

**PUBLIC HEARING**

before

**ASSEMBLY COUNTY GOVERNMENT AND REGIONAL AUTHORITIES COMMITTEE**

on

**ASSEMBLY BILL 1778**

(Provides for a resource recovery investment  
tax on solid waste disposal at sanitary landfills.)

Held:  
April 5, 1984  
Room 346  
State House Annex  
Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Assemblyman Harry A. McEnroe, Chairman  
Assemblyman Thomas A. Pankok, Vice Chairman  
Assemblyman John T. Hendrickson, Jr.

**ALSO PRESENT:**

Assemblyman Robert J. Meyer  
District 8

Peggy McNutt, Research Assistant  
Office of Legislative Services  
Aide, Assembly County Government  
and Regional Authorities Committee

**New Jersey State Library**

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ASSEMBLY, No. 1778

STATE OF NEW JERSEY

INTRODUCED MARCH 15, 1984

By Assemblymen McENROE, VAINIERI, HENDRICKSON,  
ZECKER, Assemblywoman COOPER, Assemblyman ROD,  
Assemblywoman OGDEN, Assemblymen FORTUNATO, OTLOW-  
SKI, GALLO, LARocca, Assemblywoman KALIK, Assembly-  
men LONG and PANKOK

AN ACT concerning solid waste disposal and resource recovery,  
amending P. L. 1975, c. 326, P. L. 1970, c. 40 and P. L. 1971, c. 198  
and supplementing P. L. 1970, c. 39 and P. L. 1976, c. 68.

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

1 1. (New section) The Legislature finds and declares that the  
2 State's capacity to safely dispose of solid waste at sanitary landfills  
3 is rapidly diminishing; that the recovery of any potential resource  
4 in solid waste, especially its conversion to useable energy, is in the  
5 public interest; that the acquisition, construction or operation of  
6 resource recovery facilities is characterized by high initial capital  
7 expenditures and initially high costs of disposal which may be  
8 stabilized or decreased based upon a return on energy generated,  
9 all of which require long-term financial arrangements and a steady  
10 and secure flow of waste; that to encourage the use of resource  
11 recovery it is necessary to attain the most advantageous financing  
12 and ownership structures for implementation of resource recovery  
13 projects by units of local government while maintaining strict  
14 financial and programmatic scrutiny by agencies of State govern-  
15 ment; and that it is necessary to provide for funding of the solid  
16 waste management programs of the State and of the solid waste  
17 management districts, all as hereinafter provided.

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



1 2. (New section) As used in this act:

2 a. "Contracting unit" means any county; any municipality; or  
3 any board, ~~commission~~, committee, authority or agency, which is  
4 not a State board, commission, committee, authority or agency,  
5 and which has administrative jurisdiction over any district other  
6 than a school district, project, or facility, included or operating in  
7 whole or in part, within the territorial boundaries of any county or  
8 municipality which exercises functions which are appropriate for  
9 the exercise by one or more units of local government, and which  
10 has statutory power to make purchases and enter into contracts or  
11 agreements for the performance of any work or the furnishing or  
12 hiring of any materials or supplies usually required, the contract  
13 price of which is to be paid with or out of public funds;

14 b. "County" means any county of this State of whatever class;

15 c. "Department" means the Department of Environmental  
16 Protection;

17 d. "Director" means the Director of the Division of Taxation  
18 in the Department of Treasury;

19 e. "District" means a solid waste management district as desig-  
20 nated by section 10 of P. L. 1975, c. 326 (C. 13:1E-19);

21 f. "District investment tax fund" means a District Resource  
22 Recovery Investment Tax Fund established pursuant to subsection  
23 b. of section 15 of this act;

24 g. "Division" means the Division of Taxation in the Department  
25 of Treasury;

26 h. "Franchise" means the exclusive right to control the disposal  
27 of solid waste within a district as awarded by the Board of Public  
28 Utilities;

29 i. "Independent public accountant" means a certified public  
30 accountant, a licensed public ~~accountant~~ or a registered municipal  
31 accountant;

32 j. "Investment tax" means the resource recovery investment tax  
33 imposed pursuant to subsection b. of section 3 of this act;

34 k. "Investment tax fund" means the Resource Recovery Invest-  
35 ment Tax Fund containing subaccounts for each county pursuant to  
36 the provisions of section 14 of this act;

37 l. "Out-of-district solid waste" means any solid waste accepted  
38 for disposal in a district which was generated outside the receiving  
39 district;

40 m. "Person or party" means any individual, public or private  
41 corporation, company, partnership, firm, association, political sub-  
42 division of this State, or any State, bi-state, or interstate agency or  
43 authority;

44 n. "Resource recovery facility" means a solid waste facility  
 44a constructed and operated for the collection, separation, recycling,  
 44b and recovery of metals, glass, paper, and other materials for reuse  
 44c or for energy production;

44d o. "Sanitary landfill facility" means a solid waste facility  
 45 at which solid waste is deposited on or in the land as fill for the  
 46 purpose of permanent disposal or storage for a period exceeding  
 47 six months, except that it shall not include any waste facility  
 48 approved for disposal of hazardous waste;

49 p. "Services tax" means the solid waste services tax imposed  
 50 pursuant to subsection a. of section 3 of this act;

51 q. "Services tax fund" means the Solid Waste Services Tax  
 52 Fund established pursuant to section 12 of this act in which the  
 53 receipts from the services tax and any interest thereon will be  
 54 deposited;

55 r. "Subfranchise" means the exclusive right, as awarded by a  
 56 district, of a vendor to control the disposal of solid waste within all  
 57 or any portion of a district; and

58 s. "Vendor" means any person or party financially qualified for,  
 59 and technically and administratively capable of, undertaking the  
 60 design, financing, construction, operation, or maintenance of a  
 61 resource recovery facility or of providing resource recovery ser-  
 62 vices.

1 3. (New section) a. There is levied upon the owner or operator  
 2 of every sanitary landfill facility a solid waste services tax. The  
 3 services tax shall be imposed on the owner or operator at the  
 4 initial rate of \$0.25 per cubic yard of solids and \$0.003 per gallon  
 5 of liquids on all solid waste accepted for disposal at a sanitary  
 6 landfill facility. On the first day of the 13th month following the  
 7 imposition of the services tax and annually thereafter, the rate of  
 8 the services tax shall be increased by \$0.01 per cubic yard of solids.

9 b. (1) There is levied upon the owner or operator of every  
 10 sanitary landfill facility a resource recovery investment tax. The  
 11 investment tax shall be levied on the owner or operator at an  
 12 initial rate of \$0.28 per cubic yard of solids and \$0.004 per gallon  
 13 of liquids on all solid waste, other than waste products resulting  
 14 from the operation of a resource recovery facility, accepted for  
 15 disposal at a sanitary landfill facility.

16 (2) Unless the rate is otherwise adjusted pursuant to section 11  
 17 of this act, the rate of the investment tax shall be increased pur-  
 18 suant to the following schedule:

19 (a) On the first day of the 18th month following the imposi-  
 20 tion of the investment tax, the rate of the investment tax shall  
 21 increase to \$0.56 per cubic yard of solids;



22 (b) On the first day of the 30th month following the imposi-  
 23 tion of the investment tax, the rate of the investment tax shall  
 24 increase to \$0.84 per cubic yard of solids; and

25 (c) On the first day of the 42nd month following the imposi-  
 26 tion of the investment tax, the rate of the investment tax shall  
 27 increase to \$1.12 per cubic yard of solids.

28 The investment tax shall no longer be levied on the owner or  
 29 operator of a sanitary landfill facility on and after the first day of  
 30 the first month of the 11th year following the imposition of the  
 31 investment tax.

32 c. (1) There is levied upon the owner or operator of every sani-  
 33 tary landfill facility a surcharge on the investment tax. The sur-  
 34 charge shall be imposed on the owner or operator at a rate of  
 35 \$0.21 per cubic yard of solids and \$0.003 per gallon of liquids on  
 36 all out-of-district solid waste, other than waste products resulting  
 37 from the operation of a resource recovery facility, accepted for  
 38 disposal at a sanitary landfill facility.

39 (2) If the department shall determine that a district has failed  
 40 to fulfill its solid waste management planning responsibilities  
 41 pursuant to section 17 of this act, the rate of the surcharge on the  
 42 investment tax levied pursuant to paragraph (1) of this subsection  
 43 shall, upon notification to the Board of Public Utilities and to the  
 44 director, immediately be increased to a rate determined by the  
 45 department, not to exceed \$0.42 per cubic yard of solids or \$0.006  
 46 per gallon of liquids.

47 d. If any owner or operator of a sanitary landfill measures the  
 48 solid waste accepted for disposal by a measure other than cubic  
 49 yards or gallons, the taxes and surcharges imposed by the provi-  
 50 sions of this section shall be levied at a rate equivalent thereof as  
 51 determined by the director.

52 e. No taxes or surcharges shall be levied on the owner or operator  
 53 of a sanitary landfill facility for the acceptance of solid waste  
 54 generated exclusively by any agency of the federal government if  
 55 a solid waste collector submits to the owner or operator a copy of  
 56 the contract with the federal agency indicating the effective date of  
 57 the contract was before the effective date of this act. Taxes and  
 58 surcharges shall be levied on the owner or operator for acceptance  
 59 of solid waste generated by a federal agency if the contract between  
 60 the federal agency and the solid waste collector was entered into,  
 61 or renewed, on or after the effective date of this act.

1 4. (New section) a. Every owner or operator of a sanitary land-  
 2 fill facility which accepts solid waste for disposal and which is  
 3 subject to the taxes and surcharges imposed pursuant to section 3

4 of this act, shall register with the director on forms prescribed by  
5 him within 20 days after the first acceptance of that waste.

6 b. The director shall prepare and transmit to each owner or  
7 operator of a sanitary landfill facility forms for the rendering of a  
8 tax return. The form shall be structured in a manner and form  
9 determined by the director and shall provide for the following  
10 information, and any other information he may deem necessary  
11 to be rendered in the return:

12 (1) The total number of cubic yards of solids and gallons of  
13 liquids accepted for disposal during the previous month;

14 (2) The number of cubic yards of solids and gallons of  
15 liquids accepted and place of origin of out-of-district waste  
16 accepted for disposal during the previous month; and

17 (3) The amount of each tax or surcharge paid according to  
18 the amount of solid waste accepted.

19 The director may prescribe a consolidated form for reporting the  
20 taxes and surcharges imposed under this act and the taxes imposed  
21 pursuant to P. L. 1981, c. 278 (C. 13:1E-91 et seq.) and P. L. 1981,  
22 c. 306 (C. 13:1E-100 et seq.).

1 5. (New section) Every owner or operator of a sanitary landfill  
2 facility shall, on or before the 20th day of each month, render a  
3 return under oath to the director and pay the full amount of taxes  
4 and surcharges due as stated in the return.

1 6. (New section) a. If a return required by this act is not filed, or  
2 if a return when filed is incorrect or insufficient in the opinion of  
3 the director, the amount of tax due shall be determined by the  
4 director from such information as may be available. Notice of such  
5 determination shall be given to the taxpayer liable for the payment  
6 of the tax. Such determination shall finally and irrevocably fix the  
7 tax unless the person against whom it is assessed, within 30 days  
8 after receiving notice of such determination, shall apply to the  
9 director for a hearing, or unless the director on his own motion  
10 shall redetermine the same. After such hearing, the director shall  
11 give notice of his determination to the person to whom the tax is  
12 assessed.

13 b. Any taxpayer who shall fail to file his return when due or to  
14 pay any tax when the same becomes due, as herein provided, shall  
15 be subject to such penalties and interest as provided in the "state  
16 tax uniform procedure law," Subtitle 9 of Title 54 of the Revised  
17 Statutes. If the director determines that the failure to comply with  
18 any provision of this section was excusable under the circum-  
19 stances, it may remit such part or all of the penalty as shall be  
20 appropriate under such circumstances.

21 c. (1) Any person failing to file a return, failing to pay the tax,  
 22 or filing or causing to be filed, or making or causing to be made, or  
 23 giving or causing to be given any return, certificate, affidavit,  
 24 representation, information, testimony or statement required or  
 25 authorized by this act, or rules or regulations adopted hereunder  
 26 which is willfully false, or failing to keep any records required by  
 27 this act or rules and regulations adopted hereunder, shall, in addi-  
 28 tion to any other penalties herein or elsewhere prescribed, be  
 29 guilty of a crime of the fourth degree.

30 (2) The certificate of the director to the effect that a tax has  
 31 not been paid, that a return has not been filed, that information has  
 32 not been supplied or that inaccurate information has been supplied  
 33 pursuant to the provisions of this act or rules or regulations  
 34 adopted hereunder shall be presumptive evidence thereof.

1 7. (New section) In addition to any other powers authorized by  
 2 this act, the director shall have the following powers:

3 a. To delegate to any officer or employee of the division any  
 4 powers or responsibilities required by this act as he may deem  
 5 necessary;

6 b. To promulgate and distribute any forms necessary for the  
 7 implementation of this act; and

8 c. To adopt any rules and regulations pursuant to the  
 9 "Administrative Procedure Act," P. L. 1968, c. 410 (C.  
 10 52:14B-1 et seq.) as he may deem necessary to effectuate the  
 11 purposes of this act.

1 8. (New section) The taxes imposed by this act shall be governed  
 2 in all respects by the provisions of the "state tax uniform pro-  
 3 cedure law," Subtitle 9 of Title 54 of the Revised Statutes, but only  
 4 to the extent that a specific provision of this act or any rule or  
 5 regulation required to be promulgated by this act may be in con-  
 6 flict therewith.

1 9. a. (New section) Notwithstanding the provisions of any law  
 2 to the contrary, the owner or operator of a sanitary landfill facility  
 3 may collect the taxes and surcharges levied and imposed pursuant  
 4 to this act by imposing an automatic surcharge on any tariff estab-  
 5 lished pursuant to law for the solid waste disposal operations of  
 6 the sanitary landfill facility.

7 b. For the purposes of this act, all municipal, county, and State  
 8 contracts for solid waste collection and disposal shall be considered  
 9 tariffs for solid waste collection, and shall be subject to any adjust-  
 10 ment of tariffs resulting from the provisions of this act.

1 10. (New section) a. The Board of Public Utilities shall, within  
 2 60 days of the effective date of this act, issue an order adjusting

3 the tariffs established pursuant to law for solid waste collection  
4 operations by an amount equal to the total amount of the increase  
5 in the adjusted tariffs for solid waste disposal operations to take  
6 effect on the date on which the tax is imposed.

7 b. The Board of Public Utilities shall, by the date of any increase  
8 in the services tax or the investment tax required in subsection a.  
9 of section 3 of this act, issue an order adjusting the tariffs estab-  
10 lished pursuant to law for solid waste collection operations by an  
11 amount equal to the total amount of the increase in the tariffs for  
12 solid waste disposal operations that shall be adjusted on that date.

13 c. The Board of Public Utilities shall, within 60 days of notifica-  
14 tion by the department that an additional surcharge shall be  
15 imposed on an owner or operator of a sanitary landfill facility or  
16 that the investment tax rate shall be adjusted in a manner other  
17 than by the rate adjustments provided in subsection b. of section 3  
18 of this act, issue an order adjusting the tariffs established pursuant  
19 to law for solid waste collection operations by an amount equal  
20 to the total amount of the increase in the tariffs for solid waste  
21 disposal operations.

22 d. In issuing any order required by this section, the Board of  
23 Public Utilities shall be exempt from the provisions of R. S.  
24 48:2-21.

1 11. (New section) a. Each district, in consultation with the  
2 department, may conduct a study to determine the tax rate esti-  
3 mated to be necessary to be paid into the district investment tax  
4 fund so as to lower the cost of resource recovery facility services  
5 to a level which is competitive with the cost of disposal in a sani-  
6 tary landfill utilized by the district.

7 b. After completion of the study, the district may request the  
8 department to adjust the investment tax rate set forth in section 3  
9 of this act to a rate, not to exceed \$2.80 per cubic yard, or the  
10 equivalent thereof, which is consistent with the conclusions drawn  
11 in the study and with the plan developed pursuant to subsection d.  
12 of section 15. The district may request the department to adjust  
13 the rate, subject to that maximum rate, on an annual basis in  
14 accordance with the conclusions drawn as a result of a review of  
15 the study and any additional information gained during the pre-  
16 vious year.

17 c. The provisions of any law to the contrary notwithstanding,  
18 two or more districts may conduct a joint study and establish a  
19 single investment tax rate for the districts.

20 d. The department shall, upon approval of a request by a dis-  
21 trict, notify the Board of Public Utilities and the director of the  
22 investment tax rate adjustment in that district.

1 12. (New section) There is created a nonlapsing Solid Waste  
 2 Services Tax Fund to be the depository for the services tax moneys,  
 3 and any interest thereon, paid to the director pursuant to this act  
 4 and disbursed as provided herein.

1 13. (New section) a. Before any moneys in the services tax fund  
 2 are appropriated as provided hereunder, the cost of administration  
 3 and collection of the tax shall be paid out of that fund.

4 b. The moneys collected in the services tax fund shall be appro-  
 5 priated to the Department of Environmental Protection and shall  
 6 be used only in the following manner:

7 (1) By the department for solid waste planning, permitting,  
 8 regulation, enforcement and research, pursuant to the provisions  
 9 of the "Solid Waste Management Act," P. L. 1970, c. 39 (C. 13:1E-1  
 10 et seq.);

11 (2) By the department for reviewing the economic aspects of  
 12 solid waste management;

13 (3) By the department for administering the services tax fund;  
 14 and

15 (4) To provide State aid to solid waste management districts  
 16 for preparing, revising, and implementing solid waste management  
 17 plans. At least 50% of the annual balance of the services tax fund  
 18 shall be used for State aid and shall be distributed in amounts  
 19 proportionate to the population of each district, except that no  
 20 district shall receive less than 2% of the amount apportioned to  
 21 aid all districts. In the event that the department determines pur-  
 22 suant to section 17 of this act that any district shall fail to fulfill  
 23 its solid waste management planning responsibilities, the depart-  
 24 ment may withhold for the entire year or until the district fulfills  
 25 its responsibilities, all or a portion of the amount of moneys that  
 26 district would have received in any year pursuant to this para-  
 27 graph. Any moneys withheld for the entire year shall be distributed  
 28 among the remaining districts in the same proportion as the other  
 29 moneys were distributed.

1 14. (New section) There is created a Resource Recovery Invest-  
 2 ment Tax Fund to contain subaccounts for each district to be held  
 3 by the State Treasurer, to be the depository for:

4 a. The investment tax revenues collected by the director  
 5 resulting from the amount of solid waste generated from within  
 6 each county;

7 b. The surcharge revenues collected by the director resulting  
 8 from the acceptance of out-of-district waste;

9 c. The investment tax revenues collected by the director not  
 10 otherwise deposited in another investment tax fund subaccount

11 pursuant to subsections a. and b. of this section shall be  
12 deposited in the receiving district's subaccount; and

13 d. Any interest thereon.

14 The moneys deposited in each district subaccount fund shall be  
15 disbursed as provided herein.

1 15. (New section) a. Before the moneys in each investment tax  
2 fund subaccount are appropriated as provided hereunder, the cost  
3 of administration and collection of the tax and surcharge shall be  
4 paid by the moneys in the subaccounts.

5 b. Each district shall create a District Resource Recovery In-  
6 vestment Tax Fund, to be the depository of the moneys appropriated  
7 to each district pursuant to this section to be administered by the  
8 governing body of each county, and the Hackensack Commission, in  
9 the case of the Hackensack Meadowlands District.

10 c. The moneys collected in each investment tax fund subaccount  
11 shall be appropriated to each district for deposit in its district in-  
12 vestment tax fund and shall be used only in accordance with a plan  
13 prepared and approved pursuant to subsection d. of this section  
14 and only for the following purposes:

15 (1) To reduce the rates charged by a resource recovery facility  
16 serving the district in order to provide gradual transition between  
17 resource recovery facility rates and sanitary landfill facility rates.  
18 Any reductions may be achieved through use of investment tax  
19 fund money; to pay construction costs and related facility start-up  
20 costs, or to pay directly part of the fees charged for disposal at a  
21 resource recovery facility.

22 (2) To cover any expenses directly related to the planning, design-  
23 ing, financing, construction, operation or maintenance of a resource  
24 recovery facility or the acquisition of the services of a resource  
25 recovery facility, including expenses incurred if a study is con-  
26 ducted pursuant to section 11 of this act;

27 (3) To design, finance, construct, operate, maintain environ-  
28 mentally sound sanitary landfill facilities to be utilized for:

29 (a) Disposing of those solid wastes which cannot be pro-  
30 cessed by a resource recovery facility or which result from the  
31 operation of a resource recovery facility;

32 (b) Disposal of solid waste, on an interim basis, until a  
33 resource recovery facility becomes operational; and

34 (c) Disposal of solid waste, on a long term basis, in those  
35 districts which demonstrate to the satisfaction of the depart-  
36 ment that utilization of a resource recovery facility is not  
37 feasible for disposal of the solid waste generated in that dis-  
38 trict; and

39 (4) To administer the investment tax fund, provided that not  
 40 more than two percent of the annual balance shall be used for  
 41 administration.

42 d. Within two years of the effective date of this act, and prior to  
 43 the disbursement of any funds, each district shall prepare a plan, includ-  
 44 ing a schedule, which shall outline the proposed uses of the moneys  
 45 in the district investment tax fund as well as describe the manner  
 46 in which those moneys will be disbursed. Each plan shall be adopted  
 47 as an amendment to the district solid waste management plan re-  
 48 quired pursuant to the provisions of the "Solid Waste Management  
 49 Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.). This plan may be  
 50 amended, as necessary, in accordance with the procedures provided  
 51 therefor pursuant to the "Solid Waste Management Act," P. L.  
 52 1970, c. 39 (C. 13:1E-1 et seq.).

53 e. Each district shall, by October 31 of each year in which moneys  
 54 remain in its district investment tax fund, file an audit of the  
 55 district investment tax fund and any expenditures therefrom with  
 56 the Local Finance Board in the Division of Local Government  
 57 Services in the Department of Community Affairs. The audit shall  
 58 be conducted by an independent public accountant.

59 f. Upon approval by the department, two or more districts may  
 60 establish a joint investment tax fund to receive the investment tax  
 61 fund revenues and any surcharge collected pursuant to section  
 62 3 of this act.

1 16. (New section) If the department shall determine that a dis-  
 2 trict has failed to fulfill its solid waste management planning re-  
 3 sponsibilities pursuant to section 17 of this act, the department  
 4 may assume the administration of the district investment tax fund  
 5 of that district and may use the moneys in the fund for the pur-  
 6 poses permitted in subsection c. of section 15 of this act for the  
 7 benefit of that district.

1 17. (New section) The department may determine that a district  
 2 has failed to fulfill its solid waste management planning responsi-  
 3 bilities as required by sections 11 and 12 of P. L. 1975, c. 326  
 4 (C. 13:1E-20 and 13:1E-21) and by subsection d. of section 15 of  
 5 this act. A determination of failure shall include a finding that the  
 6 district has not made a good faith effort toward fulfilling its  
 7 planning responsibilities.

1 18. (New section) Notwithstanding the provisions of any law,  
 2 rule or regulation to the contrary, as an alternative to any other  
 3 procedure provided for by law, the design, financing, construction,  
 4 operation or maintenance, or any combination thereof, of a resource  
 5 recovery facility or the provision of resource recovery facility



6 services may be procured by a contracting unit in accordance with  
7 the provisions of sections 19 through 27 of this act.

1 19. (New section) Any contract between a vendor and a con-  
2 tracting unit for the design, financing, construction, operation or  
3 maintenance, or any combination thereof, of a resource recovery  
4 facility or for the provision of the services of such a facility may  
5 be awarded for a period not to exceed 40 years.

1 20. (New section) a. The contracting unit shall issue a request  
2 for qualifications of vendors which shall include the date, time of  
3 day and place by which qualifications shall be received and the  
4 minimum acceptable qualifications, and which shall be made avail-  
5 able to all potential vendors through adequate public notice which  
6 shall include publication in at least one appropriate trade or pro-  
7 fessional journal and a newspaper of general circulation in the  
8 jurisdiction of the contracting unit. In addition to all other factors  
9 bearing on qualification, the contracting unit may consider infor-  
10 mation which might result in debarment or suspension of a vendor  
11 from State contracting and may disqualify a vendor if the vendor  
12 has been debarred or suspended by any State agency.

13 b. The contracting unit shall publish, in the same publications  
14 in which notice of the request for qualifications appeared, a list  
15 of qualified vendors and a statement setting forth the basis for  
16 their selection.

1 21. (New section) a. The contracting unit shall issue a request  
2 for proposals to the qualified vendors which shall include a de-  
3 scription of the services and facilities required, the specific infor-  
4 mation and data required, and a statement as to the relative im-  
5 portance of price and other evaluation factors.

6 b. The contracting unit shall fix a date, time of day and place  
7 by which proposals shall be received and shall specify the format  
8 and procedure for submission of proposals. The contracting unit  
9 may extend the time for submission of proposals provided that any  
10 extension shall apply to all qualified vendors and the contracting  
11 unit shall provide simultaneous written notice of any extension to  
12 all qualified vendors.

1 22. (New section) a. Proposals shall be reviewed by the con-  
2 tracting unit so as to avoid disclosure of contents to competing  
3 vendors during the process of proposal review. A list of proposals  
4 shall be prepared and shall be open for public inspection in the  
5 offices of the contracting unit at reasonable hours for at least 30  
6 days after the contract award.

7 b. As shall be provided in the request for proposals, discussions  
8 may be conducted with qualified vendors who submit proposals

9 for the purpose of clarification to assure full understanding of, and  
 10 responsiveness to, the solicitation requirements. Any revisions in  
 11 the request for proposals which may be developed in the course  
 12 of those discussions shall immediately be communicated to all quali-  
 13 fied vendors. Revisions to proposals may be permitted after sub-  
 14 missions and prior to award for the purpose of obtaining best and  
 15 final offers. In conducting discussions, there shall be no disclosure  
 16 of any information derived from proposals submitted by competing  
 17 vendors.

1 23. (New section) a. The contracting unit shall designate the  
 2 qualified vendor, or two vendors if simultaneous negotiation is to  
 3 be conducted, whose proposal or proposals are determined in writ-  
 4 ing to be the most advantageous to the public, taking into considera-  
 5 tion price and the evaluation factors set forth in the request for  
 6 proposals. No other factors or criteria shall be used in the evalua-  
 7 tion. The contract file shall include the basis on which the desig-  
 8 nation is made.

9 b. The contracting unit may negotiate a proposed contract, which  
 10 shall include the accepted proposal, with the designated vendor.

1 24. (New section) Any contract to be awarded to a vendor pur-  
 2 suant to the provisions of sections 19 through 27 of this act or pur-  
 3 suant to the "Local Public Contracts Law," P. L. 1971, c. 198  
 4 (C. 40A:11-1 et seq.) or any other contracting procedure authorized  
 5 by law for resource recovery facilities, shall include where applica-  
 6 ble, but not be limited to, provisions concerning:

7 a. Allocation of the risks of financing and constructing a resource  
 8 recovery facility, such risks to include:

- 9 (1) Delays in project completion;
- 10 (2) Construction cost overruns and change orders;
- 11 (3) Changes necessitated by revisions in laws, rules or regu-
- 12 lations;
- 13 (4) Failure to achieve the required operating performance;
- 14 (5) Loss of tax benefits; and
- 15 (6) The need for additional equity contributions.

16 b. Allocation of the risks of operating and maintaining a re-  
 17 source recovery facility, such risks to include:

- 18 (1) Excess downtime or technical failure;
- 19 (2) Excess labor or materials costs due to underestimation;
- 20 (3) Changes in operating procedure necessitated by revi-
- 21 sions in laws, rules or regulations;
- 22 (4) Changes in the amount or composition of the solid waste
- 23 delivered for disposal;

24 (5) Excess operation or maintenance costs due to poor  
25 management; and

26 (6) Increased costs of disposal of the resource recovery  
27 facility residue.

28 c. Allocation of the risks associated with circumstances beyond  
29 the control of any party to the contract;

30 d. Allocation of the revenues from the sale of energy;

31 e. Default and termination of the contract;

32 f. The periodic preparation by the vendor of an operating per-  
33 formance report and an audited financial statement of the facility  
34 which shall be submitted to the contracting unit, the department  
35 and the Division of Local Government Services in the Department  
36 of Community Affairs;

37 g. The intervals at which the contract shall be renegotiated; and

38 h. Employment of current employees of the contracting unit  
39 whose positions will be affected by the terms of the contract.

1 25. (New section) Any new or substantially renegotiated con-  
2 tract to be awarded to a vendor pursuant to this act shall be the  
3 subject of a public hearing to be held by the contracting unit in  
4 the jurisdiction of the contracting unit, prior to submission of the  
5 contract for the approvals required in section 26 of this act, in  
6 accordance with the following procedure:

7 a. The contracting unit shall provide adequate public notice of  
8 the proposed contract award to prospective consumers and other  
9 interested parties, which shall include publication in at least one  
10 newspaper of general circulation in the jurisdiction of the con-  
11 tracting unit;

12 b. The contracting unit shall schedule a meeting to be held within  
13 45 days of publication of the public notice with consumer repre-  
14 sentatives and other interested parties in order to present and  
15 explain the terms and conditions of the contract and to receive  
16 written questions which shall become part of the hearing record;

17 c. The contracting unit shall hold a public hearing within 90  
18 days of providing notice of the proposed contract award at which  
19 the questions submitted at the meeting held pursuant to subsec-  
20 tion b. of this section shall be addressed. At the hearing, interested  
21 parties may submit statements or additional questions concerning  
22 the terms and conditions of the proposed contract;

23 d. The contracting unit shall, within 30 days of the close of the  
24 hearing record, publish a hearing report which shall include all  
25 issues and questions raised at the hearing and the contracting  
26 unit's response thereto; and

27 e. The hearing report and the determination of the contracting

28 unit concerning the terms and conditions of the contract shall be  
29 provided to all interested parties and hearing attendees at least 15  
30 days prior to submission of the contract for the approvals required  
31 in section 26 of this act.

1 26. (New section) a. Any new or substantially renegotiated con-  
2 tract to be awarded to a vendor and a copy of the public hearing  
3 report shall be submitted to the department which shall approve or  
4 disapprove the proposed contract based on its being consistent with  
5 the district solid waste management plan adopted pursuant to the  
6 provisions of the "Solid Waste Management Act," P. L. 1970, c. 39  
7 (C. 13:1E-1 et seq.) within 60 days of receipt. If the department  
8 shall disapprove the proposed contract, the contracting unit may  
9 prepare an amended contract and, if the amendments are sub-  
10 stantial, hold a public hearing thereon pursuant to the provisions  
11 of section 25 of this act. Thereafter the amended contract may be  
12 resubmitted for approval. In the alternative, the district solid  
13 waste management plan may be amended so as to be consistent  
14 with the proposed contract.

15 b. Any new or substantially renegotiated contract to be awarded  
16 to a vendor and a copy of the public hearing report shall be sub-  
17 mitted to Division of Local Government Services in the Department  
18 of Community Affairs which shall approve or disapprove the pro-  
19 posed contract within 60 days of receipt. The Division of Local  
20 Government Services shall approve the contract if the division  
21 finds, in writing, that the contract meets the requirements of section  
22 24 of this act concerning the contents of the contract and that the  
23 contract comports with the fiscal and financial capabilities of the  
24 contracting unit. If the Division of Local Government Services dis-  
25 approves the proposed contract, the division shall inform the  
26 contracting unit, in writing, of the changes necessary for approval.  
27 The contracting unit may then prepare an amended contract and,  
28 if the amendments are substantial, hold a public hearing thereon  
29 pursuant to the provisions of section 25 of this act. Thereafter, the  
30 amended contract may be resubmitted for approval.

31 c. Any new or substantially renegotiated contract to be awarded  
32 to a vendor pursuant to this act, pursuant to the "Local Public  
33 Contracts Law," P. L. 1971, c. 198 (C. 40A:11-1 et seq.) or pur-  
34 suant to any other contracting procedure authorized by law for  
35 resource recovery facilities, shall be filed with the Board of Public  
36 Utilities along with a copy of the public hearing report. The Board  
37 of Public Utilities shall, within 90 days of receipt, review any con-  
38 tract filed with it and approve that contract if the board finds the  
39 contract to be in the public interest. If the Board of Public Utilities

40 disapproves the contract because the contract is not in the public  
 41 interest, the board shall notify the contracting unit in writing of  
 42 the changes needed in the contract in order for it to be in the public  
 43 interest. The contracting unit may prepare an amended contract  
 44 and, if the amendments are substantial, hold a public hearing  
 45 thereon pursuant to the provisions of section 25 of this act. There-  
 46 after the amended contract may be resubmitted for approval.

47 In reviewing and approving the contract, the Board of Public  
 48 Utilities shall not determine a rate base for, or otherwise regulate  
 49 the tariffs or return of, the proposed resource recovery facility. The  
 50 board shall not, thereafter, conduct any further review of the  
 51 contract.

52 d. Notwithstanding the provisions of subsection c. of this section,  
 53 all parties to any contract may request the board to determine a rate  
 54 base for the proposed resource recovery facility, in which case the  
 55 board may make that determination and the terms of any contract  
 56 so approved shall remain subject to the continuing jurisdiction of  
 57 the board.

58 27. (New section) The contracting unit may award a contract  
 59 for resource recovery facilities or services to a vendor only after  
 60 a public hearing thereon and upon approval by the department, the  
 61 Division of Local Government Services, and the Board of Public  
 62 Utilities.

1 28. (New section) Whenever the Division of Rate Counsel in the  
 2 Department of the Public Advocate represents the public interest in  
 3 a proceeding held to consider a contract awarded pursuant to sec-  
 4 tions 19 through 27 of this act, the Director of the Division of Rate  
 5 Counsel may assess the vendor in the manner provided for in section  
 6 20 of P. L. 1974, c. 27 (C. 52:27E-19).

1 29. (New section) A contracting unit may lease or sell the site for  
 2 a resource recovery facility to a vendor which has been awarded a  
 3 contract pursuant to this act or pursuant to the "Local Public  
 4 Contracts Law," P. L. 1971, c. 198 (C. 40A:11-1 et seq.) or pursuant  
 5 to any other contracting procedure authorized by law for resource  
 6 recovery facilities.

1 30. (New section) Any contracting unit which has substantially  
 2 and materially complied with the provisions of sections 20 through  
 3 23 of this act, prior to the effective date of this act, as determined  
 4 by the department, may award contracts pursuant to the provisions  
 5 of this act.

1 31. (New section) a. Each district which is awarded a franchise  
 2 pursuant to the provisions of section 6 of P. L. 1970, c. 40 (C.  
 3 48:13A-5) may award subfranchises to one or more persons en-

4 gaged in operating a resource recovery facility in all or any part  
5 of that district, provided that any subfranchise so awarded does  
6 not alter the terms of any franchise awarded by the Board of Public  
7 Utilities and that the subfranchise shall conform to the solid waste  
8 management plan for that district as approved by the department.

9 b. Subfranchises awarded pursuant to this section shall be of  
10 sufficient area to support the estimated technical and economic needs  
11 of the resource recovery facility which is to serve the district or  
12 portion thereof.

1 32. (New section) a. The department may adopt any rules and  
2 regulations pursuant to the provisions of the "Administrative  
3 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as it may  
4 deem necessary to effectuate the purposes of this act.

5 b. The Board of Public Utilities may adopt any rules and regula-  
6 tions pursuant to the provisions of the "Administrative Procedure  
7 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as it may deem  
8 necessary to effectuate the purposes of this act.

9 c. The Division of Local Government Services in the Department  
10 of Community Affairs may adopt any rules and regulations pursu-  
11 ant to the provisions of the "Administrative Procedure Act," P. L.  
12 1968, c. 410 (C. 52:14B-1 et seq.) as it may deem necessary to  
13 effectuate the purposes of this act.

1 33. (New section) Any additional expenditures made by a munic-  
2 ipality or county necessary to comply with an order, issued by the  
3 department pursuant to the provisions of the "Solid Waste Manage-  
4 ment Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.) and the Board of  
5 Public Utilities pursuant to the "Solid Waste Utility Control Act  
6 of 1970," P. L. 1970, c. 40 (C. 48:13A-1 et seq.), to transport solid  
7 waste to a resource recovery facility, or any expenditures necessary  
8 to reflect adjustment in rates, fees or other charges made in con-  
9 nection with the taxes and surcharges imposed pursuant to section  
10 3 of P. L. c. (C. ) (now pending before the Legislature as  
11 Assembly Bill No. 1778 of 1984), or the provisions of a contract  
12 entered into pursuant to the provisions of P. L. , c. (C.  
13 ), (now pending before the Legislature as Assembly Bill No.  
14 1778 of 1984), shall, for the purposes of P. L. 1976, c. 68 (C.  
15 40A:4-45.1 et seq.), be considered an expenditure mandated by  
16 State law.

1 34. Section 11 of P. L. 1975, c. 326 (C. 13:1E-20) is amended to  
2 read as follows:

3 11. a. (1) Within 360 days after the effective date of this amenda-  
4 tory and supplementary act, the respective boards of chosen  
5 freeholders, in the case of counties, and the Hackensack Com-

6 mission, in the case of the Hackensack Meadowlands District,  
 7 shall develop and formulate, pursuant to the procedures herein  
 8 contained, a solid waste management plan for each respective solid  
 9 waste management district; provided, however, that the commis-  
 10 sioner may extend such period for a maximum of 45 additional  
 11 days upon the certification of the board of chosen freeholders or  
 12 the Hackensack Commission, as the case may be, of the causes of  
 13 the delay in developing and formulating a plan, and upon the  
 14 commissioner's determination that an extension will permit the  
 15 development and formulation of a solid waste management plan  
 16 as required herein. Within 90 days of the effective date of this  
 17 act, each district shall make the necessary personnel, financial and  
 18 legal arrangements to assure the development and formulation  
 19 of the plan within 360 days of the effective date of this act.  
 20 Every such solid waste management plan shall be developed and  
 21 formulated to be in force and effect for a period of *not less than*  
 22 10 years, upon the expiration of which a new plan shall be developed  
 23 and formulated pursuant to the procedures herein contained; pro-  
 24 vided, however, that every such plan shall contain provisions for  
 25 automatic review thereof not less than once every two years  
 26 following the approval thereof by the department, which review  
 27 shall be undertaken by the board of chosen freeholders or the  
 28 Hackensack Commission, as the case may be; and, provided further,  
 29 however, that every such plan may be reviewed at any time by the  
 30 department. Upon such review, if the board of chosen freeholders,  
 31 the Hackensack Commission, or the department, as the case may  
 32 be, determines that any solid waste management plan, or any part  
 33 thereof, is inadequate for the purposes for which it was intended,  
 34 such board of chosen freeholders or the Hackensack Commission, as  
 35 the case may be, shall develop and formulate a new solid waste  
 36 management plan, or any part thereof, and such new plan, or part  
 37 thereof, shall be adopted thereby pursuant to the procedures con-  
 38 tained in section 14 of this amendatory and supplementary act.

38A Nothing herein contained shall be construed as to prevent any  
 38B board of chosen freeholders or the Hackensack Commission from  
 38C readopting a solid waste management plan upon the expiration of  
 38D same in a solid waste management district; provided, however,  
 38E that any such readoption shall be pursuant to the provisions of  
 38F section 14 of this amendatory and supplementary act.

39 (2) Any two or more districts may formulate and adopt a single  
 40 solid waste management plan which shall meet all the requirements  
 41 of this act for the combined area of the cooperating solid waste  
 42 management districts.



43 b. (1) To assist each board of chosen freeholders in the develop-  
 44 ment and formulation of the solid waste management plans re-  
 45 quired herein, an advisory solid waste council shall be constituted  
 46 in every county and shall include municipal mayors or their  
 47 designees, persons engaged in the collection or disposal of solid  
 48 waste and environmentalists. The respective size, composition and  
 49 membership of each such council shall be designated by the respec-  
 50 tive boards of chosen freeholders. In the Hackensack Meadowlands  
 51 District, the Hackensack meadowlands municipal committee, estab-  
 52 lished pursuant to article 4 of P. L. 1968, c. 404 (C. 13:17-7 and  
 53 13:17-8), is hereby designated an advisory solid waste council  
 54 for the purposes of this amendatory and supplementary act; pro-  
 55 vided, however, that nothing herein contained shall be construed  
 56 as in any way altering the powers, duties and responsibilities of the  
 57 Hackensack Meadowlands municipal committee except as herein  
 58 specifically provided. The respective boards of chosen freeholders  
 59 and the Hackensack Commission shall consult with the relevant  
 60 advisory solid waste council at such stages in the development and  
 61 formulation of the solid waste management plan as each such board  
 62 of chosen freeholders or the Hackensack Commission, as the case  
 63 may be, shall determine; provided, however, that a solid waste  
 64 management plan shall be adopted as hereinafter provided only  
 65 after consultation with the relevant advisory solid waste council.

66 (2) In the development and formulation of a solid waste man-  
 67 agement plan for any solid waste management district, the board  
 68 of chosen freeholders or the Hackensack Commission, as the case  
 69 may be, shall:

70 (a) Consult with the county or municipal government agencies  
 71 concerned with, or responsible for, water pollution control, water  
 72 policy, water supply, or zoning or land use within the solid waste  
 73 management district;

74 (b) Review such plans for solid waste collection and disposal  
 75 proposed by, or in force in, any municipality or municipalities  
 76 within the solid waste management district, to determine the suit-  
 77 ability of any such plan, or any part thereof, for inclusion within  
 78 the solid waste management plan of the solid waste management  
 79 district; and

80 (c) Consult with persons engaged in solid waste collection and  
 81 disposal in the solid waste management district.

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

3 6. a. The Board of Public [Utility Commissioners] *Utilities* shall,  
 4 after hearing, by order in writing, when it finds that the public

5 interest requires, designate any municipality as a franchise area  
 6 to be served by one or more persons engaged in solid waste collec-  
 7 tion and *may award* any solid waste management district **[as]** a  
 8 franchise **[area to]** *which shall* be served by one or more persons  
 9 engaged in solid waste disposal at rates and charges published in  
 10 tariffs or contracts accepted for filing by the board; provided,  
 11 however, that the proposed franchise area for solid waste collection  
 12 or *the proposed franchise* for solid waste disposal conforms to the  
 13 solid waste management plan of the solid waste management  
 14 district in which such franchise area is to be located or *such fran-*  
 15 *chise is to be awarded*, as such plan shall have been approved by  
 16 the Department of Environmental Protection.

17 *b. Upon application by any solid waste management district,*  
 18 *the Board of Public Utilities shall, by order in writing, award a*  
 19 *solid waste management district, or two or more districts, a fran-*  
 20 *chise which shall be served by a person engaged in operating a*  
 21 *resource recovery facility, provided that the proposed franchise*  
 22 *shall conform to the solid waste management plan, as approved by*  
 23 *the department, of the solid waste management district or districts*  
 24 *to which the franchise will be awarded.*

25 *Each district awarded a franchise pursuant to this subsection*  
 26 *may award subfranchises pursuant to the provisions of section 31*  
 27 *of P. L. c. (C. ) (now pending before the Legis-*  
 28 *lature as Assembly Bill No. 1778 of 1984), provided the subfran-*  
 29 *chises do not alter the terms of a franchise awarded pursuant to*  
 30 *this subsection.*

31 *c. Franchises awarded pursuant to this section shall be of suffi-*  
 32 *ent area to support the estimated technical and economic needs of*  
 33 *the resource recovery facility which is to serve the district or*  
 34 *portion thereof.*

35 *d. For the purposes of this section, franchise shall mean the*  
 36 *exclusive right to control the disposal of solid waste within a*  
 37 *district as awarded pursuant to this section.*

38 *e. The board shall encourage the consolidation of all accounts,*  
 39 *customers, routes and facilities by persons engaged in solid waste*  
 40 *collection **[or]** within franchise areas or in solid waste disposal*  
 41 ***[within such]** pursuant to a franchise **[areas].***

42 Nothing in section 11 of this act (C. 48:13A-10) shall be inter-  
 43 preted to prevent the implementation of this section by the Board  
 44 of Public **[Utility Commissioners]** Utilities.

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

3 15. Duration of certain contracts. All purchases, contracts or

4 agreements for the performing of work or the furnishing of ma-  
 5 terials, supplies or services shall be made for a period not to exceed  
 6 12 consecutive months, except that contracts or agreements may  
 7 be entered into for longer periods of time as follows:

8 (1) Supplying of

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

11 (b) Fuel or oil for use of airplanes, automobiles, motor  
 12 vehicles or equipment for any term not exceeding in the aggre-  
 13 gate, two years;

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

21 (2) (Deleted by amendment; P. L. 1977, c. 53.)

22 (3) The collection and disposal of garbage and refuse, for any  
 23 term not exceeding in the aggregate, five years;

24 (4) The recycling of solid waste, for any term not exceeding 25  
 25 years, when such contract is in conformance with a solid waste  
 26 management plan approved pursuant to P. L. 1970, c. 39 (C. 13:1E-1  
 27 et seq.), and with the approval of the Division of Local Government  
 28 Services and the Department of Environmental Protection;

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

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

32 (7) Leasing or servicing of automobiles, motor vehicles, [elec-  
 33 tronic communications equipment,] machinery and equipment of  
 34 every nature and kind, for a period not to exceed three years; pro-  
 35 vided, however, such contracts shall be entered into only subject  
 36 to and in accordance with the rules and regulations promulgated  
 37 by the Director of the Division of Local Government Services of  
 38 the Department of Community Affairs;

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

42 (9) Any single project for the construction, reconstruction or  
 43 rehabilitation of any public building, structure or facility, or any  
 44 public works [projects] *project*, including the retention of the  
 45 services of any architect or engineer in connection therewith, for  
 46 the length of time authorized and necessary for the completion of  
 47 the actual construction;

48 (10) The providing of food services for any term not exceeding  
49 three years;

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

54 (12) The performance of work or services or the furnishing of  
55 materials or supplies for the purpose of conserving energy in build-  
56 ings owned by, or operations conducted by, the contracting unit,  
57 the entire price of which to be established as a percentage of the  
58 resultant savings in energy costs, for a term not to exceed 10 years;  
59 provided, however, that such contracts shall be entered into only  
60 subject to and in accordance with rules and regulations promulgated  
61 by the Department of Energy establishing a methodology for com-  
62 puting energy cost savings[.];

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

66 (14) *Leasing or servicing of electronic communications equip-*  
67 *ment for a period not to exceed five years; provided, however, such*  
68 *contract shall be entered into only subject to and in accordance*  
69 *with rules and regulations promulgated by the Director of the Divi-*  
70 *sion of Local Government Services of the Department of Com-*  
71 *munity Affairs;*

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

78 (16) *The provision of solid waste disposal services by a resource*  
79 *recovery facility, or the design, construction, operation or mainte-*  
80 *nance of a resource recovery facility for a period not to exceed 40*  
81 *years when the contract is approved by the Division of Local*  
82 *Government Services in the Department of Community Affairs, the*  
83 *Board of Public Utilities, and the Department of Environmental*  
84 *Protection; and when the facility is in conformance with a solid*  
85 *waste management plan approved pursuant to P. L. 1970, c. 39*  
86 *(C. 13:1E-1 et seq.). For the purposes of this subsection, "resource*  
87 *recovery facility" means a solid waste facility for the collection,*  
88 *separation, recycling and recovery of metals, glass, paper and other*  
89 *materials for reuse or for energy production.*

90 All multi-year leases and contracts entered into pursuant to this

91 section 15, except contracts for the leasing or servicing of equip-  
 92 ment supplied by a telephone company which is subject to the  
 93 jurisdiction of the Board of Public Utilities **[or]**, *contracts for*  
 94 *thermal energy authorized pursuant to subsection (1) above*, con-  
 95 struction contracts authorized pursuant to subsection (9) above, or  
 96 contracts and agreements for the **[provisions]** *provision* of work or  
 97 the supplying of equipment to promote energy conservation au-  
 98 thorized pursuant to subsection (12) above, *or contracts for re-*  
 99 *source recovery services or a resource recovery facility authorized*  
 100 *pursuant to subsection (16) above* shall contain a clause making  
 101 them subject to the availability and appropriation annually of  
 102 sufficient funds as may be required to meet the extended obligation,  
 103 or contain an annual cancellation clause.

104 The Division of Local Government Services shall adopt and  
 105 promulgate rules and regulations concerning the methods of ac-  
 106 counting for all contracts that do not coincide with the fiscal year.

1 37. This act shall take effect immediately except for section 3  
 2 which shall take effect the first day of the third month following  
 3 enactment.

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#### STATEMENT

The State's capacity to dispose of its non-hazardous solid waste through landfilling is rapidly diminishing. As required under the "Solid Waste Management Act," P. L. 1970, c. 39 (C. 13:1E-1 et seq.), each solid waste management district has prepared a plan for solid waste management. Most of the plans developed provide for the establishment of resource recovery facilities to replace the sanitary landfills currently in use. Resource recovery facilities provide an environmentally acceptable means of solid waste disposal and also will convert waste to energy and thereby be more economically efficient than landfilling.

The construction and initial operation of resource recovery facilities are highly capital intensive and, therefore, the owners or operators of the facilities may need to charge disposal fees which, at least initially, will be substantially higher than landfill disposal fees. In order to encourage and facilitate the provision of resource recovery services, it is necessary to reduce the initially high cost of these disposal services so that the fees are more competitive with landfill disposal fees.

This bill provides for a resource recovery investment tax on solid waste disposal at sanitary landfills to be placed in a resource recovery investment fund in each solid waste district for later use in

subsidizing the transition to resource recovery. The tax will be levied on all solid waste generated within each district at an initial rate of \$0.28 per cubic yard of waste. Thereafter, the tax will be automatically increased by \$0.28 at 18 months, 30 months, and 42 months after the tax is first imposed unless otherwise adjusted by the district with the approval of the Department of Environmental Protection. In addition, the bill provides for a surcharge on the tax to be levied on all out-of-district waste received in a district at a rate of \$0.21 per cubic yard. The funds generated by the surcharge will be retained in the resource recovery fund of the receiving district as compensation for accepting solid waste from another district and to provide an incentive to districts that send waste to another district to discontinue that practice.

This bill also provides for the imposition of an additional tax to be levied on all solid waste accepted at landfills at a rate of \$0.25 per cubic yard. At least 50% of the funds generated by this additional tax will be distributed among the 22 solid waste management districts for the purpose of preparing, revising, and implementing solid waste management plans. The remaining funds will be used by the Department of Environmental Protection for research, planning, permitting, regulating and enforcing the provisions of the Solid Waste Management Act and for administering the services tax fund.

To attract private sector financing of resource recovery facilities, it is necessary to remove any institutional impediments which now exist. This bill would encourage private sector financing of resource recovery facilities by establishing a method of procurement by local government through the use of long term negotiated contracts, designated franchises and simplified rate setting as an alternative to traditional public utility regulation. This process would be subject to strict scrutiny by the Department of Environmental Protection, the Board of Public Utilities and the Department of Community Affairs.

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**ASSEMBLYMAN HARRY A. McENROE (Chairman):** Good morning. I would like to welcome all of you to this public hearing, called to review Assembly Bill 1778. This, of course, is a Committee which has the responsibility, generally, for oversight in areas affecting county governments and regional authorities.

Probably the most important aspect of our responsibility which we will review during this session, is embodied in this legislation. As all of us know, in a very general way, there has been progress made in this country in technological advancement. We have had great success in scientific matters, and yet we have continued for 200 years to just spoil our most precious asset, our land, with the waste from this modern, throwaway society. It has generated a great problem across the country, and what really is a shame across the nation, is almost criminal in a State like New Jersey, which has limited land resources.

We think this legislation addresses the major question of how to resolve this difficult circumstance in a wasteful society. We welcome everyone's testimony, not only those in government charged with responsibility for the regulation and enforcement of meaningful solid waste reform, but certainly we are convening these hearings to hear about the public's interest in the direction we propose.

We are going to have a statement by our Committee Aide in a moment, which will outline the bill in a sense. Prior to that, I would like to introduce the members of the Committee. On my far right is the Vice Chairman of this Committee, Assemblyman Thomas Pankok, representing the Counties of Salem and Cumberland. Assemblyman Pankok, thank you for your attendance. We also have Assemblyman John Hendrickson, representing Ocean County. John is a member of the Committee and has, of course, a great interest in the meaningful development of a solid proposal to handle the garbage in our State in the future. Do you have a statement, Assemblyman Hendrickson, that you would like to offer?

**ASSEMBLYMAN HENDRICKSON:** Yes, Mr. Chairman, and I would like to read it. My county -- actually Burlington and Ocean Counties -- has been involved with solid waste in our Solid Waste Management

Plan. For the last 10 years, there has been an ever-growing crisis in New Jersey, one that has been ignored until it now poses a serious threat to the well-being of the State. That crisis is solid waste and its disposal. The time has come when we can no longer bury our garbage under a mound of dirt and walk away. This crisis has grown even more severe as landfills throughout the State are closed or are about to be closed.

Having been involved in local government for many years, I have watched elected officials struggle with the landfill question. I have also watched in horror as my County of Ocean has become the dumping ground of counties that have not lived up to their responsibilities under the Solid Waste Management Act. It is unreasonable to expect counties which have followed the letter of the law, to have their planned landfill space used up by counties which have not developed their own solid waste management program.

Assemblyman McEnroe's and Senator DiFrancesco's bill, which is supported by Governor Kean, goes a long way in solving the solid waste problems of New Jersey. First, it provides for private investment in the construction of resource recovery facilities. Second, it calls for the establishment of a solid waste management fund in each county through a mandated surcharge on garbage disposal, which will be used for the development of resource recovery and associated facilities. Third, the legislation attempts to speed the contracting process. Finally, and I might add most importantly, it provides for the payment of penalties to those counties which have been forced to accept garbage from other counties for disposal .

I am sure we will have an informed discussion today, and I look forward to hearing everyone's opinion.

Thank you very much, Mr. Chairman.

ASSEMBLYMAN McENROE: Thank you, Assemblyman Hendrickson. Before I introduce the Committee Aide, I would like to introduce the other gentlemen at the table with us. The Majority Aide to the Committee, Mr. John Alati, is on my right, and Mr. Glenn Beebe, the Minority Aide for the Committee, is on Assemblyman Hendrickson's right. Miss McNutt, would you kindly outline-- I think Assemblyman

Hendrickson did an exceptional job in laying the framework for your comments, but will you kindly describe the intent of the bill?

MISS McNUTT: Assembly Bill 1778 establishes a new method of contracting for the construction, operation, and maintenance of resource recovery facilities, and simplifies the rate-setting procedures. In addition, the bill permits franchises and subfranchises to be awarded in order to ensure a solid waste flow to the facilities. The bill also establishes two taxes and a surcharge to provide stable funding sources for the State and the solid waste management districts to use in implementing, regulating, and enforcing solid waste management plans and in reducing resource recovery fees.

The new contracting procedure permits a contracting unit to request proposals from vendors for the construction, operation, and maintenance of a resource recovery facility. The contracting unit may then designate a vendor or vendors based upon price and evaluation factors for the purposes of negotiating a proposed contract. Certain provisions must be included in the proposed contract concerning the allocation of risks between the vendor and the contracting unit in the event problems arise during the construction or operation of the resource recovery facility.

After a proposed contract has been negotiated, the contracting unit holds a meeting with consumer representatives and a public hearing to explain the contract and answer any questions thereon. A hearing report is prepared, to include all issues and questions raised at the public hearing and the responses of the contracting unit thereto.

After the public hearing, the contracting unit submits the proposed contract for approval to the Department of Environmental Protection, Division of Local Government Services, and to the Board of Public Utilities.

Upon approval by all three parties, the contract may be awarded to a vendor for a period not to exceed 40 years.

The bill provides for a resource recovery investment tax on solid waste disposed at sanitary landfills to be placed in a resource recovery investment fund in each solid waste district for later use in

subsidizing the transition to resource recovery. The tax will be levied on the owner or operator of a sanitary landfill for all solid waste accepted from a district, at an initial rate of \$0.28 per cubic yard of waste. Thereafter, the tax will be automatically increased by \$0.28 at 18 months, 30 months, and 42 months after the tax is first imposed, unless otherwise adjusted by the district and the Department of Environmental Protection.

In addition, the bill provides for a surcharge on the tax to be levied on the owner or operator, on all out-of-district waste received in a district, at a rate of \$0.21 per cubic yard of waste. The funds generated by the surcharge will be retained in the resource recovery fund of the receiving district as compensation for accepting solid waste from another district, and to provide an incentive to districts that send waste to another district to discontinue that practice.

The bill also provides for the imposition of an additional tax to be levied on all solid waste accepted at landfills, at a rate of \$0.25 per cubic yard of waste. At least 50% of the funds generated by this additional tax will be distributed among the 22 solid waste management districts for the purpose of preparing, revising, and implementing solid waste management plans. The remaining funds may be used by the Department of Environmental Protection for reviewing, regulating, enforcing, and assisting in the development of solid waste management plans, and for administering the tax funds.

ASSEMBLYMAN McENROE: Thank you very much. The first individual who will offer testimony will be the Commissioner of the Department of Environmental Protection, Commissioner Robert Hughey. Good morning, sir. It's nice to have you begin our deliberations and our testimony. I anticipate comments supportive of the bill, but I want to indicate, as Chairman, I think, of a pivotal committee in an effort to resolve this matter, that I appreciate your cooperation, your leadership, and the straightforward way in which you have approached your responsibilities.

ROBERT E. HUGHEY: Thank you, Mr. Chairman, and I return that to you in kind. I think that since we all know what the bill contains now --

we've had, I think, two summaries -- I am not going to do that. But, I do want to provide, for the benefit of the Committee and the public, an insight into how we got here. I think as we debate bills, we sometimes think they are drafted overnight, or that they are a two-week process. This bill, as the sponsors know, has been in the works for two years. I think it is very important to note that during those two years the major input on the bill came from the counties. Every once in a while it seems that I am not in agreement with any county in the State on solid waste, because I have to direct it to Assemblyman Hendrickson's district, support the Cumberland Freeholder's district, or take them to court if they don't do what they did a couple of weeks ago and get themselves in trouble locally.

So, solid waste is difficult under the best of circumstances. Working with the counties has not always been very easy, but it has been easy on this bill. What we have done over the course of the last two years is work with all the counties in the State. We have debated all the issues they face in terms of solid waste. Some of those issues are things that are not easily done away with. There is certainly no way to take the pressure off siting issues, or to make them easier. But, one of the things I agreed with them on two years ago, was that we had to address the financing of not just resource recovery, but upgraded landfills. We had to make the transition from what has been a cheap way of taking care of garbage in this State, to what is going to be a very expensive way. Somehow we had to soften that blow.

This bill does that, and I think it is one of the more fundamental parts of the bill. For the first time, we have a planning bill which begins to force savings which can be used to offset future costs. The county, whether it is a county which is moving forward quickly or not, today has no recourse but to abruptly change as they reach a new process, whether it is an upgraded landfill in Cumberland County, an upgraded landfill in Ocean County, or a resource recovery facility in Essex County. Under the current process, there are no savings before the fact, so we get up to a year before we abruptly face municipal and county governments with a change that could be tenfold.

This bill, by phasing in tipping fee increases over a period of years, really begins to provide a cushion for them that makes the cost for resource recovery and the cost of upgraded landfills level off in the future. While it looks like it is another means of raising money, and it is, I think we should put that money it raises in proportion, and in some relevant sense. What we are talking about today, when it is all done, is still not going to be enough to do resource recovery. It is still not going to be enough to do upgraded landfills without some changes in the rate structure, but it is going to be a tremendous help. As good a help as it is, it represents, over the next four years, only a 5% to 10% increase in the cost of garbage to the homeowner. I think that is important to keep a sense of.

I think we all acknowledge, and I know the Legislature does, that garbage has sort of been the ignored stepchild of our environmental problems in this State. I think we have done very well with some of the things we have had to deal with that focused attention on them. We have stepped in -- New Jersey has stepped in more strongly than any other state in this country on hazardous waste. We have done good things in historical research on problems. But, garbage has been sitting here since 1972, when it was first called a crisis, and we have not taken the steps I think the State has to take. The State is the only place where you can take the steps that we are taking today; the only place where you can streamline the contracting process; and, the only place where you can make some certainty a part of the rate-setting structure. It is the only place you can acknowledge that some counties are in an advantage position because they have done their job, and there are some counties which are in a disadvantage position. I think that is another part of the bill which is going to be overlooked as we move on, but it is very important because it acknowledges, for the first time, that there should be incentives to the county which gets stuck with someone else's garbage, and there should be disincentives for wanting to send it there.

I am going to be followed today by the New Jersey Association of Counties. I think they are coming today to testify in favor of the bill, which says more than anything I could tell you about the extent

to which this State has become aware of both the problem and where we have to go in the future. The garbage problem is very real. With the development of resource recovery facilities, at least in some limited way, we can cut down our dependency on landfills. I think that is also going to be followed by the development of mandatory recycling, which I expect to see within the next couple of years. I think when we see it, we are going to have to phase it in, because nobody will be ready for mandatory recycling in one day or one week. Another component is composting, which we are now seeing some of our counties move toward.

The general sentiment I would leave you with, is that not one of those solutions is the solution. They work in combination, and what this bill does is make possible some of the solutions. It does not mandate any solution. It does not say that if you pass the bill we are going to have resource recovery. It does not say that if you pass the bill we are going to have upgraded landfills or recycling. But, what it does say, is that we are going to begin to compile the resources to give the counties the options which they do not have now. I think the county governments which have been working with me for the last two years, with the sponsors of this legislation, have done a remarkable job. It is the first time in my experience -- and I came from county government -- that we have ever seen a group of counties acknowledge that you have to think in advance, and that you have to start to set aside dollars in advance. This is not an easy decision for elected officials, but they think that garbage is important enough to do that. I think that probably tells you more about where we are than I could, even given infinite time.

I would say this bill is probably not a cure-all, but it addresses every problem that every county has brought to us, or has brought to the sponsors of the legislation, in the last 18 months. Now, I think, again, that that is sort of unusual in a piece of legislation, to be able to address all the counties, regardless of where they are in solid waste planning, and regardless of where they hope to be in the future. To be able to take a piece of legislation as comprehensive as this and include all those concerns, is, to me, really outstanding.



I also want to thank, in addition to the sponsors and my Department, the Board of Public Utilities and the Public Advocate's office, because we have had input from them for the last 18 months. I think that represents something distinctly different in terms of environmental problems, where the agencies which are involved have actually worked through the drafts. That doesn't mean that we are going to concur on everything, but I think it is the wave of the future in terms of answering our environmental problems.

Mr. Chairman, I want to thank you. I think it is an important piece of legislation. I think you're right in saying it is probably the most important piece of legislation we will see this year. Certainly, for my Department it is the most important one we'll see this year. I think it will put us well on the way if it works. I think it will help every county in the State, and I think it will help, through those counties, the people who produce garbage who are not at all sure what happens to it after it leaves the curb. What happens to it when it leaves the curb-- If we have resource recovery in the next 10 years, we will still need 158 acres of new landfills every year. If we don't have it, we will need 368 acres of landfills every year. For those of you on this Committee who have been watching -- as I have been watching -- people going through the questions of siting, landfills are every bit as hard to site as anything else in the garbage business. I think it is entirely unlikely that we are going to see an ability to site that many landfills, and I think it is entirely questionable whether or not we should want to see an ability to site that many landfills.

We have a State that has tremendous natural resources which people, when they are on the wrong road, miss; but, we don't miss them. I think it would be terrible to continue to use those natural resources in a way that is not a part of an overall plan.

Mr. Chairman, I would like to thank you for all the work you have put into this piece of legislation with my Department. I think it is the most sophisticated piece of legislation we have worked on in two years. I very much appreciate your efforts. Thank you.

ASSEMBLYMAN McENROE: Thank you, Commissioner. Are there any questions, Assemblyman Hendrickson or Assemblyman Pankok? (negative response) We're certainly off on the right foot. Thank you very much, Commissioner.

COMMISSIONER HUGHEY: Thank you.

ASSEMBLYMAN McENROE: We have a sign-in pad on the table for any individuals who have arrived who may wish to offer further testimony, but who have not advised us up to this point.

The next person we are going to call is the Executive Director of the New Jersey Association of Counties, Mr. Philip Beachem. Would you please join us up here at the table?

**PHILIP BEACHEM:** Thank you, Mr. Chairman. Let me just correct you, if I may. My title is Legislative Coordinator; my boss, Mr. Guy Millard, who is the Executive Director, would be very upset if he read that I had usurped him here. (laughter)

ASSEMBLYMAN McENROE: Well, you are an impressive fellow; that was an endorsement of sorts.

**MR. BEACHEM:** Mr. Chairman and members of the Committee: My name is Phil Beachem; I am the Legislative Coordinator for the New Jersey Association of Counties. I come before you today to testify on behalf of the Association, and to indicate our strong support for Assembly Bill 1778.

The New Jersey Association of Counties has spent the past several weeks reviewing the specific elements of this legislation, and has worked closely with Commissioner Hughey's staff to ensure that the bill responds to the needs and concerns of the county governments. This extensive review included discussions by our Public Works and Environmental Protection Committee, which is chaired by Ocean County Freeholder George Buckwald, our Legislation Committee, which is chaired by Middlesex County Freeholder David Crabiel, and finally, by the NJAC Board of Directors. At both Committee and Board levels, support for this legislation was unanimous. Additionally, a presentation by staff members of DEP was made before an NJAC affiliate, the New Jersey Association of County Administrators.

The Association of Counties is pleased to endorse this comprehensive and realistic legislation. We commend the sponsor, Assemblyman McEnroe, and Commissioner Hughey for developing legislation which addresses a major statewide problem and offers needed assistance to the counties in designing long-term solutions to that problem.

County officials throughout the State have been, and continue to be concerned about the protection of our environment for the well-being of current and future generations. We recognize that New Jersey's capacity to safely dispose of solid waste through landfilling has nearly reached its limit. Consequently, many counties have planned for, or are in the process of planning for the establishment of resource recovery facilities. County officials are committed to resource recovery as an environmentally acceptable method of solid waste disposal. Nonetheless, it must be understood that resource recovery is a very costly proposition, especially when compared to the relatively low cost of landfilling. Therefore, a concerted effort must be made to help bridge the gap between disposal at landfills and disposal through resource recovery. We believe that Assembly Bill 1778 accomplishes that purpose in an equitable manner. This legislation strikes a fair balance between the urgent need for environmentally safe solid waste disposal on the one hand, and the ability of the public to bear the cost for such disposal on the other hand.

The resource recovery investment tax created by this bill will greatly assist the county governments in making the difficult transition between landfilling and resource recovery. It will provide us with the financial capability to implement our district plans, while at the same time offering a strong incentive for more rapid development of resource recovery operations. Additionally, the solid waste services' tax will establish a stable source of funding for our solid waste management programs, and will allow for the increased enforcement activities which are so important to our citizens. It will also permit the counties to provide needed assistance to certain municipalities to help offset extraordinary expenses incurred as a result of hosting a solid waste facility.

With regard to the host bonus surcharge established by this legislation, we believe that it offers a reasonable and appropriate mechanism for compensating those counties which accept garbage from outside their borders. This element of the legislation has met with approval from both importing and exporting counties, and justifiably so. Our Association has heard no objections to the provision allowing a doubling of the host bonus surcharge in the event that the Department of Environmental Protection finds that a district has failed to make a good-faith effort to fulfill its responsibilities. We trust that the Department will be fair, consistent, and judicious in its exercise of this authority.

Finally, we support those provisions of the bill which establish an alternative competitive procurement procedure that addresses the unique aspects of private resource recovery services and encourages private-sector financing through long-term negotiated contracts and designated franchises. These particular components of the legislation offer practical and workable solutions to a highly complex problem.

In closing, let me point out that county governments, as solid waste management districts, are most directly affected by this legislation. We appreciate this opportunity to share our views with the members of this Committee, and we offer our full cooperation in securing passage of this legislation. The New Jersey Association of Counties believes that A-1778 will greatly assist the counties in effectively dealing with the serious problem of solid waste and, in so doing, will benefit all the citizens of the State of New Jersey. Thank you, Mr. Chairman.

ASSEMBLYMAN McENROE: Thank you, Mr. Beachem. Are there any questions for Mr. Beachem relative to the legislation? (negative response) Thank you, Mr. Beachem. We certainly appreciate your coming.

I would like to comment on a paragraph on Page 3 of your statement, where you say, "We trust that the Department will be fair, consistent, and judicious in its exercise of this authority." I think on behalf of the Legislature we can say we will monitor that

circumstance. We assure you, on the county level, that our efforts will be directed, of course, to satisfying fairness, consistency, and a judicious approach to all this.

So, thank you very much for your unanimous support. Frankly, I think that is more than we could possibly ask for.

MR. BEACHEM: Yes, we got unanimous support from 21 counties out of 21 counties.

ASSEMBLYMAN McENROE: Thank you.

ASSEMBLYMAN HENDRICKSON: We don't get that very often.

ASSEMBLYMAN McENROE: We have concluded hearing from people who signed in prior to the hearing, those who advised us they wished to offer testimony -- Commissioner Hughey and Mr. Beachem, the Legislative Coordinator from the New Jersey Association of Counties. Is there anyone else in the room who wishes to be heard by the Committee? (no response)

We have advised the public that we will hold an additional hearing on April 19 in the Essex County Hall of Records in Newark. My office has been contacted, and our Aide has been contacted, by various utilities and by other interested individuals representing various public interest groups. They remarked they are anxious to hear the comments from today's hearing, and then they will provide us with their thoughts and positions at the following hearing.

Frankly, it is a surprise to me that no one has raised the basic question of where all the money is coming from, so we could address the major part of this bill, because certainly in the next 10 years, I would think that over \$1 billion would be spent in an effort to resolve this matter, in the form of construction moneys for resource recovery facilities. This is a major question, and certainly one that we want to address and provide responsible information on.

We will now adjourn the hearing, fully confident at this point that we stand with the unanimous support of the citizenry. We appreciate everyone coming, and we hope to see you again as we progress toward final passage of the bill.

Thank you all very much.

**(HEARING CONCLUDED)**