily used to fight fires, for a term not to exceed seven
25 years, when the contract includes an option to purchase, subject
26 to and in accordance with rules and regulations promulgated by
27 the Director of the Division of Local Government Services of the
28 Department of Community Affairs;

29 (16) The provision of water supply services or the designing,
30 financing, construction, operation, or maintenance, or any
31 combination thereof, of a water supply facility, or any component,
32 part or parts thereof, including a water filtration system, for a
33 period not to exceed 40 years, when the contract for these
34 services is approved by the Division of Local Government
35 Services in the Department of Community Affairs, the Board of
36 Public Utilities, and the Department of Environmental Protection
37 pursuant to P.L.1985, c.37 (C.58:26-1 et seq.). For the purposes
38 of this subsection, "water supply services" means any service
39 provided by a water supply facility; "water filtration system"
40 means any equipment, plants, structures, machinery, apparatus,
41 or land, or any combination thereof, acquired, used, constructed,
42 rehabilitated, or operated for the collection, impoundment,
43 storage, improvement, filtration, or other treatment of drinking
44 water for the purposes of purifying and enhancing water quality
45 and insuring its potability prior to the distribution of the drinking
46 water to the general public for human consumption, including
47 plants and works, and other personal property and appurtenances
48 necessary for their use or operation; and "water supply facility"

1 means and refers to the real property and the plants, structures,
2 interconnections between existing water supply facilities,
3 machinery and equipment and other property, real, personal and
4 mixed, acquired, constructed or operated, or to be acquired,
5 constructed or operated, in whole or in part by or on behalf of a
6 political subdivision of the State or any agency thereof, for the
7 purpose of augmenting the natural water resources of the State
8 and making available an increased supply of water for all uses, or
9 of conserving existing water resources, and any and all
10 appurtenances necessary, useful or convenient for the collecting,
11 impounding, storing, improving, treating, filtering, conserving or
12 transmitting of water and for the preservation and protection of
13 these resources and facilities and providing for the conservation
14 and development of future water supply resources;

15 (17) The provision of solid waste disposal services by a
16 resource recovery facility, the furnishing of products of a
17 resource recovery facility, the disposal of the solid waste
18 delivered for disposal which cannot be processed by a resource
19 recovery facility or the waste products resulting from the
20 operation of a resource recovery facility, including hazardous
21 waste and recovered metals and other materials for reuse, or the
22 design, financing, construction, operation or maintenance of a
23 resource recovery facility for a period not to exceed 40 years
24 when the contract is approved by the Division of Local
25 Government Services in the Department of Community Affairs,
26 the Board of Public Utilities, and the Department of
27 Environmental Protection; and when the facility is in
28 conformance with a solid waste management plan approved
29 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes
30 of this subsection, "resource recovery facility" means a solid
31 waste facility constructed and operated for the incineration of
32 solid waste for energy production and the recovery of metals and
33 other materials for reuse; or a mechanized composting facility,
34 or any other solid waste facility constructed or operated for the
35 collection, separation, recycling, and recovery of metals, glass,
36 paper, and other materials for reuse or for energy production;

37 (18) The sale of electricity or thermal energy, or both,
38 produced by a resource recovery facility for a period not to
39 exceed 40 years when the contract is approved by the Board of
40 Public Utilities, and when the facility is in conformance with a
41 solid waste management plan approved pursuant to P.L.1970, c.39
42 (C.13:1E-1 et seq.). For the purposes of this subsection,
43 "resource recovery facility" means a solid waste facility
44 constructed and operated for the incineration of solid waste for
45 energy production and the recovery of metals and other materials
46 for reuse; or a mechanized composting facility, or any other solid
47 waste facility constructed or operated for the collection,
48 separation, recycling, and recovery of metals, glass, paper,

1 and other materials for reuse or for energy production;
2 ~~(19) The provision of wastewater treatment services or the~~
3 ~~designing, financing, construction, operation, or maintenance, or~~
4 ~~any combination thereof, of a wastewater treatment system, or~~
5 ~~any component part or parts thereof, for a period not to exceed~~
6 ~~40 years, when the contract for these services is approved by the~~
7 ~~Division of Local Government Services in the Department of~~
8 ~~Community Affairs and the Department of Environmental~~
9 ~~Protection pursuant to P.L.1985, c.72 (C.58:27-1 et seq.). For~~
10 ~~the purposes of this subsection, "wastewater treatment services"~~
11 ~~means any service provided by a wastewater treatment system,~~
12 ~~and "wastewater treatment system" means equipment, plants,~~
13 ~~structures, machinery, apparatus, or land, or any combination~~
14 ~~thereof, acquired, used, constructed, or operated for the storage,~~
15 ~~collection, reduction, recycling, reclamation, disposal,~~
16 ~~separation, or other treatment of wastewater or sewage sludge,~~
17 ~~or for the final disposal of residues resulting from the treatment~~
18 ~~of wastewater, including, but not limited to, pumping and~~
19 ~~ventilating stations, facilities, plants and works, connections,~~
20 ~~outfall sewers, interceptors, trunk lines, and other personal~~
21 ~~property and appurtenances necessary for their operation;~~

22 (20) The supplying of materials or services for the purpose of
23 ~~lighting public streets, for a term not to exceed five years,~~
24 ~~provided that the rates, fares, tariffs or charges for the supplying~~
25 ~~of electricity for that purpose are approved by the Board of~~
26 ~~Public Utilities;~~

27 (21) ~~In the case of a contracting unit which is a county or~~
28 ~~municipality, the provision of emergency medical services by a~~
29 ~~hospital to residents of a municipality or county as appropriate~~
30 ~~for a term not to exceed five years.~~

31 All multi-year leases and contracts entered into pursuant to
32 this section, except contracts for the leasing or servicing of
33 equipment supplied by a telephone company which is subject to
34 the jurisdiction of the Board of Public Utilities, contracts
35 involving the supplying of electricity for the purpose of lighting
36 public streets and contracts for thermal energy authorized
37 pursuant to subsection (1) above, construction contracts
38 authorized pursuant to subsection (9) above, contracts and
39 agreements for the provision of work or the supplying of
40 equipment to promote energy conservation authorized pursuant to
41 subsection (12) above, contracts for water supply services or for a
42 water supply facility, or any component part or parts thereof
43 authorized pursuant to subsection (16) above, contracts for
44 resource recovery services or a resource recovery facility
45 authorized pursuant to subsection (17) above, contracts for the
46 sale of energy produced by a resource recovery facility
47 authorized pursuant to subsection (18) above, contracts for
48 ~~wastewater treatment services or for a wastewater treatment~~

1 system or any component part or parts thereof authorized
2 pursuant to subsection (19) above, shall contain a clause making
3 them subject to the availability and appropriation annually of
4 ~~sufficient funds as may be required to meet the extended~~
5 obligation, or contain an annual cancellation clause.

6 The Division of Local Government Services shall adopt and
7 promulgate rules and regulations concerning the methods of
8 accounting for all contracts that do not coincide with the fiscal
9 year.

10 (cf: P.L.1989, c.159, s.2)

11 48. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to
12 read as follows:

13 23. Advertisements for bids; bids; general requirements. All
14 advertisements for bids shall be published in a legal newspaper
15 sufficiently in advance of the date fixed for receiving the bids to
16 promote competitive bidding, but in no event less than 10 days
17 prior to such date; except that all advertisements for bids on
18 contracts for the collection and disposal of municipal solid waste
19 shall be published in a legal newspaper circulating in the county
20 or municipality, and in at least one newspaper of general
21 circulation published in the State, sufficiently in advance of the
22 date fixed for receiving the bids to promote competitive bidding,
23 but not less than 60 days prior to that date.

24 The advertisement shall designate the manner of submitting
25 and the method of receiving the bids and the time and place at
26 which the bids will be received. If the published specifications
27 provide for receipt of bids by mail, those bids which are mailed to
28 the contracting unit shall be sealed and shall only be opened for
29 examination at such time and place as all bids received are
30 unsealed and announced. At such time and place the contracting
31 agent of the contracting unit shall publicly receive the bids, and
32 thereupon immediately proceed to unseal them and publicly
33 announce the contents, which announcement shall be made in the
34 presence of any parties bidding or their agents, who are then and
35 there present, and shall also make proper record of the prices and
36 terms, upon the minutes of the governing body, if the award is to
37 be made by the governing body of the contracting unit, or in a
38 book kept for that purpose; if the award is to be made by other
39 than the governing body, and in such latter case it shall be
40 reported to the governing body of the contracting unit for its
41 action thereon, when such action thereon is required. No bids
42 shall be received after the time designated in the advertisement.

43 Notice of revisions or addenda to advertisements or bid
44 documents relating to bids shall, no later than five days,
45 Saturdays, Sundays and holidays excepted, prior to the date for
46 acceptance of bids, be published in a legal newspaper and be
47 made available by notification in writing by certified mail to any
48 person who has submitted a bid or who has received a bid

1 package; except that notice of revisions or addenda to
2 advertisements or bid documents relating to bids on contracts for
3 the collection and disposal of municipal solid waste shall be
4 published in a legal newspaper circulating in the county or
5 municipality, and in at least one newspaper of general circulation
6 published in the State, no later than 30 days, Saturdays, Sundays
7 and holidays excepted, prior to the date for acceptance of bids.

8 Failure of the contracting unit to advertise for the receipt of
9 bids or to provide proper notification of revisions or addenda to
10 advertisements or bid documents related to bids as prescribed by
11 this section shall prevent the contracting unit from accepting the
12 bids and require the readvertisement for bids.

13 (cf: P.L.1985, c. 429, s.1)

14 49. Section 10 of P.L.1985, c.38 (C.13:1E-145) is repealed.

15 50. This act shall take effect 45 days following enactment
16 except that section 15 shall take effect the first day of the forty
17 ninth month following enactment. Section 21 of this act and
18 section 8 of P.L.1970, c.40 (C.48:13A-7) shall expire on the
19 effective date of section 15 of this act.

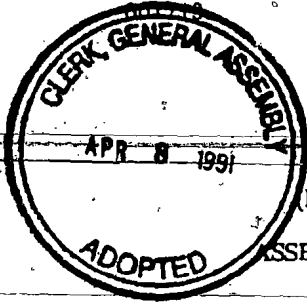
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22 WASTE MANAGEMENT

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24 The "Solid Waste Collection Regulatory Reform Act."



ASSEMBLY SUBSTITUTE
(Proposed by Assemblyman McEnroe)
for
ASSEMBLY COMMITTEE SUBSTITUTE FOR
Assembly, Nos. 3136 and 312

STATE OF NEW JERSEY

ADOPTED OCTOBER 15, 1990

Sponsored by Assemblymen McENROE, DUCH and Shinn

AN ACT concerning regulatory reform of the solid waste collection industry, and amending, supplementing and repealing parts of the statutory law.

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

1. (New section) Sections 1 through 23 inclusive of this amendatory and supplementary act shall be known and may be cited as the "Solid Waste Collection Regulatory Reform Act."

2. (New section) The Legislature finds and declares that the collection of solid waste is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste collection services; and that efficient solid waste collection services at competitive rates will more likely be achieved if the solid waste collection industry is under the supervision of, but not subject to traditional public utility rate regulation by, the Board of Public Utilities.

The Legislature further finds and declares that it is imperative that the State ensure the economic viability and competitiveness of the solid waste collection industry in order to safeguard the integrity of the State's long-term solid waste management strategy; that it is equally imperative to safeguard the interests of consumers as well as the interests of those providing solid waste collection services; that to provide for ratepayer and consumer protection it is necessary to foster competition within the industry and to establish a responsible State supervisory role to ensure safe, adequate and proper solid waste collection service at competitive rates; and that to achieve these ends in the most efficient and reasonable manner, it is necessary to establish procedures for regulatory reform and the eventual termination of traditional public utility rate regulation of the solid waste collection industry.

The Legislature further finds and declares that the Legislature through enactment of P.L.1983, c.392 (C.13:1E-126 et seq.) has ~~established a licensing system which is designed to prevent~~ persons with criminal backgrounds from engaging in the solid waste collection business, thereby promoting free and open competition within the solid waste collection industry; and that ~~terminating traditional public utility rate regulation of the solid waste collection industry can be achieved without compromising the State's role in protecting the public interest.~~

The Legislature therefore determines that it is in the public interest to establish procedures for the eventual termination of public utility rate regulation of solid waste collectors while at the same time maintaining Board of Public Utilities supervision over the solid waste collection industry.

3. (New section) As used in sections 1 through 23 of P.L. , c. (C.) (pending in the Legislature as this bill):

"Applicant" means any person seeking to obtain an initial certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9) in order to provide solid waste collection services in this State.

"Board" means the Board of Public Utilities.

"Materials recovery" means the processing and separation of solid waste utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Materials recovery facility" means a transfer station or other authorized solid waste facility at which nonhazardous, nonputrescible solid waste, which material is not source separated by the generator thereof prior to collection, is received for onsite processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Septic waste" means pumpings from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

"Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

"Solid waste collection" means the activity related to pickup and transportation of solid waste from its source or location to an authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

"Solid waste collection services" means the services provided by persons engaging in the business of solid waste collection.

"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

"Solid waste container" means a receptacle, container or bag suitable for the depositing of solid waste.

"Solid waste disposal" means the storage, treatment, utilization, processing, or final disposal of solid waste.

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

"Solid waste facilities" mean and include the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

"Transition year" means any of the 4 successive 12-month periods commencing on the effective date of P.L. , c. (C.)(pending in the Legislature as this bill).

4. (New section) a. Every solid waste collector shall pay an annual fee of \$100.00 to cover the costs of supervising the solid waste collection industry. The fee imposed pursuant to this section shall be in addition to the annual assessment made by the board pursuant to P.L.1968, c.173 (C.48:2-59 et seq.).

b. The provisions of section 1 of P.L.1959, c.43 (C.48:2-56) or any rules or regulations adopted pursuant thereto to the contrary notwithstanding, the board may charge and collect a filing fee of up to \$500.00 per applicant from persons seeking to obtain a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

5. (New section) The board may direct any applicant to furnish proof that the rates or charges to be received for solid waste collection services do not exceed just and reasonable rates or charges. Should the board find, subsequent to the issuance of a certificate of public convenience and necessity, that the rates or charges received for solid waste collection services are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in just and reasonable rates or charges.

6. (New section) a. The board, upon complaint or its own initiative, after hearing, may direct any solid waste collector to furnish proof that the rates or charges received for solid waste collection services do not exceed rates or charges which would result from effective competition.

b. Should the board find that the rates or charges received for solid waste collection services are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in competitive rates or charges. In issuing this order, the board may direct the solid waste collector to refund, at an interest rate to be determined by the board, the difference between the excessive rates or charges and the competitive rates or charges ordered by the board.

7. (New section) a. Any solid waste collector proposing to extend solid waste collection services into any area where that person is not actively engaged in solid waste collection, and the proposed extension of services is not set forth in a tariff previously filed with and accepted by the board, shall file with the board appropriate revised tariff sheets which reflect the proposed changes in areas to be served.

b. Any solid waste collector proposing to expand his solid waste collection business for the purpose of providing new solid waste collection services, and the proposed expansion of services is not set forth in a tariff previously filed with and accepted by the board, shall file with the board appropriate revised tariff sheets which reflect the proposed changes in services to be provided.

c. Should the board find, subsequent to its review of a revised tariff, that the rates or charges set forth therein are excessive, then it may order the solid waste collector charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in competitive rates or charges.

8. (New section) a. Any increase or decrease in the disposal rates or charges received at authorized solid waste facilities in this State shall be automatically adjusted for in the uniform tariff for solid waste collection established by the Board of Public Utilities in rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.).

(1) Any solid waste collector seeking an adjustment to the rates or charges set forth in the uniform tariff as solid waste disposal service charges shall file with the board appropriate revised tariff sheets which reflect changes in the disposal rates or charges received at an authorized solid waste facility.

(2) No adjustment in the disposal rate shall be implemented until such time as revised tariff sheets and verification forms have been filed with the board. Every solid waste collector shall file these documents with the board within five days of any decrease in the disposal rates or charges received at an authorized solid waste facility.

b. (1) Any net savings in the payment of disposal rates or charges at authorized solid waste facilities realized by a solid waste collector due to decreased waste flows resulting from materials recovery, or the revenues generated thereby, may be adjusted for in the rates or charges set forth in the uniform tariff as solid waste disposal service charges.

(2) Any solid waste collector seeking an adjustment to the rates or charges set forth in the uniform tariff as solid waste disposal service charges shall file with the board appropriate revised tariff sheets which reflect net savings in the payment of disposal rates or charges at an authorized solid waste facility. No adjustment in the disposal rate shall be implemented until such time as revised tariff sheets and verification forms have been filed with the board.

c. Every solid waste collector shall file with the board rates or charges for solid waste collection services conforming to the uniform tariff for solid waste collection established by the board. Every person engaged in the business of solid waste collection in this State shall be subject to the provisions of this subsection and shall file with the board a uniform tariff.

9. (New section) The provisions of any other law, or of any rule, regulation or administrative order adopted or issued pursuant thereto, to the contrary notwithstanding, during the 48-month transition from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry, the rates or charges that may be imposed by solid waste collectors for solid waste collection services in this State shall be determined in accordance with the provisions of P.L. , c.

(C.) (pending in the Legislature as this bill).

a. The Board of Public Utilities shall establish, in rules and regulations adopted pursuant to the "Administrative Procedure Act," solid waste collection rate bands governing the rates or charges that may be imposed by solid waste collectors for solid waste collection services in this State during each transition year.

The solid waste collection rate bands shall provide for the maximum adjustment that any solid waste collector may make to the rates or charges set forth as solid waste collection service charges in the uniform tariff filed with and accepted by the board after the effective date of this amendatory and supplementary act for any residential, commercial, industrial or institutional customer during a specified transition year.

b. The solid waste collection rate bands shall conform to the following schedule:

(1) During the first transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the Consumer Price Index, multiplied by the rates or charges;

(2) During the second transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 5% plus the annual percentage change in the Consumer Price Index, plus the sum authorized pursuant to paragraph (1), multiplied by the rates or charges;

(3) During the third transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of 10% plus the annual percentage change in the Consumer Price Index, plus the sum authorized pursuant to paragraph (2), multiplied by the rates or charges; and

(4) During the fourth transition year, the rates or charges set forth as solid waste collection service charges in the uniform tariff may be adjusted by an amount within a rate band the upper and lower limits of which shall not exceed the sum of the annual percentage change in the Consumer Price Index plus the sum authorized pursuant to paragraph (3), multiplied by the rates or charges.

Any adjustments to the uniform tariff authorized pursuant to this subsection may be made on an individual customer basis.

For the purposes of this subsection, "Consumer Price Index" means the consumer price index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of Labor.

c. Prior to the close of each transition year, the board shall, by order in writing, revise the solid waste collection rate bands for the forthcoming transition year to conform to the schedule established pursuant to subsection b. of this section for the pricing of solid waste collection services.

10. (New section) a. Upon filing with the Board of Public Utilities a uniform tariff, any solid waste collector may adjust the rates or charges set forth as solid waste collection service charges in the uniform tariff as provided in the solid waste collection rate bands established pursuant to section 9 of P.L. . . . c. (C.) (pending in the Legislature as this bill).

b. (1) Any solid waste collector may adjust the rates or charges set forth in the uniform tariff filed with the board as provided in the solid waste collection rate bands, whether or not those rates or charges have been reviewed and accepted by the board.

(2) Should the board find, subsequent to its review of a uniform tariff, that the rates or charges set forth therein are excessive, then it may order the solid waste collector to refund, at an interest rate to be determined by the board, the difference between the adjusted rates or charges and the rates or charges accepted by the board.

c. (1) During the first and second transition years, every solid waste collector shall, at least once every six months, file with the board a report describing the amount and frequency of variation from the rates or charges set forth in the uniform tariff for each class of residential, commercial, industrial or institutional customers. The report shall include the percentage of each class of solid waste collection services for which adjustments have been made, and the specified percentage increase or decrease to the rates or charges made to that customer class.

(2) During the third and fourth transition years, every solid waste collector shall, at least once every 12 months, file with the board a report describing the amount and frequency of variation from the rates or charges set forth in the uniform tariff for each class of residential, commercial, industrial or institutional customers. The report shall include the percentage of each class of solid waste collection services for which adjustments have been made, and the specified percentage increase or decrease to the rates or charges made to that customer class.

d. Whenever a solid waste collector makes an adjustment to the uniform tariff pursuant to this section, the solid waste collector shall notify every customer to be affected thereby at least 10 days prior to the implementation of that adjustment. The solid waste collector shall attach a copy of the applicable rate schedule to the notice.

11. (New section) Every solid waste collector shall notify customers at least once every year that solid waste collection services in this State are available on a competitive basis, as provided in the customer bill of rights established by the board in rules and regulations adopted pursuant to the "Administrative Procedure Act," and shall provide every customer with a copy thereof.

12. (New section) No solid waste collector utilizing the solid waste collection rate bands established by the Board of Public Utilities pursuant to section 9 of P.L. , c. (C.) (pending in the Legislature as this bill) to make adjustments to the uniform tariff may, except in cases of hardship or exigent circumstances, or in the case of significant increases in energy costs, as determined by the board, petition the board for changes in the rates or charges set forth as solid waste collection service charges in the uniform tariff previously filed with and accepted by the board.

13. (New section) The Board of Public Utilities shall, within 12 months of the effective date of this amendatory and supplementary act and at least once every six months thereafter, publish the rate schedule set forth in the uniform tariff of every solid waste collector serving a particular region of the State in at least one newspaper of general circulation within that region and at least one newspaper of statewide circulation. The rate schedule shall be accompanied by a notice advising the public of the current solid waste collection rate band in effect on that date and stating that any difficulties in securing solid waste collection services, or any complaints pertaining to the adequacy of existing solid waste collection services, may be referred to the board.

14. (New section) a. The Board of Public Utilities shall, within 30 months of the effective date of this amendatory and supplementary act, submit a preliminary report to the Governor and the Legislature concerning the implementation of P.L. , c. (C.) (pending in the Legislature as this bill).

The board shall provide interested parties and the general public with an opportunity to submit written comments on the contents of the preliminary report in a manner to be determined by the board.

b. The board shall, within 36 months of the effective date of this amendatory and supplementary act, submit a final report to the Governor and the Legislature concerning the implementation of P.L. , c. (C.) (pending in the Legislature as this bill).

The final report shall include, but need not be limited to:

(1) An evaluation of the success of solid waste collection rate bands in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper solid waste collection services at competitive rates;

~~(2) An evaluation of the success of solid waste collection rate bands in eliminating predatory pricing and other anticompetitive activities within the solid waste collection industry;~~

~~(3) An evaluation of the success of uniform specifications for municipal solid waste collection contracts in promoting competition within the solid waste collection industry while at the same time ensuring safe, adequate and proper municipal solid waste collection services at competitive rates;~~

~~(4) An assessment of the economic viability and competitiveness of the solid waste collection industry and a recommendation, as warranted by the circumstances, as to whether the termination of rate regulation of the solid waste collection industry by the board will promote meaningful competition and ensure efficient solid waste collection services at competitive rates; and~~

~~(5) A summary of any written comments submitted by interested parties or the general public on the contents of the preliminary report required pursuant to subsection a. of this section.~~

15. (New section) The rates or charges imposed by solid waste collectors, or fees, rates or charges for solid waste collection services provided by persons engaged in the business of solid waste collection in this State shall not be subject to the regulation of the Board of Public Utilities. Nothing herein provided shall be construed to limit the authority of the board with respect to the supervision of the solid waste collection industry.

16. (New section) a. The board may compel any person engaged in the business of solid waste collection or otherwise providing solid waste collection services to furnish and file with the board a consolidated annual report or other documents as may be necessary to enable the board to administer its duties as prescribed by law and this act.

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

17. (New section) a. The board may compel any solid waste collector to furnish and file with the board any records, including, but not limited to, manifests, origin and destination forms, customer lists, financial or operational information, contracts, books, accounts and records of affiliated business concerns, including any affiliated or parent corporation or organization, or any wholly or partially owned subsidiary thereof, directly or indirectly involved therewith, or having a direct or indirect financial interest in the solid waste collection

services provided by the solid waste collector, and all financial transactions between these parties related to the solid waste collection services provided by the solid waste collector, and any other documents related to solid waste collection or solid waste disposal activities, at any time or place in order to determine compliance with the provisions of this act or P.L.1970, c.40 (C.48:13A-1 et seq.) or any rule, regulation or administrative order adopted or issued pursuant thereto, and to enable the board to administer its duties as prescribed by law and this act.

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

18. (New section) a. Should any person engaged in the solid waste collection business fail or refuse to complete, execute or perform any contract or agreement obligating such person to provide solid waste collection services, the board may order any solid waste collector to extend solid waste collection services into any area where the collection of solid waste has been discontinued.

b. Should the board find that any class of customers within a specific geographic area is unable to secure solid waste collection services, or that any person seeking a specific type of solid waste collection service is unable to secure solid waste collection services, or that the board has received complaints pertaining to the adequacy of existing solid waste collection services, the board may order any solid waste collector to extend solid waste collection services to that geographic area; class of customers or person.

c. (1) Prior to the effective date of section 15 of P.L. , c. (C.) (pending in the Legislature as this bill), should the board order any solid waste collector to extend solid waste collection services to any area, class of customers or person, the rates and charges for the extended solid waste collection services shall be determined in accordance with the provisions of sections 9 and 10 of P.L. , c. (C.) (pending in the Legislature as this bill).

(2) After the effective date of section 15 of P.L. , c. (C.) (pending in the Legislature as this bill), should the board order any solid waste collector to extend solid waste collection services to any area, class of customers or person, the rates and charges for the extended solid waste collection services shall be determined by the person ordered by the board to extend those services.

d. Should any solid waste collector fail or refuse to comply with any provision of this section, the board may revoke or suspend the certificate of public convenience and necessity issued to that person.

19. (New section) Within 180 days of the effective date of this amendatory and supplementary act, the Board of Public Utilities shall establish, in rules and regulations adopted pursuant to the provisions of the "Administrative Procedure Act," the criteria and procedures to be utilized by the board in making a determination of effective competition.

a. The board shall utilize the criteria in making a determination as to whether a lack of effective competition is likely to occur if the board approves a transaction pursuant to the provisions of R.S.48:3-7, or in making a determination as to whether a lack of effective competition exists within a specific geographic area, class of customers or type of solid waste collection services after the effective date of section 15 of P.L. , c. (C.) (pending in the Legislature as this bill).

b. The criteria shall include, but need not be limited to, the following:

(1) the existence of barriers to entry of persons seeking to provide solid waste collection services within a specific geographic area, class of customers or type of service;

(2) the structure of the solid waste collection industry within a specific geographic area, class of customers or type of service, including the number of participating solid waste collectors, the intensity of competition, or the concentration in ownership of collection or haulage vehicles or other equipment; and

(3) the existence of patterns of anti-competitive behavior by persons providing solid waste collection services within a specific geographic area, class of customers or type of service.

c. The board shall utilize the criteria in conjunction with generally accepted economic indicators which shall be identified in rules and regulations adopted pursuant to the provisions of the "Administrative Procedure Act." These indicators may include an evaluation of capital investment costs, economies of scale, differentiation of service, technological barriers facing entrants, financial requirements, including capital entry or exit costs, regulatory barriers, and business characteristics, including number of customers, customer turnover, annual gross revenues, class or type of service provided, and annual net income.

d. The board shall establish procedures to be utilized in reviewing the rates or charges received by a solid waste collector pursuant to section 20 of P.L. , c. (C.) (pending in the Legislature as this bill).

20. (New section) a. (1) Whenever, on the basis of available information, the board has reasonable grounds for belief in the existence of facts warranting further investigation that a solid waste collector is charging rates or charges for solid waste collection services which exceed rates or charges that would have resulted from effective competition, the board shall transmit a notice to the solid waste collector stating that the board intends to review the rates or charges received by that solid waste collector. The notice shall enumerate the reasons for the review and the criteria utilized by the board in making a determination that a lack of effective competition exists.

(2) The board shall complete its review of the rates or charges received by the solid waste collector no later than 45 days following the date of the notice.

(3) Upon completing its review, the board may, after hearing, by order in writing, issue an order to the solid waste collector charging such excessive rates or charges to reduce the rates or charges received for solid waste collection services to a sum which would result from effective competition.

b. The board may issue an order to any person engaged in the business of solid waste collection to reduce the rates or charges received for solid waste collection services to a sum which would result from effective competition if the following conditions are met:

(1) the board has determined that a lack of effective competition exists within a specific geographic area, or within a specific class of customers or type of solid waste collection services; and

(2) the board has determined that the lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition.

In making a determination pursuant to paragraph (1) of this subsection, the board shall not consider extraneous technical or economic factors such as variation in solid waste disposal or recycling costs, the availability of, or access to, materials recovery facilities, recycling centers or markets for recyclable materials, or other seasonal or short-term considerations.

In making a determination pursuant to paragraph (2) of this subsection, the board shall compare the rates or charges received by the solid waste collector charging such excessive rates or charges with those received by other solid waste collectors for solid waste collection services within a comparable geographic area, class of customers or type of service. The board, if it deems that such information is necessary, may review the revenues, income or expenditures of the solid waste collector charging such excessive rates or charges, except that the board shall not consider any revenues, income or expenditures derived from recycling activities.

Any order issued by the board pursuant to this subsection shall expire no later than the first day of the seventh month following the effective date of the order.

c. In issuing an order pursuant to subsection b. of this section, the board may:

(1) direct the solid waste collector to refund, at an interest rate to be determined by the board, the difference between the excessive rates or charges and the competitive rates or charges ordered by the board as of the date of the notice of the board's intention to review the rates or charges received by that solid waste collector;

(2) take other actions pursuant to law as may be needed to restore or promote effective competition within the affected geographic area, class of customers or type of service; or

(3) make recommendations as to the steps needed to restore or promote effective competition within the affected geographic area, class of customers or type of service.

d. (1) No later than 6 months after issuing an order pursuant to subsection b. of this section, the board shall review the actions taken pursuant thereto and make a determination as to whether a lack of effective competition still exists within the affected geographic area, class of customers or type of service, or whether the continued lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition.

(2) The board shall, upon a determination that effective competition exists within the affected geographic area, class of customers or type of service, rescind any such order and cease any further rate setting activity with respect to the solid waste collector subject to that order.

(3) The board may, upon a written determination that a lack of effective competition still exists within the affected geographic area, class of customers or type of service, and that the continued lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition, issue a new order pursuant to subsection b. of this section and continue rate setting activity with respect to the solid waste collector subject to that order as provided in subsection c. of this section.

21. (New section) a. There is created in the Board of Public Utilities a special nonlapsing fund to be known as the "Solid Waste Enforcement Fund." All monies from penalties collected by the board pursuant to section 13 of P.L.1970, c.40 (C.48:13A-12) shall be deposited in the fund.

b. Unless otherwise expressly provided by the specific appropriation thereof by the Legislature, monies in the fund shall be utilized exclusively by the Division of Solid Waste in the Board of Public Utilities for enforcement and implementation of the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) and P.L. , c. (C.) (pending in the Legislature as this bill).

22. (New section) The Board of Public Utilities shall establish, in rules and regulations adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), uniform bid specifications for municipal solid waste collection contracts.

23. (New section) a. (1) Whenever the governing body of a municipality adopts an ordinance to provide for the collection or disposal of solid waste within its municipal boundaries by imposing solid waste charges based on the number of solid waste containers processed per household pursuant to subsection b. of R.S.40:66-5, the governing body shall transmit to the Board of Public Utilities, by certified mail and within 90 days of the effective date of the ordinance, a copy of the proposed rate schedule and the contract awarded pursuant to subsection a. of R.S.40:66-4. The board, within 60 days of receipt of the proposed rate schedule and contract and if requested to do so by the municipality or the relevant solid waste collector, as the case may be, may review these documents to determine whether the solid waste charges are equitable and to accept, reject or modify the rate schedule. If the board finds the solid waste charges to be equitable, the board shall accept the rate schedule and contract and issue an appropriate order therefor. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

(2) Should the board find, subsequent to the issuance of any order pursuant to this subsection, that the rates or charges received for the collection of solid waste contained within a contract entered into prior to the effective date of that order require adjustment, then it may order the person charging these rates or charges to make an adjustment in the contract to a sum which shall result in equitable rates or charges. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

b. (1) The board may issue an appropriate order establishing an equitable rate schedule based on the number of solid waste containers processed per household for the solid waste collection tariffs of persons engaging in private solid waste collection services in any municipality in which solid waste collection services are contracted for and provided on an individual household basis. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

(2) Any person engaged in private solid waste collection services in this State and utilizing a rate schedule based on the number of solid waste containers processed per household as provided in this subsection may provide customers with the opportunity to purchase, on a prepaid basis, one or more solid waste containers, or a voucher or sticker therefor, to facilitate the provision of solid waste collection services on a per container basis.

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

1. This act shall be known [as,] and may be cited as[,] the "Solid Waste Utility Control Act [of 1970]."

(cf: P.L.1970, c.40, s.1)

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

2. The Legislature finds and declares that the [collection,] disposal [and utilization] of solid waste is a matter of grave concern to all citizens and is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste [collection,] disposal [and utilization] service; that [such service will more likely be achieved if the Public Utility Commission] safe, adequate and proper solid waste disposal service at just and reasonable rates cannot be achieved unless the Board of Public Utilities is charged with the duty of setting and enforcing standards and rates for regulating the economic aspects of all solid waste [collection,] disposal [and utilization] service; and that the exercise of any power herein provided for shall be deemed to be in the public interest and for a public purpose.

(cf: P.L.1970, c.40, s.2)

26. Section 3 of P.L.1970, c.40 (C.48:13A-3) is amended to read as follows:

3. As used in this act:

[a.] "Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids [disposed of incident thereto], except [it shall not include] for solid animal and vegetable [waste] wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

[b.] "Solid waste collection" means the activity related to pickup and transportation of solid waste from its source or location to a transfer station or other authorized solid waste facility, but does not include activity related to the pickup, transportation or unloading of septic waste.

"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9).

[c.] "Solid waste disposal" means the storage, treatment, utilization, processing, transfer, or final disposal of solid waste.

[d.] "Septic waste" means pumpings from septic tanks and cesspools, but shall not include wastes from a sewage treatment plant.

[e.] "Solid waste container" means a receptacle, container or bag suitable for the depositing of solid waste.

"Solid waste collection services" means the services provided by persons engaging in the business of solid waste collection.

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

[f.] "Solid waste facilities" mean and include the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.) and P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

[g.] "Solid waste transfer operations" mean the activity related to the transfer of solid waste from solid waste collection vehicles to solid waste haulage vehicles, including rail cars, for transportation to an offsite sanitary landfill facility, resource recovery facility, or other destination for disposal.

[h.] "Transfer station" means a solid waste facility at which solid waste is transferred from a solid waste collection vehicle to a licensed solid waste haulage vehicle, including a rail car, for transportation to an offsite sanitary landfill facility, resource recovery facility, or other destination for disposal, except that a "transfer station" shall not include any solid waste facility at which solid waste is received for onsite transfer, and processing or disposal utilizing facility-owned or operated equipment and vehicles operated therefor.

(cf: P.L.1990, c.113, s.1)

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

5. a. The Board of Public [Utility Commissioners] Utilities shall, after hearing, by order in writing, [make] adopt appropriate rules, regulations [and] or administrative orders for the regulation of rates and public utility aspects of the [solid waste collection industry and the] solid waste disposal industry.

b. The Board of Public Utilities shall, after hearing, by order in writing, adopt appropriate rules, regulations or administrative orders for the supervision of the solid waste collection industry.

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

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

(cf: P.L.1970, c.40, s.5)

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

7. a. No person shall engage, or be permitted to engage, in the business of solid waste collection or solid waste disposal until found by the board to be qualified by experience, training or education to engage in such business, is able to furnish proof of financial responsibility, and unless that person holds a certificate of public convenience and necessity issued by the Board of Public Utilities.

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

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

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

c. Notwithstanding the provisions of subsection b. of this section, the board shall not have jurisdiction over rates or charges for the transportation of regulated medical waste.
(cf: P.L.1989, c.34, s.30)

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

8. a. The board, upon complaint or its own initiative, after hearing, may direct any person engaging in the [solid waste collection business or the] solid waste disposal business to furnish proof that the rates or charges [or rates to be] received for [such service] solid waste disposal services do not exceed just and reasonable rates or charges for such service.

b. [(1)] Should the board find that the rates or charges received for solid waste disposal services are excessive, then it may order the person charging such excessive rates or charges to make an adjustment in the tariff or contract to a sum which shall result in just and reasonable rates or charges.

[(2)] Should the board find, subsequent to the issuance of any order pursuant to subsection c. of this subsection, that the rates or charges received for the collection of solid waste contained within a contract entered into prior to the effective date of that order require adjustment, then it may order the person charging these rates or charges to make an adjustment in the contract to a sum which shall result in just and reasonable rates or charges. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

c. (1) Whenever the governing body of a municipality adopts an ordinance to provide for the collection or disposal of solid waste within its municipal boundaries by imposing solid waste charges based on the number of solid waste containers processed per household pursuant to subsection b. of R.S.40:66-5, the governing body shall transmit to the board, by certified mail and within 90 days of the effective date of the ordinance, a copy of the proposed rate schedule and the contract awarded pursuant to subsection a. of R.S.40:66-4. The board, within 60 days of receipt of the proposed rate schedule and contract and if requested to do so by the municipality or the relevant solid waste collector or solid waste transporter, as the case may be, may review

these documents to determine whether the solid waste charges are equitable and to accept, reject or modify the rate schedule.

(2) If the board finds the solid waste charges to be equitable, the board shall accept the rate schedule and contract and issue an appropriate order therefor. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

d. (1) The board may issue an appropriate order establishing an equitable rate schedule based on the number of solid waste containers processed per household for the solid waste collection tariffs of persons engaging in private solid waste collection or transportation services in any municipality in which solid waste collection or transportation services are contracted for and provided on an individual household basis. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.

(2) Any person engaged in private solid waste collection or transportation services in this State and utilizing a rate schedule based on the number of solid waste containers processed per household as provided in this subsection may provide customers with the opportunity to purchase, on a prepaid basis, one or more solid waste containers, or a voucher or sticker therefor, to facilitate the provision of solid waste collection services on a per container basis.]

(cf: P.L.1989, c.244, s.8)

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

9. [a. Every person engaged in the business of solid waste collection or solid waste disposal shall furnish and file with the board, in connection with each contract or agreement entered into by him for the provision of such service, a performance bond in such amount as may be required by the board in rules or regulations promulgated by the board.

b.] Should any person engaged in the solid waste [collection business or the solid waste] disposal business fail or refuse to complete, execute or perform any contract or agreement obligating such person to provide [such service] solid waste disposal services, the board may order any person engaged in the solid waste [collection business or the solid waste] disposal business to extend [his collection or disposal service] solid waste disposal services into any area where service has been discontinued in accordance with the provisions of R.S.48:2-27, and the board shall fix just and reasonable rates and charges for [such] solid waste disposal service in the extended area.

(cf: P.L.1970, c.40, s.9)

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

~~10. The board, on its own initiative or upon complaint by the [State] Department of Environmental Protection shall revoke[,] or suspend [or grant a temporary continuance for up to 1 year of] the certificate of public convenience and necessity issued to any person engaged in the solid waste collection business or the solid waste disposal business upon the finding that such person:~~

a. ~~Has violated any provision of [this act] P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L. , c. (C.) (pending in the Legislature as this act), or any rule, regulation or administrative order [promulgated hereunder] adopted or issued pursuant thereto; or~~

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

c. ~~Has refused or failed to comply with any lawful order of the board; or~~

d. ~~Has had its registration revoked by the [State] Department of Environmental Protection; or~~

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

(cf: P.L.1975, c.326, s.32)

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

11. a. ~~No person shall monopolize, or attempt to monopolize, or combine or conspire with any other person to monopolize, trade or commerce in any relevant market, located in whole or in part in this State, for the solid waste collection business or the solid waste disposal business.~~

b. ~~Any person who shall be injured in his business or property by reason of a violation of the provisions of subsection a. of this section may sue therefor and shall recover threefold the damages sustained by him, together with reasonable attorney's fees and the costs of the suit. The State and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this act. Any action brought pursuant to this subsection shall be barred unless commenced within [4] 5 years after the cause of action accrued.~~

c. ~~No municipality may require [a public utility] any person lawfully engaged in the solid waste collection business or the solid waste disposal business to submit to any prequalification test before permitting [it] that person to bid on a contract or before the employment of a solid waste collection or a solid waste disposal contractor.~~

(cf: P.L.1970, c.40, s.11)

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

12. a. The board may compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and all the documents necessary to enable the board to administer its duties as prescribed by law and this act.

b. The board may compel any person engaged in the business of solid waste disposal or otherwise providing solid waste disposal services in this State to furnish and file with the board any annual reports, federal or State tax returns, contracts, papers, books, accounts, customer lists, financial or operational information, or contracts, books, accounts and records of affiliated business concerns, including any affiliated or parent corporation or organization, or any wholly or partially owned subsidiary thereof, directly or indirectly involved therewith, or having a direct or indirect financial interest in the solid waste disposal services provided by that person, and all financial transactions between these parties related to the solid waste disposal services provided by that person, or other documents as may be necessary to enable the board to administer its duties as prescribed by law and this act.

c. Should any person engaged in the business of solid waste disposal or otherwise providing solid waste disposal services fail or refuse to comply with any provision of this section, or any applicable provision of Title 48 of the Revised Statutes, the board may revoke or suspend the certificate of public convenience and necessity issued to that person.

(cf: P.L.1970, c.40, s.12)

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

13. a. Any person or any officer or agent thereof who shall knowingly violate any of the provisions of this act or aid or advise in such violation, or who, as principal, manager, director, agent, servant or employee knowingly does any act comprising a part of such violation, is guilty of a [misdemeanor] crime of the fourth degree and shall be punished by imprisonment for not more than [three years] 18 months or, notwithstanding the provisions of N.J.S.2C:43-3, by a fine of not more than \$50,000.00, or both; and if a corporation by a fine of not more than \$100,000.00. Each day during which the violation continues constitutes an additional, separate and distinct offense.

b. Any person who shall violate any provision of [this act] P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L. , c. (C.) (pending in the Legislature as this bill) or any rule, regulation or administrative order adopted or issued [hereunder] pursuant thereto, including an interdistrict, intradistrict or interstate waste flow order issued in conjunction with the Department of Environmental Protection, or under any applicable provision of Title 48 of the Revised Statutes, or who shall engage in the solid waste collection business or solid waste disposal business without having been issued a certificate of public convenience and necessity, shall be liable to a penalty of not more than \$10,000.00 for a first offense, not more than \$25,000.00 for a second offense and not more than \$50,000.00 for a third and every subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense. The penalties herein provided shall be enforced by summary proceedings instituted by the board under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and the municipal courts shall all have jurisdiction to enforce "the penalty enforcement law" in connection with this act.

c. Whenever it shall appear to the Board, a municipality, local board of health, or county health department, as the case may be, that any person has violated, intends to violate, or will violate any provision of [this act] P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L. , c. (C.) (pending in the Legislature as this bill) or any rule, regulation or administrative order [duly promulgated hereunder] adopted or issued pursuant thereto, or under any applicable provision of Title 48 of the Revised Statutes, the Board, the municipality, local board of health or county health department may institute a civil action in the Superior Court for injunctive relief and for such other relief as may be appropriate in the circumstances, and the [said] court may proceed in any such action in a summary manner.

Notwithstanding the provisions of any other law, or any rule or regulation adopted pursuant thereto to the contrary, all penalties recovered pursuant to actions brought by the Board under this section shall be paid to the "Solid Waste Enforcement Fund" established pursuant to section 21 of P.L. , c. (C.) (pending in the Legislature as this bill). If a money judgment is rendered against a defendant pursuant to subsections a. or b. of this section, the payment made to the court shall be remitted to the fund.

(cf: P.L.1989, c.118, s.1)

~~35. R.S. 48:3-7 is amended to read as follows:~~

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

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

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

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

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

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

- (1) the sale of 60% or more of its property within a 12-month period;
- (2) a merger or consolidation of its property, franchises, privileges or rights; or
- (3) the sale of any of its franchises, privileges or rights.

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

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

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

(2) merge or consolidate its property, including customer lists, with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), P.L. , c. (C.) (pending in the Legislature as this bill) or any other act.

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

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

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

(3) The board shall approve a transaction unless it makes a determination pursuant to the provisions of section 19 of P.L. , c. (C.) (pending in the Legislature as this bill) that the proposed sale, lease, mortgage, disposition, encumbrance, merger or consolidation would result in a lack of effective competition.

The Board of Public Utilities shall prescribe and provide upon request all necessary forms for the implementation of the notification requirements of this subsection.

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

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

As used in this section, "business concern" means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization.

(cf: P.L.1985, c.232, s.1)

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

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

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

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

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

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

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

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

(cf: P.L.1985, c.232, s.2)

37. Section 2 of P.L.1981, c.438 (C.13:1E-9.1) is amended to read as follows:

2. [a.] The provisions of any law to the contrary notwithstanding, the owner or operator of any sanitary landfill facility may collect any fee imposed pursuant to section 9 of P.L.1970, c.39 (C.13:1E-9) as a surcharge on any tariff established pursuant to law for the solid waste disposal operations of the facility.

[b. The Board of Public Utilities shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection operations by an amount equal to the total increase in the relevant solid waste disposal tariff pursuant to subsection a. of this section. In issuing this order, the board shall not be bound to find a rate base under section 31 of P.L.1962, c.198 (C.48:2-21.2).]

(cf: P.L.1981, c.438, s.2)

38. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to read as follows:

18. Any solid waste facility constructed, acquired or operated pursuant to the provisions of [this amendatory and supplementary act] P.L.1970, c.39 (C.13:1E-1 et seq.) shall be deemed a public utility and shall be subject to such rules and regulations as may be adopted by the Board of Public [Utility Commissioners] Utilities in accordance with the provisions of the "Solid Waste Utility Control Act [of 1970]" (P.L.1970; c.40, C.48:13A-1 et seq.) and P.L. , c. (C.) (pending in the Legislature as this bill).

(cf: P.L.1975, c.326, s.18)

39. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to read as follows:

19. a. Any municipality within which a sanitary landfill facility is located pursuant to an adopted and approved district solid waste management plan shall be entitled to an annual economic benefit not less than the equivalent of \$1.00 per ton of solids on all solid waste accepted for disposal at the sanitary landfill facility during the previous calendar year as determined by the department.

The owner or operator of the sanitary landfill facility shall annually pay to the relevant municipality the full amount due under this subsection and each relevant municipality is empowered to anticipate this amount for the purposes of preparing its annual budget. For the purposes of calculating the payments, the owner or operator of the sanitary landfill facility may, subject to the prior agreement of the relevant municipality and the approval of the Board of Public Utilities, provide the municipality with any of the following benefits in consideration for the use of land within its municipal boundaries as the location of a sanitary landfill facility:

- (1) The receipt of annual sums of money in lieu of taxes on the land used for the sanitary landfill facility;
- (2) The exemption from all fees and charges for the disposal of solid waste generated within its boundaries;
- (3) The receipt of a lump sum cash payment; or
- (4) Any combination thereof.

b. Every owner or operator of a sanitary landfill facility required to make annual payments to a municipality pursuant to subsection a. of this section may petition the Board of Public Utilities for an increase in its tariff which reflects these payments. The board, within 60 days of the receipt of the petition, shall issue an appropriate order that these payments shall be passed along to the users of the sanitary landfill facility as an automatic surcharge on any tariff filed with, and recorded by, the board for the solid waste disposal operations of the facility.

c. [The board, within 60 days of the computation of any increase in a solid waste disposal tariff pursuant to subsection b. of this section, shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection by an amount equal to the total amount of the increase in the relevant solid waste disposal tariff calculated pursuant to subsection b. of this section.

d.] In issuing any order required by this section, the Board of Public Utilities shall be exempt from the provisions of R.S.48:2-21.

(cf: P.L.1985, c.38, s.38)

40. Section 2 of P.L.1987, c.449 (C.13:1E-28.1) is amended to read as follows:

2. a. Any municipality within which a transfer station is located pursuant to an adopted and approved district solid waste management plan shall be entitled to an annual economic benefit to be paid or adjusted not less than quarterly in an amount established by agreement with the owner or operator of the transfer station or by order of the Board of Public Utilities, but not less than the equivalent of \$0.50 per ton of all solid waste accepted for transfer at the transfer station during the 1987 calendar year and each year thereafter.

The owner or operator of the transfer station shall, not less frequently than quarterly, pay to the relevant municipality the full amount due under this subsection and each relevant municipality is empowered to anticipate this amount for the purposes of preparing its annual budget. For the purposes of calculating the payments, the owner or operator of the transfer station may, subject to the prior agreement of the relevant municipality and the approval of the Board of Public Utilities, provide the municipality with any of the following benefits in consideration for the use of land within its municipal boundaries as the location of a transfer station:

- (1) The receipt of quarterly payments of annual sums of money in lieu of taxes on the land used for the transfer station;
- (2) The exemption from all fees and charges for the acceptance for transfer of solid waste generated within its boundaries;
- (3) The receipt of quarterly lump sum cash payments; or
- (4) Any combination thereof.

b. Every owner or operator of a transfer station required to make payments not less frequently than quarterly to a municipality pursuant to subsection a. of this section may petition the Board of Public Utilities for an increase in its tariff which reflects these payments. The board, within 60 days of the receipt of the petition, shall issue an order that these payments shall be passed along to the users of the transfer station as an automatic surcharge on any tariff filed with, and recorded by, the board for the solid waste disposal operations of the transfer station.

c. [The board, within 60 days of the computation of any increase in a solid waste disposal tariff for a transfer station pursuant to subsection b. of this section, shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collectors using the transfer station by an amount equal to the total amount of the increase in the relevant solid waste disposal tariff calculated pursuant to subsection b. of this section.

d.] In issuing any order required by this section, the Board of Public Utilities shall be exempt from the provisions of R.S.48:2-21.

(cf: P.L.1990, c.54, s.1)

41. Section 7 of P.L.1981, c.278 (C.13:1E-98) is amended to read as follows:

7. [a.] The provisions of any law to the contrary notwithstanding, the owner or operator of any solid waste facility may collect the tax imposed pursuant to section 4 of P.L.1981, c.278 (C.13:1E-95) as a surcharge on any tariff established pursuant to law for the solid waste disposal operations of the facility.

[b. The Board of Public Utilities shall, within 90 days of the effective date of P.L.1987, c.102 (C.13:1E-99.11 et al.), issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection operations by an amount equal to the total increase in the relevant solid waste disposal tariff pursuant to subsection a. of this section. In issuing this order, the board shall be exempt from the provisions of R.S.48:2-21.]

(cf: P.L.1987, c.102, s.38)

42. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended to read as follows:

40. a. Any person engaged in the business of solid waste collection or solid waste disposal in accordance with the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), P.L. , c. (C.) (pending in the Legislature as this bill) or any other act may engage in recycling or otherwise provide recycling services in this State.

b. [Notwithstanding the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.) or any other law, the] The Board of Public Utilities shall not have jurisdiction over charges or rates for recycling or services provided by persons engaging in the business of recycling or otherwise providing recycling services in this State. [The revenues generated by persons engaging in the business of recycling or otherwise providing recycling services shall not be included within the computation of current or adjusted tariffs established pursuant to law for solid waste collection.]

(cf: P.L.1987, c.102, s.40)

43. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to read as follows:

13. a. The provisions of any law to the contrary notwithstanding, the owner or operator of any sanitary landfill facility may collect the tax imposed pursuant to section 5 of P.L.1981, c.306 (C.13:1E-104), and the escrow account payments required by section 10 of P.L.1981, c.306 (C.13:1E-109), [this supplementary act] as a surcharge on any tariff established pursuant to law for the solid waste disposal operations of the facility.

b. The Board of Public Utilities may direct the owner or operator of a sanitary landfill facility to reduce the rate of payments to an escrow account required by section 10 [hereof] of P.L.1981, c.306 (C.13:1E-109), but only to the extent that:

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

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

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

(cf: P.L.1981, c.306, s.13)

44. Section 3 of P.L.1983, c.93 (C.13:1E-119) is amended to read as follows:

3. [a.] Any solid waste facility required to install scales pursuant to this act may petition the Board of Public Utilities for an increase in its tariff which reflects the costs reasonably incurred by the facility in complying with this act. The board, within 60 days of the receipt of such a petition, shall determine the extent to which these costs shall be passed along to the users of the solid waste facility as an automatic surcharge on any

tariff filed with, and recorded by, the board for the operation of the solid waste facility.

b. The board, within 60 days of the computation of any increase in a solid waste disposal tariff pursuant to subsection a. of this section, shall issue an appropriate order increasing current tariffs established pursuant to law for solid waste collection by an amount equal to the total amount of the increase in the relevant solid waste disposal tariff calculated pursuant to subsection a. of this section. In issuing this order, the board shall be exempt from the provisions of section 31 of P.L.1962, c.198 (C.48:2-21.2).

c. For the purposes of this act, all municipal, county, and State contracts for solid waste collection and disposal shall be deemed to be tariffs for solid waste collection, and shall be subject to adjustment pursuant to the terms of this act.]

(cf: P.L.1983, c.93, s.3)

45. Section 9 of P.L.1985, c.38 (C.13:1E-144) is amended to read as follows:

9. [a.] Notwithstanding the provisions of any law to the contrary, the owner or operator of a sanitary landfill facility may collect the taxes levied and imposed pursuant to [this amendatory and supplementary act] section 3 of P.L.1985, c.38 (C.13:1E-138) by imposing an automatic surcharge on any tariff established pursuant to law for the solid waste disposal operations of the sanitary landfill facility.

[b. For the purposes of this amendatory and supplementary act, all municipal, county, and State contracts for solid waste collection and disposal shall be considered tariffs for solid waste collection, and shall be subject to any adjustment of tariffs resulting from the provisions of this amendatory and supplementary act.]

(cf: P.L.1985, c.38, s.9)

46. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to read as follows:

6. Any solid waste [collection system or solid waste treatment or disposal] facilities owned or operated by a county improvement authority pursuant to the provisions of this amendatory and supplementary act, shall be deemed a public utility and shall be subject to such rules and regulations as may be adopted by the Board of Public [Utility Commissioners] Utilities in accordance with the provisions of the "Solid Waste Utility Control Act. [of 1970]" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement authority's application to operate any solid waste facility shall be considered at a public hearing by the Board of Public [Utility Commissioners] Utilities.

(cf: P.L.1973, c.330, s.6)

47. R.S.40:66-4 is amended to read as follows:

40:66-4. a. The governing body may, if it deem it more advantageous, contract with any person for the cleaning of the streets, or the collection or disposal of solid waste. Before making any such contract or contracts the governing body shall first adopt specifications for the doing of the work in a sanitary and inoffensive manner[, and any]. Any specifications adopted by the governing body for the collection or disposal of solid waste shall conform to the uniform bid specifications for municipal solid waste collection contracts established pursuant to section 22 of P.L. , c. (C.) (pending in the Legislature as this bill). Any such contract or contracts, the total amount of which exceeds in the fiscal year the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), shall be entered into and made only after bids shall have been advertised therefor, and awarded in the manner provided in the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq). [The bidder or bidders to whom the contract or contracts shall be awarded shall give satisfactory bond or other security for the faithful performance of the work. The contract shall include and in all respects conform to the specifications adopted for the doing of the work.]

b. Whenever the governing body adopts an ordinance to provide for the collection or disposal of solid waste within its municipal boundaries by imposing solid waste charges based on the number of solid waste containers processed per household pursuant to subsection b. of R.S.40:66-5, on or after the first day of the 13th month following the effective date of that ordinance, the governing body may request the relevant solid waste collector [or solid waste transporter] to whom a multi-year contract has been awarded to renegotiate the contract to reflect any reduction in the annual volume of solid waste collected [or transported] achieved as a result of the ordinance.

(cf: P.L.1989, c.244, s.4)

48. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to read as follows:

13. Specifications. Any specifications for an acquisition under this act, whether by purchase, contract or agreement, shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the purchase, contract or agreement is made; or

(b) Require that any bidder be a resident of, or that his place of business be located in, the county or municipality in which the purchase will be made or the contract or agreement performed, unless the physical proximity of the bidder is requisite to the efficient and economical purchase or performance of the contract or agreement; except that no specification for a contract for the collection and disposal of municipal solid waste shall require any bidder to be a resident of, or that his place of business be located in, the county or municipality in which the contract will be performed; or

(c) Discriminate on the basis of race, religion, sex, national origin; or

(d) Require, with regard to any purchase, contract or agreement, the furnishing of any "brand name," but may in all cases require "brand name or equivalent," except that if the materials to be supplied or purchased are patented or copyrighted, such materials or supplies may be purchased by specification in any case in which the ordinance or resolution authorizing the purchase, contract, sale or agreement so indicates, and the special need for such patented or copyrighted materials or supplies is directly related to the performance, completion or undertaking of the purpose for which the purchase, contract or agreement is made; or

(e) Fail to include any option for renewal, extension, or release which the contracting unit may intend to exercise or require; or any terms and conditions necessary for the performance of any extra work; or fail to disclose any matter necessary to the substantial performance of the contract or agreement.

Any specification adopted by the governing body, which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect and subject purchase, contract or agreement shall be readvertised, and the original purchase, contract or agreement shall be set aside by the governing body.

Any specification adopted by the governing body for a contract for the collection and disposal of municipal solid waste shall conform to the uniform bid specifications for municipal solid waste collection contracts established pursuant to section 22 of P.L. , c. (C.) (pending in the Legislature as this bill).

(cf: P.L.1971, c.198, s.13)

49. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to read as follows:

15. Duration of certain contracts. All purchases, contracts or agreements for the performing of work or the furnishing of materials, supplies or services shall be made for a period not to exceed 12 consecutive months, except that contracts or agreements may be entered into for longer periods of time as follows:

(1) Supplying of:

(a) ~~Fuel for heating purposes, for any term not exceeding in the aggregate, two years;~~

(b) Fuel or oil for use of airplanes, automobiles, motor vehicles or equipment for any term not exceeding in the aggregate, two years;

(c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;

(2) (Deleted by amendment; P.L.1977, c.53.)

(3) The collection and disposal of [garbage and refuse] municipal solid waste, [and] or the [barging and] disposal of sewage sludge, for any term not exceeding in the aggregate, five years;

(4) The [recycling of solid waste, including the] collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

(5) Data processing service, for any term of not more than three years;

(6) Insurance, for any term of not more than three years;

(7) Leasing or servicing of automobiles, motor vehicles, machinery and equipment of every nature and kind, for a period not to exceed three years; provided, however, such contracts shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a telephone company which is subject to the jurisdiction of the Board of Public Utilities for a term not exceeding five years;

(9) Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

(10) The providing of food services for any term not exceeding three years;

(11) On-site inspections undertaken by private agencies pursuant to the "State Uniform Construction Code Act" (P.L.1975, c.217; C.52:27D-119 et seq.) for any term of not more than three years;

(12) The performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 10 years; provided, however, that such contracts shall be entered into only subject to and in accordance with rules and regulations promulgated by the Department of Energy establishing a methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of materials or supplies for the purpose of elevator maintenance for any term not exceeding three years;

(14) Leasing or servicing of electronic communications equipment for a period not to exceed five years; provided, however, such contract shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(15) Leasing of motor vehicles, machinery and other equipment primarily used to fight fires, for a term not to exceed seven years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et seq.). For the purposes of this subsection, "water supply services" means any service provided by a water supply facility;

"water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

(17) The provision of solid waste disposal services by a resource recovery facility, the furnishing of products of a resource recovery facility, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the waste products resulting from the operation of a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, or the design, financing, construction, operation or maintenance of a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection; and when the facility is in conformance with a solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the facility is in conformance with a solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et seq.). For the purposes of this subsection, "wastewater treatment services" means any service provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of materials or services for the purpose of lighting public streets, for a term not to exceed five years, provided that the rates, fares, tariffs or charges for the supplying of electricity for that purpose are approved by the Board of Public Utilities;

(21) In the case of a contracting unit which is a county or municipality, the provision of emergency medical services by a hospital to residents of a municipality or county as appropriate for a term not to exceed five years.

All multi-year leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Public Utilities, contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

(cf: P.L.1989, c.159, s.2)

50. Section 23 of P.L.1971, c.198 (C.40A:11-23) is amended to read as follows:

23. Advertisements for bids; bids; general requirements. All advertisements for bids shall be published in a legal newspaper sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than 10 days prior to such date; except that all advertisements for bids on contracts for the collection and disposal of municipal solid waste shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but not less than 60 days prior to that date.

The advertisement shall designate the manner of submitting and the method of receiving the bids and the time and place at which the bids will be received. If the published specifications provide for receipt of bids by mail, those bids which are mailed to the contracting unit shall be sealed and shall only be opened for examination at such time and place as all bids received are unsealed and announced. At such time and place the contracting agent of the contracting unit shall publicly receive the bids, and thereupon immediately proceed to unseal them and publicly announce the contents, which announcement shall be made in the presence of any parties bidding or their agents, who are then and there present, and shall also make proper record of the prices and terms, upon the minutes of the governing body, if the award is to be made by the governing body of the contracting unit, or in a book kept for that purpose, if the award is to be made by other than the governing body, and in such latter case it shall be reported to the governing body of the contracting unit for its action thereon, when such action thereon is required. No bids shall be received after the time designated in the advertisement.

Notice of revisions or addenda to advertisements or bid documents relating to bids shall, no later than five days, Saturdays, Sundays and holidays excepted, prior to the date for acceptance of bids, be published in a legal newspaper and be made available by notification in writing by certified mail to any person who has submitted a bid or who has received a bid package; except that notice of revisions or addenda to advertisements or bid documents relating to bids on contracts for the collection and disposal of municipal solid waste shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, no later than 5 days, Saturdays, Sundays and holidays excepted, prior to the date for acceptance of bids.

Failure of the contracting unit to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the contracting unit from accepting the bids and require the readvertisement for bids.

(cf: P.L.1985, c. 429, s.1)

51. Section 10 of P.L.1985, c.38 (C.13:1E-145) is repealed.

52. This act shall take effect on the 45th day after enactment, except that sections 15 and 20 shall take effect 48 months thereafter. Sections 5 through 10 and sections 12, 13 and 23 of this act shall expire on the effective date of sections 15 and 20.

WASTE MANAGEMENT

The "Solid Waste Collection Regulatory Reform Act."

STATEMENT

The Assembly Substitute for A-3136/A-312 ACS would make several substantive changes to the bill reported from the Assembly Waste Management, Planning and Recycling Committee on October 15, 1990.

First, the substitute bill would authorize the Board of Public Utilities to retain residual ratesetting authority over a solid waste collector following the 48-month transition period to total deregulation if the Board determines that: (1) there exists a lack of effective competition within a specified geographic region, class of customers or particular type of collection service; and (2) the lack of effective competition has resulted in the solid waste collector charging rates that exceed rates that would have resulted under effective competition.

The Board would make this determination by comparing the solid waste collector's rates with those received in a comparable region or for comparable solid waste collection services. If necessary, the Board would be authorized to review the solid waste collector's rates and financial records, and to order refunds of excessive rates and take other measures to restore effective competition. Any such order would expire six months following the effective date of the order.

Following its six month review and upon a determination that effective competition has been restored to the affected geographic area, class of customers or type of service, the Board must rescind the order and cease any further rate setting activity with respect to the solid waste collector subject to that order. However, upon a written determination that a lack of effective competition still exists, and that the continued lack of effective competition has resulted in rates or charges received for solid waste collection services which exceed rates or charges that would have resulted from effective competition, the Board may issue a new order and continue rate setting activity with respect to that solid waste collector for an additional six-month period.

Second, the substitute bill would authorize any solid waste collector, during the 48-month transition period to deregulation, to pass along to customers any net savings in the payment of disposal rates or charges at authorized solid waste facilities realized due to the materials recovery activities undertaken by that solid waste collector. These savings would be reflected in an adjustment of the rates or charges set forth in the uniform tariff as solid waste disposal service charges.

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3136 and 312
STATE OF NEW JERSEY

DATED: December 11, 1990

Assembly Committee Substitute (ACS) for Assembly Bill Nos. 3136 and 312 of 1990 establishes procedures for regulatory reform and provides a 48-month transition period from economic regulation to the termination of Board of Public Utilities rate regulation of the solid waste collection industry. The ACS provides that 48 months following the effective date of the bill, the rates or charges imposed by solid waste collectors would no longer be subject to the regulation of the Board. However, between the bill's effective date and the end of the fourth transition year, solid waste collectors would remain subject to the rate regulation of the Board.

The bill requires the Board to adopt rules and regulations establishing solid waste collection rate bands that would govern the rates or charges that may be imposed by solid waste collectors during the 48-month transition period. In addition, the Board is authorized to begin receiving, upon enactment, an annual fee of \$100 from existing solid waste collectors to renew their operating certificate, and a filing fee of \$500 from applicants for an initial solid waste operating certificate. Revenues from this source would be used by the Board for administrative expenses.

The Office of Legislative Services estimates that the bill will result in the annual generation of at least \$180,000 in new revenues for the Board. This amount is based on the \$100 certificate renewal fee that will be imposed on the 1,800 solid waste collection companies now operating in the State. Additional funds will also be generated from the \$500 application fee imposed on new companies in this industry.

The bill's effect on the customers of solid waste collectors cannot be estimated at this time, but the anticipated effect of most rate reform bills is to lower consumer rates through deregulation. During the 48-month transition period, the impact of the bill's rate band adjustments on customers also cannot be ascertained because it can only be accurately assessed when compared to the types of rate increases that would be normally approved by the Board during this period.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

August 22, 1991

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY BILL NOS. 3136 and 312 ACS**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Committee Substitute for Assembly Bill Nos. 3136 and 312 with my objections for reconsideration.

Under existing State solid waste laws, the Board of Public Utilities (BPU) has broad authority to regulate the rates charged by private haulers for trash collection services provided in the State.

This committee substitute generally provides a strong framework for proceeding with the gradual deregulation of the solid waste collection industry in New Jersey.

Under the provisions of the committee substitute, the gradual phaseout of BPU ratesetting authority would be implemented through a four-year series of widening rate bands governing solid waste collector tariffs. After filing baseline tariffs with the BPU, trash haulers would then be free to vary their charges within these rate bands without being required to refile their tariffs with the Board. Based on a formula prescribed in the committee substitute, the rate band schedule would allow for sizable, cumulative downward or upward adjustments by the end of the four-year transition period.

At the same time, the BPU would retain certain administrative powers needed to police the solid waste marketplace after the deregulation process is completed. For example, the Board would still be empowered to review and block business mergers that could erode industry competition in specific geographic regions or service markets. Also, the BPU could impose temporary rate caps for trash collection services upon making a finding that the lack of effective competition in a region or market has resulted in excessive charges to customers.

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These permanent safeguards will help ensure that trash haulers will never be allowed to engage in "price-gouging" actions at the expense of New Jersey households and businesses.

While I am enthusiastic about moving forward with deregulation of the solid waste collection industry and I strongly support most of the provisions of this committee substitute, I nonetheless believe this legislation has several technical problems that must be resolved to ensure the effective implementation of the deregulation process.

Generally, the committee substitute lays out clear economic guidelines for deregulation of the collection industry. During the four-year transition period, hauler charging practices would be governed principally by the statutory rate bands. Following the transition period, the BPU could utilize a newly-defined "effective competition" standard to check any anti-competitive practices that have resulted in excessive charges to customers.

Within this framework, however, one provision of the committee substitute, section 6, represents a potential regulatory anomaly that could undermine the clarity, administrability and enforceability of the planned deregulation process. This section effectively creates a second, overlapping economic standard by authorizing the Board to order rate adjustments and even refunds in cases where solid waste collectors impose charges that exceed those rates that would result from "effective competition."

Unfortunately, the section 6 "effective competition" standard is not adequately defined in the bill. While the BPU is required under section 19 of this legislation to adopt rules defining a new "effective competition" standard, this rulemaking is not due to be completed until six months following enactment of the committee substitute. Also, other provisions of the committee substitute expressly limit the applicability of this standard to the post-transition period.

To address this key technical concern, I am proposing amendments that would clarify the "effective competition" standard to be employed by the BPU during the transition period. This standard would be identical to the "effective competition" standard that would apply during the post-transition period once deregulation of the collection industry has been completed.

Under this approach, the BPU would receive the clearcut authority to enforce this economic standard during the transition period, but this standard would be carefully defined by rulemaking to provide the regulated community with appropriate notice of the criteria and procedures to be employed by the Board in implementing the standard.

In a closely related provision, I am recommending a technical amendment to ensure that the BPU will apply consistent economic standards in reviewing initial uniform tariffs filed by new solid waste collectors and existing haulers seeking to expand their collection territories.

Another provision of the committee substitute, section 10, provides the BPU with the authority to review collector tariffs and rates and require refunds in cases where the rates charges are found to be "excessive." As this provision is currently worded, however, the scope of the Boards's authority to order collector refunds remains uncertain and subject to varying interpretation.

Accordingly, I am proposing a technical amendment to clarify that the BPU could order refunds in instances where customers have been charged rates that would not otherwise have been authorized by the rate band schedule contained in the committee substitute. This proposed amendment would protect New Jersey citizens from overcharging by trash haulers, while providing collectors with ample flexibility to make legitimate rate adjustments within the prescribed rate bands.

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I am also recommending amendments to strengthen the committee substitute provision that authorizes the BPU to impose temporary rate caps under certain circumstances during the post-transition period.

Under current wording in the provision, the Board, after issuing a notice of its intent to review hauler rates, would have only 45 days to gather necessary information from haulers, conduct its technical review, and issue an order imposing temporary rate caps. I believe this time period is too restrictive and could hinder the Board's ability to make a careful, thorough determination on whether rate controls are needed to address marketplace aberrations in specific regions or service markets. As a reasonable alternative, I would recommend that the Board be given 60 days following the receipt of any requested information to make a final determination and issue any necessary rate control orders.

Also, I would propose a further modification to this provision to expand the range of technical factors the BPU could consider in making a rate control determination. I believe that some of the technical factors cited in the provision as extraneous considerations could potentially be germane to a Board determination assessing competition in a region or market. For example, hauler access to material recovery facilities, which can operate to cut trash disposal costs, could be a key determinant of competition within a particular geographic region.

Finally, I am recommending the modification of the current wording that provides for the automatic expiration of Board orders after a time period of six months. This amendment will help to ensure that temporary rate controls imposed by a Board order to protect New Jersey consumers from excessive charges may remain in effect in certain instances where the order is being adjudicated in a contested case.

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For these reasons, I herewith return the Assembly Committee Substitute for Assembly Bill Nos. 3136 and 312 and recommend that it be amended as follows:

- Page 2, Section 3, Line 22: After "nonhazardous" delete ", nonputrescible"
- Page 3, Section 6, Line 40: After "upon" delete "complaint or its own initiative, after hearing" insert "the adoption of the rules and regulations required pursuant to section 19 of P.L. ,c. (C.) pending in the Legislature as this bill)"
- Page 3, Section 6, Line 41: After "may" delete "direct" insert "review the rates or charges of"
- Page 3, Section 6, Line 41: After "collector" insert "pursuant to the provisions of section 20 of P.L. ,c. (C.) (pending in the Legislature as this bill) in accordance with the criteria and procedures established pursuant to section 19 of P.L. ,c. (C.)(pending in the Legislature as this bill)"
- Page 3, Section 6, Line 42: Before "the rates" delete "furnish proof that" insert "determine whether"
- Page 3, Section 6, Line 43: After "services" delete "do not"
- Page 3, Section 6, Line 43: After "exceed" insert "those"
- Page 3, Section 6, Line 45: After "find" insert ", pursuant to the provisions of section 20 of P.L. ,c. (C.)(pending in the Legislature as this bill),"
- Page 4, Section 6, Line 3: After "board" insert "as of the date of the notice of the board's intention to review the rates or charges received by that solid waste collector"
- Page 4, Section 6, Line 3: After "board." insert "c. Nothing contained in sections 9 or 10 of P.L. ,c. (C.) (pending in the Legislature as this bill) shall be construed to interfere with the implementation of this section by the board."

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- Page 4, Section 7, Line 22: After "result in" delete "competitive" insert "just and reasonable"
- Page 4, Section 8, Line 32: After "tariff" delete "as"
- Page 4, Section 8, Line 33: After "disposal" delete "service"
- Page 4, Section 8, Line 47: Before "solid" delete "as"
- Page 4, Section 8, Line 47: After "disposal" delete "service"
- Page 4, Section 8, Line 49: After "tariff" delete "as"
- Page 4, Section 8, Line 50: After "disposal" delete "service"
- Page 6, Section 10, Line 31: After "bands" delete ", whether or not" insert "unless"
- Page 6, Section 10, Line 32: After "have been" delete "reviewed and accepted" insert "expressly rejected"
- Page 6, Section 10, Line 35: After "tariff" insert "filed by a solid waste collector and the adjusted rates or charges imposed by that solid waste collector"
- Page 6, Section 10, Line 35: After "charges" delete "set forth therein" insert "imposed by that solid waste collector"
- Page 6, Section 10, Line 37: After "board," delete "the" insert "any"
- Page 6, Section 10, Line 38: After "adjusted rates or charges" insert "imposed by the solid waste collector"
- Page 6, Section 10, Line 39: After "board" insert "following readjustment of the uniform tariff and the solid waste collection rate bands governing the rates or charges that may be imposed by the solid waste collector"
- Page 7, Section 12, Line 22: After "collector" delete "utilizing the solid waste collection rate bands established by the Board of Public Utilities pursuant to section 9 of P.L. ,c. (C.) (pending in the Legislature as this bill) to make adjustments to the uniform tariff"

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- Page 8, Section 15, Line 35: After "Utilities" insert ",
except as provided in section
20 of P.L. ,c. (C.)
(pending in the Legislature
as this bill)"
- Page 9, Section 18, Line 43: After "sections" insert "7,"
- Page 10, Section 19, Line 19: After "services" delete
"after the effective date of
section 15 of P.L. ,c.
(C.) (pending in the
Legislature as this bill)"
- Page 10, Section 19, Line 46: After "pursuant to" delete
"section" insert "sections 6
and"
- Page 11, Section 20, Line 9: Before "The board" insert
"The board may, within 30
days following the date of
notice, request that the
solid waste collector submit
any additional information
needed to assist in its
review. In the event that
additional information is
requested, the board shall
outline, in writing, why it
deems such information
necessary to make an informed
determination on whether the
collector is charging rates
or charges for solid waste
collection services which
exceed rates or charges that
would have resulted from
effective competition."
- Page 11, Section 20, Line 10: After "later than" delete
"45" insert "60"
- Page 11, Section 20, Line 11: After "notice" insert ",
except that if the board
requests additional
information from the solid
waste collector, the board
shall complete its review
within 60 days of receipt of
all requested information"
- Page 11, Section 20, Line 31: After "consider" delete
"extraneous"
- Page 11, Section 20, Line 32: After "factors" delete "such
as variation in solid waste
disposal or recycling costs,
the availability of, or
access to, materials recovery
facilities, recycling centers
or markets for recyclable
materials, or other seasonal
or short-term
considerations" insert "that

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are not directly related to
the provision of solid waste
collection services"

Page 11, Section 20, Line 49:

After "order" insert "
except that an order may
remain in effect pending the
adjudication of a contested
case"

Page 35, Section 52, Line 21:

After "on the" delete "45th"
insert "90th"

Page 35, Section 52, Line 22:

After "except that" delete
"sections 15 and 20" insert
"section 15"

Page 35, Section 52, Line 24:

After "date of" delete
"sections 15 and 20" insert
"section 15"

Respectfully,

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ Andrew Weber

Counsel to the Governor