

Bill and Sponsors Statement identical to S1903

COMMITTEE STATEMENT:	ASSEMBLY:	Yes
	SENATE:	No
FLOOR AMENDMENT STATEMENTS:		No
LEGISLATIVE FISCAL ESTIMATE:		No
VETO MESSAGE:		No
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"DiFrancesco OK's garbage bill," 2-28-2001 Home News p.A3

SENATE, No. 1903

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 4, 2000

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

Senator Bennett

SYNOPSIS

Provides mechanism for provision of municipal trash collection services or reimbursement to apartment buildings and complexes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/15/2000)

S1903 SINGER, GORMLEY

2

1 AN ACT concerning the provision of solid waste collection services to
2 apartment complexes, supplementing Title 40 of the Revised
3 Statutes and amending P.L.1976, c.68.

4

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

7

8 1. (New section) For the purposes of sections 1 through 5 of
9 P.L. , c. (C.) (pending before the Legislature as this bill):

10 "Qualified apartment building or garden apartment complex" means
11 any building or structure or complex of buildings or structures in
12 which five or more housing units are rented or leased or offered for
13 rental or lease for residential purposes except hotels, motels or other
14 guesthouses serving transient or seasonal guests.

15 "Solid waste collection services" means the collection and disposal
16 of solid waste.

17 "Total cost of services" means the cost that would be incurred by
18 a municipality in providing solid waste collection services to a
19 qualified apartment building or garden apartment complex in the same
20 manner as the municipality provides those services, streetside, to other
21 residents of the municipality.

22

23 2. (New section) a. Except as otherwise provided in subsection
24 b. of this section, when solid waste collection services are provided to
25 qualified private communities within a municipality pursuant to
26 P.L.1989, c.299 (C.40:67-23.2 et seq.), the governing body of that
27 municipality shall reimburse a qualified apartment building or garden
28 apartment complex for the actual cost to the qualified apartment
29 building or garden apartment complex of providing that service, but
30 not more than the amount that the municipality would have expended
31 on the solid waste collection services if provided by the municipality
32 directly to the qualified apartment building or garden apartment
33 complex, calculated as if the apartment units were located along public
34 roads and streets. Alternatively, the municipality shall provide the
35 solid waste collection services in the same manner as provided to the
36 residents of the municipality who live along public roads and streets.

37 b. (1) Nothing in P.L. , c. (C.) (pending before the
38 Legislature as this bill) shall require a municipality to operate any
39 municipally owned or leased vehicles or other equipment, or to
40 provide any of the services enumerated in subsection a. of this section,
41 upon, along or in relation to any road or street in a garden apartment
42 complex which either (a) is not accepted for dedication to public use
43 or (b) does not meet all municipal standards and specifications for such

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

Matter underlined thus is new matter.

1 dedication, except for width.

2 (2) In order to be eligible for solid waste collection services or
3 reimbursement for those services, a qualified apartment building or
4 garden apartment complex shall be required to comply with all
5 recycling requirements generally applicable to all other residential
6 properties within the municipality. If a certified public works manager
7 employed by the municipality determines that a qualified apartment
8 building or garden apartment complex is not in compliance with the
9 municipal recycling requirements, then the municipality may terminate
10 solid waste and recyclables collection services to the building or
11 complex, or reduce its reimbursement payments by an amount equal
12 to the landfill or disposal costs that would be saved if the recyclables
13 were separated from the other solid waste. No solid waste collection
14 shall be terminated or reimbursement amount shall be reduced
15 pursuant to this subsection unless the landlord has been sent written
16 notice of noncompliance and been given 30 days' written notice of the
17 proposed reimbursement amount reduction. During those 30 days the
18 landlord shall have the opportunity to bring the building or complex
19 into compliance with the municipal recycling requirements, and have
20 that compliance certified by a certified public works manager
21 employed by the municipality.

22 c. The Director of the Division of Local Government Services in
23 the Department of Community Affairs, for the purpose of calculating
24 the allowable operating appropriations before exceptions pursuant to
25 section 2 of P.L.1976, c.68 (C.40A:4-45.2), shall provide a cap base
26 adjustment to the total general appropriations of the local budget year
27 prior to the year in which the services are first provided by the
28 municipality for the full amount appropriated pursuant to P.L. , c.
29 (C.) (pending before the Legislature as this bill).

30 d. Reimbursement or provision of services to a qualified apartment
31 building or garden apartment complex, when provided to qualified
32 private communities within the municipality pursuant to P.L.1989,
33 c.299 (C.40:67-23.2 et seq.), shall commence for local budget year
34 2002 in municipalities operating on a calendar year basis and local
35 budget year 2003 in municipalities operating on a State fiscal year
36 basis; provided that reimbursement payments shall be phased-in over
37 a five-year period pursuant to section 4 of P.L. , c. (C.)
38 (pending before the Legislature as this bill).

39 e. No municipality shall be liable for the provision of any solid
40 waste collection services or for the payment of any reimbursement
41 amounts with regard to solid waste collection services to any qualified
42 apartment building or garden apartment complex except as specifically
43 provided pursuant to P.L. , c. (C.) (pending before the
44 Legislature as this bill).

45

46 3. (New section) a. Pursuant to section 2 of P.L. , c. (C.)

1 (pending before the Legislature as this bill) and section 4 of P.L. , c.
2 (C.) (pending before the Legislature as this bill), when a
3 municipal governing body determines not to provide solid waste
4 collection services to a qualified apartment building or garden
5 apartment complex, it shall enter into a written agreement with the
6 qualified apartment building or garden apartment complex to annually
7 reimburse the qualified apartment building or garden apartment
8 complex in an amount not to exceed the cost that would be incurred
9 by the municipality in providing those services.

10 b. The amount to be reimbursed to the qualified apartment building
11 or garden apartment complex shall be used by the qualified apartment
12 building or garden apartment complex to pay for the solid waste
13 collection service that the municipality chooses not to provide. The
14 municipal governing body shall reimburse the qualified apartment
15 building or garden apartment complex for the actual cost to the
16 qualified apartment building or garden apartment complex of providing
17 that service, but not more than the amount that the municipality would
18 have expended on the solid waste collection services if provided by the
19 municipality directly to the qualified apartment building or garden
20 apartment complex, calculated as if the apartment units were located
21 along public roads and streets. The amount of reimbursement for
22 services paid by the municipality shall be distributed among the
23 qualified tenants of the qualified apartment building or garden
24 apartment complex pursuant to section 5 of P.L. , c. (C.)
25 (pending before the Legislature as this bill).

26 c. An agreement entered into pursuant to this section shall provide
27 for an accounting by the qualified apartment building or garden
28 apartment complex of the use of the money paid over to it by the
29 municipality, and for the refunding to the municipality of any payments
30 in excess of the amounts actually expended or contractually committed
31 by the qualified apartment building or garden apartment complex
32 during the accounting period in order to provide for the solid waste
33 collection services covered by the agreement.

34
35 4. (New section) Pursuant to a reimbursement agreement entered
36 into in lieu of providing streetside solid waste collection services, a
37 municipality shall reimburse the landlord of a qualified apartment
38 building or garden apartment complex for a portion of the cost of
39 providing services commencing in local budget year 2002 for
40 municipalities operating on a calendar year basis, and in local budget
41 year 2003, for municipalities operating on a State fiscal year basis, in
42 the following manner:

43 2002 or 2003, as appropriate, ...20% of the total cost of services in
44 2002 or 2003, as appropriate

45 2003 or 2004, as appropriate, ...40% of the total cost of services in
46 2003 or 2004, as appropriate

1 2004 or 2005, as appropriate, ...60% of the total cost of services in
2 2004 or 2005, as appropriate

3 2005 or 2006, as appropriate, ...80% of the total cost of services in
4 2005 or 2006, as appropriate

5 The total cost of services in each local budget year shall be
6 determined pursuant to section 3 of P.L. , c. (C.) (pending
7 before the Legislature as this bill). In local budget year 2006 or 2007,
8 as appropriate, and for each local budget year thereafter, the
9 municipality shall either provide the solid waste collection services
10 pursuant to section 2 of P.L. , c. (C.) (pending before the
11 Legislature as this bill) or enter into a written agreement to annually
12 reimburse the qualified private community pursuant to section 3 of
13 P.L. , c. (C.) (pending before the Legislature as this bill).

14

15 5. (New section) a. For the purposes of this section:

16 "Qualified tenant" means a person who actually had rent paid during
17 the period of time for which a reimbursement amount is received by a
18 landlord, regardless of whether that person is currently a tenant of the
19 landlord; provided that any such tenant who does not occupy a rental
20 unit operated by the landlord at the time the reimbursement amount is
21 received has provided the landlord with a current forwarding address.
22 If a former tenant fails to provide a landlord with a current forwarding
23 address, then that tenant's share of the reimbursement amount shall be
24 distributed among, or credited to, the other qualified tenants in the
25 same proportion as the original distribution or credit was made
26 pursuant to subsection b. of this section.

27 "Reimbursement amount" means a sum of money paid by a
28 municipality to a landlord of a qualified apartment building or garden
29 apartment complex pursuant to a written agreement under section 3 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31 "Rent paid" means rent actually paid, and also includes rent payable
32 but lawfully withheld pursuant to an order of court or an order of a
33 local rent control or rent leveling board. Rent paid shall not include
34 any amount held by a landlord as a security deposit, regardless of
35 whether the security deposit is eventually used as a rent payment.

36 b. When an annual reimbursement amount is received by the
37 landlord of a qualified apartment building or garden apartment
38 complex pursuant to section 3 of P.L. , c. (C.) (pending
39 before the Legislature as this bill), the reimbursement amount shall be
40 distributed to each qualified tenant in proportion to the amount of rent
41 paid by that tenant to the total amount of rent collected by the landlord
42 for the 12-month period, or such other period, for which the
43 reimbursement amount is paid by the municipality to the landlord. The
44 reimbursement amount, at the option of the landlord, shall be credited
45 either as a rent reduction or paid directly to the qualified tenants
46 within 15 business days of receipt by the landlord.

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1 c. In any action for possession instituted by a landlord who has
2 failed to comply with the provisions of this section, no judgment for
3 possession shall be entered until there has been compliance. The court
4 shall continue such case for up to 90 days and if there has not been
5 compliance within such period, the action shall be dismissed.

6 d. A qualified tenant or group of qualified tenants may bring a
7 summary action in municipal court against any landlord who fails to
8 comply with the provisions of this section. The municipal court may
9 require a landlord to pay treble damages, along with reasonable
10 attorney fees and costs, to any qualified tenant, upon a finding that the
11 landlord failed to properly distribute or credit any reimbursement
12 amount within 15 business days of the landlord's receipt of the
13 reimbursement amount.

14 e. The Director of the Division of Local Government Services in
15 the Department of Community Affairs, in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), shall adopt and promulgate such rules and regulations as may be
18 necessary for the implementation of this section.

19
20 6. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read
21 as follows:

22 3. In the preparation of its budget a municipality shall limit any
23 increase in said budget to 5% or the index rate, whichever is less, over
24 the previous year's final appropriations subject to the following
25 exceptions:

26 a. (Deleted by amendment, P.L.1990, c.89.)

27 b. Capital expenditures, including appropriations for current
28 capital expenditures, whether in the capital improvement fund or as a
29 component of a line item elsewhere in the budget, provided that any
30 such current capital expenditure would be otherwise bondable under
31 the requirements of N.J.S.40A:2-21 and 40A:2-22;

32 c. (1) An increase based upon emergency temporary appropriations
33 made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event
34 which immediately endangers the health, safety or property of the
35 residents of the municipality, and over which the governing body had
36 no control and for which it could not plan and emergency
37 appropriations made pursuant to N.J.S.40A:4-46. Emergency
38 temporary appropriations and emergency appropriations shall be
39 approved by at least two-thirds of the governing body and by the
40 Director of the Division of Local Government Services, and shall not
41 exceed in the aggregate 3% of the previous year's final current
42 operating appropriations.

43 (2) (Deleted by amendment, P.L.1990, c.89.)

44 The approval procedure in this subsection shall not apply to
45 appropriations adopted for a purpose referred to in subsection d. or j.
46 below;

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- 1 d. All debt service, including that of a Type I school district;
- 2 e. Upon the approval of the Local Finance Board in the Division
3 of Local Government Services, amounts required for funding a
4 preceding year's deficit;
- 5 f. Amounts reserved for uncollected taxes;
- 6 g. (Deleted by amendment, P.L.1990, c.89.)
- 7 h. Expenditure of amounts derived from new or increased
8 construction, housing, health or fire safety inspection or other service
9 fees imposed by State law, rule or regulation or by local ordinance;
- 10 i. Any amount approved by any referendum;
- 11 j. Amounts required to be paid pursuant to (1) any contract with
12 respect to use, service or provision of any project, facility or public
13 improvement for water, sewerage, parking, senior citizen housing or
14 any similar purpose, or payments on account of debt service therefor,
15 between a municipality and any other municipality, county, school or
16 other district, agency, authority, commission, instrumentality, public
17 corporation, body corporate and politic or political subdivision of this
18 State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60
19 through 13:17-76) by a constituent municipality to the intermunicipal
20 account; (3) any lease of a facility owned by a county improvement
21 authority when the lease payment represents the proportionate amount
22 necessary to amortize the debt incurred by the authority in providing
23 the facility which is leased, in whole or in part; and (4) any repayments
24 under a loan agreement entered into in accordance with the provisions
25 of section 5 of P.L.1992, c.89;
- 26 k. (Deleted by amendment, P.L.1987, c.74.)
- 27 l. Appropriations of federal, county, independent authority or
28 State funds, or by grants from private parties or nonprofit
29 organizations for a specific purpose, and amounts received or to be
30 received from such sources in reimbursement for local expenditures.
31 If a municipality provides matching funds in order to receive the
32 federal, county, independent authority or State funds, or the grants
33 from private parties or nonprofit organizations for a specific purpose,
34 the amount of the match which is required by law or agreement to be
35 provided by the municipality shall be excepted;
- 36 m. (Deleted by amendment, P.L.1987, c.74.)
- 37 n. (Deleted by amendment, P.L.1987, c.74.)
- 38 o. (Deleted by amendment, P.L.1990, c.89.)
- 39 p. (Deleted by amendment, P.L.1987, c.74.)
- 40 q. (Deleted by amendment, P.L.1990, c.89.)
- 41 r. Amounts expended to fund a free public library established
42 pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;
- 43 s. (Deleted by amendment, P.L.1990, c.89.)
- 44 t. Amounts expended in preparing and implementing a housing
45 element and fair share plan pursuant to the provisions of P.L.1985,
46 c.222 (C.52:27D-301 et al.) and any amounts received by a

- 1 municipality under a regional contribution agreement pursuant to
2 section 12 of that act;
- 3 u. Amounts expended to meet the standards established pursuant
4 to the "New Jersey Public Employees' Occupational Safety and Health
5 Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
- 6 v. (Deleted by amendment, P.L.1990, c.89.)
- 7 w. Amounts appropriated for expenditures resulting from the
8 impact of a hazardous waste facility as described in subsection c. of
9 section 32 of P.L.1981, c.279 (C.13:1E-80);
- 10 x. Amounts expended to aid privately owned libraries and reading
11 rooms, pursuant to R.S.40:54-35;
- 12 y. (Deleted by amendment, P.L.1990, c.89.)
- 13 z. (Deleted by amendment, P.L.1990, c.89.)
- 14 aa. Extraordinary expenses, approved by the Local Finance Board,
15 required for the implementation of an interlocal services agreement;
- 16 bb. Any expenditure mandated as a result of a natural disaster, civil
17 disturbance or other emergency that is specifically authorized pursuant
18 to a declaration of an emergency by the President of the United States
19 or by the Governor;
- 20 cc. Expenditures for the cost of services mandated by any order of
21 court, by any federal or State statute, or by administrative rule,
22 directive, order, or other legally binding device issued by a State
23 agency which has identified such cost as mandated expenditures on
24 certification to the Local Finance Board by the State agency;
- 25 dd. Expenditures of amounts actually realized in the local budget
26 year from the sale of municipal assets if appropriated for non-recurring
27 purposes or otherwise approved by the director;
- 28 ee. Any local unit which is determined to be experiencing fiscal
29 distress pursuant to the provisions of P.L.1987, c.75
30 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible
31 municipality" as defined in section 3 of P.L.1987, c.75
32 (C.52:27D-118.26), and which has available surplus pursuant to the
33 spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et
34 seq.), may appropriate and expend an amount of that surplus approved
35 by the director and the Local Finance Board as an exception to the
36 spending limitation. Any determination approving the appropriation
37 and expenditure of surplus as an exception to the spending limitations
38 shall be based upon:
- 39 1) the local unit's revenue needs for the current local budget year
40 and its revenue raising capacity;
- 41 2) the intended actions of the governing body of the local unit to
42 meet the local unit's revenue needs;
- 43 3) the intended actions of the governing body of the local unit to
44 expand its revenue generating capacity for subsequent local budget
45 years;
- 46 4) the local unit's ability to demonstrate the source and existence

1 of sufficient surplus as would be prudent to appropriate as an
2 exception to the spending limitations to meet the operating expenses
3 for the local unit's current budget year; and
4 5) the impact of utilization of surplus upon succeeding budgets of
5 the local unit;
6 ff. Amounts expended for the staffing and operation of the
7 municipal court;
8 gg. Amounts appropriated for the cost of administering a joint
9 insurance fund established pursuant to subsection b. of section 1 of
10 P.L.1983, c.372 (C.40A:10-36), but not including appropriations for
11 claims payments by local member units;
12 hh. Amounts appropriated for the cost of implementing an
13 estimated tax billing system and the issuance of tax bills thereunder
14 pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);
15 ii. Expenditures related to the cost of conducting and
16 implementing a total property tax levy sale pursuant to section 16 of
17 P.L.1997, c.99 (C.54:5-113.5);
18 jj. Amounts expended for a length of service award program
19 pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);
20 kk. Amounts expended to provide municipal services or
21 reimbursement amounts to qualified apartment buildings and garden
22 apartment complexes for the collection and disposal of solid waste
23 generated by the residents of the qualified apartment buildings and
24 garden apartment complexes. [This exception shall apply to all
25 agreements for reimbursement entered into after July 27, 1999] This
26 subsection shall cease to be operative at the end of the first local
27 budget year in which the municipality has fully phased in its
28 reimbursement amount expenses;
29 ll. Amounts expended by a municipality under an interlocal
30 services agreement entered into pursuant to the "Interlocal Services
31 Act," P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the
32 effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing
33 body of the municipality that will receive the service may choose to
34 allow the amount of projected annual savings to be added to the
35 amount of final appropriations upon which its permissible expenditures
36 are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);
37 mm. Amounts expended under a joint contract pursuant to the
38 "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et
39 seq.) entered into after the effective date of P.L.2000, c.126
40 (C.52:13H-21 et al.). The governing body of each participating
41 municipality may choose to allow the amount of projected annual
42 savings to be added to the amount of final appropriations upon which
43 its permissible expenditures are calculated pursuant to section 2 of
44 P.L.1976, c.68 (C.40A:4-45.2).
45 (cf: P.L.2000, c.126, s.19)

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1 year. A landlord would have the option of distributing the
2 reimbursement money or providing a rent credit to the tenants. A
3 landlord that fails to distribute or credit the reimbursement amount
4 could be prevented from having a judgment for possession entered
5 against a tenant. Additionally, the landlord could be liable for treble
6 damages plus reasonable attorney fees and costs in a summary action
7 brought by a tenant or group of tenants in municipal court.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1903

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2000

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 1903.

This bill, as amended, provides the mechanism for provision of solid waste collection services, or the payment of a reimbursement amount, by a municipality to qualified apartment buildings and garden apartment complexes. Under current law, a municipality that provides various services to its residential homeowners is required to provide those same services, or reimbursement for those services, to certain condominiums, cooperatives and other private communities. In WHS Realty Company, Inc. v. Town of Morristown, 323 N.J. Super. 553 (App. Div. 1999), cert. denied 162 N.J. 489 (1999), the court held, on equal protection grounds, that a municipal garbage collection ordinance providing service to qualified private communities could not exclude apartment buildings and garden apartment complexes. This bill represents a rational method for implementing the reasoning of the court in a fiscally prudent manner. Under this bill municipalities that provide solid waste collection services to residential homeowners have the option of either directly providing services to the apartments or entering into an agreement to pay the landlord a reimbursement amount. The reimbursement amount may be phased in over a five-year period so as not to cause a drastic increase in the municipal tax rate in any single budget year. The landlord would be required to comply with any generally applicable municipal residential recycling requirements. The bill also provides for an adjustment to the cap-base during the phase in period. The bill would apply to apartment buildings or garden apartment complexes of five or more tenants and the services or reimbursement would have to commence for local budget year 2002 in municipalities operating on the calendar year and local budget year 2003 for municipalities operating on the fiscal year. This delay is intended to ensure that the municipalities are able to adequately plan for the increased service demand, which may require the renegotiation of contracts, the purchase of new equipment, the hiring of additional personnel, or the negotiation of new joint or consolidated services agreements.

The committee amended the bill to remove section 5, the provision requiring landlords that receive reimbursements from a municipality to pass through those amounts to their tenants, based upon concerns expressed by the New Jersey Apartment Association that the taxpayer referred to in the WHS Realty decision was the landlord, not the tenants, and that there is no dollar-for-dollar correlation between expenses and rent increases.

The committee also made amendments to the bill, upon the recommendation of the Division of Local Government Services in the Department of Community Affairs, of a more technical nature. Those amendments substitute the phrase "multifamily dwelling" for "qualified apartment buildings and garden apartment complexes" and define the term "multifamily dwelling" in terms of words that already have an established meaning under the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.). The amendments also clarify that a municipality is not required to provide solid waste collection services or reimbursement if it does not provide collection for its residents generally. Further amendments recommended by the Division of Local Government Services to subsection c. of section 2 of the bill clarify the cap base adjustment procedure affecting the local budget year following the phase in of reimbursement amounts. Finally, the division also recommended an amendment substituting the term "curbside" for "streetside" since "curbside" is more generally understood as a term of art.

MINORITY STATEMENT

Submitted by Senators RICE and JAMES

The bill, in its present form as amended by the committee, would continue the type of invidious discrimination against apartment dwellers that the court found so offensive in the WHS Realty v. Morristown case.

In this case, the trial judge ruled, and the Appellate Division affirmed, that the economically disadvantaged apartment dwellers were discriminated against because they paid twice for the same service. The court found that both the cost of removing garbage from the complex and the cost of local property taxes were paid by the tenants through their rent.

The trial judge found that the tenants of these apartment complexes were the true targets of unequal treatment. The local ordinance in Morristown provided garbage collection, financed through the general tax rate of the municipality, to all single family home owners, condominium owners and rental apartment dwellers in complexes of less than four units. This service is financed through the general tax

rate of the municipality. Apartment dwellers who live in complexes larger than four units do not receive this service even though they pay property taxes through their rent.

The judge found that this classification discriminated against apartment dwellers in a way that:

is unacceptable under our Constitution ... exclusion of a class of apartment dwellers from such a service constituted invidious discrimination.... When we deal with suburban communities ... we have the risk of having an invidious social economic class system of the worst kind ... the less advantaged economically live in rental apartments, the risk that those people will be discriminated against is real and schemes like this, are unfortunately an embodiment of that reality.

Current law, the "Tenants' Property Tax Rebate Act," may not otherwise require the landlords to pass along these savings. We believe that in order to insure that tenants who have been the object of this discriminatory practice receive a rebate or rental credit, the bill should be amended to require that this reimbursement amount be considered a "property tax reduction," as defined by the "Tenants' Property Tax Rebate Act" and rebated or credited to the tenants in the same manner.

[First Reprint]

SENATE, No. 1903

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 4, 2000

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

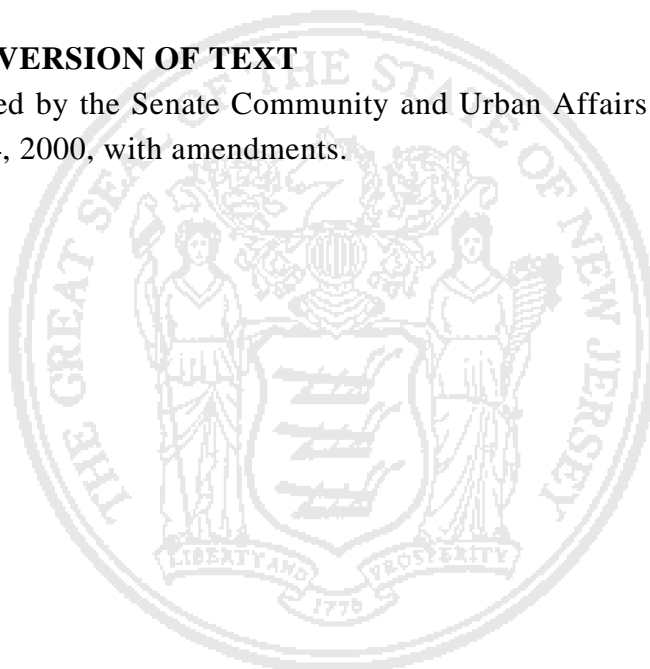
**Senator Bennett, Assemblymen Merkt, Gregg, Felice, Conners,
Assemblywoman Cruz-Perez, Assemblymen LeFevre, Blee and Geist**

SYNOPSIS

Provides mechanism for provision of municipal trash collection services or reimbursement to apartment buildings and complexes.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on December 14, 2000, with amendments.



(Sponsorship Updated As Of: 1/30/2001)

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2 apartment complexes, supplementing Title 40 of the Revised
3 Statutes and amending P.L.1976, c.68.

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

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8 1. (New section) For the purposes of sections 1 through 5 of
9 P.L. , c. (C.) (pending before the Legislature as this bill):
10 ¹["Qualified apartment building or garden apartment complex"]
11 "Multifamily dwelling"¹ means any building or structure or complex of
12 buildings or structures in which five or more ¹[housing] dwelling¹
13 units are rented or leased or offered for rental or lease for residential
14 purposes except hotels, motels or other guesthouses serving transient
15 or seasonal guests ¹as those terms are defined under subsection (j) of
16 section 3 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76
17 (C.55:13A-1 et seq.)¹.

18 "Solid waste collection services" means the collection and disposal
19 of solid waste.

20 "Total cost of services" means the cost that would be incurred by
21 a municipality in providing solid waste collection services to a
22 ¹[qualified apartment building or garden apartment complex]
23 multifamily dwelling¹ in the same manner as the municipality provides
24 those services, ¹[streetside] curbside¹, to other residents of the
25 municipality.

26

27 2. (New section) a. Except as otherwise provided in subsection
28 b. of this section, when solid waste collection services are provided to
29 ¹[qualified private communities within] the residents of¹ a
30 municipality ¹[pursuant to P.L.1989, c.299 (C.40:67-23.2 et seq.)]¹,
31 the governing body of that municipality shall reimburse a ¹[qualified
32 apartment building or garden apartment complex] multifamily
33 dwelling¹ for the actual cost to the ¹[qualified apartment building or
34 garden apartment complex] multifamily dwelling¹ of providing that
35 service, but not more than the amount that the municipality would
36 have expended on the solid waste collection services if provided by the
37 municipality directly to the ¹[qualified apartment building or garden
38 apartment complex] multifamily dwelling¹, calculated as if the
39 ¹[apartment] dwelling¹ units were located along public roads and
40 streets ¹and the service provided curbside¹. Alternatively, ¹when solid
41 waste collection services are provided to the residents of a

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCU committee amendments adopted December 14, 2000.

1 municipality, the governing body of¹ the municipality shall provide the
2 solid waste collection services in the same manner as provided to the
3 residents of the municipality who live along public roads and streets.

4 b. (1) Nothing in P.L. , c. (C.) (pending before the
5 Legislature as this bill) shall require a municipality to operate any
6 municipally owned or leased vehicles or other equipment, or to
7 provide any of the services enumerated in subsection a. of this section,
8 upon, along or in relation to any road or street in a ¹[garden
9 apartment] multifamily dwelling¹ complex which either (a) is not
10 accepted for dedication to public use or (b) does not meet all
11 municipal standards and specifications for such dedication, except for
12 width.

13 (2) In order to be eligible for solid waste collection services or
14 reimbursement for those services, a ¹[qualified apartment building or
15 garden apartment complex] multifamily dwelling¹ shall be required to
16 comply with all recycling requirements generally applicable to all other
17 residential properties within the municipality. If a certified public
18 works manager employed by the municipality determines that a
19 ¹[qualified apartment building or garden apartment complex]
20 multifamily dwelling¹ is not in compliance with the municipal recycling
21 requirements, then the municipality may terminate solid waste and
22 recyclables collection services to the ¹[building or complex]
23 multifamily dwelling¹, or reduce its reimbursement payments by an
24 amount equal to the landfill or disposal costs that would be saved if
25 the recyclables were separated from the other solid waste. No solid
26 waste collection shall be terminated or reimbursement amount shall be
27 reduced pursuant to this subsection unless the landlord has been sent
28 written notice of noncompliance and been given 30 days' written notice
29 of the proposed reimbursement amount reduction. During those 30
30 days the landlord shall have the opportunity to bring the ¹[building or
31 complex] multifamily dwelling¹ into compliance with the municipal
32 recycling requirements, and have that compliance certified by a
33 certified public works manager employed by the municipality.

34 c. The Director of the Division of Local Government Services in
35 the Department of Community Affairs, for the purpose of calculating
36 the allowable operating appropriations before exceptions pursuant to
37 section 2 of P.L.1976, c.68 (C.40A:4-45.2), shall provide a cap base
38 adjustment to the total general appropriations of the local budget year
39 prior to the year in which the ¹solid waste collection¹ services are first
40 ¹provided in full, either through the provision of actual services or
41 following the completion of the phase in of the reimbursement
42 amount¹ provided by the municipality for the full amount
43 ¹[appropriated pursuant to] of the costs attributable to implementing¹
44 P.L. , c. (C.) (pending before the Legislature as this bill).

45 d. Reimbursement or provision of services to a ¹[qualified

1 apartment building or garden apartment complex] multifamily
2 dwelling¹, when solid waste collection services are ¹provided to
3 ¹[qualified private communities] residents generally¹ within the
4 municipality ¹[pursuant to P.L.1989, c.299 (C.40:67-23.2 et seq.)]¹,
5 shall commence for local budget year 2002 in municipalities operating
6 on a calendar year basis and local budget year 2003 in municipalities
7 operating on a State fiscal year basis; provided that reimbursement
8 payments shall be phased-in over a five-year period pursuant to section
9 4 of P.L. , c. (C.) (pending before the Legislature as this
10 bill).

11 e. No municipality shall be liable for the provision of any solid
12 waste collection services or for the payment of any reimbursement
13 amounts with regard to solid waste collection services to any
14 ¹[qualified apartment building or garden apartment complex]
15 multifamily dwelling¹ except as specifically provided pursuant to
16 P.L. , c. (C.) (pending before the Legislature as this bill).
17

18 3. (New section) a. Pursuant to section 2 of P.L. , c. (C.)
19 (pending before the Legislature as this bill) and section 4 of P.L. , c.
20 (C.) (pending before the Legislature as this bill), when a
21 municipal governing body determines not to provide solid waste
22 collection services to a ¹[qualified apartment building or garden
23 apartment complex] multifamily dwelling¹, it shall enter into a written
24 agreement with the ¹[qualified apartment building or garden
25 apartment complex] multifamily dwelling¹ to annually reimburse the
26 ¹[qualified apartment building or garden apartment complex]
27 multifamily dwelling¹ in an amount not to exceed the cost that would
28 be incurred by the municipality in providing those services.

29 b. The amount to be reimbursed to the ¹[qualified apartment
30 building or garden apartment complex] multifamily dwelling¹ shall be
31 used by the ¹[qualified apartment building or garden apartment
32 complex] multifamily dwelling¹ to pay for the solid waste collection
33 service that the municipality chooses not to provide. The municipal
34 governing body shall reimburse the ¹[qualified apartment building or
35 garden apartment complex] multifamily dwelling¹ for the actual cost
36 to the ¹[qualified apartment building or garden apartment complex]
37 multifamily dwelling¹ of providing that service, but not more than the
38 amount that the municipality would have expended on the solid waste
39 collection services if provided by the municipality directly to the
40 ¹[qualified apartment building or garden apartment complex]
41 multifamily dwelling¹, calculated as if the ¹[apartment] dwelling¹ units
42 were located along public roads and streets ¹and the collection service
43 provided curbside¹. ¹[The amount of reimbursement for services paid
44 by the municipality shall be distributed among the qualified tenants of
45 the qualified apartment building or garden apartment complex

1 pursuant to section 5 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).]¹

3 c. An agreement entered into pursuant to this section shall provide
4 for an accounting by the ¹[qualified apartment building or garden
5 apartment complex] multifamily dwelling¹ of the use of the money
6 paid over to it by the municipality, and for the refunding to the
7 municipality of any payments in excess of the amounts actually
8 expended or contractually committed by the ¹[qualified apartment
9 building or garden apartment complex] multifamily dwelling¹ during
10 the accounting period in order to provide for the solid waste collection
11 services covered by the agreement.

12
13 4. (New section) Pursuant to a reimbursement agreement entered
14 into in lieu of providing ¹[streetside] curbside¹ solid waste collection
15 services, a municipality shall reimburse the landlord of a ¹[qualified
16 apartment building or garden apartment complex] multifamily
17 dwelling¹ for a portion of the cost of providing services commencing
18 in local budget year 2002 for municipalities operating on a calendar
19 year basis, and in local budget year 2003, for municipalities operating
20 on a State fiscal year basis, in the following manner:

21 2002 or 2003, as appropriate, ...20% of the total cost of services in
22 2002 or 2003, as appropriate

23 2003 or 2004, as appropriate, ...40% of the total cost of services in
24 2003 or 2004, as appropriate

25 2004 or 2005, as appropriate, ...60% of the total cost of services in
26 2004 or 2005, as appropriate

27 2005 or 2006, as appropriate, ...80% of the total cost of services in
28 2005 or 2006, as appropriate

29 The total cost of services in each local budget year shall be
30 determined pursuant to section 3 of P.L. , c. (C.) (pending
31 before the Legislature as this bill). In local budget year 2006 or 2007,
32 as appropriate, and for each local budget year thereafter, the
33 municipality shall either provide the solid waste collection services
34 pursuant to section 2 of P.L. , c. (C.) (pending before the
35 Legislature as this bill) or enter into a written agreement to annually
36 reimburse the ¹[qualified private community] multifamily dwelling¹
37 pursuant to section 3 of P.L. , c. (C.) (pending before the
38 Legislature as this bill).

39
40 ¹[5. (New section) a. For the purposes of this section:
41 "Qualified tenant" means a person who actually had rent paid during
42 the period of time for which a reimbursement amount is received by a
43 landlord, regardless of whether that person is currently a tenant of the
44 landlord; provided that any such tenant who does not occupy a rental
45 unit operated by the landlord at the time the reimbursement amount is

1 received has provided the landlord with a current forwarding address.
2 If a former tenant fails to provide a landlord with a current forwarding
3 address, then that tenant's share of the reimbursement amount shall be
4 distributed among, or credited to, the other qualified tenants in the
5 same proportion as the original distribution or credit was made
6 pursuant to subsection b. of this section.

7 "Reimbursement amount" means a sum of money paid by a
8 municipality to a landlord of a qualified apartment building or garden
9 apartment complex pursuant to a written agreement under section 3 of
10 P.L. , c. (C.) (pending before the Legislature as this bill).

11 "Rent paid" means rent actually paid, and also includes rent payable
12 but lawfully withheld pursuant to an order of court or an order of a
13 local rent control or rent leveling board. Rent paid shall not include
14 any amount held by a landlord as a security deposit, regardless of
15 whether the security deposit is eventually used as a rent payment.

16 b. When an annual reimbursement amount is received by the
17 landlord of a qualified apartment building or garden apartment
18 complex pursuant to section 3 of P.L. , c. (C.) (pending
19 before the Legislature as this bill), the reimbursement amount shall be
20 distributed to each qualified tenant in proportion to the amount of rent
21 paid by that tenant to the total amount of rent collected by the landlord
22 for the 12-month period, or such other period, for which the
23 reimbursement amount is paid by the municipality to the landlord. The
24 reimbursement amount, at the option of the landlord, shall be credited
25 either as a rent reduction or paid directly to the qualified tenants
26 within 15 business days of receipt by the landlord.

27 c. In any action for possession instituted by a landlord who has
28 failed to comply with the provisions of this section, no judgment for
29 possession shall be entered until there has been compliance. The court
30 shall continue such case for up to 90 days and if there has not been
31 compliance within such period, the action shall be dismissed.

32 d. A qualified tenant or group of qualified tenants may bring a
33 summary action in municipal court against any landlord who fails to
34 comply with the provisions of this section. The municipal court may
35 require a landlord to pay treble damages, along with reasonable
36 attorney fees and costs, to any qualified tenant, upon a finding that the
37 landlord failed to properly distribute or credit any reimbursement
38 amount within 15 business days of the landlord's receipt of the
39 reimbursement amount.

40 e. The Director of the Division of Local Government Services in
41 the Department of Community Affairs, in accordance with the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.), shall adopt and promulgate such rules and regulations as may be
44 necessary for the implementation of this section.]]¹

45

46 ¹[6.] 5.¹ Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended

1 to read as follows:

2 3. In the preparation of its budget a municipality shall limit any
3 increase in said budget to 5% or the index rate, whichever is less, over
4 the previous year's final appropriations subject to the following
5 exceptions:

6 a. (Deleted by amendment, P.L.1990, c.89.)

7 b. Capital expenditures, including appropriations for current capital
8 expenditures, whether in the capital improvement fund or as a
9 component of a line item elsewhere in the budget, provided that any
10 such current capital expenditure would be otherwise bondable under
11 the requirements of N.J.S.40A:2-21 and 40A:2-22;

12 c. (1) An increase based upon emergency temporary appropriations
13 made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event
14 which immediately endangers the health, safety or property of the
15 residents of the municipality, and over which the governing body had
16 no control and for which it could not plan and emergency
17 appropriations made pursuant to N.J.S.40A:4-46. Emergency
18 temporary appropriations and emergency appropriations shall be
19 approved by at least two-thirds of the governing body and by the
20 Director of the Division of Local Government Services, and shall not
21 exceed in the aggregate 3% of the previous year's final current
22 operating appropriations.

23 (2) (Deleted by amendment, P.L.1990, c.89.)

24 The approval procedure in this subsection shall not apply to
25 appropriations adopted for a purpose referred to in subsection d. or j.
26 below;

27 d. All debt service, including that of a Type I school district;

28 e. Upon the approval of the Local Finance Board in the Division
29 of Local Government Services, amounts required for funding a
30 preceding year's deficit;

31 f. Amounts reserved for uncollected taxes;

32 g. (Deleted by amendment, P.L.1990, c.89.)

33 h. Expenditure of amounts derived from new or increased
34 construction, housing, health or fire safety inspection or other service
35 fees imposed by State law, rule or regulation or by local ordinance;

36 i. Any amount approved by any referendum;

37 j. Amounts required to be paid pursuant to (1) any contract with
38 respect to use, service or provision of any project, facility or public
39 improvement for water, sewerage, parking, senior citizen housing or
40 any similar purpose, or payments on account of debt service therefor,
41 between a municipality and any other municipality, county, school or
42 other district, agency, authority, commission, instrumentality, public
43 corporation, body corporate and politic or political subdivision of this
44 State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60
45 through 13:17-76) by a constituent municipality to the intermunicipal
46 account; (3) any lease of a facility owned by a county improvement

- 1 authority when the lease payment represents the proportionate amount
2 necessary to amortize the debt incurred by the authority in providing
3 the facility which is leased, in whole or in part; and (4) any repayments
4 under a loan agreement entered into in accordance with the provisions
5 of section 5 of P.L.1992, c.89;
- 6 k. (Deleted by amendment, P.L.1987, c.74.)
- 7 l. Appropriations of federal, county, independent authority or State
8 funds, or by grants from private parties or nonprofit organizations for
9 a specific purpose, and amounts received or to be received from such
10 sources in reimbursement for local expenditures. If a municipality
11 provides matching funds in order to receive the federal, county,
12 independent authority or State funds, or the grants from private parties
13 or nonprofit organizations for a specific purpose, the amount of the
14 match which is required by law or agreement to be provided by the
15 municipality shall be excepted;
- 16 m. (Deleted by amendment, P.L.1987, c.74.)
- 17 n. (Deleted by amendment, P.L.1987, c.74.)
- 18 o. (Deleted by amendment, P.L.1990, c.89.)
- 19 p. (Deleted by amendment, P.L.1987, c.74.)
- 20 q. (Deleted by amendment, P.L.1990, c.89.)
- 21 r. Amounts expended to fund a free public library established
22 pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;
- 23 s. (Deleted by amendment, P.L.1990, c.89.)
- 24 t. Amounts expended in preparing and implementing a housing
25 element and fair share plan pursuant to the provisions of P.L.1985,
26 c.222 (C.52:27D-301 et al.) and any amounts received by a
27 municipality under a regional contribution agreement pursuant to
28 section 12 of that act;
- 29 u. Amounts expended to meet the standards established pursuant
30 to the "New Jersey Public Employees' Occupational Safety and Health
31 Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
- 32 v. (Deleted by amendment, P.L.1990, c.89.)
- 33 w. Amounts appropriated for expenditures resulting from the
34 impact of a hazardous waste facility as described in subsection c. of
35 section 32 of P.L.1981, c.279 (C.13:1E-80);
- 36 x. Amounts expended to aid privately owned libraries and reading
37 rooms, pursuant to R.S.40:54-35;
- 38 y. (Deleted by amendment, P.L.1990, c.89.)
- 39 z. (Deleted by amendment, P.L.1990, c.89.)
- 40 aa. Extraordinary expenses, approved by the Local Finance Board,
41 required for the implementation of an interlocal services agreement;
- 42 bb. Any expenditure mandated as a result of a natural disaster, civil
43 disturbance or other emergency that is specifically authorized pursuant
44 to a declaration of an emergency by the President of the United States
45 or by the Governor;
- 46 cc. Expenditures for the cost of services mandated by any order of

1 court, by any federal or State statute, or by administrative rule,
2 directive, order, or other legally binding device issued by a State
3 agency which has identified such cost as mandated expenditures on
4 certification to the Local Finance Board by the State agency;

5 dd. Expenditures of amounts actually realized in the local budget
6 year from the sale of municipal assets if appropriated for non-recurring
7 purposes or otherwise approved by the director;

8 ee. Any local unit which is determined to be experiencing fiscal
9 distress pursuant to the provisions of P.L.1987, c.75
10 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible
11 municipality" as defined in section 3 of P.L.1987, c.75
12 (C.52:27D-118.26), and which has available surplus pursuant to the
13 spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et
14 seq.), may appropriate and expend an amount of that surplus approved
15 by the director and the Local Finance Board as an exception to the
16 spending limitation. Any determination approving the appropriation
17 and expenditure of surplus as an exception to the spending limitations
18 shall be based upon:

19 1) the local unit's revenue needs for the current local budget year
20 and its revenue raising capacity;

21 2) the intended actions of the governing body of the local unit to
22 meet the local unit's revenue needs;

23 3) the intended actions of the governing body of the local unit to
24 expand its revenue generating capacity for subsequent local budget
25 years;

26 4) the local unit's ability to demonstrate the source and existence of
27 sufficient surplus as would be prudent to appropriate as an exception
28 to the spending limitations to meet the operating expenses for the local
29 unit's current budget year; and

30 5) the impact of utilization of surplus upon succeeding budgets of
31 the local unit;

32 ff. Amounts expended for the staffing and operation of the
33 municipal court;

34 gg. Amounts appropriated for the cost of administering a joint
35 insurance fund established pursuant to subsection b. of section 1 of
36 P.L.1983, c.372 (C.40A:10-36), but not including appropriations for
37 claims payments by local member units;

38 hh. Amounts appropriated for the cost of implementing an
39 estimated tax billing system and the issuance of tax bills thereunder
40 pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);

41 ii. Expenditures related to the cost of conducting and implementing
42 a total property tax levy sale pursuant to section 16 of P.L.1997, c.99
43 (C.54:5-113.5);

44 jj. Amounts expended for a length of service award program
45 pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);

46 kk. Amounts expended to provide municipal services or

1 reimbursement amounts to ¹[qualified apartment buildings or garden
2 apartment complexes] multifamily dwellings¹ for the collection and
3 disposal of solid waste generated by the residents of the ¹[qualified
4 apartment buildings and garden apartment complexes] multifamily
5 dwellings¹. [This exception shall apply to all agreements for
6 reimbursement entered into after July 27, 1999] This subsection shall
7 cease to be operative at the end of the first local budget year in which
8 the municipality has fully phased in its reimbursement amount
9 expenses;

10 ll. Amounts expended by a municipality under an interlocal services
11 agreement entered into pursuant to the "Interlocal Services Act,"
12 P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the effective
13 date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of
14 the municipality that will receive the service may choose to allow the
15 amount of projected annual savings to be added to the amount of final
16 appropriations upon which its permissible expenditures are calculated
17 pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

18 mm. Amounts expended under a joint contract pursuant to the
19 "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et
20 seq.) entered into after the effective date of P.L.2000, c.126
21 (C.52:13H-21 et al.). The governing body of each participating
22 municipality may choose to allow the amount of projected annual
23 savings to be added to the amount of final appropriations upon which
24 its permissible expenditures are calculated pursuant to section 2 of
25 P.L.1976, c.68 (C.40A:4-45.2).

26 (cf: P.L.2000, c.126, s.19)

27

28 ¹[7.] 6.¹ This act shall take effect immediately; however,
29 reimbursement or provision of services to a ¹[qualified apartment
30 building or garden apartment complex,] multifamily dwelling¹ shall
31 commence for local budget year 2002 for municipalities operating on
32 a calendar year basis and local budget year 2003 for municipalities
33 operating on a State fiscal year basis, and reimbursement payments
34 shall be phased in over a five-year period pursuant to section 4 of
35 P.L. , c. (C.) (pending before the Legislature as this bill).

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1903

STATE OF NEW JERSEY

DATED: JANUARY 18, 2001

The Assembly Local Government Committee reports favorably Senate Bill No. 1903 (1R).

This bill provides the mechanism for provision of solid waste collection services, or the payment of a reimbursement amount, by a municipality to qualified apartment buildings and garden apartment complexes.

Under current law, a municipality that provides various services to its residential homeowners is required to provide those same services, or reimbursement for those services, to certain condominiums, cooperatives and other private communities. In WHS Realty Company, Inc. v. Town of Morristown, 323 N.J. Super. 553 (App. Div. 1999), cert. denied 162 N.J. 489 (1999), the court held, on equal protection grounds, that a municipal garbage collection ordinance providing service to qualified private communities could not exclude apartment buildings and garden apartment complexes.

This bill represents a rational method for implementing the reasoning of the court in a fiscally prudent manner. Under this bill municipalities that provide solid waste collection services to residential homeowners have the option of either directly providing services to the apartments or entering into an agreement to pay the landlord a reimbursement amount. The reimbursement amount may be phased in over a five-year period so as not to cause a drastic increase in the municipal tax rate in any single budget year. The landlord would be required to comply with any generally applicable municipal residential recycling requirements.

The bill also provides for an adjustment to the cap-base during the phase in period. The bill would apply to apartment buildings or garden apartment complexes of five or more tenants and the services or reimbursement would have to commence for local budget year 2002 in municipalities operating on the calendar year and local budget year 2003 for municipalities operating on the fiscal year. This delay is intended to ensure that the municipalities are able to adequately plan for the increased service demand, which may require the renegotiation of contracts, the purchase of new equipment, the hiring of additional personnel, or the negotiation of new joint or consolidated services

agreements.

This bill is identical to Assembly Bill No. 3053 as amended and reported by this committee on January 18, 2001.

ASSEMBLY, No. 3053

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 11, 2000

Sponsored by:

Assemblyman RICK MERKT

District 25 (Morris)

Assemblyman GUY R. GREGG

District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

Assemblymen Felice, Conners, Assemblywoman Cruz-Perez and

Assemblyman LeFevre

SYNOPSIS

Provides mechanism for provision of municipal trash collection services or reimbursement to apartment buildings and complexes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/19/2001)

A3053 MERKT, GREGG

2

1 AN ACT concerning the provision of solid waste collection services to
2 apartment complexes, supplementing Title 40 of the Revised
3 Statutes and amending P.L.1976, c.68.

4

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

7

8 1. (New section) For the purposes of sections 1 through 5 of
9 P.L. , c. (C.) (pending before the Legislature as this bill):

10 "Qualified apartment building or garden apartment complex" means
11 any building or structure or complex of buildings or structures in
12 which five or more housing units are rented or leased or offered for
13 rental or lease for residential purposes except hotels, motels or other
14 guesthouses serving transient or seasonal guests.

15 "Solid waste collection services" means the collection and disposal
16 of solid waste.

17 "Total cost of services" means the cost that would be incurred by
18 a municipality in providing solid waste collection services to a
19 qualified apartment building or garden apartment complex in the same
20 manner as the municipality provides those services, streetside, to other
21 residents of the municipality.

22

23 2. (New section) a. Except as otherwise provided in subsection
24 b. of this section, when solid waste collection services are provided to
25 qualified private communities within a municipality pursuant to
26 P.L.1989, c.299 (C.40:67-23.2 et seq.), the governing body of that
27 municipality shall reimburse a qualified apartment building or garden
28 apartment complex for the actual cost to the qualified apartment
29 building or garden apartment complex of providing that service, but
30 not more than the amount that the municipality would have expended
31 on the solid waste collection services if provided by the municipality
32 directly to the qualified apartment building or garden apartment
33 complex, calculated as if the apartment units were located along public
34 roads and streets. Alternatively, the municipality shall provide the
35 solid waste collection services in the same manner as provided to the
36 residents of the municipality who live along public roads and streets.

37 b. (1) Nothing in P.L. , c. (C.) (pending before the
38 Legislature as this bill) shall require a municipality to operate any
39 municipally owned or leased vehicles or other equipment, or to
40 provide any of the services enumerated in subsection a. of this section,
41 upon, along or in relation to any road or street in a garden apartment
42 complex which either (a) is not accepted for dedication to public use
43 or (b) does not meet all municipal standards and specifications for such

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

Matter underlined thus is new matter.

1 dedication, except for width.

2 (2) In order to be eligible for solid waste collection services or
3 reimbursement for those services, a qualified apartment building or
4 garden apartment complex shall be required to comply with all
5 recycling requirements generally applicable to all other residential
6 properties within the municipality. If a certified public works manager
7 employed by the municipality determines that a qualified apartment
8 building or garden apartment complex is not in compliance with the
9 municipal recycling requirements, then the municipality may terminate
10 solid waste and recyclables collection services to the building or
11 complex, or reduce its reimbursement payments by an amount equal
12 to the landfill or disposal costs that would be saved if the recyclables
13 were separated from the other solid waste. No solid waste collection
14 shall be terminated or reimbursement amount shall be reduced
15 pursuant to this subsection unless the landlord has been sent written
16 notice of noncompliance and been given 30 days' written notice of the
17 proposed reimbursement amount reduction. During those 30 days the
18 landlord shall have the opportunity to bring the building or complex
19 into compliance with the municipal recycling requirements, and have
20 that compliance certified by a certified public works manager
21 employed by the municipality.

22 c. The Director of the Division of Local Government Services in
23 the Department of Community Affairs, for the purpose of calculating
24 the allowable operating appropriations before exceptions pursuant to
25 section 2 of P.L.1976, c.68 (C.40A:4-45.2), shall provide a cap base
26 adjustment to the total general appropriations of the local budget year
27 prior to the year in which the services are first provided by the
28 municipality for the full amount appropriated pursuant to P.L. , c.
29 (C.) (pending before the Legislature as this bill).

30 d. Reimbursement or provision of services to a qualified apartment
31 building or garden apartment complex, when provided to qualified
32 private communities within the municipality pursuant to P.L.1989,
33 c.299 (C.40:67-23.2 et seq.), shall commence for local budget year
34 2002 in municipalities operating on a calendar year basis and local
35 budget year 2003 in municipalities operating on a State fiscal year
36 basis; provided that reimbursement payments shall be phased-in over
37 a five-year period pursuant to section 4 of P.L. , c. (C.)
38 (pending before the Legislature as this bill).

39 e. No municipality shall be liable for the provision of any solid
40 waste collection services or for the payment of any reimbursement
41 amounts with regard to solid waste collection services to any qualified
42 apartment building or garden apartment complex except as specifically
43 provided pursuant to P.L. , c. (C.) (pending before the
44 Legislature as this bill).

45

46 3. (New section) a. Pursuant to section 2 of P.L. , c. (C.)

1 (pending before the Legislature as this bill) and section 4 of P.L. , c.
2 (C.) (pending before the Legislature as this bill), when a
3 municipal governing body determines not to provide solid waste
4 collection services to a qualified apartment building or garden
5 apartment complex, it shall enter into a written agreement with the
6 qualified apartment building or garden apartment complex to annually
7 reimburse the qualified apartment building or garden apartment
8 complex in an amount not to exceed the cost that would be incurred
9 by the municipality in providing those services.

10 b. The amount to be reimbursed to the qualified apartment building
11 or garden apartment complex shall be used by the qualified apartment
12 building or garden apartment complex to pay for the solid waste
13 collection service that the municipality chooses not to provide. The
14 municipal governing body shall reimburse the qualified apartment
15 building or garden apartment complex for the actual cost to the
16 qualified apartment building or garden apartment complex of providing
17 that service, but not more than the amount that the municipality would
18 have expended on the solid waste collection services if provided by the
19 municipality directly to the qualified apartment building or garden
20 apartment complex, calculated as if the apartment units were located
21 along public roads and streets. The amount of reimbursement for
22 services paid by the municipality shall be distributed among the
23 qualified tenants of the qualified apartment building or garden
24 apartment complex pursuant to section 5 of P.L. , c. (C.)
25 (pending before the Legislature as this bill).

26 c. An agreement entered into pursuant to this section shall provide
27 for an accounting by the qualified apartment building or garden
28 apartment complex of the use of the money paid over to it by the
29 municipality, and for the refunding to the municipality of any payments
30 in excess of the amounts actually expended or contractually committed
31 by the qualified apartment building or garden apartment complex
32 during the accounting period in order to provide for the solid waste
33 collection services covered by the agreement.

34
35 4. (New section) Pursuant to a reimbursement agreement entered
36 into in lieu of providing streetside solid waste collection services, a
37 municipality shall reimburse the landlord of a qualified apartment
38 building or garden apartment complex for a portion of the cost of
39 providing services commencing in local budget year 2002 for
40 municipalities operating on a calendar year basis, and in local budget
41 year 2003, for municipalities operating on a State fiscal year basis, in
42 the following manner:

43 2002 or 2003, as appropriate, ...20% of the total cost of services in
44 2002 or 2003, as appropriate

45 2003 or 2004, as appropriate, ...40% of the total cost of services in
46 2003 or 2004, as appropriate

1 2004 or 2005, as appropriate, ...60% of the total cost of services in
2 2004 or 2005, as appropriate

3 2005 or 2006, as appropriate, ...80% of the total cost of services in
4 2005 or 2006, as appropriate

5 The total cost of services in each local budget year shall be
6 determined pursuant to section 3 of P.L. , c. (C.) (pending
7 before the Legislature as this bill). In local budget year 2006 or 2007,
8 as appropriate, and for each local budget year thereafter, the
9 municipality shall either provide the solid waste collection services
10 pursuant to section 2 of P.L. , c. (C.) (pending before the
11 Legislature as this bill) or enter into a written agreement to annually
12 reimburse the qualified private community pursuant to section 3 of
13 P.L. , c. (C.) (pending before the Legislature as this bill).
14

15 5. (New section) a. For the purposes of this section:

16 "Qualified tenant" means a person who actually had rent paid during
17 the period of time for which a reimbursement amount is received by a
18 landlord, regardless of whether that person is currently a tenant of the
19 landlord; provided that any such tenant who does not occupy a rental
20 unit operated by the landlord at the time the reimbursement amount is
21 received has provided the landlord with a current forwarding address.
22 If a former tenant fails to provide a landlord with a current forwarding
23 address, then that tenant's share of the reimbursement amount shall be
24 distributed among, or credited to, the other qualified tenants in the
25 same proportion as the original distribution or credit was made
26 pursuant to subsection b. of this section.

27 "Reimbursement amount" means a sum of money paid by a
28 municipality to a landlord of a qualified apartment building or garden
29 apartment complex pursuant to a written agreement under section 3 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31 "Rent paid" means rent actually paid, and also includes rent payable
32 but lawfully withheld pursuant to an order of court or an order of a
33 local rent control or rent leveling board. Rent paid shall not include
34 any amount held by a landlord as a security deposit, regardless of
35 whether the security deposit is eventually used as a rent payment.

36 b. When an annual reimbursement amount is received by the
37 landlord of a qualified apartment building or garden apartment
38 complex pursuant to section 3 of P.L. , c. (C.) (pending
39 before the Legislature as this bill), the reimbursement amount shall be
40 distributed to each qualified tenant in proportion to the amount of rent
41 paid by that tenant to the total amount of rent collected by the landlord
42 for the 12-month period, or such other period, for which the
43 reimbursement amount is paid by the municipality to the landlord. The
44 reimbursement amount, at the option of the landlord, shall be credited
45 either as a rent reduction or paid directly to the qualified tenants
46 within 15 business days of receipt by the landlord.

1 c. In any action for possession instituted by a landlord who has
2 failed to comply with the provisions of this section, no judgment for
3 possession shall be entered until there has been compliance. The court
4 shall continue such case for up to 90 days and if there has not been
5 compliance within such period, the action shall be dismissed.

6 d. A qualified tenant or group of qualified tenants may bring a
7 summary action in municipal court against any landlord who fails to
8 comply with the provisions of this section. The municipal court may
9 require a landlord to pay treble damages, along with reasonable
10 attorney fees and costs, to any qualified tenant, upon a finding that the
11 landlord failed to properly distribute or credit any reimbursement
12 amount within 15 business days of the landlord's receipt of the
13 reimbursement amount.

14 e. The Director of the Division of Local Government Services in
15 the Department of Community Affairs, in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), shall adopt and promulgate such rules and regulations as may be
18 necessary for the implementation of this section.

19
20 6. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read
21 as follows:

22 3. In the preparation of its budget a municipality shall limit any
23 increase in said budget to 5% or the index rate, whichever is less, over
24 the previous year's final appropriations subject to the following
25 exceptions:

26 a. (Deleted by amendment, P.L.1990, c.89.)

27 b. Capital expenditures, including appropriations for current capital
28 expenditures, whether in the capital improvement fund or as a
29 component of a line item elsewhere in the budget, provided that any
30 such current capital expenditure would be otherwise bondable under
31 the requirements of N.J.S.40A:2-21 and 40A:2-22;

32 c. (1) An increase based upon emergency temporary
33 appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent
34 situation or event which immediately endangers the health, safety or
35 property of the residents of the municipality, and over which the
36 governing body had no control and for which it could not plan and
37 emergency appropriations made pursuant to N.J.S.40A:4-46.
38 Emergency temporary appropriations and emergency appropriations
39 shall be approved by at least two-thirds of the governing body and by
40 the Director of the Division of Local Government Services, and shall
41 not exceed in the aggregate 3% of the previous year's final current
42 operating appropriations.

43 (2) (Deleted by amendment, P.L.1990, c.89.)

44 The approval procedure in this subsection shall not apply to
45 appropriations adopted for a purpose referred to in subsection d. or j.
46 below;

- 1 d. All debt service, including that of a Type I school district;
- 2 e. Upon the approval of the Local Finance Board in the Division
3 of Local Government Services, amounts required for funding a
4 preceding year's deficit;
- 5 f. Amounts reserved for uncollected taxes;
- 6 g. (Deleted by amendment, P.L.1990, c.89.)
- 7 h. Expenditure of amounts derived from new or increased
8 construction, housing, health or fire safety inspection or other service
9 fees imposed by State law, rule or regulation or by local ordinance;
- 10 i. Any amount approved by any referendum;
- 11 j. Amounts required to be paid pursuant to (1) any contract with
12 respect to use, service or provision of any project, facility or public
13 improvement for water, sewerage, parking, senior citizen housing or
14 any similar purpose, or payments on account of debt service therefor,
15 between a municipality and any other municipality, county, school or
16 other district, agency, authority, commission, instrumentality, public
17 corporation, body corporate and politic or political subdivision of this
18 State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60
19 through 13:17-76) by a constituent municipality to the intermunicipal
20 account; (3) any lease of a facility owned by a county improvement
21 authority when the lease payment represents the proportionate amount
22 necessary to amortize the debt incurred by the authority in providing
23 the facility which is leased, in whole or in part; and (4) any repayments
24 under a loan agreement entered into in accordance with the provisions
25 of section 5 of P.L.1992, c.89;
- 26 k. (Deleted by amendment, P.L.1987, c.74.)
- 27 l. Appropriations of federal, county, independent authority or State
28 funds, or by grants from private parties or nonprofit organizations for
29 a specific purpose, and amounts received or to be received from such
30 sources in reimbursement for local expenditures. If a municipality
31 provides matching funds in order to receive the federal, county,
32 independent authority or State funds, or the grants from private parties
33 or nonprofit organizations for a specific purpose, the amount of the
34 match which is required by law or agreement to be provided by the
35 municipality shall be excepted;
- 36 m. (Deleted by amendment, P.L.1987, c.74.)
- 37 n. (Deleted by amendment, P.L.1987, c.74.)
- 38 o. (Deleted by amendment, P.L.1990, c.89.)
- 39 p. (Deleted by amendment, P.L.1987, c.74.)
- 40 q. (Deleted by amendment, P.L.1990, c.89.)
- 41 r. Amounts expended to fund a free public library established
42 pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;
- 43 s. (Deleted by amendment, P.L.1990, c.89.)
- 44 t. Amounts expended in preparing and implementing a housing
45 element and fair share plan pursuant to the provisions of P.L.1985,
46 c.222 (C.52:27D-301 et al.) and any amounts received by a

- 1 municipality under a regional contribution agreement pursuant to
2 section 12 of that act;
- 3 u. Amounts expended to meet the standards established pursuant
4 to the "New Jersey Public Employees' Occupational Safety and Health
5 Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
- 6 v. (Deleted by amendment, P.L.1990, c.89.)
- 7 w. Amounts appropriated for expenditures resulting from the
8 impact of a hazardous waste facility as described in subsection c. of
9 section 32 of P.L.1981, c.279 (C.13:1E-80);
- 10 x. Amounts expended to aid privately owned libraries and reading
11 rooms, pursuant to R.S.40:54-35;
- 12 y. (Deleted by amendment, P.L.1990, c.89.)
- 13 z. (Deleted by amendment, P.L.1990, c.89.)
- 14 aa. Extraordinary expenses, approved by the Local Finance Board,
15 required for the implementation of an interlocal services agreement;
- 16 bb. Any expenditure mandated as a result of a natural disaster, civil
17 disturbance or other emergency that is specifically authorized pursuant
18 to a declaration of an emergency by the President of the United States
19 or by the Governor;
- 20 cc. Expenditures for the cost of services mandated by any order of
21 court, by any federal or State statute, or by administrative rule,
22 directive, order, or other legally binding device issued by a State
23 agency which has identified such cost as mandated expenditures on
24 certification to the Local Finance Board by the State agency;
- 25 dd. Expenditures of amounts actually realized in the local budget
26 year from the sale of municipal assets if appropriated for non-recurring
27 purposes or otherwise approved by the director;
- 28 ee. Any local unit which is determined to be experiencing fiscal
29 distress pursuant to the provisions of P.L.1987, c.75
30 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible
31 municipality" as defined in section 3 of P.L.1987, c.75
32 (C.52:27D-118.26), and which has available surplus pursuant to the
33 spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et
34 seq.), may appropriate and expend an amount of that surplus approved
35 by the director and the Local Finance Board as an exception to the
36 spending limitation. Any determination approving the appropriation
37 and expenditure of surplus as an exception to the spending limitations
38 shall be based upon:
- 39 1) the local unit's revenue needs for the current local budget year
40 and its revenue raising capacity;
- 41 2) the intended actions of the governing body of the local unit to
42 meet the local unit's revenue needs;
- 43 3) the intended actions of the governing body of the local unit to
44 expand its revenue generating capacity for subsequent local budget
45 years;
- 46 4) the local unit's ability to demonstrate the source and existence

1 of sufficient surplus as would be prudent to appropriate as an
2 exception to the spending limitations to meet the operating expenses
3 for the local unit's current budget year; and
4 5) the impact of utilization of surplus upon succeeding budgets of
5 the local unit;
6 ff. Amounts expended for the staffing and operation of the
7 municipal court;
8 gg. Amounts appropriated for the cost of administering a joint
9 insurance fund established pursuant to subsection b. of section 1 of
10 P.L.1983, c.372 (C.40A:10-36), but not including appropriations for
11 claims payments by local member units;
12 hh. Amounts appropriated for the cost of implementing an
13 estimated tax billing system and the issuance of tax bills thereunder
14 pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);
15 ii. Expenditures related to the cost of conducting and implementing
16 a total property tax levy sale pursuant to section 16 of P.L.1997, c.99
17 (C.54:5-113.5);
18 jj. Amounts expended for a length of service award program
19 pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);
20 kk. Amounts expended to provide municipal services or
21 reimbursement amounts to qualified apartment buildings and garden
22 apartment complexes for the collection and disposal of solid waste
23 generated by the residents of the qualified apartment buildings and
24 garden apartment complexes. [This exception shall apply to all
25 agreements for reimbursement entered into after July 27, 1999] This
26 subsection shall cease to be operative at the end of the first local
27 budget year in which the municipality has fully phased in its
28 reimbursement amount expenses;
29 ll. Amounts expended by a municipality under an interlocal services
30 agreement entered into pursuant to the "Interlocal Services Act,"
31 P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the effective
32 date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of
33 the municipality that will receive the service may choose to allow the
34 amount of projected annual savings to be added to the amount of final
35 appropriations upon which its permissible expenditures are calculated
36 pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);
37 mm. Amounts expended under a joint contract pursuant to the
38 "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et
39 seq.) entered into after the effective date of P.L.2000, c.126
40 (C.52:13H-21 et al.). The governing body of each participating
41 municipality may choose to allow the amount of projected annual
42 savings to be added to the amount of final appropriations upon which
43 its permissible expenditures are calculated pursuant to section 2 of
44 P.L.1976, c.68 (C.40A:4-45.2).
45 (cf: P.L.2000, c.126, s.19)

1 7. This act shall take effect immediately; however, reimbursement
2 or provision of services to a qualified apartment building or garden
3 apartment complex, shall commence for local budget year 2002 for
4 municipalities operating on a calendar year basis and local budget year
5 2003 for municipalities operating on a State fiscal year basis, and
6 reimbursement payments shall be phased in over a five-year period
7 pursuant to section 4 of P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9

10

11

STATEMENT

12

13 This bill provides the mechanism for provision of solid waste
14 collection services, or the payment of a reimbursement amount, by a
15 municipality to qualified apartment buildings and complexes. Under
16 current law, a municipality that provides various services to its
17 residential homeowners is required to provide those same services, or
18 reimbursement for those services, to certain condominiums,
19 cooperatives and other private communities. In WHS Realty
20 Company, Inc. v. Town of Morristown, 323 N.J. Super. 553 (App.
21 Div. 1999), cert. denied 162 N.J. 489 (1999), the court held, on equal
22 protection grounds, that a municipal garbage collection ordinance
23 providing service to qualified private communities could not exclude
24 apartment buildings and garden apartment complexes. This bill
25 represents a rational method for implementing the reasoning of the
26 court in a fiscally prudent manner. Under this bill municipalities have
27 the option of either directly providing services or entering into an
28 agreement to pay the landlord a reimbursement amount. The
29 reimbursement amount may be phased in over a five-year period so as
30 not to cause a drastic increase in the municipal tax rate in any single
31 budget year. The landlord would be required to comply with any
32 generally applicable municipal residential recycling requirements. The
33 bill also provides for an adjustment to the cap-base during the phase-in
34 period. The bill would apply to apartment buildings or garden
35 apartment complexes of five or more tenants and the services or
36 reimbursement would have to commence for local budget year 2002
37 in municipalities operating on the calendar year and local budget year
38 2003 for municipalities operating on the fiscal year. This delay is
39 intended to ensure that the municipalities are able to adequately plan
40 for the increased service demand, which may require the renegotiation
41 of contracts, the purchase of new equipment, the hiring of additional
42 personnel, or the negotiation of new joint or consolidated services
43 agreements.

44

45 The bill requires that landlords that receive reimbursement from a
46 municipality pass those funds through to their tenants on a pro rata
basis in accordance with the tenant's share of overall rent paid for the

1 year. A landlord would have the option of distributing the
2 reimbursement money or providing a rent credit to the tenants. A
3 landlord that fails to distribute or credit the reimbursement amount
4 could be prevented from having a judgment for possession entered
5 against a tenant. Additionally, the landlord could be liable for treble
6 damages plus reasonable attorney fees and costs in a summary action
7 brought by a tenant or group of tenants in municipal court.

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3053

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 18, 2001

The Assembly Local Government Committee reports favorably and with committee amendments Assembly Bill No. 3053.

This bill, as amended, provides the mechanism for provision of solid waste collection services, or the payment of a reimbursement amount, by a municipality to qualified apartment buildings and garden apartment complexes.

Under current law, a municipality that provides various services to its residential homeowners is required to provide those same services, or reimbursement for those services, to certain condominiums, cooperatives and other private communities. In WHS Realty Company, Inc. v. Town of Morristown, 323 N.J. Super. 553 (App. Div. 1999), cert. denied 162 N.J. 489 (1999), the court held, on equal protection grounds, that a municipal garbage collection ordinance providing service to qualified private communities could not exclude apartment buildings and garden apartment complexes.

This bill represents a rational method for implementing the reasoning of the court in a fiscally prudent manner. Under this bill municipalities that provide solid waste collection services to residential homeowners have the option of either directly providing services to the apartments or entering into an agreement to pay the landlord a reimbursement amount. The reimbursement amount may be phased in over a five-year period so as not to cause a drastic increase in the municipal tax rate in any single budget year. The landlord would be required to comply with any generally applicable municipal residential recycling requirements. The bill also provides for an adjustment to the cap-base during the phase in period.

The bill would apply to apartment buildings or garden apartment complexes of five or more tenants and the services or reimbursement would be required to commence for local budget year 2002 in municipalities operating on the calendar year and local budget year 2003 for municipalities operating on the fiscal year. This delay is intended to ensure that the municipalities are able to adequately plan for the increased service demand, which may require the renegotiation of contracts, the purchase of new equipment, the hiring of additional personnel, or the negotiation of new joint or consolidated services

agreements.

The committee amended the bill to remove section 5, the provision requiring landlords that receive reimbursements from a municipality to pass through those amounts to their tenants, based upon concerns expressed by the New Jersey Apartment Association that the taxpayer referred to in the WHS Realty decision was the landlord, not the tenants, and that there is no dollar-for-dollar correlation between expenses and rent increases.

The committee also made amendments to the bill, upon the recommendation of the Division of Local Government Services in the Department of Community Affairs, of a more technical nature. Those amendments substitute the phrase "multifamily dwelling" for "qualified apartment buildings and garden apartment complexes" and define the term "multifamily dwelling" in terms of words that already have an established meaning under the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.). The amendments also clarify that a municipality is not required to provide solid waste collection services or reimbursement if it does not provide collection for its residents generally. Further amendments recommended by the Division of Local Government Services to subsection c. of section 2 of the bill clarify the cap base adjustment procedure affecting the local budget year following the phase in of reimbursement amounts. Finally, the division also recommended an amendment substituting the term "curbside" for "streetside" since "curbside" is more generally understood as a term of art.

As amended, Assembly Bill No. 3053 is identical to Senate Bill No. 1903 (1R), also reported by this committee on January 18, 2001.

[First Reprint]

ASSEMBLY, No. 3053

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 11, 2000

Sponsored by:

Assemblyman RICK MERKT

District 25 (Morris)

Assemblyman GUY R. GREGG

District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

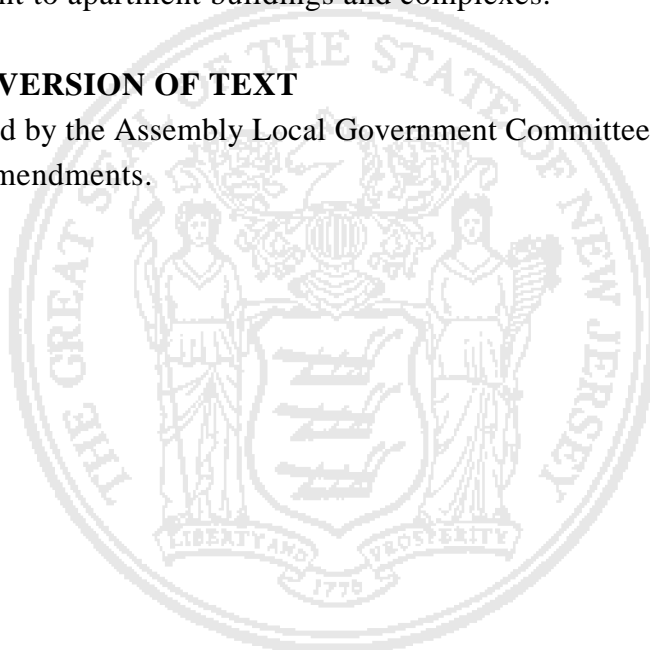
Assemblymen Felice, LeFevre, Blee and Geist

SYNOPSIS

Provides mechanism for provision of municipal trash collection services or reimbursement to apartment buildings and complexes.

CURRENT VERSION OF TEXT

As reported by the Assembly Local Government Committee on January 18, 2001, with amendments.



(Sponsorship Updated As Of: 1/30/2001)

1 AN ACT concerning the provision of solid waste collection services to
2 apartment complexes, supplementing Title 40 of the Revised
3 Statutes and amending P.L.1976, c.68.

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

7
8 1. (New section) For the purposes of sections 1 through 5 of
9 P.L. , c. (C.) (pending before the Legislature as this bill):
10 ¹["Qualified apartment building or garden apartment complex"]
11 "Multifamily dwelling"¹ means any building or structure or complex of
12 buildings or structures in which five or more ¹[housing] dwelling¹
13 units are rented or leased or offered for rental or lease for residential
14 purposes except hotels, motels or other guesthouses serving transient
15 or seasonal guests ¹as those terms are defined under subsection (j) of
16 section 3 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76
17 (C.55:13A-1 et seq.)¹.

18 "Solid waste collection services" means the collection and disposal
19 of solid waste.

20 "Total cost of services" means the cost that would be incurred by
21 a municipality in providing solid waste collection services to a
22 ¹[qualified apartment building or garden apartment complex]
23 multifamily dwelling¹ in the same manner as the municipality provides
24 those services, ¹[streetside] curbside¹, to other residents of the
25 municipality.

26
27 2. (New section) a. Except as otherwise provided in subsection
28 b. of this section, when solid waste collection services are provided to
29 ¹[qualified private communities within] the residents of¹ a
30 municipality ¹[pursuant to P.L.1989, c.299 (C.40:67-23.2 et seq.)]¹,
31 the governing body of that municipality shall reimburse a ¹[qualified
32 apartment building or garden apartment complex] multifamily
33 dwelling¹ for the actual cost to the ¹[qualified apartment building or
34 garden apartment complex] multifamily dwelling¹ of providing that
35 service, but not more than the amount that the municipality would
36 have expended on the solid waste collection services if provided by the
37 municipality directly to the ¹[qualified apartment building or garden
38 apartment complex] multifamily dwelling¹, calculated as if the
39 ¹[apartment] dwelling¹ units were located along public roads and
40 streets ¹and the service provided curbside¹. Alternatively, ¹when solid
41 waste collection services are provided to the residents of a

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALG committee amendments adopted January 18, 2001.

1 municipality, the governing body of¹ the municipality shall provide the
2 solid waste collection services in the same manner as provided to the
3 residents of the municipality who live along public roads and streets.

4 b. (1) Nothing in P.L. , c. (C.) (pending before the
5 Legislature as this bill) shall require a municipality to operate any
6 municipally owned or leased vehicles or other equipment, or to
7 provide any of the services enumerated in subsection a. of this section,
8 upon, along or in relation to any road or street in a ¹[garden
9 apartment] multifamily dwelling¹ complex which either (a) is not
10 accepted for dedication to public use or (b) does not meet all
11 municipal standards and specifications for such dedication, except for
12 width.

13 (2) In order to be eligible for solid waste collection services or
14 reimbursement for those services, a ¹[qualified apartment building or
15 garden apartment complex] multifamily dwelling¹ shall be required to
16 comply with all recycling requirements generally applicable to all other
17 residential properties within the municipality. If a certified public
18 works manager employed by the municipality determines that a
19 ¹[qualified apartment building or garden apartment complex]
20 multifamily dwelling¹ is not in compliance with the municipal recycling
21 requirements, then the municipality may terminate solid waste and
22 recyclables collection services to the ¹[building or complex]
23 multifamily dwelling¹, or reduce its reimbursement payments by an
24 amount equal to the landfill or disposal costs that would be saved if
25 the recyclables were separated from the other solid waste. No solid
26 waste collection shall be terminated or reimbursement amount shall be
27 reduced pursuant to this subsection unless the landlord has been sent
28 written notice of noncompliance and been given 30 days' written notice
29 of the proposed reimbursement amount reduction. During those
30 30 days the landlord shall have the opportunity to bring the ¹[building
31 or complex] multifamily dwelling¹ into compliance with the municipal
32 recycling requirements, and have that compliance certified by a
33 certified public works manager employed by the municipality.

34 c. The Director of the Division of Local Government Services in
35 the Department of Community Affairs, for the purpose of calculating
36 the allowable operating appropriations before exceptions pursuant to
37 section 2 of P.L.1976, c.68 (C.40A:4-45.2), shall provide a cap base
38 adjustment to the total general appropriations of the local budget year
39 prior to the year in which the ¹solid waste collection¹ services are first
40 ¹provided in full, either through the provision of actual services or
41 following the completion of the phase in of the reimbursement
42 amount¹ provided by the municipality for the full amount
43 ¹[appropriated pursuant to] of the costs attributable to implementing¹
44 P.L. , c. (C.) (pending before the Legislature as this bill).

45 d. Reimbursement or provision of services to a ¹[qualified

1 apartment building or garden apartment complex] multifamily
2 dwelling¹, when solid waste collection services are¹ provided to
3 ¹[qualified private communities] residents generally¹ within the
4 municipality ¹[pursuant to P.L.1989, c.299 (C.40:67-23.2 et seq.)]¹,
5 shall commence for local budget year 2002 in municipalities operating
6 on a calendar year basis and local budget year 2003 in municipalities
7 operating on a State fiscal year basis; provided that reimbursement
8 payments shall be phased-in over a five-year period pursuant to section
9 4 of P.L. , c. (C.) (pending before the Legislature as this
10 bill).

11 e. No municipality shall be liable for the provision of any solid
12 waste collection services or for the payment of any reimbursement
13 amounts with regard to solid waste collection services to any
14 ¹[qualified apartment building or garden apartment complex]
15 multifamily dwelling¹ except as specifically provided pursuant to
16 P.L. , c. (C.) (pending before the Legislature as this bill).
17

18 3. (New section) a. Pursuant to section 2 of P.L. , c. (C.)
19 (pending before the Legislature as this bill) and section 4 of P.L. , c.
20 (C.) (pending before the Legislature as this bill), when a
21 municipal governing body determines not to provide solid waste
22 collection services to a ¹[qualified apartment building or garden
23 apartment complex] multifamily dwelling¹, it shall enter into a written
24 agreement with the ¹[qualified apartment building or garden apartment
25 complex] multifamily dwelling¹ to annually reimburse the ¹[qualified
26 apartment building or garden apartment complex] multifamily
27 dwelling¹ in an amount not to exceed the cost that would be incurred
28 by the municipality in providing those services.

29 b. The amount to be reimbursed to the ¹[qualified apartment
30 building or garden apartment complex] multifamily dwelling¹ shall be
31 used by the ¹[qualified apartment building or garden apartment
32 complex] multifamily dwelling¹ to pay for the solid waste collection
33 service that the municipality chooses not to provide. The municipal
34 governing body shall reimburse the ¹[qualified apartment building or
35 garden apartment complex] multifamily dwelling¹ for the actual cost
36 to the ¹[qualified apartment building or garden apartment complex]
37 multifamily dwelling¹ of providing that service, but not more than the
38 amount that the municipality would have expended on the solid waste
39 collection services if provided by the municipality directly to the
40 ¹[qualified apartment building or garden apartment complex]
41 multifamily dwelling¹, calculated as if the ¹[apartment] dwelling¹ units
42 were located along public roads and streets ¹and the collection service
43 provided curbside¹. ¹[The amount of reimbursement for services paid
44 by the municipality shall be distributed among the qualified tenants of
45 the qualified apartment building or garden apartment complex

1 pursuant to section 5 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).]¹

3 c. An agreement entered into pursuant to this section shall provide
4 for an accounting by the ¹[qualified apartment building or garden
5 apartment complex] multifamily dwelling¹ of the use of the money
6 paid over to it by the municipality, and for the refunding to the
7 municipality of any payments in excess of the amounts actually
8 expended or contractually committed by the ¹[qualified apartment
9 building or garden apartment complex] multifamily dwelling¹ during
10 the accounting period in order to provide for the solid waste collection
11 services covered by the agreement.

12

13 4. (New section) Pursuant to a reimbursement agreement entered
14 into in lieu of providing ¹[streetside] curbside¹ solid waste collection
15 services, a municipality shall reimburse the landlord of a ¹[qualified
16 apartment building or garden apartment complex] multifamily
17 dwelling¹ for a portion of the cost of providing services commencing
18 in local budget year 2002 for municipalities operating on a calendar
19 year basis, and in local budget year 2003, for municipalities operating
20 on a State fiscal year basis, in the following manner:

21 2002 or 2003, as appropriate, ...20% of the total cost of services in
22 2002 or 2003, as appropriate

23 2003 or 2004, as appropriate, ...40% of the total cost of services in
24 2003 or 2004, as appropriate

25 2004 or 2005, as appropriate, ...60% of the total cost of services in
26 2004 or 2005, as appropriate

27 2005 or 2006, as appropriate, ...80% of the total cost of services in
28 2005 or 2006, as appropriate

29 The total cost of services in each local budget year shall be
30 determined pursuant to section 3 of P.L. , c. (C.) (pending
31 before the Legislature as this bill). In local budget year 2006 or 2007,
32 as appropriate, and for each local budget year thereafter, the
33 municipality shall either provide the solid waste collection services
34 pursuant to section 2 of P.L. , c. (C.) (pending before the
35 Legislature as this bill) or enter into a written agreement to annually
36 reimburse the ¹[qualified private community] multifamily dwelling¹
37 pursuant to section 3 of P.L. , c. (C.) (pending before the
38 Legislature as this bill).

39

40 ¹[5. (New section) a. For the purposes of this section:

41 "Qualified tenant" means a person who actually had rent paid during
42 the period of time for which a reimbursement amount is received by a
43 landlord, regardless of whether that person is currently a tenant of the
44 landlord; provided that any such tenant who does not occupy a rental
45 unit operated by the landlord at the time the reimbursement amount is

1 received has provided the landlord with a current forwarding address.
2 If a former tenant fails to provide a landlord with a current forwarding
3 address, then that tenant's share of the reimbursement amount shall be
4 distributed among, or credited to, the other qualified tenants in the
5 same proportion as the original distribution or credit was made
6 pursuant to subsection b. of this section.

7 "Reimbursement amount" means a sum of money paid by a
8 municipality to a landlord of a qualified apartment building or garden
9 apartment complex pursuant to a written agreement under section 3 of
10 P.L. , c. (C.) (pending before the Legislature as this bill).

11 "Rent paid" means rent actually paid, and also includes rent payable
12 but lawfully withheld pursuant to an order of court or an order of a
13 local rent control or rent leveling board. Rent paid shall not include
14 any amount held by a landlord as a security deposit, regardless of
15 whether the security deposit is eventually used as a rent payment.

16 b. When an annual reimbursement amount is received by the
17 landlord of a qualified apartment building or garden apartment
18 complex pursuant to section 3 of P.L. , c. (C.) (pending
19 before the Legislature as this bill), the reimbursement amount shall be
20 distributed to each qualified tenant in proportion to the amount of rent
21 paid by that tenant to the total amount of rent collected by the landlord
22 for the 12-month period, or such other period, for which the
23 reimbursement amount is paid by the municipality to the landlord. The
24 reimbursement amount, at the option of the landlord, shall be credited
25 either as a rent reduction or paid directly to the qualified tenants
26 within 15 business days of receipt by the landlord.

27 c. In any action for possession instituted by a landlord who has
28 failed to comply with the provisions of this section, no judgment for
29 possession shall be entered until there has been compliance. The court
30 shall continue such case for up to 90 days and if there has not been
31 compliance within such period, the action shall be dismissed.

32 d. A qualified tenant or group of qualified tenants may bring a
33 summary action in municipal court against any landlord who fails to
34 comply with the provisions of this section. The municipal court may
35 require a landlord to pay treble damages, along with reasonable
36 attorney fees and costs, to any qualified tenant, upon a finding that the
37 landlord failed to properly distribute or credit any reimbursement
38 amount within 15 business days of the landlord's receipt of the
39 reimbursement amount.

40 e. The Director of the Division of Local Government Services in
41 the Department of Community Affairs, in accordance with the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.), shall adopt and promulgate such rules and regulations as may be
44 necessary for the implementation of this section.]¹

45

46 ¹[6.] 5.¹ Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended
47 to read as follows:

1 3. In the preparation of its budget a municipality shall limit any
2 increase in said budget to 5% or the index rate, whichever is less, over
3 the previous year's final appropriations subject to the following
4 exceptions:

5 a. (Deleted by amendment, P.L.1990, c.89.)

6 b. Capital expenditures, including appropriations for current capital
7 expenditures, whether in the capital improvement fund or as a
8 component of a line item elsewhere in the budget, provided that any
9 such current capital expenditure would be otherwise bondable under
10 the requirements of N.J.S.40A:2-21 and 40A:2-22;

11 c. (1) An increase based upon emergency temporary appropriations
12 made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event
13 which immediately endangers the health, safety or property of the
14 residents of the municipality, and over which the governing body had
15 no control and for which it could not plan and emergency
16 appropriations made pursuant to N.J.S.40A:4-46. Emergency
17 temporary appropriations and emergency appropriations shall be
18 approved by at least two-thirds of the governing body and by the
19 Director of the Division of Local Government Services, and shall not
20 exceed in the aggregate 3% of the previous year's final current
21 operating appropriations.

22 (2) (Deleted by amendment, P.L.1990, c.89.)

23 The approval procedure in this subsection shall not apply to
24 appropriations adopted for a purpose referred to in subsection d. or j.
25 below;

26 d. All debt service, including that of a Type I school district;

27 e. Upon the approval of the Local Finance Board in the Division
28 of Local Government Services, amounts required for funding a
29 preceding year's deficit;

30 f. Amounts reserved for uncollected taxes;

31 g. (Deleted by amendment, P.L.1990, c.89.)

32 h. Expenditure of amounts derived from new or increased
33 construction, housing, health or fire safety inspection or other service
34 fees imposed by State law, rule or regulation or by local ordinance;

35 i. Any amount approved by any referendum;

36 j. Amounts required to be paid pursuant to (1) any contract with
37 respect to use, service or provision of any project, facility or public
38 improvement for water, sewerage, parking, senior citizen housing or
39 any similar purpose, or payments on account of debt service therefor,
40 between a municipality and any other municipality, county, school or
41 other district, agency, authority, commission, instrumentality, public
42 corporation, body corporate and politic or political subdivision of this
43 State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60
44 through 13:17-76) by a constituent municipality to the intermunicipal
45 account; (3) any lease of a facility owned by a county improvement
46 authority when the lease payment represents the proportionate amount

1 necessary to amortize the debt incurred by the authority in providing
2 the facility which is leased, in whole or in part; and (4) any repayments
3 under a loan agreement entered into in accordance with the provisions
4 of section 5 of P.L.1992, c.89;

5 k. (Deleted by amendment, P.L.1987, c.74.)

6 l. Appropriations of federal, county, independent authority or State
7 funds, or by grants from private parties or nonprofit organizations for
8 a specific purpose, and amounts received or to be received from such
9 sources in reimbursement for local expenditures. If a municipality
10 provides matching funds in order to receive the federal, county,
11 independent authority or State funds, or the grants from private parties
12 or nonprofit organizations for a specific purpose, the amount of the
13 match which is required by law or agreement to be provided by the
14 municipality shall be excepted;

15 m. (Deleted by amendment, P.L.1987, c.74.)

16 n. (Deleted by amendment, P.L.1987, c.74.)

17 o. (Deleted by amendment, P.L.1990, c.89.)

18 p. (Deleted by amendment, P.L.1987, c.74.)

19 q. (Deleted by amendment, P.L.1990, c.89.)

20 r. Amounts expended to fund a free public library established
21 pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;

22 s. (Deleted by amendment, P.L.1990, c.89.)

23 t. Amounts expended in preparing and implementing a housing
24 element and fair share plan pursuant to the provisions of P.L.1985,
25 c.222 (C.52:27D-301 et al.) and any amounts received by a
26 municipality under a regional contribution agreement pursuant to
27 section 12 of that act;

28 u. Amounts expended to meet the standards established pursuant
29 to the "New Jersey Public Employees' Occupational Safety and Health
30 Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

31 v. (Deleted by amendment, P.L.1990, c.89.)

32 w. Amounts appropriated for expenditures resulting from the
33 impact of a hazardous waste facility as described in subsection c. of
34 section 32 of P.L.1981, c.279 (C.13:1E-80);

35 x. Amounts expended to aid privately owned libraries and reading
36 rooms, pursuant to R.S.40:54-35;

37 y. (Deleted by amendment, P.L.1990, c.89.)

38 z. (Deleted by amendment, P.L.1990, c.89.)

39 aa. Extraordinary expenses, approved by the Local Finance Board,
40 required for the implementation of an interlocal services agreement;

41 bb. Any expenditure mandated as a result of a natural disaster, civil
42 disturbance or other emergency that is specifically authorized pursuant
43 to a declaration of an emergency by the President of the United States
44 or by the Governor;

45 cc. Expenditures for the cost of services mandated by any order of
46 court, by any federal or State statute, or by administrative rule,

1 directive, order, or other legally binding device issued by a State
2 agency which has identified such cost as mandated expenditures on
3 certification to the Local Finance Board by the State agency;

4 dd. Expenditures of amounts actually realized in the local budget
5 year from the sale of municipal assets if appropriated for non-recurring
6 purposes or otherwise approved by the director;

7 ee. Any local unit which is determined to be experiencing fiscal
8 distress pursuant to the provisions of P.L.1987, c.75
9 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible
10 municipality" as defined in section 3 of P.L.1987, c.75
11 (C.52:27D-118.26), and which has available surplus pursuant to the
12 spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et
13 seq.), may appropriate and expend an amount of that surplus approved
14 by the director and the Local Finance Board as an exception to the
15 spending limitation. Any determination approving the appropriation
16 and expenditure of surplus as an exception to the spending limitations
17 shall be based upon:

18 1) the local unit's revenue needs for the current local budget year
19 and its revenue raising capacity;

20 2) the intended actions of the governing body of the local unit to
21 meet the local unit's revenue needs;

22 3) the intended actions of the governing body of the local unit to
23 expand its revenue generating capacity for subsequent local budget
24 years;

25 4) the local unit's ability to demonstrate the source and existence
26 of sufficient surplus as would be prudent to appropriate as an
27 exception to the spending limitations to meet the operating expenses
28 for the local unit's current budget year; and

29 5) the impact of utilization of surplus upon succeeding budgets of
30 the local unit;

31 ff. Amounts expended for the staffing and operation of the
32 municipal court;

33 gg. Amounts appropriated for the cost of administering a joint
34 insurance fund established pursuant to subsection b. of section 1 of
35 P.L.1983, c.372 (C.40A:10-36), but not including appropriations for
36 claims payments by local member units;

37 hh. Amounts appropriated for the cost of implementing an
38 estimated tax billing system and the issuance of tax bills thereunder
39 pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);

40 ii. Expenditures related to the cost of conducting and implementing
41 a total property tax levy sale pursuant to section 16 of P.L.1997, c.99
42 (C.54:5-113.5);

43 jj. Amounts expended for a length of service award program
44 pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);

45 kk. Amounts expended to provide municipal services or
46 reimbursement amounts to ¹[qualified apartment buildings or garden

1 apartment complexes] multifamily dwellings¹ for the collection and
2 disposal of solid waste generated by the residents of the ¹[qualified
3 apartment buildings and garden apartment complexes] multifamily
4 dwellings¹. [This exception shall apply to all agreements for
5 reimbursement entered into after July 27, 1999] This subsection shall
6 cease to be operative at the end of the first local budget year in which
7 the municipality has fully phased in its reimbursement amount
8 expenses;

9 ll. Amounts expended by a municipality under an interlocal services
10 agreement entered into pursuant to the "Interlocal Services Act,"
11 P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the effective
12 date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of
13 the municipality that will receive the service may choose to allow the
14 amount of projected annual savings to be added to the amount of final
15 appropriations upon which its permissible expenditures are calculated
16 pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

17 mm. Amounts expended under a joint contract pursuant to the
18 "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et
19 seq.) entered into after the effective date of P.L.2000, c.126
20 (C.52:13H-21 et al.). The governing body of each participating
21 municipality may choose to allow the amount of projected annual
22 savings to be added to the amount of final appropriations upon which
23 its permissible expenditures are calculated pursuant to section 2 of
24 P.L.1976, c.68 (C.40A:4-45.2).

25 (cf: P.L.2000, c.126, s.19)

26

27 ¹[7.] 6.¹ This act shall take effect immediately; however,
28 reimbursement or provision of services to a ¹[qualified apartment
29 building or garden apartment complex,] multifamily dwelling¹ shall
30 commence for local budget year 2002 for municipalities operating on
31 a calendar year basis and local budget year 2003 for municipalities
32 operating on a State fiscal year basis, and reimbursement payments
33 shall be phased in over a five-year period pursuant to section 4 of
34 P.L. , c. (C.) (pending before the Legislature as this bill).

P.L. 2001, CHAPTER 25, *approved February 27, 2001*
Senate, No. 1903 (*First Reprint*)

1 **AN ACT** concerning the provision of solid waste collection services to
2 apartment complexes, supplementing Title 40 of the Revised
3 Statutes and amending P.L.1976, c.68.

4

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

7

8 1. (New section) For the purposes of sections 1 through 5 of
9 P.L. , c. (C.) (pending before the Legislature as this bill):

10 ¹["Qualified apartment building or garden apartment complex"]
11 "Multifamily dwelling"¹ means any building or structure or complex of
12 buildings or structures in which five or more ¹[housing] dwelling¹
13 units are rented or leased or offered for rental or lease for residential
14 purposes except hotels, motels or other guesthouses serving transient
15 or seasonal guests ¹as those terms are defined under subsection (j) of
16 section 3 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76
17 (C.55:13A-1 et seq.)¹.

18 "Solid waste collection services" means the collection and disposal
19 of solid waste.

20 "Total cost of services" means the cost that would be incurred by
21 a municipality in providing solid waste collection services to a
22 ¹[qualified apartment building or garden apartment complex]
23 multifamily dwelling¹ in the same manner as the municipality provides
24 those services, ¹[streetside] curbside¹, to other residents of the
25 municipality.

26

27 2. (New section) a. Except as otherwise provided in subsection
28 b. of this section, when solid waste collection services are provided to
29 ¹[qualified private communities within] the residents of¹ a
30 municipality ¹[pursuant to P.L.1989, c.299 (C.40:67-23.2 et seq.)]¹,
31 the governing body of that municipality shall reimburse a ¹[qualified
32 apartment building or garden apartment complex] multifamily
33 dwelling¹ for the actual cost to the ¹[qualified apartment building or
34 garden apartment complex] multifamily dwelling¹ of providing that
35 service, but not more than the amount that the municipality would
36 have expended on the solid waste collection services if provided by the
37 municipality directly to the ¹[qualified apartment building or garden

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCU committee amendments adopted December 14, 2000.

1 apartment complex] multifamily dwelling¹, calculated as if the
2 ¹[apartment] dwelling¹ units were located along public roads and
3 streets ¹and the service provided curbside¹. Alternatively, ¹when solid
4 waste collection services are provided to the residents of a
5 municipality, the governing body of¹ the municipality shall provide the
6 solid waste collection services in the same manner as provided to the
7 residents of the municipality who live along public roads and streets.

8 b. (1) Nothing in P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall require a municipality to operate any
10 municipally owned or leased vehicles or other equipment, or to
11 provide any of the services enumerated in subsection a. of this section,
12 upon, along or in relation to any road or street in a ¹[garden
13 apartment] multifamily dwelling¹ complex which either (a) is not
14 accepted for dedication to public use or (b) does not meet all
15 municipal standards and specifications for such dedication, except for
16 width.

17 (2) In order to be eligible for solid waste collection services or
18 reimbursement for those services, a ¹[qualified apartment building or
19 garden apartment complex] multifamily dwelling¹ shall be required to
20 comply with all recycling requirements generally applicable to all other
21 residential properties within the municipality. If a certified public
22 works manager employed by the municipality determines that a
23 ¹[qualified apartment building or garden apartment complex]
24 multifamily dwelling¹ is not in compliance with the municipal recycling
25 requirements, then the municipality may terminate solid waste and
26 recyclables collection services to the ¹[building or complex]
27 multifamily dwelling¹, or reduce its reimbursement payments by an
28 amount equal to the landfill or disposal costs that would be saved if
29 the recyclables were separated from the other solid waste. No solid
30 waste collection shall be terminated or reimbursement amount shall be
31 reduced pursuant to this subsection unless the landlord has been sent
32 written notice of noncompliance and been given 30 days' written notice
33 of the proposed reimbursement amount reduction. During those 30
34 days the landlord shall have the opportunity to bring the ¹[building or
35 complex] multifamily dwelling¹ into compliance with the municipal
36 recycling requirements, and have that compliance certified by a
37 certified public works manager employed by the municipality.

38 c. The Director of the Division of Local Government Services in
39 the Department of Community Affairs, for the purpose of calculating
40 the allowable operating appropriations before exceptions pursuant to
41 section 2 of P.L.1976, c.68 (C.40A:4-45.2), shall provide a cap base
42 adjustment to the total general appropriations of the local budget year
43 prior to the year in which the ¹solid waste collection¹ services are first
44 ¹provided in full, either through the provision of actual services or
45 following the completion of the phase in of the reimbursement

1 amount¹ provided by the municipality for the full amount
2 ¹[appropriated pursuant to] of the costs attributable to implementing¹
3 P.L. , c. (C.) (pending before the Legislature as this bill).

4 d. Reimbursement or provision of services to a ¹[qualified
5 apartment building or garden apartment complex] multifamily
6 dwelling¹, when ¹solid waste collection services are ¹provided to
7 ¹[qualified private communities] residents generally¹ within the
8 municipality ¹[pursuant to P.L.1989, c.299 (C.40:67-23.2 et seq.)]¹,
9 shall commence for local budget year 2002 in municipalities operating
10 on a calendar year basis and local budget year 2003 in municipalities
11 operating on a State fiscal year basis; provided that reimbursement
12 payments shall be phased-in over a five-year period pursuant to section
13 4 of P.L. , c. (C.) (pending before the Legislature as this
14 bill).

15 e. No municipality shall be liable for the provision of any solid
16 waste collection services or for the payment of any reimbursement
17 amounts with regard to solid waste collection services to any
18 ¹[qualified apartment building or garden apartment complex]
19 multifamily dwelling¹ except as specifically provided pursuant to
20 P.L. , c. (C.) (pending before the Legislature as this bill).
21

22 3. (New section) a. Pursuant to section 2 of P.L. , c. (C.)
23 (pending before the Legislature as this bill) and section 4 of P.L. , c.
24 (C.) (pending before the Legislature as this bill), when a
25 municipal governing body determines not to provide solid waste
26 collection services to a ¹[qualified apartment building or garden
27 apartment complex] multifamily dwelling¹, it shall enter into a written
28 agreement with the ¹[qualified apartment building or garden
29 apartment complex] multifamily dwelling¹ to annually reimburse the
30 ¹[qualified apartment building or garden apartment complex]
31 multifamily dwelling¹ in an amount not to exceed the cost that would
32 be incurred by the municipality in providing those services.

33 b. The amount to be reimbursed to the ¹[qualified apartment
34 building or garden apartment complex] multifamily dwelling¹ shall be
35 used by the ¹[qualified apartment building or garden apartment
36 complex] multifamily dwelling¹ to pay for the solid waste collection
37 service that the municipality chooses not to provide. The municipal
38 governing body shall reimburse the ¹[qualified apartment building or
39 garden apartment complex] multifamily dwelling¹ for the actual cost
40 to the ¹[qualified apartment building or garden apartment complex]
41 multifamily dwelling¹ of providing that service, but not more than the
42 amount that the municipality would have expended on the solid waste
43 collection services if provided by the municipality directly to the
44 ¹[qualified apartment building or garden apartment complex]
45 multifamily dwelling¹, calculated as if the ¹[apartment]dwelling¹ units

1 were located along public roads and streets ¹and the collection service
2 provided curbside¹. ¹ [The amount of reimbursement for services paid
3 by the municipality shall be distributed among the qualified tenants of
4 the qualified apartment building or garden apartment complex
5 pursuant to section 5 of P.L. , c. (C.) (pending before the
6 Legislature as this bill).]¹

7 c. An agreement entered into pursuant to this section shall provide
8 for an accounting by the ¹ [qualified apartment building or garden
9 apartment complex] multifamily dwelling¹ of the use of the money
10 paid over to it by the municipality, and for the refunding to the
11 municipality of any payments in excess of the amounts actually
12 expended or contractually committed by the ¹ [qualified apartment
13 building or garden apartment complex] multifamily dwelling¹ during
14 the accounting period in order to provide for the solid waste collection
15 services covered by the agreement.

16
17 4. (New section) Pursuant to a reimbursement agreement entered
18 into in lieu of providing ¹ [streetside] curbside¹ solid waste collection
19 services, a municipality shall reimburse the landlord of a ¹ [qualified
20 apartment building or garden apartment complex] multifamily
21 dwelling¹ for a portion of the cost of providing services commencing
22 in local budget year 2002 for municipalities operating on a calendar
23 year basis, and in local budget year 2003, for municipalities operating
24 on a State fiscal year basis, in the following manner:

25 2002 or 2003, as appropriate, ...20% of the total cost of services in
26 2002 or 2003, as appropriate

27 2003 or 2004, as appropriate, ...40% of the total cost of services in
28 2003 or 2004, as appropriate

29 2004 or 2005, as appropriate, ...60% of the total cost of services in
30 2004 or 2005, as appropriate

31 2005 or 2006, as appropriate, ...80% of the total cost of services in
32 2005 or 2006, as appropriate

33 The total cost of services in each local budget year shall be
34 determined pursuant to section 3 of P.L. , c. (C.) (pending
35 before the Legislature as this bill). In local budget year 2006 or 2007,
36 as appropriate, and for each local budget year thereafter, the
37 municipality shall either provide the solid waste collection services
38 pursuant to section 2 of P.L. , c. (C.) (pending before the
39 Legislature as this bill) or enter into a written agreement to annually
40 reimburse the ¹ [qualified private community] multifamily dwelling¹
41 pursuant to section 3 of P.L. , c. (C.) (pending before the
42 Legislature as this bill).

43

44 ¹ [5. (New section) a. For the purposes of this section:

45 "Qualified tenant" means a person who actually had rent paid during

1 the period of time for which a reimbursement amount is received by a
2 landlord, regardless of whether that person is currently a tenant of the
3 landlord; provided that any such tenant who does not occupy a rental
4 unit operated by the landlord at the time the reimbursement amount is
5 received has provided the landlord with a current forwarding address.
6 If a former tenant fails to provide a landlord with a current forwarding
7 address, then that tenant's share of the reimbursement amount shall be
8 distributed among, or credited to, the other qualified tenants in the
9 same proportion as the original distribution or credit was made
10 pursuant to subsection b. of this section.

11 "Reimbursement amount" means a sum of money paid by a
12 municipality to a landlord of a qualified apartment building or garden
13 apartment complex pursuant to a written agreement under section 3 of
14 P.L. , c. (C.) (pending before the Legislature as this bill).

15 "Rent paid" means rent actually paid, and also includes rent payable
16 but lawfully withheld pursuant to an order of court or an order of a
17 local rent control or rent leveling board. Rent paid shall not include
18 any amount held by a landlord as a security deposit, regardless of
19 whether the security deposit is eventually used as a rent payment.

20 b. When an annual reimbursement amount is received by the
21 landlord of a qualified apartment building or garden apartment
22 complex pursuant to section 3 of P.L. , c. (C.) (pending
23 before the Legislature as this bill), the reimbursement amount shall be
24 distributed to each qualified tenant in proportion to the amount of rent
25 paid by that tenant to the total amount of rent collected by the landlord
26 for the 12-month period, or such other period, for which the
27 reimbursement amount is paid by the municipality to the landlord. The
28 reimbursement amount, at the option of the landlord, shall be credited
29 either as a rent reduction or paid directly to the qualified tenants
30 within 15 business days of receipt by the landlord.

31 c. In any action for possession instituted by a landlord who has
32 failed to comply with the provisions of this section, no judgment for
33 possession shall be entered until there has been compliance. The court
34 shall continue such case for up to 90 days and if there has not been
35 compliance within such period, the action shall be dismissed.

36 d. A qualified tenant or group of qualified tenants may bring a
37 summary action in municipal court against any landlord who fails to
38 comply with the provisions of this section. The municipal court may
39 require a landlord to pay treble damages, along with reasonable
40 attorney fees and costs, to any qualified tenant, upon a finding that the
41 landlord failed to properly distribute or credit any reimbursement
42 amount within 15 business days of the landlord's receipt of the
43 reimbursement amount.

44 e. The Director of the Division of Local Government Services in
45 the Department of Community Affairs, in accordance with the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), shall adopt and promulgate such rules and regulations as may be
2 necessary for the implementation of this section.]]¹

3
4 ¹[6.] 5.¹ Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended
5 to read as follows:

6 3. In the preparation of its budget a municipality shall limit any
7 increase in said budget to 5% or the index rate, whichever is less, over
8 the previous year's final appropriations subject to the following
9 exceptions:

10 a. (Deleted by amendment, P.L.1990, c.89.)

11 b. Capital expenditures, including appropriations for current capital
12 expenditures, whether in the capital improvement fund or as a
13 component of a line item elsewhere in the budget, provided that any
14 such current capital expenditure would be otherwise bondable under
15 the requirements of N.J.S.40A:2-21 and 40A:2-22;

16 c. (1) An increase based upon emergency temporary appropriations
17 made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event
18 which immediately endangers the health, safety or property of the
19 residents of the municipality, and over which the governing body had
20 no control and for which it could not plan and emergency
21 appropriations made pursuant to N.J.S.40A:4-46. Emergency
22 temporary appropriations and emergency appropriations shall be
23 approved by at least two-thirds of the governing body and by the
24 Director of the Division of Local Government Services, and shall not
25 exceed in the aggregate 3% of the previous year's final current
26 operating appropriations.

27 (2) (Deleted by amendment, P.L.1990, c.89.)

28 The approval procedure in this subsection shall not apply to
29 appropriations adopted for a purpose referred to in subsection d. or j.
30 below;

31 d. All debt service, including that of a Type I school district;

32 e. Upon the approval of the Local Finance Board in the Division
33 of Local Government Services, amounts required for funding a
34 preceding year's deficit;

35 f. Amounts reserved for uncollected taxes;

36 g. (Deleted by amendment, P.L.1990, c.89.)

37 h. Expenditure of amounts derived from new or increased
38 construction, housing, health or fire safety inspection or other service
39 fees imposed by State law, rule or regulation or by local ordinance;

40 i. Any amount approved by any referendum;

41 j. Amounts required to be paid pursuant to (1) any contract with
42 respect to use, service or provision of any project, facility or public
43 improvement for water, sewerage, parking, senior citizen housing or
44 any similar purpose, or payments on account of debt service therefor,
45 between a municipality and any other municipality, county, school or
46 other district, agency, authority, commission, instrumentality, public

- 1 corporation, body corporate and politic or political subdivision of this
2 State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60
3 through 13:17-76) by a constituent municipality to the intermunicipal
4 account; (3) any lease of a facility owned by a county improvement
5 authority when the lease payment represents the proportionate amount
6 necessary to amortize the debt incurred by the authority in providing
7 the facility which is leased, in whole or in part; and (4) any repayments
8 under a loan agreement entered into in accordance with the provisions
9 of section 5 of P.L.1992, c.89;
- 10 k. (Deleted by amendment, P.L.1987, c.74.)
- 11 l. Appropriations of federal, county, independent authority or State
12 funds, or by grants from private parties or nonprofit organizations for
13 a specific purpose, and amounts received or to be received from such
14 sources in reimbursement for local expenditures. If a municipality
15 provides matching funds in order to receive the federal, county,
16 independent authority or State funds, or the grants from private parties
17 or nonprofit organizations for a specific purpose, the amount of the
18 match which is required by law or agreement to be provided by the
19 municipality shall be excepted;
- 20 m. (Deleted by amendment, P.L.1987, c.74.)
- 21 n. (Deleted by amendment, P.L.1987, c.74.)
- 22 o. (Deleted by amendment, P.L.1990, c.89.)
- 23 p. (Deleted by amendment, P.L.1987, c.74.)
- 24 q. (Deleted by amendment, P.L.1990, c.89.)
- 25 r. Amounts expended to fund a free public library established
26 pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;
- 27 s. (Deleted by amendment, P.L.1990, c.89.)
- 28 t. Amounts expended in preparing and implementing a housing
29 element and fair share plan pursuant to the provisions of P.L.1985,
30 c.222 (C.52:27D-301 et al.) and any amounts received by a
31 municipality under a regional contribution agreement pursuant to
32 section 12 of that act;
- 33 u. Amounts expended to meet the standards established pursuant
34 to the "New Jersey Public Employees' Occupational Safety and Health
35 Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
- 36 v. (Deleted by amendment, P.L.1990, c.89.)
- 37 w. Amounts appropriated for expenditures resulting from the
38 impact of a hazardous waste facility as described in subsection c. of
39 section 32 of P.L.1981, c.279 (C.13:1E-80);
- 40 x. Amounts expended to aid privately owned libraries and reading
41 rooms, pursuant to R.S.40:54-35;
- 42 y. (Deleted by amendment, P.L.1990, c.89.)
- 43 z. (Deleted by amendment, P.L.1990, c.89.)
- 44 aa. Extraordinary expenses, approved by the Local Finance Board,
45 required for the implementation of an interlocal services agreement;
- 46 bb. Any expenditure mandated as a result of a natural disaster, civil

- 1 disturbance or other emergency that is specifically authorized pursuant
2 to a declaration of an emergency by the President of the United States
3 or by the Governor;
- 4 cc. Expenditures for the cost of services mandated by any order of
5 court, by any federal or State statute, or by administrative rule,
6 directive, order, or other legally binding device issued by a State
7 agency which has identified such cost as mandated expenditures on
8 certification to the Local Finance Board by the State agency;
- 9 dd. Expenditures of amounts actually realized in the local budget
10 year from the sale of municipal assets if appropriated for non-recurring
11 purposes or otherwise approved by the director;
- 12 ee. Any local unit which is determined to be experiencing fiscal
13 distress pursuant to the provisions of P.L.1987, c.75
14 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible
15 municipality" as defined in section 3 of P.L.1987, c.75
16 (C.52:27D-118.26), and which has available surplus pursuant to the
17 spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et
18 seq.), may appropriate and expend an amount of that surplus approved
19 by the director and the Local Finance Board as an exception to the
20 spending limitation. Any determination approving the appropriation
21 and expenditure of surplus as an exception to the spending limitations
22 shall be based upon:
- 23 1) the local unit's revenue needs for the current local budget year
24 and its revenue raising capacity;
- 25 2) the intended actions of the governing body of the local unit to
26 meet the local unit's revenue needs;
- 27 3) the intended actions of the governing body of the local unit to
28 expand its revenue generating capacity for subsequent local budget
29 years;
- 30 4) the local unit's ability to demonstrate the source and existence of
31 sufficient surplus as would be prudent to appropriate as an exception
32 to the spending limitations to meet the operating expenses for the local
33 unit's current budget year; and
- 34 5) the impact of utilization of surplus upon succeeding budgets of
35 the local unit;
- 36 ff. Amounts expended for the staffing and operation of the
37 municipal court;
- 38 gg. Amounts appropriated for the cost of administering a joint
39 insurance fund established pursuant to subsection b. of section 1 of
40 P.L.1983, c.372 (C.40A:10-36), but not including appropriations for
41 claims payments by local member units;
- 42 hh. Amounts appropriated for the cost of implementing an
43 estimated tax billing system and the issuance of tax bills thereunder
44 pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);
- 45 ii. Expenditures related to the cost of conducting and implementing
46 a total property tax levy sale pursuant to section 16 of P.L.1997, c.99

1 (C.54:5-113.5);

2 jj. Amounts expended for a length of service award program
3 pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);

4 kk. Amounts expended to provide municipal services or
5 reimbursement amounts to ¹[qualified apartment buildings or garden
6 apartment complexes] multifamily dwellings¹ for the collection and
7 disposal of solid waste generated by the residents of the ¹[qualified
8 apartment buildings and garden apartment complexes] multifamily
9 dwellings¹. [This exception shall apply to all agreements for
10 reimbursement entered into after July 27, 1999] This subsection shall
11 cease to be operative at the end of the first local budget year in which
12 the municipality has fully phased in its reimbursement amount
13 expenses;

14 ll. Amounts expended by a municipality under an interlocal services
15 agreement entered into pursuant to the "Interlocal Services Act,"
16 P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the effective
17 date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of
18 the municipality that will receive the service may choose to allow the
19 amount of projected annual savings to be added to the amount of final
20 appropriations upon which its permissible expenditures are calculated
21 pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

22 mm. Amounts expended under a joint contract pursuant to the
23 "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et
24 seq.) entered into after the effective date of P.L.2000, c.126
25 (C.52:13H-21 et al.). The governing body of each participating
26 municipality may choose to allow the amount of projected annual
27 savings to be added to the amount of final appropriations upon which
28 its permissible expenditures are calculated pursuant to section 2 of
29 P.L.1976, c.68 (C.40A:4-45.2).

30 (cf: P.L.2000, c.126, s.19)

31

32 ¹[7.] 6.¹ This act shall take effect immediately; however,
33 reimbursement or provision of services to a ¹[qualified apartment
34 building or garden apartment complex,] multifamily dwelling¹ shall
35 commence for local budget year 2002 for municipalities operating on
36 a calendar year basis and local budget year 2003 for municipalities
37 operating on a State fiscal year basis, and reimbursement payments
38 shall be phased in over a five-year period pursuant to section 4 of
39 P.L. , c. (C.) (pending before the Legislature as this bill).

40

41

42

43

44 Provides mechanism for provision of municipal trash collection
45 services or reimbursement to apartment buildings and complexes.

CHAPTER 25

AN ACT concerning the provision of solid waste collection services to apartment complexes, supplementing Title 40 of the Revised Statutes and amending P.L.1976, c.68.

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

C.40:66-1.2 Definitions relative to solid waste collection services for multifamily dwellings.

1. For the purposes of sections 1 through 4 of P.L.2001, c.25 (C.40:66-1.2 et seq.):

"Multifamily dwelling" means any building or structure or complex of buildings or structures in which five or more dwelling units are rented or leased or offered for rental or lease for residential purposes except hotels, motels or other guesthouses serving transient or seasonal guests as those terms are defined under subsection (j) of section 3 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.).

"Solid waste collection services" means the collection and disposal of solid waste.

"Total cost of services" means the cost that would be incurred by a municipality in providing solid waste collection services to a multifamily dwelling in the same manner as the municipality provides those services, curbside, to other residents of the municipality.

C.40:66-1.3 Reimbursement of multifamily dwelling.

2. a. Except as otherwise provided in subsection b. of this section, when solid waste collection services are provided to the residents of a municipality, the governing body of that municipality shall reimburse a multifamily dwelling for the actual cost to the multifamily dwelling of providing that service, but not more than the amount that the municipality would have expended on the solid waste collection services if provided by the municipality directly to the multifamily dwelling, calculated as if the dwelling units were located along public roads and streets and the service provided curbside. Alternatively, when solid waste collection services are provided to the residents of a municipality, the governing body of the municipality shall provide the solid waste collection services in the same manner as provided to the residents of the municipality who live along public roads and streets.

b. (1) Nothing in P.L.2001, c.25 (C.40:66-1.2 et al.) shall require a municipality to operate any municipally owned or leased vehicles or other equipment, or to provide any of the services enumerated in subsection a. of this section, upon, along or in relation to any road or street in a multifamily dwelling complex which either (a) is not accepted for dedication to public use or (b) does not meet all municipal standards and specifications for such dedication, except for width.

(2) In order to be eligible for solid waste collection services or reimbursement for those services, a multifamily dwelling shall be required to comply with all recycling requirements generally applicable to all other residential properties within the municipality. If a certified public works manager employed by the municipality determines that a multifamily dwelling is not in compliance with the municipal recycling requirements, then the municipality may terminate solid waste and recyclables collection services to the multifamily dwelling, or reduce its reimbursement payments by an amount equal to the landfill or disposal costs that would be saved if the recyclables were separated from the other solid waste. No solid waste collection shall be terminated or reimbursement amount shall be reduced pursuant to this subsection unless the landlord has been sent written notice of noncompliance and been given 30 days' written notice of the proposed reimbursement amount reduction. During those 30 days the landlord shall have the opportunity to bring the multifamily dwelling into compliance with the municipal recycling requirements, and have that compliance certified by a certified public works manager employed by the municipality.

c. The Director of the Division of Local Government Services in the Department of Community Affairs, for the purpose of calculating the allowable operating appropriations before exceptions pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2), shall provide a cap base adjustment to the total general appropriations of the local budget year prior to the year in which the solid waste collection services are first provided in full, either through the provision of actual services or following the completion of the phase-in of the reimbursement amount provided by the municipality for the full amount of the costs attributable to implementing P.L.2001, c.25 (C.40:66-1.2 et al.).

d. Reimbursement or provision of services to a multifamily dwelling, when solid waste collection services are provided to residents generally within the municipality, shall commence

for local budget year 2002 in municipalities operating on a calendar year basis and local budget year 2003 in municipalities operating on a State fiscal year basis; provided that reimbursement payments shall be phased-in over a five-year period pursuant to section 4 of P.L.2001, c.25 (C.40:66-1.5).

e. No municipality shall be liable for the provision of any solid waste collection services or for the payment of any reimbursement amounts with regard to solid waste collection services to any multifamily dwelling except as specifically provided pursuant to P.L.2001, c.25 (C.40:66-1.2 et al.).

C.40:66-1.4 Written agreement, use of reimbursement.

3. a. Pursuant to section 2 of P.L.2001, c.25 (C.40:66-1.3) and section 4 of P.L.2001, c.25 (C.40:66-1.5), when a municipal governing body determines not to provide solid waste collection services to a multifamily dwelling, it shall enter into a written agreement with the multifamily dwelling to annually reimburse the multifamily dwelling in an amount not to exceed the cost that would be incurred by the municipality in providing those services.

b. The amount to be reimbursed to the multifamily dwelling shall be used by the multifamily dwelling to pay for the solid waste collection service that the municipality chooses not to provide. The municipal governing body shall reimburse the multifamily dwelling for the actual cost to the multifamily dwelling of providing that service, but not more than the amount that the municipality would have expended on the solid waste collection services if provided by the municipality directly to the multifamily dwelling, calculated as if the dwelling units were located along public roads and streets and the collection service provided curbside.

c. An agreement entered into pursuant to this section shall provide for an accounting by the multifamily dwelling of the use of the money paid over to it by the municipality, and for the refunding to the municipality of any payments in excess of the amounts actually expended or contractually committed by the multifamily dwelling during the accounting period in order to provide for the solid waste collection services covered by the agreement.

C.40:66-1.5 Reimbursement schedule.

4. Pursuant to a reimbursement agreement entered into in lieu of providing curbside solid waste collection services, a municipality shall reimburse the landlord of a multifamily dwelling for a portion of the cost of providing services commencing in local budget year 2002 for municipalities operating on a calendar year basis, and in local budget year 2003, for municipalities operating on a State fiscal year basis, in the following manner:

2002 or 2003, as appropriate,...20% of the total cost of services in 2002 or 2003, as appropriate

2003 or 2004, as appropriate,...40% of the total cost of services in 2003 or 2004, as appropriate

2004 or 2005, as appropriate,...60% of the total cost of services in 2004 or 2005, as appropriate

2005 or 2006, as appropriate,...80% of the total cost of services in 2005 or 2006, as appropriate

The total cost of services in each local budget year shall be determined pursuant to section 3 of P.L.2001, c.25 (C.40:66-1.4). In local budget year 2006 or 2007, as appropriate, and for each local budget year thereafter, the municipality shall either provide the solid waste collection services pursuant to section 2 of P.L.2001, c.25 (C.40:66-1.3) or enter into a written agreement to annually reimburse the multifamily dwelling pursuant to section 3 of P.L.2001, c.25 (C.40:66-1.4).

5. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read as follows:

C.40A:4-45.3 Municipalities; budget limitation exceptions.

3. In the preparation of its budget a municipality shall limit any increase in said budget to 5% or the index rate, whichever is less, over the previous year's final appropriations subject to the following exceptions:

- a. (Deleted by amendment, P.L.1990, c.89.)
- b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditure would be otherwise bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;
- c. (1) An increase based upon emergency temporary appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.
(2) (Deleted by amendment, P.L.1990, c.89.)
The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or j. below;
- d. All debt service, including that of a Type I school district;
- e. Upon the approval of the Local Finance Board in the Division of Local Government Services, amounts required for funding a preceding year's deficit;
- f. Amounts reserved for uncollected taxes;
- g. (Deleted by amendment, P.L.1990, c.89.)
- h. Expenditure of amounts derived from new or increased construction, housing, health or fire safety inspection or other service fees imposed by State law, rule or regulation or by local ordinance;
- i. Any amount approved by any referendum;
- j. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a municipality and any other municipality, county, school or other district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or political subdivision of this State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60 through 13:17-76) by a constituent municipality to the intermunicipal account; (3) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in providing the facility which is leased, in whole or in part; and (4) any repayments under a loan agreement entered into in accordance with the provisions of section 5 of P.L.1992, c.89;
- k. (Deleted by amendment, P.L.1987, c.74.)
- l. Appropriations of federal, county, independent authority or State funds, or by grants from private parties or nonprofit organizations for a specific purpose, and amounts received or to be received from such sources in reimbursement for local expenditures. If a municipality provides matching funds in order to receive the federal, county, independent authority or State funds, or the grants from private parties or nonprofit organizations for a specific purpose, the amount of the match which is required by law or agreement to be provided by the municipality shall be excepted;
- m. (Deleted by amendment, P.L.1987, c.74.)
- n. (Deleted by amendment, P.L.1987, c.74.)
- o. (Deleted by amendment, P.L.1990, c.89.)
- p. (Deleted by amendment, P.L.1987, c.74.)
- q. (Deleted by amendment, P.L.1990, c.89.)
- r. Amounts expended to fund a free public library established pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;
- s. (Deleted by amendment, P.L.1990, c.89.)
- t. Amounts expended in preparing and implementing a housing element and fair share plan pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et al.) and any amounts received by a municipality under a regional contribution agreement pursuant to section 12 of that act;

- u. Amounts expended to meet the standards established pursuant to the "New Jersey Public Employees' Occupational Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
- v. (Deleted by amendment, P.L.1990, c.89.)
- w. Amounts appropriated for expenditures resulting from the impact of a hazardous waste facility as described in subsection c. of section 32 of P.L.1981, c.279 (C.13:1E-80);
- x. Amounts expended to aid privately owned libraries and reading rooms, pursuant to R.S.40:54-35;
 - y. (Deleted by amendment, P.L.1990, c.89.)
 - z. (Deleted by amendment, P.L.1990, c.89.)
- aa. Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;
- bb. Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically authorized pursuant to a declaration of an emergency by the President of the United States or by the Governor;
- cc. Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;
- dd. Expenditures of amounts actually realized in the local budget year from the sale of municipal assets if appropriated for non-recurring purposes or otherwise approved by the director;
- ee. Any local unit which is determined to be experiencing fiscal distress pursuant to the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible municipality" as defined in section 3 of P.L.1987, c.75 (C.52:27D-118.26), and which has available surplus pursuant to the spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et seq.), may appropriate and expend an amount of that surplus approved by the director and the Local Finance Board as an exception to the spending limitation. Any determination approving the appropriation and expenditure of surplus as an exception to the spending limitations shall be based upon:
 - 1) the local unit's revenue needs for the current local budget year and its revenue raising capacity;
 - 2) the intended actions of the governing body of the local unit to meet the local unit's revenue needs;
 - 3) the intended actions of the governing body of the local unit to expand its revenue generating capacity for subsequent local budget years;
 - 4) the local unit's ability to demonstrate the source and existence of sufficient surplus as would be prudent to appropriate as an exception to the spending limitations to meet the operating expenses for the local unit's current budget year; and
 - 5) the impact of utilization of surplus upon succeeding budgets of the local unit;
- ff. Amounts expended for the staffing and operation of the municipal court;
- gg. Amounts appropriated for the cost of administering a joint insurance fund established pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), but not including appropriations for claims payments by local member units;
- hh. Amounts appropriated for the cost of implementing an estimated tax billing system and the issuance of tax bills thereunder pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);
- ii. Expenditures related to the cost of conducting and implementing a total property tax levy sale pursuant to section 16 of P.L.1997, c.99 (C.54:5-113.5);
- jj. Amounts expended for a length of service award program pursuant to P.L.1997, c.388 (C.40A:14-183 et al.);
- kk. Amounts expended to provide municipal services or reimbursement amounts to multifamily dwellings for the collection and disposal of solid waste generated by the residents of the multifamily dwellings. This subsection shall cease to be operative at the end of the first local budget year in which the municipality has fully phased in its reimbursement amount expenses;
- ll. Amounts expended by a municipality under an interlocal services agreement entered into

pursuant to the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) entered into after the effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of the municipality that will receive the service may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2);

mm. Amounts expended under a joint contract pursuant to the "Consolidated Municipal Service Act," P.L.1952, c.72 (C.40:48B-1 et seq.) entered into after the effective date of P.L.2000, c.126 (C.52:13H-21 et al.). The governing body of each participating municipality may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2).

6. This act shall take effect immediately; however, reimbursement or provision of services to a multifamily dwelling shall commence for local budget year 2002 for municipalities operating on a calendar year basis and local budget year 2003 for municipalities operating on a State fiscal year basis, and reimbursement payments shall be phased in over a five-year period pursuant to section 4 of P.L.2001, c.25 (C.40:66-1.5).

Approved February 27, 2001.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
Steffanie Bell
609-777-2600

RELEASE: February 27 , 2001

Acting Governor Donald T. DiFrancesco today signed the following legislation:

S-1903, sponsored by Senators Singer (R-Burlington/Monmouth/Ocean) and Gormley (R-Atlantic) and Assemblymen Merkt (R-Morris) and Gregg (R-Sussex/Hunterdon/Morris), provides a mechanism for the provision of municipal trash collection services or reimbursement to apartment buildings and complexes. Under this bill municipalities have the option of directly providing solid waste collection services to qualified apartment buildings, or entering into an agreement to pay the landlord a reimbursement amount. The bill provides that services or reimbursement must begin in local budget year 2002 for municipalities operating on the calendar year and local budget year 2003 for those operating on the fiscal year.