

SENATE, No. 3892

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

Establishes timeframe for adoption of, and requires public comment on, proposed host community benefit agreements for certain solid waste facilities; authorizes residents to petition State to establish or adjust host community benefit.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning host community benefit agreements for certain
2 solid waste facilities, and amending P.L.1975, c.326 and
3 P.L.1987, c.449.

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

7
8 1. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to
9 read as follows:

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

16 The owner or operator of the sanitary landfill facility shall
17 annually pay to the relevant municipality the full amount due under
18 this subsection, and each relevant municipality **[is]** shall be
19 empowered to anticipate this amount for the purposes of preparing
20 its annual budget. For the purposes of calculating the payments, the
21 owner or operator of the sanitary landfill facility may, subject to the
22 prior agreement of the relevant municipality and the approval of the
23 Department of Environmental Protection, provide the municipality
24 with any of the following benefits in consideration for the use of
25 land within its municipal boundaries as the location of a sanitary
26 landfill facility:

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

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

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

32 (4) Any combination thereof.

33 b. (Deleted by amendment, P.L.1994, c.27).

34 c. Every owner or operator of a sanitary landfill facility
35 required to make annual payments to a municipality pursuant to
36 subsection a. of this section may petition the Department of
37 Environmental Protection for an increase in its tariff which reflects
38 these payments. The department, **[within]** not more than 60 days
39 **[of]** after the receipt of the petition, shall issue an appropriate order
40 stating that these payments shall be passed along to the users of the
41 sanitary landfill facility as an automatic surcharge on any tariff filed
42 with, and recorded by, the department for the solid waste disposal
43 operations of the facility.

44 d. In issuing any order required by subsection c. of this section,
45 the Department of Environmental Protection shall be exempt from
46 the provisions of R.S.48:2-21.

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

Matter underlined thus is new matter.

- 1 e. Not more than 10 days after commencing negotiations
2 pursuant to subsection a. of this section, in association with the
3 adoption of a host community benefit agreement, the municipality
4 shall provide written notice to the department of the date on which
5 negotiations were commenced.
- 6 f. Negotiations undertaken pursuant to subsection a. of this
7 section shall be completed not more than 180 days after being
8 commenced. If negotiations cannot be completed within the
9 timeframe specified by this subsection, the parties may jointly apply
10 to the department for an extension of up to 180 days to complete the
11 negotiations. The joint application shall identify the reasons why
12 negotiations were not completed within the initial 180-day
13 timeframe required by this subsection. The department shall
14 approve an application for extension, submitted pursuant to this
15 subsection, provided that there is no reasonable basis for the
16 commissioner to believe that the municipality or sanitary landfill
17 facility are acting in bad faith with respect to the negotiations.
18 Notice of an extension authorized pursuant to this subsection shall
19 be posted on the Internet websites of the department and the
20 municipality not later than 10 days after the extension is granted.
- 21 g. Not more than 10 days after negotiations are completed
22 pursuant to subsection f. of this section, and before the proposed
23 host community benefit agreement is submitted to the department
24 for approval pursuant to subsection a. of this section, the
25 municipality shall publish the proposed host community benefit
26 agreement on its Internet website and provide a minimum 45-day
27 period for public comment on the proposed agreement. Not more
28 than 45 days after the public comment period is closed, the
29 municipality and sanitary landfill facility shall consider the
30 comments received and incorporate changes to the proposed host
31 community benefit agreement, in accordance with those comments,
32 as is deemed by the parties to be appropriate. Upon submission of
33 the proposed agreement to the department for approval, pursuant to
34 subsection a. of this section, the municipality shall also transmit the
35 public comments to the department for consideration.
- 36 h. If a request for extension, submitted pursuant to subsection
37 f. of this section, is denied by the department on the basis of bad
38 faith negotiations undertaken by either party, or if the parties
39 otherwise cannot agree on the terms of the host community benefit
40 agreement within the initial and extended timeframes provided by
41 subsection f. of this section, the department shall issue an order
42 establishing a host community benefit in the municipality, as the
43 commissioner deems appropriate. When establishing the host
44 community benefit, the commissioner shall consider, and shall
45 incorporate to the greatest extent possible, consistent with the other
46 provisions of the order, any terms on which the parties were able to
47 reach agreement during the course of negotiations.

1 i. A resident of a municipality within which a sanitary landfill
2 facility is located may petition the department for an order
3 establishing or adjusting a host community benefit pursuant to this
4 section. The petition shall be presented in a form and manner
5 prescribed by the department and shall: (1) indicate the level of
6 benefit that the petitioner believes should be imposed; (2) include
7 supporting information and documentation explaining why the
8 proposed level of benefit is both reasonable and necessary; and (3)
9 include any other information required by the department. The
10 department shall issue a decision on the petition no later than 180
11 days after receipt thereof.

12 (cf: P.L.1994, c.27, s.1)

13

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

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

25 The owner or operator of the transfer station shall, not less
26 frequently than quarterly, pay to the relevant municipality the full
27 amount due under this subsection, and each relevant municipality
28 **[is]** shall be empowered to anticipate this amount for the purposes
29 of preparing its annual budget. For the purposes of calculating the
30 payments, the owner or operator of the transfer station may, subject
31 to the prior agreement of the relevant municipality and the approval
32 of the Board of Public Utilities, provide the municipality with any
33 of the following benefits in consideration for the use of land within
34 its municipal boundaries as the location of a transfer station:

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

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

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

40 (4) Any combination thereof.

41 b. Every owner or operator of a transfer station required to
42 make payments not less frequently than quarterly to a municipality
43 pursuant to subsection a. of this section may petition the Board of
44 Public Utilities for an increase in its tariff which reflects these
45 payments. The board, **[within]** not more than 60 days **[of]** after
46 the receipt of the petition, shall issue an order that these payments
47 shall be passed along to the users of the transfer station as an

1 automatic surcharge on any tariff filed with, and recorded by, the
2 board for the solid waste disposal operations of the transfer station.

3 c. In issuing any order required by subsection b. of this section,
4 the Board of Public Utilities shall be exempt from the provisions of
5 R.S.48:2-21.

6 d. Not more than 10 days after commencing negotiations
7 pursuant to subsection a. of this section, in association with the
8 adoption of a host community benefit agreement, the municipality
9 shall provide written notice to the Board of Public Utilities of the
10 date on which negotiations were commenced.

11 e. Negotiations undertaken pursuant to subsection a. of this
12 section shall be completed not more than 180 days after being
13 commenced. If negotiations cannot be completed within the
14 timeframe specified by this subsection, the parties may jointly apply
15 to the board for an extension of up to 180 days to complete the
16 negotiations. The joint application shall identify the reasons why
17 negotiations were not completed within the initial 180-day
18 timeframe required by this subsection. The board shall approve an
19 application for extension, which is submitted pursuant to this
20 subsection, provided that there is no reasonable basis for the board
21 to believe that the municipality or transfer station are acting in bad
22 faith with respect to the negotiations. Notice of an extension
23 authorized pursuant to this subsection shall be posted on the
24 Internet websites of the board and the municipality no later than 10
25 days after the extension is granted.

26 f. Not more than 10 days after negotiations are completed
27 pursuant to subsection e. of this section, and before the proposed
28 host community benefit agreement is submitted to the board for
29 approval pursuant to subsection a. of this section, the municipality
30 shall publish the proposed host community benefit agreement on its
31 Internet website and provide a minimum 45-day period for public
32 comment on the proposed agreement. Not more than 45 days after
33 the public comment period is closed, the municipality and transfer
34 station shall consider the comments received and incorporate
35 changes to the proposed host community benefit agreement, in
36 accordance with those comments, as is deemed by the parties to be
37 appropriate. Upon submission of the proposed agreement to the
38 board for approval, the municipality shall also transmit the public
39 comments to the board for consideration.

40 g. If a request for extension, submitted pursuant subsection e.
41 of this section, is denied by the board on the basis of bad faith
42 negotiations undertaken by either party, or if the parties otherwise
43 cannot agree on the terms of the host community benefit agreement
44 within the initial and extended timeframes specified by subsection
45 e. of this section, the board shall issue an order establishing a host
46 community benefit in the municipality, as it deems appropriate.
47 When establishing the host community benefit, the board shall
48 consider, and shall incorporate to the greatest extent possible,

1 consistent with the other provisions of the order, any terms on
2 which the parties were able to reach agreement during the course of
3 negotiations.

4 h. A resident of a municipality within which a transfer station
5 is located may petition the board for an order establishing or
6 adjusting a host community benefit pursuant to this section. The
7 petition shall be presented in a form and manner prescribed by the
8 board and shall: (1) indicate the level of benefit that the petitioner
9 believes should be imposed; (2) include supporting information and
10 documentation explaining why the proposed level of benefit is both
11 reasonable and necessary; and (3) include any other information
12 required by the board. The board shall issue a decision on the
13 petition no later than 180 days after receipt thereof.

14 (cf: P.L.1991, c.381, s.40)

15
16 3. This act shall take effect immediately.

17 18 19 STATEMENT

20
21 This bill would amend the law pertaining to the establishment of
22 host community benefit agreements for municipalities in which
23 sanitary landfill facilities or solid waste transfer stations operate, in
24 order to provide for greater public input with respect to the
25 establishment and terms of such agreements and greater
26 transparency and finality in the host community benefit negotiation
27 process.

28 Current law provides that any municipality in which a sanitary
29 landfill facility or transfer station is located is entitled to receive an
30 annual economic benefit, to be paid by the owner or operator of the
31 facility or transfer station. The amount and form of the benefit are
32 to be established pursuant to an agreement that is executed between
33 the municipality and the sanitary landfill facility or transfer station
34 and is approved by the Department of Environmental Protection
35 (DEP) or the Board of Public Utilities (BPU), as appropriate. This
36 bill would: (1) establish a specific timeframe for the completion of
37 host community benefit negotiations between a municipality and a
38 sanitary landfill facility or transfer station; (2) require the
39 municipality to publish the proposed agreement online, for public
40 comment, prior to submitting the proposed agreement to the DEP or
41 BPU for approval; (3) require the DEP or BPU to establish the host
42 community benefit for a municipality in any case where the parties
43 are negotiating in bad faith or otherwise fail to come to an
44 agreement on the host community benefit; and (4) authorize any
45 resident to petition the DEP or BPU for an order establishing or
46 adjusting a host community benefit in the municipality.

47 The bill provides, in particular, that, not more than 10 days after
48 negotiations are commenced between a municipality and a sanitary

1 landfill facility or transfer station to establish a host community
2 benefit, the municipality will be required to provide written notice
3 to the DEP or BPU, as appropriate, indicating the date on which
4 negotiations were commenced. Negotiations are to be completed
5 not more than 180 days after being commenced; however, if
6 negotiations cannot be completed within this timeframe, the parties
7 may jointly apply to the DEP or BPU for an extension of up to 180
8 days to complete the negotiations and publish the proposed
9 agreement. An application for extension is to identify the reasons
10 why negotiations were not completed within the initial 180-day
11 timeframe required by the bill. The DEP or BPU, as appropriate,
12 will be required to approve an application for extension, so long as
13 there is no reasonable basis for the commissioner or the board, as
14 appropriate, to believe that the municipality or the sanitary landfill
15 facility or transfer station, as appropriate, are acting in bad faith
16 with respect to the negotiations. Notice of an extension authorized
17 under the bill is to be posted on the Internet websites of both the
18 municipality and the DEP or BPU, as appropriate, within 10 days
19 after the extension is granted.

20 The bill also provides that, not more than 10 days after
21 negotiations are completed in accordance with the timeframes
22 specified by the bill, and before the proposed host community
23 benefit agreement is submitted to the DEP or BPU for approval, the
24 municipality is to publish the proposed host community benefit
25 agreement on its Internet website and provide a minimum 45-day
26 period for public comment on the proposed agreement. Not more
27 than 45 days after the public comment period is closed, the parties
28 will be required to consider the comments received and incorporate
29 changes to the proposed host community benefit agreement, in
30 accordance with those comments, as is deemed by the parties to be
31 appropriate. Upon submission of the proposed agreement to the
32 DEP or BPU for approval, the municipality will also be required to
33 transmit the public comments to the DEP or BPU for consideration.

34 If an application for extension of the negotiation period is denied
35 by the DEP or the BPU on the basis of bad faith negotiations
36 undertaken by either party, or if the parties otherwise cannot agree
37 on the terms of the host community benefit agreement within the
38 initial and extended timeframes specified by the bill, the DEP or
39 BPU, as appropriate, will be required to issue an order establishing
40 a host community benefit in the municipality as the commissioner
41 or board deems appropriate. When establishing a host community
42 benefit, the commissioner or board will be required to consider, and
43 incorporate to the greatest extent possible, consistent with the other
44 provisions of the order, any terms on which the parties were able to
45 reach agreement during the course of negotiations.

46 Finally, the bill authorizes any resident of a municipality in
47 which a sanitary landfill facility or transfer station is located to, at
48 any time, petition the DEP or the BPU for an order establishing or

1 adjusting a host community benefit in the municipality. Any such
2 petition is to: (1) indicate the level of benefit that the petitioner
3 believes should be imposed; (2) include supporting information and
4 documentation explaining why the proposed level of benefit is both
5 reasonable and necessary; and (3) include any other information
6 required by the DEP or BPU, as appropriate. The DEP or BPU, as
7 the case may be, will be required to issue a decision on the petition
8 no later than 180 days after receipt thereof.