
Public Hearing

before

ASSEMBLY APPROPRIATIONS COMMITTEE

Assembly Bill No. 2295

(Revises the "Natural Resources Bond Act of 1980" and "Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985," appropriates \$5,000)

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: July 27, 1998
4:30 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Richard H. Bagger, Chairman
Assemblyman Leonard Lance, Vice-Chairman
Assemblyman Francis J. Blee
Assemblywoman Clare M. Farragher
Assemblyman John C. Gibson
Assemblyman Guy R. Gregg
Assemblyman Kenneth C. LeFevre
Assemblyman Joseph R. Malone III
Assemblyman John E. Rooney
Assemblyman Joel M. Weingarten
Assemblyman Joseph Charles Jr.
Assemblyman William D. Payne
Assemblyman Louis A. Romano
Assemblyman Joseph Suliga
Assemblywoman Bonnie Watson Coleman



ALSO PRESENT:

David J. Rosen
Philip N. Liloia
Office of Legislative Services
Committee Aides

Mary Alice Messenger
Assembly Democratic
Committee Aide

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

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ASSEMBLYMAN RICHARD H. BAGGER (Chairman): At this point, we will have the public hearing on Assembly Bill No. 2295, in accordance with our Rules.

I will invite David Pringle of the New Jersey Environmental Federation to testify first.

DAVID PRINGLE: Thank you, Mr. Chairman. Thank you also for getting me up first. I have to run as soon as I'm done here and pick up my daughter. It's my day care night.

Before I get into it, I'd like to thank the Committee for moving the Assembly constitutional amendment on dedicating permanent funding for open space. As I mentioned, it is a critical bill, and we're glad to have it happening. Before I get into solid waste, just a quick comment on Assemblyman Suliga's concerns about open space and transportation.

The environmental community is committed to working with the Legislature in the enabling legislation to ensure that urban districts get their fair share of funding. Open space is just as critical, and arguably more critical, in urban communities than it is out where there is more of it. And it can be a critical tool in revitalizing cities. Secondly, the environmental community is very concerned with how much transportation funding there is and that it's spent appropriately. We support increasing spending on transportation, but we want assurances it's going to be spent better than it has in the past. To that end a fix-it-first policy that becomes a reality and more funding for mass transit, which will also help the cities, is critical.

On the bill, the Environmental Federation opposes this bill as an incinerator bailout at the taxpayers' expense. Rather than bailing out

incinerators, we should be shutting them down and making those who have profited from the incinerator industry and from these incinerators pay off the stranded debt, not the taxpayers. We can replace the burning of trash with the three *R*'s plus *C*: reduce, reuse, recycle. If we did those three things, increased each -- the recycling, composting, and reduction rate -- by 10 percent each, we would eliminate the need to burn any trash. We'd eliminate the need to send any trash out of state, and we'd, in fact, reduce the amount of trash we'd send in state -- we landfilled in state.

In dealing with this issue for the last year and a half and arguably the last 10 years, many legislators have come to me and asked why the environmental community is even involved in this issue, seeing it as strictly an economic one. In fact, it is not strictly an economic issue. We are in this mess because incineration is not competitive. It needed a guaranteed flow of trash to be competitive. Because of that guaranteed flow, we are now in the boat we are now, where we have \$1.6 billion in debt that we need to address. Five-eighths of the debt that is outstanding is incineration debt, and this bill would subsidize the existing incinerators. And we just cannot permit that either for environmental or economic grounds -- to let that continue.

The incinerators have come at a tremendous cost. Environmentally, it's wasted natural resources, and every year the five existing incinerators in New Jersey are legally permitted to pollute over 10 million pounds of carcinogens, heavy metals and adding to the ozone-smog problems that we face in this state.

The Gannett Newspapers did a story this Sunday in Sunday's papers that documented many of the environmental and pollutant problems

the incinerators have created. We can't permit that environmentally to continue. Economically, people try to pit jobs versus the environment. That's something that's been attempted to go on in the transportation debate. This is -- the solid waste issue is a perfect example of how jobs and the environment can work together. The best solid waste management practices, recycling in particular, create many more jobs than incineration, but they compete for the very same materials. You can't have both. We can create more jobs if we move away from incineration and we stop subsidizing it.

Taxes -- again it's incredibly expensive. We got into this mess in the first place because of the cost of incineration. We recognize that the solid waste debt must be addressed. There's just a better way. We do not need to address it now. We intend to spend more time and energy working on solutions in the fall. There's already \$40 million in this fiscal year budget to address this issue. Two counties in particular have been saying that any day they're going to default this year, and, in fact, both are in better shape now than when they started this year. Passaic County was supposedly going to default in March. Four months later, they're in better shape than they were in March. In Warren County, they said they were going to default earlier this month. There are articles that I attached to my testimony that, hopefully, everyone has gotten a copy of that highlights that now Warren County's in better shape than they have been in over a year, that they're at least solid through December.

So, yes, we need to address this issue. No, it does not have to happen now. There are better alternatives that can be better fully explored in the fall. This proposal along with some of the other legislation that's been put

forth to address this issue essentially says tax first and ask questions, if at all, later. And that's just not good public policy. It's not fair again to the taxpayers who have already paid environmentally and economically for these environmental nightmares.

I'd just like to quickly lay out a few alternatives in closing as to how we can address this without taxing taxpayers first. In particular, if there's ever going to be any taxpayer money going to bail out incinerators, at a minimum there has to be strings attached. There has to be audits to ensure that waste mismanagement and fraud is not subsidized. Mercer County has no incinerator to show for it, but they have \$145 million in debt. No taxpayer dollars, not one penny, should go to Mercer County until they document how every penny was spent.

Second, in the *Bergen Record* -- editorialized earlier this week or last week about this, and again it's in the copy of the testimony that I've given you, that incinerator companies need to pay their fair share and that the threat of default needs to be real to force stakeholders who have profited at taxpayers' expense to come to the table. As long as they know there's a bailout coming down the road, there's no incentive for incinerator companies, for other private vendors, for insurers, and investors, who have all profited at taxpayers' expense -- there's no incentive for them to come to the table as long as they know a bailout is guaranteed. At a minimum, the threat of default in some instances needs to be real to force stakeholders to pay their fair share.

Five-eighths of the debt is revenue debt. Moodys is already on record -- Moodys Investment Services is already on record as saying that Warren County, which has revenue debt -- their credit rating would not be

affected by default on this debt because it's Improvement Authority debt. It's not county backed. It's revenue bonds. So again you need the threat of default to make investors, insurers, and incinerator companies pay their fair share.

Finally, there's no moral obligation on the part of the State, despite assertions to the contrary, to bail out the incinerators. It's very crystal clear in the McEnroe Act. It says Improvement Authority debt is just that. It has no obligation of the State or the State's subdivisions including the counties and municipalities to pay off that debt.

Finally, under terms of force majeure -- again, not being a legal scholar, I can't quote it in detail -- but, essentially, we have a force majeure here: a drastic change in circumstances beyond the control of any party to the contracts involved here. The incinerator companies, the State-- Well, arguably the State should have known that flow control was going to be ruled unconstitutional. But in any case, we have drastic changes to the circumstances which calls for these contracts to be ruled null and void, and that means renegotiation of the contracts. And, again, you need to make that happen if you're going to bring them to the table.

In conclusion, the Supreme Court has given New Jersey a tremendous opportunity to fix, rather than aggravate, the past mistakes we've made on solid waste policy. We can protect New Jerseyans' environment, health, pocketbooks, and wallets, or we can continue to subsidize the profits of private polluters. I urge you not to waste the opportunity the Supreme Court has given us and look forward to working with you in the fall to correct these past mistakes.

And thank you again for the time to testify.

ASSEMBLYMAN BAGGER: Thank you, and before you go, Assemblyman Rooney has a question or a comment. Though somehow, I feel this is not the first time you two guys have discussed this together.

MR. PRINGLE: We've had a long dialogue.

ASSEMBLYMAN ROONEY: I've heard this testimony almost verbatim many times before, and I keep coming up with the same response -- is that he seems to believe that the incinerator operators own these bonds. And that's an absolute fallacy. They don't own the bonds. The people who own the bonds are people like you and me -- are the senior citizens out there who made an investment for their retirement or whatever. They made an investment in an Authority bond that they assumed was backed by the State. Now, those bonds are out there. If we default on them, it's not the incinerator people who are going to have a problem, it's going to be the people of the State of New Jersey, the residents that are out there, the senior citizens that own these bonds.

And the problem that you don't understand, you keep missing the point, is that what happens when we default on these bonds is every one of the existing facilities will then go up for auction. And who's going to buy them? The very people that you're trying to say should pay for them. They're going to buy them at auction at 10 cents on the dollar. They're going to wind up having these facilities at lower prices than they ever had before. They're going to be much more competitive. They're going to be able to expand. They're going to be able to compete with other methods of disposal, and incineration

is going to be a way of life for us here. By paying off the bonds, by getting these things in the proper order, we're not going to have that problem.

I can't believe, David, that you haven't learned the lesson by this that you're not screwing the incinerators, you're screwing the people and the residents of the State of New Jersey. And I resent that, and I will support this bill. I will support this bond. Bail out, if you will, and I'll defend it to my dying day.

You look at Passaic County. Passaic had their incinerator blown up. The people that had faith in that are out there with \$98 million worth of debt. It's not an incinerator company that has that debt. You brought it up yourself. Mercer County -- you blew up the incinerator, fine. I don't have a problem with that. What happens is \$142 million worth of debt -- and maybe there should be a SCI investigation in Mercer County. That's not for me to say. I've said it-- I've inferred it, but it's not for me to say.

ASSEMBLYMAN BAGGER: Let the record-- No, he did not say.

ASSEMBLYMAN ROONEY: Any maybe Bob Prunetti should answer to those charges as to what happened. I don't have a problem, but what happens is there are people out there that are holding these bonds that bought it in good faith. It's not the incinerator operators. This is what you don't understand. As far as I'm concerned, this is good legislation. It's good policy, and it's good for the residents of the State of New Jersey.

ASSEMBLYMAN BAGGER: Somehow I think that there's not going to be a consensus between the witness and Assemblyman Rooney at this point.

ASSEMBLYMAN ROONEY: No. Never on this issue.

MR. PRINGLE: We've had this passionate debate for at least seven months now.

ASSEMBLYMAN BAGGER: And I'm glad you both feel strongly about it.

MR. PRINGLE: Needless to say, I respectfully disagree.

ASSEMBLYMAN BAGGER: I want you to be able to pick up your daughter on time, so--

MR. PRINGLE: I do appreciate the Assemblyman's comments that we need to get better controls on the incinerators and the Gannett stories this weekend.

ASSEMBLYMAN ROONEY: Then you ought to support my bills because that's exactly what it says is that we should have an audit for all of these.

MR. PRINGLE: You already know we do support them.

ASSEMBLYMAN BAGGER: Assemblyman, thank you very much.

David, if there's nothing further, thank you very much for your testimony today.

MR. PRINGLE: Thank you.

ASSEMBLYMAN BAGGER: We have three groups to testify on this bill beginning with Celeste Carpiano, Executive Director, New Jersey Association of Counties, who is joined by Robert Collins, the Monmouth County Administrator.

CELESTE CARPIANO: Good afternoon, Mr. Chairman, members of the Committee. I want to thank you today very much for this opportunity to testify before you.

As you are aware, the Association represents all the state's 21 counties with 21 different problems when it comes to the issue of solid waste. Our members have for years analyzed these problems in order to find a solution. Our problems are complex, and we believe that the statewide approach is our only viable solution. The Association strongly supports this legislation, A-2295, and we'd like to commend the efforts of those individuals who have crafted the bill and also the sponsors, Assemblymen Gibson and Blee. And we ask you to please release this bill today.

With me is Robert Collins, the Monmouth County Administrator, who would also like to make some comments.

ASSEMBLYMAN BAGGER: Certainly.

Mr. Collins.

ROBERT COLLINS: Thank you, Mr. Chairman.

Celeste said it all. In the interest of time, I just urge you to support the bill.

And, as to Mr. Pringle, Monmouth County is not an incinerator county, and it supports it.

Thank you.

ASSEMBLYMAN BAGGER: Thank you both very, very much.

We are also pleased to have with us Timothy McDonough and John Carlton of the Pollution Control Financing Authority of Warren County. Mr. McDonough is the Treasurer and Mr. Carlton is the Executive Director,

and they are joined by Assemblywoman Connie Myers representing Warren County together, of course, with our Vice-Chairman.

Assemblywoman.

ASSEMBLYWOMAN CONNIE MYERS: Thank you, Mr. Chairman, for giving us the opportunity to testify today. This is an issue that I have spent the lion's share of my brief tenure in the Legislature on, as a member of the Agriculture and Waste Management Committee last session, under the leadership of Assemblyman Gibson, and this session as a member of the Solid and Hazardous Waste Committee, under the leadership of Assemblyman Rooney. I have sponsored for two years a bill similar to the bill that is before you today.

There are some differences, and I'd like to give you a very brief -- because I know the hour is late -- view of what our Committee's last session and this session determined, as far as trying to achieve an equitable distribution of State funds to assist the counties with significant debt.

My bill was released last session as companion to the Gibson package, which primarily permitted EICs as a method for counties to address their debt. Assembly Bill No. 1167, which you graciously posted on your list today, was released this year, last month, by our Committee as a companion to Mr. Rooney's package, which primarily would rely on appropriations from the General Fund to help counties handle their debt. So my initiative was in a context of a wider solution for the solid waste problem. The bill before you today is in isolation. It gives over a \$100 million to seven counties, and I do agree with the intent to free up money that is sitting in the 1980, 1985 Bond

Acts to help at least some of our counties. I think it's critical that we get more money into the fund. Forty million dollars is not enough.

This bill will provide about \$150 million in additional funding, which is critically needed. However, the way A-2295 is crafted, there are no standards for distributing the money. In the bills that our Committees approved last session and this session, we adopted a standard of per capita debt. The per capita debt across the 21 counties in New Jersey ranges from zero in one of the counties that I represent to almost 1000 per capita in another of the counties that I represent. So it is a significant and very diverse problem across the 21 counties.

And I look forward to working with this Committee because I'm sure that this -- although this is the first bill to address the solid waste issue, I'm sure it will not be the last bill that the Legislature considers. And I urge you, as we move forward when we come back in the fall, to consider the particular situation of counties like Warren with per capita debt that they cannot deal with through environmental investment charges. In Warren County's unique situation, they cannot deal with it because they were host to a regional facility that serviced three counties. Two other counties, Somerset and Hunterdon, were responsible for fully two-thirds of their debt service until the Federal court decision struck down waste flow and permitted Somerset and Hunterdon to go another way. Warren County has literally been left holding the bag.

A standard such as per capita debt or a system that relies on audits so that State aid is awarded according to need makes sense for Warren County. I would also like to say that Warren County -- and I have with me the

Treasurer and the Director of the Warren County Pollution Control Financing Authority -- has worked very closely with the administration under the Partnership Agreement Program that this Committee started in the budget a year ago. They have been meeting in good faith with the Treasurer in the Governor's Office for a year to try to address the problems. They have laid off staff. They've cut their staff literally in half, reallocated expenses, renegotiated contracts, and yet, they have not been able to receive any aid from the original 20 million, let alone the now 40 million that has been appropriated by this Committee for that purpose.

So I thank you very much for giving me your time today. I know you've had a long day and ask you, although there may not be time to consider Warren County in the context of this bill, if when we come back in the fall you will work with me to address this particular concern.

And I'll be happy to answer any questions. Thank you.

ASSEMBLYMAN BAGGER: Thank you very much.

Assemblyman Charles.

ASSEMBLYMAN CHARLES: Yes. What are the reasons given for not allocating money on a per capita basis or for some formula or modification of that type formula?

ASSEMBLYWOMAN MYERS: Perhaps the sponsor would prefer to answer this.

ASSEMBLYMAN BAGGER: Yes, I think that's more appropriately addressed else where.

Assemblyman Gibson, are you willing to take that on?

ASSEMBLYMAN GIBSON: Basically, the bill provides for the forgiveness of existing debt. And as I understand it and hope, it will be all the existing debt that these seven or so counties have incurred borrowing money from the State of New Jersey. The State of New Jersey, the lender, intends through this legislation, if ratified by the voters this November, to forgive all that debt. It does not appear to be any need for a formula if, in fact, the debt is identified and the intention of the bill is to forgive that debt. That's one part of the bill.

The second part of the bill is to provide an opportunity, again if ratified by the voters, to let the State refinance as much of the debt as the counties who wished to participate in that of their own debt -- to refinance that through a State bond issue -- could enjoy the lower interest rates and perhaps enjoy the ability to not make it necessary to keep this debt-reserve ratio, thereby, reducing their debt or their payments in both cases.

ASSEMBLYMAN CHARLES: Just so that I'm clear on it, part of the debt of these entities derives from State loans, another part is from private financing. This bill forgives all the State obligations--

ASSEMBLYMAN GIBSON: Yes, Assemblyman.

ASSEMBLYMAN CHARLES: --so everybody is treated the same with respect to the State obligation.

ASSEMBLYMAN GIBSON: Except those that never borrowed from the State.

ASSEMBLYMAN CHARLES: Okay.

ASSEMBLYMAN GIBSON: They're not necessarily able to enjoy that part of the benefit.

ASSEMBLYMAN CHARLES: So that Warren County's problem derives from its private financing? Is that the situation?

ASSEMBLYMAN GIBSON: Yes. And I would expect that the only part of this bill that might be of some benefit to Warren County, should they choose to refinance and take advantage of the State financing it, if, in fact, the voters ratify that in November.

ASSEMBLYMAN CHARLES: Thank you.

ASSEMBLYMAN BAGGER: Thank you very much.

Mr. Carlton, Mr. McDonough, any comments to add?

T I M O T H Y M c D O N O U G H: Yes, there are a quick, few comments, if I can, Mr. Chairman. And on behalf of the Pollution Control Financing Authority, I want to thank you for allowing us this opportunity to be here today to just talk a few minutes about A-2295.

The Authority definitely appreciates and wants to thank the sponsors. John Gibson, who's worked very hard and finally really took the whole idea of solid waste by the horns here and started to move it along with the fellow sitting next to him, Assemblyman Rooney, as well, we want to thank you. Also, Francis Blee, the cosponsor, as well as the Vice-Chair, Appropriations Committee, Assemblyman Leonard Lance. Also, Connie Myers, thank God for Connie Myers with her Warren County. I would be-- I don't where we'd be today without her leadership. And, also, in the Treasurer's Office, Lou Goetting, who's been a tremendous help, along with Bob Fabricant.

The Authority continues to support a State solution to this stranded debt created by the loss of solid waste flow control. It was through

State policy and pressure, as you recall, that Warren County constructed the first State's solid waste resource recovery facility -- the first in the state and the first ash landfill. The system provided a regional, environmentally sound waste disposal service to the counties of Warren, Hunterdon, and Somerset. And that's key because it's a regional system, and that's why Warren County is unique.

However, as a result of the *Atlantic Coast* case, as we all know, the Authority is in a very dangerous financial situation today. Since November of 1997, our revenues have been approximately \$1 million per month lower than our expenses. And you know what that means if you have any bond experience or financial experience. We are technically, as we sit here today, in a technical default. This Authority has already reached the technical default level.

The Authority has taken a lot of measures on its own to try and restructure our operations. We have laid off people. We have reduced staff. We have eliminated functions, and we have also started or have continuing negotiations with the facility operator, as well as our host communities in the area. And we have participated in the State Solid Waste Partnership Agreement Program as well. Nevertheless, this drain on the financial resources continues.

Assembly Bill No. 2295, similar to Assembly Bill No. 1167 sponsored by Assemblywoman Connie Myers, provides State loan forgiveness and much needed State funds to assist authorities and counties who have incurred substantial solid waste debt for their facilities. However, unlike Assemblywoman Myers's bill, A-2295 does not specify a method of State aid

distribution. And this is what Assemblyman Charles was talking about a few minutes ago. Without a specified method, there is no assurance that Warren County, which has the highest per capita solid waste debt in the state, that's \$956 per person-- We have no assurances without any kind of specified method that the necessary funds will be given to Warren County in order to prevent a bond default by our Authority.

We, therefore, request that the Committee amend the bill to provide a method of a distribution just such as on the basis of per capita solid waste debt. With such an amendment there will be assurances that the greatest amount of State money will be given to the counties with the greatest need. The Pollution Control Financing Authority of Warren County once again appreciates the sponsors and cosponsors of A-2295 in providing State assistance to counties such as Warren. We ask the Assembly Appropriations Committee ensure that this bill provides the money where it is most needed.

Thank you.

ASSEMBLYMAN BAGGER: Thank you very much.

If there's nothing further, let me thank you for being here. The members of this Committee and the Legislature's very aware of the situation that Warren County finds itself in with the high level of per capita debt. Your representatives in this Assembly have been real advocates for Warren County. The amendment that we are going to be acting on for the Assembly Committee Substitute for Assembly Bill No. 2295 gives the Joint Budget Oversight Committee a substantial involvement in the role of approving the disbursing of funds for solid waste grants. One of your representatives is a member of that Joint Budget Oversight Committee, so you can be sure that this

Committee will continue to try to alleviate the situation that you find yourselves in.

And with that, thank you very much.

MR. McDONOUGH: Thank you, Mr. Chairman.

ASSEMBLYMAN BAGGER: We also have representatives for the Port Authority of New York and New Jersey who have signed up on Assembly Bill No. 1167. That bill is not going to be voted on today, and I do not see them. I was going to invite them the opportunity to--

Sue Ostergaard, would you like to testify on Assembly Bill No. 2295? You had signed up on the other approach to this which is not being acted on. (negative response from audience) We're not going to be hearing the other one today.

I want to conclude the public hearing on Assembly Bill No. 2295 if there's no one else present who wishes to be heard on that legislation. If not, I will declare that public hearing closed.

(HEARING CONCLUDED)