
Committee Meeting

of

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT COMMITTEE

ASSEMBLY BILL No. 50

*“Solid Waste Management and Environmental
Investment Cost Recovery Act”*

LOCATION: Committee Room 15
State House Annex
Trenton, New Jersey

DATE: December 5, 1996
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John C. Gibson, Chair
Assemblyman Anthony R. Bucco, Vice-Chair
Assemblywoman Martha W. Bark
Assemblyman Melvin Cottrell
Assemblywoman Connie Myers
Assemblyman Anthony Improveto

ALSO PRESENT:

Algis P. Matioska
Leonard J. Colner
Office of Legislative Services
Aides, Assembly Agriculture and
Waste Management Committee



Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey

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ASSEMBLYMAN JOHN C. GIBSON (Chair): We will open the Agriculture and Waste Management Committee meeting with the Pledge of Allegiance to the flag. (participants comply)

Roll call, please.

MR. MATIOSKA: Assemblyman Imprevduto?

ASSEMBLYMAN IMPREVEDUTO: Yes.

MR. MATIOSKA: Assemblywoman Myers?

ASSEMBLYWOMAN MYERS: Here.

MR. MATIOSKA: Assemblywoman Bark?

ASSEMBLYWOMAN BARK: Here.

MR. MATIOSKA: Assemblyman Bucco?

ASSEMBLYMAN BUCCO: Here.

MR. MATIOSKA: Assemblyman Gibson?

ASSEMBLYMAN GIBSON: Here.

MR. MATIOSKA: You have a quorum.

(at this point Committee considers the following bills: Assembly Bill Nos. 1033, 2267, 2378, 1477 and Senate Bill No. 196)

ASSEMBLYMAN GIBSON: On Assembly Bill No. 50 that we began at the last meeting, we have a couple who have formally signed up to testify. I will add that this meeting will continue beyond today. We'll continue to seek input from those who are most interested in this major legislation.

Is Janet Hoffman from Waste Management here? (affirmative response)

Janet, we invite you up for your testimony. Good morning, Janet.

JANET P. HOFFMAN: Good morning, Mr. Chairman, members of the Committee. Thank you for the opportunity to come and speak to you about this bill.

My name is Janet Hoffman. I am the Director of Government Relations and Communications for the Mid-Atlantic Group of Waste Management, Incorporated.

Waste Management is a subsidiary of WMX Technologies and is the world's leading waste services company with recycling, collection, processing, transfer, and disposal capability in more than 20 countries with a workforce of more than 60,000 people worldwide.

In New Jersey, we have six waste collection facilities operating out of Vineland, Newark, Camden, Woodbine, Chester, and Trenton with approximately 500 employees. We also operate the Hunterdon County transfer station and the Hackensack-Meadowlands baler on behalf of those solid waste districts.

As I said, we do thank you for the opportunity to address our concerns about A-50. We applaud your initiative in addressing this controversial issue. We recognize the inherent difficulties in trying to reconcile opposing points of view which involve serious financial implications.

Waste Management is studying the issue of flow control or waste flow control in New Jersey and the provisions of this proposed legislation. As a result of our preliminary review, we have identified several key points or issues that we believe should be addressed in the legislation.

First, as a private company doing business in New Jersey, we believe there should be an equitable and fair process for procurement of

disposal contracts. To allow public facilities to negotiate with local governments while subjecting private facilities to a bid process is inherently unfair, uneconomic, and is likely contrary to constitutional requirements relative to protecting interstate commerce. We support equitable treatment for all facilities seeking business opportunities in the solid waste industry. A market-based system which requires all solid waste contracts to be competitively procured is in everyone's best interest.

Lower disposal fees generated through this market-based system will be passed on to consumers and will help promote a positive business climate for New Jersey. We would offer the possibility, also, that with a good business climate in New Jersey, private industry and county governments might be able to find mutually beneficial solutions to the financial problems created under the previous waste flow system.

ASSEMBLYMAN GIBSON: May I stop you there?

MS. HOFFMAN: Yes.

ASSEMBLYMAN GIBSON: Fortunately, today we don't have as many witnesses on this issue as we had at the first meeting, so maybe we'll get a little more specific.

I'm not sure what you mean when you say that you have to bid but a municipality negotiating with the county does not necessarily have to bid. Could you give me something specific of what you mean by that?

MS. HOFFMAN: I don't have the legislation in front of me, but the language says that a municipality can negotiate with a county facility. Whereas, private disposal facilities would need to go through a bid process.

ASSEMBLYMAN GIBSON: Excuse me a minute.

All right. I think your comment is well taken, evidently, because we have already covered that in an amendment. If you and your staff will review some of the amendments that we're not going to act on, but they're being introduced as we go along -- as I sign off on the particular amendments that make the most sense to me, as we hear this -- and I think if you will look at those amendments, it may address what you covered in that paragraph.

So I will ask you to continue.

MS. HOFFMAN: We would be happy to do that. We were not aware of that, and we would like to see those.

I would like to introduce Mr. Bill Studzinski, who is one of our counsels at Waste Management.

ASSEMBLYMAN GIBSON: Welcome.

WILLIAM STUDZINSKI, ESQ.: Good morning. Thank you.

MS. HOFFMAN: Second -- our second concern -- we believe the concept of an environmental investment charge is one way to address investments made in good faith by county governments in New Jersey, costs which could become stranded in the future. This charge, however, should include only the debt incurred to site, develop, and build disposal facilities. It should not include debt incurred for optional waste services such as solid waste collection, processing, disposition or marketing of designated recyclable materials, a district household hazardous waste program, or other nonstranded investment items. Items developed solely at the option of the counties or solid waste district or solid waste authorities in reliance on inflated disposal fees under the previous flow control system should be excluded from recovery through environmental investment charges.

ASSEMBLYMAN GIBSON: All right. Let me stop you there.

MS. HOFFMAN: Okay.

ASSEMBLYMAN GIBSON: The legislation, as I am advised, proposes that to be discretionary at the counties' discretion, but how does that affect you adversely, you as an industry? How does the fact that counties will have the discretion of being able to fund, separate from a tipping fee, these necessary State policies of recycling and collecting household hazardous waste -- how does that affect your industry adversely?

MS. HOFFMAN: Our concern would be-- We believe in separating the solid waste management issue from the debt recovery of the public debt that has been incurred. We recognize, however, there is a link. One of the things that we would like to see is that we are able to move forward with solid waste management while minimizing the impact of the debt on that, on that movement forward with the solid waste management program. It would be a very indirect kind of impact.

Our concern was that the legislation that was originally passed was for the disposition of solid waste, and it was our belief that those were the costs that should be allowed to be recovered.

Is there something else, Bill? (no response)

ASSEMBLYMAN GIBSON: All right. Thanks. You may continue.

MS. HOFFMAN: Third, the previously enacted State legislation resulted in local governments entering into contracts with private companies for management of their solid waste. We do not believe the purpose of this bill is to interfere with or abrogate those existing contracts. Private companies

have invested resources based on contracts with local governments. It is paramount that the State not interfere with these public/private arrangements. Any legislation relative to a new solid waste management system should specifically state that it is not intended nor should it be construed to abrogate these contracts.

Fourth, we do not support commercial or industrial franchising. We believe any franchising is not necessarily in the best interest of the State. Some may argue that municipal franchising of residential waste collection and disposal might represent the most efficient method of waste management for a municipality. We disagree. It is imperative that commercial and industrial waste continue to be collected and disposed through an open-market process. Both small and large businesses need the opportunity to negotiate the best possible rates for their solid waste needs.

While this bill does allow for commercial and industrial waste generators to procure solid waste services outside a municipal system, we would object to the legislation to the extent that it would enable a municipality to create a solid waste management and/or disposal system for commercial and industrial customers. A market-based system will be in the best interest of supporting economic development in the State, thereby resulting in a positive economic climate in New Jersey.

ASSEMBLYMAN GIBSON: And I would just comment the bill makes that discretionary. That would be up to the locals to decide that or not.

MS. HOFFMAN: That's right.

Last, enforcement of environmental investment charges should not interfere with the operations of the solid waste industry. We believe there

should be some clarification on enforcement of the collection of these charges in the form of legislative parameters guiding counties in the choice of enforcement mechanisms.

We would be happy to work with the Committee, the State, and with you, Mr. Chairman, to help develop those parameters.

In conclusion, we do offer to work with you, Mr. Chairman, the members of the Committee, and the entire Legislature to address this important issue. We believe an equitable solution can be found, and we pledge to you our support to try to find that solution.

ASSEMBLYMAN GIBSON: Thank you for your comments, and we continue to invite you to work with us on this legislation.

Are there any comments for the witness by the Committee? (no response)

Thank you both very much.

MS. HOFFMAN: Thank you.

ASSEMBLYMAN GIBSON: John Antonellis, JB Hanauer and Company.

Good morning, Mr. Antonellis.

JOHN F. ANTONELLIS: Good morning, sir. Good morning.

My name is John Antonellis. I am a Senior Vice President and Trader with the firm of JB Hanauer. We are a retail municipal bond firm established in 1931. We're probably one of the largest retail firms in the country in what we do.

Over the last few years, we have distributed approximately \$150 million of unsecured solid waste debt, New Jersey debt, to our investors. We

appreciate this opportunity to come down here to provide not only support for this legislation, but also to provide some input that we think should be considered in amendments that are going to be drafted as this bill moves forward.

Our concerns, primarily, of course, are the protection of our bondholders, because their investments were done with consideration to historical policy and historical law.

We are also concerned about maintaining the integrity of the solid waste systems that exist in New Jersey and, as was pointed out by Waste Management, are concerned in allowing these systems to be competitive in the environment. New Jersey took a very aggressive posture many years ago, leading the nation in recycling, and I don't think they should be penalized for that position that they were put in.

The third thing, of course, we're concerned about is the impact of this legislation or any legislation on the counties. These counties were asked to provide solid waste management programs, which they did, and responded under State mandates.

While we think this legislation is very, very important to establish the framework and the foundation to move forward, to want to solve the problems of those three areas that we just recently addressed, we also believe that consideration should be given to the fact that the State is probably going to take a more aggressive role in providing support to these counties.

What I would like to do is just clarify a couple of things. Our comments were submitted to the Committee for the last meeting. I would like to review a couple of those comments and some suggestions that we have in

the financial community. We are also willing to work with the Committee to provide input from other parts of the financial community that should help the Committee in making amendments to this legislation.

What we wanted to do was point out to the Committee, first, what has happened, basically, with these investments that are outstanding. As I mentioned, our role in the last few years in distributing the product to individual investors is there has been a major shift of these bonds from the mutual funds and the large institutional holders to the moms-and-pops, the retail investors in the State of New Jersey. That has occurred since the Supreme Court decision.

So any decisions that go on in this meeting and anything that goes on with regard to legislation drafted will affect those individuals. These are not mutual funds where the investments are, as I said, a small portion of the total portfolio. You're going to be affecting a lot of individuals, because that is what has happened over the last couple of years. These investments have shifted into their hands.

The State of New Jersey has always enjoyed an access to capital markets for a number of reasons. There is local finance boards, the Department of Community Affairs, its checks and balances which provide the financial community with a security that there will be an ongoing evaluation of fiscal prudence. We think that is a concern here in any legislation that is going to affect not only the State, but the counties.

So some of the things we would like to recommend in understanding, one, where the bonds are currently held and who they would be affected by, but also in this legislation is, we feel, necessary framework to

establish the foundation to move forward this impact and what we would like to consider in terms of how it is going to affect the counties.

A couple of suggestions that we would like to add are possibly the creation of a State authority. It was recommended-- We recommended that the New Jersey Waste Water Treatment Trust Authority might be used to provide rate stabilization, might be used to provide refinancing of the outstanding debt. If what we're saying, ultimately, is that this debt will be incurred by the county, then we have an opportunity there to save a tremendous amount in interest costs by a refinancing of this outstanding debt.

ASSEMBLYMAN GIBSON: Could you give us a little bit of an estimate of about how much interest costs we might save?

MR. ANTONELLIS: I would say you're going to save right off-- Once you shift-- These ratings on these outstanding bonds are all basically bank-investment grade when they came out in 1991 and 1992. The yields on these things range anywhere from, right now in the current market, from 7 percent to 7.5 percent, considerably higher than anything that is available in the State of New Jersey, quite frankly, bordering on junk bond status. If you shift this debt in an opportunity to create now a county-guaranteed obligation, you'll probably save at least 200 basis points.

So if there is a move to move this debt over to the county level, I think the State has to support and consider any opportunity to bring down that cost associated with the debt. So that is the first recommendation we think has to be explored. We see the authority of the Jersey Waste Water Treatment Trust, or maybe some other authority has the opportunity to do that, to provide that interim financing or rate stabilization.

The bottom line is that you have to ease the pain to the counties. Any county-guaranteed debt out there right now is their obligation. But this unenhanced debt that they have outstanding could pose a potential threat to their credit ratings. So I think that has to be considered.

So that would cover a couple of the points. One, is the possibility of refinancing outstanding debt, lowering that cost. I think the rating agencies need to be brought into this process. We have seen, in the financial community, an attempt by the local finance board, which, based on State statutes, has indicated that this debt will be put back to the counties. It seems to be a very hard-line approach. We can understand that. It also reassures the investment community, but I think if it came down to that it would get challenged. I think the only time that it really was challenged in the State of New Jersey was, I think, in 1993 with Bergen County. But I think an attempt to stonewall or play hardball and put this debt back to the counties could test the State's laws.

ASSEMBLYMAN GIBSON: I'll interrupt you there. You have said it twice, put the debt back to the counties. Isn't that where it is now?

MR. ANTONELLIS: No, actually, the debt is not the counties' debt, it's revenue debt. It is the revenues from the tipping fees that are generated at the authorities.

ASSEMBLYMAN GIBSON: And the authorities are of the counties.

MR. ANTONELLIS: That is correct, but the county doesn't provide for debt service coverage on the outstanding bonds--

ASSEMBLYMAN GIBSON: Say that again.

MR. ANTONELLIS: --except on the county-guaranteed stuff.

ASSEMBLYMAN GIBSON: Say that again.

MR. ANTONELLIS: The counties currently do not provide for the revenues of a debt service to cover the debt service on the outstanding bonds.

In other words, what you have outstanding in the market is you have county-guaranteed debt, which funds run from the general funds of the county toward the payment of the outstanding bonds for the solid waste purposes. But you also have revenue bonds outstanding. Those revenue bonds are secured strictly by the tipping fees generated by the authorities. In two years, they will not be able to control that. They will not be able to maintain the system. So you're going to lose that source of revenue.

ASSEMBLYMAN GIBSON: So when you say putting it back to the counties, you're saying coming from the counties' authorities back to the counties directly.

MR. ANTONELLIS: As an obligation of the county, exactly.

ASSEMBLYMAN GIBSON: All right. I understand.

MR. ANTONELLIS: And that process, while it has been indicated that that is an alternative available to the State of New Jersey, that process has a lot more implications that we're concerned about.

Again, I mentioned three things that we are concerned about; that was the investors, the integrity of a self-sufficient solid waste system in New Jersey, and, of course, the access to the capital markets.

This legislation, we believe, provides for a basic and needed framework to answer -- to solving some of those problems. It definitely takes

care of the investors, and it begins the framework to allow these authorities to be competitive.

When you start to strip out the costs associated with these bond issues that were incurred to satisfy State mandates, you now allow these authorities to begin to operate like businesses. That solves the question -- or answers the question that was raised by Waste Management, and that is, let's allow these authorities to be competitive. So we think this legislation is good because it begins to deal with that, but we do think it needs some amendments to work with.

Another consideration that we strongly feel must be addressed is-- I'm not sure that the counties really have a good handle on what we're talking about in terms of the costs going back to the counties under such legislation. I think as part of this process the financial community should be accessed and, also, the local finance board should be accessed to provide for good data on what this cost really is.

As I mentioned, in the debt that is outstanding now, the county-guaranteed debt is the problem with the county, end of story. There is not much you can do. It has been budgeted. But when you're talking about the debt now that is revenue-supported debt, what is the real impact?

I think, everybody -- we were involved very much with the Governor's Office in providing support for grandfathering legislation in Congress. I'm not actually sure I agree with grandfathering legislation, because I'm not sure it provides for the most cost-effective measure for New Jersey residents or even for New Jersey systems, but we were more concerned about

the integrity of the outstanding debt. We made these commitments, people, and then there was a law changed.

So I think it is needed to really assess what is outstanding, what the costs are, and then look at a number of alternatives: refinancing a debt, creation of a rate stabilization fund, and the creation of an authority of utilization of an authority that can help that refinancing of the outstanding debt. I think when you look at those alternatives you will--

ASSEMBLYMAN GIBSON: There is nothing in the legislation that prevents these counties from refinancing.

MR. ANTONELLIS: No, but I think you'll need some-- Remember, a lot of this is AMT debt, alternative minimum tax debt. I think you'll need an IRS ruling. I'm not sure. I am not an investment banker. So, again, many of these things need to be explored. But, no, it does not, it does not--

I'm sorry, Ma'am.

ASSEMBLYWOMAN BARK: I just have a question, because it seems to me in the back of my mind I recall that if you have refinanced as a public entity, there is a time period before you can do it again, and you also must achieve a certain percentage of savings. Am I correct in remembering that?

MR. ANTONELLIS: Yes. Actually, there is-- You have two things that will affect the ability to refinance debt. One, of course, is the 1986 tax laws which limit refinancing, AMT bonds, prerefunding bonds, and so forth.

ASSEMBLYWOMAN BARK: Well, the reason why I asked the question is because I am aware that my county has done some refinancing, and I'm not sure that we would be eligible to refinance at this point, unless there are some legislative initiatives--

MR. ANTONELLIS: Exclusions, yes.

ASSEMBLYWOMAN BARK: --in that vicinity. That is the only reason why I am bringing it up at all, because it might be something that should be explored.

MR. ANTONELLIS: Yes, most definitely. That is what we're encouraging. While the legislation, the bill, does not preclude anybody from doing that, it would be unfortunate to look at that as a option to lower the cost to the counties, ultimately, only to find that they can't do it. So, yes--

ASSEMBLYMAN GIBSON: And other than what the Assemblywoman just said, what would prevent them from doing that?

MR. ANTONELLIS: Again, Federal tax laws, which do not allow you to do current refundings on AMT bonds. I'm sorry, excuse me, you cannot do advance refundings on AMT bonds. You can only do current refundings. So the 1986 tax laws will impact the ability of a lot of these outstanding debts to be refunded. So I think we need to explore those possibilities.

Then you have to look at the State laws that are going to affect refundings, whether it is present value savings and what the determination is going to be. So I think we need to explore those possibilities.

There is a substantial savings there, and I think when you look at solving this problem from a broad perspective-- Everybody looked at flow

control grandfathering as a solution to the problem. Quite frankly, we were quite amazed in the financial community to wind up at this point knowing that there is over a billion dollars worth of outstanding debt in the State of New Jersey and many other states right now. We're at this point now and two years is not a long period of time.

It would seem crazy to us to design a plan or a legislation such as this which allows these authorities to be competitive. Look, it may not have been the best system in the world, but I have to think that the State of New Jersey and the people involved -- the freeholders at that time -- took the best approach to solve the problem. We are ahead of the nation in what we do. We've done a good job. We're unfortunate that we have to deal with the Supreme Court decision.

Our other concern, of course, is bringing the rating agencies in here to talk about the affect of such legislation on the ratings of the counties. To put the burden back to the counties, even though we might be able to reduce those costs down through refinancings and other alternatives like rate stabilization funds, would be offset by the fact that if their ratings are downgraded, it is going to cost them more to access the markets. Many of these authorities are not responsible just for solid waste programs. They are responsible for a lot of other programs.

So, again, our support here is for this type of legislation. We believe it is necessary. We believe it is a very good framework to start from, and we do hope that some of the points that we made will be considered. We would like to offer our services in providing any kind of evaluation or market data that would help.

ASSEMBLYMAN GIBSON: The bill is clearly designed to help taxpayers at all levels and the bondholders, which are New Jersey citizens, as well.

MR. ANTONELLIS: Yes, most definitely.

ASSEMBLYMAN GIBSON: So we continue to invite your comments. If you're around this afternoon, perhaps there are some specific things that you can share with us. I am particularly interested in that part of the problem where the counties have not pledged their full faith and credit. Those bonds, perhaps, need the greatest amount of propping up. If there are some things in this legislation that restrict that or doesn't encourage that, then I would be happy to have that pointed out specifically.

Thank you for your comments.

MR. ANTONELLIS: Thank you very much.

ASSEMBLYMAN GIBSON: Are there any other legislators who are represented in the audience who wanted to continue to comment? (no response) If not, I'll open it up to comments from anybody who hasn't signed up if they choose to share anything with the Committee. We do have some additional time left. (no response)

If not that, we will continue with this meeting at our January meeting. We will probably take up, as we did today, whatever legislation is before us at that time, but the meeting on A-50 will continue in January. The goal may be, although it is certainly flexible, to hear it again in February with the idea to adopt whatever amendments by February and perhaps release it at that time; although, that is certainly flexible dependent on the amount of time

it takes to incorporate and receive all of the suggestions that you are all concerned with and that we're concerned with.

I'll recess, I guess, perhaps, the meeting on A-50 until January and close this morning's Agriculture and Waste Management meeting.

Thank you all for being here.

(MEETING CONCLUDED)